Cost Containment Strategies For State Correctional Facilities: A Compilation of Resource Materials

Prepared For The
Central Indiana Corporate Partnership

Prepared by Baker & Daniels

February 2004

BAKER & DANIELS

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February 23, 2004

VIA UPS

Stephen Baranyk
Chairman, General Government Subcommittee
Indiana Government Efficiency Commission
202 Senator Way East
Carmel, IN 46032

Re: Research on Corrections Costs

Dear Steve:

Last year, at the request of our client, Central Indiana Corporate Partnership, we reviewed the efforts in other states to address the increasing costs of their corrections systems.

We have compiled that research and resource materials in the accompanying report. CICP would like to provide these materials to the Department of Correction, members of the Indiana General Assembly and the Indiana Government Efficiency Commission to assist each of you in your ongoing study of this issue. Although we have attempted to be thorough in our review of the literature in this area, it is possible that there are other worthwhile programs or studies that are not included in this report. In addition, by presenting this report to you, CICP is not taking a position on the relative merits of any of the proposals described in the report, nor should this report be taken as an endorsement or recommendation of any particular policy position. Rather, CICP wanted to share these materials with the administration and the legislature to assist you and other policymakers as you consider these issues. We hope that these materials are useful to you in that endeavor.

Sincerely,

Ronald D. Gifford

RDG/ss
Enclosure
cc: David Goodrich (w/o encl.)

Methodology and Purpose

As state and local budgets come under increasing strain, new attention has been focused on the costs of running state and local corrections programs. To assist the Indiana General Assembly and the state's Executive Branch as they consider the costs of these programs and strategies to address those issues, the Central Indiana Corporate Partnership commissioned the law firm of Baker & Daniels to review how other states have addressed this issue and to compile relevant information on possible cost containment proposals to be shared with Indiana policymakers.

This report is a summary of the information that was gathered in 2003. Although it is a comprehensive report, it does not purport to be an exhaustive study of the literature or of all state programs that might exist. Where an issue has been the subject of considerable policy debate, such as in the areas of drug sentencing or prison privatization, this report attempts to identify and cite independent analyses of those issues, although the report does identify the positions put forth by advocates regarding such issues. Finally, this report is not intended to take a position on the relative merits of any of the proposals described in the report, nor should it be taken as an endorsement or recommendation of any particular policy position.

About the Central Indiana Corporate Partnership

The Central Indiana Corporate Partnership is an alliance of Indiana business and research university leaders coming together to foster long-term prosperity for the region. CICP is dedicated to the proposition that the public, private and academic sectors must plan and invest strategically to build a competitive, 21st century economy in Central Indiana.

CICP is not an economic development mechanism or a trade association. Its members advocate policy directions and engage in collaborative efforts to address the broader issues facing our region: expanding capital formation, encouraging high-growth, high-wage economic clusters, and maximizing Indiana's intellectual resources, among others.

For more information on CICP, please visit its website at www.cincorp.com.

EXECUTIVE SUMMARY

Twenty-five years ago, Indiana spent $45 million a year to incarcerate 4,500 inmates. Today, Indiana spends approximately $600 million a year to incarcerate 21,000 inmates. As a result the Indiana Department of Correction's budget has increased over the past decade at nearly twice the rate of the rest of the state budget.[1]

The expansion of prison populations has been driven primarily by the increased incarceration of nonviolent offenders, both in Indiana and nationwide. The majority of Indiana's current prison population is comprised of nonviolent offenders: 19.3% of state prisoners were sent to prison for a drug crime, and another 29.2% were committed for property, non-criminal code, and public disorder offenses.[2] These percentages are comparable to the experience in other states, based on data collected nationally on the number of non-violent offenders held in state prisons.

As a result, the percentage of violent offenders held in state prisons has actually declined from 57% percent in 1978 to 48% in 1999.[3] From 1980 to 1997, while the number of violent offenders committed to state prisons nearly doubled (82%), the number of nonviolent offenders tripled (207%) while the number of drug offenders increased more than ten-fold (1040%).[4]

Given the fiscal pressures created by the increased costs of housing these offenders, states have struggled to identify cost-savings in their correctional systems. Researchers and decision-makers have focused on two primary areas: controlling the size of the prison population and managing the cost of building and operating prison facilities.

Advocates for "population-based" reforms tend to focus on four particular areas: (1) enhancing court discretion over sentencing decisions; (2) promulgating sentencing guidelines that reduce prison time for non-violent, low-risk offenders; (3) increasing the use of intermediate sanctions; and (4) expanding drug court options.

State governments looking to reduce operational costs have increasingly turned to the private sector to control the operational expense of both constructing and operating correctional facilities. Proponents of privatization assert that private contractors can operate prisons at a lesser cost than the government, without reducing the levels or quality of service.

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1 Kauffman, Kelsey, *Cutting Education to Feed Prison Industry*, February 22, 2002, The Indianapolis Star.

2 *Offender Population Statistics*, as of July 1, 2002, Indiana Department of Correction website, http://www.in.gov/indcorrection/.

3 Hindelang, Michael J. et al., *Sourcebook of Criminal Justice Statistics 1980,* U.S. Department of Justice, Bureau of Justice Statistics, 1981, p. 577. Beck, Allen J. and Paige Harrison, *Prisoners in 2000* (2001), United States Department of Justice, Bureau of Justice Statistics website, Washington DC.

4 Beatty, Phillip, Barry Holman, and Vincent Schiraldi. *Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States,* The Justice Policy Institute (2000).

This report will examine the effectiveness of these cost-containment efforts in Indiana and other states. Many of these programs may hold significant promise for reducing corrections costs.

In the area of population-based reforms, Indiana has already granted enhanced judicial discretion over certain drug sentencing decisions and has eliminated mandatory minimum sentences for certain drug offenses. Because those changes have only recently occurred, the full impact of these changes has not yet been realized. North Carolina's experience with reforming its sentencing guidelines in 1993 has generated a reduction both in its incarceration and crime rate, and suggests an opportunity for Indiana to realize cost savings from similar reforms in its current review of sentencing guidelines. Likewise, the use of drug courts in Indiana and elsewhere may reduce overall corrections costs by diverting offenders to less-expensive programs. The case for intermediate sanctions is less clear, since many of these programs have traditionally not been structured in a manner that generates cost savings.

This report will also examine how privately designed, constructed, and operated prisons compare with their public counterparts on both cost and quality, and what the bases for any cost differences may be. Generally speaking, the evidence has been inconclusive as to the relative cost effectiveness of privately operated prisons, although there are indications that privately constructed prisons generate cost savings relative to publicly constructed prisons. The limited studies available suggest that the quality of privately operated prisons is comparable to their public counterparts.

A. Enhanced Discretion Over Sentencing

In 2001, the Indiana General Assembly passed House Bill 1892, which gave the courts enhanced discretion to sentence certain drug offenders to drug treatment programs rather than prison, and exempted drug offenders with no other types of convictions from the "three strikes" law, provided they do not have more than one trafficking conviction. The General Assembly also passed Senate Bill 358 in 2001, which eliminated mandatory minimum sentences for habitual offenders for certain non-violent drug offenses.[5]

Other bills to enhance judicial discretion have not been enacted, however. For example, Senate Bill 476 was introduced in the 2003 session of the Indiana General Assembly. This bill would have permitted counties to divert offenders who suffer from mental health and/or chronic substance abuse disorders to drug treatment programs instead of prison.[6] The bill did not receive a hearing.

B. Sentencing Guidelines

In response to federal truth-in-sentencing requirements, and a "get tough on crime" political environment, many states over the past twenty years have implemented presumptive sentencing guidelines that reduced or eliminated early release programs and increased the percentage of time served under prison sentences. These sentencing guidelines are used by courts as a framework for making their sentencing decisions.

North Carolina was one of those states that modified its sentencing guidelines as a part of this national trend. Unlike many of these states, however, North Carolina did not increase prison terms for *all* offenses under its 1993 presumptive sentencing guidelines. Instead, North Carolina decided to rationalize its sentencing system, allocating scarce correctional resources (and facilities) by increasing presumptive sentences for more serious crimes while reducing presumptive sentences for less serious offenses. Through the implementation of these guidelines, North Carolina has been able to control its prison population in a manner that other states have not; in fact, between 1995-1999, North Carolina's incarceration rate decreased by 10% while the national incarceration rate increased by 16%.[7]

One researcher who examined presumptive sentencing policies concluded that the appropriate use of such sentencing guidelines has been the only sentencing policy reform to

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[5] Piper, Bill; Mathew Briggs, Katharine Huffman, and Rebecca Lubot-Conk, *State of the States: Drug Policy Reforms: 1996-2002,* Drug Policy Alliance (2002). The Drug Policy Alliance promotes alternatives to incarceration for drug offenders.

[6] Access Indiana Website, http://www.ai.gov/

[7] Greene, Judith and Vincent Schiraldi, *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis,* Center on Juvenile and Criminal Justice (2001).

consistently lower rates of prison admission and incarceration rates, with an estimated reduction in a state's incarceration rate from 72 per 100,000 residents to 55 per 100,000.[8]

North Carolina's Presumptive Sentencing Guidelines

In 1990, North Carolina General Assembly created a permanent, standing commission—the North Carolina Sentencing and Policy Advisory Commission (the "Commission") to review its sentencing practices and provide recommendations for improving them. Specifically, the Commission's goals were to develop sentencing policies that were rational, truthful, consistent, and a reflection of resource priorities. To accomplish its goals, the Commission was provided with a full-time staff that included statisticians and researchers in addition to 30 members drawn from all three branches of government, all areas of the criminal justice system, and from the public.[9] Twenty other states and the District of Columbia also have state sentencing commissions performing similar functions.[10]

In 1993, the General Assembly reviewed, amended, and adopted the Commission's recommendations. The new law was called structured sentencing and applied to all felony and misdemeanor crimes (except DWIs) committed on or after October 1, 1994. Generally, under the new structured sentencing guidelines, violent and career offenders served longer prison terms whereas non-violent and non-repeat offenders served shorter terms as compared to the prior sentencing system.

In addition to developing structured, rational sentencing guidelines based upon the Commission's research and classification of crime severity, the Commission is statutorily obligated to review all proposed legislation that creates a new criminal offense, changes the classification of an offense, or changes the range of punishments for an offense, and to make recommendations to the North Carolina General Assembly as to whether the proposed changes are consistent with the statutory goals and principles reflected in the 1993 sentencing guidelines, based upon its computerized correctional population model.

Impact of North Carolina's Presumptive Sentencing Guidelines

Since the Commission implemented North Carolina's 1993 Presumptive Sentencing Guidelines, 10,000 to 12,000 offenders each year have been diverted from prison sentences to non-custodial penalties involving treatment and/or strict community supervision. Before the reform was introduced, 44% of sentenced felons received a prison term. After

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[8] Greene, Judith and Vincent Schiraldi, *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis,* Center on Juvenile and Criminal Justice (2001).

[9] The North Carolina Sentencing and Policy Advisory Commission website, http://www.nccourts.org/Courts/CRS/Councils/spac/Default.asp.

[10] National Association of State Sentencing Commission website, http://www.ussc.gov/states/nascaddr.htm.

implementation, the rate fell to 29%.[11] In 1980, North Carolina had the highest incarceration rate in the South. As of 2001, it had the second lowest rate in the region.[12]

Despite its reduced rate of incarceration after 1993, North Carolina has, along with the rest of the country, enjoyed a reduction in crime rates since 1991, with a 12% drop in violent crime and a 9% drop in property crime.[13] How was North Carolina able to both decrease incarceration rates *and* lower serious crimes rates during the same period? By putting away serious offenders (who were more likely to be recidivists) for longer periods of time. Once North Carolina used its sentencing guidelines to reduce the number of non-serious offenders taking up prison space, North Carolina was able to keep serious offenders in prison longer—for example, it increased minimum sentence terms 16% for serious felonies under the new sentencing guidelines.[14]

As researchers Judith Greene and Vincent Schiraldi concluded about North Carolina's 1993 sentencing reforms: "Crime policy has been largely de-politicized in North Carolina since the reform was introduced. Sentencing guidelines have brought a great deal of stability to the system. The impact of proposed sentencing reforms can be projected with confidence; sentencing debates are generally focused on the fiscal impact of any proposed changes; proposals to 'get tough' have largely faded while the dollars saved in correctional costs have shifted to the education budget."[15]

In the 2003 legislative session, the Indiana General Assembly passed House Enrolled Act 1145, which creates a sentencing policy study committee to examine Indiana's sentencing laws and policies. This committee must present its final report by November 1, 2004. Based upon North Carolina's success at controlling prison population through sentencing reforms (and the creation of a permanent, standing sentencing commission), the Indiana sentencing policy committee may want to consider whether North Carolina's approach might serve as a useful model for Indiana.

C. Intermediate Sanctions

Intermediate sanctions were touted as a form of alternative sentencing that would simultaneously divert offenders from incarceration, reduce recidivism rates, and save money, all while providing credible punishments that could be matched to the severity of offenders'

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[11] Greene, Judith and Vincent Schiraldi, *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis,* Center on Juvenile and Criminal Justice (2001).

[12] Id.

[13] Id.

[14] Abt Associates, Multi-Site Evaluation of Sentencing Guidelines: Florida and North Carolina (2000).

[15] Greene, Judith and Vincent Schiraldi, *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis,* Center on Juvenile and Criminal Justice (2001).

crimes.[16] Intermediate sanctions encompassed a wide variety of correctional alternatives including intensive supervision, correctional boot camps, electronic monitoring, and drug testing.

Throughout the 1980s and 1990s, the National Institute of Justice funded a wide range of evaluations of different types of intermediate sanctions, so that there is now a body of evidence regarding the efficacy of these programs.[17] This research cast doubt on the claim that these intermediate sanctions actually reduced recidivism, and, in some cases, concluded that use of intermediate sanctions instead increased overall corrections costs.

Impact of Intermediate Sanctions on Corrections Costs

The stated goals of intermediate sanctions programs are to reduce correctional costs by reducing recidivism – and thus lowering the prison population – and putting offenders in lower-cost forms of custody, rather than in prison. Unfortunately, neither goal seems to have been achieved.

Studies show that intensive supervision programs, electronic monitoring, correctional boot camps, home confinement/house arrest, and drug testing are not effective by themselves in reducing the recidivism of offenders.[18] In fact, the very design of these programs creates additional "opportunities" for an offender to find himself returned to prison. Many of these alternative programs mandate increased surveillance over the offenders to ensure that they comply with all of the conditions of their intermediate sanction. A technical violation of one of the conditions can itself result in revocation of the alternative sentence and subsequent incarceration – in other words, "victimless recidivism." Not only will the state not save the costs of incarcerating this offender, it may incur additional costs through the intermediate sanctions.[19]

Even if intermediate sanctions do not reduce (and may aggravate) recidivism, one might still assume that placing an offender in an intermediate sanctions program would be less expensive than other alternatives. This is true, of course, if that alternative is incarceration. But often, corrections officials are unwilling to release higher risk offenders, who otherwise would be in prison, into these community-based programs. Thus, while policymakers support intermediate sanctions, they often limit their eligibility to low-risk offenders—those who would otherwise be serving a probation sentence or on parole if such sanctions did not exist. In such instances, intermediate sanctions may increase corrections costs since the heightened surveillance required by intermediate sanctions is more expensive than probation. In addition, by "widening the net" of control over offenders, you increase the likelihood of technical

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[16] Mackenzie, D.L., *Sentencing and Corrections in the 21st Century: Setting the Stage for the Future*, report submitted to The National Institute Justice, Office of Justice Program, U.S. Department of Justice (2000).

[17] MacKenzie, D.L., *Criminal Justice and Crime Prevention*, in Sherman et al. (Eds.) Crime Prevention: What Works, What Doesn't, What's Promising (1997).

[18] Id.

[19] Id.

violations for individuals who otherwise might be compliant probationers or parolees, which also has the effect of increasing correction costs.[20]

Role of Rehabilitation In the Success of Intermediate Sanctions

While there is still debate about the effectiveness of rehabilitation, recent studies suggest that rehabilitation can effectively change some offenders and reduce their criminal activities.[21] The following programs have proven to reduce recidivism: cognitive behavioral therapy, non-prison based sex-offender programs, vocational education programs, and community employment programs. Other programs that are promising (but with a lower level of certainty) include adult basic education, transitional programs providing individualized employment preparation and service for high-risk offenders, fines, and drug treatment combined with urine testing.[22] None of the surveillance-based intermediate sanctions reduced recidivism without incorporating at least one of these rehabilitative programs.[23]

Indiana's Experience With Intermediate Sanctions

Indiana uses intermediate sanctions through the Department of Correction's Community Transition Program ("CPT"), which places felons into community corrections programs where they are monitored through day reporting, work release, house arrest, or home detention with electronic monitoring.[24] Based upon the foregoing research evaluating the efficacy of intermediate sanctions, Indiana may want to consider whether CPT is achieving significant cost-savings by targeting offenders who would otherwise still be in prison (as opposed to on probation or parole) and whether sufficient rehabilitative programs are in place to reduce recidivism.

D. Drug Courts

From 1980 to 1997, the number of drug offenders held in state prisons has increased more than ten-fold (1040%).[25] These offenders strain criminal justice resources, leaving fewer resources available to adjudicate and punish more serious, violent crimes. Furthermore, incarceration does little to break the cycle of drug use and crime. Drug offenders exhibit a high rate of recidivism if they are not treated for drug abuse. Drug abuse treatment is

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[20] Mackenzie, D.L., *Sentencing and Corrections in the 21st Century: Setting the Stage for the Future*, report submitted to The National Institute Justice, Office of Justice Program, U.S. Department of Justice. (2000).

[21] Cullen, F.T., and P. Gendreau, *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects* (2000).

[22] Mackenzie, D.L., *Sentencing and Corrections in the 21st Century: Setting the Stage for the Future*, report submitted to The National Institute Justice, Office of Justice Program, U.S. Department of Justice. 2000.

[23] Mackenzie, D.L., *Sentencing and Corrections in the 21st Century: Setting the Stage for the Future*, report submitted to The National Institute Justice, Office of Justice Program, U.S. Department of Justice. 2000.

[24] *Annual Report*, Indiana Department of Correction (2001).

[25] Beatty, Phillip, Barry Holman, and Vincent Schiraldi. *Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States*, The Justice Policy Institute (2000).

effective in reducing drug addiction and drug-related crime, but treatment is only effective if the participant remains in the treatment program for an adequate period of time.[26]

Drug courts use a "carrot and stick" approach to motivate offenders into drug treatment programs. Drug courts are successful because drug court judges closely scrutinize participant behavior and because drug courts address the underlying problems associated with drug abuse. Empirical evidence shows that drug courts curtail drug abuse and criminal behavior. Drug courts are also cost effective; one study suggests that Indiana may have already reduced incarceration costs by an estimated $11,880,000. Drug courts do, however, require a significant up-front investment and have only demonstrated success to date with non-violent, low-level drug offenders.

In 1993, Indiana began using drug courts in five jurisdictions (Terre Haute, Fort Wayne, South Bend, Gary, and Lawrenceburg) through federal funding provided by the Drug Court Program Office of the Department of Justice. Since then, Indiana's efforts have expanded to fifteen active drug courts and nine in the planning stages. In the 2002 legislative session, the Indiana General Assembly authorized the Indiana Judicial Center to administer, certify, and support drug courts. In October, 2002, Mary Kay Hudson was appointed the Indiana Judicial Center's first Drug Court Coordinator, making her responsible for implementing and promoting the drug court system within Indiana.

Although more rigorous research needs to be conducted, drug courts have shown promise at decreasing incarceration rates and recidivism, as compared to traditional courts. Consequently, Indiana may want to consider expanding the drug court system through state funding, which is currently not provided to drug courts.

How Drug Courts Work: The "Carrot and Stick" Approach

Drug courts use a "carrot and stick" approach. Drug courts give participants the opportunity to reduce or to avoid incarceration for the crime they committed (the "carrot") in exchange for working with an outpatient drug treatment program on a daily basis, submitting to drug tests on a weekly basis, and appearing before the drug court judge on a weekly basis. Also, participants are often required to participate in medical, educational, or vocational rehabilitation programs before "graduating" from the program. If participants fail to fulfill these requirements, drug court judges enforce immediate criminal sanctions against the offender and send them to prison (the "stick.")[27]

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[26] *Looking at a Decade of Drug Courts*, U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project (1999).

[27] *Congressional Testimony: Drug Court Review*, Federal Document Clearing House (2000) (statement by Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs).

Why Drug Courts Work

(a) Close Judicial Supervision

Under the traditional adjudication process, a drug offender has very little contact with the court. There are long delays between the time when an offender relapses and when a judge imposes sanctions.[28] Traditionally, parole officers supervise drug offenders. Parole officers generally require only that the offender report back on a monthly basis, and drug tests are infrequent.[29] If a parolee violates the terms of parole, a judge will order a bench warrant for the offender. Bench warrants often are not executed promptly, and often the offender appears before the court only after a new arrest. So, by the time the court punishes the offender for an initial relapse, the court is usually also punishing the offender for a new drug crime.[30] In other words, the system provides few incentives (or deterrents) to change the offender's underlying behaviors.

Drug courts by contrast create short-term incentives to achieve long-term goals. The desire to evade criminal punishment motivates drug court participants to fulfill the program requirements. But drug court participants are still closely supervised and punished for bad behavior. Because participants are supervised so closely, drug court judges can impose immediate sanctions. A drug court judge may impose sanctions for any drug relapse or any other failure to meet the drug court program conditions. Participants are motivated by the day to day threat of sanctions, which are imposed for violating the drug court conditions.

(b) Integrated Rehabilitation Programs

Traditionally, courts do not address the underlying problems that lead to drug abuse, sometimes referring parolees to outpatient drug treatment programs but seldom monitoring the parolee's progress. There are strong correlations between drug abuse and social problems—employment, education, family, and mental illness. Yet traditional courts try to address drug abuse problems in isolation from social problems.[31]

Drug courts integrate traditional drug treatment with other social and health services. Drug courts often provide education and employment opportunities, community support services, and mental healthcare services, thereby assisting the participant to develop the tools to create and maintain a stable environment.[32]

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[28] *Looking at a Decade of Drug Courts*, U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project (1999).

[29] Id.

[30] Id.

[31] Cooper, Caroline S., *2000 Drug Court Survey Report: Program Operations, Services and Participant Perspectives* (2001), United States Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project.

[32] U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project. *Looking at a Decade of Drug Courts* (1999).

Drug Courts are Cost Effective

(a) Drug Courts Reduce Incarceration Costs

A recent study conducted by the University of Kentucky concluded that drug courts saved the state of Kentucky $4,826 annually per participant, resulting from reduced incarceration costs and the additional income earned by participants.[33] Based upon Indiana's drug court costs, the cost savings in Indiana could be substantial as well. Indianapolis and Gary reported the average full-service drug court cost per participant as $2,100-2,500 annually.[34] This figure is just slightly below Kentucky's estimated cost of $2,642 per participant. Drug court advocate and former Indiana State Senator (now Porter County Judge) William Alexa places the ratio at $2,200 per drug court participant compared to $22,000 for a year in jail.[35] Assuming Indiana participants have comparable outcomes to their Kentucky counterparts, Indiana could match, or even surpass, Kentucky's $4,826 savings per drug court participant. In addition to the Kentucky study, at least 86 other local governments have reported cost savings from drug courts.[36] Included among these local governments that identified costs savings were Madison County ($100,000) and Allen County ($550,500) in Indiana.[37]

(b) Drug Courts Reduce Social Costs

Less than half of all drug court participants are employed when they enter a drug court program. Most drug court programs, however, require the participant to be employed in order to graduate. As a result, most graduates leave the drug court program with the ability to support themselves. According to the University of Kentucky study, for each dollar the State spends on drug court programs, graduates earn $5.58 and make $3.30 in child support payments.[38]

Successful drug court participants can create significant cost savings related to their children as well. For each child born addicted to drugs, experts estimate that the care and treatment costs to be a minimum of $250,00 for the first year of life and $750,000 through age 18.[39] Drug court graduates also regain custody of their minor children in many instances. The

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[33] Logan, T.K.; Hoyt, William; and Carl Leukefeld, *Kentucky Drug Court Outcome Evaluation: Behaviors, Costs, and Avoided Costs to Society*, Center on Drug and Alcohol Research, University of Kentucky (2001).

[34] Cooper, Caroline S., *2000 Drug Court Survey Report: Program Operations, Services and Participant Perspectives*, United States Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project (2001).

[35] Martin DeAgostino, *Chamblee Cheers Drug Court Legislation*, S. Bend Tribune, (Feb. 14, 2002).

[36] U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse. *Cost Benefit/Cost Avoided Reported by Drug Court Programs* (2003).

[37] Id.

[38] Logan, T.K.; Hoyt, William; and Carl Leukefeld, *Kentucky Drug Court Outcome Evaluation: Behaviors, Costs, and Avoided Costs to Society*, Center on Drug and Alcohol Research, University of Kentucky (2001).

[39] U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse. *Cost Benefit/Cost Avoided Reported by Drug Court Programs* (2003).

city of Buffalo, New York, estimated that it saved $488,010 in foster care expenses for 30 children of 143 drug court graduates.[40]

(c) Drug Courts Curtail Drug Use and Criminal Behavior

Drug court participants complete their treatment programs more often than do offenders in traditional court programs. Indiana drug courts have reported average graduation rates from 63% in Vigo County to 84% in Madison County.[41] Traditional outpatient programs retain around 50% of their participants.[42]

Drug court participants test positive for drug use substantially less often than do offenders in traditional courts. Although no statistical data has been compiled on positive drug test rates in Indiana, the Drug Court Clearing House project records the national average rate of positive drug tests at 17%. Even at 17%, the rate of positive drug tests in drug courts is significantly lower than the 35%+ recorded for non-drug court offenders.[43]

Drug court participants are less likely than are offenders in traditional courts to return to their criminal habits. For instance, the Baltimore City Drug Court has significantly lower rates of re-arrests for drug court participants than for non-participants, 48% - 64%. Eire Co., Ohio has a 36% re-arrest rate for drug court program participants and a 69% re-arrest rate for non-participants. And in Portland, Oregon the re-arrest rate for drug court participants is 37% versus 53% for non-participants.[44] No data have been compiled for Indiana drug courts.

Drug Court Challenges

Indiana drug courts identify funding as a major concern.[45] Indiana's drug courts are currently funded through federal Bureau of Justice Assistance grants and user fees assessed by the drug courts.[46] The General Assembly does not appropriate any funds to Indiana's drug court system. In 2001, the Indiana Judicial Committee requested $205,000 to fund an Indiana University/Hudson Institute study on the effectiveness of Indiana's drug courts. The request was

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[40] Id.

[41] U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project, *Drug Court Activity Update: Summary Information on All Programs and Detailed Information on Adult Drug Courts* (June 25, 2001).

[42] *Congressional Testimony by Federal Document Clearing House: Drug Court Review* (2000) (statement by Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs).

[43] U.S. Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project, *Drug Court Activity Update: Summary Information on All Programs and Detailed Information on Adult Drug Courts* (June 25, 2001).

[44] Belenko, Steve. *Research on Drug Courts: A Critical Review-2001 Update.* New York, NY: The National Center on Addiction and Substance Abuse at Columbia University. 2001.

[45] Cooper, Caroline S., *2000 Drug Court Survey Report: Program Operations, Services and Participant Perspectives* (2001), United States Dept. of Justice, Office of Justice Programs, Drug Court Clearinghouse and Technical Assistance Project.

[46] Indiana Judicial System website, http://www.in.gov/judiciary/.

denied because of the impending state fiscal emergency.[47] Such a study would be useful, as there are a lack of rigorous studies conducted by impartial sources that examine the efficacy of drug courts.

II. OPERATIONAL COST REDUCTIONS FOR PRISON FACILITIES

A. Introduction

Over the last ten years, state governments looking to reduce operational costs have increasingly turned to the private sector to reduce the operational expense of both constructing and operating correctional facilities. Proponents of privatization assert that private contractors can operate prisons at less cost than the government, without reducing the levels or quality of service. Nationwide, 15,300 inmates were housed in adult correctional facilities operated by private contractors in 1990. By the beginning of 2000, that number had increased to 145,160 inmates, an increase of 949% over the ten-year period.[48] Two private contractors—Corrections Corporation of America and Wackenhut Correction Corporation— dominate the correctional facilities and services sector, controlling 49.08% and 27.26% of the private market respectively.[49] Despite the rapid growth of private correctional facilities, the estimated bed capacity of private correctional facilities in 2001 made up less than 7% of the U.S. market.[50]

Based upon the data reviewed, privately designed and built prisons may generate cost savings of 15-25%, but there is inconclusive evidence that privately operated prisons save money. At the same time, the limited data available suggest that privately run prisons offer comparable quality relative to their public counterparts.

Indiana does not have any privately operated state prisons. Indiana is one of at least eight states that allow their inmates to be housed at privately run facilities in other states, and has placed 650 inmates at Otter Creek Correctional Facility, a privately run state prison facility in Wheelwright, Kentucky operated by Corrections Corporation of America. Although there are no privately-operated state prison facilities in Indiana, Indianapolis has contracted with Corrections Corporation of America for the construction and management of its county annex prison that has a capacity of 858 prisoners.[51]

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[47] Indiana Judicial System website, http://www.in.gov/judiciary/.

[48] Charles W. Thomas, *Private Adult Correctional Facility Census, 10th Edition* (1996).

[49] Charles W. Thomas, *Private Adult Correctional Facility Census, 10th Edition* (1996).

[50] Austin, James and Garry Coventry, *Emerging Issues on Privatized Prisons*, Bureau of Justice Assistance, 6 (2001).

[51] *Private Prison Per-diem Rates Paid by State for Medium-Security, General Population Male Prison Beds.* Oklahoma Senate Fiscal Staff Telephone Survey (9/06/01-10/05/01).

B. Inconclusive Evidence Regarding Cost Savings Between Privately and Publicly Operated Prisons

1. Empirical Studies Are Conflicting

Empirical studies produce varying results regarding the cost effectiveness of privately operated prisons as compared to their public counterparts. A 1996 General Accounting Office study that reviewed earlier research concluded that privately operated prisons generate no consistent cost savings relative to publicly operated prisons.[52] In 1998, Abt Associates Inc., a consulting firm retained by the National Institute of Corrections at the request of Congress to examine privately operated prisons, concluded that "...regarding costs and savings...the few existing studies and other available data do not provide strong evidence of any general pattern."[53] By contrast, the Reason Public Policy Institute, a think tank advocating competition in government services, conducted a 2002 review of what it considered the most rigorous studies on this subject and found that privately operated prisons generate cost savings of between 3.5% and 16% percent.[54]

Two other studies examined the economic impact that privately operated prisons have on the costs associated with the state prison system as a whole. The Rio Grande Foundation, a think tank dedicated to "free markets," published a 2003 study concluding that states with 45% of their prisoners in private custody spent about $10,000 less annually per-prisoner than states without privatized prisons.[55] A 2003 Vanderbilt study (funded by an association representing private prison operators and CCA) concluded that during the period 1999-2001, the existence of prisoners under private management in a jurisdiction resulted in reduced growth in per diem expenditures on publicly held prisoners by 4.45% per year.[56]

The discrepancies regarding cost comparisons between privately and publicly operated prisons point to a larger issue: the challenge of identifying studies that are sufficiently rigorous and impartial to accurately capture the complexity of comparing the cost savings between such prisons. Given the current state of the research, it is difficult to draw firm conclusions regarding cost savings.

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[52] United States General Accounting Office. *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service.* Letter Report, p. 4, August 16, 1996.

[53] McDonald, Douglas, Elizabeth Fournier, Malcolm Russell-Einhourn, and Stephen Crawford. *Private Prisons in the United States: An Assessment of Current Practice*, Abt Associates Inc. 1, v (1998)

[54] Geoffrey F. Segal and Adrian T. Moore, *Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services*, Reason Public Policy Institute (2002).

[55] Mitchell, Matthew, *The Pros of Privately-Housed Cons: New Evidence on Cost Savings of Private Prisons*, Rio Grande Foundation (2003).

[56] Blumstein, James F. and Mark A. Cohen, *The Interrelationship Between Public and Private Prisons: Does the Existence of Prisoners Under Private Management Affect the Rate of Growth in Expenditures on Prisoners Under Public Management* (2003).

2. Sources of Potential Cost-Savings

Labor costs account for two-thirds of total prison operation costs.[57] Private prisons reduce labor costs in part by paying prison guards less money. In a 2000 questionnaire, entry-level guards at private facilities were paid on average 23.4% less than their public counterparts, and the maximum-level guards were paid on average 39.2% less than their public counterparts. In addition, privately designed and built prisons are often developed in such a manner that fewer personnel can be used due to greater reliance on electronic surveillance.[58] Private prison advocates also claim that labor savings are achieved through fewer administrative personnel, reduced overtime and sick leave, and greater freedom to manage personnel compared to their public counterparts.[59]

In addition to reduced labor costs, design and construction costs may be lower for private prison operators. Past industry estimates suggest that cost savings of between 15-25% can result from contracting with private prison operators to build prison facilities.[60] These savings (and the speed with which these facilities can be constructed) have been attributed to private prison operators' ability to (1) design and construct prisons that are not subject to government construction and procurement requirements, and (2) obtain financing without having to go through the bond issuance process.[61]

C. Inconclusive Evidence Regarding Quality Levels Between Privately and Publicly Operated Prisons

1. Public Concerns about the Quality of Privately Operated Prisons

Concerns about the quality of privately operated prisons have sparked opposition from a variety of sources, including community groups, government officials, and prison guard unions, who contend that privately run prisons cut corners on staffing, training, and safety to save money.[62] They argue that these money-saving tactics result in greater danger to prison workers, more inmate violence, and more frequent prison escapes, putting the community in danger. Privatization advocates counter that there is no industry-wide evidence that private

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[57] Vishny, Robert W., *The Proper Scope of Government: Theory and an Application to Prisons*, 112 Q.J. Econ. 1127, 1148 (1997).

[58] *Developments in the Law: A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, 115 Harv. L. Rev. 1868, 1876 (2002).

[59] Moore, Adrian T., *Private Prisons: Quality Corrections at a Lower Cost*, Policy Study No. 240, 16-17 (1998).

[60] Thomas, Charles W., *Private Adult Correctional Facility Census* (1993).

[61] Cripe, Clair A., *Legal Aspects of Corrections Management*, Aspen Publishers (1997).

[62] See, e.g., Parenti, Christan, *The Prison Industrial Complex: Crisis and Control*, Corpwatch.org website, http://www.corpwatch.org/issues/PID.jsp?articleid=852 (1999) and AFSCME Corrections United website, http://www.afscme.org/private/aculink3.htm.

facilities are lower quality than the public counterparts, and that private operators are particularly careful on quality issues due to the increased scrutiny such facilities encounter.[63]

The evidence regarding quality comparisons between privately and publicly operated prisons is limited. As with cost savings, there needs to be more rigorous, impartial studies conducted before any conclusions can be reached. To the extent it exists, however, privately operated and publicly operated prisons appear to be comparable in their quality levels.

2. Empirical Studies Suggest No Difference in Quality

It is difficult to quantify and compare the quality of prisons.[64] Perhaps as a result, relatively few studies have been to evaluate quality between publicly and privately operated prisons.[65] To the limited extent such studies are available, they generally find that the quality of public and private prisons are roughly equal.[66] These studies attempt to quantify and compare quality indicators such as: safety, personnel qualifications, physical conditions of the facilities, health care, and inmate activities.[67] Past studies generally found comparable performance, whether the study was conducted as an operational audit,[68] or as a survey of inmates.[69]

CONCLUSION

Proposals for reining in the increasing costs of state corrections programs must necessarily focus on one of two areas: controlling the size of the prison population or controlling the costs of building and operating the prisons. When adjusted for inflation, the per capita costs of incarcerating an inmate have not risen substantially over the past twenty-five years. So looking to operational changes as a source of significant cost savings is unlikely to generate substantial returns.

By contrast, the size of the prison population has exploded. The number of inmates in Indiana prisons have quintupled since 1980, while the general population has stayed

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[63] *Developments in the Law: A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, 115 Harv. L. Rev. 1868, 1870-71 (2002).

[64] *Developments in the Law: A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, 115 Harv. L. Rev. 1868, 1870-71 (2002).

[65] Austin, James and Garry Coventry, *Emerging Issues on Privatized Prisons*, Bureau of Justice Assistance, 6 (2001).

[66] McDonald, Douglas, Elizabeth Fournier, Malcolm Russell-Einhourn, and Stephen Crawford. *Private Prisons in the United States: An Assessment of Current Practice*, Abt Associates Inc. 1, 50 (1998)

[67] United States General Accounting Office. *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service*. Letter Report, August 16, 1996.

[68] Austin, James and Garry Coventry, *Emerging Issues on Privatized Prisons*, Bureau of Justice Assistance, 6 (2001).

[69] Camp, Scott; Gerald Gaes; Jody Kelin-Saffran; Dawn M. Daggett; William G. Saylor; *Assessing Prison Performance from the Inmates' View: Comparing Private and Public Prisons*, Office Research and Evaluations, Federal Bureau of Prisons (2001).

relatively static. The limited research in this area suggests that two policy choices might have the most significant impact on controlling the prison population: (1) adopt a more rigorous analysis of sentencing guidelines to ensure that the punishment does indeed fit the crime, and (2) re-orient the punishment of drug offenders away from incarceration and into non-custodial rehabilitation programs through an aggressive drug court program.

Indiana has begun taking important steps to implement both of these programs. While not abandoning efforts or analyses of cost savings in other areas, such as privatization, the state might consider focusing its resources on these areas to realize a greater return on its investments in the corrections system.

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Friday, February 22, 2002

EDITORIAL

LETTER SPOTLIGHT; LETTERS; FRIDAY FORUM

Cutting education to feed prison industry

KELSEY KAUFFMAN

Twenty-five years ago, Indiana spent $45 million a year to incarcerate 4,500 inmates. Today we are spending $600 million a year to incarcerate 20,000 inmates. According to the governor's statement this week on budget cuts, the Department of Correction's budget has increased over the past decade at nearly twice the rate of the rest of the budget.

When headlines recently declared, "Colleges brace for potential spending cuts," education leaders must have cast an envious eye toward the Department of Correction. Spending on prisons has increased more than twice as fast as spending on higher education in Indiana since 1980. The question is, have we put our money and our priorities in the right place?

Indiana is not alone in its budget woes, nor in the extent to which the state's fiscal crisis is affected by spending on prisons. According to the Justice Policy Institute, states are facing a combined shortfall of $38 billion. That is almost precisely the amount spent annually on prisons -- $40 billion compared to $5 billion in 1978.

The national prison boom has been driven by increasing incarceration of non-violent offenders, especially drug offenders. While the number of violent offenders sent to prison has nearly doubled, the number of non-violent offenders has tripled, and the number of drug offenders has increased 11-fold.

According to the Bureau of Justice Statistics, non-violent offenders account for about three-quarters of the increase in prisoners. The Justice Department says half of all inmates in state prisons were convicted of offenses that involved neither harm, nor the threat of harm, to another person.

Other states caught in the recession are re-evaluating their reliance on prisons. Ohio, Michigan and Illinois (all with Republican governors) each recently announced it will close entire prisons, with expected annual savings of between $41 million and $55 million.

On Tuesday, Gov. Frank O'Bannon announced plans to shut down the transitional unit at Westville and a medical unit at Wishard, for an

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annual saving of $4 million. But no other closures are contemplated. Indeed, new facilities are due to open in New Castle (a much-needed mental health unit) and Peru.

However, last year the legislature passed, and the governor signed, a bill that restores discretion in drug sentencing. By the repeal of mandatory minimum sentences, judges will be able to decide on a case-by-case basis whether to send drug addicts and small-time dealers to treatment programs or community corrections instead of to prison. The law should in time decrease demand for prison space.

Prisons are effective means of isolating predatory individuals from the world outside (although often not from potential victims within the prison world). The problem with prisons as a front-line defense against crime is that they are extraordinarily expensive and relatively ineffective in reforming their captives.

A former commissioner of corrections in Indiana, Jim Aiken, used to say that he calculated how many prison beds we would need 10 years down the track by knowing the number of at-risk fourth-graders in the state. Failure to meet the needs of vulnerable children is one of the key factors that determine the eventual number of juvenile delinquents and adult criminals.

The irony is, if in a time of scarcity we cut education, mental health, housing and other social services in order to expand and sustain a bloated prison system, we may in the long run undermine rather than enhance public safety.

Kauffman, Greencastle, is a prison researcher, author and former correctional officer.

Spending on prisons has increased more than twice as fast as spending on higher education in Indiana since 1980. The question is, have we put our money and our priorities in the right place?

---- INDEX REFERENCES ----

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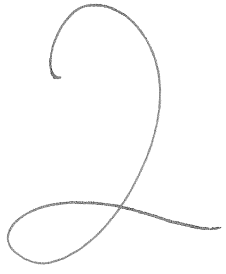


OFFENDERS BY SECURITY LEVEL**

I (Violent)	20.1%
II (Serious)	9.3%
III (Less Serious)	56.8%
IV (Minor)	13.8%

SEX

Male	79.3%
Female	20.7%

RACE/ETHNICITY

White	54.7%
Black	38.8%
Other	6.5%

AVERAGE AGE AT INTAKE	15.9
AVERAGE CURRENTAGE	16.6

MINIMUM LENGTH OF STAY

Effective August 1, 2001, the Juvenile Services Division began using the Comprehensive Case Management System. Under the new system, each student is responsible for his/her own progress through the phases of treatment, and length of stay is now determined individually based upon that progress. Students with determinate sentences are released according to their court-ordered release dates.

TYPE OF OFFENSE**

Property	38.7%
Person	28.4%
Public Administration	9.8%
Public Order	7.2%
Controlled Substances	6.5%
Status	4.2%
Weapons	2.5%
Other (Alcohol, Violations)	2.5%
Miscellaneous Criminal	.1%
Obscenity/Pornography	<.1%

(12.0% of juvenile offender population has 1 or more drug offenses.

JUVENILES ON PAROLE

Male	789
Female	227

*includes 215 contract beds and 51 juveniles held in county detention centers awaiting entrance

**by most serious committing offense

NOTE: Due to rounding, totals may not equal 100%

July 1, 2002

TOTAL DEPARTMENT ACTIVE PERSONNEL	8,408

ADULT POPULATION

ADULT NUMBER OF INSTITUTIONS	24
TOTAL POPULATION	21,425^
STATUTORY AVERAGE PER DIEM	$59.07
OFFENDERS BY CLASSIFICATION LEVEL	
Minimum	9.6%
Low medium	55.6%
High Maximum	15.1%
Maximum	19.7%
SEX	
Male	92.8%
Female	7.2%
RACE/ETHNICITY	
White	53.8%
Black	39.2%
Undetermined	3.8%
Hispanic	2.8%
American Indian/Alaskan Native	.2%
Asian/Pacific Islander	.1%
AVERAGE AGE AT INTAKE	31.1
AVERAGE CURRENT AGE	34.7
LONGEST SENTENCE LENGTH*	
<1 year	3.4%
1-2 years	5.7%
2-5 years	18.3%
5-10 years	23.8%
10-15 years	10.5%
15-20 years	10.9%
>20 years	26.0%
Active Indiana Death Sentence	.2%
Indeterminate Life/Life w/o Parole	1.1%

*adjusted for portion suspended

TYPE OF OFFENSE	
Person	39.2%
Property	21.9%
Controlled Substance	19.3%
Substantive Criminal Provisions	7.1%
Non Criminal Code Offenses	6.5%
Weapons	2.3%
Public Administration	1.5%
Miscellaneous Criminal	1.2%
Public Order	.8%
Sentencing (habitial)	<.1%
Obscenity/Pornography	<.1%

(24.2% of adult inmate populations has 1 or more drug offenses)

**by most serious committing offense

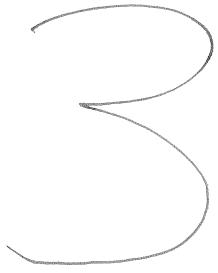
OFFENDERS ON PAROLE	
Male	5341
Female	546

^includes inmates held in county jails and 948 contract beds.

July 1, 2002

JUVENILE POPULATION

NUMBER OF JUVENILE FACILITIES	10
TOTAL POPULATION*	1798
AVERAGE PER DIEM (FY01)	$150.46



U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics Bulletin

August 2001, NCJ 188207

Prisoners in 2000

By Allen J. Beck, Ph.D.
and Paige M. Harrison
BJS Statisticians

The total number of prisoners under the jurisdiction of Federal or State adult correctional authorities was 1,381,892 at yearend 2000. During the year the States and the District of Columbia added 8,021 prisoners, and the Federal prison system added 10,170 prisoners. Overall, the Nation's prison population grew 1.3%, which was less than the average annual growth of 6.0% since 1990. During 2000 the prison population rose at the lowest rate since 1972 and had the smallest absolute increase since 1980.

The rate of incarceration in prison at yearend 2000 was 478 sentenced inmates per 100,000 U.S. residents — up from 292 in 1990. About 1 in every 109 men and 1 in every 1,695 women were sentenced prisoners under the jurisdiction of State or Federal authorities.

Overall, the United States incarcerated 2,071,686 persons at yearend 2000. This total represents persons held in —

- — Federal and State prisons (1,312,354, which excludes State and Federal prisoners in local jails)
- — territorial prisons (16,130)
- — local jails (621,149)
- — facilities operated by or exclusively for the U.S. Immigration and Naturalization Service (8,894)
- — military facilities (2,420)
- — jails in Indian country (1,775)
- — juvenile facilities (108,965 as of October 1999).

Highlights

December 31	Number of inmates		Sentenced prisoners per 100,000 resident population		Population housed as a percent of highest capacity	
	Federal	State	Federal	State	Federal	State
1990	65,526	708,379	20	272	--	115%
1995	100,250	1,025,624	32	379	126%	114
1999	135,246	1,228,455	42	434	132	101
2000	145,416	1,236,476	45	432	131	100

--Not available.

• In the last 6 months of 2000, the State prison population declined about 6,200 inmates (down 0.5%) — the first measured decline in the State prison population since 1972.

• Between January 1 and December 31, 2000, 13 States experienced decreases, led by Massachusetts (down 5.6%), followed by New Jersey (down 5.4%), New York (down 3.7%) and Texas (down 3.2%).

• Five States — Idaho (up 14.1%), North Dakota (14.1%), Mississippi (10.9%), Vermont (10.5%), and Iowa (10.0%) — had increases of at least 10% in 2000.

• California (163,001 inmates), Texas (157,997), and the Federal system (145,416) together held 1 in every 3 prisoners in the Nation. The 10 States with the smallest prison systems, each holding fewer than 4,000 inmates, together held less than 2% of the Nation's prisoners.

• At yearend 2000, privately operated facilities housed 87,369 inmates (5.8% of State and 10.7% of Federal inmates); local jails housed 63,140 State and Federal inmates (4.6% of all prisoners).

• On December 31, 2000, State prisons were operating between full capacity and 15% above capacity, while Federal prisons were operating at 31% above capacity.

• Between June 30, 1990, and June 30, 2000, when complete censuses of prison facilities were conducted, the number of State adult correctional facilities increased 351. At midyear 2000, there were 1,320 State adult facilities, 84 Federal facilities, and 264 privately operated facilities. During the decade, States added more than 528,000 beds (up 81%).

• At yearend 2000, 91,612 women were in State or Federal prisons — 6.6% of all prison inmates. Since 1990 the number of male prisoners has grown 77% (reaching 1,290,280 in 2000), while the number of female prisoners has increased 108%.

• Among the more than 1.3 million sentenced inmates at yearend, an estimated 428,300 were black males between the ages of 20 and 39. At yearend 2000, 9.7% of black males age 25 to 29 were in prison, compared to 2.9% of Hispanic males and 1.1% of white males in the same age group.

More than 1.9 million in prisons and local jails

On December 31, 2000, 1,312,354 inmates were in the custody of State and Federal prison authorities, and 621,149 were in the custody of local jail authorities (table 1). Since yearend 1999 the total incarcerated population has increased by 40,388. Including inmates in public and privately operated facilities, the number of inmates in State prisons increased 1.5% during 2000; the number in Federal prisons, 6.6%; and in local jails, 2.5%. During 2000 the total incarcerated population grew 2.1% — less than half the annual average (5.3%) since 1990.

The rate of incarceration in prison and jail was 699 inmates per 100,000 residents in 2000 up from 458 in 1990. At yearend 2000, 1 in every 143 U.S. residents were incarcerated in State or Federal prison or a local jail.

Table 1. Number of persons held in State or Federal prisons or in local jails, 1990-2000

Year	Total inmates in custody	Prisoners in custody on December 31		Inmates in local jails on June 30	Incarceration rate[a]
		Federal	State		
1990	1,148,702	58,838	684,544	405,320	458
1995	1,585,586	89,538	989,004	507,044	601
1996	1,646,020	95,088	1,032,440	518,492	618
1997	1,743,643	101,755	1,074,809	567,079	648
1998	1,816,931	110,793	1,113,676	592,462	669
1999[b]	1,893,115	125,682	1,161,490	605,943	691
2000	1,933,503	133,921	1,178,433	621,149	699
Percent change,					
1999-2000	2.1%	6.6%	1.5%	2.5%	
Average annual increase,					
1990-2000	5.3%	8.6%	5.6%	4.4%	

Note: Counts include all inmates held in public and private adult correctional facilities. Jail counts for 1995-2000 exclude persons supervised outside of a jail facility.
[a]Number of prison and jail inmates per 100,000 U.S. residents at yearend.
[b]In 1999, 15 States expanded their reporting criteria to include inmates held in privately operated correctional facilities. For comparisons with previous years, the State count 1,137,544 and the total count 1,869,169 should be used.

Percent change during 6-month periods in the number of prisoners under the jurisdiction of State correctional authorities, 1995-2000

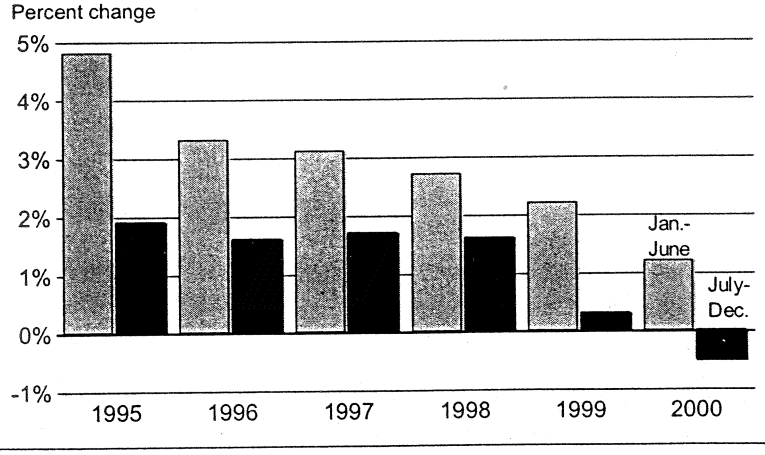


Figure 1

U.S. prison population rose 1.3% during 2000 — the smallest annual growth rate since 1972

The 2000 growth in the number of inmates under State or Federal jurisdiction (1.3%) was significantly lower than the percentage increase recorded during 1999 (3.4%) and the lowest annual rate recorded since 1972 (table 2). The population under the jurisdiction of State and Federal authorities increased by 18,191 inmates during 2000, significantly lower than in 1999 (up 43,796). Since yearend 1990 the prison population has grown an average of 60,799 per year, for an increase of 607,987 in 10 years.

Since 1995 the overall growth of the Nation's prison population has steadily slowed (figure 1). Annual growth rates peaked in 1994 (at 8.7%) and then began to decrease. In absolute numbers, however, the annual growth in the population under State and Federal jurisdiction has exceeded 50,000 new inmates in every year during the 1990's except in 1999 and 2000.

Table 2. Change in the State and Federal prison populations, 1990-2000

Years	Annual increase in the number of prisoners		Percent change
	Custody	Jurisdiction	
1990	60,000	61,555	8.6%
1991	49,153	51,640	6.7
1992	58,031	56,941	6.9
1993	58,815	64,992	7.4
1994	80,766	84,258	8.7
1995	88,395	71,172	6.7
1996	49,222	57,494	5.1
1997	48,800	58,785	5.0
1998	47,905	58,420	4.7
1999	36,957	43,796	3.4
2000	25,182	18,191	1.3
Average annual increase, 1990-2000	56,897	60,799	6.0%

Note: In years in which States changed their reporting methods, counts based on comparable methods were used to calculate the annual increase and percent change. See *Methodology* for changes by State.

In the last 6 months of 2000, the State prison population declined about 6,200 inmates

Between July 1, 2000, and December 31, 2000, the number of inmates under State jurisdiction dropped 0.5% (from 1,242,719 at midyear to 1,236,476 at yearend). This was the first measured decline in the State prison population since 1972. At the same time the Federal population continued to grow (up 2.0% from midyear 2000). In the last 6 months of 2000, the Federal population rose 2,886, compared to an increase of 7,284 inmates in the first 6 months.

Prisoners under the jurisdiction of State or Federal correctional authorities, 1998-2000

Date	State*	Federal
12/31/98	1,177,532	123,041
06/30/99	1,224,404	130,378
12/31/99	1,228,455	135,246
06/30/00	1,242,719	142,530
12/31/00	1,236,476	145,416

*See *Prison and Jail Inmates at Midyear 2000* (NCJ 185989) for State counts for June 30, 1999 and 2000.

Sentenced Federal inmate population rose 9.4% during the last 12 months

Prisoners with sentences of more than 1 year ("sentenced prisoners") represented 97% of the total State prison population and 86% of the Federal prison population at yearend 2000. During the 12-month period, the sentenced prison population grew 1.3% (table 3). The remaining prisoners had sentences of a year or less or were currently unsentenced.

While the 12-month growth of the State sentenced prison population was 0.5%, the sentenced Federal prison population grew 9.4%. The rate in 2000 was down only slightly from the 10.2% increase during 1999. During 2000, the Federal prison system added 10,769 sentenced prisoners — the equivalent of more than 200 new inmates per week.

Table 3. Prisoners under the jurisdiction of State or Federal correctional authorities, by region and jurisdiction, yearend 1999 and 2000

Region and jurisdiction	Total			Sentenced to more than 1 year			Incarceration rate, 2000[a]
	Advance 2000	1999	Percent change, 1999-00	Advance 2000	1999	Percent change, 1999-00	
U.S. total	1,381,892	1,363,701	1.3%	1,321,137	1,304,074	1.3%	478
Federal	145,416	135,246	7.5	125,044	114,275	9.4	45
State	1,236,476	1,228,455	0.7	1,196,093	1,189,799	0.5	432
Northeast	174,825	179,424	-2.6%	166,631	171,237	-2.7%	320
Connecticut[b]	18,355	18,639	-1.5	13,155	13,032	0.9	398
Maine	1,679	1,716	-2.2	1,635	1,663	-1.7	129
Massachusetts[c]	10,722	11,356	-5.6	9,479	10,282	-7.8	252
New Hampshire	2,257	2,257	0.0	2,257	2,257	0.0	185
New Jersey[d]	29,784	31,493	-5.4	29,784	31,493	-5.4	362
New York[e]	70,198	72,899	-3.7	70,198	72,899	-3.7	383
Pennsylvania	36,847	36,525	0.9	36,844	36,525	0.9	307
Rhode Island[b]	3,286	3,003	9.4	1,966	1,908	3.0	197
Vermont[b]	1,697	1,536	10.5	1,313	1,178	11.5	218
Midwest	237,016	232,903	1.8%	236,185	232,314	1.7%	371
Illinois[d,e]	45,281	44,660	1.4	45,281	44,660	1.4	371
Indiana	20,125	19,309	4.2	20,081	19,260	4.3	335
Iowa[d,e]	7,955	7,232	10.0	7,955	7,232	10.0	276
Kansas[d]	8,344	8,567	-2.6	8,344	8,567	-2.6	312
Michigan	47,718	46,617	2.4	47,718	46,617	2.4	480
Minnesota	6,238	5,969	4.5	6,238	5,955	4.8	128
Missouri	27,323	26,155	4.5	27,299	26,133	4.5	494
Nebraska	3,895	3,688	5.6	3,816	3,632	5.1	228
North Dakota	1,076	943	14.1	994	866	14.8	158
Ohio[d]	45,833	46,842	-2.2	45,833	46,842	-2.2	406
South Dakota	2,616	2,506	4.4	2,613	2,498	4.6	353
Wisconsin	20,612	20,415	1.0	20,013	19,699	1.6	376
South	552,225	548,657	0.7%	529,025	526,764	0.4%	539
Alabama[f]	26,225	24,658	--	24,123	24,109	--	549
Arkansas	11,915	11,415	4.4	11,851	11,336	4.5	458
Delaware[b]	6,921	6,983	-0.9	3,937	3,730	5.5	513
Dist.of Columbia[b]	7,456	8,652	-13.8	5,008	6,730	-25.6	971
Florida[e]	71,319	69,596	2.5	71,318	69,594	2.5	462
Georgia[e]	44,232	42,091	5.1	44,141	42,008	5.1	550
Kentucky	14,919	15,317	-2.6	14,919	15,317	-2.6	373
Louisiana	35,047	34,066	2.9	35,047	34,066	2.9	801
Maryland	23,538	23,095	1.9	22,490	22,184	1.4	429
Mississippi	20,241	18,247	10.9	19,239	17,410	10.5	688
North Carolina	31,266	31,123	0.5	27,043	26,672	1.4	347
Oklahoma[d]	23,181	22,393	3.5	23,181	22,393	3.5	685
South Carolina	21,778	22,008	-1.0	21,017	21,228	-1.0	532
Tennessee[d,e]	22,166	22,502	-1.5	22,166	22,502	-1.5	399
Texas[d]	157,997	163,190	-3.2	150,107	154,865	-3.1	730
Virginia	30,168	29,789	1.3	29,643	29,088	1.9	422
West Virginia	3,856	3,532	9.2	3,795	3,532	7.4	211
West	272,410	267,471	1.8%	264,252	259,484	1.8%	423
Alaska[b]	4,173	3,949	5.7	2,128	2,325	-8.5	341
Arizona[e]	26,510	25,986	2.0	25,412	23,944	6.1	515
California	163,001	163,067	0.0	160,412	160,517	-0.1	474
Colorado	16,833	15,670	7.4	16,833	15,670	7.4	403
Hawaii[b]	5,053	4,903	3.1	3,553	3,817	-6.9	302
Idaho	5,526	4,842	14.1	5,526	4,842	14.1	430
Montana	3,105	2,951	5.2	3,105	2,951	5.2	348
Nevada	10,012	9,494	5.5	9,921	9,413	5.4	518
New Mexico	5,342	5,124	4.3	4,887	4,730	3.3	279
Oregon	10,630	9,860	7.8	10,603	9,840	7.8	316
Utah	5,630	5,322	5.8	5,526	5,164	7.0	254
Washington	14,915	14,590	2.2	14,666	14,558	0.7	251
Wyoming	1,680	1,713	-1.9	1,680	1,713	-1.9	349

-- Not calculated.
[a]The number of prisoners with sentences of more than 1 year per 100,000 U.S. residents.
[b]Prisons and jails form one integrated system. Data include total jail and prison population.
[c]The incarceration rate includes an estimated 6,200 inmates sentenced to more than 1 year but held in local jails or houses of corrections.
[d]"Sentenced to more than 1 year" includes some inmates "sentenced to 1 year or less."
[e]Population figures are based on custody counts.
[f]Alabama counts for 1999 were for fiscal year ending September 30.

Table 4. Change in the number of sentenced prisoners under the jurisdiction of State or Federal correctional authorities, 1990-2000

Region and jurisdiction	1990-2000 Population difference	1990-2000 Percent change	Average annual percent change
U.S. total	574,029	76.8%	5.9%
Federal	74,641	148.1%	9.5%
State	499,388	71.7	5.6
Northeast	47,568	40.0%	3.4%
Connecticut	5,384	69.3	5.4
Maine	155	10.5	1.0
Massachusetts[a]	1,580	20.0	1.8
New Hampshire	915	68.2	5.3
New Jersey	8,656	41.0	3.5
New York	15,303	27.9	2.5
Pennsylvania	14,563	65.4	5.2
Rhode Island	380	24.0	2.2
Vermont	632	92.8	6.8
Midwest	90,604	62.2%	5.0%
Illinois	17,765	64.6	5.1
Indiana[a]	7,466	59.2	4.8
Iowa	3,988	100.5	7.2
Kansas	2,569	44.5	3.7
Michigan[a]	13,451	39.3	3.4
Minnesota	3,062	96.4	7.0
Missouri	12,356	82.7	6.2
Nebraska	1,530	66.9	5.3
North Dakota	559	128.5	8.6
Ohio	14,011	44.0	3.7
South Dakota	1,272	94.9	6.9
Wisconsin	12,575	--	--
South	246,444	87.2%	6.5%
Alabama	8,758	57.0	4.6
Arkansas	4,577	62.9	5.0
Delaware	1,696	75.7	5.8
Dist. of Columbia[a]	-1,790	-26.3	--
Florida	26,938	60.7	4.9
Georgia	22,470	103.7	7.4
Kentucky	5,896	65.3	5.2
Louisiana	16,448	88.4	6.5
Maryland	5,756	34.4	3.0
Mississippi	11,155	138.0	9.1
North Carolina[a]	9,279	52.2	4.3
Oklahoma	10,896	88.7	6.6
South Carolina	4,809	29.7	2.6
Tennessee	11,778	113.4	7.9
Texas[b]	93,323	164.3	10.2
Virginia	12,225	70.2	5.5
West Virginia	2,230	142.5	9.3
West	114,772	76.8%	5.9%
Alaska	277	15.0	1.4
Arizona	11,631	84.4	6.3
California[a]	66,290	70.4	5.5
Colorado	9,162	119.4	8.2
Hawaii	1,845	108.0	7.6
Idaho	3,565	181.8	10.9
Montana	1,680	117.9	8.1
Nevada	4,098	70.4	5.5
New Mexico	1,820	59.3	4.8
Oregon	4,111	63.3	5.0
Utah	3,052	123.4	8.4
Washington	6,671	83.4	6.3
Wyoming[a]	570	51.4	4.2

-Not calculated because of changes in reporting procedures.
Growth may be slightly overestimated due to a change in reporting rom custody to jurisdiction counts.
Includes 6,742 "paper-ready" State inmates held in local jails n 1990.

Prison incarceration rates have risen sharply since 1990

On December 31, 2000, the number of sentenced prisoners per 100,000 U.S. residents was 478. Of the 13 States with rates greater than that for the Nation, 9 were in the South, 2 were in the West, and 2 were in the Midwest. Three States — Minnesota (128), Maine (129), and North Dakota (158) — had rates that were less than a third the national rate. The District of Columbia, a wholly urban jurisdiction, held 971 sentenced prisoners per 100,000 residents. The number of sentenced inmates in the District of Columbia dropped 26% during 2000, as a result of an ongoing transfer of responsibility for sentenced felons to the Federal system.

Since 1990 the number of sentenced prisoners per 100,000 residents has risen from 292 to 478. During this period, incarceration rates rose most in the South (from 316 to 539) and West (from 277 to 423). The rate in the Midwest rose from 239 to 371, and the rate in the Northeast grew from 232 to 320. The number of sentenced Federal prisoners per 100,000 U.S. residents increased from 20 to 45.

Five States reported increases of at least 10% during 2000; 13 States reported decreases

Between January 1 and December 31, Idaho and North Dakota experienced the largest increase (up 14.1%), followed by Mississippi (10.9%), Vermont (10.5%), and Iowa (10.0%). Thirteen States and the District of Columbia experienced a decline in prison populations. The District of Columbia had the largest decline (down 13.8%), followed by Massachusetts (down 5.6%), New Jersey (down 5.4%), New York (down 3.7%), and Texas (down 3.2%).

In absolute numbers of inmates, only 2 jurisdictions grew by at least 2,000. The Federal system (up 10,170), experienced the largest growth, followed by Georgia (up 2,141). These two jurisdictions accounted for more than two-thirds of the total growth during 2000.

Since 1990 the sentenced inmate population in State prisons has grown 72% (table 4). During this period 10 States more than doubled their sentenced inmate populations, led by Idaho (up 182%), Texas (up 164%), and West Virginia (up 142%). Between 1990 and 2000 the Federal system reported an increase of 148% — 74,641 additional inmates with sentences of more than 1 year.

Table 5. The 10 highest and lowest jurisdictions for selected characteristics of the prison population, yearend 2000

Prison population	Number of inmates	Incarceration rates, 2000	Rate per 100,000 State residents[a]	1-year growth, 1999-2000	Percent change	Growth since 1990	Average percent change[b]
10 highest:							
California	163,001	Louisiana	801	Idaho	14.1%	Idaho	10.9%
Texas	157,997	Texas	730	North Dakota	14.1	Texas	10.2
Federal	145,416	Mississippi	688	Mississippi	10.9	Federal	9.5
Florida	71,319	Oklahoma	685	Vermont	10.5	West Virginia	9.3
New York	70,198	Georgia	550	Iowa	10.0	Mississippi	9.1
Michigan	47,718	Alabama	549	Rhode Island	9.4	North Dakota	8.6
Ohio	45,833	South Carolina	532	West Virginia	9.2	Washington	8.4
Illinois	45,281	Nevada	518	Oregon	7.8	Colorado	8.2
Georgia	44,232	Arizona	515	Federal	7.5	Montana	8.1
Pennsylvania	36,847	Delaware	513	Colorado	7.4	Tennessee	7.9
10 lowest:							
North Dakota	1,076	Minnesota	128	District of Columbia	-13.8%	Maine	1.0%
Maine	1,679	Maine	129	Massachusetts	-5.6	Alaska	1.4
Wyoming	1,680	North Dakota	158	New Jersey	-5.4	Massachusetts	1.8
Vermont	1,697	New Hampshire	185	New York	-3.7	Rhode Island	2.2
New Hampshire	2,257	Rhode Island	197	Texas	-3.2	New York	2.5
South Dakota	2,616	West Virginia	211	Kentucky	-2.6	South Carolina	2.6
Montana	3,105	Vermont	218	Kansas	-2.6	Maryland	3.0
Rhode Island	3,286	Nebraska	228	Maine	-2.2	Michigan	3.4
West Virginia	3,856	Washington	251	Ohio	-2.2	New Jersey	3.5
Nebraska	3,895	Utah	254	Wyoming	-1.9	Ohio	3.7

[a]The number of prisoners with a sentence of more than 1 year per 100,000 residents in the State population. The Federal Bureau of Prisons and the District of Columbia are excluded.
[b]The average annual percent change from 1990 to 2000.

Among States, Louisiana had the highest incarceration rate; Minnesota, the lowest

At yearend 2000 the 10 jurisdictions with the largest prison populations had under their jurisdiction 827,842 inmates, or 60% of the Nation's total prison population (table 5). California (163,001), Texas (157,997), and the Federal system (145,416) accounted for a third of the population. The 10 States with the smallest prison populations each held fewer than 4,000 inmates. Collectively, these States held 1.8% of the Nation's total prison population.

Louisiana had the highest prison incarceration rate (801 sentenced inmates per 100,000 residents), followed by Texas (730), Mississippi (688), and Oklahoma (685). Five States had prison incarceration rates below 200, led by Minnesota (128), Maine (129), and North Dakota (158).

Since 1990 two States had average annual prison population increases of at least 10%: Idaho (10.9%) and Texas (10.2%). Ten States had average annual growth rates of less than 4%, led by Maine (1.0%), Alaska (1.4%) and Massachusetts (1.8%).

Female prisoner population more than doubled since 1990

During 2000 the number of women under the jurisdiction of State or Federal prison authorities increased 1.2%, slightly below the increase in the number of men (up 1.3%) (table 6). At yearend 91,612 women and 1,290,280 men were in State or Federal prisons.

Since 1990 the annual rate of growth of the female inmate population has averaged 7.6%, higher than the 5.9% average increase in the number of male inmates. While the total number of male prisoners has grown 77% since 1990, the number of female prisoners has increased 108%. By yearend 2000 women accounted for 6.6% of all prisoners nationwide, up from 5.7% in 1990.

Relative to their number in the U.S. resident population, men were about 15 times more likely than women to be incarcerated in a State or Federal prison. At yearend 2000 there were 59 sentenced female inmates per 100,000 women in the United States, compared to 915 sentenced male inmates per 100,000 men.

Table 6. Prisoners under the jurisdiction of State or Federal correctional authorities, by gender, yearend 1990, 1999, and 2000

	Men	Women
All inmates		
Advance 2000	1,290,280	91,612
Final 1999	1,273,171	90,530
Final 1990	729,840	44,065
Percent change, 1999-2000	1.3%	1.2%
Average annual 1990-2000	5.9	7.6
Sentenced to more than 1 year		
Advance 2000	1,237,469	83,668
Final 1999	1,221,611	82,463
Percent change, 1999-2000	1.3%	1.5%
Incarceration rate*		
2000	915	59
1990	572	32

*The number of prisoners with sentences of more than 1 year per 100,000 residents on December 31.

Table 7. Women under the jurisdiction of State or Federal correctional authorities,1990-2000

	Number of female inmates		Percent change		
	2000	1990	1999 -2000	Average, 1990-00[a]	Incarceration rate, 2000[b]
U.S. total	91,612	44,065	1.2%	7.6%	59
Federal	10,245	5,011	3.3%	7.4%	6
State	81,367	39,054	0.9	7.6	53
Northeast	9,081	6,293	-6.7%	3.7%	29
Connecticut	1,406	683	-3.6	7.5	46
Maine	66	44	1.5	4.1	10
Massachusetts[c]	663	582	-10.6	1.3	7
New Hampshire	120	44	2.6	10.6	19
New Jersey	1,650	1,041	-11.4	4.7	39
New York	3,279	2,691	-9.4	2.0	34
Pennsylvania	1,579	1,006	-2.4	4.6	25
Rhode Island	238	166	26.6	3.7	12
Vermont	80	36	35.6	8.3	14
Midwest	14,578	7,521	3.1%	6.8%	45
Illinois	2,849	1,183	1.7	9.2	46
Indiana[c]	1,452	681	18.8	7.9	47
Iowa	592	212	9.8	10.8	40
Kansas	504	284	-11.6	5.9	37
Michigan[c]	2,131	1,688	5.1	2.4	42
Minnesota	368	159	3.7	8.8	15
Missouri	1,988	777	5.1	9.8	70
Nebraska	266	145	6.0	6.3	30
North Dakota	68	20	-2.9	13.0	17
Ohio	2,808	1,947	-1.2	3.7	48
South Dakota	200	77	5.8	10.0	53
Wisconsin	1,352	348	-2.2	14.5	50
South	38,058	15,366	1.7%	9.5%	69
Alabama	1,556	955	--	5.0	66
Arkansas	772	435	-2.0	5.9	57
Delaware	597	226	-2.5	10.2	62
Dist. of Columbia[c]	356	606	29.0	-5.2	31
Florida	4,105	2,664	7.5	4.4	52
Georgia	2,758	1,243	5.8	8.3	67
Kentucky	1,061	479	-3.3	8.3	52
Louisiana	2,272	775	0.2	11.4	100
Maryland	1,219	877	9.5	3.3	39
Mississippi	1,669	448	18.8	14.1	105
North Carolina[c]	1,903	945	0.8	7.3	35
Oklahoma	2,394	1,071	3.4	8.4	138
South Carolina	1,420	1,053	-1.9	3.0	64
Tennessee[c]	1,369	390	0.1	13.4	48
Texas[d]	12,245	2,196	-2.1	18.7	100
Virginia	2,059	927	2.4	8.3	55
West Virginia	303	76	26.8	14.8	31
West	19,650	9,874	1.7%	7.1%	59
Alaska	284	128	-1.4	8.3	33
Arizona	1,964	835	5.9	8.9	72
California[c]	11,161	6,502	-1.8	5.6	63
Colorado	1,333	433	9.9	11.9	63
Hawaii	561	171	1.4	12.6	64
Idaho	493	120	23.6	15.2	77
Montana	306	76	16.3	14.9	68
Nevada	834	406	14.1	7.5	89
New Mexico	511	193	11.1	10.2	48
Oregon	598	362	2.4	5.1	35
Utah	384	125	8.2	11.9	33
Washington	1,065	435	-4.1	9.4	34
Wyoming[c]	156	88	9.9	5.9	65

--Not calculated because of changes in reporting procedures.
[a]The average annual percentage increase from 1990 to 2000.
[b]The number of female prisoners with sentences of more than 1 year per 100,000 U.S. residents.
[c]Growth from 1990 to 2000 may be slightly overestimated due to a change in reporting from custody to jurisdiction counts.
[d]Excludes an unknown number of female inmates in 1990 who were "paper-ready" State inmates held in local jails.

Over a third of all female prisoners were held in the 3 largest jurisdictions: Texas (12,245), California (11,161), and the Federal system (10,245) (table 7). Oklahoma (with 138 sentenced female inmates per 100,000 female State residents), Mississippi (105), and Texas and Lousiana (both with 100) had the highest female incarceration rates. Massachusetts (with 7 sentenced female prisoners per 100,000 female residents), Maine (10), and Rhode Island (12) had the lowest incarceration rates.

Since 1990 the female prisoner population has grown at an annual average rate of at least 10% in 17 States. Texas reported the highest average annual increase in female prisoners (18.7%), followed by Idaho (15.2%), Montana (14.9%) and West Virginia (14.8%). The District of Columbia, which is transferring responsibility of its sentenced felons to the Federal system, was the only jurisdiction to report fewer female prisoners since 1990. However, in 2000 the District of Columbia recorded a 29% increase in the number of female inmates, primarily unsentenced or with sentences of 1 year or less.

Privately operated prisons held over 87,000 State and Federal inmates in 2000

At yearend 2000, 31 States, the District of Columbia, and the Federal system reported a total of 87,369 prisoners held in privately operated facilities (table 8). These private facilities held 5.8% of all State prisoners and 10.7% of Federal prisoners.

Among States, Texas (with 13,985 State inmates housed in private facilities) and Oklahoma (with 6,931) reported the largest number in 2000. Five States — New Mexico (40%), Alaska (33%), Montana (32%), Oklahoma (30%), Hawaii (24%), and Wisconsin (21%) — had at least 20% of their prison population housed in private facilities.

Except for Wisconsin (with 21% of its State inmates in private facilities), North Dakota (with 9%), and New Jersey (with 8%), the use of private facilities was concentrated among Southern and Western States. Overall, 8.3% of State inmates in the South and 5.9% in the West were in privately operated facilities at the end of 2000.

Table 8. State and Federal prisoners held in private facilities, local jails, or other States' facilities, by jurisdiction, yearend 2000

	Private facilities		Local jails		In other State or Federal facilities	
	Number	Percent of all inmates[a]	Number	Percent of all inmates[a]	Number	Percent of all inmates[a]
U.S. total	87,369	6.3%	63,140	4.6%	7,243	0.5%
Federal[b]	15,524	10.7	2,438	1.7	1,249	0.9
State	71,845	5.8	60,702	4.9	5,994	0.5
Northeast	2,509	1.4%	3,823	2.2%	1,260	0.7%
Connecticut	0	0	--	--	470	2.6
Maine	11	0.7	24	1.4	59	3.5
Massachusetts	0	0	457	4.3	95	0.9
New Hampshire	0	0	14	0.6	78	3.5
New Jersey[c]	2,498	8.4	3,225	10.8	72	0.2
New York	0	0	45	0.1	0	0
Pennsylvania	0	0	58	0.2	47	0.1
Rhode Island[c]	0	0	--	--	49	1.5
Vermont[c]	0	0	--	--	390	23.0
Midwest	7,836	3.3%	2,103	0.9%	863	0.4%
Illinois	0	0	0	0	36	0.1
Indiana	991	4.9	1,187	5.9	0	0
Iowa	0	0	0	0	0	0
Kansas	0	0	0	0	87	1.0
Michigan	449	0.9	286	0.6	0	0
Minnesota	0	0	149	2.4	144	2.3
Missouri	0	0	0	0	61	0.2
Nebraska	0	0	0	0	29	0.7
North Dakota	96	8.9	38	3.5	18	1.7
Ohio	1,918	4.2	0	0	39	0.1
South Dakota	45	1.7	16	0.6	23	0.9
Wisconsin	4,337	21.0	427	2.1	426	2.1
South	45,560	8.3%	49,455	9.0%	2,367	0.4%
Alabama	0	0	3,401	13.0	461	1.8
Arkansas	1,540	12.9	728	6.1	0	0
Delaware	0	0	--	--	232	3.4
Dist. of Columbia	2,342	31.4	1,329	17.8	1,241	16.6
Florida	3,912	5.5	0	0	0	0
Georgia	3,746	8.5	3,888	8.8	0	0
Kentucky	1,268	8.5	3,850	25.8	18	0.1
Louisiana	3,068	8.8	15,599	44.5	0	0
Maryland	127	0.5	118	0.5	42	0.2
Mississippi	3,230	16.0	3,700	18.3	0	0
North Carolina	330	1.1	0	0	0	0
Oklahoma	6,931	29.9	970	4.2	76	0.3
South Carolina	0	0	433	2.0	297	1.4
Tennessee	3,510	15.8	5,204	23.5	0	0
Texas	13,985	8.9	6,477	4.1	0	0
Virginia	1,571	5.2	2,962	9.8	0	0
West Virginia	0	0	796	20.6	0	0
West	15,940	5.9%	5,321	2.0%	1,504	0.6%
Alaska	1,383	33.1	--	--	33	0.8
Arizona	1,430	5.4	237	0.9	94	0.4
California	4,547	2.8	2,758	1.7	624	0.4
Colorado[d]	...	...	2,178	12.9	0	0
Hawaii	1,187	23.5	--	--	34	0.7
Idaho	1,162	21.0	450	8.1	88	1.6
Montana	986	31.8	548	17.6	36	1.2
Nevada	508	5.1	175	1.7	203	2.0
New Mexico	2,155	40.3	0	0.0	23	0.4
Oregon	0	0	7	0.1	161	1.5
Utah	208	3.7	1,050	18.7	119	2.1
Washington[c]	0	0	0	0	65	0.4
Wyoming	275	16.4	17	1.0	24	1.4

--Not applicable. Prison and jails form an integrated system
...Not reported.
[a]Based on the total number of inmates under State or Federal jurisdiction.
[b]Includes 6,143 Federal inmates held in privately operated community correctional centers.
[c]Inmates held in other State facilities include interstate compact cases.
[d]Colorado housed 2,099 inmates in private facilities under contract to local jails. These inmates were included in regional and national totals for private facilities.

Local jails held more than 63,000 State prisoners

At the end of 2000, 34 States, the District of Columbia, and the Federal system reported a total of 63,140 State and Federal prisoners held in local jails or other facilities operated by county or local authorities. These inmates held in local jails represented 4.6% of all prisoners in 2000. Approximately 10% of inmates in local jails were being held for State or Federal prison authorities.

Louisiana had the largest percentage of its State inmate population housed in local jails, 44%. Three other States — Kentucky (26%), Tennessee (24%), and West Virginia (21%) — had at least 20% of their population housed in local jail facilities.

In addition to housing inmates in privately operated facilities and local jails (within their own State and elsewhere), 35 States and the District of Columbia reported placing inmates in Federal facilities and in other State-operated facilities. On December 31, 2000, 7,243 prisoners nationwide were held under such arrangements — representing less than 1% of all State prisoners. California placed the most inmates (624), followed by Connecticut (470) and Wisconsin (426). Vermont (23%) and the District of Columbia (17%) had more than 10% of their prison population housed in facilities of other States or the Federal system.

Prison capacity measures vary

Prison capacity and the extent of crowding are difficult to determine because of the absence of uniform measures for defining capacity. Jurisdictions apply a variety of capacity measures to reflect both the available space to house inmates and the ability to staff and operate an institution. To estimate the capacity of their prisons, jurisdictions were asked to supply three measures for yearend 2000: rated, operational, and design capacities.

Table 9. Reported Federal and State prison capacities, yearend 2000

Region and jurisdiction	Type of capacity measure: Rated	Operational	Design	Custody population as a percent of — Highest capacity[a]	Lowest capacity[a]
Federal	95,374	...	...	131%	131%
Northeast					
Connecticut[b]	...	...	...	...	...
Maine	1,428	1,641	1,460	100%	115%
Massachusetts	...	...	9,162	113	113
New Hampshire	2,500	2,286	2,216	91	103
New Jersey	...	...	17,122	141	141
New York	62,773	67,412	55,446	105	127
Pennsylvania	25,690	33,180	25,690	111	143
Rhode Island	3,717	3,717	3,878	88	92
Vermont	1,301	1,361	1,184	96	111
Midwest					
Illinois	32,995	32,995	28,211	137%	161%
Indiana	15,383	19,829	...	91	117
Iowa	6,772	6,772	6,772	117	117
Kansas	8,786	...	...	95	95
Michigan	...	48,974	...	97	97
Minnesota	6,321	6,321	6,321	96	96
Missouri	...	28,498	...	96	96
Nebraska	...	2,963	2,371	129	161
North Dakota	1,005	952	1,005	92	97
Ohio	39,927	...	...	114	114
South Dakota	...	2,619	...	97	97
Wisconsin	...	11,739	...	131	131
South					
Alabama	...	22,806	22,806	101%	101%
Arkansas[c]	10,576	10,576	10,576	105	105
Delaware	...	4,206	3,192	--	--
District of Columbia	4,586	4,586	...	83	83
Florida	83,026	75,842	56,101	81	120
Georgia	...	45,156	...	90	90
Kentucky	11,445	11,196	...	96	99
Louisiana	19,448	19,701	...	99	100
Maryland	...	23,659	...	99	99
Mississippi[c]	...	18,027	...	100	100
North Carolina	29,107	...	29,107	107	107
Oklahoma[c]	...	23,150	...	95	95
South Carolina	...	23,512	22,229	89	94
Tennessee[c]	17,958	17,555	...	95	97
Texas[c,d]	161,736	158,501	161,736	96	98
Virginia	32,166	...	...	91	91
West Virginia	3,123	3,253	3,123	94	98
West					
Alaska	2,603	2,691	2,603	102%	106%
Arizona	...	24,947	24,947	106	106
California	...	154,697	80,467	101	194
Colorado	...	12,826	11,607	98	108
Hawaii	...	3,406	2,481	106	145
Idaho	5,228	5,030	4,454	95	112
Montana	...	1,400	896	112	175
Nevada[c]	10,599	...	8,292	91	117
New Mexico[c]	...	5,736	5,828	92	93
Oregon	...	10,132	...	100	100
Utah	...	4,637	4,881	86	91
Washington	9,466	13,562	13,562	110	158
Wyoming	1,314	1,303	1,251	96	101

...Data not available.
--Not calculated. (See *Jurisdiction notes.*)
[a]Population counts are based on the number of inmates held in facilities operated by the jurisdiction. Excludes inmates held in local jails, in other States, or in private facilities.
[b]Connecticut no longer reports capacity because of a law passed in 1995.
[c]Includes capacity of private and contract facilities and inmates housed in them.
[d]Excludes capacity of county facilities and inmates housed in them.

These measures were defined as follows:

Rated capacity is the number of beds or inmates assigned by a rating official to institutions within the jurisdiction.

Operational capacity is the number of inmates that can be accommodated, based on a facility's staff, existing programs, and services.

Design capacity is the number of inmates that planners or architects intended for the facility.

Of the 51 reporting jurisdictions, 29 supplied a rated capacity; 43, an operational capacity; and 33, a design capacity (table 9). Twenty-two jurisdictions provided only 1 measure or the same figure for each measure they reported. For the 29 jurisdictions with more than 1 reported type of capacity, estimates of population as a percent of capacity are based on the highest and lowest figures provided.

Table 10. State prison population as a percent of capacity, yearend 2000

	State prisons[a]
Highest capacity	1,151,222
Lowest capacity	1,000,736
Population as a percent of capacity[b]	
Highest	
1990	115
1999 (comparable)	109
1999 (revised)	101
2000	100
Lowest	
1990	127
1999	117
2000	115

Note: Data reflect the highest and lowest of the three capacities reported. In 1999 California reported operational capacity for the first time; for comparisons with previous years, use 1,041,139 as the highest capacity of State prisons.
[a]Capacity figures were estimated for Connecticut in 1999 and 2000.
[b]Excludes inmates sentenced to prison but held in local jails and inmates in private facilities (unless included in the reported capacity). See *Jurisdiction notes.*

Twenty-two States and Federal system operating at or above capacity

Prisons generally require reserve capacity to operate efficiently. Dormitories and cells need to be maintained and repaired periodically, special housing is needed for protective custody and disciplinary cases, and space may be needed to cope with emergencies.

At yearend 2000, 27 States and the District of Columbia reported that they were operating at or below 99% of their highest capacity. Twenty-one States and the Federal prison system reported operating at 100% or more of their highest capacity. Florida, which was operating at 81% of its highest capacity, reported the lowest percent of capacity occupied. California, operating at 94% over its lowest reported capacity, had the highest percent of capacity occupied.

By yearend 2000 the Federal prison system was operating at 31% over capacity, decreasing since yearend 1999 (32%). Overall, State prisons in 2000 were operating at their highest capacity and 15% above their lowest capacity.

States added 351 adult correctional facilities and more than 528,000 prison beds during the decade

On June 30, 2000, based on the *Census of State and Federal Adult Correctional Facilities*, there were 1,558 public and private adult correctional facilities housing State prisoners. In addition, there were 84 Federal facilities and 26 private facilities that housed primarily inmates for Federal authorities. Since the 1990 census, the number of State correctional facilities increased by 351, up from 1,207 in 1990. (See *Methodology* for census definitions and coverage.)

Through new construction of public and private facilities and expansion of existing facilities, States added 528,274 beds. Overall, based on the number of beds assigned by rating officials to each facility, the rated capacity of State public and private prisons rose 81% during the decade.

Prison construction was the greatest in Texas (with the addition of 109,975 beds) and California (with 73,005 more beds), Florida (28,550) and Georgia (25,812). Together, these four States accounted for nearly 45% of the added capacity of State prisons nationwide.

Two States, Colorado and Texas, more than tripled their rated capacities. Colorado, with the addition of 33 public and private facilities, and Texas, with construction of the State jail system and 84 new facilities, led the Nation in the expansion of capacity. Thirteen other States experienced at least a doubling of their public and private prison capacities. Two States — Maine (up 18%) and New York (up 22%) — had increases in rated capacity of less than 25%.

Table 11. Number of State public and private adult correctional facilities, June 30, 1990 and 2000

Region and jurisdiction	1990	2000		Total capacity added, 1990-2000	
	All facilities	All facilities	Confinement[a]	Number of beds	Percent change
Total[b]	1,207	1,558	1,109	528,274	81.2%
Northeast	182	233	175	50,957	46.6%
Connecticut	20	20	20	8,325	89.8
Maine	7	8	6	234	17.8
Massachusetts	20	25	18	5,797	92.0
New Hampshire	5	8	5	951	90.7
New Jersey	25	43	25	10,790	66.7
New York	62	69	63	12,313	21.8
Pennsylvania	30	44	25	10,049	61.5
Rhode Island	7	7	6	1,929	107.8
Vermont	6	9	7	569	73.3
Midwest	255	301	238	80,711	60.2%
Illinois	39	48	36	10,352	44.2
Indiana	23	25	21	--	--
Iowa	24	30	8	3,964	87.7
Kansas	16	11	10	3,782	71.2
Michigan	67	70	61	17,211	55.6
Minnesota	9	9	9	4,876	147.8
Missouri	17	28	25	14,782	98.3
Nebraska	7	9	7	1,600	88.0
North Dakota	2	3	3	332	57.7
Ohio	22	34	34	11,941	41.5
South Dakota	2	4	3	1,381	110.3
Wisconsin	27	30	21	8,976	165.0
South	534	730	516	272,889	104.0%
Alabama	28	35	19	9,300	72.5
Arkansas	13	15	8	3,496	53.5
Delaware	8	9	5	2,190	62.1
Dist. of Col.	11	6	1	-4,699	-63.4
Florida	100	106	69	28,550	60.7
Georgia	32	83	57	25,812	131.2
Kentucky	15	25	15	5,730	78.7
Louisiana	20	17	10	5,562	39.3
Maryland	21	26	18	8,826	56.4
Mississippi	24	28	9	9,875	134.1
North Carolina	91	80	68	14,763	77.7
Oklahoma	23	52	26	15,623	165.5
South Carolina	32	34	24	7,658	48.9
Tennessee	18	15	15	9,891	107.2
Texas	43	127	114	109,975	211.6
Virginia	48	61	49	18,861	135.7
West Virginia	7	11	9	1,476	91.0
West	236	294	180	123,717	85.5%
Alaska	13	24	14	1,042	40.4
Arizona	20	16	13	10,941	74.7
California	100	86	49	73,005	79.3
Colorado	14	47	27	12,850	257.4
Hawaii	10	10	8	908	35.6
Idaho	7	13	8	3,452	193.8
Montana	5	8	4	1,538	171.3
Nevada	17	20	12	3,749	63.2
New Mexico	11	10	10	2,892	91.0
Oregon	11	13	13	6,042	113.2
Utah	8	8	4	2,197	72.5
Washington	16	30	13	3,235	48.2
Wyoming	4	9	5	1,866	178.1

Note: Based on the Census of State and Federal Adult Correc-
ional Facilities, 1990 and 2000. (See *Methodology*.)
Excludes facilities in which 50% or more of inmates are permitted
o leave unaccompanied or the primary facility function was
ommunity corrections, work release, or prerelease.
Excludes 84 Federal facilities and 26 privately operated facilities
hat held at least 50% of their inmates for Federal authorities,
ncluding the Immigration and Naturalization Service and the U.S.
arshals Service.

At yearend 2000 U.S. military authorities held 2,420 prisoners in 62 facilities

About 79% of prisoners held by the Army, Air Force, Navy, and Marine Corps were convicted inmates; 21% were unconvicted persons whose cases had not been tried. Fifty-six percent of the prisoners (1,346) had sentences of 1 year or more.

At yearend 2000 the Army's Disciplinary Barracks, Fort Leavenworth, Kansas, and five other local or regional Army facilities held the largest share (41%) of all inmates under military jurisdiction. The 11 Navy facilities held nearly 32% of all inmates; the 6 Marine Corps facilities held 23% of all inmates; and the 39 Air Force facilities held 4% of all inmates.

The operational capacity of the 62 military confinement facilities totaled 4,488. At yearend 2000 these facilities were operating at 54% of their operational capacity.

Table 12. Prisoners under military jurisdiction, by branch of service, yearend 1999 and 2000

Branch of service	Number 2000	Number 1999	Percent change, 1999-00
To which prisoners belonged			
Total	2,420	2,279	6.2%
Air Force	413	409	1.0
Army	789	761	3.7
Marine Corps	730	565	29.2
Navy	474	523	-9.4
Coast Guard	14	21	-33.3
Holding prisoners			
Total	2,420	2,279	6.2%
Air Force	102	92	10.9
Army	994	1,026	-3.1
Marine Corps	563	480	17.3
Navy	761	681	11.7

U.S. Territories held 16,130 inmates in 2000

The U.S. Territories and Commonwealths — American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands — reported 16,130 inmates under the jurisdiction of their prison systems at yearend 2000 — a decrease of 12.3% since 1999.

Prisoners with a sentence of more than 1 year totaled 11,916 (or nearly three-quarters of the total territorial prison population). Since 1995, the number of sentenced prisoners held in U.S. Territories has grown 27%, compared to the 19% increase in the number of sentenced State prisoners.

Relative to the resident populations in the Territories, the rate of incarceration was 275 prisoners per 100,000 residents — nearly two-thirds of the combined rate of the 50 States and the District of Columbia. Of the 5 Territories, the Northern Mariana Islands had the lowest prison incarceration rate (71 inmates per 100,000 residents), while the U.S. Virgin Islands (with 292) had the highest rate.

Puerto Rico, the largest of the Territories, had the most sentenced prisoners (11,075 at yearend 2000), down from 11,933 in 1999. In 2000, 22 States and the District of Columbia had fewer sentenced inmates than Puerto Rico; 13 States had equal or lower incarceration rates.

Table 13. Prisoners in custody of correctional authorities in the U.S. Territories, yearend 1999 and 2000

	Total			Sentenced to more than 1 year			
	Advance 2000	Final 1999	Percent change, 1999-00	Advance 2000	Final 1999	Percent change, 1999-00	Incarceration rate, 2000*
Total	16,130	18,394	-12.3%	11,916	12,610	-5.5%	275
American Samoa	140	108	29.6	114	94	21.3	174
Guam	684	970	-29.5	323	288	12.2	209
Commonwealth of the Northern Mariana Islands	97	71	36.6	51	42	21.4	71
Commonwealth of Puerto Rico	14,691	15,465	-5.0	11,075	11,933	-7.2	283
U.S. Virgin Islands	518	1,780	-70.9	353	253	39.5	292

*The number of prisoners with a sentence of more than 1 year per 100,000 persons in the resident population. Midyear population estimates were provided by the U.S. Bureau of the Census, International Data Base.

Table 14. Number of sentenced prisoners under State or Federal jurisdiction, by gender, race, Hispanic origin, and age, 2000

	Number of sentenced prisoners							
	Males				Females			
Age	Total[a]	White[b]	Black[b]	Hispanic	Total[a]	White[b]	Black[b]	Hispanic
Total	1,237,469	436,500	572,900	206,900	83,668	34,500	37,400	10,000
18-19	33,300	8,400	16,300	6,800	1,200	600	500	100
20-24	199,600	56,500	98,100	38,700	7,800	3,300	3,000	1,200
25-29	232,100	67,100	119,100	41,300	14,700	5,300	6,600	2,000
30-34	234,000	81,900	109,400	40,000	21,000	8,300	9,900	2,300
35-39	212,700	79,200	101,700	30,400	18,200	7,600	8,600	2,000
40-44	149,400	58,300	64,600	24,800	10,200	4,100	4,800	1,100
45-54	128,800	60,300	49,200	17,800	8,300	3,800	3,100	1,100
55 or older	42,300	23,700	11,300	6,600	1,900	1,300	600	200

Note: Based on custody counts from National Prisoners Statistics (NPS-1A) and updated from jurisdiction counts by gender at yearend. Estimates by age derived from the Surveys of Inmates in State and Federal Correctional facilities, 1997. Estimates were rounded to the nearest 100.
[a]Includes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.
[b]Excludes Hispanics.

More black males than white males among State and Federal inmates at yearend 2000

	Percent of prisoners under State or Federal jurisdiction*	
	1990	2000
Total	100.0%	100.0%
White	35.6	35.7
Black	44.5	46.2
Hispanic	17.4	16.4
Other	2.5	1.7

*Based on inmates with sentences of more than 1 year. Yearend 2000 counts were based on custody counts from NPS-1A and updated from sentenced jurisdiction counts by gender.

At yearend 2000 black inmates represented an estimated 46% of all inmates with sentences of more than 1 year, while white inmates accounted for 36% and Hispanic inmates, 16%.

Although the total number of sentenced inmates rose sharply (up 77% between 1990 and 2000), there were only small changes in the racial and Hispanic composition of the inmate population. At yearend 2000, black males (572,900) outnumbered white males (436,500) and Hispanic males (206,900) among inmates with sentences of more than 1 year (table 14). More than 46% of all sentenced inmates were black males.

Nearly 10% of black males, age 25-29, in prison in 2000

When incarceration rates are estimated separately by age group, black males in their twenties and thirties are found to have high rates relative to other groups (table 15). Expressed in terms of percentages, 9.7% of black non-Hispanic males age 25 to 29 were in prison in 2000, compared to 2.9% of Hispanic males and about 1.1% of white males in the same age group. Although incarceration rates drop with age, the percentage of black males age 45 to 54 in prison in 2000 was still nearly 2.7% — only slightly lower than the highest rate (2.9%) among Hispanic males (age 25 to 29) and more than twice the highest rate (1.2%) among white males (age 30 to 34).

Female incarceration rates, though substantially lower than male incarceration rates at every age, reveal similar racial and ethnic disparities. Black non-Hispanic females (with an incarceration rate of 205 per 100,000) were more than 3 times as likely as Hispanic females (60 per 100,000) and 6 times more likely than white non-Hispanic females (34 per 100,000) to be in prison in 2000. These differences among white, black, and Hispanic females were consistent across all age groups.

Table 15. Number of sentenced prisoners under State or Federal jurisdiction per 100,000 residents, by gender, race, Hispanic origin, and age, 2000

	Number of sentenced prisoners per 100,000 residents of each group							
	Males				Females			
Age	Total[a]	White[b]	Black[b]	Hispanic	Total[a]	White[b]	Black[b]	Hispanic
Total	904	449	3,457	1,220	59	34	205	60
18-19	785	302	2,679	1,058	29	23	83	21
20-24	2,045	886	7,276	2,503	83	55	216	86
25-29	2,520	1,108	9,749	2,890	159	88	486	148
30-34	2,355	1,219	8,690	2,740	210	125	722	169
35-39	1,889	995	7,511	2,134	162	96	573	147
40-44	1,316	697	4,955	2,088	89	49	331	96
45-54	707	428	2,699	1,144	44	27	143	69
55 or older	164	112	540	401	6	5	21	9

Note: Based on estimates of the U.S. resident population on July 1, 2000, and adjusted for the 1990 census undercount.
[a]Includes American Indians, Alaska Natives, Asians, Native Hawaiians, and other Pacific Islanders.
[b]Excludes Hispanics.

Table 16. Estimated number of sentenced prisoners under State jurisdiction, by offense, gender, race, and Hispanic origin, 1999

Offenses	All	Male	Female	White	Black	Hispanic
Total	1,189,800	1,115,400	74,400	396,100	553,100	202,100
Violent offenses	570,000	548,400	21,600	189,300	266,300	93,800
Murder[a]	141,500	134,900	6,600	44,000	70,700	22,900
Manslaughter	17,500	15,700	1,800	6,200	6,900	3,400
Rape	30,900	30,600	300	14,200	12,400	2,600
Other sexual assault	78,100	77,300	800	44,600	19,300	10,800
Robbery	161,800	156,600	5,200	33,800	97,300	26,200
Assault	115,100	109,700	5,400	35,800	50,500	23,800
Other violent	25,100	23,600	1,500	10,700	9,100	4,200
Property offenses	245,000	225,400	19,600	103,900	98,500	34,100
Burglary	116,600	112,900	3,800	49,200	47,200	16,200
Larceny	46,700	40,500	6,100	17,300	21,000	6,400
Motor vehicle theft	19,900	19,200	700	7,700	7,300	4,400
Fraud	31,700	24,100	7,600	16,000	12,000	2,800
Other property	30,100	28,700	1,400	13,600	11,000	4,200
Drug offenses	251,200	226,100	25,100	50,700	144,700	52,100
Public-order offenses[b]	120,600	112,800	7,800	51,500	42,100	21,300
Other/unspecified[c]	3,000	2,700	300	600	1,500	700

Note: Data are for inmates with a sentence of more than 1 year under the jurisdiction of State correctional authorities. The number of inmates by offense were estimated using the 1997 Survey of Inmates in State Correctional Facilities and rounded to the nearest 100.
[a]Includes nonnegligent manslaughter.
[b]Includes weapons, drunk driving, court offenses, commercialized vice, morals and decency charges, liquor law violations, and other public-order offenses.
[c]Includes juvenile offenses and unspecified felonies.

Growth linked to increasing number of inmates in State prison for violent and drug offenses

Between 1990 and 1999 the distribution of the four major offense categories — violent, property, drug, and public-order offenses — changed slightly among State prisoners. The percent held for property and drug offenses dropped while the percent held for public-order offenses rose.

	Percent of sentenced State inmates	
	1990	1999
Total	100%	100%
Violent	46	48
Property	25	21
Drug	22	21
Public-order	7	10

In absolute numbers, an estimated 570,000 inmates in State prison at yearend 1999 were held for violent offenses, 161,800 for robbery, 141,500 for murder, 115,100 for assault, and 109,000 for rape and other sexual assaults (table 16). In addition, 245,000 inmates were held for property offenses, 251,200 for drug offenses, and 120,600 for public-order offenses.

Overall, the largest growth in State inmates between 1990 and 1999 was among violent offenders. During the 9-year period, the number of violent offenders grew 254,100, while the number of drug offenders grew 101,500 (table 17). As a percentage of the total growth, violent offenders accounted for 51% of the growth; drug offenders 20%; property offenders 14%; and public-order offenders 15%.

Sources of growth differ among men and women and among white, black, and Hispanic inmates

The increasing number of violent offenders accounted for the 53% of the total growth among male inmates and 28% among female inmates. Drug offenders accounted for the largest source of the total growth among female inmates (35%), compared to 19% among male inmates. The increasing number of property offenses accounted for a slightly higher percent of the growth among female inmates (21%) than male inmates (13%). Although the number of public-order offenders rose sharply, they accounted for only 15% of the total growth among male inmates and 16% of the growth among female inmates.

The sources of population growth also differed among white, black, and Hispanic prisoners. Overall, the increasing number of drug offenses accounted for 27% of the total growth among black inmates, 15% of the total growth among Hispanic inmates, and 14% of the growth among white inmates (table 18). Violent offenders accounted for the largest source of growth for all groups — among white State inmates (47%), black inmates (50%), and Hispanic inmates (58%).

Table 17. Partitioning the total growth of sentenced prisoners under State jurisdiction, by offense and gender, 1990-99

	Total		Male		Female	
	Increase, 1990-99	Percent of total	Increase, 1990-99	Percent of total	Increase, 1990-99	Percent of total
Total	500,200	100%	462,600	100%	37,700	100%
Violent	254,100	51	243,600	53	10,500	28
Property	70,000	14	62,100	13	7,900	21
Drug	101,500	20	88,200	19	13,300	35
Public-order	74,800	15	68,900	15	5,900	16

Table 18. Partitioning the total growth of sentenced prisoners under State jurisdiction, by offense, race, and Hispanic origin, 1990-99

	White		Black		Hispanic	
	Increase, 1990-99	Percent of total	Increase, 1990-99	Percent of total	Increase, 1990-99	Percent of total
Total	152,700	100%	238,400	100%	86,800	100%
Violent	71,700	47	120,200	50	50,100	58
Property	28,700	19	27,600	12	9,900	11
Drug	21,100	14	64,900	27	13,400	15
Public-order	31,800	21	25,500	11	13,000	15

Table 19. Number of sentenced inmates in Federal prisons, by most serious offense, 1990, 1995, and 1999

Offenses	Number of sentenced inmates in Federal prisons 1990	1995	1999	Percent change, 1990-99	Percent of total growth, 1990-1999
Total	56,989	88,101	119,185	109.1%	100.0%
Violent offenses	9,557	11,321	13,355	39.7%	6.1%
Homicide[a]	1,233	966	1,498	21.5	0.4
Robbery	5,158	6,341	9,354	81.3	6.7
Other violent	3,166	4,014	2,503	-20.9	-1.1
Property offenses	7,935	7,524	8,682	9.4%	1.2%
Burglary	442	164	195	-55.9	-0.4
Fraud	5,113	5,629	6,553	28.2	2.3
Other property	2,380	1,731	1,934	-18.7	-0.7
Drug offenses	30,470	51,737	68,360	124.4%	60.9%
Public-order offenses	8,585	15,762	26,456	208.2%	28.7%
Immigration	1,728	3,612	10,156	487.7	13.6
Weapons	3,073	7,519	9,494	208.9	10.3
Other public-order	3,784	4,631	6,806	79.9	4.9
Other/unspecified[b]	442	1,757	2,332	427.6%	3.0%

Note: All data are from the BJS Federal justice database. Data for 1990 and 1995 are for December 31. Data for 1999 are for September 30. Data are based on all sentenced inmates, regardless of sentence length.

[a]Includes murder, nonnegligent manslaughter, and negligent manslaughter.
[b]Includes offenses not classifiable or not a violation of the United States Code.

Changing Federal prison population related to drugs, weapons, and immigration violations

Prisoners sentenced for drug offenses constitute the largest group of Federal inmates (61%) in 1999, up from 53% in 1990 (table 19). On September 30, 1999, the date of the latest available data in the Federal Justice Statistics Program, Federal prisons held 68,360 sentenced drug offenders, compared to 30,470 at yearend 1990. Between 1990 and 1999, the number of Federal inmates held for immigration offenses increased 488%, and the number held for weapons offenses increased 209%. The number of immigration offenders rose from 1,728 in 1990 to 10,156 in 1999; weapons offenders rose from 3,073 to 9,494. By September 30, 1999, weapons offenders represented 10.3% of Federal inmates and immigration violators 13.6%.

Although the number of robbers showed an increase of 81% between 1990 and 1999, the increase was offset by a decline of 21% among other violent offenders (such as inmates held for assault and sex offenses). Overall, the percentage of violent Federal inmates declined from 17% to 11%.

While the number of offenders in each major offense category increased, the number incarcerated for a drug offense accounted for the largest percentage of the total growth (61%). Public-order offenders accounted for 29% of the increase; violent offenders, 6%, and property offenders, 1%.

Methodology

National Prisoner Statistics

The Bureau of Justice Statistics (BJS), with the U.S. Census Bureau as its collection agent, obtains yearend and midyear counts of prisoners from departments of correction in each of the 50 States, the District of Columbia, and the Federal Bureau of Prisons. In an effort to collect comparable data from all jurisdictions, National Prisoner Statistics (NPS) distinguishes prisoners in custody from those under jurisdiction. To have custody of a prisoner, a State must hold that person in one of its facilities. To have jurisdiction means that a State has legal authority over the prisoner. Prisoners under a State's jurisdiction may be in the custody of a local jail, another State's prison, or other correctional facility. Some States are unable to provide both custody and jurisdiction counts. (See *NPS jurisdiction notes.*)

Excluded from NPS counts are persons confined in locally administered confinement facilities who are under the jurisdiction of local authorities. NPS counts include all inmates in State-operated facilities in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, which have combined jail-prison systems.

2000 Census of State and Federal Adult Correctional Facilities

The 2000 census was the sixth enumeration of State institutions and the second of Federal institutions conducted by the Bureau of Justice Statistics. Earlier censuses were completed in 1974, 1979, 1984, 1990 and 1995.

Facilities were included in the census if they had separate staffs; housed primarily State or Federal prisoners; were physically, functionally, and administratively separate; and operational on June 30, 2000. Data were collected from all facilities, resulting in a final response rate of 100%.

The census included the following types of adult correctional facilities: prisons and penitentiaries; boot camps; prison farms; reception, diagnostic, and classification centers; road camps, forestry and conservation camps; youthful offender facilities (except in California; vocational training facilities; prison hospital; drug and alcohol treatment facilities; and State-operated local detention facilities (in Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont).

Facilities were classified as community based if 50% or more of their inmates are regularly permitted to leave unaccompanied or if their primary function was community corrections. Such facilities included halfway houses and restitution, prerelease, work release, and study release centers. Correctional facilities were classified as confinement facilities if fewer than 50% of the inmates are regularly permitted to leave unaccompanied.

Military Corrections Statistics

BJS obtains yearend counts of prisoners in the custody of U.S. military authorities from the Department of Defense Corrections Council. In 1994 the council, comprised of representatives from each branch of military service, adopted a standardized report (DD Form 2720) with a common set of items and definitions. This report provides information on persons held in U.S. military confinement facilities inside and outside the continental United States, by branch of service, sex, race, Hispanic origin, conviction status, sentence length, and offense. It also includes data on the number of facilities, and their design and rated capacities.

Estimating age-specific incarceration rates

The number of sentenced prisoners within each age group was estimated for men, women, whites, blacks, and Hispanics. Estimates for 1999 were produced by combining data from NPS and from the *1997 Surveys of Inmates in State and Federal Correctional Facilities.* The following procedures were used:

1. To obtain estimates of the number of sentenced State and Federal inmates by sex, race, and Hispanic origin in each year, NPS midyear 2000 custody counts for men and women were used. These counts of State and Federal inmates were multiplied by the proportion white, black, Hispanic, or other race as estimated from the State and Federal inmate surveys in 1997. The estimates were then adjusted to equal the number of sentenced inmates by sex in State and Federal prisons as reported in NPS for yearend 2000.

2. To obtain estimates by age in each year, age distributions for each demographic group were drawn from the State and Federal prison inmate surveys. These percentages were then multiplied by the number of sentenced inmates for each group defined by sex, race, and Hispanic origin.

3. Estimates of the U.S. resident population for July 1, 2000, were obtained from the U.S. Census Bureau. (See *U.S. Population Estimates, by Age, Sex, Race, and Hispanic Origin: 1990 to 1995,* PPL-41, and updates for 2000.) These data were then adjusted for the 1990 decennial census, using the 1990 Post Enumeration Survey.

4. Age-specific rates of incarceration for each demographic group were calculated by dividing the estimated number of sentenced prisoners in each age group by the number of U.S. residents in each age group and then multiplying by 100,000.

NPS jurisdiction notes

Alabama — Population counts are for September 30, 1999, and December 31, 2000.

Capacity figures exclude community programs.

Alaska — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Arizona — Population counts are based on custody data. Counts exclude 219 sentenced males and 18 sentenced females housed in local jails who were awaiting transfer to the DOC.

Operational capacity excludes temporary beds and double bunks used in situations of crowding.

Arkansas — Only one type of capacity, set by the Board of Corrections and Community Punishment, is reported.

California — Population counts include felons and civil addicts who are temporarily absent, such as in court, jail or hospital.

Colorado — Population counts include 2,099 male inmates in Colorado private contract facilities.

Capacity figures exclude Bent County Correctional Center, Huerfano Correctional Center, Crowley County Correctional Center, and Kit Carson Correctional Center.

Connecticut — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Legislation in 1995 abolished the capacity law so that prisons no longer have a rated or operational capacity. Design capacity is recorded separately in each facility.

Delaware — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Capacity counts include Department of Correction halfway houses.

District of Columbia — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Design capacity is no longer meaningful because of the prison closure program.

Federal — Custody counts exclude offenders housed in community corrections centers (6,143 on December 14, 2000) and offenders under home confinement (1,591).

Rated capacity excludes contract beds.

Florida — Population counts are based on custody data.

Rated capacity is the maximum safe capacity.

Georgia — Population counts are based on custody data.

Facilities in Georgia are not given rated or design capacities.

Hawaii — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Idaho — Rated capacity is defined as 100% of the maximum capacity; operational capacity as 95% of the maximum (except in one facility which is 100%).

Capacity excludes 235 "non-bed" offenders awaiting a parole hearing on December 31, 2000, and 246 "non-bed" offenders on December 31, 1999.

Illinois — Population counts are based on custody data.

Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

Capacity figures include 822 inmates on electronic detention.

Iowa — Population counts are based on custody data.

Population counts of inmates with a sentence of more than 1 year include

an undetermined number with a sentence of 1 year or less.

Kansas — Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Louisiana — Operational capacity is based on day-to-day operations. Rated and operational capacities include contractual work release facilities.

Population counts include 14,347 males and 1,252 females housed in local jails as a result of a partnership with the Louisiana Sheriffs' Association and local authorities.

Maryland — Design capacity is no longer reported because of renovations and other changes. Operational capacity was estimated by applying a percentage to the population count on December 31, 2000.

Massachusetts — By law, offenders may be sentenced to terms of up to 2½ years in locally operated jails. Such offenders are included in counts and rates for local jails. About 6,200 inmates with sentences of more than 1 year were held in local jails in 2000.

Michigan — Population counts are based on jurisdiction data, excluding 286 inmates held in local jails.

Operational capacity includes institution and camp net capacities and populations in community programs.

Mississippi — Operation and design capacities include private prison capacities.

Missouri — Design capacities are not available for older prisons. Operational capacity is defined as the number of available beds including those temporarily off-line.

Nebraska — Operational capacity is defined as stress capacity (or 125% of design capacity), which is ordered by the governor and set by the Department of Corrections.

Nevada — Population counts are for January 9, 2001.

Rated capacity is defined as emergency capacity. Design capacity is defined as one bed per cell. Capacity figures include 500 beds in a private facility.

New Jersey — Rated and operational capacity figures are not maintained.

Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

New Mexico — Capacity figures include the maximum number of contracted beds in private facilities.

North Carolina — Operational capacity has been eliminated due to a legislative cap.

North Dakota — Capacity figures include a new facility opened in 1998 and double bunking in the State Penitentiary.

Ohio — Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Oklahoma — Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Capacity figures include private prisons and contract jails.

Oregon — Under a new law, inmates with under a 1 year maximum sentence remain under the control of local counties.

Rated and design capacities are not recognized.

Pennsylvania — Reported capacities are single-cell capacities. Operational capacity is based on multiple occupancy.

Rhode Island — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

South Carolina — Population counts include unsentenced inmates on Youthful Offender Act observation status, of which there were none on December 31, 2000.

South Dakota — Operational capacity is planned capacity. Rated and design capacities are not recognized.

Tennessee — Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year.

Texas — Population counts of inmates with a sentence of more than 1 year include an undetermined number with a sentence of 1 year or less.

Capacity figures include public, privately operated and county contracted facilities that are state funded.

Vermont — Prisons and jails form one integrated system. All NPS data include jail and prison populations.

Population counts are jurisdiction counts that include inmates housed in other States but exclude inmates on furlough or intermediate sanctions.

Virginia — Rated, operational, and design capacity are calculated using an operational capacity method in which all inmates housed in a cell are counted.

Washington — A recently revised law allows increasing numbers of inmates with sentences of less than 1 year to be housed in prison.

Wisconsin — Counts exclude temporary probation or parole placements and persons on escape status. Counts include Alternatives to Revocation (ATRs), adult inmates held in contract juvenile facilities, and inmates held in local jails or in out-of-State, private, and Federal prisons due to crowding.

Operational capacity excludes contracted local jails, Federal, other State, and private facilities.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Lawrence A. Greenfeld is the acting director.

BJS Bulletins present the first release of findings from permanent data collection programs such as the National Prisoner Statistics.

Allen J. Beck and Paige M. Harrison wrote this report. Erika Westry provided statistical assistance and verification.

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Christopher J. Mumola collected and processed data on prisoners in the U.S. Territories, in U.S. military facilities, and in facilities operated by or for the U.S. Immigration and Naturalization Service.

August 2001, NCJ 188207

This report in portable document format and in ASCII, its tables, and related statistical data are available at the BJS World Wide Web Internet site:
http://www.ojp.usdoj.gov/bjs/

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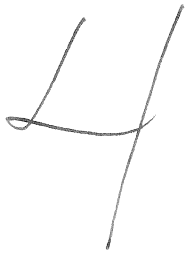

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Poor Prescription:
The Costs of Imprisoning Drug Offenders in the United States

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Center on Juvenile & Criminal Justice

Poor Prescription:
The Costs of Imprisoning Drug Offenders in the United States

It is clear that we cannot arrest our way out of the problem of chronic drug abuse and drug-driven crime. We cannot continue to apply policies and programs that do not deal with the root causes of substance abuse and attendant crime. Nor should we expect to continue to have the widespread societal support for our counter-drug programs if the American people begin to believe these programs are unfair.

Barry R. McCaffrey, Director,
Office of National Drug Control Policy[1]

They [mandatory sentences] have not stemmed the drug trade. The only thing they've done is to fill the prisons.

Retired Republican New York State Senator John Dunne.[2]

I. Introduction

As America entered the new millennium we culminated the most punishing decade in our nation's history. While the number of persons in jail and prison grew by 462,006 in the seven decades from 1910 to 1980, in the 1990s alone, the number of jail and prison inmates grew by an estimated 816,965. As the millennium turned, America's prison and jail populations approached the 2 million mark, with that dubious distinction likely to be achieved within a year of the release of this report.[3]

The cost of this massive growth in incarceration is staggering. Americans will spend nearly $40 billion on prisons and jails in the year 2000. Almost $24 billion of that will go to incarcerate 1.2 million nonviolent offenders.[4] Meanwhile, in two of our nation's largest states, California and New York, the prison budgets outstripped the budgets for higher education during the mid-1990s.[5]

The number of people behind bars not only dwarfs America's historical incarceration rates; it defies international comparisons as well. While America has about 5% of the world's population, almost one in four persons incarcerated worldwide are incarcerated in the US.[6]

While substantial increases in all categories of inmates have contributed to America's mushrooming incarceration rates, the use of imprisonment for drug offenders has increased particularly sharply, drawing increased attention by researchers and policy makers alike.

In 1999, the Sentencing Project reported that between 1980 and 1997, drug arrests tripled in the United States. In 1997, four out of five drug arrests (79.5%) were for possession, with 44% of those arrests for marijuana offenses. Between 1980 and 1997, while the number of drug offenders entering prisons skyrocketed, the proportion of state prison space housing violent offenders declined from 55% to 47%.[7]

Fully 76% of the increase in admissions to America's prisons from 1978 to 1996 was attributable to non-violent offenders, much of that to persons incarcerated for drug offenses.[8] Data like these prompted retired General Barry McCaffrey, Director of the Office of National Drug Control Policy, to refer to America's prison system as an "American gulag."[9] And indeed, with an incarceration rate second to only Russia's, the drug czar's choice of language is fitting.[10]

The hammer of incarceration for drug offenses has by no means fallen equally across race or age categories, with young, African American men suffering unprecedented rates of incarceration for drug offenses. According to the Sentencing Project, nearly one in three (32%) black men between the ages of 20 and 29 were under criminal justice control in 1995.[11] A recent report by the Building Blocks for Youth Initiative found that black youth were admitted to state public facilities for drug offenses at 48 times the rate of white youth.[12]

From 1986 to 1991, while the number of blacks imprisoned for violent offenses rose by about the same amount as whites (31,000 and 33,000, respectively), the number of blacks imprisoned for drug offenses increased four times as much as the increase for whites (66,000 vs. 15,000).[13] This occurred at a time when survey data showed that five times as many whites were using drugs as blacks.[14] The consequences of mass incarceration affect individuals and whole communities. The Sentencing Project and Human Rights Watch has reported that by 1998, 1.4 million African America men, or 13% of the black male adult population, had lost the right to vote due to their involvement in the criminal justice system.[15]

More recently, Human Rights Watch released a report focusing on the extent to which African Americans "have been burdened with imprisonment because of nonviolent drug offenses." The findings of the report were sobering:

- While blacks make up about 13% of regular drug users in the US, they make up 62.7% of all drug offenders admitted to prison.

- While there are 5 times as many white drug users as black drug users, black men are admitted to state prison for drug offenses at a rate that is 13.4 times greater than that of white men. This drives an overall black incarceration rate that is 8.2 times higher than the white incarceration rate.

- In seven states, blacks constitute 80 to 90% of all drug offenders sent to prison. In 15 states, black men are admitted to state prison for drug charges at a rate that is 20 to 57 times the white male rate.[16]

Human Rights Watch concluded, "Drug control policies bear primary responsibility for the quadrupling of the national prison population since 1980 and a soaring incarceration rate, the highest among western democracies.... No functioning democracy has ever governed itself with as large a percentage of its adults incarcerated as the United States."

Using the same data set examined by the Human Rights Watch researchers – the National Corrections Reporting Program – as well as data provided by the Justice Department's Bureau of Justice Statistics and the California Department of Corrections, the Justice Policy Institute sought to examine several questions:

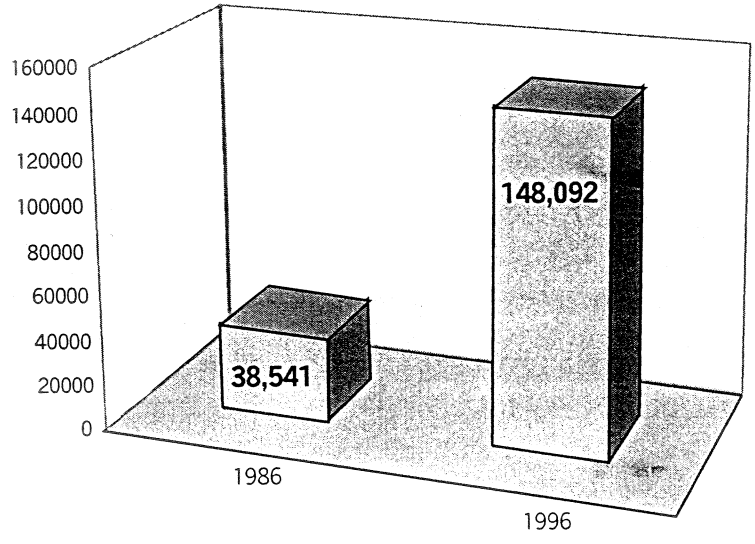
- What proportion of the total current prison population is made up of persons incarcerated for drug offenses and what is America currently spending to incarcerate drug offenders?
- How has incarceration for drug offenders increased over time vs. incarceration for other categories of non-violent offenders and for violent offenders?
- How have drug commitments for whites and blacks changed over time?
- How have drug commitments for younger adults changed over time?
- Which states make the most prolific use of prison space for drug offenders?
- Do states that incarcerate a higher proportion of their citizens for drug offenses experience lower rates of drug use amongst their citizens than states that make more parsimonious use of prisons for drug offenders?

II. Findings

A. Monumental growth of drug commitments to prisons

Nationally, the overall increase in drug admissions to prison from 1986 to 1996 is astonishing. For the thirty-seven states examined, a total of 38,541 inmates were admitted to prison on drug charges in 1986. In 1996 that number had grown to 148,092–nearly four times as many admissions as only a decade earlier (Graph 1). As population figures change, it is more instructive to examine drug incarceration rates per 100,000. In 1986, for every 100,000 citizens there were 18 people admitted to prison for drug offenses. By 1996 the rate had more than tripled to 63 drug admissions per 100,000, a 247% increase (Graph 2).

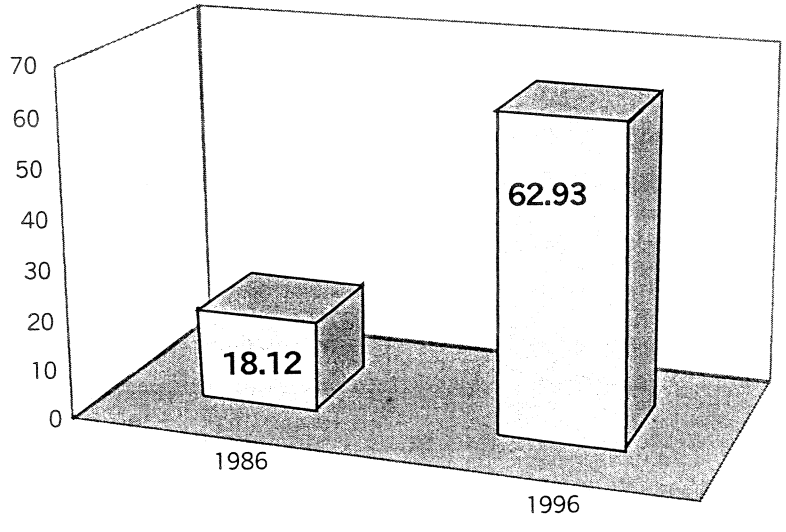
Graph 1: Number of Prison Admissions for Drug Offenses, 1986 and 1996



By the year 2000, these increases resulted in 458,131[17] drug offenders incarcerated in America's prisons and jails–approximately the size of the entire US prison and jail population of 1980.[18] This means that nearly one in four (23.7%) prisoners in America is incarcerated for a non-violent drug offense.[19] Using federal, state and local average per prisoner annual costs, the price tag for incarcerating 458,131 nonviolent drug offenders comes to $9.4[20] billion annually.

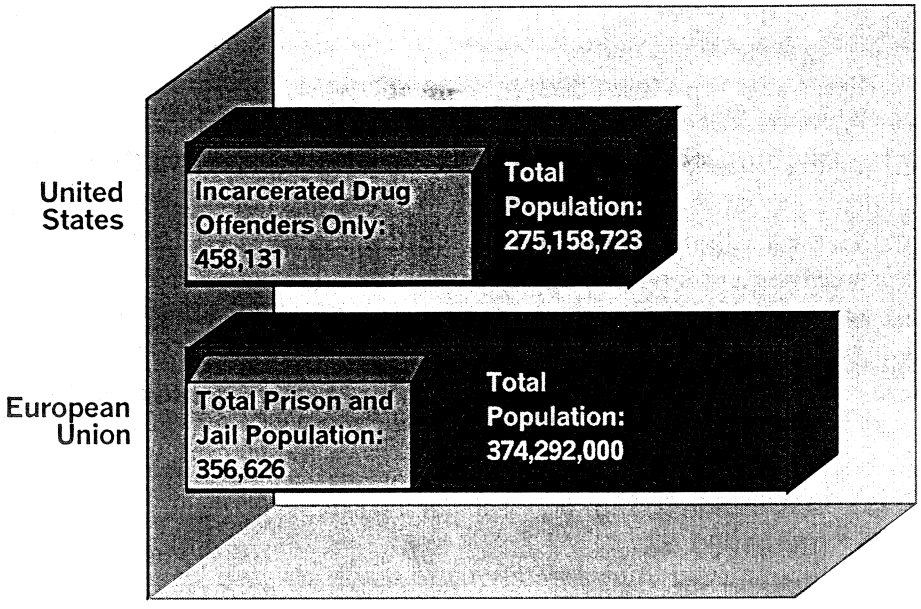
This growth defies not only historical US prison populations, but international incarceration rates as well. America's imprisonment of drug offenders dwarfs the incarcerated drug populations of *all* of Europe. In fact, America has 100,000 more persons behind bars *just for drug offenses* (458,131), than the European Union has *for all offenses* (356,626),[21] even though the EU has 100 million more citizens than the US (Graph 3).

Graph 2: Rate of Prison Admissions for Drug Offenses, 1986 and 1996



Every state except West Virginia and Hawaii increased the number of admissions to prison for drug offenses in 1996 versus 1986. But, as we show, the ramifications of these two states' decreases need to be taken with

Graph 3: America locks up 100,000 more persons just for drug offenses than the entire European Union does for all offenses, even though the EU has 100 million more citizens than the U.S.



Sources: Population (in thousands) for countries of the World: 1998. New York, New York: United Nations, Department of Economic and Social Affairs, Population Division, 2000; Walmsley, Roy. World Prison Population List. London, UK: Home Office, Research, Development and Statistical Directorate, 1999; U.S. Population Clock Projection, U.S. Census Bureau, July 4, 2000. www.census.gov/cgi_bin/popclock.).

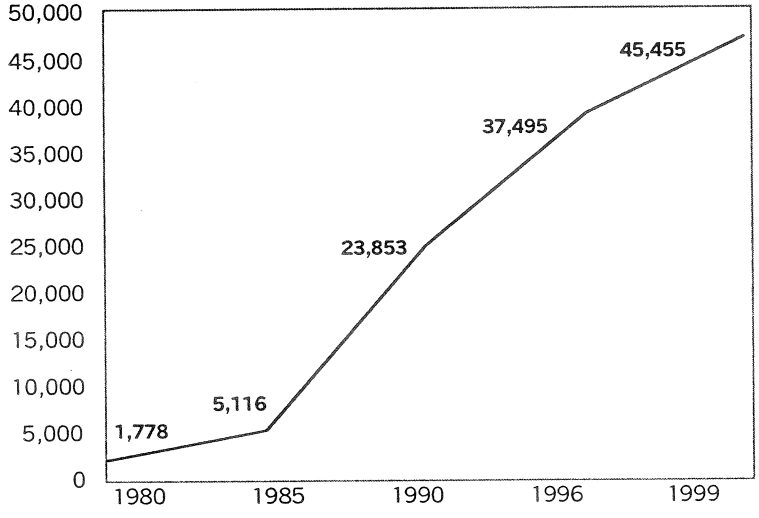
a grain of salt. California incarcerated the most people for drug admissions in 1986 and again in 1996, 9,885 and 42,614 respectively—a quadrupling in drug incarcerations (see California insert, next page). No other state came close. New York incarcerated the second most with 14,658 in 1996, up from 4,464 in 1986; Texas was third, admitting 9,246 in 1996 compared to 5,805 in 1986.

Examining the rates of drug incarceration offers a more reasonable way to compare states to one another (Table 1). California is the leader in this category as well with 134 Californians incarcerated for drug offenses for every 100,000 citizens of the state. California also led the nation in 1986 with 37 admissions to prison for drug offense per 100,000. Texas, the third highest incarcerator in terms of raw numbers in 1996, had the second highest drug incarceration rate in 1986 (35). However, Texas fell to 16th in 1996 with 49 drug incarcerations per 100,000.

Drug Policy and California's Prison Population

During the 1980s, California embarked on the largest expansion of a state prison system in United States history. Capitalizing on growing public crime fears and a powerful prison lobby, state officials implemented over a thousand new laws designed to increase penalties through longer prison sentences. Although California's prison population increased for all offenders, nonviolent drug offenders accounted for the most dramatic increases. As Graph 10 shows there were 1,778 drug offenders in the California Department of Corrections in 1980 and 45,455 drug offenders in 1999; a 25-fold increase in a 20 year period. There are now twice as many Californians incarcerated for drug offenses as the entire state prison population in 1980 (23,264). Presently, drug offenders account for approximately 27% of California's prison population compared to only 8% in 1980. In 1999, the state spent $1,022,465,000 a year to imprison 45,455 drug offenders.

Graph 10: Number of persons imprisoned by the California Department of Corrections for drug offenses:



Source: California Department of Corrections

Note that while there was modest growth in imprisonment from 1980 to 1985, the biggest growth came after 1985 and the implementation of harsh new drug laws.

The increased imprisonment brought about by California's draconian drug policies have been especially harsh on women. Presently, 51% of the females admitted to California state prisons are sentenced for drug violations compared to 39% of male admittees.

In 1999, of the 45,455 imprisoned in California for drug offenses, 20,862, or 46%, were incarcerated for simple possession only; the remainder were for drug manufacture, sales, or possession with intent to sell. Seventy-five percent of the growth in imprisonment for drug offenders over the past five years has been for simple possession. This population is mostly nonviolent drug users with long term addictions who serve relatively short sentences. While in prison those inmates with addictions are unlikely to receive treatment due to limited resources and the absence of a rehabilitation mandate.

During the 1980s, the fastest growth in drug arrests and imprisonments was for manufacture, sales, and possession with intent to sell offenses. During the 1990s, nearly all of the growth has been for simple possession offenses.

If current trends continue, simple possession offenses will constitute the majority of drug offenders in California prisons.

Table 1 - Ten states with the highest rate of admissions to prison for drug offenses in 1996

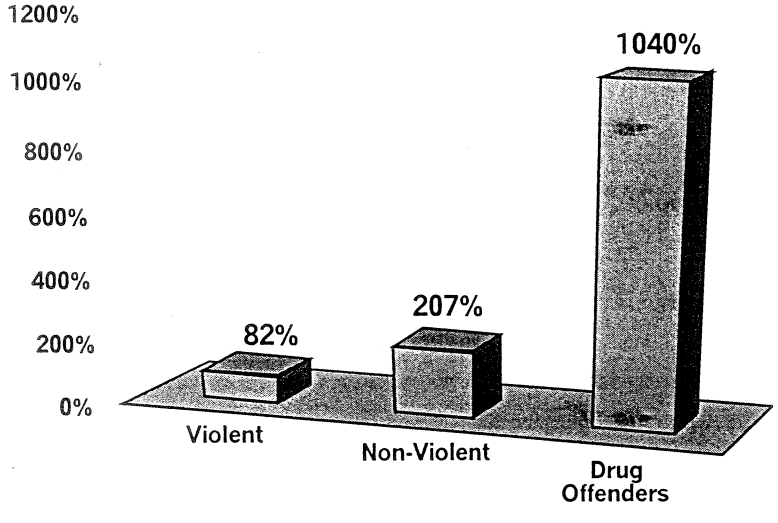
State	*1986 Rate**	*1996 Rate**	*%Change*
California	36.47	134.09	267.63
Louisiana	3.56	106.55	2890.84
New Jersey	11.04	85.26	272.63
New York	25.03	80.79	222.74
North Carolina	24.46	76.69	213.57
Illinois	11.14	73.25	557.33
South Carolina	29.35	70.98	141.87
Maryland	22.11	68.30	208.93
Mississippi	19.39	68.30	252.20
Georgia	2.96	64.46	2078.82

*** rate per 100,000**

Source: National Corrections Reporting Program, 1986, 1996 data

Texas' relative slide (during which time, it is important to remember, Texas still experienced a 39% increase in its drug commitment rate) is largely the result of having been surpassed by a number of states with very low rates in 1986 choosing to increase their reliance on prison to deal with drug offenders. Topping this list is Louisiana, which in 1986 incarcerated 4 per 100,000 state residents for drug offenses. In 1996, Louisiana had catapulted to second place in incarceration rates for drug offenders with 107 per 100,000–a 2890% increase. Likewise, Georgia imprisoned 3 drug offenders per 100,000 citizens in 1986, the lowest in the nation. By 1996, Georgia was admitting 65 per 100,000 to state prisons–a 2079% increase.

Graph 4: From 1980-1997 the number of people entering prison for violent offenses doubled, while non-violent offenses tripled and drug offenses increased 11-fold



Source: Gililard, Darrel K. Trends in U.S. Correctional Populations, 1992. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1992, and Mumola, Christopher J. and Beck, Alan. Trends in U.S. Correctional Population, 1997. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, in press.

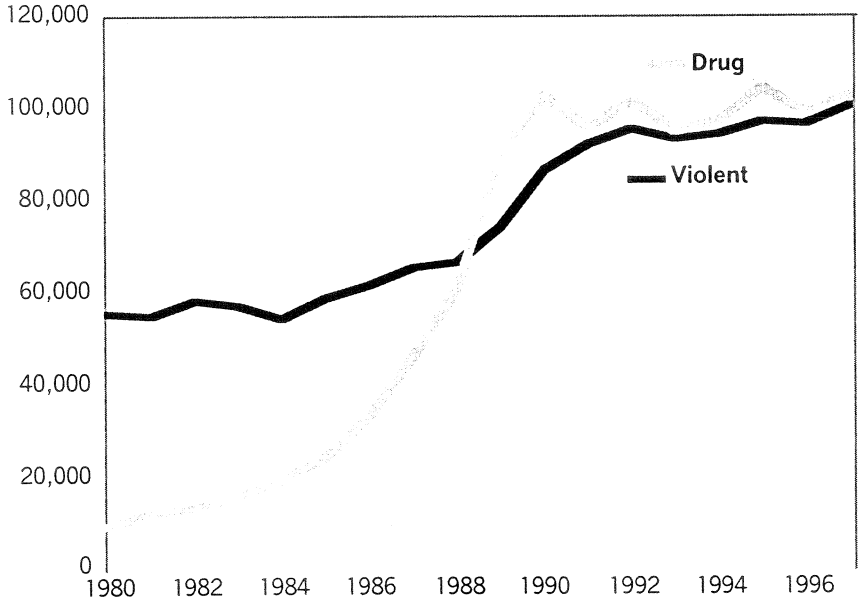
West Virginia (-5%) and Hawaii (-10%) are the only two states showing a drop in drug ad-

mission rates; all other states report an increase. Appendix Table 1 lists the rate and percent change in drug ad-missions for 1986 and 1996.

B. Increases in drug commitments dwarf changes in violent and non-violent commitments

The growth of drug commitments has disproportionately contributed to the overall growth of prison populations in the US. From 1980 to 1997, the number of offenders committed to state prison nearly doubled (+82%), the number of non-violent offenders tripled (+207%) while the number of drug offenders increased 11-fold (+1040%) (Graph 4). In 1988, for the first time, the number of drug offenders being committed to prison exceeded the number of violent offenders being sent to prison, and has exceeded it every year since (See Graph 5).

Graph 5: Every year since 1989 the number of people sent to state prison for drug offenses has exceeded the number of people sent to state prison for violent offenses



Source: Gililard, Darrel K. Trends in U.S. Correctional Populations, 1992. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1992, and Mumola, Christopher J. and Beck, Alan. Trends in U.S. Correctional Population, 1997. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, in press.

Table 2-Ten States with the Highest Percent of Admissions to Prison for Drug Offenses in 1996

State	*1986%*	*1996%*	*%Change*
NewYork	21.82	45.59	108.9
NewJersey	23.87	43.45	82.0
Illinois	10.65	37.23	249.6
Washington	10.06	36.83	266.1
California	18.00	34.16	161.6
Louisiana	40.78	33.41	-18.1
Virginia	12.79	30.81	140.9
Ohio	13.40	29.15	117.5
Pennsylvania	11.51	28.77	150.0
Georgia	34.62	27.80	-19.7

Source: National Corrections Reporting Program, 1986, 1996 data

Thirty states increased the percent of new admissions to prison from 1986 to 1996. Seven states reported lower admissions for drug offenses in 1996 than in 1986. Table 2 shows the ten states with the largest percent of prison admissions for drug offenses in 1996, the percent of drug admissions in 1986 and the percent change in admissions between these years. See Appendix Table 2 for data on all states.

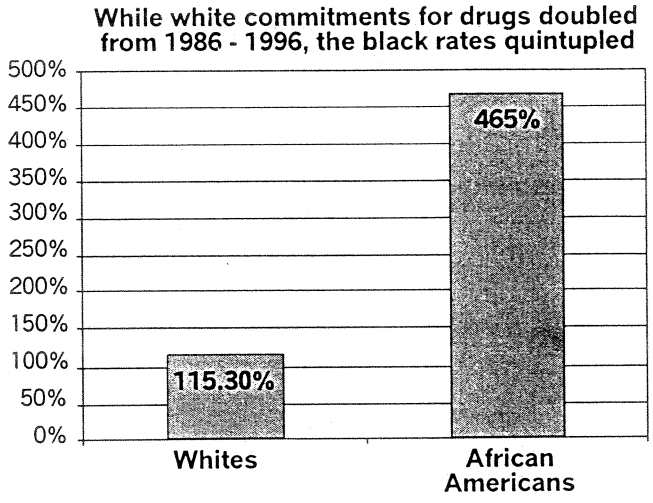
C. Growth in drug commitments disproportionately borne by blacks

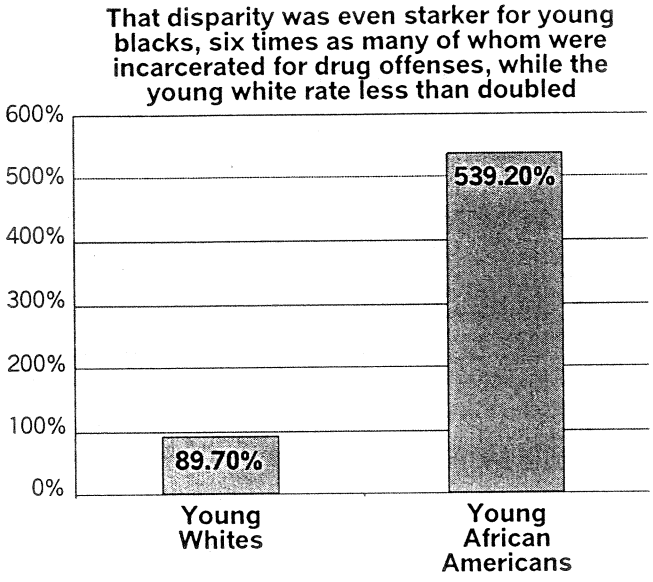
The numbers above describe a nearly unilateral increase in the use of prison as an attempt to deal with the drug issue in the United States. They tell only part of the story. The following data clearly show the brunt of the war on drugs being shouldered by the African American community. While many more whites use drugs than blacks in America, prison space for drug offenses is increasingly reserved for African Americans.

The overall rate of admission to prison for drug offenses was 63 per 100,000 in 1996. When dichotomized by race, however, the rates reveal vast disparities. Whites were sent to prison for drug offenses at a much lower rate (20 per 100,000) than were African Americans (279 per 100,000), in 1996. That means blacks are incarcerated for a drug offense at a rate 14 times that of whites, while survey data reveals that five times as many whites use drugs as blacks.[22]

Both whites and blacks were admitted to prison at higher rates in 1996 than 1986. But for blacks the increase was much more dramatic. Whites experienced a 115% increase in

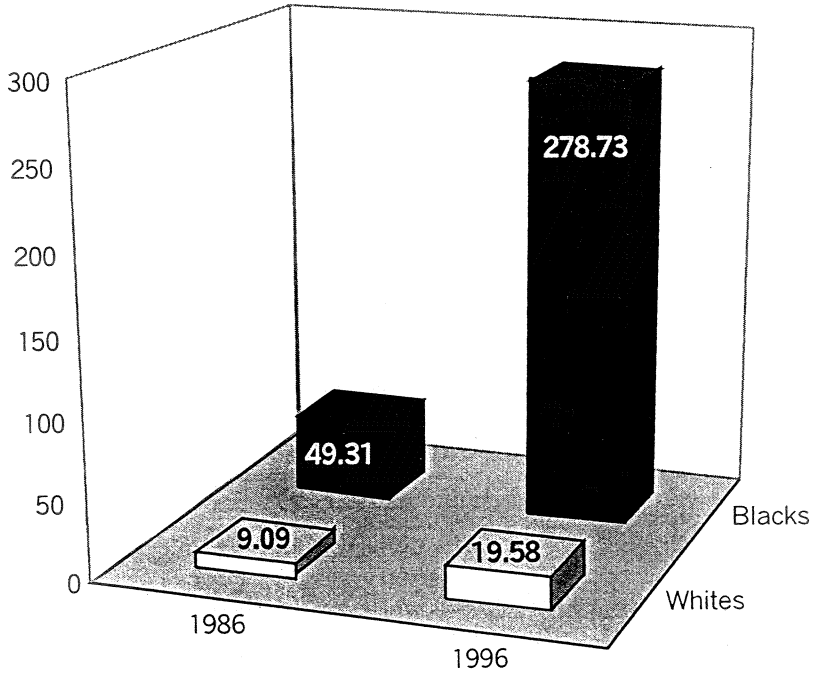
Graph 6





the rate of drug admissions, from 9 to 20. Meanwhile the black rate of 49 per 100,000 in 1986 skyrocketed by 465% to 279 per 100,000 in 1996 (Graph 6). Put another way, while the white drug commitment rate doubled from 1986 to 1996, the black rate quintupled (see Graph 7). Despite the doubling of the white drug commitment rate between 1986 and 1996, the black rate of commitment to prison for drug offenses in **1986** was still 2 1/2 times the **1996** white rate.

Graph 7: Rate of Prison Admissions for Drug Offenses by Race, 1986 and 1996



In 1986 the gap between the percent of new admissions for blacks and whites that were the result of drug convictions was small and in some states the

Table 3 - States with the Highest Percentage of Black Admissions to Prison for Drug Offenses, 1996

State	%1986		%1996		%Change	
	B	W	B	W	B	W
Washington	8.05	6.28	49.96	23.19	696.0	53.0
New Jersey	22.57	20.76	48.05	23.37	131.0	03.5
Illinois	11.75	7.40	46.23	14.46	525.0	23.0
NewYork	17.16	14.46	45.11	16.72	212.0	-2.6
Kentucky	10.07	9.08	41.56	16.98	358.0	67.0
W.Virginia	18.63	25.77	40.25	8.61	056.0	-54.0
Maine	22.88	unav	39.13	8.42	-63.0	NA
Virginia	14.06	11.09	38.47	15.95	247.0	13.0
Ohio	14.01	12.19	38.10	17.25	213.0	23.0
Texas	17.57	11.42	37.45	17.96	228.0	2.2

Source: National Corrections Reporting Program, 1986, 1996 data

percentage for whites exceeded that of blacks. During the "Punishing 90's," however, the percent of blacks entering prison for drug offenses outstripped that of whites, in some states more than two to one (Table 3).

State level data reveal an even starker image of the change in white and black rates of incarceration. Earlier we reported that Hawaii and West Virginia experienced a decrease in their overall drug incarceration rates. However, we find that in these states the decrease is fully attributable to a white decrease in incarceration. The percent change in the rate of incarceration for whites in West Virginia was -38%, for Hawaii it was -58%. Blacks in each state did not fair so well with increases of 172% in West Virginia and 87% in Hawaii.

Five other states also reduced the drug incarceration rates for whites between 1986 and 1996. Like Hawaii and West Virginia, however, blacks in those states weathered a dramatic increase. For example, in South Carolina, Texas, and North Carolina, while the white commitment rate for drug offenses was declining by 32%, 27%, and 21%, respectively, the comparable black rate was exploding by 270%, 216%, and 501%, respectively (Table 4).

Table 4 - States Reporting a Rate Decrease in Prison Admissions for Whites in 1996 versus 1986

State	1986 Rate*		1996 Rate*		%Change	
	W	B	W	B	W	B
Hawaii	19.62	21.75	8.26	40.70	-57.91	87.13
West Virginia	6.77	41.53	4.19	112.85	-38.10	171.76
South Carolina	17.77	56.00	12.06	207.00	-32.16	269.62
Texas	23.71	69.91	17.40	220.68	-26.61	215.68
North Carolina	16.64	49.51	13.19	297.41	-20.75	500.68
Maine	4.70	unrep	4.21	172.02	-10.31	**
Pennsylvania	4.48	26.33	4.44	148.81	- 00.78	465.20

* rate per 100,000

**Maine's overall drug admission rates increased 9.4%. It is most likely that this increase is exclusively the result of an increase in the black incarceration rate.

Source: National Corrections Reporting Program, 1986, 1996 data

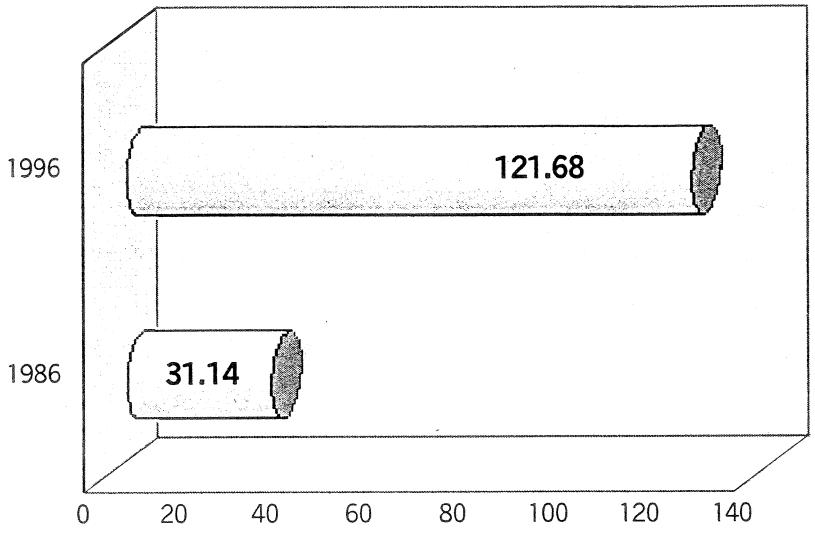
In no state did the rate of increase for whites outpace that for blacks. In most states the black percentage change far exceeds that of whites. The states with the largest percent increases for blacks are Louisiana (10,102%), Georgia (5,499%), Arkansas (5,033%), Iowa (4,284%) and Tennessee (1,473%). Each of these states began with a low rate of incarceration of blacks (and whites) for drug offenses in 1986. The next eleven years were spent catching up with and passing other states in the race to incarcerate black drug users. Appendix Table 3 lists the white and black incarceration rates for 1986 and 1996 by state and the percent change in the rate between those years.

D. Fast-paced growth in the incarceration of young adults for drug offenses

Next we asked how prison policies regarding drug offenders affected America's young adults.[23]

America has certainly gotten tougher on its youth. In 1986, nearly at the height of the drug war, 31 out of every 100,000 youth were admitted to state prisons for drug offenses. In 1996, 122 youth per 100,000 were entering prison on drug convictions. This represents a 291% increase in the rate at which young people were incarcerated because of drug involvement (Graph 8).

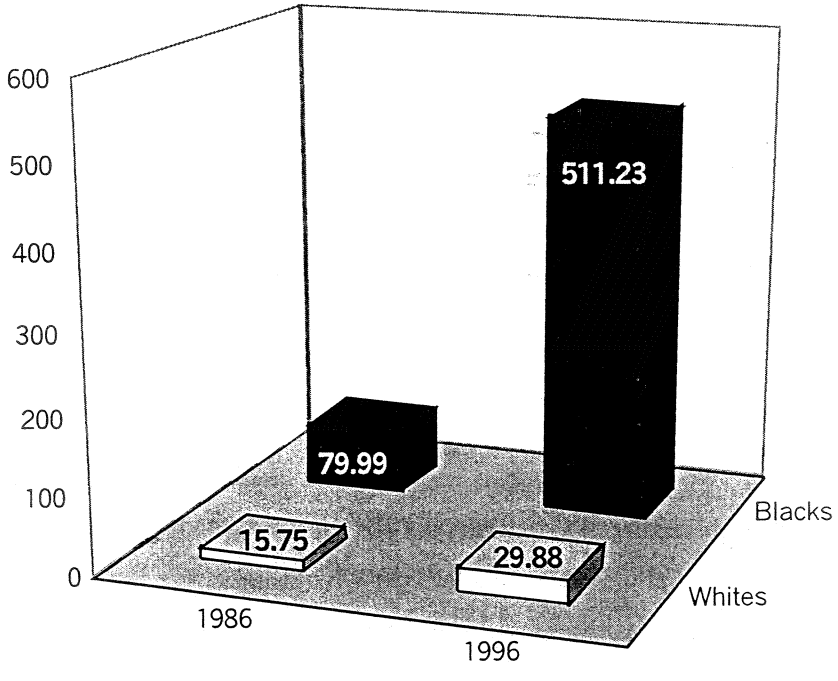
Graph 8: There was a four-fold increase in drug admissions for young adults from 1986-1996



Hawaii was the only state to show a decrease in the rate of youth incarceration for drug offenses (-10%). Georgia youth experienced the largest increase (6,322%) followed by Louisiana (6,197%), Iowa (1,736%), Tennessee (1,432%) and Arkansas (1,250%).

Again we examined how this significant increase was being played out across racial lines. These findings are even more disturbing than those that look-ed at all ages. Nationally, the percent increase in the rate of incarceration for drug offenses between 1986 and 1996 was 539% for young blacks compared to 90% for whites (Graph 6). In 1986 young blacks were incarcerated at a rate of 80 per 100,000; young whites were incarcerated at a rate of 16. In 1996 the young white rate of incarceration had doubled to 30 but the young black rate had grown nearly six and one-half times to 511 per 100,000 (Graph 9).

Graph 9: While the rate of young whites being sent to prison for drug offenses from 1986-1996 doubled, the comparable black rate increased six-fold



At the state level, we were not surprised to find great discrepancy in the rates at which white and black youth are admitted to prison or in the disparate levels of change in admission rates over time. In

Table 5 - States Where the White Youth Rate of Admission for Drug Offenses Decreased and Associated Black Rates

State	*1986 Rate**		*1996 Rate**		*% Change in Rate*	
	W	B	W	B	W	B
Hawaii	21.49	9.24	12.83	16.62	-40.32	79.92
Texas	46.46	95.11	28.45	382.54	-38.76	302.23
South Carolina	34.05	93.76	21.83	477.10	-35.91	408.87
West Virginia	11.84	50.43	08.16	329.98	-31.06	554.32
North Carolina	32.06	64.75	25.99	521.92	-18.94	706.12
Maine	06.78	unrep	05.95	105.93	-12.31	**

* rate per 100,000

**Maine's overall drug admission rates increased 9.4%. It is most likely that this increase is exclusively the result of an increase in the black incarceration rate.

Source: National Corrections Reporting Program, 1986, 1996 data

six states, the rate of prison admission of white youth for drug offenses decreased–black youth did not share the same experience (Table 5). See Appendix Table 4 for data on all 37 states concerning youth incarceration for drug offenses in 1986 and 1996.

E. Little connection found between drug incarceration rates and drug usage

It is, of course, important to ask how drug incarceration rates might be influencing drug use. After all, some support such high rates of incarceration by claiming that they are having a salutary impact on drug use. A thorough analysis of this question is extremely difficult given the paucity of data on state-by-state drug use. At the present time, since the Substance Abuse and Mental Health Services Administration (SAMSHA) data is not reported on a state-by-state basis, no annual state-by-state data is available to properly analyze changes over time in state drug use.

However, in 1993, SAMSHA produced a three-year average of 1991-1993 estimates of state-by-state drug use in 26 states which was reported in the recent Human Rights Watch report.[24] Of those, 23 corresponded to states whose incarceration data are available through the National Corrections Reporting Program–the program we have used for our state-by-state drug incarceration analysis.

Appendix Table 5 reports the annualized average of the percent of people twelve and older in each state who reported using drugs in the previous month, 1991-1993. Using the NCRP admissions data for those years, we computed the average rate of drug admission to prison in the twenty-three corresponding states; they are also reported in Appendix Table 5.

We wanted to know if this available data could give us a clue as to any association between rates of incarceration and the percent of people using drugs. A simple bivariate correlation analysis was performed. The correlation coefficient is both positive (.495) and statistically significant at the .05 level. In other words, for those states with data available, the connection between drug commitment rates to prison and the percent of those using drugs is associated–states with higher rates of drug incarceration have higher rates of drug use.

A bivariate analysis of the 1991 drug admission rates and the 1991-1993 drug use averages was performed to check for a lag effect of high drug admission rates on drug use. Are high rates of incarceration in 1991 associated with lower drug use in subsequent years? Again, the correlation between admission rates to prison and drug use rates is positive (.440) and significant at the .05 level. High rates of incarceration in 1991 are associated with high drug use rates in 1991-1993. Indeed, despite the massive increase in drug admissions to prison for young people during the 1990s, a recent Center for Disease Control Study found that drug use among high school children increased during the 1990s, with twice as many kids reporting have used cocaine

III. Discussion

A. Summary of Findings

As with other examinations of the impact of the drug war on incarceration rates, the Justice Policy Institute has found that the imprisonment of drug offenders has grown at an alarming rate over the past two decades, even when compared to the generally explosive growth of incarceration in the US during that time. While the number of persons imprisoned in state institutions for violent offenses nearly doubled from 1980 to 1997,

the number of nonviolent offenders has tripled and the number of persons imprisoned for drug offenses has increased eleven-fold.

Nearly one in four persons imprisoned in the United States is imprisoned for a drug offense. The number of persons behind bars for drug offenses is roughly the same as the entire prison and jail population in 1980. There are 100,000 more persons imprisoned in America for drug offenses than *all* prisoners in the European Union, even though the EU has 100 million more citizens than the US. The cost of incarcerating over 458,000 prisoners for drug offenses now exceeds $9 billion annually.

This punitive and costly approach has fallen most heavily on young, black males. Even though surveys continue to show similar drug usage rates for young blacks and whites, prison commitments for young black males has increased six-fold while prison commitments for young whites has doubled. In 6 states, drug commitment rates for young whites actually declined while comparable black rates experienced two- to eight-fold increases.

Finally, we utilized data from 23 very diverse states around the country for which we had both drug use data and rates of drug offender admissions to prison. We found a significant, positive correlation between the two, suggesting that, if anything, states with *higher* rates of drug incarceration experience *higher*, not lower, rates of drug use.

This is not the first study to question the effectiveness of incarceration as a means to reduce substance abuse. According to 1997 research by the RAND corporation, spending additional funds to provide treatment for heavy cocaine users would reduce drug consumption by nearly four times as much as spending the same amount on law enforcement, and more than seven times as much as spending the same amount on longer sentences. Additionally, RAND estimated that treatment reduced drug-related crime as much as 15 times more than mandatory sentences. According to RAND:

> *Mandatory minimum sentences are not justifiable on the basis of cost-effectiveness at reducing cocaine consumption, cocaine expenditures, or drug related-crime. Mandatory minimums reduce cocaine consumption*

less per million taxpayer dollars spent than does spending the same amount on enforcement under the previous sentencing regime. And either type of incarceration approach reduces drug consumption less than does putting heavy users through treatment programs, per million dollars spent.[25]

B. Legislative, Judicial, and Voter Initiative Reforms

While there remains plenty of bad news to report about the overreliance on incarceration as a solution to America's drug dilemma, there are beginning to be some rays of hope in creating a more rational and effective response to our nation's drug problem. Faced with data like these and the costs and human tragedies they reflect, states around the country have begun to experiment with ways to address substance abuse without breaking the bank and deteriorating the human condition through unnecessary imprisonment.

Legislation

Although 36 states currently have mandatory minimums in place for drug offenses, one of the first states to enact such mandatory sentences, Michigan, recently moved to ease some of the more draconian provisions of its so-called "650 Lifer" drug laws. Passed in 1978, the 650 Lifer law meted out mandatory sentences of life without the possibility of parole for persons caught with at least 650 grams of heroin or cocaine. After a heated debate, the Michigan legislature passed, and the governor signed, a law which allowed parole for some 650-lifers after they served 15 or 20 years, depending on their prior record.[26] Although the change will apply to only a small number of persons sentenced in Michigan each year, Families Against Mandatory Minimums Executive Director, Laura Sager, describes it as a sea change, "It was an admission on the part of both parties that drug laws had gone too far, that they hadn't worked as intended.... It was considered an incredible thing."[27]

Similarly, in 1994, Congress passed a "safety valve" to the federal mandatory drug provisions which allows judges to sentence offenders below the mandatory minimum if the offender has a minimal prior record, the offense is nonviolent, and the offender cooperates with prosecutors.[28] According to The Sentencing Project, "Since the adoption of this provision, 20% of federal drug cases are now sentenced in this way, providing an indication of the degree to which low-level offenders are being prosecuted."

Judicial Efforts

Recently, a statewide panel convened by New York State's Chief Judge Judith S. Kaye announced what it described as "sweeping new reforms to provide court-mandated substance abuse treatment to nonviolent drug-addicted offenders throughout the state."[29] According to the *New York Times*, the reforms would make New York the "first state to require that nearly all nonviolent criminals who are drug addicts be offered treatment instead of incarceration."[30] The plan developed by the Commission on Drugs and the Courts convened under the aegis of New York's Unified Court System would divert 10,000 defendants from prison or jail into treatment at a savings of $500 million a year in incarceration and other taxpayer costs.[31] According to Chief Judge Kaye,

> *[T]he court system is seeking to end the unproductive recycling of immense numbers of drug cases, which have pushed to the limit our already overburdened court dockets. In this regard, we are beginning immediately to implement a new program that addresses drug-related offenses on a systemic level statewide, concentrating on achieving the most cost-effective and long-term outcomes for both the public and substance-abusing defendants, while at the same time safeguarding public safety.*[32]

In 1998, there were some 22,670 drug offenders in the New York State prison system, about one-third of all prisoners. Over 90% are there because of two mandatory sentencing laws that were passed in 1973 known as the Rockefeller Drug Laws. It costs New York State over $680 million a year to keep these nonviolent drug offenders in prison. By way of comparison, since 1988, the state has reduced its annual budget for higher education by $615 million.[33] According to data cited in the Commission's report, fully 6,834 of prisoners incarcerated in New York for drug offenses were never convicted of a violent felony. Ninety-one percent of the 8,521 drug offenders sentenced to state prison in New York were either convicted of possession or one of the three lowest level drug offenses.[34] As noted above, a higher percentage of New York's prisoners are committed for drug offenses than any other state.

Although New York State's mandatory sentencing laws for drug offenses – the first and some of the harshest in the nation – were ostensibly the focal point around which the commission convened, the commission chose to make only minor recommendations

with respect to them due to an inability "to reach consensus to recommend either their repeal or their continued existence in their present form."[35] Instead, the Commission recommended allowing the New York State Court of Appeals, the state's highest judicial branch, to review and reduce sentences for a small number of those sentenced under the Rockefeller Drug laws.

Voter Initiatives

While the aforementioned reform efforts are encouraging first steps, some view legislative and judicial branch efforts to reform drug policy as too compromised by political concerns. As a result, citizens in a number of states have taken matters into their own hands by placing drug reform initiatives on the ballot for voter approval. From 1996 to 1999, voters in eight states (Alaska, Arizona, California, Colorado, Maine, Nevada, Oregon, and Washington) and the District of Columbia approved initiatives allowing for the medical use of marijuana by cancer patients and those suffering from AIDS.

In the early 1990s, voters in Arizona approved an initiative that diverted nonviolent defendants convicted of drug possession from prison as well as medicalizing marijuana. Disturbed over the passage of what it considered an irresponsible initiative, the Arizona legislature forced a second vote on the same issue and, in November 1996, the Drug Medicalization, Prevention, and Control Act ("the Act") was again passed. In December 1996, the Act established the Drug Treatment and Education Fund to create drug treatment slots for offenders who would be diverted from prison under the Act.

In a March 1999 report from the Arizona Supreme Court, it was found that 2,622 probationers participated in treatment under the program in its first year. There was a 98.2% matching rate between recommended and actual placements and, at the time of the report, there was a success rate of 61.1% for the 932 probationers for whom treatment completion data was available. The Supreme Court researchers estimated that the program achieved a net saving of $2,563,032 in incarceration costs during its first year of implementation after subtracting treatment and probation costs. The researchers estimated that these savings would increase in subsequent years as the initiative achieved full implementation.[36]

Buoyed by the success of the Arizona initiative, the California Campaign for New Drug Policies has placed the Substance Abuse and Crime Prevention Act on the ballot for November 2000. Like the Arizona initiative, the California Act would send those convicted of nonviolent drug possession charges to treatment centers instead of prison. Those convicted of selling or manufacturing drugs would be ineligible for diversion, as would those with convictions for violent offenses in the last 5 years.

Even with those limitations, the non-partisan California Legislative Analyst's Office estimates that the measure would reduce the state's prison population by 25,000 and the population in county jails by another 12,000, saving the state between $100 million to $150 million a year. In addition, counties would save $50 million a year in jail costs, and there would be a one-time savings of $500 million in prison construction costs.[37] To pay for the new drug treatment slots, the initiative requires the establishment of a $120 million superfund, generated from the savings in prison costs. Those funds would be funneled to counties to provide treatment for offenders diverted from incarceration. Contrary to the conventional wisdom amongst political pundits, a poll taken recently by the Field Institute found that 64% of poll respondents supported the initiative, compared to 20% who opposed it.[38]

The country is going through a period of unprecedented prosperity, but not all of America's citizens are sharing in that prosperity. A population approximately the size of the District of Columbia[39] is currently incarcerated for drug offenses, many of whom are nonviolent, many of whom could be addressed more effectively through diversion into treatment rather than costly and debilitating incarceration. As states like New York and California have led the nation's move toward incarcerating drug offenders, perhaps those states can lead the nation in a more reasonable, effective, and humane approach to combating substance abuse and its concomitant problems.

V. Methodology

A. Data Sources

The findings in this report were mainly generated using two data sources. Prison admission data for 1996 and 1986 come from:

U.S. Dept. of Justice, Bureau of Justice Statistics. *National Corrections Reporting Program, 1996.* [CD-ROM]. ICPSR ed. Ann Arbor, MI. Inter-University Consortium for Political and Social Research [producer and distributor], 1999.

U.S. Dept. of Justice, Bureau of Justice Statistics. *National Corrections Reporting Program, 1983-1986, 1991, 1992, 1993.* [CD-ROM]. ICPSR ed. Ann Arbor, MI. Inter-University Consortium for Political and Social Research [producer and distributor], 1998.

It is a major shortcoming of the criminal justice system that no comprehensive, complete and scientifically gathered data set exists to report state-by-state data on the race, offense and other important characteristics of inmates. The National Corrections Reporting Program (NCRP) is the only source available for examining admissions to prison by state, race, offense and other variables. The NCRP reports individual level data on each admission to state prison in a given year. The number of states reporting varies from year to year. For the years we examine, these data exist for thirty-seven matching states. The Department of Justice has gathered this data yearly since 1983.

We chose 1996 as one year of analysis because it is the latest NCRP data available. 1986 was chosen because prior to then the number of states participating and the quality of the data decline significantly. There were thirty-seven states that contributed complete data in both 1986 and 1996. We use these states in our analysis. The NCRP reports up to three offenses for each admission. It further reports the most serious of these offenses. Our analysis includes only those admissions for which a drug offense was the most serious offense. If, for instance, an admission included murder and drug possession, the admission would not be included in our analysis.

Because of missing or ambiguous data concerning both type of drug and type of drug offense, we do not report findings concerning these variables. In a substantial proportion of cases, the drug type or the type of drug offense was listed as "unspecified" in the NCRP and therefore we can only examine all drug admissions as a group.

To calculate rates of admissions, we used population figures provided by the Bureau of Census. For both 1996 and 1986 we use July estimates published on the Census website at:

1996: http://www.census.gov/population/estimates/state/sasrh/sasrh96.txt
1986: http://www.census.gov/population/www/estimates/st_81asrh.html

B. Analysis of subpopulations

For all information in this report, total population refers to people of all ages, and all races and ethnicities. Black refers to black non-Hispanics. White refers to white non-Hispanics. When looking at all 15-29 year-olds, this included people of all races and ethnicities. Rates for 15-29 year-old blacks refer only to black non-Hispanics. Rates for 15-29 year-old whites refer only to white non-Hispanics. Because of unreliable ethnicity data in both the 1996 and 1986 data sets, we could not include an analysis of drug admissions for Hispanics. It should be noted, however, that Hispanics are estimated to be twenty percent of the current prison and jail population.

VI. Endnotes

[1] Prepared remarks by Barry R. McCaffrey, Director, Office of National Drug Control Policy before the First Annual Criminal Justice and Substance Abuse Conference, Albany, New York, June 29, 1999.

[2] Commenting on New York State's mandatory sentences for drug offenses, which he voted in favor of in 1973. Quoted in *Terms of Imprisonment*, by Ellen Perlman, Governing Magazine, April 2000.

[3] See, for example, Alan J. Beck *Prison and Jail Inmates at Midyear 1999*, Bureau of Justice Statistics, U.S. Department of Justice, April 2000; and Jason Ziedenberg and Vincent Schiraldi, *The Punishing Decade: Prison and Jail Estimates at the Millennium*, Justice Policy Institute, Washington, DC, revised estimates, May, 2000.

[4] Ziedenberg and Schiraldi, May 2000.

[5] See Dan Macallair, Khaled Taqi-Eddin and Vincent Schiraldi, *Class Dismissed: Higher Education vs. Corrections During the Wilson Years*, Justice Policy Institute, Washington, DC, September 1998; Robert Gangi, Vincent Schiraldi, and Jason Ziedenberg, *New York State of Mind? Higher Education vs. Prison Funding in the Empire State, 1988 - 1998,* Justice Policy Institute and Correctional Association of New York, December 1998.

[6] Ziedenberg and Schiraldi, May 2000.

[7] The Sentencing Project, *Drug Policy and the Criminal Justice System*, August 1999.

[8] John Irwin, Vincent Schiraldi, and Jason Ziedenberg, *America's One Million Nonviolent Prisoners*, Justice Policy Institute, Washington, DC, March 1999.

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[10] According to Beck, 1999, the U.S. incarceration rate is 682 Per 100,000. Russia's incarceration rate is 685 per 100,000, Sentencing Project, Briefing Sheet #1049, *New Inmate Population figures Suggest US Will Soon Surpass Russian Rate of Incarceration.* 1999.

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[13] Marc Mauer, *Intended and Unintended Consequences: State Racial Disparities in Imprisonment,* The Sentencing Project, Washington, DC, January 1997.

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[16] Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs,* New York, June 2000.

[17] For state estimates, the 1997 Bureau of Justice Statistics (BJS) estimates of violent, non-violent and drug offender prison populations were converted to percentages, and applied to the 2000 prison and jail estimates released by BJS in April, 2000. The federal estimate is based on a 1998 count and percentage of federal prisoners held for drug offenses that year, and was also applied to the April 2000 estimate. The jail estimate is based on counts on the national jail population done in 1996, and published by BJS in 1998. Beck, Alan. J. *Prison and Jail Inmates at Midyear 1999.* Washington, DC: Department of Justice, Bureau of Justice Statistics, April, 2000; Maguire, Kathleen and Ann. L. Pastore, editors *Sourcebook of Criminal Justice Statistics,* 1998. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 1998.

[18] In 1980, the combined prison and jail population of the US was 474,368. (Ziedenberg and Schiraldi, May 2000).

[19] This estimate should be considered conservative, since it does not include prisoners who are incarcerated solely for failing urine tests while on probation or parole for non-drug offenses.

[20] Costs per inmate per year for state ($20,261.15) and federal ($21,837.95) prisons and jails ($19,903) were derived from The Corrections Yearbook per day average estimate, and applied to our estimates of drug offenders in each system; Camp, George M. and Camp, Camille Graham. *The Corrections Yearbook,* 1998. Middletown, Connecticut: Criminal Justice Institute, 1999.

[21] Based on a calculation of the 15 EU member countries incarceration data from Roy Walmsley, *World Prison Population List: Research Findings No. 88,* Home Office Research, Development and Statistics Directorate, London, United Kingdom.

[22] SAMSHA, *Summary Findings 1998.*

[23] The available census data sets required us to define this group as those ages 15-29. While more minors under age 18 are being tried and punished as adults, their portion of overall prison admissions is low. It is also important to note that in some states a youth may be placed in a juvenile facility until the age of 21 or even 25.

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Acknowledgments

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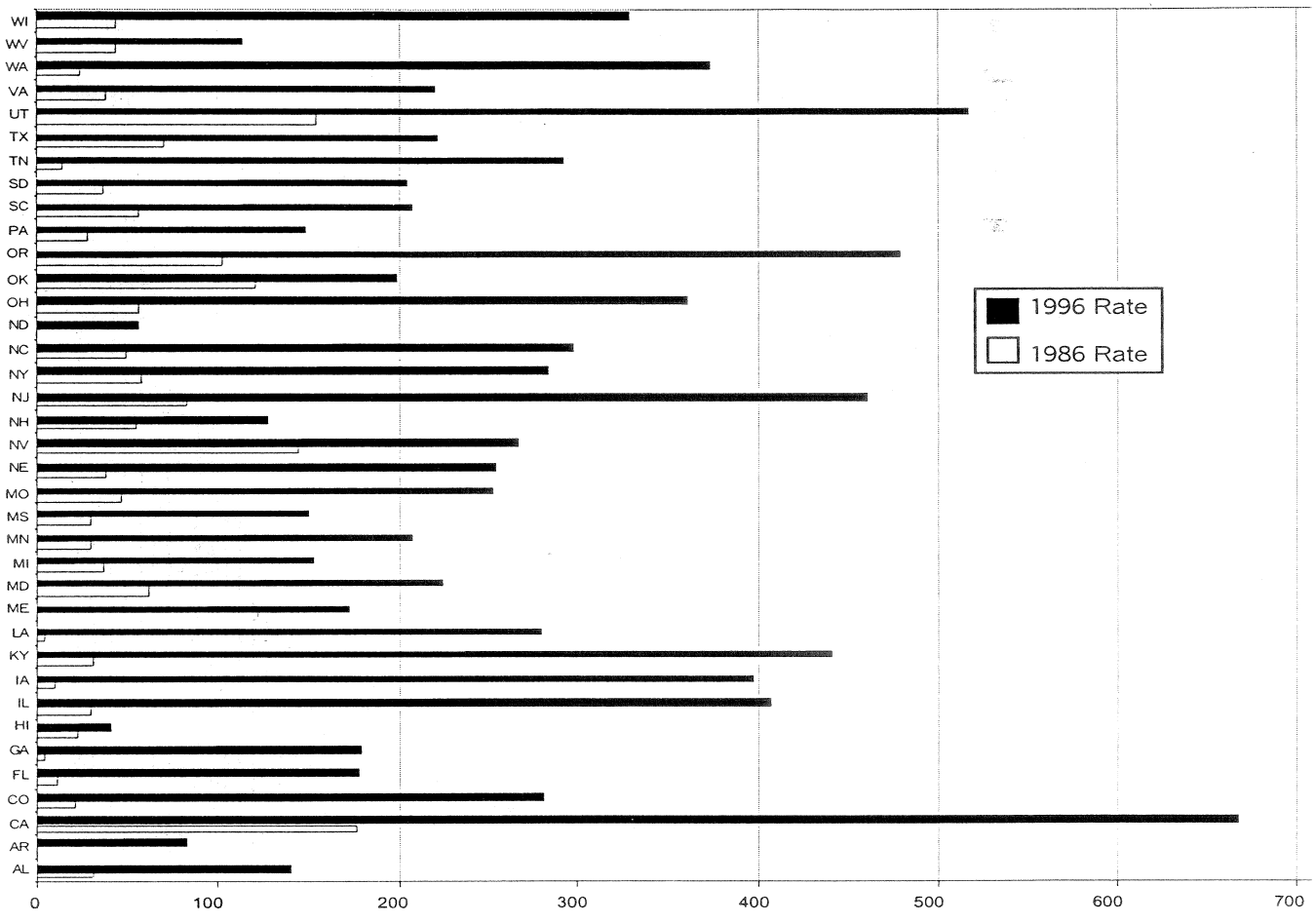
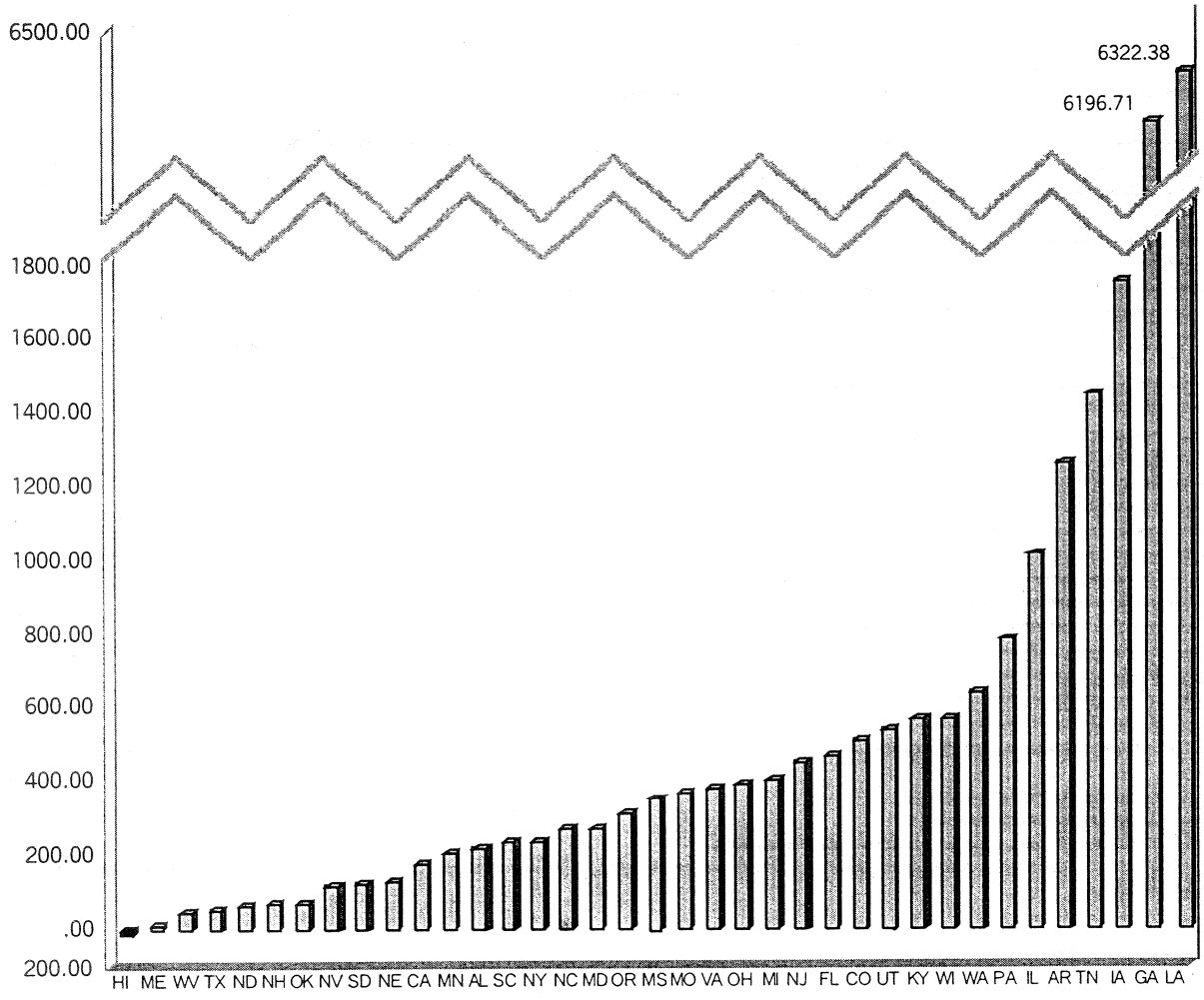
Appendix Graph 1:
Rate of Prison Admissions for Drug Offenses by Race and State, African American, 1986 & 1996



Source: National Corrections Reporting Program, 1986 and 1996 data.

Appendix Graph 2:
Percent Change in Prison Admissions for Drug Offenses All Youth, 1986 and 1996 by State



Source: National Corrections Reporting Program, 1986 and 1996 data.

Appendix Table 1
State Drug Admission Rate per 100,000, 1986 & 1996

STATE	1986 Rate	1996 Rate	% Change
Alabama	18.69	48.46	159.28
Arkansas	2.40	28.30	1078.69
California	36.47	134.09	267.63
Colorado	7.41	32.76	341.90
Florida	11.00	34.73	215.80
Georgia	2.96	64.46	2078.82
Hawaii	11.69	10.55	-9.76
Illinois	11.14	73.25	557.33
Iowa	1.76	20.57	1072.20
Kentucky	9.03	54.32	501.51
Louisiana	3.56	106.55	2890.84
Maine	4.79	5.24	9.40
Maryland	22.11	68.30	208.93
Michigan	8.92	27.17	204.65
Minnesota	5.18	10.59	104.20
Mississippi	19.39	68.30	252.20
Missouri	12.76	54.45	326.71
Nebraska	11.31	25.92	129.21
Nevada	32.43	59.07	82.15
New Hampshire	6.34	9.65	52.16
New Jersey	22.88	85.26	272.63
New York	25.03	80.79	222.74
North Carolina	24.46	76.69	213.57
North Dakota	8.96	14.62	63.16
Ohio	14.67	55.82	280.56
Oklahoma	26.72	44.35	66.01
Oregon	14.57	53.27	265.60
Pennsylvania	6.51	23.31	258.08
South Carolina	29.35	70.98	141.87
South Dakota	10.34	27.64	167.25
Tennessee	10.17	62.37	513.17
Texas	35.05	48.65	38.79
Utah	6.13	35.36	476.39
Virginia	14.88	52.69	254.01
Washington	6.00	37.48	525.01
West Virginia	8.02	7.59	-5.43
Wisconsin	6.20	26.11	320.95

Source: National Corrections Reporting Program, 1986 and 1996 data.

Appendix Table 2:
Percent of All Prison Admissions that are Drug Admissions, by State and Race, 1986 & 1996

STATE	1986 % Drug Admits	1986 % White Drug Admits	1986 % Black Drug Admits	1996 % Drug Admits	1996 % White Drug Admits	1996 % Black Drug Admits
Alabama	15.85	18.95	12.29	25.99	18.00	30.67
Arkansas	36.36	40.34	20.00	28.24	26.58	30.25
California	18.00	13.31	18.97	34.16	30.77	37.03
Colorado	8.35	10.01	4.65	21.74	14.50	30.45
Florida	65.16	58.22	46.50	23.29	11.48	33.04
Georgia	34.62	38.08	26.00	27.80	17.46	32.91
Hawaii	23.25	34.18	17.86	10.93	9.48	23.64
Illinois	10.65	11.75	7.40	37.23	14.46	46.23
Iowa	43.36	43.43	40.00	15.10	11.74	25.73
Kentucky	9.85	10.07	9.08	25.88	16.98	41.56
Louisiana	40.78	40.72	28.35	33.41	21.59	37.41
Maine	23.05	22.88	.00	9.64	8.42	39.13
Maryland	16.29	16.86	15.64	26.89	13.49	30.37
Michigan	8.81	8.91	8.48	20.37	8.50	28.83
Minnesota	11.09	11.72	6.23	14.62	11.53	20.45
Mississippi	14.95	19.33	12.28	28.32	18.64	31.82
Missouri	13.32	13.71	12.65	23.45	18.16	30.83
Nebraska	18.20	21.11	9.64	22.76	20.55	28.42
Nevada	15.22	13.25	16.67	24.45	22.06	27.98
New Hampshire	16.13	15.14	20.00	12.70	9.71	25.71
New Jersey	23.87	22.57	20.76	43.45	23.37	48.05
New York	21.82	17.16	14.46	45.59	16.72	45.11
North Carolina	9.29	10.32	8.08	25.34	9.85	33.95
North Dakota	13.33	15.07	.00	16.26	17.57	16.67
Ohio	13.40	14.01	12.19	29.15	17.25	38.10
Oklahoma	17.40	16.60	20.46	28.60	25.82	33.93
Oregon	10.89	9.97	9.45	26.35	21.66	33.16
Pennsylvania	11.51	14.12	8.32	28.77	14.46	31.09
South Carolina	11.74	11.57	11.58	24.34	9.69	30.71
South Dakota	9.63	12.33	5.26	17.72	20.02	23.08
Tennessee	7.57	9.35	4.76	23.82	12.40	32.50
Texas	15.77	17.57	11.42	27.51	17.96	37.45
Utah	10.63	10.14	17.98	26.21	24.11	29.05
Virginia	12.79	14.06	11.09	30.81	15.95	38.47
Washington	10.06	8.05	6.28	36.83	23.19	49.96
West Virginia	19.82	18.63	25.77	13.54	8.61	40.25
Wisconsin	10.00	9.79	8.37	21.87	11.79	29.54

Source: National Corrections Reporting Program, 1986 and 1996 data.

Appendix Table 3:
Drug Admission Rates per 100,000 by Race, 1986 & 1996

STATE	1986 White Rate	1986 Black Rate	1996 White Rate	1996 Black Rate	% Change White	% Change Black
Alabama	14.32	30.24	17.07	139.70	19.22	361.95
Arkansas	2.50	1.61	18.22	82.62	628.51	5033.79
California	12.86	175.01	75.39	667.78	486.36	281.56
Colorado	5.90	21.16	11.56	279.59	96.07	1221.53
Florida	5.64	9.97	9.68	178.08	71.82	1686.46
Georgia	2.49	3.19	19.96	178.68	702.25	5499.19
Hawaii	19.62	21.75	8.26	40.70	-57.91	87.13
Illinois	5.97	29.39	9.60	407.03	60.74	1284.97
Iowa	1.60	9.09	12.24	398.32	665.99	4283.97
Kentucky	7.41	30.89	24.65	440.67	232.54	1326.57
Louisiana	2.69	2.73	27.41	278.83	920.26	10102.05
Maine	4.70	.00	4.21	172.02	-10.31	-.-
Maryland	9.66	60.77	10.38	223.51	7.47	267.78
Michigan	4.66	35.15	5.72	153.18	22.69	335.74
Minnesota	3.94	29.83	4.39	207.59	11.29	595.92
Mississippi	14.46	27.57	20.39	150.37	40.99	445.42
Missouri	9.05	44.36	28.97	251.84	219.95	467.71
Nebraska	10.08	35.92	14.55	253.23	44.30	604.90
Nevada	22.72	142.30	40.14	267.12	76.64	87.71
New Hampshire	5.59	53.12	6.77	127.55	21.20	140.14
New Jersey	11.04	83.28	11.17	459.74	1.24	452.05
New York	5.92	56.96	7.00	283.93	18.24	398.49
North Carolina	16.64	49.51	13.19	297.41	-20.75	500.68
North Dakota	8.19	.00	10.84	56.04	32.47	-.-
Ohio	9.90	55.40	16.37	359.96	65.45	549.69
Oklahoma	19.56	120.49	28.89	199.42	47.66	65.50
Oregon	11.59	100.75	36.41	477.20	214.19	373.65
Pennsylvania	4.48	26.33	4.44	148.81	-.78	465.20
South Carolina	17.77	56.00	12.06	207.00	-32.16	269.62
South Dakota	9.84	35.03	26.77	204.50	171.99	483.84
Tennessee	6.84	14.16	17.25	292.27	152.13	1963.58
Texas	23.71	69.91	17.40	220.68	-26.61	215.68
Utah	4.58	153.93	24.19	516.76	427.88	235.70
Virginia	9.79	36.69	12.47	220.26	27.32	500.39
Washington	3.76	23.82	15.10	374.51	301.20	1472.57
West Virginia	6.77	41.53	4.19	112.85	-38.10	171.76
Wisconsin	3.62	42.06	6.27	327.93	72.97	679.62

Source: National Corrections Reporting Program, 1986 and 1996 data.

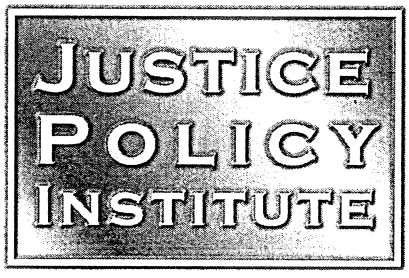
Appendix Table 4:
Youth Drug Admission Rates per 100,000 by State and Race, 1986 & 1996, and Percent Change in Rate

STATE	1986 Rate All Youth	1996 Rate All Youth	1986 Rate White	1986 Rate Black	1996 Rate White	1996 Rate Black	% Change All Youth	% Change White	% Change Black
Alabama	31.46	100.37	27.10	43.50	28.07	268.52	219.07	3.57	517.27
Arkansas	4.09	55.28	4.91	.00	33.50	148.03	1250.31	582.13	-.-
California	65.35	180.85	17.22	336.02	90.80	726.12	176.76	427.36	116.09
Colorado	10.55	63.95	9.25	18.75	17.12	441.31	506.00	85.03	2253.17
Florida	13.04	73.56	6.73	13.23	16.48	310.88	464.24	145.01	2249.36
Georgia	1.98	126.92	1.38	2.51	30.87	335.06	6322.38	2142.22	13232.97
Hawaii	15.17	13.71	21.49	9.24	12.83	16.62	-9.60	-40.32	79.92
Illinois	16.72	185.00	10.17	38.28	20.34	925.26	1006.16	99.98	2317.25
Iowa	2.35	43.20	2.31	.00	20.77	780.78	1736.26	799.55	-.-
Kentucky	14.75	97.68	12.43	40.74	33.05	812.73	562.10	165.85	1894.99
Louisiana	3.69	232.57	2.94	1.08	46.62	570.83	6196.71	1487.84	52910.48
Maine	6.97	7.80	6.78	.00	5.95	105.93	11.90	-12.31	-.-
Maryland	46.47	171.81	18.47	122.49	19.99	510.05	269.69	8.22	316.40
Michigan	12.58	62.55	7.50	41.09	9.36	328.17	397.05	24.73	698.73
Minnesota	8.17	25.05	6.53	38.24	8.24	454.24	206.75	26.30	1087.88
Mississippi	33.18	149.85	27.87	41.78	28.97	314.39	351.60	3.95	652.49
Missouri	24.72	114.66	18.37	72.40	50.43	540.56	363.88	174.60	646.64
Nebraska	24.44	55.97	22.13	70.89	27.89	505.50	128.99	26.05	613.03
Nevada	54.82	121.74	35.14	251.08	85.90	429.77	122.07	144.48	71.17
New Hampshire	14.01	23.91	13.65	49.70	16.24	187.79	70.62	18.97	277.84
New Jersey	43.34	237.19	21.00	147.05	23.79	1090.61	447.27	13.30	641.67
New York	45.16	151.85	10.42	100.21	13.59	480.23	236.23	30.40	379.24
North Carolina	40.99	151.49	32.06	64.75	25.99	521.92	269.54	-18.94	706.12
North Dakota	21.43	35.49	20.38	.00	28.13	70.82	65.62	38.01	-.-
Ohio	26.44	129.28	20.50	71.69	32.38	793.37	388.94	57.94	1006.68
Oklahoma	50.86	86.87	37.92	198.52	47.81	393.08	70.81	26.09	98.00
Oregon	24.26	99.12	20.31	104.95	59.05	566.93	308.51	190.72	440.19
Pennsylvania	6.52	57.25	4.69	22.74	6.31	351.58	777.67	34.54	1446.31
South Carolina	53.18	177.29	34.05	93.76	21.83	477.10	233.39	-35.91	408.87
South Dakota	26.26	59.18	25.78	.00	57.64	436.41	125.35	123.61	-.-
Tennessee	8.58	131.39	6.10	16.39	31.09	554.48	1431.96	409.84	3283.93
Texas	56.43	89.18	46.46	95.11	28.45	382.54	58.05	-38.76	302.23
Utah	7.80	49.74	7.61	.00	31.39	505.05	537.66	312.29	-.-
Virginia	24.11	113.79	16.67	53.69	21.89	444.92	371.98	31.36	728.62
Washington	10.78	79.47	6.56	12.62	24.38	579.66	637.30	271.57	4493.11
West Virginia	13.31	19.40	11.84	50.43	8.16	329.98	45.82	-31.06	554.32
Wisconsin	11.24	74.61	7.49	60.63	13.85	817.63	563.67	84.83	1248.51

Source: National Corrections Reporting Program, 1986 and 1996 data.

Appendix Table 5:
Percent Monthly Drug Use and Rate of Prison Admissions for Selected States, Rate of Drug Admission 1991, Average 1991-93 and Percent 12 and Older Using Drugs in the Previous Month 1991-1993

STATE	Use Rates, 91-93 Average	Drug Incarceration Rate, 91	Drug Incarceration Rate, 91-93 Average
CA	8.23	107.74	102.53
FL	4.95	96.90	78.76
GA	5.82	87.07	75.80
IL	4.64	45.74	47.99
KY	4.53	32.44	32.41
LA	4.38	6.01	55.20
MI	5.52	35.35	32.11
MN	4.62	11.81	10.63
MO	4.98	41.63	39.96
NJ	5.40	69.63	72.49
NY	6.44	76.60	78.37
NC	5.85	74.70	82.57
OH	5.37	58.10	59.50
OK	6.96	44.18	43.95
OR	7.08	8.43	35.92
PA	5.07	22.11	21.00
SC	4.99	72.03	75.64
TN	4.53	49.40	53.97
TX	5.57	69.55	54.88
VA	5.55	60.33	57.38
WA	6.07	35.31	35.02
WV	4.23	22.58	10.78
WI	4.07	17.75	20.16



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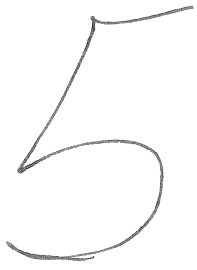

DRUG POLICY ALLIANCE

Reason. Compassion. Justice.

STATE OF THE STATES

DRUG POLICY REFORMS: 1996-2002
A REPORT BY THE DRUG POLICY ALLIANCE

SEPTEMBER 2003

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STATE OF THE STATES

DRUG POLICY REFORMS: 1996-2002
A REPORT BY THE DRUG POLICY ALLIANCE

EXECUTIVE SUMMARY

This report details over 150 notable drug policy reforms enacted by voters and legislators in 46 states between 1996 and 2002. This is the first comprehensive documentation of these important political developments, and is designed to allow ready analysis both by region and type of reform. Unlike their federal counterparts, who by and large remain paralyzed by decades of failed drug war rhetoric and inertia, state officials and the voting public are moving forward. The number and scope of these reforms provide evidence of diminishing public confidence in the reflexively "get-tough" answers of the drug war, and a growing commitment to approaches rooted in science, fiscal responsibility, public health and civil rights.*

The reforms discussed in this report were initiated, sponsored and supported by Democrats, Republicans, Libertarians, Greens and Independents. They have passed in states from Maine to Hawaii, from Michigan to Mississippi. They vary widely in language, reach and effect. Some were passed with relative ease; others required years of political advocacy and negotiation. Some have been implemented smoothly; others remain contested. Some were achieved by direct voter initiative, others by legislative action and gubernatorial approval. These measures address a broad range of issues relating to racial justice, drug treatment, property rights, HIV/AIDS and more. They allow people to grow and use marijuana for medical purposes; reduce senselessly long and costly prison sentences for nonviolent drug offenders; increase legal access to sterile syringes to reduce the spread of HIV/AIDS; restore the rights and duties of citizenship to those with a felony conviction in their past; curtail the excesses and abuses of asset forfeiture by government agencies; and so on. Each reform supplants, at least partially, a priority of punishment – zero tolerance, arrest, incarceration – with a priority of pragmatism, fairness or public health.

These reforms reflect an emerging "harm reduction" consciousness among the public and legislatures: the awareness that not just drug abuse, but also misguided drug policies, can cause grave harms to individuals and society – and that the ideal policies are those which reduce both kinds of harm as effectively and humanely as possible.

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*While this report is a comprehensive overview of most state drug policy reforms from 1996 to 2002, it does not cover every reform. It examines only those drug policy reforms enacted by state legislators and voters. It does not cover reforms enacted through executive order or regulatory change, reforms enacted at the local level, or any reforms since December 31, 2002. It also documents only a few of the dozens of other drug policy reform bills in many states which passed both chambers of the legislature, only to be vetoed by the governor. This report does not cover legislation that appropriates money for drug treatment programs, unless the money was explicitly shifted away from the criminal justice system.

Many of the reforms described here, as well as the harm reduction perspective underlying them, are well established in Canada, nations of Western Europe, Australia, New Zealand and a growing number of other countries. The tragedy in the United States is that these reforms were resisted for so long, and that so much more needs to be done.

Between 1996 and 2000, voters approved seventeen of nineteen proposed statewide drug policy reform ballot initiatives – to legalize marijuana for medical purposes, reduce asset forfeiture abuses, and divert nonviolent drug possession offenders from prison to treatment. This series of victories suggests that the public is ahead of the politicians in recognizing the failures and excesses of the drug war. But the much greater number of drug policy reforms enacted by state legislators and signed by governors also suggests that the fear of being labeled "soft" on drugs or crime no longer paralyzes the political process. Importantly, voters have not punished their representatives for backing the reforms described here. Instead, they have repeatedly reelected them.

The Drug Policy Alliance and associated organizations have played an important role in initiating, drafting and advocating for many of the drug policy reforms described in this report, as well as in helping to protect and implement the new laws. Our offices in California, New Mexico, New Jersey and New York are deeply engaged in drug policy reform efforts in those states, while our national organization advises and supports reform efforts in roughly half the states nationwide. The pace of reform will only accelerate as public opinion shifts increasingly against the drug war; as budget crises force states to adopt money-saving (and more effective) alternatives to incarceration; and as public health concerns, scientific evidence and drug policy reform advocacy undo the damage caused by the drug war excesses of the past.

STATE OF THE STATES

DRUG POLICY REFORMS: 1996-2002
A REPORT BY THE DRUG POLICY ALLIANCE

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DRUG POLICY REFORMS: 1996-2002
SELECTED ISSUES

ADVANCING ALTERNATIVES TO INCARCERATION

Diversion of certain nonviolent drug offenders from prison to drug treatment

Substance abuse is one the few health issues in which criminal justice approaches have taken precedence over medical and public health concerns. A strong punitive emphasis has persisted for decades, despite abundant evidence that it often only exacerbates social problems – including those it is intended to address. Millions of Americans continue to struggle with drug abuse, most of them without access to effective, affordable treatment. Millions of others suffer from drug-related harms such as fatal overdose, AIDS, or incarceration, which are either generated or worsened by drug policies themselves.

Voters and legislators are looking to reduce these harms more effectively in their states. In an era of budget crisis, state governments are under strong pressure to reduce prison overcrowding and other law enforcement excesses. "Alternatives to incarceration" divert certain nonviolent drug offenders from prison to drug treatment, offering compassionate options in public policy, with obvious fiscal advantages.

Where punishment often fails, appropriate and high-quality drug treatment often works. A study conducted for the White House's Office of National Drug Control Policy, for example, found treatment to be 15 times more cost-effective than law enforcement at reducing cocaine abuse.[1] (Imprisonment costs an average of $30,000 per person per year, while treatment can cost as little as $4,000.[2]) Another study found that every additional dollar invested in substance abuse treatment saves taxpayers more than seven dollars in societal costs.[3]

Treatment has broad and growing public support. A recent survey by Peter Hart Research Associates[4] found that more than 60 percent of voters favor providing treatment rather than prison time for people convicted of drug possession or selling small amounts of drugs.[5]

State-level momentum for alternatives to incarceration has been gaining force since 1996. Voters in Arizona[6] and California[7] have overwhelmingly approved measures mandating that first and second time nonviolent drug possession offenders receive drug treatment instead of incarceration. Arizona's Proposition 200, passed in 1996, remains the national model for this type of drug policy reform. According to the Arizona Supreme Court, the initiative has resulted in a system that provides for "safer communities and more substance abusing probationers in recovery."[8] Similarly, California's Proposition 36, which passed with 61 percent of the vote in 2000, diverted 30,469 people into treatment between July 1, 2001 and July 1, 2002.[9] Due in part to the success and popularity of these two initiatives, voters and legislators around the country have begun to follow suit. In 2002, the people of Washington, D.C. passed Measure 62 with 78 percent of the vote and Hawaii's lawmakers enacted Senate Bill 1188, both modeled after Proposition 200 and Proposition 36.

It must be noted that even these reforms are handicapped to varying degrees by the continued involvement of the criminal justice system in treatment programs. Entanglement of law enforcement with treatment can come at a high price: the sacrifice of confidentiality between patient and caregiver; the diversion of funding from voluntary and community-based treatment into coerced treatment programs, often behind bars; and the *de facto* criminalization of relapse, which is recognized as a standard occurrence for most individuals struggling with substance abuse. Advocates and lawmakers concerned about this trend stress that effective drug treatment is ideally both voluntary and community-based and need not be backed by the coercive power of the state.

PROTECTING MEDICAL MARIJUANA PATIENTS AND PROVIDERS

Regulation of legal access to medical marijuana for patients with AIDS, cancer, glaucoma and other conditions for which it provides relief

No drug policy reform is more widely supported in America today than the legalization of marijuana for medical purposes. A 1999 Gallup poll found that 73 percent of Americans favor "making marijuana legally available for doctors to prescribe in order to reduce pain and suffering."[10] According to an October 2002 Time/CNN poll, 80 percent of Americans think people should be "allowed to legally use marijuana for medical purposes if their doctor prescribes it."[11]

Tens of thousands of American men and women of every age, race and background use marijuana as medicine. They and their physicians have found it to be beneficial in reducing the pain, nausea and other discomfort associated with AIDS, cancer, multiple sclerosis, glaucoma and other serious conditions.[12] Many patients have found relief in marijuana when all other pain relief efforts have failed.[13] Numerous medical and scientific studies have validated such testimony. According to a report by the national Institute of Medicine (IOM), for example, "[s]cientific data indicate the potential therapeutic value of cannabinoid drugs . . . for pain relief, control of nausea and vomiting, and appetite stimulation."[14] The IOM also concluded that "there are some limited circumstances in which we recommend smoking marijuana for medical uses."[15]

Between 1996 and 2002, eight states enacted laws that offer substantial protection under state law to medical marijuana patients. Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington have all removed criminal penalties for growing, possessing and using marijuana when it is recommended by a doctor. California's 1996 medical marijuana voter initiative, Proposition 215, passed with 56 percent of the vote, thereby establishing that major drug policy reforms could be accomplished through the initiative process.[16] Proposition 215 generated national debate, stimulating medical marijuana proposals in state legislatures across the country.

Even with this widespread public and state legislative support, however, medical marijuana patients find their most powerful and active foes in Washington, D.C. The federal government has repeatedly used its discretion under federal law to arrest, prosecute and incarcerate medical marijuana patients, their caregivers and those who produce marijuana for them – even those operating with the acknowledgement and support of state and local law enforcement, elected

officials and other authorities. State governments, eager to establish effective, well-regulated distribution systems, have been deterred or blocked by vigorous federal opposition, leaving patients no choice but to obtain their medicine illegally. These federal decisions have prevented states and localities from implementing their own initiatives and have created a general climate of fear and vulnerability among patients and providers.*

Nevertheless, the current federal campaign against medical marijuana cannot reverse most of the substantial benefits of state-level reform. As a practical matter, most marijuana arrests are made at the state and local level, so state-level reform affords significant legal protection to patients in most situations. States may protect patients and their caregivers against arrest and prosecution for cultivation and possession of marijuana sufficient to meet medical need. They may also establish registry systems to provide official identification for patients who have received a doctor's recommendation to use marijuana, eliminating confusion about qualified participants. As a statement of support for medical marijuana providers, patients and their loved ones, such measures help create more compassionate, safe and well-regulated communities. Though most states have yet to enact such protections,** medical marijuana bills are currently under consideration in roughly half a dozen legislatures, and there is reason to believe that state challenges to federal interference will become more frequent and diverse in coming years.

REFORMING DRUG SENTENCING

Reduction of severe prison sentences for nonviolent drug offenses, including elimination/reduction of notoriously harsh "mandatory minimums"

In the 1980s, many new American drug laws resulted from escalating efforts to "get tougher" on drugs and drug users. During the height of voter fear generated by the crack cocaine epidemic, state and federal lawmakers dramatically increased both prosecutorial power and criminal sanctions in drug cases. Common measures included: greatly lengthened prison sentences; removal of discretion from judges through mandatory minimum sentencing schemes and strict guideline systems; expansion of conspiracy laws to include people only peripherally involved in an offense; loosening of the evidentiary requirements to prove conspiracy; and "school-zone" sentencing enhancements that apply to a large percentage of all drug cases in many urban areas (although the majority of such cases do not involve minors or take place on school grounds).[17]

Twenty years later, these policies have had significant effects, most of them negative. The United States now incarcerates more than 450,000 people for nonviolent drug offenses – more than the entire European Union (with roughly 100 million more people) incarcerates for all criminal offenses combined. The vast majority of these offenders are in state and local jails and

*The Bush Administration is a fierce opponent of medical marijuana. Recent raids in California by the DEA of medical marijuana hospices caused national outrage. Arrests and prosecutions continue. Other administrations have chosen to take dramatically different stances. In 1978, for example, the federal government created the Investigational New Drug (IND) "compassionate access" program, which allowed some patients to receive medical marijuana from the government. Unfortunately, the IND was closed to new applicants in 1992 after it was flooded by applications from AIDS patients. Even today, however, seven surviving patients receive marijuana from the federal government and are completely immune from prosecution.

**Since 1978, thirty-five states have passed laws recognizing marijuana's medicinal value, but most of these have been essentially symbolic. For instance, fourteen states currently have laws that allow patients to legally use marijuana through state-run therapeutic research programs, though the federal government effectively blocks such programs by failing to provide the marijuana approved for research. Federal law also prevents doctors from prescribing marijuana in the seven states which allow such prescriptions.

prisons, where they now account for almost one-fourth of the total population behind bars. Additionally, tens or perhaps hundreds of thousands of non-drug offenders on probation or parole are imprisoned or re-imprisoned each year for nothing more than testing positive for drug use or an arrest for simple drug possession.

At the state level, however, the tide is rapidly turning across the country. At an average of $30,000 per year per inmate, the mass imprisonment of nonviolent drug offenders is not a cost-effective or sensible policy. In an era of severe state budget crises, most states simply cannot afford these costly sentences any longer. State lawmakers from all parties and backgrounds are coalescing, in growing numbers, to reduce these costs and achieve better results for their constituents.

In 2001 and 2002 alone, twelve states enacted significant drug sentencing reforms – cutting the most excessive sentences, exempting nonviolent drug offenses from habitual offender laws like "three strikes," and enacting "alternatives to incarceration" measures (see previous section), among other changes. In December 2002, for example, Michigan's governor signed legislation eliminating mandatory minimum sentences from the state's sentencing guidelines. A number of other states were rapidly emerging as reformers at the time this report went to print.

Mandatory Minimums

Among the state drug sentencing laws in most urgent need of reform are those commonly known as "mandatory minimums," under which judges are required to sentence convicted drug offenders to long, preset prison terms, from five, ten or twenty years up to life. Sentence length is based strictly on the quantity of drugs involved in the offense. Crucial mitigating factors – the offender's peripheral role in the offense, lack of criminal history, or clear need for drug treatment – cannot be considered. Mandatory minimums exist in 35 states for drug possession or sales offenses,[18] and have put tens of thousands of nonviolent drug offenders behind bars. They routinely result in low-level and first-time offenders serving cruelly long and arbitrary sentences.

Conspiracy and "Snitch" Laws

Drug sentencing laws are generally subject to conspiracy provisions, under which a single individual, even one only peripherally involved, can be sentenced based on the amount involved in an entire drug-supply operation. In order to reduce their own penalty, defendants may cooperate with the prosecutor by "snitching" on other defendants in exchange for a reduced sentence. This combination has two harmful effects that undermine the reliability and legitimacy of the system. First, many drug conspiracy laws allow convictions based solely on the cooperating defendant's testimony. No corroborating evidence is required, even though that person has a clear incentive to lie in exchange for a shorter sentence. Second, even when information provided is accurate, the people at the lowest levels of the drug trade – many of whom sell drugs only to support their own addiction – are charged with the full amount of drugs, yet have little useful information to trade. Paradoxically, they often receive sentences longer than those of their bosses, who have information about the involvement of many people.

REDUCING FATAL OVERDOSE

Improvement of emergency medical services to reduce the incidence of fatal overdose from illegal drugs, including the reduction of obstacles posed to such services by the threat of law enforcement interference

Annual heroin overdose deaths in the United States have roughly doubled since the early 1990s.[19] In certain areas they have become an epidemic: for example, overdose was the leading cause of death for men aged 25 to 44 in Portland, Oregon in 2000, according to the Centers for Disease Control and Prevention.[20] In other major American cities, it is the number one, two or three cause of death for this age group.

Ample scientific evidence indicates that the overdose death rate could be cut substantially with modest public health measures and changes in public policy. In localities around the world, a variety of inexpensive initiatives have shown success: targeting prevention education at specific high-risk populations; coordinating efforts among ambulance, police and other first-responder services; training drug users in CPR and rescue breathing; and distributing naloxone – the antidote to heroin overdose, commonly known by the brand name Narcan – to emergency medical providers or directly to drug users.[21]

Many overdose fatalities occur in the presence of other people, and virtually all could be prevented with rapid medical attention. Yet those near the victim often do not call emergency services for fear of being arrested themselves – so help does not arrive until long after the overdose.[22] To decrease the death rate in these circumstances, public health advocates and state legislators in a number of U.S. states are proposing legal amnesty for overdose witnesses who call 911.

Unfortunately, the federal government dedicates no funding at all to overdose prevention. Few states have implemented comprehensive statewide programs to respond to the growing problem. Just twenty states even have accurate information on overdose death rates dating back to 1990, making it difficult for health and safety officials to plan prevention and response strategies. In 2002, California – a frequent, influential pioneer in drug policy reform – passed historic legislation to track and reduce fatal overdose. California's new law joins state agencies, law enforcement, direct service providers and at-risk populations together in an unprecedented way to combat the epidemic.

BANNING RACIAL PROFILING

Prohibition of the unconstitutional and ineffective police practice of targeting suspects - most often drug suspects - solely on the basis of race

The drug war has had highly disproportionate and harmful effects on communities of color in the United States. A full exposition of this subject is beyond the scope of this report (other recent reports document aspects of this phenomenon[23]), but the basic facts say a great deal. Drug use rates are roughly equal across racial lines; yet African Americans, who constitute just 13 percent of the total population, account for nearly two-thirds of incarcerated drug offenders.

This injustice is due in large part to discriminatory police practices. African Americans, Latinos and other people of color are no more likely than anyone else to use drugs, but they are far more

likely to be suspected, stopped, searched and caught than their white counterparts. In many communities, African American and Latino men are subject to routine, warrantless police drug frisks. Police targeting of minority drivers for traffic stops and unwarranted roadside searches for drugs is so common in some areas that the cause for suspicion has been mockingly referred to as "DWB" – "driving while black (or brown)." Racial profiling not only violates the civil rights of large numbers of innocent people and breaches the Constitution, but also skews arrest rates, thereby reinforcing those false perceptions that gave rise to profiling in the first place.

Between 1996 and 2002, 20 states banned racial profiling or mandated that police collect demographic data on motorists pulled over for traffic offenses (to determine the nature and extent of any racial profiling occurring). It should be noted that although the drug war is typically the driving force behind racial profiling, these reforms are not limited to drug law enforcement.

RESTORING BENEFITS AND VOTING RIGHTS TO FORMER OFFENDERS

Reduction of the "collateral consequences" of the war on drugs

Under various state and federal laws, many people convicted of drug offenses face punishments that last long after they have served their sentences. Former drug offenders and their families are denied access to public housing, college loans, welfare and other benefits – often for life. Among the most severe of these policies is a component of the 1996 federal welfare reform legislation which disallows anyone convicted of a drug offense from qualifying for federally-funded benefits such as TANF or food stamps, even after they have successfully completed their sentences.

Many former drug offenders also lose their right to vote due to state-level "felony disenfranchisement" laws. In twelve states, any person with a felony conviction, no matter how long ago it occurred, is permanently barred from voting; in dozens more, those convicted of a felony are denied the right to vote while they are on probation or parole.[24] Nonviolent drug felony convictions, which account for a large share of all felonies in most states, have become a leading cause of voter disenfranchisement in the United States.

These punishments do little if anything to deter drug use. They place unnecessary and counterproductive obstacles in the paths of people trying to rebuild their lives. In the case of denying benefits, they effectively punish children and other family members simply for their association with someone with a past drug abuse problem or offense. In many cases they do not apply to any other category of offense, including violent crime. These laws are particularly harmful to people of color, who disproportionately lack access to economic resources and are also disproportionately arrested and sentenced for drug offenses. Almost 1.4 million African American men, fourteen percent of the entire adult black male population in the U.S., are currently denied the right to vote because of a felony conviction – a rate seven times the national average. In Alabama and Florida, 31 percent of all black men are permanently disenfranchised.[25]

Many state legislatures are taking measures to restore these rights and benefits to men and women who have served their sentences and returned to society. Twenty-nine states, for example, have enacted legislation opting out, partially or totally, of the 1996 federal ban on

welfare benefits to former drug offenders. Between 1996 and 2002, five states reformed their voting laws to allow ex-felons to vote (and two more did so early in 2003).

EXPANDING STERILE SYRINGE AVAILABILITY

Deregulation of the supply of sterile syringes, particularly through pharmacies and needle exchanges, to reduce the spread of HIV/AIDS, hepatitis and other infectious diseases among people who inject drugs and among their loved ones

Sharing of syringes among people who inject drugs is a crucial factor in the worldwide spread of HIV/AIDS, hepatitis C and other infectious diseases. It affects not only those people who inject drugs, but also their sexual partners and their children.[26] Needle sharing is already responsible, directly or indirectly, for more than 250,000 HIV infections – and over 50 percent of all pediatric AIDS cases – in the United States.[27]

Fortunately, simple and inexpensive public health measures have proven to quickly and substantially reduce these trends. Policymakers need only change the laws that create artificial shortages of sterile syringes among people who inject drugs to begin preventing new infections immediately.[28] Every established medical, scientific and legal body to study the issue – including the National Academy of Sciences, American Medical Association, American Public Health Association, Centers for Disease Control and Prevention, and President George H.W. Bush's and President Clinton's AIDS Advisory Commissions – concurs in the efficacy of improved access to sterile syringes in reducing the spread of infectious diseases.[29]

Depending on existing law in a particular state, optimal syringe law reform may require one or more of the following:

- *Deregulating the sale of syringes in pharmacies, so that pharmacies can sell sterile syringes to customers without a prescription.* (Non-prescription pharmacy sale is standard throughout Western Europe, much of central and Eastern Europe, and increasingly in U.S. states.[30])

- *Decriminalizing the possession of syringes, so that people who inject drugs can legally carry sterile syringes and properly dispose of used ones.* (Since Connecticut changed its paraphernalia and prescription laws in 1992 to allow for possession and sale of up to ten syringes, needle sharing has dropped 40 percent and needle-stick injuries to police have decreased 66 percent.[31])

- *Removing all legal barriers to needle exchange programs and providing public support to such programs.* (A worldwide survey found that HIV rates among people who inject drugs decreased 5.8 percent per year in cities with needle exchange programs, and increased 5.9 percent per year in cities without needle exchange programs.[32])

Although the possession, distribution, and sale of syringes remain criminal offenses throughout much of the country, many states and municipalities are changing such policies to reflect public health priorities. Between 1996 and 2002, nine states passed legislation to increase the availability of syringes through needle exchange programs, pharmacy deregulation and the decriminalization of syringe possession.

PROMOTING INDUSTRIAL HEMP

Reform of laws prohibiting the cultivation of industrial hemp, a non-intoxicating cousin of the marijuana plant, which is used to make paper, fiber, food, fuel and cloth

Hemp, which has a long and distinguished history in the United States and around the world,[33] comes from the same plant species as marijuana. But hemp contains almost no trace of marijuana's psychoactive ingredient, THC, so consuming or smoking it does not induce any "high." It cannot be used as a drug.

Hemp rope and canvas sails once outfitted the world's sailing ships. Hemp seeds, rich in omega fatty acids, are used in traditional foods and are still sold as birdseed in the United States. Paper made from the strong hemp fiber is used in many of the world's currencies. Indigenous societies in the Americas have produced and used hemp products for centuries.

In the past several years, a global hemp industry has re-emerged. Hundreds of companies worldwide offer thousands of hemp products such as clothes, paper, and soap. Australia, Great Britain, France, Spain and Canada are among the dozens of countries growing, using and exporting hemp.

Federal law denies U.S. farmers the right to grow hemp and compete in the global marketplace. Between 1996 and 2002, however, legislatures in 12 states have passed 23 measures in support of industrial hemp, ranging from resolutions calling for its legalization to funding for farming and research.

REDUCING CIVIL ASSET FORFEITURE ABUSES

Reform of laws permitting law enforcement to seize and keep private property suspected of involvement in a crime – most often related to drugs

Under state and federal civil asset forfeiture laws, law enforcement agencies are permitted to seize money and property merely suspected of being used in connection with a crime (nearly always the drug trade).* Many such laws permit the government to permanently keep the seized assets even if the owner is never convicted of a crime. In fact, one review of law-enforcement records showed that in more than 80 percent of the cases surveyed the owner was not even *charged* with a crime – yet the seized property was never returned.[34]

In a system critics say encourages corruption, many civil forfeiture laws allow the police who seize the assets to keep the proceeds for their departmental use. Budgetary dependence can result, providing a dangerous incentive for overly aggressive police tactics, unsubstantiated accusations, unlawful searches and other abuses.

Between 1996 and 2002, ten states and the federal government enacted asset forfeiture reforms, and dozens of other legislatures are considering it. Specific reforms include requiring that an owner be convicted of a crime before property can be forfeited; enacting provisions to protect innocent co-owners; redirecting proceeds from law enforcement coffers to drug treatment or

*To retrieve seized property, owners must typically prove in a court of law - at their own expense, sometimes over a period of years - that the property itself is not "guilty." Even proving one's personal innocence may not be enough: the guilty property may have been used in the commission of a crime by another party, even without the knowledge or consent of the owner.

other government programs; and changing laws to prevent local and federal law enforcement agencies from colluding to circumvent state forfeiture restrictions.

DRUG POLICY REFORMS: 1996-2002
SELECTED STATES

ARIZONA

In 1996, Arizona became the first state to implement sweeping drug policy reform when voters approved Proposition 200. That initiative, also known as the Drug Medicalization, Prevention and Control Act, mandates that nonviolent drug offenders arrested for simple possession or use of an illegal drug receive treatment instead of jail time for their first and second offenses. It also allows doctors to prescribe marijuana and other drugs (such as heroin and MDMA, commonly known as Ecstasy) for medicinal use when it becomes legal to do so under federal law. This legal change would create a system much like that of Great Britain, where primary control of prescribing medication is left to doctors rather than government agencies.

An analysis by the Arizona Supreme Court found that Proposition 200 diverted 2,600 nonviolent offenders into drug treatment in its first year, saving Arizona taxpayers $2.56 million.[35] More than three-fourths of the offenders tested drug-free after completing the program. A follow-up Supreme Court study in 2001 found that Proposition 200 saved taxpayers over $6.7 million in prisons costs in its second year.[36] The Court concluded that "The Drug Medicalization, Prevention and Control Act of 1996 has allowed the judicial branch to build an effective probation model to treat and supervise substance abusing offenders.... All of these factors are resulting in safer communities and more substance abusing probationers in recovery."[37]

Norman Helber, adult probation chief for Maricopa County (which accounts for over half of all drug arrests in Arizona), noted that treatment instead of incarceration "has been fantastic from the field perspective."[38] And Arizona Appellate Court Judge Rudy Gerber reported that the initiative "is doing more to reduce drug use and crime than any other state program and saving taxpayer dollars at the same time."[39]

In Arizona more than in any other state, voters and lawmakers have been at odds over drug policy reform. Following the passage of Proposition 200, the Arizona legislature passed bills limiting both the medical marijuana and the prescription provisions of the initiative. In turn, however, voters passed two further initiatives which overturned these legislative amendments, restoring Proposition 200 to its original form. Although Arizona voters have not backed every change unequivocally – in 2002, they passed an initiative altering Proposition 200 to allow the incarceration of drug offenders who "fail" treatment, and rejected a broader medical marijuana initiative – they have demonstrated to the legislature that their commitment to drug policy reform is abiding.

Arizona

Mandated Treatment Instead of Incarceration (Proposition 200, 1996)
Required drug treatment instead of jail time for first- and second-time drug possession offenders; made those already incarcerated for possession offenses eligible for parole; established the Drug Treatment and Education Fund and supported it with monies from a percentage of the luxury tax on alcohol, cigarettes and other tobacco products.

Changed State Law to Allow Doctors to Prescribe Marijuana and Other Drugs (Proposition 200, 1996)
Allowed medical doctors to prescribe a controlled substance such as marijuana to treat a disease or to relieve the pain and suffering of a seriously or terminally ill patient. The doctor must be able to document that scientific research supports the use of the controlled substance and must obtain a written opinion from a second doctor that prescribing the controlled substance is appropriate. A patient who receives, possesses or uses a controlled substance as prescribed by a doctor would not be subject to criminal penalties. (Note: for practical purposes, this provision has not yet gone into effect because, under federal law, doctors cannot "prescribe" marijuana. Other states have avoided this conflict with federal law by protecting patients that use marijuana when "recommended" – as opposed to "prescribed" – by a doctor.)

Overturned Legislation Repealing Medical Marijuana Provisions (Proposition 300, 1998)
After two-thirds of Arizona's voters approved Proposition 200, the legislature passed HB 2518 which would have barred doctors from prescribing marijuana or other drugs without FDA or Congressional approval. Voters defeated HB 2518 at the ballot box.

Overturned Legislation Repealing Treatment Instead of Incarceration Provisions (Proposition 301, 1998)
After voters approved Proposition 200, the legislature passed SB 1373 which would have amended Proposition 200 to restrict which offenders would be eligible for treatment. Voters defeated SB 1373 at the ballot box.

CALIFORNIA

Californians and their state legislators have been national leaders in drug policy reform, passing landmark initiatives and bills on medical marijuana, alternatives to incarceration, fatal overdose prevention and a range of other issues.

In 1996 California voters passed Proposition 215, legalizing marijuana for medicinal purposes. Proposition 215's success demonstrated to the nation that major, state-level drug policy reform could be achieved through the political process. Proposition 215 also launched the ongoing struggle by medical marijuana advocates to implement the initiative effectively in the context of aggressive federal opposition. Despite significant obstacles, Proposition 215 has successfully provided many medical marijuana patients and providers with a significant measure of legal

protection in California. The initiative has also been a model for reformers – medical marijuana supporters, treatment advocates and others – throughout the country.

In November of 2000, California voters passed Proposition 36, the single most significant drug policy reform victory in terms of the number of nonviolent people it has kept out of jail and prison. Proposition 36 diverts low-level, nonviolent drug offenders convicted solely of possession for personal use into community-based treatment instead of incarceration.

Between 1980 and 2000, California's overall prison population rose nearly seven-fold. During the same period, the number of people incarcerated for drug offenses increased more than twenty-fold, from under 2,000 to roughly 45,000.[40] Under Proposition 36,[41] which went into effect in July 2001, tens of thousands of drug offenders have been placed in community-based treatment instead of incarceration. California's Legislative Analyst's Office estimated that the measure would divert approximately 36,000 people to treatment per year and save $1.5 billion (net) over the next five years, while preventing the need for a new prison slated for construction.[42] One subsequent analysis found that in five counties alone, between July 2001 and April 2002, 12,594 individuals were referred to treatment, saving the state an estimated $228 million.[43]

The decline in incarceration of female nonviolent drug offenders has been so significant that California has closed one of its four women's prisons to help shrink its state budget deficit, and is considering closing a second facility. Margot Bach, a spokeswoman for the California Department of Corrections noted, "There are a lot of reasons the population is down – crime rates have fallen, parole programs are working – but we think the biggest factor with the women's numbers is Proposition 36."[44]

Along with voters, California lawmakers have also played a large and active role in drug policy reform. Two historic examples: in 2001, the state legislature became the first in the nation to pass legislation barring the revocation of probation or parole solely for testing positive for drug use. In such circumstances, drug testing may now be used only as a treatment tool, not a mechanism for criminal punishment. In 2002, lawmakers passed a bill to address the state's growing crisis of fatal drug overdose. (Estimates from the Centers for Disease Control suggest that 1,400 to 2,000 Californians have died from drug overdoses each year since 1998. Many of these deaths could have been prevented with the antidote, naloxone.) The new law provides a level of focus, coordination and training that is unprecedented in any state.

Unfortunately, while California voters and state legislators continue to support reforms, Governor Gray Davis (D) has vetoed more drug policy reform legislation than any other governor in history. He is responsible for vetoing legislation on medical marijuana, overdose prevention, restoration of benefits to former offenders, asset forfeiture and racial profiling. His refusal to support reform has made ballot initiatives, which are veto-proof, all the more crucial in California.

California

Legalized Medical Marijuana (Proposition 215, 1996)
Voters approved initiative exempting patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from state criminal laws, which otherwise prohibit possession or cultivation of marijuana.

Approved Resolution in Support of Industrial Hemp (HR 32, 1999)
Legislators passed resolution declaring that industrial hemp has many uses in many products; that it will contribute to the state economy; that the legislature should revise the legal status of industrial hemp; and that the University of California and other agencies should prepare studies in conjunction with private industry on the cultivation, processing and marketing of industrial hemp.

Mandated Traffic-Stop Data Collection (SB 78, 1999) – Vetoed by Governor Davis
Would have mandated that police collect traffic-stop data on whomever they pull over, in an effort to detect and curb racial profiling.

Reformed Civil Asset Forfeiture Laws (SB 1866, 2000) – Vetoed by Governor Davis
Would have required law enforcement agencies to get a court order to transfer money and property they seize to a federal agency. Would have redirected about one-quarter of all forfeiture proceeds to drug prevention and treatment services.

Banned Racial Profiling (SB 1102, 2000)
Legislators banned racial profiling and mandated that local and state law enforcement officers participate in racial profiling training.

Mandated Treatment Instead of Incarceration (Proposition 36, 2000)
Voters approved initiative allowing first- and second-time nonviolent, drug possession offenders the opportunity to receive substance abuse treatment instead of incarceration. Allocated $120 million annually for five-and-a-half years to pay for treatment services.

Implemented Medical Marijuana Patients Registry (SB 187, 2001) – Passed both Chambers, died on file
Would have required the State Department of Health Services to establish and maintain a voluntary program for the issue of ID cards to qualified patients, and established procedures under which a patient with an ID can use marijuana for medical purposes.

Established New Protections for Probationers and Parolees (SB 223, 2001)
Legislators provided new protections for probationers and parolees; mandated that drug testing be used only as a treatment tool; and prevented anyone for whom drug testing is a condition of probation or parole from being remanded to custody solely upon the basis of a positive drug test.

Passed Drug Overdose Prevention Legislation (SB 1134, 2001) – Vetoed by Governor Davis
Would have established a program to coordinate data collection, reporting, draft curricula and materials, and administer a small grants program to give local programs resources to undertake

overdose prevention efforts. Also would have given regional and county emergency medical directors the authority to train first responders (including certain EMT's, volunteer and ambulance teams) to administer the antidote to opiate overdose – naloxone hydrochloride.

Restored Benefits Eligibility to Ex-Drug Offenders (AB 767, 2001) – Vetoed by Governor Davis; (AB 1947, 2002) – Vetoed by Governor Davis
Would have allowed persons convicted of drug related felonies to be eligible (under certain circumstances) for food stamps and other public benefits. Only drug felonies permanently disqualify California citizens from ever receiving health and social benefits that they would otherwise qualify for. Governor Davis vetoed similar bills in both 2001 and 2002.

Passed Legislation to Track and Reduce Fatal Overdose (SB 1695, 2002)
Legislature unanimously passed bill (which was signed into law) authorizing administration of the opiate overdose antidote naloxone by emergency medical technicians, and directing the state Health and Human Services Agency to publish overdose trend data, along with recommendations for controlling overdose, on its web site.

Repealed Methadone Dosage Caps and Billing Requirements (SB 1447, 2002)
Legislature repealed dosage limits for methadone and LAAM (a synthetic, long-acting opiate replacement therapy), allowing patients and doctors to determine appropriate dosages for opiate replacement patients. Additionally, they amended reporting and billing procedures that had previously discouraged physicians from treating Proposition 36-referred patients.

Allowed Pharmacy Sale and Possession of Up to Thirty Syringes (SB 1785, 2002) – Vetoed by Governor Davis
Would have allowed adults to purchase up to thirty syringes at a pharmacy without a prescription as part of the state's comprehensive approach to HIV/AIDS and hepatitis C prevention.

Mandated Hepatitis C Prevention Education in State Prisons (AB 2529, 2002) – Vetoed by Governor Davis
Would have mandated that all California state prisoners receive hepatitis C prevention education at time of intake, including information on safer injection. Would have improved access to testing and treatment for hepatitis C for the over 50,000 prisoners thought to be infected.

COLORADO

In 2000, Colorado voters overwhelmingly approved a medical marijuana initiative, ending a long legal battle to secure its rightful place on the ballot. (In 1998, a judge ruled at the last minute that proponents had not gathered sufficient signatures to put the initiative on the ballot. Stacks of uncounted petition sheets were discovered after the election, however, and exit polls revealed majority support for the initiative. It was ordered back on the ballot in 2000.)

In 2002, the Colorado legislature passed significant reform of the state's asset forfeiture laws. Lawmakers also approved legislation, later vetoed by Governor Bill Owens (R), which would have reduced the penalties for simple possession of illegal drugs and used the savings to fund drug treatment.[45]

Colorado

Partially Opted Out of Federal Welfare Ban (SB 97-120, 1997)
Legislature passed bill partially opting out of federal legislation banning former drug offenders from ever receiving public benefits. Legislature applied lifetime ban only to those offenders who purchased drugs with food stamps benefits, and made such persons ineligible for food stamps only.

Legalized Medical Marijuana (Amendment 20, 2000)
Voters approved initiative exempting patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Mandated Traffic Stop Data Collection and Diversity Training (HB01-1114, 2001)
Legislature mandated collection of racial and other demographic data of individuals involved in police traffic stops, along with compulsory diversity training for police officers.

Cut Drug Sentences (SB 02-39, 2002) – Vetoed by Governor Bill Owen
Legislature passed bill that would have lowered the criminal classification for a first offense of possession of 1 gram or less of certain controlled substances from a class 3 or class 4 to a class 6 felony. The sentence for possession of less than 1 gram of heroin, for example, would have dropped from 4-12 years to 12-18 months. This bill also would have lowered the penalties for a second offense to a class 4 felony. Finally, it would have established the Drug Offender Treatment Fund and the State Drug Offender Treatment Board and used the tax savings to fund drug treatment.

Reformed Civil Asset Forfeiture Laws (HB 1404, 2002)
Legislature changed forfeiture laws to require that a criminal conviction occur in most cases before property and cash can be seized; increased the legal standard of proof used in forfeiture cases from a "preponderance of the evidence" to "clear and convincing evidence"; mandated that the property be instrumental to the offense and that the value of the property seized be proportional to the crime charges and the proceeds be traceable; and mandated that half of the proceeds be turned over to the state's alcohol and drug abuse division and the other half to the local government overseeing the law–enforcement agency involved in the seizure.

CONNECTICUT

Connecticut's prison population has more than doubled in the last ten years. At a cost to taxpayers of over $513 million per year, prison expenses are increasingly difficult to cover.[46] Drug offenders account for a large percentage of this growth,[47] which has had a disproportionate effect on the state's African American population. While black men comprise less than three percent of Connecticut's population, they account for 47 percent of the state's inmates in prisons, jails, and halfway houses.[48]

"I don't think anyone intended it to be this way, but if you were trying to design a system to incarcerate as many African American and Latino men as possible, I don't think you could have designed a better system," said Democratic Representative Michael Lawlor, chair of the House Judiciary Committee since 1996.[49]

In recent years, however, Connecticut has been active on a range of reform efforts, including sentencing reform, an opt-out of the federal welfare ban, data gathering to combat racial profiling, and restoration of voting rights to ex-felons. In 2001, Republican Governor John Rowland urged the legislature to reform mandatory minimums and focus more resources on drug treatment.

Connecticut

Authorized Office-Based Methadone Maintenance Pilot Program (SB 1259, 1997)
Legislature authorized a pilot program to assess the feasibility of methadone maintenance based in physicians' offices.

Opted Out of Federal Welfare Ban (HB 8003, 1997)
Legislature wholly opted out of federal ban on welfare benefits for former drug offenders.

Allowed Possession of Up to Thirty Syringes (HB 7501, 1999)
Legislature amended paraphernalia statute to increase the number of syringes that can be handed out without a prescription by needle exchanges and pharmacies from ten to 30.

Mandated Traffic Stop Data Collection (SB 1282, 1999)
Legislature mandated collection of racial and other demographic data of individuals involved in police traffic stops.

Reformed Mandatory Minimums (SB 1160, 2001)
Legislature gave judges discretion to waive certain mandatory minimum sentences for nonviolent offenders.

Restored Voting Rights to Felons on Probation (HB 5042, 2001)
Legislature restored voting rights to felons sentenced to probation (felons who had served their sentences were already able to vote), allowing more than 35,000 Connecticut residents on probation to vote.

HAWAII

In 2000, Hawaii became the first state to legalize marijuana for medicinal purposes through the legislative process, adopting legislation similar to that approved by voters in eight other states and Washington, D.C. Similarly, in 2002, Hawaii became the first state to adopt major "treatment instead of incarceration" legislation through the legislative process. Legislators also passed four bills in support of industrial hemp between 1996 and 2002, including legislation making it legal for the first hemp test plot to grow in America since the crop was banned after World War II.

While reform has been bipartisan, much of the success can be attributed to former Governor Benjamin Cayetano (D), who was a leading advocate for reform during his term of office. Governor Cayetano introduced the medical marijuana legislation that became law and was an outspoken critic of the federal government's policy towards medical marijuana, publicly stating that "it's time that Congress finally gets around to understanding that the states should be allowed to provide this kind of relief to the people. Congress is way, way behind in their thinking."[50]

Hawaii

Passed Resolution to Study Industrial Hemp (HR 71, 1996)
House requested a program through the Hawaii Agribusiness Development Corporation and the University of Hawaii to study the economic potential of growing industrial hemp as an agricultural project.

Partially Opted Out of Federal Welfare Ban (HB 480, 1997)
Legislature partially opted out of federal welfare ban for former drug offenders by allowing people to receive benefits if they receive drug treatment.

Legalized Growing of Industrial Hemp for Research Purposes (HB 32, 1999)
Legislature legalized privately funded industrial hemp research in Hawaii when state and federal agencies (DEA) issue licenses. Authorized state and federal agencies to monitor all phases of the research and required status reports.

Passed Resolution to Study Industrial Hemp (HR 110, 1999)
House requested a program through the Hawaii Department of Business, Economic Development and Tourism to examine the feasibility of growing and using industrial hemp for biomass energy production.

Passed Resolution Petitioning Federal Government on Hemp Issue (HR 109, 1999)
House requested the U.S. Department of Agriculture to recommend the use of hemp fiber soil erosion control blankets whenever feasible.

Legalized Medical Marijuana (SB 862, 2000)
Legislature exempted patients and caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Mandated Treatment Instead of Incarceration (SB 1188, 2002)
Legislature mandated that first-time nonviolent drug offenders convicted of possession or use be sentenced to probation with drug treatment instead of prison.

INDIANA

Incarcerating drug offenders costs Indiana taxpayers nearly $90 million a year.[51] To create space in state prisons and save taxpayer money, legislators passed sweeping drug sentencing reform in 2001, including allowing nonviolent drug offenders to receive drug treatment, home detention or work release instead of prison.

"Many of these prisoners are drug offenders who are not dangerous to society. They are only dangerous to themselves. We put them in prisons, which are known as schools of crime, they come out hardened and two of three go back,"[52] said Democratic Representative B. Patrick Bauer.

Indiana

Reformed "Three Strikes, You're Out" Law (SB 358, 2001)
Legislature exempted drug offenders with no other types of convictions from "three strikes" law, as long as they do not have more than one trafficking conviction.

Expanded Treatment Instead of Incarceration (HB 1892, 2001)
Legislature allowed judges to sentence to drug treatment instead of prison those who sell drugs to support their habit.

Eliminated Mandatory Minimums (HB 1892, 2001)
Legislature eliminated mandatory minimums for certain nonviolent drug offenses and gave judges discretion to sentence offenders to home detention or work release. Made certain already incarcerated offenders eligible for early release.

Reformed "Drug-Free" Zone Law (HB 1892, 2001)
Legislature provided defendants with a defense against enhanced penalties for possessing or dealing drugs within a "drug-free" zone, if the defendant was only briefly within the drug-free zone or was lured there by police.

LOUISIANA

Louisiana's notoriously severe drug laws are largely responsible for giving the state the dubious distinction of having the highest incarceration rate in the country.[53] One-third of Louisiana's inmates are nonviolent drug offenders, many of them sentenced to harsh sentences for minor offenses.[54] More than 200 people are currently serving mandatory life sentences in Louisiana for nonviolent drug offenses[55] – including a man sentenced to life in prison without parole for a first-time drug transaction in which he made only $50.[56] Harsh drug laws have also exacerbated racial disparities in Louisiana's criminal justice system. While African Americans make up only one-third of the state's population, they make up three-fourths of the state's prison population.[57]

Faced with gross racial disparities in their criminal justice system and with budget-breaking prison expenses, a coalition of civil rights leaders and fiscal conservatives in the legislature passed sweeping drug policy reform in June 2001. The legislation, sponsored by members of the Louisiana Black Caucus, is expected to save Louisiana $60 million a year in reduced prison costs.[58]

Louisiana

Opted Out of Federal Welfare Ban (SB 969, 1997)
Legislature partially opted out of federal ban on welfare benefits for former drug offenders. Offenders who are not incarcerated are ineligible for benefits for one year following conviction; incarcerated offenders are ineligible for one year following their release.

Reformed "Three Strikes, You're Out" Law (SB 239, 2001)
Legislature eliminated application of the three strikes laws to all felonies; instead mandates life imprisonment only if the current and both prior offenses were serious drug offenses or violent crimes.

Established Risk Review Panel (SB 239, 2001)
Legislature created Louisiana Risk Review Panel to review records of inmates convicted of nonviolent offenses in order to make recommendations to the parole and pardon boards.

Reduced Drug Sentences and Reformed Mandatory Minimums (SB 239, 2001)
Legislature removed mandatory sentences for simple drug possession and other nonviolent offenses and cut sentences for many drug selling offenses in half. Eliminated Louisiana's heroin and cocaine laws mandating life without parole for distribution of any amount of heroin (now five to 50 years) or for manufacturing cocaine (now ten to 30 years). Eliminated mandatory minimum sentences for selling drugs in a "drug-free zone."

NEVADA

In less than three years, Nevada has essentially reversed its approach to marijuana policy. In 1998 and again in 2000, the state's voters approved an initiative legalizing the medicinal use of marijuana (under Nevada law, initiatives have to be approved twice before they can take effect). In 2001, the state legislature followed the voters' lead, passing legislation to implement the initiative.

In 2001, the Nevada legislature also passed legislation decriminalizing small amounts of marijuana for personal use.* The year before, a 40-member judicial commission, headed by the Nevada Supreme Court's Chief Justice, had recommended reducing penalties for possession of small amounts of marijuana for personal use from a felony to a misdemeanor.[59] In 2002, the

*With Nevada's action, 12 states have decriminalized marijuana: Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio and Oregon. With the exception of Nevada, these reforms all took place prior to 1996, outside the scope of this study. Additionally, numerous foreign countries, including Canada, Great Britain, Belgium, Switzerland and the Netherlands have already established decriminalization policies or are moving towards decriminalization of small amounts of marijuana for personal use.

state's voters considered a more far-reaching marijuana legalization initiative. Though the initiative did not pass, the two major reforms already in effect remain in place.

Nevada

Opted out of Federal Welfare Ban (AB 401, 1997)
Legislature partially opted out of federal ban on welfare benefits for former drug offenders. Offenders can receive benefits following completion of drug treatment.

Legalized Medical Marijuana (Question Nine, 2000)
Voters approved initiative exempting patients and caregivers who possess or cultivate physician-recommended marijuana from criminal laws which otherwise prohibit possession or cultivation of marijuana.

Implemented Voter-Initiated Medical Marijuana Measure (AB 453, 2001)
Legislature made it legal for seriously ill Nevadans to have up to seven marijuana plants for medical use. Established a state registry for patients whose doctors recommend they use marijuana for medical reasons.

Decriminalized Marijuana for Personal Use (AB 453, 2001)
Legislature made possession of an ounce or less of marijuana (for non-medical use) a misdemeanor, subject to a fine of up to $600 for the first offense (or referral to drug treatment). A second offense would result in a higher fine.

Reformed Civil Asset Forfeiture Laws (SB 36, 2001)
Legislature raised the standard of proof for seizing property to "clear and convincing" evidence; also directed to local school districts 70 percent of all money in excess of $100,000 collected in police agency's forfeiture account at the end of each fiscal year.

NEW MEXICO

Republican Governor Gary Johnson made national headlines in the summer of 1999 when he first told voters in New Mexico that it was time to end the war on drugs and proposed the legalization of marijuana. Over the following three years, Governor Johnson maintained these positions while also becoming a strong proponent of modest reforms based on harm reduction principles. He and the Democratically-controlled state legislature found common ground, despite a highly partisan political environment. As a result of this bipartisan cooperation and leadership, New Mexico leads the nation in the number of drug policy reforms enacted into law.

"Nothing like this has ever happened in any state before," said Governor Johnson. "Two years ago, no one wanted to talk about this issue at all. Now both Democrats and Republicans have committed to common-sense ways to reduce the harms associated both with drug abuse and with our current drug policies."[60]

A statewide poll of likely voters conducted in March 2001 showed that nearly four out of five New Mexicans support making medical marijuana available to terminally ill patients; two out of three support the decriminalization of an ounce or less of marijuana; and nearly two-thirds support treatment instead of incarceration for first- and second-time "hard" drug offenders.[61]

New Mexico

Established Needle Exchange Program (SB 220, 1997)
Legislature established a statewide harm-reduction program administered by the Department of Health to prevent infectious disease through syringe availability.

Approved Industrial Hemp Research (HB 9, 1999)
Legislature appropriated $50,000 to New Mexico State University to conduct a feasibility study on growing industrial hemp as a commercial crop.

Deregulated Pharmacy Syringe Sales (SB 320, 2001)
Legislature ended pharmacists' potential criminal liability for sale of syringes in pharmacies.

Limited Liability for Administration of Anti-Opioids (HB 813, 2001)
Legislature created civil and criminal immunity for administering, dispensing, distributing, using or possessing an opioid antagonist (opioid antagonists are medications that reverse the effects of opiates such as opium and heroin, and prevent overdose and death by overdose).

Restored Voting Rights for Felons (SB 204, 2001)
Legislature restored voting rights to felons upon completion of their sentences.

Expanded Drug Treatment Programs (SB 628, 2001)
Legislature appropriated $9.8 million to expand and coordinate substance abuse intervention, treatment and harm reduction initiatives by the Department of Health and the Department of Corrections.

Established Women's Re-entry Drug Court (SB 200, 2001)
Legislature established program for early release of women convicted of nonviolent drug offenses; allowed for treatment in the community rather than incarceration for the last 18 months of a woman's sentence.

Reformed Habitual Offender Laws (HB 26, 2002)
Legislature gave judges more sentencing discretion over sentencing in certain cases, including certain drug offenses.

Reformed Civil Asset Forfeiture Laws (SB 5, 2002)
Legislature reformed civil asset forfeiture laws. Required criminal conviction prior to loss of property, a court order before property seizure and proof "by clear and convincing evidence" that the property is subject to forfeiture. Directed proceeds from seizures to the general fund of the local or state entity for substance abuse education and treatment or for drug enforcement.

Opted Out of Federal Ban on Benefits (HB 11, 2002)
Legislature fully opted New Mexico out of the federal lifetime ban on welfare benefits to former drug offenders.

Corrections Population Control Act (HB 263, 2002)
Legislature established a Corrections Population Control Commission to consider the early release of state prison inmates convicted of certain drug and other nonviolent offenses, or incarcerated as a result of parole revocation related to drug use or possession.

TEXAS

Texas has long been in the national spotlight for rampant racial disparities and abuses in its criminal justice system. It has one of the largest incarceration populations in the United States (over 145,000 state inmates in jail or prison as of 2002)[62] and the third highest per capita incarceration rate of any state.[63] Even modest reforms, therefore, can have a tremendous impact. A number of well-publicized injustices have forced Texas legislators to scrutinize their criminal justice system and enact reforms. The most notorious of these injustices occurred in Tulia, Texas, where dozens of African American residents were arrested, prosecuted and sentenced to years (decades and even centuries) of imprisonment for drug law violations – all on the word of one corrupt undercover agent.[64] Thanks to the tireless efforts of the defendants and their families, friends and attorneys, the agent's false testimony came to light and all of the defendants' convictions have been vacated. The U.S. Justice Department has launched a federal civil rights investigation into the case, and the Texas legislature passed two reforms in response.

Texas

Limited Convictions Without Corroborating Evidence (HB 2351, 2001)
Legislature outlawed drug convictions based solely on the testimony of an informant (while the House version prevented people from being convicted solely on the word of an undercover officer or an informant, the Senate watered it down to apply only to informants).

Banned Racial Profiling (SB 1074, 2001)
Legislature banned racial profiling by law-enforcement officers; mandated that police document traffic stops and searches by race and report them annually.

Reformed Asset Forfeiture Laws (SB 563, 2001)
Legislature allowed owners to reclaim confiscated property that had been used in a crime, provided they can prove no involvement in the crime.

VERMONT

In 2000, the Vermont legislature legalized the use of methadone maintenance therapy for the treatment of heroin addiction over the objection of then Governor Howard Dean (D).* This reduced to seven the number of states in the U.S. which do not allow the use of methadone for addiction treatment under any conditions.

In early 2002, the Vermont House and Senate passed competing medical marijuana bills. The House version, like measures that have passed in other states, would have eliminated criminal penalties for growing, possessing and using marijuana for medicinal reasons. The Senate version only allowed seriously ill patients arrested for using marijuana to present an affirmative defense in court. The Governor appeared likely to veto these bills, so the legislators decided to establish a special committee "to investigate and assess options for legal protections that will allow seriously ill Vermonters to use medical marijuana without facing criminal prosecution under Vermont law." That committee has since provided them with strong recommendations in favor of passing a state medical marijuana law.

In 1996, Vermont became one of the first states to pass meaningful industrial hemp legislation when it enacted a bill authorizing research into the feasibility of hemp as a commercial product. Four years later, the legislature passed a resolution urging the U.S. Drug Enforcement Administration, the U.S. Department of Agriculture and the U.S. Congress to reconsider federal policies that prohibit the cultivation and sale of industrial hemp and related products.

*Methadone is the proven, most effective method of treating heroin addiction. Still, methadone remains one of the most regulated, restricted, and under-available medications in the United States. With few exceptions, methadone is distributed only at specialized methadone centers. By contrast, many other countries – including Great Britain, Australia, Switzerland and Germany – allow access to methadone and other pharmacological treatments in physicians' offices and through local pharmacies.

Vermont

Commissioned Study on Industrial Hemp (H.0783, 1996)
Legislature requested the Commission of Agriculture, Food and Markets, and the University of Vermont to research the feasibility of industrial hemp production in Vermont.

Legalized Methadone Maintenance Therapy (S.303, 2000)
Legislature legalized the use of methadone in methadone maintenance programs for the treatment of heroin addiction.

Petitioned Federal Government on Industrial Hemp (JRS 98, 2000)
Legislature passed a resolution calling on Congress and federal agencies to reassess current federal policies restricting the cultivation and sale of industrial hemp.

Established Medical Marijuana Commission (S.193, 2002)
Legislature declared that "state law should make a distinction between the medical and non-medical use of marijuana" and established a commission to issue a recommendation on the best way to provide legal protections to patients that use marijuana.

WASHINGTON

The State of Washington rivals New Mexico in its drug policy reform pace, enacting six reforms between 1996 and 2002, ranging from permitting medical marijuana to decriminalizing the sale and possession of syringes.* In 2002, the legislature passed a law cutting sentences for various nonviolent drug offenses, and using the savings (estimated to be $50 million over the next six years)[65] to fund drug treatment programs. The legislation also will implement a new sentencing grid in 2004 that will give judges more sentencing discretion. Supporters include Democratic Governor Gary Locke and Republican King County (Seattle) prosecutor Norm Maleng.

"For nonviolent offenders, treatment works. Investing in treatment will enable us to free up more prison cells for the violent offenders who belong in jail," said Governor Locke when he signed the legislation into law."

*Although this report begins with 1996, it should be noted that in 1995 the Washington legislature passed the Drug Offender Sentencing Alternative Act (DOSA) (SHB 1549, c. 268, Laws of 1995), which permits judges to reduce sentences for certain drug offenders. People sentenced under DOSA are required to participate in treatment while in prison and must comply with additional conditions when released.

Washington

Partially Opted Out of Federal Welfare Ban (HB 3901, 1997)
Legislature partially opted out of federal legislation banning drug offenders from ever receiving public benefits; allowed offenders to receive benefits if they meet certain requirements, including participation in a drug treatment program.

Permitted Medical Marijuana (Initiative 692, 1998)
Voters approved an initiative providing a legal defense against criminal charges to patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician.

Mandated Traffic Stop Data Collection (SB 6683, 2000)
Legislature required the Washington State Patrol to record certain demographic information (including race) about individuals stopped for alleged traffic violations and report that information semi-annually to the legislature.

Reformed Civil Asset Forfeiture Laws (HB 1995, 2001)
Legislature changed Washington's civil forfeiture statutes to shift the burden of proof to law enforcement agencies, requiring law enforcement to establish by a preponderance of the evidence that property is subject to forfeiture. If a claimant substantially prevails in a forfeiture proceeding, the claimant is entitled to reasonable attorney fees.

Decriminalized Sale and Possession of Syringes (HB 1759, 2002)
Legislature made it legal for individuals to possess syringes and for pharmacies to distribute them.

Cut Drug Sentences and Used Cost Savings for Treatment (HB 2338, 2002)
Legislature allowed for expanded community-based treatment and the restoration of broader sentencing discretion to judges; reduced the prison terms for low-level heroin or cocaine drug sellers from a mid-range of 24 to 18 months; invested the money that would have been spent on prison expenses (about $8.25 million a year) in drug treatment programs; eliminated triple and double scoring for purpose of calculating an offender's sentence for many drug offenses, which had often resulted in chronically addicted, nonviolent individuals receiving substantially longer sentences than many violent offenders.

Banned Racial Profiling (SB 5852, 2002)
Legislature banned racial profiling and required local law enforcement agencies to take necessary steps to prevent future profiling.

APPENDICES

APPENDIX A: COMPLETE STATE LISTING

Alabama

- **1999.** Legislature passes a mandatory seat belt law containing provisions mandating the collection of statistics on people cited for violating it (HB 7).

Alaska

- **1998.** Voters legalize marijuana for medicinal use (Ballot Measure 8).

Arizona

- **1996.** Voters pass initiative allowing non-violent drug possession offenders to receive drug treatment instead of prison, saving taxpayers almost $2.5 million in the first year. The initiative also allows doctors to prescribe marijuana and other drugs (such as ecstasy) for medicinal use, if it becomes legal under federal law (Proposition 200).
- **1998.** Legislature passes legislation restricting both provisions of the 1996 initiative. Voters call referendums on the restrictions and defeat them both at the ballot box. (Propositions 300 and 301).

Arkansas

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 1295).
- **1999.** Legislature reforms civil asset forfeiture laws (SB 555) and passes measure in support of industrial hemp (SR 13).
- **2001.** Legislature passes legislation appointing a task force to examine racial disparities in sentencing for non-violent offenders and to recommend necessary changes (HB 2615). Also passes legislation reducing the penalty for possession, use or distribution of drug paraphernalia (such as syringes) from a Class C felony to a Class A misdemeanor (HB 2313).

California

- **1996.** Voters legalize medical marijuana (Proposition 215).
- **1999.** Legislature passes measure in support of industrial hemp (HR 32). Legislature also bans racial profiling and mandates traffic-stop data collection, but Governor Gray Davis vetoes the legislation (SB 78).
- **2000.** Voters pass Proposition 36, a treatment instead of incarceration initiative. The measure is expected to divert over 30,000 drug offenders a year to treatment, saving taxpayers $250 million in prison costs annually. Legislature bans racial profiling (SB 1102). Legislature also passes forfeiture reform legislation, but Governor Gray Davis vetoes it (SB 1866).
- **2001.** Legislature establishes new protections for probationers and parolees that fail drug tests (SB 223). Legislature also passes a bill providing for medical marijuana patient identification cards, which died on file (SB 187); and passes bills related to overdose prevention (SB1134) and restoration of benefits eligibility to ex-drug offenders (AB 767), which were both vetoed by Governor Gray Davis.
- **2002.** Legislature passes legislation to track and reduce fatal overdose (SB 1695) and to repeal methadone dosage caps (SB 1447).

Colorado

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB97-120).
- **2000.** Voters legalize marijuana for medicinal use (Amendment 20).
- **2001.** Legislature mandates traffic stop data collection and officer diversity training (HB01-1114).
- **2002.** Legislature cuts drug sentences and uses savings to fund treatment (SB02-39) and reforms drug forfeiture laws (HB02-1404). Governor Bill Owen signed HB02-1404, but vetoed SB02-39.

Connecticut

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (HB 8003) and authorizes a methadone maintenance pilot program (SB 1259).
- **1999.** Legislature amends paraphernalia statute to allow possession of up to thirty syringes (HB 7501) and mandates traffic stop data collection (SB 1282).
- **2001.** Legislature gives judges discretion to waive certain mandatory minimum sentences for nonviolent offenders (SB 1160) and restores voting rights to felons sentenced to probation (HB 5042).

Delaware

- **2000.** Legislature passes legislation restoring voting rights to felons (HB 126).

District of Columbia

- **1998.** Voters legalize medical marijuana within the District of Columbia (Measure 59). Congress overturns this initiative in order to prevent its implementation.
- **2002.** Voters provide for treatment instead of incarceration for first and second time non-violent drug offenders in the District of Columbia (Measure 62).

Florida

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 566,SB 626).
- **2001.** Legislature mandates that police develop policies to combat racial profiling, such as diversity training (SB 84).

Georgia

- No reform

Hawaii

- **1996.** Legislature passes legislation in support of industrial hemp (HR 71).
- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 480).
- **1999.** Legislature passes measures in support of industrial hemp (HB 32, HR 109, HR 110).
- **2000.** Legislature legalizes marijuana for medicinal use (SB 862).
- **2002.** Legislature implements "treatment instead of incarceration" modeled on California's Proposition 36 (SB 1188).

Idaho

- **2000.** Legislature partially opts out of federal ban on welfare to former drug offenders (HB 575).

Illinois

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 204).
- **1999.** Legislature passes measures in support of industrial hemp (SR 49, HR 168).
- **2000.** House passes resolution in support of industrial hemp (HR 553).
- **2001.** Legislature passes two measures in support of industrial hemp, but Governor George Ryan vetoes both (SB 1397, HB 3377).

Indiana

- **2001.** Legislature reforms "three strikes, you're out" law (SB 358), expands treatment instead of incarceration (HB 1892), eliminates mandatory minimums for certain non-violent drug offenses (HB 1892), and reforms "drug-free" zone laws (HB 1892).

Iowa

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SF 516).
- **2001.** Legislature passes legislation giving judges discretion when sentencing "Class D" felony offenders to a determinate sentence (SF 543).

Kansas

- **2000.** Legislature mandates traffic stop data collection (HB 2683).

Kentucky

- **1998.** Legislature partially opts out of the ban on federal welfare benefits (HB 864).
- **2001.** Legislature passes legislation prohibiting property owners from being "taxed" for marijuana growing on their property unless they are convicted of a crime (HB 356), banning racial profiling (SB 76), and supporting industrial hemp (HB 100).

Louisiana

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 969).
- **2001.** Legislature reforms "three strikes, you're out" law (SB 239), establishes a risk review panel to make recommendations on non-violent offenders that should be paroled or pardoned (SB 239), and removes mandatory sentences for simple drug possession and other non-violent offenses and cut sentences for many drug selling offenses in half (SB 239).

Maine

- **1997.** Legislature amends paraphernalia laws to allow possession of up to ten syringes (LD 351).
- **1999.** Voters legalize marijuana for medicinal purposes (Question 2).
- **2002.** Legislature expands the state's 1999 voter-approved medical marijuana law. This was the first time a state legislature expanded a voter-approved medical marijuana initiative (LD 611).

Maryland

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 499).
- **2000.** Legislature passes measure in support of industrial hemp (HB 1250).
- **2001.** Legislature bans racial profiling and mandates traffic stop data collection (HB 303). Also, establishes a task force to study repealing laws that disenfranchise felons (HB 495).
- **2002.** Legislature restores voting rights to felons upon completion of sentence for all first time offenses, and three years after completion of sentence for subsequent nonviolent offenses (HB 535).

Massachusetts

- **2000.** Legislature mandated traffic stop data collection (SB 2238).
- **2001.** Legislature totally opts out of welfare ban for former drug offenders (H 4800).

Michigan

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (SB 0169).
- **1998.** Legislature reforms "650" lifer law, which mandated life without parole for possession or distribution of 650 grams or more of heroin or cocaine (HB 4065).
- **2002.** The legislature reforms mandatory minimum drug sentences, gives judges the authority to use sentencing guidelines for most drug possession and delivery offenses, reserves consecutive sentences for top-level drug sellers, and eliminates mandatory lifetime probation for low-level drug offenders (HB 5394, HB 5395).

Minnesota

- **1997.** Legislature legalizes sale of syringes at pharmacies (SF 1908) and partially opts out of federal welfare ban for former drug offenders (SF 001)
- **1999.** Legislature passes measure in support of industrial hemp (HF 1238).
- **2001.** Legislature bans racial profiling (SF0007).

Mississippi

- **2001.** Legislature passes legislation exempting non-violent drug offenses (except sales) and other non-violent offenses from the state's requirement that inmates serve at least 85 percent of their imposed prison sentence (SB 5).

Missouri

- **2000.** Legislature bans racial profiling and mandates that police collect traffic-stop data (SB 1053).
- **2001.** Legislature reforms civil asset forfeiture laws (SB 5).

Montana

- **1999.** Legislature passes measure in support of industrial hemp (HR 2).
- **2001.** Legislature eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 174). Eliminates provisions providing for mandatory revocation of driver's licenses for people under 21 who buy, possess, or use a legal or illegal intoxicating substance (HB 191).

Nebraska

- **2001.** Legislature bans racial profiling and mandates traffic stop data collection (LB 593).

Nevada

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (AB 401).
- **1998.** Voters support ballot initiative to legalize marijuana for medicinal use (Ballot Question 9).
- **2000.** Voters legalize marijuana for medicinal use (Ballot Question 9). (Under Nevada law, initiatives have to be approved twice before they can take effect.)
- **2001.** Legislature implements voter-initiated medical marijuana measure (AB 453), decriminalizes marijuana for personal use (AB 453), and reforms drug forfeiture laws (SB 36).

New Hampshire

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (HB 722).
- **2000.** Legislature deregulates syringes, allowing pharmacies to sell them (HB 427).

New Jersey

- **1999.** Legislature partially opts out of federal welfare ban for former drug offenders (A2316).

New Mexico

- **1997.** Legislature establishes a statewide needle exchange program (SB 220).
- **1999.** Legislature passes measure in support of industrial hemp (HB 9).
- **2001.** Legislature deregulates pharmacy syringe sales (SB 320), limits liability for administration of anti-opioids (HB 813), restores voting rights to felons (SB 204), expands substance abuse intervention, treatment and harm reduction initiatives (SB 628), and establishes a women's reentry drug court that allows treatment instead of incarceration for the last 18 months of a woman's sentence (SB 200).
- **2002.** Legislature fully opts out of federal welfare ban (HB 11), expands judicial discretion (HB 26), reforms civil asset forfeiture laws (SB 5), and establishes commission to consider early release of non-violent offenders incarcerated on drug charges or as a result of parole revocation related to drug use or possession (HB 263).

New York

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (A8678, S. 5788).
- **2000.** Legislature deregulates syringes, allowing pharmacies to sell them (A9293-A, S. 6293-A).

North Carolina

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 352).
- **1999.** Legislature mandates traffic stop data collection (SB 76).

North Dakota

- **1999.** Legislature passes measures in support of industrial hemp (HB 1428, SB 2328, HCR 3038).
- **2001.** Legislature eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 1364), passes legislation directing the Legislative Council to examine the effectiveness and impact of mandatory minimum drug sentences (SCR 4018), and passes a measure in support of industrial hemp (HCR 3033).

Ohio

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (S. 52).

Oklahoma

- **1997.** Legislature totally opts out of federal welfare ban for former drug offenders (HB 2170).
- **2000.** Legislature mandates traffic stop data collection (SB 1444).

Oregon

- **1997.** Legislature bans racial profiling and mandates traffic stop data collection (HB 2433) and totally opts out of federal welfare ban for former drug offenders (SB 825).
- **1998.** Voters legalize marijuana for medicinal use (Measure 67). Legislature passes legislation re-criminalizing marijuana (which was decriminalized in the 1970s). Voters call a referendum and defeat criminalization (Measure 57).
- **2000.** Voters reform civil asset forfeiture laws (Measure 3).

Pennsylvania

- No reform

Rhode Island

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (H 6987).
- **2000.** Legislature deregulates syringes, allowing pharmacies to sell them (H 7949) and mandates traffic stop data collection (HB 7164).

South Carolina

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (H 3650).

South Dakota

- No reform

Tennessee

- **2000.** Legislature mandates traffic-stop data collection (SB 2415).
- **2001.** Legislature reforms criminal asset forfeiture laws (SB 585).
- **2002.** Legislature partially opts out of federal welfare ban for former drug offenders (SB 264).

Texas

- **2001.** Legislature bans drug convictions based solely on the testimony of an informant (HB 2351), bans racial profiling (SB 1074), and reforms drug forfeiture laws (SB 563).

Utah

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 269).
- **2000.** Voters reform civil asset forfeiture laws (Initiative B).
- **2002.** Legislature bans racial profiling and requires traffic stop data collection (HB 101).

Vermont

- **1996.** Legislature passes legislation in support of industrial hemp (H.0783).
- **2000.** Legislature legalizes methadone (S.303). (Vermont had been one of only eight states in the U.S. with no methadone maintenance treatment for heroin addiction.) Legislature also passes measure in support of industrial hemp (JRS 98).
- **2002.** Legislature established a commission to issue recommendations on the best way to provide legal protection to patients that use marijuana (S.193).

Virginia

- **1999.** Legislature passes measure in support of industrial hemp (HJ 94).
- **2001.** Legislature reduces the number of mandated hours of community service for first-time drug possession misdemeanors from "at least 100 hours" to "up to 24 hours" (HB 2751). Also passes a measure in support of industrial hemp (HJ 605).

Washington

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (HB 3901).
- **1998.** Voters legalize marijuana for medicinal use (Initiative 692).
- **2000.** Legislature mandates traffic stop data collection (SB 6683).
- **2001.** Legislature reforms civil asset forfeiture laws (HB 1995).
- **2002.** Legislature cuts drug sentences and uses savings to fund treatment (HB 2338), decriminalizes possession and sales of syringes (HB 1759), and bans racial profiling (SB 5852).

West Virginia

- **2002.** Legislature passes legislation legalizing industrial hemp for licensed farmers (SB 447) and bans racial profiling (HB 4289).

Wisconsin

- **1997.** Legislature partially opts out of federal welfare ban for former drug offenders (AB 100).

Wyoming

- No reform

APPENDIX B: REFORMS BY YEAR

1996

- **Industrial Hemp.** Legislatures pass legislation in support of industrial hemp in *Hawaii* (HR 71) and *Vermont* (H.0783).
- **Medical Marijuana.** *California* voters legalize medical marijuana (Proposition 215).
- **Treatment Instead of Incarceration/Medical Marijuana.** *Arizona* voters pass initiative allowing drug users to receive drug treatment instead of prison, saving taxpayers almost $2.5 million in the first year. The initiative also allows doctors to prescribe marijuana and other drugs (such as ecstasy) for medicinal use, if it becomes legal under federal law (Proposition 200).

1997

- **Methadone, Harm Reduction, and Treatment.** *Connecticut* legislature authorizes a methadone maintenance pilot program (SB 1259).
- **Partial Federal Opt-Out.** Legislatures partially opt out of federal welfare ban for former drug offenders in *Arkansas* (HB 1295), *Colorado* (SB 97-120), *Florida* (SB 566, SB 626), *Hawaii* (HB 480), *Illinois* (HB 0204), *Iowa* (SF 516), *Louisiana* (SB 969), *Maryland* (SB 499), *Minnesota* (SF 001), *Nevada* (AB 401), *North Carolina* (SB 352), *Rhode Island* (H 6987), *South Carolina* (H 3650), *Utah* (HB 269), *Washington* (HB 3901), and *Wisconsin* (AB 100).
- **Racial Profiling.** *Oregon* legislature bans racial profiling and mandates traffic stop data collection (HB 2433).
- **Syringe Availability.** *Maine* legislature amends paraphernalia laws to allow possession of up to ten syringes (LD 351). *Minnesota* legislature legalizes sale of syringes at pharmacies (SF 1908). *New Mexico* legislature establishes a needle exchange program (SB 220).
- **Total Federal Opt-Out.** Legislatures totally opt out of federal welfare ban for former drug offenders in *Connecticut* (HB 8003), *Michigan* (SB 0169), *New Hampshire* (HB 722), *New York* (A8678, S. 5788), *Ohio* (S. 52), *Oklahoma* (HB 2170), and *Oregon* (SB 825).

1998

- **Marijuana Decriminalization.** *Oregon* legislature passes legislation re-criminalizing marijuana (which was decriminalized in the 1970s). Voters call a referendum and defeat criminalization (Measure 57).
- **Medical Marijuana.** Voters legalize medical marijuana in *Alaska* (Ballot Measure 8), *Nevada* (Ballot Question 9), *Oregon* (Measure 67), *Washington* (Initiative 692), and *Washington, D.C.* (Initiative 59). Congress overturns the D.C. initiative.
- **Partial Federal Opt-Out.** *Kentucky* legislature partially opts out of federal ban on welfare for former drug offenders (HB 864).
- **Sentencing Reform.** *Michigan* legislature reforms "650" lifer law, which mandated life without parole for possession or distribution of 650 grams or more of heroin or cocaine (HB 4065).
- **Treatment Instead of Incarceration/Medical Marijuana.** *Arizona* legislature passes legislation restricting both provisions of Arizona's 1996 initiative. Voters call referendums on the restrictions and defeat them both at the ballot box (Proposition 300, Proposition 301).

1999

- **Forfeiture Reform.** *Arkansas* legislature reforms civil asset forfeiture laws (SB 555).
- **Industrial Hemp.** Legislatures pass measures in support of industrial hemp in *Arkansas* (SR 13), *California* (HR 32), *Hawaii* (HB 32, HR 109, HR 110), *Illinois* (SR 49, HR 168), *Minnesota* (HF 1238), *Montana* (HR 2), *New Mexico* (HB 9), *North Dakota* (HB 1428, SB 2328, HCR 3038), and *Virginia* (HJR 94).
- **Medical Marijuana.** *Maine* voters legalize medical marijuana (Question 2).
- **Partial Federal Opt-Out.** *New Jersey* legislature partially opts out of federal ban on welfare for former drug offenders (A2316).
- **Racial Profiling.** Legislatures mandate traffic-stop data collection in *Connecticut* (SB 1282) and *North Carolina* (SB 76). *Alabama* legislature passes a mandatory seat belt law containing provisions mandating the collection of statistics on people cited for violating it (HB 99-397). *California* legislature bans racial profiling and mandates traffic stop data collection, but Governor Gray Davis vetoes the legislation (SB 78).
- **Syringe Availability.** *Connecticut* legislature amends paraphernalia statute to allow possession of up to thirty syringes (HB 7501).

2000

- **Felony Disenfranchisement.** *Delaware* legislature passes legislation restoring voting rights to felons (HB 126).
- **Forfeiture Reform.** Voters reform civil asset forfeiture laws in *Oregon* (Measure 3) and *Utah* (Initiative B). *California* legislature passes forfeiture reform legislation, but Governor Gray Davis vetoes it (SB 1866).
- **Industrial Hemp.** Legislatures pass measures in support of industrial hemp in *Illinois* (HR 553), *Maryland* (HB 1250), and *Vermont* (JRS 98).
- **Medical Marijuana.** *Hawaii* legislature legalizes medical marijuana (SB 862). Voters legalize medical marijuana in *Colorado* (Amendment 20) and *Nevada* (Question 9). This is the second vote for Nevadans. (Under Nevada law, initiatives have to be approved twice before they can take effect).
- **Methadone, Harm Reduction, and Treatment.** *Vermont* legislature legalizes methadone (S.303).
- **Partial Federal Opt-Out.** *Idaho* legislature partially opts out of federal ban on welfare to former drug offenders (HB 575).
- **Racial Profiling.** Legislatures ban racial profiling and/or mandate traffic stop data collection in *California* (SB 1102), *Kansas* (HB 2683), *Massachusetts* (SB 2238), *Missouri* (SB 1053), *Oklahoma* (SB 1444), *Rhode Island* (HB 7164), *Tennessee* (SB 2415), and *Washington* (SB 6683).
- **Syringe Availability.** Legislatures deregulate syringes, allowing pharmacies to sell them, in *New Hampshire* (HB 427), *New York* (A9293-A, S.6293-A) and *Rhode Island* (H 7949).
- **Treatment Instead of Incarceration.** *California* voters pass Proposition 36, a treatment instead of incarceration initiative.

2001

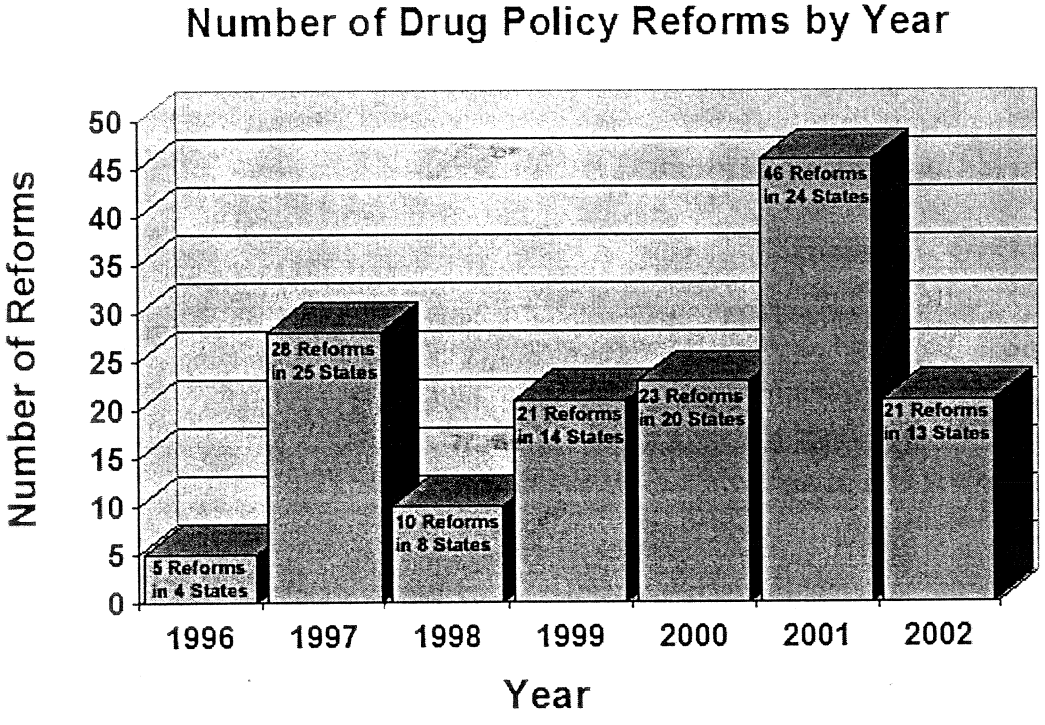
- **Felony Disenfranchisement.** *Connecticut* legislature restores voting rights to felons sentenced to probation (HB 5042). *Maryland* legislature establishes a task force to study repealing laws that disenfranchise felons (HB 495). *New Mexico* legislature restores voting rights to felons (SB 204).
- **Forfeiture Reform.** Legislatures reform civil asset forfeiture laws in *Missouri* (SB 5), *Nevada* (SB 36), *Texas* (SB 563), and *Washington* (HB 1995). *Tennessee* legislature reforms criminal asset forfeiture laws (SB 585).
- **Industrial Hemp.** Legislatures pass measures in support of industrial hemp in *Kentucky* (HB 100), *Montana* (SB 261), *North Dakota* (HCR 3033), and *Virginia* (HJR 605). *Illinois* legislature passes two measures in support of industrial hemp, but the Governor vetoes both (SB 1397, HB 3377).
- **Medical Marijuana.** *Nevada* legislature implements voter-initiated medical marijuana measure (AB 453).
- **Marijuana Decriminalization.** *Nevada* decriminalizes marijuana for personal use (AB 453).

- **Marijuana Tax Reform.** *Kentucky* legislature passes legislation prohibiting property owners from being "taxed" for marijuana growing on their property unless they are convicted of a crime (HB 356).
- **Methadone, Harm Reduction, and Treatment.** *New Mexico* legislature expands state-funded drug treatment programs, incorporating harm reduction principles (SB 628).
- **Overdose Prevention.** *New Mexico* legislature limits liability for administration of anti-opioids (HB 813).
- **Racial Profiling.** *Colorado* mandates traffic-stop data collection and officer diversity training (HB01-1114). *Florida* mandates that police develop policies to combat racial profiling, such as diversity training (SB 84). *Kentucky* bans racial profiling (SB 76). *Maryland* legislature bans racial profiling and mandates traffic-stop data collection (HB 303). *Minnesota* bans racial profiling (SF0007). *Nebraska* bans racial profiling and mandates traffic-stop data collection (LB 593). *Texas* legislature bans racial profiling (SB 1074).
- **Sentencing Reform.** *Arkansas* legislature passes legislation appointing a task force to examine racial disparities in sentencing for non-violent offenders and to make recommendations on what to do about it (HB 2615). *Connecticut* legislature gives judges discretion to waive certain mandatory minimum sentences for nonviolent offenders (SB 1160). *Indiana* legislature reforms their "three strikes, you're out" law (SB 358), expands treatment instead of incarceration (HB 1892), eliminates mandatory minimums for certain non-violent drug offenses (HB 1892), and reforms their "drug-free" zone laws (HB 1892). *Iowa* passes legislation giving judges discretion when sentencing "Class D" felony offenders to a determinate sentence (SF 543). *Louisiana* legislature reforms "three strikes, you're out" law (SB 239), establishes a risk review panel to make recommendations on non-violent offenders that should be paroled or pardoned (SB 239), and removes mandatory sentences for simple drug possession and other non violent offenses and cut sentences for many drug selling offenses in half (SB 239). *Mississippi* passes legislation exempting non-violent drug offenses (except sales) and other non-violent offenses from the state's requirement that inmates serve at least 85 percent of their imposed prison sentence (SB 5). *Montana* legislature eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 174) and eliminates provisions providing for mandatory revocation of driver's licenses for people under 21 who buy, possess, or use a legal or illegal intoxicating substance (HB 191). *New Mexico* legislature establishes a women's reentry drug court that allows early release to treatment, instead of incarceration, for the last 18 months of a woman's prison sentence (SB 200). *North Dakota* eliminates mandatory minimums for first-time offenders convicted of drug possession (HB 1364) and passes legislation directing the Legislative Council to examine the effectiveness and impact of mandatory minimum drug sentences (SCR 4018). *Texas* legislature bans drug convictions based solely on the testimony of an informant (HB 2351). *Virginia* legislature reduces the number of mandated hours of community service for first-time drug possession misdemeanors from "at least 100 hours" to "up to 24 hours" (HB 2751).
- **Syringe Availability.** *Arkansas* legislature passes legislation reducing the penalty for possession, use, or distribution of drug paraphernalia (such as syringes) from a Class C felony to a Class A misdemeanor (HB 2313). *New Mexico* legislature removes potential criminal liability for pharmacy syringe sales (SB 320).
- **Treatment Instead of Incarceration.** *California* legislature establishes new protections for probationers and parolees that fail drug tests (SB 223).
- **Total Federal Opt-Out.** *Massachusetts* totally opts out of federal ban on welfare for former drug offenders (H 4800).

2002

- **Felony Disenfranchisement.** *Maryland* legislature restores voting rights to felons upon completion of sentence for all first-time offenses, and three years after completion of sentence for subsequent nonviolent offenses (HB 535).
- **Forfeiture Reform.** Legislatures reform asset forfeiture laws in *Colorado* (HB 1404) and *New Mexico* (SB 5).
- **Industrial Hemp.** *West Virginia* legislature passes legislation legalizing industrial hemp for licensed farmers (SB 447).
- **Medical Marijuana.** *Maine* legislature passes legislation expanding the state's 1999 voter-approved medical marijuana law, making it the first time a state legislature has expanded a voter-approved medical marijuana initiative (LD 611). *Vermont* legislature established a commission to issue recommendations on the best way to provide legal protection to patients that use marijuana (S. 193).

- **Methadone, Harm Reduction, and Treatment.** *California* legislature passes legislation to repeal methadone dosage caps and bill requirements (SB 1447).
- **Overdose Prevention.** *California* legislature passes legislation to track and reduce fatal overdose (SB 1695).
- **Partial Federal Opt-Out.** *Tennessee* legislature partially opts out of federal welfare ban for former drug offenders (SB 264).
- **Racial Profiling.** *Utah* legislature bans racial profiling and requires traffic stop data collection (HB 101). *West Virginia* legislature bans racial profiling (HB 4289). *Washington* legislature bans racial profiling (SB 5852).
- **Sentencing Reform.** *Colorado* legislature cuts drug sentences and uses savings to fund treatment (SB 02-39), but Governor Bill Owens vetoes the bill. *Michigan* legislature reforms mandatory minimum drug sentences, gives judges the authority to use sentencing guidelines for most drug possession and delivery offenses, reserves consecutive sentences for top-level drug sellers, and eliminates mandatory lifetime probation for low-level drug offenders (HB 5394 and 5395). *New Mexico* legislature expands judicial discretion (HB 26), and establishes commission to consider early release of non-violent offenders incarcerated on drug charges or as a result of parole revocation related to drug use or possession (HB 263). *Washington* legislature cuts drug sentences and uses savings to fund treatment (HB 2338)
- **Syringe Availability.** *Washington* legislature decriminalizes possession and sale of syringes (HB 1759).
- **Total Federal Opt-Out.** *New Mexico* legislature fully opts out of federal welfare ban for former drug offenders (HB 11).
- **Treatment Instead of Incarceration.** *Hawaii* legislature implements Proposition 36-style treatment instead of incarceration (SB 1188). Voters in *Washington D.C.* provide for treatment instead of incarceration for first and second time non-violent drug offenders in the District of Columbia (Measure 62).



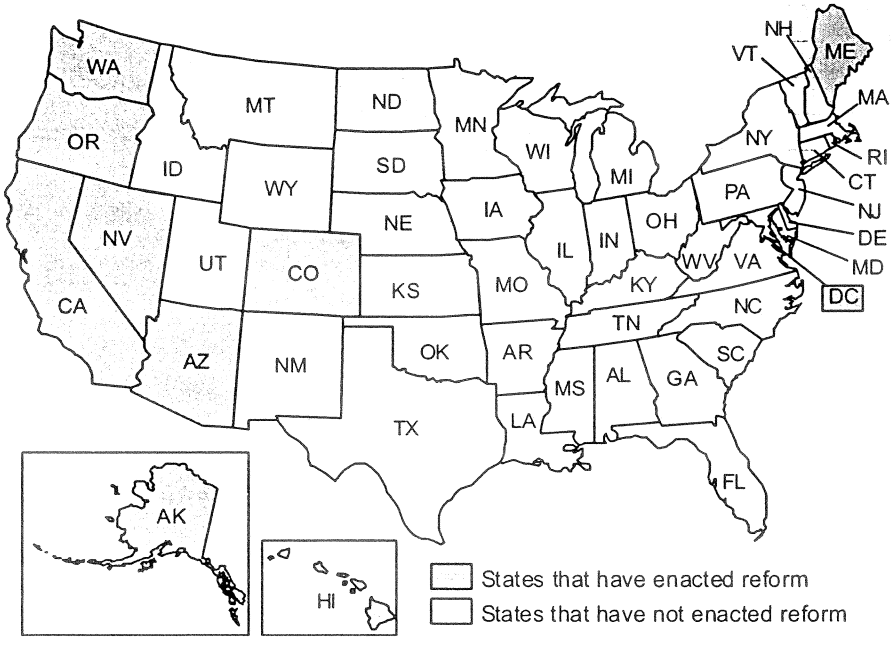
Initiatives Approved by Voters:

YEAR	STATE	SUBJECT	% Yes
1996	AZ	Proposition 200 – Treatment Instead of Incarceration/Medical Marijuana	65%
1996	CA	Proposition 215 – Medical Marijuana	56%
1998	AK	Ballot Measure 8 – Medical Marijuana	59%
1998	DC	Initiative 59 – Medical Marijuana	69%
1998	NV	Ballot Question 9 – Medical Marijuana	59%
1998	OR	Measure 67 – Medical Marijuana	55%
1998	WA	Initiative 692 – Medical Marijuana	59%
1999	ME	Question 2 – Medical Marijuana	61%
2000	CA	Proposition 36 – Treatment Instead of Incarceration	61%
2000	CO	Amendment 20 – Medical Marijuana	54%
2000	NV	Question 9 – Medical Marijuana	65%
2000	OR	Measure 3 – Civil Asset Forfeiture Reform	67%
2000	UT	Initiative B – Civil Asset Forfeiture Reform	69%
2002	DC	Measure 62 – Treatment Instead of Incarceration	78%

Roll Back Legislation Rejected by Voters:

YEAR	STATE	SUBJECT	% No
1998	AZ	Proposition 300 – Overturning certain medical marijuana provisions of Proposition 200	57%
1998	AZ	Proposition 301 – Overturning certain treatment instead of incarceration provisions of Proposition 200	52%
1998	OR	Measure 57 – Criminalizing possession of an ounce or less of marijuana	66%

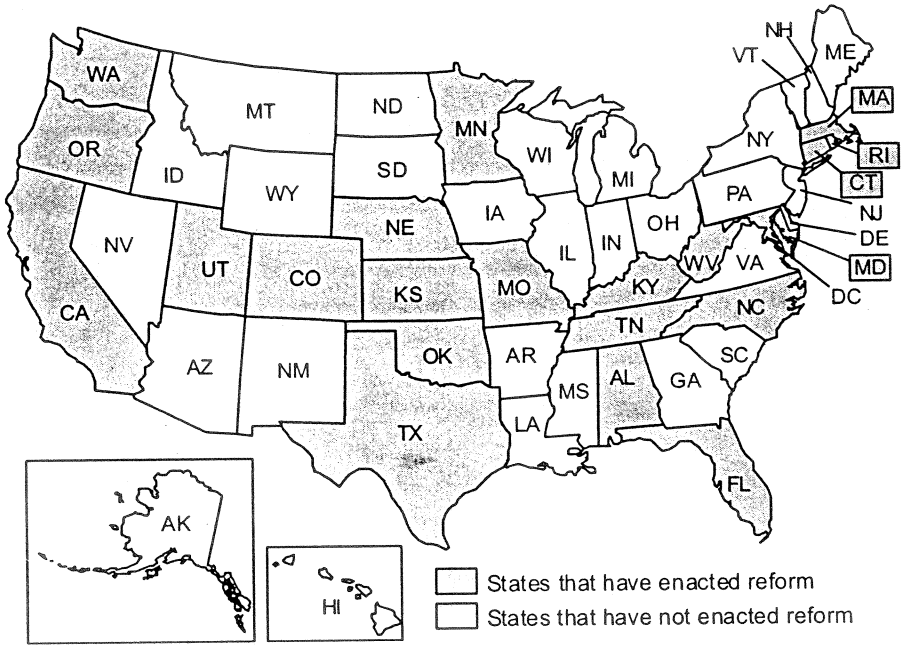
Medical Marijuana Reform: 15 reforms / 9 states and DC
States: AK, AZ, CA, CO, DC, HI, ME, NV, OR, WA
(See map below)



Racial Profiling: 22 reforms / 21 states

States: AL, CA, CO, CT, FL, KS, KY, MA, MD, MN, MO, NC, NE, OK, OR, RI, TN, TX, UT, WA, WV

(See map below)

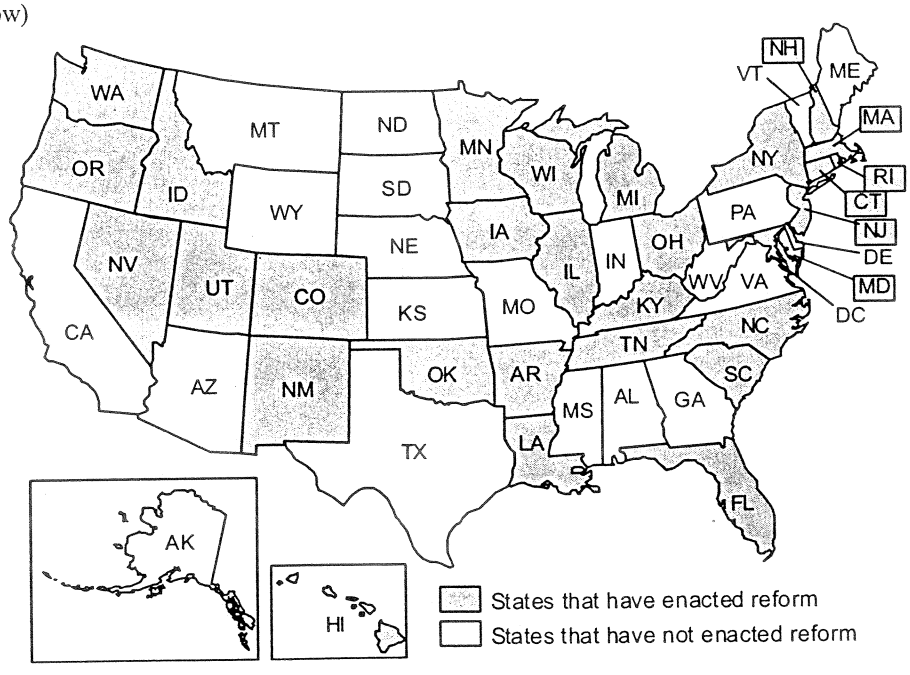


Restoring Welfare Eligibility to Former Drug Offenders (partially or totally):

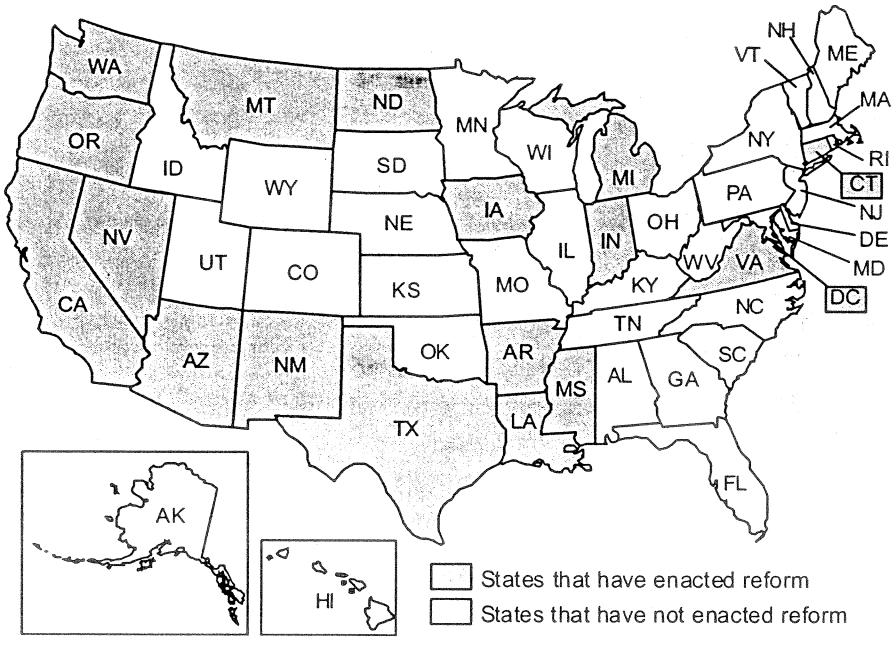
29 reforms / 29 states

States: AR, CO, CT, FL, HI, IA, ID, IL, KY, LA, MA, MD, MI, MN, NC, NH, NJ, NM, NV, NY, OH, OK, OR, RI, SC, TN, UT, WA, WI

(See map below)



Sentencing Reform: 32 reforms / 18 states and DC
States: AR, AZ, CA, CT, DC, HI, IA, IN, LA, MI, MS, MT, ND, NM, NV, OR, TX, VA, WA
(See map below)



Other Issues:

Methadone, Harm Reduction, and Treatment: 4 reforms / 4 states
States: CA, CT, NM, VT

Overdose Prevention: 2 reforms / 2 states
States: CA, NM

Forfeiture Reform: 10 reforms / 10 states
States: AR, CO, MO, NM, NV, OR, TN, TX, UT, WA

Felony Disenfranchisement Reform: 5 reforms / 4 states
States: CT, DE, MD, NM

Industrial Hemp: 24 reforms / 13 states
States: AR, CA, HI, IL, KY, MD, MN, MT, ND, NM, VA, VT, WV

Marijuana Decriminalization (also included under Sentencing Reform):
2 reforms / 2 states
States: NV, OR

Marijuana Tax Reform: 1 reform / 1 state
State: KY

Treatment Instead of Incarceration (also included under Sentencing Reform):
6 reforms / 3 states and DC
States: AZ, CA, DC, HI

Sterile Syringe Availability: 10 reforms / 9 states
States: AR, CT, ME, MN, NH, NM, NY, RI, WA

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[3] D.R. Gerstein et al., *Evaluation Recovery Services: The California Drug and Alcohol Treatment Assessment, General Report* (Chicago: National Opinion Research Center, 1994). Submitted to the State of California Department of Alcohol and Drug Programs.
[4] Peter Hart and Associates, *Changing Public Attitudes toward the Criminal Justice System* (New York: Open Society Institute, February 2002). 63 percent of respondents replied that drug abuse should be handled by treatment and counseling as opposed to prison.
[5] "Support for Crime Prevention Rises as Tough Approach Loses," *Wall Street Journal*, 13 February 2002. Also, a 2001 ABC News poll found that 69 percent of Americans support laws requiring drug treatment over jail time for first and second-time nonviolent drug offenders. See Kate Miltner, "Treatment Over Jail Time Poll: Most Favor Efforts to Combat Addiction Over Punishment," June 2001, <http://abcnews.go.com/sections/politics/DailyNews/poll010606.html> (March 2003).
[6] See pages 12-13 of this report for detailed information on voter enacted legislative reforms in Arizona.
[7] See pages 13-16 of this report for detailed information on voter enacted legislative reforms in California.
[8] Arizona Supreme Court, Office of the Courts, *Drug Treatment and Education Fund: Legislative Report FY 1997-1998* (Arizona: Arizona Supreme Court, March 1999): 12.
[9] D. Longshore, E. Evans, D. Urada, C. Teruya, M. Hardy, Y. Hser, M. Prendergast and S. Ettner, *Evaluation of the Substance Abuse and Crime Prevention Act 2002 Report* (Los Angeles, CA: University of California Los Angeles Integrated Substance Abuse Programs, July 2003). See also Drug Policy Alliance, *Proposition 36 One-Year Progress Report* (Sacramento, CA: Drug Policy Alliance, July 2002) <http://www.prop36.org/one_year_report.html> (1 July 2002).
[10] The Gallup Poll Organization, "Americans Oppose General Legalization of Marijuana, But Support Use for Medicinal Purposes," March 1999, <http://www.gallup.com/subscription/?m=f&c_id=10515> (March 2003).
[11] Joel Stein, "The New Politics of Pot," *Time*, 4 November 2002.
[12] Many medical marijuana patients and caregivers attest to the efficacy of marijuana in relieving a variety of medical conditions. Additionally, medical and other professional associations have endorsed medical marijuana. In June 2001, the American Medical Association's Council on Scientific Affairs affirmed "the appropriateness of compassionate use of marijuana . . . designed to provide symptomatic relief of nausea, vomiting, cachexia, anorexia, spasticity, acute or chronic pain, or other palliative affects." See American Medical Association, Council on Scientific Affairs, *Report 6 of the Council on Scientific Affairs (A-01): Medical Marijuana*, June 2001, <http://www.ama-assn.org/ama/pub/article/2036-4971.html> (15 June 2001).
[13] The Executive Summary of a report from the 1998 Workshop on the Medical Utility of Marijuana held by the National Institutes of Health include that "even for conditions where good therapies are available, some patients develop adverse reactions or are nonresponders. The needs of this subset of nonresponders must be considered in the deliberations on testing marijuana as a possible therapeutic agent," going into detail about specific medical uses of marijuana. See National Institutes of Health, Workshop on the Medical Utility of Marijuana, Ad Hoc Group of Experts, *Report to the Director*, 1998, <http://www.nih.gov/news/medmarijuana/MedicalMarijuana.htm#EXECUTIVE> (1 June 2000).
[14] Janet Joy et al., eds., *Marijuana and Medicine: Assessing the Science Base* (Washington, D.C.: National Academy of Sciences Institute of Medicine, 1999): 4.
[15] John Benson, prepared statement, Institute of Medicine News Conference for *Marijuana and Medicine: Assessing the Science Base* (Washington, D.C.: National Academy of Sciences Institute of Medicine, 17 March 1999). Similarly, a 1994 report of the Australian National Task Force on Cannabis stated that "THC has shown to be an effective anti-emetic (anti-nausea) agent for some patients undergoing cancer chemotherapy . . . There is reasonable evidence for the efficacy of THC in the treatment of glaucoma . . . . There is suggestive evidence for the value of various cannabinoids as anti-spasmodic and anti-convulsant agents." Robert Ali and Paul Christie, eds., *Report of*

the National Task Force on Cannabis (Canberra, Australia: Australian Government Publishing Service, 30 September 1994), 17. A September 2002 report of the Canadian Senate Special Committee on Illegal Drugs likewise states, "There are clear . . . indications of the therapeutic benefits of marijuana [for] chronic pain . . . multiple sclerosis . . . epilepsy . . . chemotherapy . . . and . . . cachexi." Pierre Claude Nolin and Colin Kenny et al., *Cannabis: Our Position for a Canadian Public Policy: Report of the Senate Special Committee on Illegal Drugs* (Ottawa, Canada: Senate Special Committee on Illegal Drugs, September 2002), 206.

[16] See page 13-16 of this report for detailed information on Proposition 215 and medical marijuana in California.

[17] William N. Brownsberger and Susan Aromaa, *An Empirical Study of the School Zone Law in Three Cities in Massachusetts* (Boston, MA: Join Together and Boston University School of Public Health, July 2001) <http://www.jointogether.org/sa/files/pdf/school_zone.pdf> (1 August 2001).

[18] Ellen Perlman, "Terms of Imprisonment," *Governing Magazine*, April 2000.

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[20] Centers for Disease Control and Prevention, "Heroin Overdose Deaths – Multnomah County, Oregon, 1993-1999," *Morbidity and Mortality Weekly Report*, 21 July 2000.

[21] Several reports and studies have discussed effective overdose prevention strategies. See Catherine McGregor et al., *It's Rarely Just the 'H': Addressing Overdose Among South Australia Heroin Users Through a Process of Intersectoral Collaboration* (Parkside, Australia: Drug and Alcohol Services Council, 1999); Donald MacPherson, *A Framework for Action: A Four-Pillar Approach to Drug Problems in Vancouver* (Vancouver, Canada: City of Vancouver, 2001).

[22] See Catherine McGregor et al., *It's Rarely Just the 'H': Addressing Overdose Among South Australia Heroin Users Through a Process of Intersectoral Collaboration* (Parkside, Australia: Drug and Alcohol Services Council, 1999); Donald MacPherson, *A Framework for Action: A Four-Pillar Approach to Drug Problems in Vancouver* (Vancouver, Canada: City of Vancouver, 2001).

[23] Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs* (New York: Human Rights Watch, May 2000); David Harris, *Driving While Black: Racial Profiling on our Nation's Highways: An ACLU Special Report* (New York: American Civil Liberties Union, June 1999); Marc Mauer, *Young Black Men and the Criminal Justice System* (Washington, D.C.: The Sentencing Project, February 1990).

[24] The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (Washington, D.C.: The Sentencing Project, October 1998).

[25] Ibid.

[26] Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report: U.S. HIV and AIDS cases reported through December 1999* 11, no. 2 (1999). Up to 10,000 HIV infections could have been avoided in the U.S. between 1987 and 1995 if the federal government had implemented syringe exchange nationally, saving over $500 million in health care costs. Action taken in early 1997 could have prevented an additional 11,000 infections by the year 2000, saving over $600 million. See P. Lurie and E. Drucker, "An opportunity lost: HIV infections associated with lack of a national needle-exchange programme in the USA," *Lancet* 349 (1997): 604-608.

[27] Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report: U.S. HIV and AIDS cases reported through June 2000* 12, no. 1 (2000): 22.

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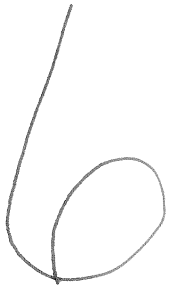

SENATE BILL No. 476

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-10; IC 11-12-5-7; IC 12-7-2; IC 12-15-43; IC 12-23-5; IC 33-14-1-7.

Synopsis: Community corrections and the mentally ill. Requires the department of correction to evaluate an offender for mental or addiction disorders and to arrange for treatment of an offender with a mental or chronic addiction disorder. Establishes a forensic collaboration program to provide services to adults with a mental illness through collaboration with criminal justice, mental health, and other service systems. Establishes a forensic diversion program to permit an adult with mental or addictive disorders who has been charged or convicted of a crime to receive treatment instead of incarceration. Creates the forensic transition fund out of money appropriated to the department of correction for incarceration of individuals with a mental illness and permits counties to receive funds from the forensic transition fund to operate a forensic diversion and forensic collaboration program. Requires the county executive to establish an advisory committee to assist the county in creating and operating the forensic diversion and collaboration programs. Requires jail and department of correction physicians to administer appropriate drugs for the treatment of mental illness or addictive disorders if these drugs are available to Medicaid recipients. Requires the department of correction to take steps to ensure that released offenders may receive Medicaid and other federal benefits as soon as possible following their release from incarceration. Makes other changes.

Effective: July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

Introduced

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 476

A BILL FOR AN ACT to amend the Indiana Code concerning corrections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 11-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A committed criminal offender shall, within a reasonable time, be evaluated regarding:

(1) ~~his~~ **the offender's** medical, psychological, educational, vocational, economic and social condition, and history;

(2) the circumstances surrounding ~~his~~ **the offender's** present commitment;

(3) ~~his~~ **the offender's** history of criminality; ~~and~~

(4) **the offender's mental or addiction disorders; and**

(5) any additional relevant matters.

(b) In making the evaluation prescribed in subsection (a), the department may utilize any presentence report, any presentence memorandum filed by the offender, any reports of any presentence physical or mental examination, the record of the sentencing hearing, or other information forwarded by the sentencing court or other agency, if that information meets the department's minimum standards for

criminal offender evaluation.

(c) If an offender has undergone, within two (2) years before the date of his commitment, a previous departmental evaluation under this section, the department may rely on the previous evaluation and the information used at that time. However, this subsection does not deprive an offender of the right to a medical and dental examination under IC 11-10-3.

SECTION 2. IC 11-10-3-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 6. (a) The department shall allow a physician to prescribe and administer to an offender any medication:**

(1) that is available to an individual who is eligible for Medicaid under IC 12-15; and

(2) that is administered to the offender to treat a mental illness or addictive disorder.

(b) The department may issue practice guidelines but may not require a physician to obtain prior authorization before prescribing or administering a medication under subsection (a).

SECTION 3. IC 11-10-4-2, AS AMENDED BY P.L.215-2001, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The department shall provide **or arrange** for the care and treatment of every confined offender who is determined to ~~be mentally ill by a psychiatrist employed or retained by the department.~~ **have a mental illness or chronic addictive disorder by a provider (as defined in IC 12-7-2-149(2)).** To provide that care and treatment, the department may:

(1) establish and operate its own mental health facilities and programs;

(2) transfer offenders to the division of mental health and addiction, subject to the approval of the director of the division of mental health and addiction; or

(3) contract with any city, county, state, or federal authority or with other public or private organizations for the provision of care and treatment.

SECTION 4. IC 11-10-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 4.5. Forensic Collaboration Program

Sec. 1. As used in this chapter, "forensic collaboration program" means a program developed to serve an adult with a mental illness through collaboration with criminal justice programs, mental health programs, and other service systems.

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Sec. 2. As used in this chapter, "forensic diversion program" means a program developed to ensure that an adult with a mental illness or addictive disorder who is alleged to have committed a crime or who has been convicted of a crime receives adequate treatment or other services from a provider (as defined in IC 12-7-2-149(2)) instead of incarceration or following incarceration. An adult with a mental illness or addictive disorder who is alleged to have committed a crime or who has been convicted of a crime may participate in a forensic diversion program:

(1) before the adult's arrest, arraignment, or trial; or

(2) following the sentencing hearing, including the period in which the adult:

(A) is serving a sentence for an offense;

(B) is participating in a community transition program; or

(C) is on probation or parole.

Sec. 3. (a) The forensic transition fund is established to provide for the placement of qualified individuals into a forensic diversion program or a forensic collaboration program. The fund shall be administered by the department and consists of money deposited in the fund from money appropriated to the department for the incarceration of persons with mental illnesses or addictive disorders.

(b) The department shall deposit enough money into the fund from the source described in subsection (a) to provide a forensic diversion program or a forensic collaboration program for persons with mental illnesses or addictive disorders.

(c) The expenses of the fund shall be paid by the department.

(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(f) Money in the fund is continually appropriated to the department to carry out the purposes of this chapter.

(g) The department shall develop a plan to determine how much money to deposit in the fund under this section. The budget committee shall review the plan. The budget agency must approve the plan.

(h) The department shall adopt rules governing the disbursement of funds to a county that complies with the provisions of this chapter.

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Sec. 4. A county may receive funds from the forensic transition fund established by section 3 of this chapter if the county does the following:

(1) Documents the county's need for a forensic collaboration program.

(2) Designs a forensic collaboration program based on the county's needs.

(3) Initiates and encourages continuing community participation in the development and operation of the forensic collaboration program, including the active participation of individuals with a mental or addictive disorder, the family of an individual with a mental or addictive disorder, and advocates for individuals with mental or addictive disorders.

(4) Develops a plan to implement a forensic diversion program.

(5) Ensures that community based mental health and addiction services are available and accessible for individuals who are diverted from or who have exited the criminal justice system.

(6) Encourages that community based mental health and addiction services are based on the best practices and use the findings of current research.

(7) Establishes processes that provide for flexible, individualized, and coordinated service planning for eligible individuals.

(8) Provides individuals with the right to participate in the planning of their treatment and to receive appropriate effective treatment alternatives to the extent practicable.

(9) Provides services that are linguistically appropriate, gender competent, and culturally competent to the extent practicable.

(10) Designs procedures for early identification of serious mental or addictive disorders among people with whom law enforcement officials come into contact.

(11) Provides eight (8) or more hours of annual in-service training for at least one (1) law enforcement officer per ten thousand (10,000) county residents, focusing on the appropriate responses or intervention for people with mental or addictive disorders. The law enforcement official trained under this subdivision shall be known as a mental health/addiction special responder.

(12) Provides that a mental health/addiction special responder

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shall be dispatched to the scene of any incident when it appears that an individual may be acting under the influence of a mental illness or chronic addiction.

(13) To the extent permitted by law, grants a mental health/addiction special responder the discretion to make dispositional decisions concerning the individual.

(14) Develops a specialized dispatch code to protect the privacy and dignity of the individual.

(15) Uses a standardized screening tool to assess individuals for mental illness and addiction before arraignment and to guide the provision of appropriate treatment for the mental health and addiction needs of all individuals entering the criminal justice system or incarcerated in a local correctional facility.

Sec. 5. The county executive (as defined in IC 36-1-2-5) shall appoint an advisory group that includes the following members:

(1) One (1) local judge.

(2) One (1) representative from the county sheriff's department.

(3) One (1) representative from a local police department.

(4) One (1) representative from a local adult correctional facility.

(5) One (1) representative from the county prosecuting attorney's office.

(6) One (1) representative from the county public defender's office.

(7) One (1) attorney who practices in the mental health area.

(8) One (1) representative from an addictions advocacy organization.

(9) One (1) representative of the family members of adults with addictive disorders.

(10) One (1) adult consumer of public mental health or addiction services.

The advisory group shall assist the county in developing priorities, operating the forensic collaboration program, and monitoring the effect of the program.

Sec. 6. Each county shall do the following:

(1) Establish and provide procedures for the early identification of serious mental or addictive disorders among detainees, including initial intake and assessment programs for individuals who are arrested.

(2) Permit an individual who:

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(A) is not charged with a crime involving serious bodily injury; and

(B) has had more than one (1) prior conviction for a crime involving a forcible felony (as defined in IC 35-41-1-11);

to participate in an arraignment or post-arraignment diversion program.

(3) Provide for deferred prosecution under IC 33-14-1-7 or IC 12-23-5-7 for an eligible individual, pending participation in a program of services.

(4) Ensure that entry into the forensic diversion program requires an individual's informed consent.

(5) Permit an individual participating in a forensic diversion program to discontinue participation sixty (60) days after the individual's primary caregiver, physician, or counselor has released the individual from all care except for basic monitoring.

SECTION 5. IC 11-12-5-7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7. (a) The county sheriff or jail administrator shall allow a physician to prescribe and administer to an offender any medication:**

(1) that is available to an individual who is eligible for Medicaid under IC 12-15; and

(2) that is administered to the offender to treat a mental illness or addictive disorder.

(b) The county sheriff or jail administrator may issue practice guidelines but may not require a physician to obtain prior authorization before prescribing or administering a medication under subsection (a).

SECTION 6. IC 12-7-2-133.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 133.7. "Offender", for purposes of IC 12-15-4-3, has the meaning set forth in IC 33-19-3-2.5.**

SECTION 7. IC 12-7-2-149, AS AMENDED BY P.L.283-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 149. "Provider" means the following:

(1) For purposes of IC 12-10-7, the meaning set forth in IC 12-10-7-3.

(2) For purposes of the following statutes, an individual, a partnership, a corporation, or a governmental entity that is enrolled in the Medicaid program under rules adopted under IC 4-22-2 by the office of Medicaid policy and planning:

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(A) **IC 11-10-4 and IC 11-10-4.5.**

(B) IC 12-14-1 through IC 12-14-9.5.

~~(B)~~ **(C)** IC 12-15, except IC 12-15-32, IC 12-15-33, and IC 12-15-34.

~~(C)~~ **(D)** IC 12-17-10.

~~(D)~~ **(E)** IC 12-17-11.

~~(E)~~ **(F)** IC 12-17.6.

~~(F)~~ **(G)** IC 12-17.7.

(3) For purposes of IC 12-17-9, the meaning set forth in IC 12-17-9-2.

(4) For the purposes of IC 12-17.2, a person who operates a child care center or child care home under IC 12-17.2.

(5) For purposes of IC 12-17.4, a person who operates a child caring institution, foster family home, group home, or child placing agency under IC 12-17.4.

SECTION 8. IC 12-15-43 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 43. Medicaid Eligibility for Incarcerated Offenders

Sec. 1. Whenever an offender with a mental illness who is enrolled in the Medicaid program is incarcerated:

(1) to the extent permitted by federal law, the office shall suspend rather than terminate the offender's eligibility for Medicaid, and the offender's eligibility for Medicaid shall remain suspended rather than terminated for as long as is permitted by federal law; and

(2) the office shall not terminate the offender from the Medicaid program unless the offender:

(A) no longer meets the Medicaid eligibility criteria under which the offender initially qualified; and

(B) is not eligible for Medicaid under any other Medicaid eligibility category.

Sec. 2. Upon the release from incarceration of an offender whose Medicaid eligibility was suspended and upon receipt of the application described in section 3, the office shall restore the Medicaid eligibility of the offender unless the office determines that the offender is no longer eligible for Medicaid.

Sec. 3. The department of correction shall do the following to ensure that the benefits of an offender whose Medicaid eligibility was suspended are restored:

(1) Identify offenders with a mental illness whose federal Supplemental Security Income, Supplemental Security

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Disability Income, or Medicaid was suspended during incarceration.

(2) Ensure that an application for Medicaid is filed on behalf of an offender identified in subdivision (1) at least forty-five (45) days before the offender's release from incarceration.

(3) Ensure that an application for federal Supplemental Security Income or Supplemental Security Disability Income is filed on behalf of an offender as soon as possible following the offender's release from incarceration.

(4) Give every offender upon whose behalf an application for federal Supplemental Security Income, Supplemental Security Disability Income, or Medicaid was filed a copy of the application for Medicaid, federal Supplemental Security Income, or Supplemental Security Disability Income when the offender is released from incarceration.

SECTION 9. IC 12-23-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. In a criminal proceeding for a misdemeanor or infraction in which:

(1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or

(2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court ~~may~~ **shall** take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

SECTION 10. IC 12-23-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) Subject to section 8 of this chapter, before conviction a court ~~may;~~ **shall,** with the consent of the defendant and the prosecuting attorney, conditionally defer the proceedings described in section 1 of this chapter for up to one (1) year.

(b) The court ~~may~~ **shall** do the following:

(1) Order the defendant to satisfactorily complete an alcohol and drug services treatment program if the court makes a determination under section 1(1) of this chapter.

(2) Order the defendant to undergo treatment for the defendant's mental illness if the court makes a determination under section 1(2) of this chapter.

(3) Impose other appropriate conditions upon the defendant.

SECTION 11. IC 12-23-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. Prosecution ~~may~~

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shall be deferred under sections 2 through 5 of this chapter if a defendant has been charged with a **Class D felony, a** misdemeanor, or **an** infraction in which the use of alcohol or drugs was a contributing factor or material element of the offense or the defendant's mental illness was a contributing factor, unless at least one (1) of the following exists:

(1) The offense involves death or serious bodily injury.

(2) The defendant has a record of at least two (2) prior convictions of forcible felonies (as defined in IC 35-41-1).

(3) Other criminal proceedings, not arising out of the same incident, alleging commission of a felony are pending against the defendant.

(4) The defendant is on probation or parole and the appropriate parole or probation authority does not consent to the defendant's participation.

(5) The defendant fails to meet additional eligibility requirements imposed by the court.

SECTION 12. IC 33-14-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A prosecuting attorney may withhold prosecution against an accused person if:

(1) the person is charged with a misdemeanor;

(2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; and

(3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

(b) An agreement under subsection (a) may include conditions that the person:

(1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-19-5-1;

(2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;

(3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;

(4) support the person's dependents and meet other family responsibilities;

(5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;

(6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;

(7) report to the prosecuting attorney at reasonable times;

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(8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; ~~and~~

(9) participate in ~~dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.~~ **an appropriate alcohol and drug services treatment program; and**

(10) participate in an appropriate therapy program.

(c) An agreement under subsection (a)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(d) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(e) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

(f) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (b)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

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Cutting Correctly: New Prison Policies for Times of Fiscal Crisis

I. INTRODUCTION

Corrections was one of the fastest growing line items in state budgets during the 1990's.[1] It cost nearly $40 billion to imprison approximately two million state and local inmates in 2000, up from $5 billion in combined prison and jail expenditures in 1978.[2] Twenty-four billion of that was spent on the incarceration of nonviolent offenders.[3]

Although the 1990's were witness to the largest prison population increase in U.S. history,[4] state prison populations around the country began to show signs of decline in the first year of the new millennium. A report by the U.S. Department of Justice, Bureau of Justice Statistics showed that, while prison roles grew nationwide by 1.3 percent in 2000, during the last six months of 2000, the nation's state prison populations actually *declined* by 6,200 inmates, the first such decline since 1972. Overall, 13 states saw declines in their prison populations in 2000.[5]

16 States and Jurisdictions had no growth, or saw their prison population declines in 2000

States with Prison Population Declines

- Maine
- Massachusetts
- New Jersey
- New York
- Kansas
- Ohio
- Delaware
- District of Columbia
- Kentucky
- South Carolina
- Tennessee
- Texas
- Wyoming
- Connecticut

States with No Prison Population Growth

- California
- New Hampshire

Source: Prisoners in 2000, U.S. Dept. of Justice, Bureau of Justice Statistics, 2001

Despite the modest recent decline in state prison populations, the massive growth in state prisoners over the past two decades continues to have a significant impact on state and local government expenditures. On average, corrections consumed 7 percent of state budgets in 2000.[6] This means that one out of every 14 general fund dollars spent in 2000 was spent on prisons.

One out of every 14 general fund dollars spent in 2000 was spent on prisons.

While state government officials may have felt they could afford incarceration largess during the boom years of the 1990's, state budgets are now groaning under the weight of the recent

recession compounded by the revenue loss associated with the September 11 terrorist attacks. According to the National Association of Budget Officer's (NASBO) *Fiscal Survey of States,* states around the country expect $40 billion in shortfalls for fiscal year 2002.[7]

NASBO reports that the last time states were facing significant budget shortfalls was during the early 1990's, but those deficits were nowhere near what states are facing today. For example, by way of comparison, in 1991, states had to cut their budgets by $7.6 billion, less that one-fifth the cuts estimated for next fiscal year.[8] According to the Bureau of Economic Analysis, over the last 12 months, state and local tax revenue growth was the slowest since the Bureau began keeping track of such data in the late 1950's.

For example, when California Governor Gray Davis announced *this year's* spending cuts, he stated, "California is facing the steepest decline in state revenue in more than half a century. California's economy, which was beginning to slow before the September 11 tragedy, has been dramatically affected by the results of the terrorist attacks. The extraordinarily rapid decline in state revenues requires additional reductions in current year spending."[9] According to NASBO's analysis, California anticipates a budget shortfall of $8 to $14 billion next fiscal year.

California is facing the steepest decline in state revenue in more than half a century

Despite significant state expenditures on corrections growth, the connection between prison population increases and crime reduction remains elusive. For example, during the 1990's, Texas added more prisoners to its prison system (98,081) than New York's entire prison population (73,233) by some 24,848 prisoners. This means that the number of prisoners that Texas added during the 1990's was 34 percent higher than New York's entire prison population. While Texas had the fastest growing prison system in the country during the 1990's, New York had the third slowest growing prison population in the U.S. Over all, during the 1990's, Texas added five times as many prisoners as New York did (18,001). Yet from 1990 to 1998, the decline in New York's crime rate was 26 percent *greater* than the drop in crime in Texas. Texas' 1999 incarceration rate (1,014 per 100,000) was 77 percent higher than New York's (574 per 100,000), yet Texas' 1998 crime rate (5,111 per 100,000) was 42 percent higher than New York's (3,588 per 100,000). In 1998, Texas' murder rate was 25 percent higher than New York State's rate.[10]

Some states around the country have already responded to the fiscal crisis with prison closures and/or downsizing. Confident that closing prisons will not pose any great risk to public safety, and struggling to bridge their budget gaps, Republican governors in four states have decided to close prisons.

In **Ohio,** under Governor Bob Taft (R), a sustained decline in the state's prison population has made closing one or more prisons an easy, attractive target in the state's belt-tightening efforts (as will be discussed in more detail below). Department of Corrections officials have decided to close the century-old 1,724-bed Orient Correctional Institution, saving $41.9 million in annual operating costs, and averting $16 million in needed renovations, to help make up for a $1.5 billion deficit in the biennial budget.[11]

Governor George Ryan (R) in **Illinois** has announced the closure of the 141-year-old Joliet prison that will cut the prison budget by $41 million.[12] **Michigan** Governor John Engler's (R) efforts to bridge a $500 million deficit with budget cuts included closing the maximum-security prison at Jackson, the Pontiac Correctional Center, Camp Pellston and most housing units at the Michigan Reformatory at Ionia, wringing a total of $55 million from the $1.6 billion DOC budget.[13] And in **Florida**, Gov. Jeb Bush plans to close the Hendry Correctional Institution, one of the state's older, more labor-intensive facilities, saving $1.8 million in salary costs.[14]

Obviously, closing entire prisons (or entire sections of prisons) saves far more than simply reducing overall prison system populations. For example, in **California**, the average annual cost per inmate is estimated at $25,607,[15] whereas the *marginal* per prisoner cost savings from removing some portion of the population from an otherwise overcrowded prison is only $13,476.[16]

Other states have put prisons on the chopping block in the face of budget deficits. In Kansas, Governor Bill Graves (R) has proposed to close minimum-security prisons in order to deal with a $426 million FY2003 budget deficit. The Oregon Department of Corrections, under Governor John A. Kitzhaber, M.D. (D), was considering closing six minimum-security prisons, while plans for construction of new medium security prisons are under hot political debate across the state. California officials are talking about closing five small community corrections facilities that house minimum-security prisoners (while, ironically, still considering constructing a new, ironically, still considering constructing a new, $335 million prison in Delano, California).

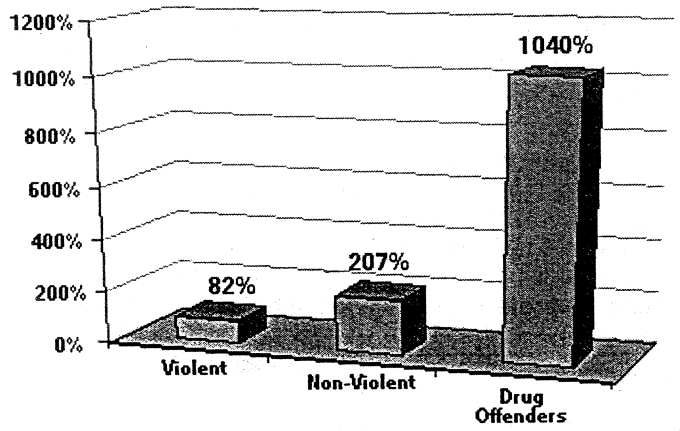
In **Missouri**, the state spent $168 million to build a new prison in the eastern Ozarks, but cannot now afford the $12 million needed to equip it for business, or the $45 million needed every year for staffing the facility. New prison construction is off the table in many states where prison population growth trends have slowed, or even reversed. Some of those states may fall into line with **Florida**, **Illinois**, **Michigan** and **Ohio** as the reality of the post-September 11th decline in state tax revenues settles into state budget processes.

In the face of severe state budget shortfalls, this monograph is designed to offer state policy makers strategies and approaches that can reduce corrections spending without jeopardizing public safety. The remainder of this report will be divided into three sections: (1) the nature and makeup of state prison populations; (2) what the latest surveys show the public thinks about imprisonment; and (3) policies that can be adopted *this year* to reduce prison expenditures without jeopardizing public safety.

II. WHO GOES TO PRISON?

The expansion of America's prisons has been largely driven by the incarceration of nonviolent offenders.[17] The percentage of violent offenders held in state prisons has actually declined from 57 percent in 1978[18] to 48 percent in 1999.[19] However, the prison and jail population has tripled over that period, from roughly 500,000 in 1978, to two million today. From 1980 to 1997, the number of violent offenders committed to state prison nearly doubled (up 82 percent), the number of nonviolent offenders tripled (up 207 percent) while the number of drug offenders increased 11-fold (up 1040 percent).[20] Nonviolent offenders accounted for 77 percent of the growth in intake to America's state and federal prisons between 1978 and 1996.[21]

Figure 1: From 1980-1997 the number of people entering prison for violent offenses doubled, while non-violent offenses tripled and drug offenses increased 11-fold



Source: Gilliard, Darrel K. Trends in U.S. Correctional Populations, 1992. Washington, D.C.: U.S. Dept. of Justice Statistics, 1992, and Mumola, Christopher J. and Beck, Alan. Trends in U.S. Correctional Population, 1997. Washington, DC: U.S. Dept. of Justice, Bureau of Justice Statistics, in press.

According to data from the U.S. Department of Justice, 51 percent of state prison inmates, 74 percent of jail inmates, and 87 percent of federal inmates were imprisoned for offenses that involved neither harm, nor the threat of harm, to a victim.[22] It is estimated that, by yearend 2001, there were 472,000 nonviolent jail inmates, 629,100 nonviolent state prison inmates, and 138,000 nonviolent federal prisoners locked up in America, for a total of 1,240,000 nonviolent prisoners.[23]

A snapshot of changes occurring in states throughout the country confirms the national data. From 1980, the number of persons incarcerated for drug offenses in California increased 25-fold, with incarceration for simple possession outstripping incarceration for sales. [24]Between 1993 and 1998, 50 percent of all inmates entering Washington, DC's prisons had no prior felony conviction, and 86 percent of DC new prison commitments had no or low prior assaultive histories. [25]Fifty-five percent of Texas inmates close to 90,000 prisoners - are incarcerated for nonviolent offenses, making Texas' nonviolent prisoner population the third largest prison system in the U.S., all by itself. Until recently, about two out of every three Texas prisoners enter on a violation of probation or parole.[26] Nearly two thirds of prisoners sent to New York State's prison system in 1997 were nonviolent offenders.[27]

This is not meant to imply that there are no serious or chronic offenders occupying state prison beds. However, these data confirm what many correctional professionals and members of the public believe, which is that, in most state prison systems, there are populations of offenders who could safely be diverted from incarceration at a cost savings to strained state budgets.

III. WHAT THE PUBLIC THINKS

For states looking to reign in mushrooming prison costs by reducing the use of incarceration for nonviolent offenders, there is plenty of public support for carefully designed efforts to do so, and in fact, corrections is increasingly the preferred line item to cut. While complex, public opinion about the use of imprisonment generally supports diverting nonviolent offenders from imprisonment into other forms of punishment and rehabilitation. In several state-based polls, the public was more willing to cut corrections funding than other state departments. Importantly, in a poll set for release next week commissioned by the Open Society Institute and conducted by Peter D. Hart Research Associates[28] , Hart found that public attitudes have become increasingly supportive of diverting nonviolent offenders from imprisonment, and that those attitudes have not changed since the September 11 attacks.[29]

From January 5 through 22, 2001, pollsters Belden, Russonello, and Stewart (BR&S), conducted a survey of 2,000 respondents nationwide about their attitudes towards imprisonment and community-based sanctions. BR&S found that the public believes that laws should be changed to reduce the incarceration of nonviolent offenders, that rehabilitation should still be the number one purpose of the justice system, and that various community sanctions and programs, such as drug treatment, community service, and restitution are preferable to simple imprisonment. The more the public knows about such community-based sanctions, the more supportive they are of them.

Although 52 percent of respondents felt that nonviolent prisoners were not punished enough, substantial majorities favored reducing imprisonment for nonviolent offenders, suggesting that the public does not see prisons as the sole means of punishing offenders or holding them accountable. Sixty-two percent of respondents agreed with the statement, "We need to change the laws so that fewer nonviolent crimes are punishable by prison terms" versus 33 percent who disagreed with that statement. Seventy-seven percent of respondents found the following argument convincing". Many people in prison today are nonviolent drug addicts who need drug treatment, not a prison sentence" versus 20 percent who did not find that argument convincing. Sixty-one percent of respondents felt that mandatory sentences are not fair, versus 36 percent who felt that they are fair.[31] These findings hold true in state-by-state surveying as well. Polling research in Oregon[32] , Washington State , North Carolina , and Vermont[35] show that the public holds a strong commitment to alternatives to incarceration.

Increasingly, when given a choice over which budget items to cut, the public is choosing corrections over education, transportation, health and welfare and other state departments. Even at the height of concern over crime in California a few months before the passage of California's "Three Strikes and You're Out" law, 72 percent of respondents to a *Los Angeles Times* poll stated that they would not support taking funds from California's university system to fund "Three Strikes."[36]

More recently, a Field Poll conducted in December 2001 found that Californians are more willing to cut spending on corrections to balance the state budget than to cut any other state program. In fact, more than four times as many respondents were willing to cut corrections (34 percent) as education (8 percent).[37]

A poll taken in December 2001 by researchers at Pennsylvania State University yielded results that were very similar to the Field Poll. Eighty-one percent of those polled indicated that they would rather have their tax dollars go towards early intervention programs than the construction of new prisons.[38]

Crime ranked last amongst voter's concerns. Penn State pollster Barbara Simms had expected crime to be on top of the list. "I was a bit surprised that Pennsylvanians, in light of Sept. 11 and such, weren't overly concerned with crime," she said.

Californians and Pennsylvanians are more willing to cut prison spending than any other state program

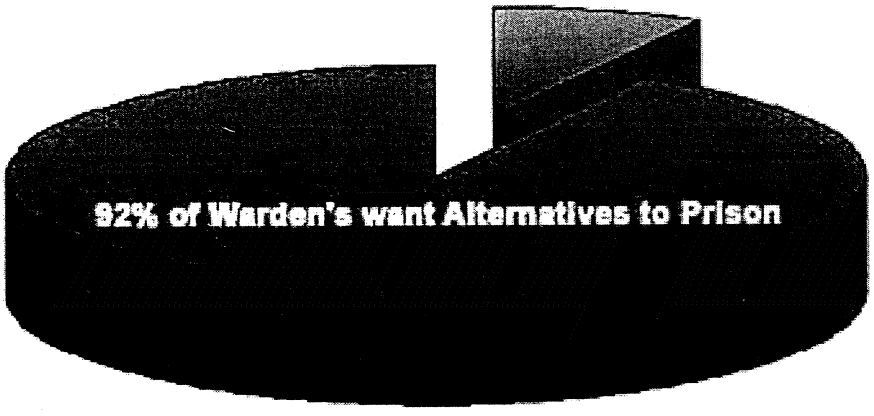
Similarly, crime ranked lowest as a concern of Connecticut voters in a December 2001.[39]

A series of more intricate surveys conducted around the country support the findings of the BR& S poll that show that the more the public is educated about non-incarcerative options, the more supportive they are about such options. Public support for more emphasis on rehabilitation and treatment along with a greatly expanded use of nonincarcerative sanctions is neither new nor limited to the east and west coasts. Public Agenda studies directed by John Doble in Alabama[40] and Delaware[41] and 1995 Doble Research studies in North Carolina and Oklahoma found that when people learned more about nonincarcerative sanctions, they overwhelmingly favored using

them with an array of nonviolent offenders and some carefully selected and screened violent offenders. Support is both broad and deep. In Oklahoma, for example, nearly 9 in 10 *strongly* favored much greater use of restitution and 8 in 10 *strongly* favored much greater use of community service and intensively supervised probation. Moreover, consensus-level majorities in both Oklahoma and North Carolina wanted to use community sanctions for a variety of offenders who are currently being incarcerated.

Moreover, in North Carolina, large majorities favored drug and alcohol and psychiatric treatment for *all* offenders in need, as well as job training and education for *all* prison inmates, *even if that meant more state spending*. North Carolina residents also favored structured sentencing even after learning that it would mean shorter prison sentences in a great many cases. Finally, in a new Doble Research pilot study, people in Vermont called for a dramatic increase in the amount of psychiatric treatment the state now provides for sex offenders who are incarcerated and in a community program.

Figure 2: Wardens Approve of Alternatives to Prison



Source: U.S. Senate Subcommittee on the Constitution (1994)

State corrections officials and prison wardens - precisely the people one would expect to hold the toughest attitudes on crime - generally share the opinions expressed by the public. According to a national survey conducted in 1994 by the U.S. Senate's Subcommittee on the Constitution, prison wardens preferred a balanced approach to public safety, one that relies less on the use of incarceration. Eighty-five percent of wardens surveyed said that elected officials are not offering effective solutions to America's crime problem and 92 percent believed that greater use should be made of alternatives to incarceration. Wardens felt that, on average, half of the offenders under their supervision could be released without endangering public safety.[42] These findings are even more impressive when one considers that they came in 1994, when a higher percentage of state prisoners were incarcerated for violent offenses, and public opinion was less supportive of alternatives to incarceration.

In addition to survey findings showing public support for community sanctions and programs, voter initiatives have passed in Arizona and California that have confirmed these polls at the ballot box. In 1996, voters in Arizona approved an initiative that diverted from prison, nonviolent offenders convicted of drug possession. Disturbed by what they considered an irresponsible initiative, Arizona's legislators forced a second vote on the same issue and, in 1998, the Drug Medicalization, Prevention and Control Act was again passed. Those acts established the Drug Treatment and Education Fund to create drug treatment slots for offenders who would be diverted

from prison under the act. According to the Administrative Office of the Courts in Arizona, the initiative is producing savings of more than $6 million a year.

In the presidential election of 2000, California voters overwhelmingly approved Proposition 36, the Substance Abuse and Crime Prevention Act, modeled after the Arizona initiative. Prior to passage of Proposition 36, the California Legislative Analyst's Office projected that implementation will save $100-150 million in annual reduction in prison costs; avoid construction of at least one $450-550 million prison; and divert as many as 36,000 offenders from jail and prison and into treatment programs annually.[43] Early indications are that implementation is closely tracking the expectations and assumptions of the LAO projections.[44] A Field Poll conducted in Spring 2000 found that 64 percent of California poll respondents favored the initiative.[45] The Field Poll proved remarkably prescient when Proposition 36 was approved by 61 percent of California voters in November 2000.

Buoyed by the success of the Arizona and California initiatives, the Campaign for New Drug Policies intends to launch similar campaigns in three states in the 2002 election season -- Florida, Michigan, and Ohio.[46] According to the Ohio-based Buckeye State Poll, which surveyed 793 randomly selected adults in 2001, 74 percent of Ohio voters favor such an initiative.[47]

While the public clearly believes offenders should be held accountable for their crimes, the "lock ëem up and throw away the key" dictum is far from sacrosanct. In several state polls, corrections was the state line item the public preferred to cut above all others. Public opinion favors laws that reduce the imprisonment of nonviolent offenders and exchanges imprisonment for drug treatment, community service and restitution. When they are educated about community-based sanctions, the public's support for such options increases. Bottom line - there is plenty of room for elected officials to enact balanced public safety approaches in this disastrous fiscal year that hold offenders accountable and make responsible use of scarce and expensive prison space.

IV. MANAGING PRISON POPULATION LEVELS WITHOUT BREAKING THE BANK

"Every dollar spent on imprisonment is a dollar not available for a different public investment. We cannot speak about increased investment in corrections today without allowing that those dollars will have to come from policing, teen pregnancy prevention programs, pre-natal and peri-natal programs and, increasingly, public education."

Martin Horn,
New York City Commissioner of Probation
Former Secretary, Pennsylvania Department of Corrections

In the context of recent shifts in public attitudes about the criminal justice system, the current state budget crises offer an unusual opportunity for state policymakers to take steps to address this problem. Many state government leaders and legislators have concluded that operating their prison system in its current configuration is too costly. Some of them are already moving to cut wasteful spending in the corrections budget by embracing new policy directions that seemed unthinkable just a few years ago. They are revising, and in some instances reversing, inefficient correctional policies that would otherwise gobble an even greater share of the shrinking state budget pie.

This section will describe public policy changes that have been enacted or are proposed around the country to reduce prison populations, and costs, without jeopardizing public safety. It is meant to serve as a menu of sorts for state policy-makers to review as they make difficult funding decisions in the coming legislative session. These policy options will be broken down into the following categories:

A. Returning Discretion to Judges and Reducing Nonviolent Prisoner Populations

B. Drug Policy Reform

C. Comprehensive Sentencing Reform

D. Parole Reform

E. Policy Reforms under Consideration around the Country

A. Returning Discretion to Judges and Reducing Nonviolent Prisoner Populations

A large portion of the current U.S. prison population is comprised of low-level, low-risk, nonviolent prisoners. Of 1,189,800 prisoners held in state prisons at the end of 2000, fewer than half (570,000) were sent to prison for a violent crime. About one fifth of state prisoners were sentenced for a drug crime, and another 31 percent were committed for nonviolent property or public order offenses.[48]

Further evidence that prisons in the U.S. hold large numbers of low-risk prisoners comes from prison classification data. Classification of prisoners is a management tool that allows prison administrators to identify prisoners that present little or no risk of violent behavior or danger to public safety. Classification by known risk factors allows more prisoners to be housed at lower custody levels without increasing the incidence of misconduct or escapes. *Upwards of 40 percent of all prisoners are estimated to fall into the minimum risk category.*[49]

The cost-benefit ratio produced by incarcerating these types of offenders is extremely unfavorable. Moreover, public support for imprisonment of low-risk, nonviolent offenders is growing thin. As cited above, 61 percent of Americans are opposed to mandatory prison sentences for nonviolent offenders and 75 percent prefer treatment to imprisonment for drug users.[50]

Americans believe that drug treatment interventions can curb criminal behavior as well as reduce substance abuse by criminal offenders. Recent research findings support their views. The RAND Corporation has determined that for heavy users of cocaine, treatment costs one-seventh as much as the traditional criminal justice approach (arrest and incarceration) to reduce drug use.[51] The Drug Treatment Alternatives to Prison program run by the District Attorneys Office in Brooklyn, New York reports that the recidivism rate for "DTAP" graduates is less than half of the rate for offenders in a comparison group that received traditional prosecution and incarceration.[52] Quality treatment does not come cheap, but the California Legislative Analysts Office has determined that even after accounting for an additional $120 million a year that will be spent to expand treatment program slots for offenders diverted under Proposition 36, the new law will save taxpayers as much as $1.5 billion over five years by reducing prison costs.

i. State-by-State innovations

No two states will be alike in their approach to modifying the use of imprisonment for nonviolent, non-serious offenders.

Policymakers in some of the most conservative states in the U.S. are already moving in a more moderate direction, revising sentencing and correctional policies so as to better reflect the overall state government policy priorities of their citizens. Spurred to action by **Louisiana's** Republican Governor Mike Foster, the Louisiana legislature abolished mandatory minimum sentences for

dozens of nonviolent offenses during the 2001 session. Louisiana's adult prison population had increased 50 percent in the past six years to 38,000 and in 2000, Louisiana had the highest per capita incarceration rate in the country. With the population projected to reach 46,000 by 2004, the Department of Public Safety and Corrections was facing a $5.1 million budget cut.

Senate Bill 239 removed mandatory minimum sentences for simple drug possession and many other nonviolent offenses, and cut minimum sentences for drug distribution in half. The possibility of parole, probation, or suspension of sentence was restored for a wide range of nonviolent crimes - from prostitution to burglary of a pharmacy. The bill allowed for already-sentenced prisoners to apply for early release.

Louisiana's (Three Strikes) law was amended to require that both of the convictions that would count for the first two (strikes) be for violent crimes. Senator Charles Jones, the sponsor of SB 239, estimates that these reforms will save about $60 million a year in prison costs.

Louisiana's sentencing reforms will save over $60 million.

Louisiana corrections officials have set up "risk review panels" to determine whether offenders sentenced to prison under the old mandatory terms can be released to save the costs of incarceration. Some 6,000 prisoners are now serving mandatory minimum sentences for minor drug offenses or low-level nonviolent offenses that make them eligible to apply for "risk review." Those who pass the review will receive a recommendation for early release by the pardon or parole boards.[53] Early release of prisoners eligible for "risk review" will save as much as $10 million annually.

For many years, **Alabama** prisons have been crowded with hundreds of offenders serving life sentences for nonviolent crimes under the state's habitual offender law. In September 2000, Governor Don Siegleman signed new legislation that directs the Alabama Department of Corrections staff to evaluate the public safety risk presented by each prisoner in this category to determine whether their case should be reviewed by a judge from their sentencing court and the state parole board for a possible sentence reduction. The Alabama Sentencing Institute estimates that between 550 and 1,400 prisoners might be affected by the change.

In **Mississippi**, legislators amended the sweeping Truth In Sentencing law they had passed in 1995 that abolished parole for all prisoners. Under the new law, nonviolent first offenders would regain eligibility for parole after they serve one-quarter of their prison sentence. By the end of 2001, more than 2,000 of the state's prisoners became parole-eligible under the reform.

During 2001, a number of other states made efforts to revamp their drug laws to allow for a more "treatment-oriented" handing of drug cases in their court systems. Mandatory minimum sentences that were required in many drug cases have been repealed in **Indiana** under Governor Frank O'Bannon (D). Under the old law, anyone arrested with three grams or more of cocaine faced a 20-year mandatory sentence for dealing drugs. The mandatory sentencing law packed the state's prisons with small-time addict/dealers who only sold enough drugs to support their habit. The reform gives judges discretion on an individual case-by-case basis to determine whether drug treatment or a community corrections program might be more appropriate than incarceration. Many of Indiana's prosecutors supported the reform, which increased penalties for dealing methamphetamine while eliminating mandatory sentences for cocaine.

North Dakota, under Governor John Hoeven (R), repealed a one-year mandatory minimum prison sentence for first offenders convicted of drug possession. They also turned down a request

for funds for construction of a new women's prison, voting instead to fund a study of the state's correctional needs and possible sentencing alternatives.

In **Connecticut,** a Republican Governor (John G. Rowland) working with a Democratically-controlled legislature teamed up to relax mandatory minimum sentencing requirements for some drug felons. The provision affects manufacture, sale, or possession of a drug or drug paraphernalia, including crimes within 1,500 feet of a school, day care center, or public housing unit. Under the new law, a judge may impose less than the mandatory minimum provided that no weapon was involved and no one was hurt during commission of the crime. And the state Department of Corrections is planning to open four new Community Justice Centers to provide treatment instead of prison for probation and parole violators as an alternative to imprisonment.

Working with a Republican Governor (Michael O. Leavitt) and Legislature in **Utah,** corrections officials have shuttered two small correctional facilities and have used some of the savings to hire more parole agents and increase parole releases. Urged to send fewer parolees back to prison cells, probation and parole staff are using intermediate sanctions to deal with technical violations.

Governor Thomas J. Vilsack (D) and the **Iowa** legislature amended the state's criminal code to downgrade the status of certain third-degree burglary offenses from a felony to a misdemeanor; to allow mitigation of the mandatory sentences required for certain Class D felonies; and to lengthen the period of time to one year during which a judge may return a prisoner to court to reconsider whether the prison term originally imposed should be modified. It is estimated that the projected impact of these changes would save the state $1 million in correctional costs.

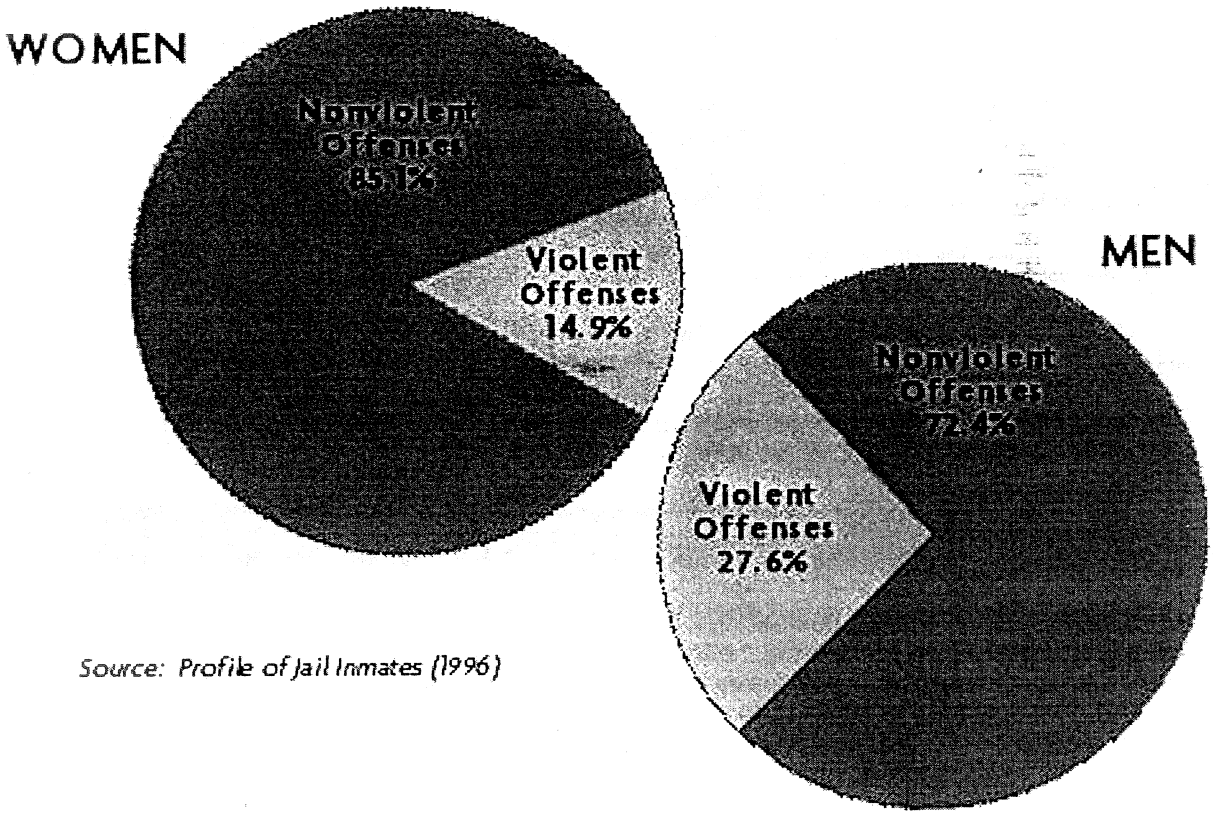
The **Arkansas** Board of Corrections and Community Punishment, under Governor Mike Huckabee (R), invoked the state's emergency powers act to grant early release from prison for 552 prisoners.

In addition to these state level innovations, two especially nonviolent and costly prisoner populations - women and elderly prisoners - warrant special consideration.

ii. Women Prisoners

At the end of 2000, there were 83,668 women incarcerated in U.S. prisons. Women prisoners are a group that warrants especially close examination by policymakers who are looking for ways to reduce correctional costs for four reasons:

Figure 3: Women are Fastest Growing, Least Violent Prisoners



Source: Profile of Jail Inmates (1996)

- Women constitute the most rapidly growing segment of the U.S. prison population. Their rate of imprisonment grew by 88 percent between 1990 and 1998. During the decade after passage of mandatory drug laws in 1986 the number incarcerated for drug offenses rose by 888 percent.[54]

- Women offenders -- frequently themselves the victims of violent crime -- are mostly imprisoned for nonviolent and drug offenses. Just 29 percent are in state prison for a violent crime, compared to 49 percent of male prisoners. The greatest proportion (34 percent) of women in prison are serving a sentence for a drug crime. Almost all female prisoners are classified as low-risk.[55]

- The recidivism risk of women after release from prison is quite low as compared to men. A New York Department of Correctional Services study followed both male and female ex-prisoners for three years. The recidivism rate for women was 27 percent, compared to 41 percent for men.[56]

- The public costs associated with imprisonment of women are spread far beyond the prison budget.[57]

The incidence of criminal violence perpetrated by women is relatively low. According to victim surveys, just one in seven victims describes a female assailant.[58]

Non-Violent Offenders Behind Bars, Yearend Projections, 2000

State Prisoners:	629,100
Local Jails:	472,000
Federal Prisons:	138,000
Total Non-Violent	**1,240,000**

Source: Justice Policy Institute Project, based on U.S. Dept. of Justice, Bureau of Justice Statistics Data. See footnotes for methodology.

While the great majority of women prisoners are serving sentences for nonviolent property and drug crimes, research indicates that most of them have been victims of serious violent crime in the past. In New York, a state where about 70 percent of all incarcerated women are serving time for nonviolent or drug-related offenses, a substantial majority of women in prison report having been, themselves, the victims of severe violence or sexual molestation prior to their incarceration.

Women prisoners are less likely to be imprisoned for violent offenses and to get arrested after prison.

Interviews with women entering Bedford Hills, the women's prison in New York that serves as the reception center for all women entering the state's prison system, indicated that over half of them experienced some form of sexual abuse during childhood or adolescence. Over the course of their lives, 38 percent of these women have experienced violent assaults; one third have been the victim of a violent sexual assault; and 28 percent have been knifed or shot at.[59]

Furthermore, the economic and social costs of incarcerating women offenders are much higher than those associated with incarcerating men. Data reported by the Bureau of Justice Statistics indicates that while more than half of all prisoners have minor children who may be affected by their incarceration, women prisoners are more likely than men to have children (65 percent compared with 55 percent) and they are much more likely (64 percent compared with 44 percent) to have been living with their dependent children when they were arrested.

Ninety percent of prison fathers report that their children are residing with their other parent, but this is true for only 28 percent of prison mothers. In most cases, incarceration of a mother serves to destroy an already-fragile family unit. The majority of children of women prisoners are cast for care on her extended family and friends, but these arrangements too often prove unstable. At least ten percent of prison mothers report that their children have been placed in non-kin foster-care homes or agencies.[60]

A team of researchers at the University of Chicago have undertaken a new project to fully explore the situation of women prisoners and their children in Illinois, and to assess the full economic and social costs of the state's sentencing policies on this population. Preliminary findings from the study indicate that these costs may be far greater than expected, especially for women admitted to prison from Cook County (Chicago).

In fiscal year 2000, 1,707 women from Cook County entered state prison. More than half of them were sentenced for a drug offense. Eighty-five percent of these women were mothers and more than half had three or more children. One-third had four or more. More than 5,000 children in Cook County lost their mother to prison in that single year. Statewide, the number rose to more than 7,500.

Using average estimates of annual costs for pre-trial detention in Cook County and for imprisonment in Illinois, the researchers estimate that direct costs for all female inmates total $147.5 million. But the reported costs of incarcerating women do not include the immediate associated costs of child welfare services.

Expenditures for foster care in Illinois are $25,000 per child annually. Using the BJS figure that 10 percent of incarcerated mothers have children in foster care, Susan George, the principal research affiliate for the University of Chicago study, estimates that about 750 children of newly incarcerated women would have entered the child welfare system in 2000 alone, for an added cost of nearly $18.8 million. Her preliminary estimate is that with these costs added in, the total average annual expense of incarceration could be as much as $58,000 per prison mother.

This estimate does not take account of the predictable economic and social costs that often follow as a consequence of disrupting the family unit. The literature on child development suggests that there may be very substantial developmental deficits suffered by these children because of separation from their mother and the disruption of alternative or foster care placements. The children of incarcerated parents are said to be six times more likely to be incarcerated themselves as adults. Sentencing these mothers to community supervision instead of prison and providing preventive services for her and her children can help to break the otherwise predictable intergenerational cycle of crime and incarceration.[61]

One opportunity already exists to save state dollars required to incarcerate prison mothers, and to shift the costs of supporting them in the community to a federal funding stream. When Congress passed the 1996 welfare reform act, they created a block grant to states called Temporary Assistance for Needy Families (TANF) to replace the old Aid to Families with Dependent Children (AFDC) program.

In addition to providing cash benefits to custodial parents who have not exceeded a five-year life-time limit for receiving benefits, the TANF block grant program allows states broad flexibility to determine how to allocate the money for provision of appropriate services to specific categories of persons in need, as long as they have a child who is eligible for TANF. Allowable services include counseling, case management, family reunification services, parenting skills training, peer support, childcare, transportation, and employment assistance. Room and board, counseling, and most "wrap-around" services of drug and alcohol treatment can be funded through TANF.

Many states have large surpluses of TANF funding in reserve. In New York one of the states that opted out of the ban on using TANF funding for individuals convicted of drug felonies -- $5 million of unspent federal TANF funds has been allocated on an annual basis to divert from prison, offenders who are parents of dependent children, and to expand and improve the services available to help them gain stable employment in the community.

Programs supported in New York with TANF funding include the Woman's Prison Association - the oldest, largest, and most diversified agency in the country that provides social services to women in the criminal justice system, and the Center for Employment Opportunities - a program that delivers comprehensive employment services for offenders: pre-employment training; paid transitional employment; and job placement. In Washington, DC, the Our Place program uses TANF funds to help women offenders reunite with their families, resettle in the community, and find decent housing and jobs.[62]

iii. Elderly Prisoners

Another group of prisoners for whom the costs of imprisonment often outstrip the benefits are the elderly. At the end of 2000, there were about 44,200 prisoners in state or federal prisons aged 55 or older. Their number has more than doubled over the past decade.[63] With more and more

prisoners serving longer prison sentences, this population will expand rapidly unless something is done to reverse the trend. The Census Bureau estimates that, within the next decade, this age group will make up 20 percent of the U.S. prison population, and 30 percent by 2030.[64]

As offenders age, beyond a threshold at least, they "age-out" of their crime-prone years. A survey of state and federal prisons conducted by the National Center on Institutions and Alternatives found that the majority of elderly prisoners (52 percent) are incarcerated for nonviolent offenses.[65] The costs for incarceration of older offenders, estimated at $69,000 per year, are three times the $22,000 average it costs to keep younger, healthier offenders in prison.

The primary reason for the higher cost is the greater health care needs of older prisoners, many of whom require intensive medical services and constant bed care. Even if originally sentenced to prison for a violent crime, physically debilitated, aged prisoners obviously present little current risk to public safety. NCIA staff estimate that a conservative prison release policy that would target only nonviolent offenders over the age of 55 who have served at least one-third of their sentence would save more than $900 million in annual prison costs.[66] As a release valve for costly elderly offenders, NCIA has recommended that states consider compassionate release and/or home detention options for nonviolent offenders beyond a certain age. Recently, the state of **Virginia** has initiated a release program for elderly inmates called the Conditional Release of Geriatric Inmates provision.[67]

B. Drug Policy Reform

Efforts to reform drug policy and abolish mandatory sentences have received support across the political spectrum. The 1996 drug law initiative in Arizona was supported by a phalanx of conservatives including former U.S. Senator Barry Goldwater who, as the Republican nominee for President in 1964, inveighed against "crime in the streets"" More recently, President George W. Bush stated, I think a lot of people are coming to the realization that maybe long [mandatory] minimum sentences for first-time users may not be the best way to occupy jail space and/or heal people from their disease. And I'm willing to look at that."[68]

Prison Reduction Estimates from Drug Policy Reforms

California:	36,000
Florida:	10,200
Ohio:	3,100

Source: Legislative Analysts' Office (1999); Campaign for New Drug Policies (2001)

i. The Campaign for New Drug Policies

As was mentioned above, California voters put drug law reform squarely in the center of the national criminal justice policy map in November 2000 as they voted 61 percent approval for Proposition 36 - a sweeping measure sponsored by the Campaign for New Drug Policies that removed prison as a sentencing option for most offenders convicted of nonviolent drug possession. Petty drug offenders are now being sent to community-based treatment in lieu of incarceration in a jail or prison facility. Likewise, most probationers and parolees who violate a drug-related condition of community release are now being sent for treatment instead of incarceration. Proposition 36 allocated an annual budget of $120 million to the state's Department of Alcohol and Drug Programs for expansion of substance abuse treatment services. Prior to passage of Proposition 36, the California Legislative Analyst's Office projected that implementation would save $100-150 million in prison costs annually, avoid construction of at

least one new prison, and divert as many as 36,000 new prisoners and probation and parole violators to treatment programs annually.[69]

The California reform was modeled on Proposition 200, a diversion-to-treatment initiative approved in 1996 by 65 percent of the popular vote in the conservative state of Arizona. A recent assessment of Proposition 200 by the Arizona Supreme Court reports high treatment success rates (62 percent successfully complied with the requirements of their treatment program). Nearly $7 million was saved during fiscal year 1999 by diversion of Arizona drug offenders from incarceration.[70]

The Campaign for New Drug Policies plans to spread the success of the California and Arizona initiatives by mounting ballot initiatives in three new states in 2002. The CNDP has been building on a string of electoral drug reform victories since California voters approved a CNDP-sponsored (medical marijuana) initiative in 1996. Initiative campaigns are underway in Ohio and Florida, and one is about to be launched in Michigan. Opinion polls in these states indicate that voters strongly support substitution of substance abuse treatment for incarceration.

In fiscal year 2000, more than 20,000 people in Florida were convicted of felony drug possession. While more than half of these offenders were placed on probation, about 10,000 were incarcerated. More than 2,000 were sentenced to prison and thousands more were jailed.[71] The Florida initiative, which requires 488,000 valid voters signatures to be placed on the November 2002 ballot, is modeled closely on California's Proposition 36, mandating treatment for first and second-time convictions for simple possession of drugs or drug paraphernalia.

More than 3,000 offenders are incarcerated on felony possession charges each year in Ohio. Eighty-five percent of them were sentenced to state prison. The Ohio initiative, also closely modeled on Proposition 36, requires substance abuse treatment instead of incarceration for nonviolent offenders convicted of drug possession. Those who fail in treatment could be re-sentenced to prison.[72] The drive to obtain the 335,422 signatures necessary to place the measure on the November 2002 ballot is about to begin.

The CNDP is kicking off an effort to roll back mandatory minimum drug laws in Michigan that will build upon earlier successes by another organization, Families Against Mandatory Minimums (FAMM). The Michigan initiative would amend the state constitution to provide treatment instead of jail for nonviolent users convicted of drug possession, but it would also revise the prison sentences now required for low- and middle-level dealers. A new sentencing commission would be established to revamp the current guidelines for sentencing drug offenders and for handling drug-related probation and parole violations. The initiative would also require funding ($120 million over six years) to support the work of the commission and establish new drug treatment programs.

Impact estimates compiled by CNDP staff indicate that these drug reform initiatives would have the greatest impact in Florida, where 10,184 offenders would be diverted from a jail or prison sentence. In Ohio, the total diverted is estimated to be 3,135. No estimate can be made for Michigan because the proposed sentencing commission's work would first need to be completed before the impact of new guidelines could be modeled.[73]

ii. Drug Courts

Steven Belenko, Senior Research Associate at the National Center on Addiction and Substance Abuse, says that while relatively few drug courts have been evaluated, the results to date provide evidence that both drug use and criminal activity are reduced while offenders are under drug court supervision.

Processing of cases through drug courts lowers criminal justice costs compared with traditional handling, primarily due to less reliance on pretrial incarceration. It is less clear how drug courts affect long term changes in the lives of participants (due to deficient quality in research design and data collection) but there is initial evidence from drug court evaluations of lower rates of drug use and less recidivism after leaving the drug court program.[74]

While there is evidence that drugs courts save local pretrial jail space by speeding up court processing of drug cases, there is no solid information about whether drug courts are diverting offenders to treatment who would otherwise be sentenced to prison. Moreover, if offenders who fail in treatment are punished with long prison terms, any correctional cost savings produced by diverting them to treatment may be eroded.

Still, the drug court concept has been widely embraced by judges across the U.S. since 1989 when then-State's Attorney Janet Reno sponsored the first drug court in Dade County. By January 2000, there were 449 drug courts in the U.S. If the positive track record reported by Belenko holds up in more in-depth research, eligibility for drug courts should be broadly expanded to target offenders with more serious criminal records, including those charged with more serious drug-related crimes.[75]

C. Comprehensive Sentencing Reform

Simply providing resources for drug courts and community treatment programs will not necessarily have a major impact on crime rates or state prison population levels. These ambitious goals require that state policymakers think long and hard about who really should be sent prison, and for how long - and then take effective steps to address the twin problems of prison sentences that are too long, and offenders who are unnecessarily recycled back to prison after release.

A study recently completed by researchers at the Vera Institute of Justice, looked at the effects of different elements - crime patterns, economic and demographic factors, sentencing policies, and criminal justice politics - on state incarceration rates, prison admission rates, and average sentence length in 1997. They found that factors that lie outside the realm of sentencing policy (crime rates; the proportion of African Americans in the population; and the ideologies favored by a state's citizens) have had a greater influence on incarceration rates than two decades of sentencing policy reforms that were deliberately designed to do so: determinate sentencing, mandatory sentencing, and truth-in-sentencing laws.

Just one sentencing policy reform was found to be consistently associated with *lower* rates of prison admissions and incarceration rates: presumptive sentencing guidelines. This type of reform was estimated to lower a state's incarceration rate by 72 per 100,000 residents and to lower the prison admission rate by 55 per 100,000.[76]

As the federal experience shows, sentencing guidelines can be designed to produce precisely the *opposite* effect - increasing the incarceration rate -- if they are intended to incorporate a strategy to increase reliance on incarceration, rather than to control prison populations. But experience with guidelines in the state of North Carolina provides a good example of how a sentencing structure that is expressly linked to prison capacity can reverse patterns of over incarceration.

State sentencing guidelines went into effect in North Carolina in 1994. By June of 1995, more than half of the courts' caseload were "new law" cases. The impact of this law has diverted 10,000 to 12,000 offenders each year from prison sentences to non-custodial penalties involving treatment and/or strict community supervision. Before the reform was introduced, 44 percent of sentenced felons were receiving a prison term. After implementation, that rate fell sharply to just 29 percent.[77]

In 1980, North Carolina had the highest incarceration rate in the South. Today the state has the second lowest rate in the region. North Carolina is the only state in the U.S. that has achieved a steady decline in its rate of incarceration over a period of years. Between 1995 and 1999, the state's incarceration rate fell every year. By 1999, the rate of decline reached 10 percent. During this same period the incarceration rate grew by 14 percent in the Southern U.S., by 16 percent for the U.S. as a whole, and by 31 percent for the federal prison system under the more punitive federal guidelines system.[78]

While drug law reform continues to be hotly debated across the U.S., North Carolina's sentencing policy has quietly been shifted away from incarceration of drug offenders in favor of treatment in the community. Over the three years prior to introduction of guidelines, the percentage of drug offenders sentenced to prison ranged from 35 to 38 percent. The average number of months imposed in these cases for those years was 59. Sentencing data from the courts in subsequent years (1997-99) show that the proportion of drug offenders imprisoned fell to 17 percent, while the number of months imposed dropped to nine.[79]

North Carolina Success:
Change in Incarceration Rate, 1995-99

North Carolina:	-10%
Southern States:	+14%
Federal Prisons:	+31%
U.S. Average:	+16%

Source: Bureau of Justice Statistics, (2000)

Felons convicted of serious violent crimes are now substantially more likely to receive prison terms and the average length of the sentences served by these offenders has increased, yet North Carolina's prison population remains within the state's institutional capacity by a comfortable margin. At the end of 1999, the prison system maintained an operating capacity of 32,344, and held 31,086 prisoners.[80]

This small miracle was accomplished without producing a crime wave. North Carolina has - along with the rest of the country - enjoyed a reduction in crime rates since 1991, with a 12 percent drop in violent crime and a nine percent drop in property crime.

Crime policy has been largely de-politicized in North Carolina since the reform was introduced. Sentencing guidelines have brought a great deal of stability to the system. The impact of proposed sentencing reforms can be projected with confidence; sentencing debates are generally focused on the fiscal impact of any proposed changes; proposals to "get tough" have largely faded while the dollars saved in correctional costs are shifted to the education budget.

Crime policy has been largely de-politicized in North Carolina since the reform was introduced.

D. Parole Reform

As *get tough* policies have shaped correctional practice in the criminal justice system, use of parole release has sharply declined. By the end of 2000, 15 states had abolished parole release and five other states had placed restrictions on parole release for prisoners sentenced for certain violent offenses. Elimination of parole release fit nicely with conservative's demands that the system "get tough" on offenders. It also spoke to the dismay of liberals who believed that the system was arbitrary and discriminatory in its impact on prisoners. But whatever the shortcomings

of discretionary parole release, its retention has always provided a primary mechanism for control of prison population levels - a safety valve to avert inhumane and dangerous levels of prison overcrowding.

From a policy maker's standpoint, parole reform options can be attractive as a prison population control mechanism because they can often be implemented without the need for legislation. "The major advantage to reforms that rely upon parole board decision-making is that they are administrative," stated James Austin, Director of the Institute on Crime, Justice and Corrections at George Washington University, "That means that they can be implemented easily this year, without the need for lengthy legislative battles."[81]

Parole Reforms can be implemented quickly, without the need for lengthy legislative battles.

i. Reforming Parole Release

For states that have retained discretionary parole release, increasing the rate at which parole is granted to low-risk prisoners can unlock immediate reductions in correctional costs, provided the increase in paroles is large enough to allow for shutting prison housing units - or even closing prisons.

The **Texas** Parole Board first adopted parole guidelines in the late 1980's, but patterns of parole decision-making indicate that these guidelines had little or no impact. In 1991, the board approved about 80 percent of the prisoners who came up for parole. By 2000, that rate had fallen to around 20 percent. That year, the Texas Department of Criminal Justice projected a need for more prison beds, but key legislative leaders indicated that a revamping of parole policies would be preferable to new construction.

According to Tony Fabelo, Director of the Texas Criminal Justice Policy Council, the Texas Parole Board, under Governor Rick Perry (R), began making more systematic use of their release powers, identifying more prisoners who were good candidates for parole. By September 2000, the parole approval percentage rate had risen to the upper 20's. Even before these steps were taken, parole agents had been urged to make more use of effective alternatives to parole revocation, utilizing intermediate sanction facilities and other preventive measures to handle parolees who were doing poorly under community supervision. The rate of parole revocations fell sharply, from a monthly average of 1,062 parolees revoked prior to the new system of reliance on intermediate sanctions, to an average of just 781 since mid-summer 2000.

The impact of these new parole policies has been dramatic. In September 2000, the prison population in Texas had reached 151,000. By the end of December 2001, the prison population was just 143,302. Fabelo says that most of the decline in the state prison population is due to changes in the state's parole policies. With 6,000 empty prison beds, the prison system is now operating with plenty of reserve capacity. The reduction in state parole revocations has more than made up for a recent increase in local probation revocations (a system not under the control of state officials). New parole guidelines were formally introduced in September 2001 that are intended to stabilize and perpetuate the systemic improvements begun in 2000.[82]

In **Ohio** a combination of sentencing and parole guidelines has served to stabilize and reduce the state's prison population. On July 1, 1996, Ohio's judges were introduced to a sweeping sentencing reform. The state's legislators adopted sentencing guidelines that embraced the concept of "truth in sentencing" and ended parole release and "good time." Senate Bill 2 prodded judges to impose long prison sentences for repeat violent offenders. But at the same time, it encouraged them to use community sanctions instead of prison for many less-serious nonviolent offenders.

After SB2 was implemented, there were noticeable shifts in sentencing patterns that seem to conform to the intended effect: admissions to prison of offenders convicted of theft crimes dropped from 22 percent to 16 percent, while admissions for violent crimes rose, from 26 percent to 38 percent. There was an overall decline in prison admissions at first (from 19,556 in 1996 to 17,681 in 1998) but then admissions rebounded and by 2001, prison intake had returned to 1996 levels.[83]

But then a second factor came into play when in 1998, in line with the new sentencing guidelines, the state adopted new parole guidelines to govern release of "old-law prisoners" who had been sentenced to prison before the SB2 reforms. The parole guidelines did not simply mirror the SB2 approach to sentencing offenders. They embodied a finely graded, risk-management approach. Offenses were ranked on a "seriousness scale" of one to thirteen. Prisoners also received a "risk score" that placed them in one of four levels according to the predicted likelihood of re-offending. On the basis of offense and risk, each offender would fall into one of 52 grid boxes, each with a presumptive term to be served before gaining parole release.

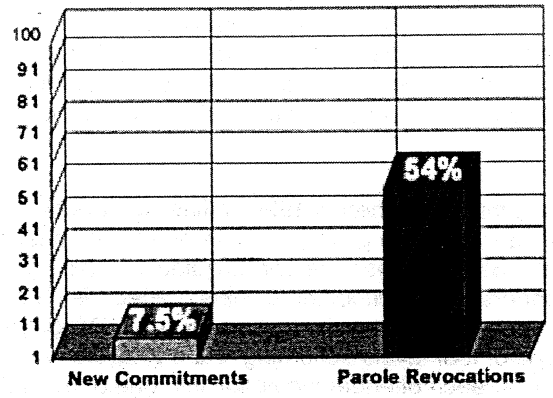
While the most serious, high-risk offenders would end up serving more time before parole, most prisoners fell into the relatively low-seriousness, low-risk category. The average time served for "old law" (pre-SB2) prisoners was expected to decline by as much as six months. The new guidelines were put into practice in the summer of 1998. By 1999 the number of prisoners that were paroled (6,150) had almost doubled over the number paroled in 1995 (3,224). The average number of prisoners paroled per month declined after 1999, but remains well above pre-guidelines levels.

Since 1998, Ohio has stood out in contrast to the steady growth of state prison populations in the Midwest region of the U.S. Against the region's average growth rate of 3.8 percent by the end of 2000, Ohio enjoyed a 5.7 percent decline in prison population. While it is not possible to pinpoint the precise role played by each reform, it is clear that deliberate shifts in criminal justice policies have helped Ohio officials gain a more firm control over Ohio's prison population.

ii. De-escalating Parole Violations

But parole release decisions are just part of the complex parole system. Parole *supervision* - some form of which remains in place even in most states that have abolished discretionary parole *release* - has become a major contributing factor in hiking prison population levels. Nationally, between 1990 and 1998, the number of "new sentence" offenders sent to prison rose by just eight percent, while the number admitted for a parole violation shot up by 54 percent.[84]

Figure 4: Changes in Admissions to Prison, 1990 to 1998



About 40 percent of state prison admissions around the country are offenders returned to prison for a violation of parole.[85] In **California**, parole *release* is denied to all prisoners but those few with "indeterminate life" sentences. But all prisoners are placed under post-release parole *supervision* after completing their prison terms. In 1997, 104,000 offenders were under parole supervision in California, but nearly 80 percent were failing to meet the terms and requirements of parole. As a consequence, 65 percent of all prison admissions that year were for violation of parole.[86] While the vast majority (76 percent) of California's parole revocations involved some kind of underlying criminal charge, many of these crimes are relatively minor events and relatively few parolees are returned to prison with a new prison sentence.

When revoked to prison for technical violations, California parolees spend an average of just 5.3 month's time before they are re-released to the streets. Even including those returned for new crimes, the average time served behind bars is just 8.5 months. These short revocation periods suggest that many of these revoked parolees are being returned to prison for fairly minor acts.

These high rates of return to prison in California are also very expensive. Parolees returned for technical violations *alone* comprise about 17 percent of California's 158,759 prisoners. Parole violators with sentences for new crimes comprise another 25 percent. By far the major cost burden of the parole supervision system shouldered by California taxpayers is the expense of incarcerating parole violators. This cost totaled almost a billion dollars in fiscal year 1999.[87]

To avoid this waste of correctional resources, many community supervision agencies responsible for correctional management of probationers and parolees are working to revamp their responses to violations of supervision conditions. Studies of the reasons that cause supervision agents to file motions to revoke community supervision indicate that failed drug tests and failure to participate in treatment programs account for almost half of these violations. Another ten percent are filed simply for "failure to report."

To reduce the cost burden of incarcerating technical violators and provide more effective responses to the problems that underlie most supervision failures, application of intermediate, "graduated" sanctions short of prison and reducing parole terms for low-risk parolees is a combination that makes good sense. Experience with implementation of such reforms shows that it is possible to reduce admissions to prisons and jails, speed the placement of offenders in need of treatment in community programs, and unburden busy court and parole board dockets by sharply cutting the number of actual revocations.[88]

In 2000, **Kansas** legislators mandated that probation and parole violators be sanctioned within the state's community corrections system rather than sent to prison. They also reduced the length

of community supervision for offenders convicted of low-level offenses, in many cases cutting supervision time by half. Senate Bill 323 also broadened the target ranges for community corrections under the state's sentencing guidelines; provided additional funding to establish three new day-reporting centers; and provided extra funds to target probation and parole violators. The Kansas Sentencing Commission estimates that 774 prison beds have been held open for more serious offenders through these reforms.

In Kansas, 774 prison beds have been saved through parole reforms.

iii. Personal Responsibility Parole

Martin Horn, New York City's Probation Commissioner and the former head of Pennsylvania's Corrections Department and New York State's Parole Division, has proposed a yet more radical solution to the problems associated with parole supervision and revocation. Horn questions the capacity of the parole supervision system to "fix" parolee behavior. While he insists that prisons should teach skills (reading, sobriety, job-readiness) essential to post-prison success, he argues that prisoners themselves should be responsible for keeping a promise to obey the law after release (the classic sense of "parole").[89]

Horn advocates abolishing parole altogether. He would require judges to fix the exact terms of the sentence up front - a prison term if warranted, followed by a set period of half-way house residence or community release under a "diminished liberty status." Under Horn's system, the responsibility for obtaining post-release services would pass to offenders themselves, through a grant of vouchers for purchase of substance abuse treatment, job assistance, education, family counseling, etc. Responsibility for enforcing law-abiding behavior would be transferred to local police authorities.

Horn points out that the parole-supervision system is costly ($190 million per year in New York) and drains resources from more socially useful purposes. Providing a $2,000 service voucher for each released from New York's prisons would free up $130 million annually for re-investment in more fundamental services that can prevent crime and promote public safety. And that's not counting the huge additional savings from averting re-imprisonment for failure to meet parole reporting requirements and other technical *housekeeping* rule violations.

While states might not be willing to entirely eliminate parole supervision, as Commissioner Horn suggests, placing a portion of lower risk parolees on "summary" (unsupervised) parole might be more attractive. According to an analysis by California's Legislative Analyst, "direct discharge" eliminating post-release supervision for non-serious, nonviolent, non-drug sale offenders would save the state $98.5 million in fiscal year 2003.

E. Policy Reforms Under Consideration around the Country

As state legislators begin again to grapple with "Post 9/11" budget deficits, criminal justice officials and policy advocates in many states have already formulated proposals for new reforms designed to address inefficient allocation of correctional resources.

i. Policy makers proposals

Washington

Governor Gary Locke (D) instructed Washington State agency heads to anticipate 15 percent cuts as they prepare budget plans for the coming fiscal year. The Department of Corrections

proposed a raft of sentencing policy changes that would shorten the average length of stay in prison for nonviolent offenders, and reduce or eliminate their community supervision after prison:

- All Level 8 drug offenses (requiring 21-27 months in prison under Washington's sentencing guidelines) should be reduced to Level 6 (requiring 15-20 months), and a provision -- "triple scoring" -- that nearly doubles the prison term for each prior drug offense, should be eliminated.

- "Double scoring" under the guidelines should be eliminated for offenders convicted of Burglary 2 and Residential Burglary, thereby reducing sentence lengths.

- Potential "earned time" off prison sentences should be increased from one-third to fifty percent for drug and nonviolent property offenders, allowing prisoners to "earn" their way out of prison sooner.

- Low and medium-low risk prisoners should be released when they reach their earned release date.

- Pre-sentence investigation reports should be eliminated for all offenders except those convicted of sex offenses.

- Post-prison supervision for low and medium-low risk prisoners should be eliminated.

- Post-prison supervision for the purpose of collecting legal financial obligations should be eliminated.

- "Community custody" should be eliminated for offenders that receive non-prison sentences, excepting those serving a sex offender sentencing alternative, or a drug offender sentencing alternative.

Taken together (with changes affecting prison sentences applied retroactively), these policy changes would have broad impact, reducing the state's prison population by 1,872 (allowing for facility closures) and the community supervision caseload by 53,000, and producing an estimated overall budget savings of $74.7 million.

Secretary of Corrections Joseph Lehman worked with the state's prosecutors to develop these proposals. The King County Prosecutor, Norm Maleng, participated in drafting legislation to reduce the base sentence range for drug offenses last year. SB5419 passed the state Senate, but failed to win approval in the House. Maleng continues to support the DOC proposals.

Prosecutors in Washington State support legislation to reduce imprisonment of nonviolent offenders.

Some of the state's largest professional organizations are demanding an end to the drug war in Washington. A King County Bar Association report that recommends treatment instead of prison for drug users has also won endorsement by the Washington State Bar Association, the Washington State Medical Association and the Washington State Pharmacy Association.[90]

California

The California prison population peaked at 162,000 in 1999, when it began to decline to the current level of 158,900. As discussed above, since last July, thousands of people arrested for drug possession have been diverted to treatment programs under Proposition 36. Corrections officials are forecasting a continued population decline to 155,721 by the middle of 2003 - but they claim that by 2007 the population will have increased again to more than 164,000.[91]

The California Legislative Analysts Office[92] has put 10 different correctional cost-saving options on the table for consideration by legislators as they downsize the state budget during the up-coming session:

- **Early release of inmates from prison** - reductions of one to 13 months in the time served by nonviolent, non-serious prisoners (FY2003 savings estimates range from **$20.8** million for a one-month reduction, to **$270** million for a 13 month reduction).

- **Rejection of short-term commitments** - nonviolent, non-serious offenders with less than three to 12 months to serve in prison would be sent directly to parole supervision instead (FY2003 savings range from **$1.8** million for those with 0-3 months to serve, to **$81.7** million for those with 0-12 months to serve).

- **Increase "Work Time" credits** - two-for-one day credits for nonviolent, non-serious prisoners assigned to work camps, day-for-day credits for such prisoners in reception centers or those who are involuntarily unassigned (FY2003 savings of **$15.3** million; **$11.8** million; and **$6.7** million respectively).

- **Remove state prison as an option for minor felony offenses** - eliminate a prison sentence for some property and drug offenses such as "petty theft with a prior," forgery/fraud; receiving stolen property; grand theft (FY2003 savings at **$79.3** million). Such offenders would still be jail eligible.

- **Direct discharge without parole** - eliminate post-release supervision for non-serious, nonviolent, non-drug sale offenders (FY2003 savings of **$98.5** million).

- **Home detention for specified elderly inmates** - release of non-serious, nonviolent offenders aged 60 and older to home detention with electronic monitoring (FY2003 savings of **$1.4** million).

- **Early discharge from parole** - terminate post-release supervision for non-serious, nonviolent, non-drug-sale offenders who have 1 to 12 months of (violation-free) "clean time" on parole (FY2003 savings range from **$88.7** million for those with one "clean" month to **$23.4** million for those with 12 "clean" months).

- **Release to parole for specified elderly inmates** - parole of non-serious, nonviolent offenders aged 60 and older (FY2003 savings of **$3.4** million).

- **Reject civil narcotics addicts** - civil narcotic addicts would not go to prison (no saving estimate available)

- **Allow nonviolent parole violators to remain in the community** - parolees with nonviolent parole violations would remain in the community pending their revocation hearings (no savings estimate available).

Each year, the California Legislative Analysts Office and Department of Corrections conduct this type of analysis of corrections cost savings options as a sort of "prison cost savings audit" for policy maker's review. State officials around the country would do well to require such analyses, so that they can evaluate a broad range of possibilities when considering annual prison expenditures, particularly during difficult fiscal times such as these.

States should have their budget analyst prepare annual "prison cost savings audits" for policy maker's review.

Nelson Rockefeller launched the U.S. drug war in 1973 when he pushed a program of mandatory minimum sentencing laws through the New York State Legislature. Under the Rockefeller Drug Laws, sales of just two ounces, or possession of just four ounces, of a narcotic drug is a Class A felony, carrying a minimum sentence of 15 years and a maximum of life in prison. Most drug crime prisoners are sentenced to lesser mandatory prison terms allowed under conviction for Class B drug offenses (minimum 3 years to life). But the Second Felony Offender law (enacted in tandem with the Rockefeller Drug Laws) mandates a prison sentence for a person convicted of two felonies within ten years, no matter the circumstances, or whether either or both offenses were nonviolent. Taken together, the effect of these harsh sentencing laws has flooded New York's prisons with petty drug and nonviolent offenders, helping to swell the prison population from 21,829 in 1980 to 70,198 in 2000.

About 30,000 people are charged with a drug felony each year in New York. More than a third of the state's prison population is made up of drug felons, most of who have never been convicted of a violent crime. The drug laws fall particularly harshly on women and people of color. Sixty percent of New York's women prisoners were sentenced for a drug crime. Ninety-four percent of those incarcerated in New York for drug crimes are African Americans and Latinos.[93]

Last year the Legal Action Center published a report that looked at the impact of various proposals for reform of the Rockefeller Drug Laws and the Second Felony Offender Law.[94] Using prison admission data for 2000, the LAC researchers provided estimates of the number of individuals sent to prison for drug offenses and other nonviolent crimes that might have been eligible for diversion if judges were given greater discretion in sentencing.

A relatively conservative proposal put forth by the New York State Assembly would have made most of those convicted of a nonviolent drug offense diversion-eligible. If it had been enacted, this reform might have averted a prison sentence for as many as 4,872 offenders. Another long-standing proposal favored by many criminal justice reform advocates would have extended eligibility for diversion to *all* those convicted of nonviolent crimes. Under this plan, as many as 8,672 offenders might have been sentenced to drug treatment or other appropriate forms of community supervision.

Efforts to amend or repeal the Rockefeller Drug Laws recently received a boost from an unexpected source, the law's Republican, tough-on-crime author, former Senator John Dunne. In a 2000 article in *US News and World Report*, Dunne stated "We have been left with something that is not only unjust, but also horrendously expensive."[95]

Two other legislative proposals have been introduced that would impact the state's prison population. The proposed New York State Geriatric and Older Prisoners Act would provide "geriatric parole," electronic detention, and nursing home care for elderly prisoners who no longer

pose a threat to public safety. A second bill would provide for discretionary awards of "merit time" for prisoners that maintain a good behavior record in prison.

Michigan

Of the almost 10,000 drug cases disposed in Michigan courts in 1999, 2,512 resulted in a prison sentence and 1,452 resulted in jail. In 1998, Families Against Mandatory Minimum's Michigan Project successfully won a reform of Michigan's "650 Lifer" law, which required a mandatory sentence of life without parole for individuals convicted of delivery of 650 grams or more of cocaine or heroin. This was one of the harshest drug laws in the nation. The new law requires judges to impose a sentence of "life or any term of years, but not less than 20." In addition, the "650 Lifers" already in prison became eligible for parole at 15, 17 1/2, or 20 years (depending on whether they were repeat offenders, and/or cooperated with law enforcement).

Families Against Mandatory Minimums has been working since the changes were made in the "650 Lifer" Law to educate Michigan policymakers and the public about the need for comprehensive drug law reform. Two bills currently under review, HB5394 and HB5395, sponsored by Representative Bill McConico, Minority Vice-Chairman of the House Criminal Justice Committee, would allow judges to use the state's current sentencing guidelines if a mandatory minimum falls above or within the sentencing range applicable to the defendant. In addition, the use of mandatory consecutive sentencing ("stacked sentences") would be limited to major drug dealers. The bills also repeal "lifetime probation" for the lowest-level drug offenders.

Kansas

The Drug Policy Subcommittee of the Kansas Sentencing Commission is proposing a "Proposition 36" style reform that would divert nonviolent offenders convicted of possession offenses from prison sentences to mandatory drug treatment. They also propose to end a current policy under the Kansas sentencing guidelines that requires enhancing the offense severity classification level for second, third, and subsequent possession convictions. The effect of these reforms would be to increase prison bed savings from about 400 beds in the first year, to more than 800 beds over ten years.

Drug policy reforms in Kansas will save an estimated 800 beds.

New Mexico

In New Mexico, Governor Gary Johnson (R) expects that the state's legislators will be responsive to proposals to ease the state's drug laws. Johnson will support legislation he first proposed last year that would legalize medical marijuana; decriminalize possession of small amounts of the drug; and eliminate mandatory minimum sentences for some drug crimes. The following three bills have been introduced this session by Democrats in the Legislature, all with the Republican Governor's support:

- A Proposition 36-style diversion to treatment law that would apply to first and second-time offenders who possess two grams or less of cocaine, heroin, or other "hard drugs," or one to eight ounces of marijuana. The bill would reduce such offenses to a misdemeanor, requiring a sentence of conditional discharge, with a referral to treatment.
- A law that would make possession of less than one ounce of marijuana punishable by a fine of $100.
- A repeal of the mandatory sentence enhancement required if a prosecutor charges an offender as an habitual offender. The enhancement would become

discretionary, allowing judges to determine whether or not it would be appropriate.[96]

Massachusetts

The Massachusetts Sentencing Commission has proposed new guidelines, incorporated in Senate Bill S1004 sponsored by Senator Marian Walsh, a member of the Senate Judiciary Committee. Under the bill, a judge could "depart" below a statutory mandatory minimum sentence under limited circumstances, although prosecutors could appeal this departure. These reforms have received support from groups ranging from Families Against Mandatory Minimums to the Massachusetts Taxpayers Foundation. Michael Widner, President of MTF recently testified before the state legislature, saying, "The increased use of intermediate or alternative sentences, which range from placement in a halfway house to financial restitution, will enable the state to hold people accountable for their actions without imposing an unreasonable financial burden to the Commonwealth."

Last fall the House passed a more limited reform, and the Senate is expected to act on the issue in the spring of 2002. Prior to the introduction of S1004, reform efforts had stalled because the state's district attorneys opposed restoring a modest measure of discretion to judges.

ii. Policy Advocate's Proposals

Michigan

While Governor John Engler moves to close prisons in Michigan, the state's prison population is growing at a rate of 120 prisoners each month. With 47,255 prisoners confined in 44 prisons and 11 prison camps, annual correctional costs of $1.6 billion account for 17 percent of the state budget - about twice the national average and up from just 3 percent in 1980. Michigan's prison population is expected to continue trending up to nearly 53,000 by 2005.[97]

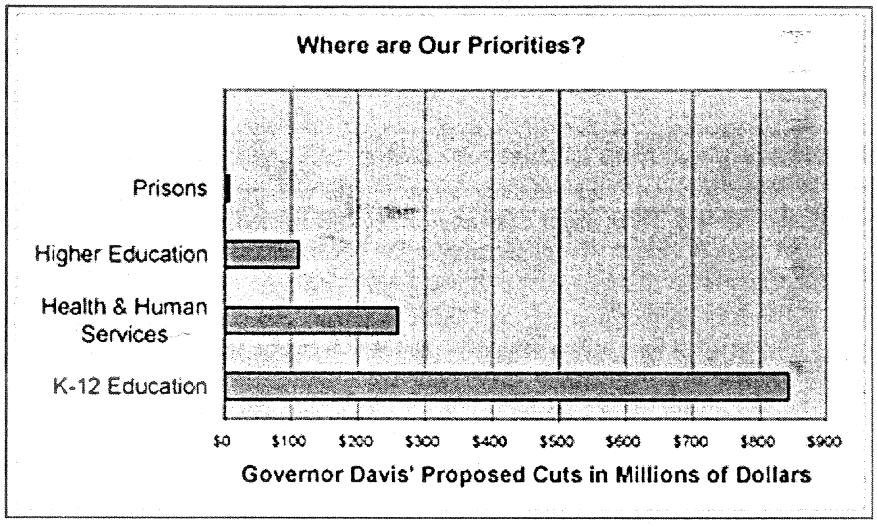
Barbara Levine, Director of the Citizens Alliance on Prisons and Public Safety (CAPPS) points out that as it stands, Michigan's prison closings will just shuffle the prisoners around to other prisons where they will be double-celled. Forty-four percent of the state's prison population consists of offenders who either are being held in prison past their parole eligibility date, or who have been returned to prison on a parole violation. The rate of parolees returned for technical violations has risen from 7 percent in 1980, to 23 percent in 2000.

CAPPS proposes that Michigan's parole guidelines be revamped to create a presumption of parole release at a prisoner's date of eligibility, and that returns to prison not be allowed for technical violations unless intermediate sanctions (increased supervision, substance abuse treatment) have been tried and have failed.

California

Governor Gray Davis has asked that state agencies present plans to reduce their budgets by 15 percent, but he has yet to back away from a long-planned 5,000-bed maximum-security prison slated for construction in Delano, California. In August 2000, a broad coalition of environmental and civil rights groups - including state chapters of the NAACP; the Center on Race, Poverty and the Environment, Critical Resistance, and the California Prison Moratorium Project -- filed a lawsuit to halt construction at Delano. The judge who heard the case ruled that the CDC's environmental review process had been inadequate -- not considering the cumulative impact of the prison given other past, present and future development projects in the area and he ordered that a new review be conducted.

Figure 5: California Govener Davis' Recommended Budget Reductions 2001/2002



Source: Prison Expansion in a Time of Austerity, The Justice Policy Institute, 2002

The California Department of Corrections recently received more than 1,000 responses to a request for comment on its revised environmental review of the planned $335 million prison. Complaints were lodged by the City of Delano, the Delano Joint Unified School District, and the California Department of Transportation that the impact of the prison on the local schools and traffic patterns have not been sufficiently explored or mitigated. But far more fundamental questions were raised by prison reform advocates like Rose Braz, Director of Critical Resistance, who disputes the need for a new prison when the state is considering closing down existing prisons, and cutting state support for education and health care. According to a report by the Justice Policy Institute, by not constructing and filling the Delano prison, the state would save $335 million in construction costs, $300 million in interest on construction bonds, and $129 million in annual operating costs.[98]

Oregon

Ballot Measure 11, approved by Oregon's voters in 1994, mandated longer prison terms for most serious violent offenders and set the state's corrections budget on a collision course with previous ballot initiatives that had slashed tax revenues across the state. Measure 11, which can only be modified by winning super majorities (3/5ths) in both houses of the state legislature, has fueled millions of dollars of prison construction already, and will require thousands more prison beds over the next few years. But at the same time, the state is facing a huge budget shortfall, and the budget must be balanced. Governor Kitzhaber has asked DOC officials to absorb a 6 to 7.5 percent budget cut. Department of Correction officials have proposing cutting the prison budget by $70 million by cutting medical services, education programs, work programs, and food for prisoners and cutting training for newly-hired prison staff. Yet at the same time, DOC plans for new medium- and minimum-security prisons are moving forward. In this context, prospects for funding operation of the new prisons now on the state's drawing board due to Measure 11 are far from clear.[99] In the face of these developments, The Oregon Criminal Justice Reform Coalition has proposed an immediate moratorium on all new prison construction as well as on the opening of newly constructed prison housing units at existing prisons.

The Coalition favors keeping the minimum-security facilities in operation. Instead of building new prisons and making program cuts, the Coalition proposes increasing "earned-time" provisions that could shorten the time served for offenders now in prison, and confining prisoners with less than 18 months to serve in local community corrections facilities, nearer to their families. The group also proposes that a new "blue-ribbon" commission be established to study the state's "hodgepodge" of sentencing laws and guidelines, and to make recommendations about ways Oregon could focus correctional resources on preventing crime and promoting public safety.

V. Conclusion

The current budget crisis is compelling state officials to consider the effects of a quarter-century of "get-tough" criminal justice policies and to adopt more pragmatic, effective approaches to preventing crime and dealing with criminal offenders. Three major categories of reforms merit careful consideration as policymakers look for ways to reduce state prison population pressures and correctional costs:

- Repealing mandatory sentencing laws and restoring judge's discretion to determine which criminal offenders truly warrant long prison sentences, and which can be safely and effectively punished and rehabilitated in the communities where they live.
    - Replace prison terms with alternatives such as treatment and intensive supervision for those convicted of drug possession and other petty drug-related offenses.
    - Repeal "Three Strikes" and other habitual offender legislation so that judges can mete out just punishment in response to crime that is commensurate with the harm done to victims and to the community.
    - Create a sentencing presumption for treatment and/or supervision in the community for nonviolent offenders who bear primary responsibility for care of their children.
- Establishing new structures for reviewing and revising state sentencing policies and guiding judges toward the most efficient, effective utilization of available correctional options -- ranging from imprisonment to community supervision, substance abuse treatment, and financial penalties.
    - Appoint a sentencing commission to review the laws and policies that govern the sanctioning of criminal offenders.
    - Collect and analyze criminal justice data to examine the results of current laws and policies and require that the full impact of any proposed reforms be projected before action is taken.
    - Conduct a *prison cost savings audit* to create a menu of savings options for policy makers to consider.
    - Create structured sentencing guidelines that will shape sentencing practices within a system of efficient, effective sentencing options chosen by state policymakers to provide community justice and public safety.
- Creating a new system of post-prison responsibilities and supports for offenders after they are released from prison that will reduce the likelihood of reoffending, and promote stronger public safety nets and healthier economies in the communities to which they return.
    - Sharply reduce or eliminate parole supervision for nonviolent offenders.
    - Use intermediate sanctions to address technical parole violations rather than returning offenders to prison.
    - Create a presumption for parole release to healthcare services and/or supervision in the community for nonviolent offenders over the age of 55 who have served a substantial portion of their prison sentence.
    - Promote community re-investment initiatives that will target a portion of the resources saved by these reforms to reduce criminogenic conditions and promote public health and economic well being for families living in high-risk urban neighborhoods.

Judith Greene is a criminal justice policy analyst whose articles on criminal sentencing issues, police practices, and correctional policy have appeared in numerous publications in the US and Europe.

Vincent Schiraldi is President of the Justice Policy Institute.

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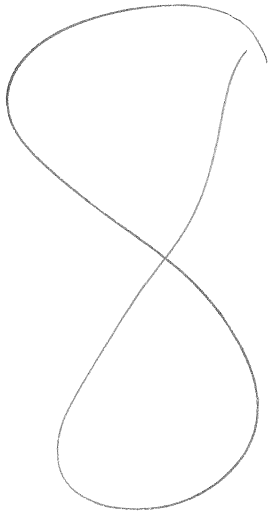

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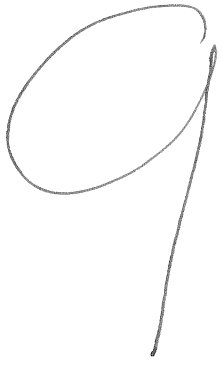
Sentencing and Policy Advisory Commission

The North Carolina Sentencing and Policy Advisory Commission was created by the General Assembly in 1990 to make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. Specifically, the Commission was directed to:

- Classify criminal offenses into felony and misdemeanor categories on the basis of their severity;
- Recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case;
- Develop a correctional population simulation model;
- Recommend a comprehensive community corrections strategy and organizational structure for the State; and,
- Study and make additional policy recommendations.

The Commission has 30 members drawn from all three branches of government; from all areas of the criminal justice system; and from the public. The Commission's prior work led to the passage of the Structured Sentencing Act which became effective in 1994. That law established truth in sentencing and prescribed sentencing options for judges based on the severity of the crime and the prior record of the offender.

Last Updated on 8/22/2002



National Assocation of State Sentencing Commissions

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(updated June 2003)

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Abt Associates Inc.

Multi-Site Evaluation of Sentencing Guidelines: Florida and North Carolina

Final Report
Executive Summary

Award #96-CE-VX-0016

February 2000

Prepared for
National Institute of Justice

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Introduction

Thirty years ago, all offenders in the U.S. were processed through indeterminate sentencing systems which permitted judges complete discretion in setting sentence conditions and terms, thus limiting appellate review[1] and detection of undesired consequences such as racial disparity. Once incarcerated, inmates served sentences according to good time earned, furloughs, parole board decisions, and sometimes early release due to arbitrary determinants such as overcrowding. Over the years, the criminal justice system (CJS) developed a diminished capacity to punish offenders in a manner consistent with many of the principles of sentencing—including deterrence, incapacitation, and retribution.[2]

Since Minnesota first enacted sentencing guidelines in 1980, many jurisdictions have considered structured sentencing a means to transition from indeterminate to determinate sentencing and restricted prison release policies. Actually, structured sentencing systems can be distinguished along a continuum ranging from mandatory to voluntary application of sentencing guidelines.[3] In some States, such as Virginia, structured sentencing is voluntary but judicial compliance with the guidelines is high.[4] All Federal felonies and most serious misdemeanor cases have been sentenced according to guidelines established by the U.S. Sentencing Commission since November 1987.[5] A recent survey[6] yielded information for 18 States which have established sentencing commissions to standardize structured sentencing rules. However, some States (e.g., Wisconsin and Florida) have decided to abolish their commissions and to adopt new criminal punishment codes.

Note: We would like to thank Kenneth Carlson, Dale Parent, and the sites for their contributions to this project.

1 Tonry, M. (1999, Sep). *Reconsidering Indeterminate and Structured Sentencing*. Washington, DC: National Institute of Justice, Research in Brief, Papers from the Executive Sessions on Sentencing and Corrections.

2 Pontell, H. (1984). *Capacity to Punish: The Ecology of Crime and Punishment*. IN: Indiana University Press.

3 Ostrom, B.J., Kauder, N.B., Rottman, D., and Peterson, M. (1998). *Sentencing Digest: Examining Current Sentencing Issues and Policies*. Williamsburg, VA: National Center for State Courts.

4 Virginia Criminal Sentencing Commission (1997, Dec). *Virginia Criminal Sentencing Commission: 1997 Annual Report*. Richmond, VA: Author.

5 U.S. Sentencing Commission. (1998). *An Overview of the Federal Sentencing Guidelines*. U.S.S.C. website (http://www.ussc.gov).

6 National Center for State Courts (1997). *Sentencing Commission Profiles: State Sentencing Policy and Practice Research in Action Partnership*. Williamsburg, VA: Author.

Generally, sentencing guidelines are rules established by commissions that structure sentencing according to both the case and the offender's record. Sentencing guidelines are often described as presumptive, meaning a range of sanctions and terms are presumed in accordance with, among other factors, offense severity and criminal history. The presumed sentence range is applied unless there are aggravating or mitigating circumstances for which alternate ranges are provided. Judges can depart from even mandatory guidelines with sufficient justification. Judges usually must state the factors which determined the alternate sentence, or if the sentence falls outside the alternate range, the reasons for a departure (e.g., for appellate review purposes).

The intent of this project is to focus on States which instituted (or made significant modifications to) structured sentencing policies in the 1990s and are referred to as "second generation sentencing commissions." Common among these second generation sentencing guidelines are some primary objectives: imprisonment of priority (violent) offenders, sentencing neutrality and uniformity, truth-in-sentencing, and prison population control. During the 1990s, Florida and North Carolina had mandatory presumptive sentencing guidelines; effective October 1998, the Florida Legislature repealed the sentencing guidelines and the Sentencing Commission, and established a new Criminal Punishment Code. The purpose of this study is to observe the effects of sentencing guidelines and prison release policy changes on felony sentences and time served in these two States.

One cannot study sentencing guidelines without examining truth in sentencing and other release policies that also affect time served and, consequently, demand on correctional resources. Prison release policies have been affected both by structured sentencing systems that may call for abolishment of parole boards and modifications in gaintime policies, and by Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) initiatives that promote increased time served. The Violent Crime Control and Law Enforcement Act of 1994 provided financial incentives for States to adopt VOI/TIS laws requiring certain offenders (esp. violent offenders) to serve minimum proportions of their sentences.[7]

For example, the Sentencing Reform Act of 1984 that established Federal sentencing guidelines also eliminated parole and reduced good conduct time allowed; these truth in sentencing provisions required that Federal offenders serve a minimum of 85 percent of their sentences. The Bureau of Justice Statistics[8] reported that between 1986 and 1997, average sentence terms rose by one-third (39 months to 54 months) and average time served more than doubled (21 months to 47 months). Despite increased sentence terms[9], the proportion of time served rose from about 58 percent in 1986 to about 87 percent in 1997 overall. Due to case processing lags, the effects of the sentencing guidelines and truth in sentencing

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7 Bureau of Justice Statistics (1999, Jan). *Truth in Sentencing in State Prisons*. Washington, DC: U.S. DOJ.

8 Bureau of Justice Statistics (1999, Jun). *Time Served in Prison by Federal Offenders, 1986-1997*. Washington, DC: U.S. DOJ.

policies accrued gradually as cohorts of new court commitments were admitted to the Bureau of Prisons; 23 percent of the inmates admitted in 1988 versus 99 percent of the inmates admitted in 1997, were sentenced under these new laws. These changes had the most impact on certain serious offenses—such as violent, drug, weapons, and immigration offenses—and had little impact on less serious offenses such as property offenses. In addition to time served, number of admissions increased differentially by offense type, whereby about 72 percent of the increase in the Federal prison population between 1986 and 1997 can be attributed to drug offenses.

Research Design

We selected two States—Florida and North Carolina—that adopted and modified sentencing guidelines, and revised release policies, to enhance sentences and time served for serious offenses and offenders with criminal histories. Our basic approach was to examine charging, sentence, prison admission, and time served statistics over time, comparing these outcomes for the periods before and after sentencing guidelines and release policy changes went into effect. Interrupted time series analyses and simulated projections were used to evaluate the impact of these policy changes on charging and sentencing practices by prosecutors, defense attorneys, and judges, as well as on release practices by prison officials. We also predicted future demand in terms of prison beds required as a consequence of these policies.

We obtained data collected by State court and corrections agencies in Florida and North Carolina for the period surrounding these policy changes (i.e., 1991 through 1997). Note that sentencing data can be highly variable in availability and quality, especially when both pre- and post-guideline data are required. Further, there are administrative practices (e.g., consolidating cases for judgement, resentencing, etc.) which impinge on our ability to observe accurate, real-time trends. Last, time served was estimated for recent cases, and one can only assume fixed characteristics to project time served estimates forward. These estimates may misrepresent future release outcomes.

As described in detail in the following chapters, both States classify offenses and criminal histories into ranked severity classes. North Carolina organizes sentence ranges in a grid format, where each cell refers to some combination of offense and criminal history severity (see appendix B). North Carolina follows guidelines for misdemeanors as well as felonies, but this study is concerned with felony crimes only. Florida differs from other States in that sentence calculations are organized into a point system rather than a punishment grid (see appendix A). Sentence type and term are determined by the sum of offense and criminal history points associated with each severity class. To control for offense type and severity, we chose cases charged with felony burglary, robbery, or drug possession. These represent

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[9] Sentence term increases are largely the result of mandatory minimum prison terms (BJS 1999).

substantial proportions of common offense typesCproperty, person, and drugCand a range of serious, moderate, and minor felonies. Further, these groups of offenses are differentially targeted by guideline modifications so comparisons can be used to demonstrate guideline impacts.

Findings pertaining to analyses of sentencing and prison data for Florida are presented in chapter 1 of this report, and for North Carolina in chapter 2. Following is a summary of those findings along with a review of the legislative changes in sentencing and release policies.

Florida

In October 1983, the Florida Sentencing Guidelines Commission initiated sentencing guidelines based on an objective scoring of offense- and offender-related criteria.[10] In an effort to promote truth in sentencing and to increase actual time served for violent and repeat offenders, Florida revised the sentencing guidelines and modified prison release policies as part of the Safe Streets Act effective January 1994.[11] With the Crime Control Act of 1995, Florida changed its sentencing guidelines to increase the incidence of prison sentences and the duration of time served for crimes involving serious offenses or serious victim injury, and for offenders who had serious prior criminal records.[12] For instance, the 1995 guidelines increased level 7 offense assessments from 42 to 56 points, changing the presumptive sentence from discretionary to mandatory prison for serious offenses such as burglary.[13] When the 1994 guidelines were effective, inmates could earn 20 to 25 days of incentive gaintime per month served, and they typically served about 70 percent of the sentence imposed. When the 1995 guidelines were effective, inmates could earn 10 days of incentive gaintime per month served, and they could not serve less than 85 percent of their sentences.[14]

Florida provided preguideline data for cases sentenced between January 1991 and December 1993, guideline data for cases related to offenses committed between January 1994 and June 1997, and admission and release data for offenders admitted to prison between July 1979 and June 1997. We analyzed sentencing data for associations between the implementation of the 1994 sentencing guidelines or the 1995 sentencing guidelines and:

- changes in primary offense, additional offense, and prior record charging;

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10 Hogenmuller, J.N. (1997, Jan). *Historical Overview of Florida Sentencing Guidelines*. Tallahassee, FL: Sentencing Commission.

11 Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author.

12 Florida Department of Corrections (1997, Mar). Sentencing Guidelines 1995-96 Annual Report: The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida. Tallahassee, FL: Author.

13 Offense types are organized in a master list by severity, ranging from 1 (low) to 10 (high).

14 Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author. Note meritorious and educational gaintime policies also apply.

- the incidence of sentence sanction and term mitigation by judges (i.e., judicial departures from the sentencing guidelines); and,
- the resulting sentence types and terms imposed.

Interrupted time-series indicate an increase in lower level charging (and a decrease in higher level charging) for primary offenses among burglary and robbery cases that coincides with the implementation of the 1995 sentencing guidelines. This reduced the impact of guideline modifications on average primary offense points, which remained nearly the same. Average points for additional offenses rose with the guideline modifications for serious felonies despite a drop in serious additional offense charging, especially among robbery cases. The incidence of prior record charging did not change, so average points increased in tandem with the guideline transition, as expected. The net effect of the 1995 guidelines was an increase in presumptive prison sentence terms, as intended by the State.

CJS officials may have adjusted charging or plea bargaining practices in response to guideline changes, but if these changes happened, they were not large enough to nullify the guidelines' intent. With the implementation of the 1995 guidelines, we see a general increase in points meaning an increase in recommended prison sentences. However, it appears that judges attempted to mitigate the harsher sanctions prescribed by the 1995 guidelines via sentence departures in burglary and drug possession cases—more in terms of nonprison sanctions than in decreased prison terms. Again, apparent CJS attempts to mitigate new provisions of the guidelines and truth in sentencing were not so great as to nullify the guidelines' intent. Comparing expected time served under 1994 versus 1995 guidelines given time served assumptions of 70 percent and 85 percent of sentence imposed, guideline changes resulted in substantial time served estimate increases for serious offenses like burglary and robbery (e.g., increases of six months or more), and only moderate increases on minor felonies such as drug possession.

We analyzed prison admission and release data for new court commitments to observe the impact of guideline and release policy changes on:

- proportion of sentence time served;
- admissions and demand (the number of prison beds required)[15]; and,
- projected cumulative demand.

Proportion of time served did increase with each set of guideline and associated release policy changes—from about 30 percent to 55 percent prior to 1994, to about 60 percent to 75 percent during the 1994 guideline period, and finally up to 85 percent since the 1995 guidelines were introduced. Although admissions declined, demand on prison resources remained steady for serious inmates such as burglary and robbery offenders as time served increased commensurate with guideline and release policies

changes. Nonetheless , sentencing guidelines changes have a positive impact that is independent of the effects of admissions and release policies. Simulating future demand, we found that sentencing guideline and truth in sentencing policies may double the number of prison beds required for such serious offenses by FY2013.

North Carolina

North Carolina adopted a structured sentencing system following a history of indeterminate sentencing altered only by the Fair Sentencing Act (FSA) of 1981.[16] In October 1994, North Carolina introduced sentencing guidelines which stipulate presumptive sentences according to offense severity and criminal history (see appendix B) for all felonies and misdemeanors. For serious crimes and repeat offenders, the guidelines presume jail or prison terms (called active terms). The felony sentencing chart is divided by a grid border that separates cells corresponding to active versus optional sentences including intermediate and community punishment.

In December 1995, selected minimum sentence ranges were amended to increase sanctions and terms for serious crimes and offenders; specifically, minimum terms were increased by approximately 16 percent for serious felonies (denoted as classes B2, C, and D). Also, active punishment options were added for felony class H offense cases (e.g., burglary) with prior record levels of I or II (minimal or no criminal histories).

Under structured sentencing, good time, gaintime, and parole were abolished. Offenders sentenced to active punishment must serve at least the minimum term imposed; however, as determined by the Department of Correction (DOC), they could earn credits of up to six days per month incarcerated on their maximum term. Prisoners could be released on the date equivalent to the maximum sentence term less nine months (effective December 1996[17]), any earned time awarded, and time served in pretrial detention.[18]

North Carolina provided court data for cases filed between 1991 and 1997, and prison admission and release data for offenders admitted between 1990 and 1997. We analyzed sentencing data for associations between the implementation of the 1994 sentencing guidelines or the 1995 sentencing guidelines and changes in:

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15 We can approximate the demand made by a cohort of offenders on prison resources by multiplying the number of offenders admitted by the average length of time they will serve.

16 The FSA mandated statutory presumptive sentence terms for felony offenses that were punishable by maximum prison terms of three or more years.

17 Effective December 1996, the incarceration release date was amended from the equivalent of the maximum prison term "less six months" to "less nine months."

18 Offenders should serve 100 percent of their minimum term less time served in pretrial detention.

- primary offense and prior record charging;
- the incidence of active punishment (above the sentencing chart border) sentences imposed; and,
- the resulting sentence types and terms imposed.

Despite the increase in terms for serious felonies effective with the 1995 guidelines, interrupted time-series indicate no change in primary offense charging patterns. Missing data probably attributable to record consolidation practices preclude definitive conclusions, but changes in prior record charging were not apparent. Also, there was no change in the proportion of cases for which active punishment was the presumed sentence that can be associated with guideline modifications in 1995.

Actually, the shift in sentences occurs in 1994 when North Carolina moved from indeterminate sentencing and FSA policies to structured sentencing. Confirmed by DOC data and expert opinion, the sentencing and prison data show a considerable drop in the length of prison terms imposed across offenses. However, the sentence outcomes are structured to reinforce the punitive differential between serious and minor felonies whereby more punitive terms are associated with more serious offenses. During the FSA period, the majority of robbery cases (i.e., the most serious felonies) were sentenced to prison terms of over five years; since the 1994 guidelines, sentence terms between 13 and 24 months are more common. In contrast, sentence terms for minor felonies (such as drug possession) were usually more than two years during the FSA period. Under sentencing guidelines, very few drug possession cases were sentenced to more than two years, and the majority were sentenced to six months or less. These trends reflect a rational decision to impose reduced demands on correctional resources, in general, but to reserve more punitive sentences for targeted serious offenses.

We analyzed prison admission and release data for new court commitments to observe the impact of guideline and release policy changes on:

- proportion of sentence time served;
- admissions and demand (the number of prison beds required); and,
- projected cumulative demand.

During the period from 1990 to 1994, prisoners served an average of 20 to 30 percent of their maximum sentence, regardless of offense type. Offenders sentenced under the sentencing guidelines served an average of about 80 percent or more of their sentences. Many offenders sentenced under the guidelines were still in prison through 1997, but there is a slight increase in time served among burglary and robbery offenses sentenced under the 1995 guidelines.

Prison demand patterns vary by offense type. Increased time served resulted in increased demand posed by burglary and robbery offenders, even though burglary admissions decreased. Demand among drug possession offenders increased, despite shorter sentences, because admissions rose. Assuming

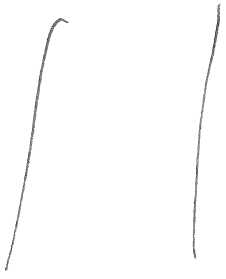
similar time served and admission averages, estimated future cumulative demand will require triple the number of prison beds for serious offenses such as robbery. There is a near doubling in demand for drug possession offenses, and a negligible increase in demand for burglary offenses. Controlling for admissions, the change in demand or the projected number of prison beds required by FY2013 is greatest for robbery offenses, but still substantial for burglary offenses. No appreciable change in demand for drug possession offenses is anticipated.

Review

Both Florida and North Carolina succeeded in raising time served for serious offenses (e.g., robbery and burglary) and the proportion of sentences served overall. According to interrupted time-series analyses, the net effect of Florida sentencing guidelines and their modifications was increased primary offense, additional offense, and prior record points for serious cases. Despite judicial departures that mitigated sanctions, guideline changes led to increased sentence terms—more for serious offenses than for minor felonies such as drug possession. The end results are inmates serving up to 85 percent of their prison sentences and higher demand related to serious offenses.

Court data are insufficient to support precise statistics, but North Carolina achieved truth in sentencing by adopting sentencing guidelines that generally lowered the sentence terms imposed. With structured sentencing, prison inmates served up to 80 percent of their sentences, with a slight increase in time served observed among serious offenses since the implementation of the 1995 guidelines. Similar to Florida, demand related to North Carolina's cases increased among serious offenses despite decreasing prison admissions. However, like Federal trends, drug offense admissions to prison are up in North Carolina. Expected time served is lower for drug possession cases compared to Federal drug trafficking cases, but demand caused by drug possession cases in North Carolina is greater than in Florida due to increasing volume.

We analyzed data for sentences and prison admissions through 1997. A new punishment code effective in Florida October 1998 entails several changes. For example, judges may impose statutory maximums without explanation, or downward departures with explanation, which are subject to appeal. As of July 1997, sentences of up to 22 months of community control or prison may be imposed without aggravating reasons when the recommended sentence is nonprison if there are prior felony convictions; and downward departures on the basis of drug addiction were eliminated. If mitigating judicial departures are inhibited by these policies, we would expect further increases in demands on prison resources while truth in sentencing policies are also in effect.



SENTENCING AND CORRECTIONS IN THE 21ST CENTURY: SETTING THE STAGE FOR THE FUTURE

Report Submitted to

THE NATIONAL INSTITUTE OF JUSTICE

OFFICE OF JUSTICE PROGRAM

U.S. DEPARTMENT OF JUSTICE

BY

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February 23, 2000

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SENTENCING AND CORRECTIONS IN THE 21ST CENTURY:

SETTING THE STAGE FOR THE FUTURE[1]

In the past thirty years there have been enormous changes in the philosophy and practice of sentencing and corrections. The strong emphasis on rehabilitation that had existed for the first seven decades of the 20th century gave way to a focus on fairness and justice where sentences would reflect just deserts and not some utilitarian motive. Subsequently, sentencing practices moved to a crime control model with an emphasis on the use of incarceration to reduce crime in the community. During the 1980s and 1990s the crime control model became increasingly popular. Discussion of the future of sentencing and corrections in the 21st century must begin with knowledge of the changes that have occurred and the impact these changes have had on the criminal justice system.

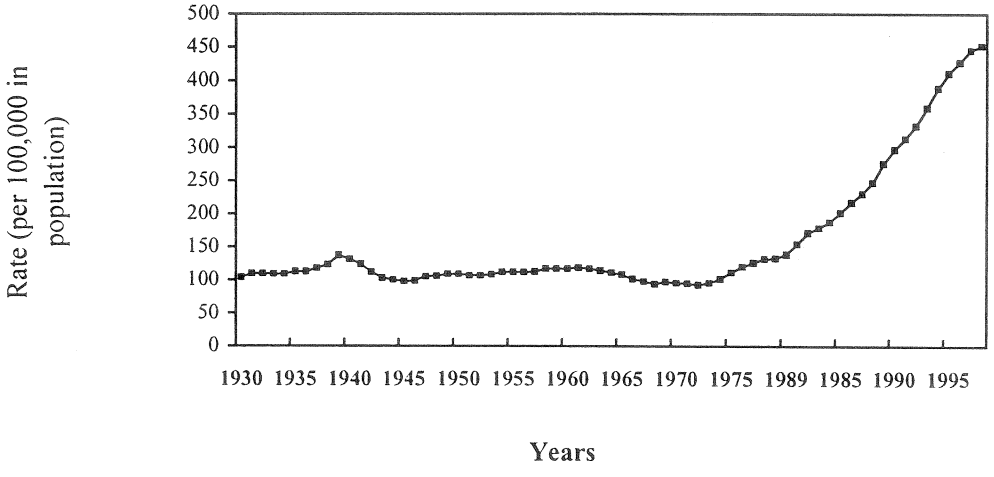
The historical changes in sentencing and corrections policies and practices can be characterized, in part, by the emphasis placed on different goals. Four major goals are usually attributed to the sentencing process: retribution, rehabilitation, deterrence and incapacitation. Retribution refers to just deserts; people who do certain things deserve to be punished. The three other goals are utilitarian in purpose, emphasizing methods to protect the public. They differ, however, in the mechanism expected to provide public safety. Deterrence emphasizes the onerous-ness of punishment; offenders will be deterred from committing crimes because of a rational calculation that the costs of punishment are too great. The punishment is so repugnant that neither the punished offender (specific deterrence) nor others (general deterrence) will commit the crime in the future. Incapacitation deprives a person of the capacity to commit crimes because they are physically detained in prison; when offenders are in prison they cannot commit crimes in the community. Rehabilitation is directed toward changing offenders so they will not continue to commit crime in the future. While sentences frequently address several of these goals in practice, emphasis on these different goals has changed dramatically in the last thirty years.

At the same time that there have been changes in the goals of punishment, there has been has been an enormous increase in the number of people in the United States who are under some form of correctional supervision. Changes in the practice and philosophy of sentencing and corrections have clearly had a major impact on the rates. However, there is no consensus on what specifically has caused the changes, the impact of the changes, and the intended and unintended consequences. This paper is designed in part to explore these issues.

1. GROWTH OF CORRECTIONAL POPULATIONS

It is valuable to begin this discussion of sentencing and corrections by examining the dramatic increase in offender populations that accompanied changes in sentencing and correctional philosophy. The increase in incarceration rates was unprecedented and followed a period of relative stability in incarceration rates (Figure 1). For example, from 1930 until 1975 the average incarceration rate was 106 inmates for every 100,000 individuals in the population. The rate fluctuated only slightly, from a low of 93 inmates per 100,000 to a maximum rate of 137.[2] This was the age of indeterminate sentencing and rehabilitation.

Figure 1. U.S. Incarceration Rate in State and Federal Institutions (1930-1998)



Sourcebook, 1998

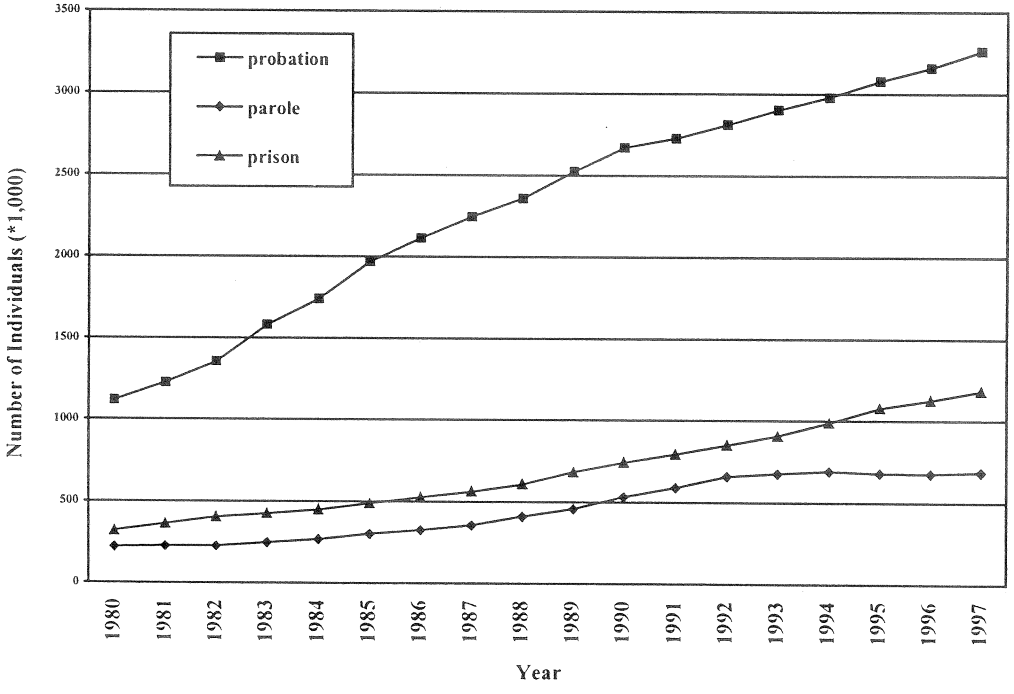
After 1975, incarceration rates grew tremendously; by 1985, the incarceration rate for individuals in state or federal prisons was 202 per 100,000 adults in the population, and this continued to grow to 411 in 1995, and 445 in 1997. If jail populations are considered as well, the incarceration rate was 652 in 1997. By the end of 1998, more than 1.3 million prisoners were under federal or state jurisdiction; over 1.8 million were in either jail or prison.[3]

Nationally, the increases in the correctional populations were not limited to prison. The number of individuals on probation and parole also grew substantially (Figure 2).[4] Since 1980, the total correctional population rose from 1.8 million in 1980 to 5.7 million in 1997. From 1980 until 1997, probation grew 191 percent, parole grew 213 percent and prisons grew 271 percent.[5] By 1998, over 4.1 million adult men and women

were on probation or parole; there were 1,705 probationers and 352 parolees for every 100,000 adults in the population.[6]

The adult correctional population in Federal, State, and local adult correctional populations reached an all-time high of approximately 5.9 million in 1998.[7] One in 34 adults, or 2.9 percent of the population, were either incarcerated or on probation or parole at the end of the year.[8] The majority of these adults (69.1 percent) were on probation or parole.[9]

Figure 2. Adults on Probation, Parole or in Prison (1980-1997)



Sourcebook, 1998

1.1 Differences Among States

The expansion of the prison population involved every one of the fifty states and federal prisons. However, it is important to note that the number of individuals in prison or in the community on probation or parole and the changes over time in these numbers differ greatly by the jurisdiction being examined, as the following table shows for incarceration rates.

Table 1. Rate (per 100,000 resident population) of sentenced prisoners in selected states (Sourcebook, 1998).

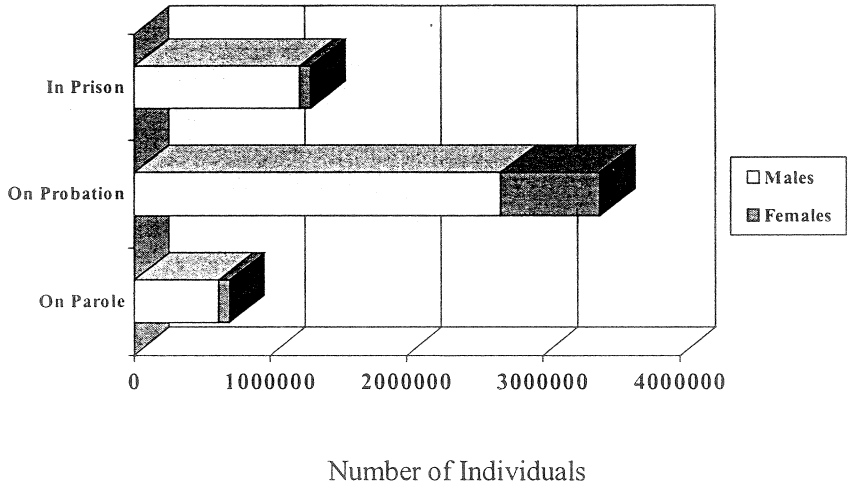
STATES	1980	1990	1997
California	98	375	484
Georgia	219	327	492
Illinois	94	234	353
Louisiana	211	427	709
Minnesota	49	72	117
New York	123	304	384
Texas	210	290	700
Washington	106	162	243

While incarceration rates in all jurisdictions have increased, the rates for the different jurisdictions vary substantially by: the amount of increase, when changes occurred, and the rate in 1997. Also, some significant and relatively stable regional differences exist in incarceration rates.

1.2 Race, Ethnicity and Gender

Overall, women made up a small percent of the total correctional population as shown in Figure 3. However, the rates for women have grown faster than the rates for men. For example, in 1980 the incarceration rate for females was 11 per 100,000 U.S. residents compared to a rate of 275 for males. By 1996, the rate for women had grown to 51 per 100,000 U.S. residents, a 364% increase.[10]

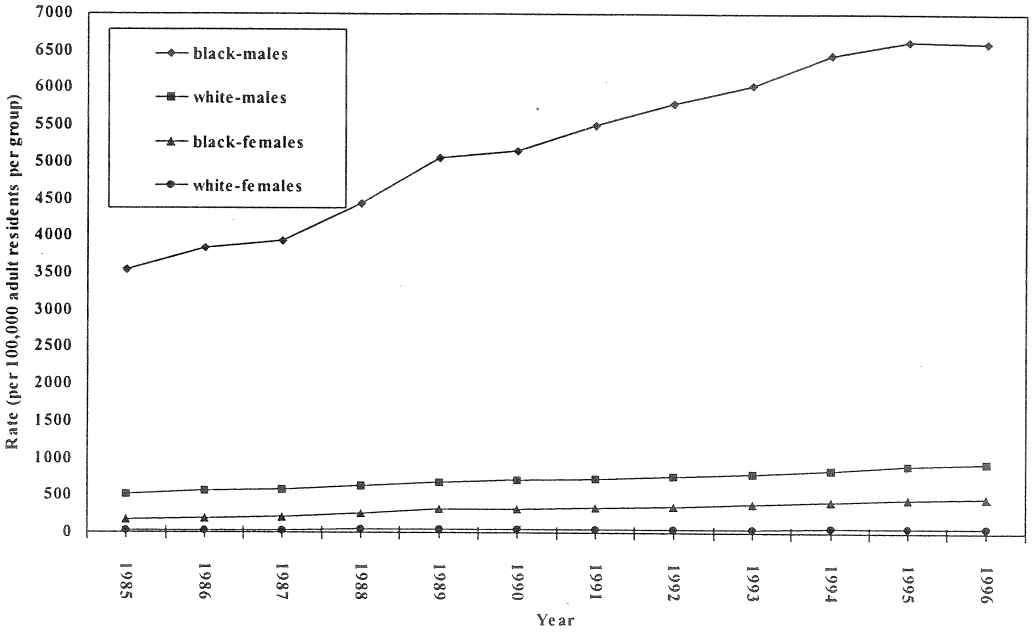
Figure 3. Number of Individuals in Prison, on Probation and on Parole Showing Gender Distribution, 1998



Beck and Mumola, 1999, Bonczar and Glaze, 1999

Minority males had the greatest overall rate of incarceration as well as the greatest increases in rates. From 1980 until 1996 the incarceration rate for African-American prisoners in state or federal prisons grew from 554 to 1,574 (a 184 percent increase).[11] During this time, incarceration rates for Hispanics increased from 206 to 609 (a 196 percent increase); rates for whites went from 73 to 193 (a 164 percent increase).[12] If both prison and jail are considered, in 1996, the rates for African-Americans were 6,607 and 474 (per 1000,000 adult residents) for males and females, respectively; for whites the rates were 944 for males and 73 for females.[13] The rates for different gender and racial groups, and the dramatic increase from 1985 until 1996 for African-American males are shown in Figure 4.

Figure 4. Incarceration Rates in Prison and Jail by Race and Sex (1985-1996)



Sourcebook, 1998

1.3 Correctional Expenditures

In response to this enormous growth in correctional populations, expenditures for corrections grew as well. Direct expenditures for correctional activities by state governments grew from $4.26 billion in 1980 to $21.27 billion in 1994.[14] The majority of the expenditures were for institutions rather than other correctional programs (probation, parole, community corrections, etc.). Furthermore, despite the fact that the number of probationers grew more rapidly than the number of prisoners, the proportion of the funds given to institutions continued to grow during this period. In 1980, institutions accounted for 80.1% of the total correctional expenditures; this grew to 83.4 in 1994; expenditures for other correctional programs were reduced from 19.9% in 1980 to 16.6 in 1994.

The cost to keep inmates in institutions is much greater than the cost of community supervision. For example, in 1996, the average annual operating expenditure

per inmate in state prisons was $20,100. The costs of regular probation and parole supervision are estimated to be about $200 per year per offender for probation, and $975 for parole.[15]

As an annual cost per U.S. resident, total state correctional spending rose from $53 in 1985 to $103 in 1996.[16] While the per year spending for prisons increased at a greater rate than other areas of state budgets, corrections' relative share of the total outlay remained small. For example, the annual per capita costs for state spending for education, public welfare and health in FY 1996 were $994, $738 and $123, respectively.[17] However, there is some concern that the area of the state budgets that is being most strongly impacted by the increased cost of corrections is higher education. It has been widely alleged that university and college budgets are the most likely areas of the total budget that are being reduced to fund the increased cost of corrections.

2. FROM INDETERMINACY TO CRIME CONTROL

2.1 The Age of Indeterminate Sentencing and Rehabilitation

Thirty years ago all states, the Federal government and the District of Columbia had indeterminate sentencing systems. There was a strong emphasis on the rehabilitation of juvenile delinquents and adults offenders. Legislatures set maximum authorized sentences; judges sentenced offenders to imprisonment, probation, and fines and set maximum sentences; correctional officials had power over granting good time, earned-time and furloughs[18]; and parole boards set release dates.[19] In some states the indeterminacy of the sentences permitted sufficient leeway to permit courts to sentence offenders to prison for time periods from one day to life. Professionals, typically the parole board, were assigned the task of determining when the offender had made sufficient progress to be awarded supervised release in the community. After the sentence was imposed, decision-making was almost totally the prerogative of correctional authorities or parole boards.

The idea behind indeterminate sentencing was individualization of sentences. Judges gave sentences with a wide range between the minimum and maximum length of time (e.g., 0 to 20 years) the offender had to serve in prison. Offenders were supposed to be released when they were rehabilitated. Decisions about release were the responsibility of prison authorities and the parole board. Officials were given broad authority to tailor dispositions to the treatment needs of individual offenders. The goals were to prevent new crimes, to promote the correction and rehabilitation of the offenders, and to safeguard offenders against excessive, disproportionate or arbitrary punishment.

Theoretically, two underlying beliefs appear to explain the philosophy behind indeterminate sentences – one environmental and the other psychological.[20] Environmental explanations focused on the wretchedness of the inner city slum environments and questioned how an individual growing up in these environments could

be held responsible for later criminal behavior. Fairness dictated that offenders be treated as individuals; anything else was vengeful. The psychological perspective considered offenders ill and, therefore, in need of treatment as a cure for the illness. In either case, the criminal justice system was responsible for changing law-breakers into law-abiders or rehabilitating them. In his 1965 address to the U.S. Congress, President Lyndon Johnson "called for the establishment of a blue ribbon panel to probe fully and deeply into the problems of crime in our Nation."

The strong rehabilitative perspective of the times is reflected in the recommendations this panel made for changes in the courts and corrections. Prominent among their recommendations was an emphasis on probation and parole:

- Caseloads should be reduced to an average ratio of 35 offenders per probation or parole officer;
- All releasees from institutions should receive adequate supervision;
- All jurisdictions should provide services for "felons, juveniles and adult misdemeanants who need or can profit from community treatment";
- "Probation and parole officials should develop new methods and skills to aid in reintegrating offenders through active intervention on their behalf with community institutions." [21]

A review of some of the panel's recommendations for institutions similarly reflect the emphasis on rehabilitation, services and reintegration:

- "Model, small-unit correctional institutions for flexible, community-oriented treatment" should be established;
- "Educational and vocational training programs should be upgraded and extended to all inmates who could profit from them";
- Modern correctional industries aimed at the rehabilitation of offenders should be instituted;
- Graduated release and furlough programs should be expanded and coordinated with community treatment services.[22]

Prosecutors were urged to make discriminating charge decisions by "assuring that offenders who merit criminal sanctions are not released and that other offenders are either released or diverted to non-criminal methods of treatment" such as diversion to community treatment. Out of these recommendations grew the Law Enforcement Assistance Act of 1965 and the Omnibus Crime Control and Safe Streets Act of 1968.

These recommendations, as well as the indeterminate sentencing structure, clearly demonstrate that the emphasis at that time was on rehabilitation with a focus on community treatment, diversion, reintegration and education and employment programs. Despite the philosophical emphasis on rehabilitation, it should be noted that, in actual practice these programs were often poorly implemented and funded.

2.2 A Time of Change: 1970-2000

The decade of the 1960s had begun with great optimism about the promises that a new frontier would be created and a more equitable order achieved. By the end of the decade, belief in "The Great Society" had given way to a despairing distrust of the state. The fallout from this thinking for correctional policy was immense because inherent in the rehabilitative ideal was a trust in criminal justice officials to reform offenders. Some questioned the unbridled discretion available to criminal justice decision makers that gave preferential sentences to the advantaged, and coerced inmates into conformity. Others wished to return to earlier times when "law and order" reigned in our country and they called for a "war on crime" to preserve the social order. In either case, the times were ripe for major changes in the criminal justice system. A virtual revolution occurred in sentencing and corrections policies and practices in the seventies and thereafter.

One of the most visible influences on this change was Martinson's 1974 summary of a more elaborate report by Lipton, Martinson, and Wilks.[23] Martinson's essay described the results of the research team's assessment of 231 evaluations of treatment programs conducted between 1945 and 1967. From this research, he concluded "With few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."[24] This report was widely interpreted as demonstrating that "nothing works" in the rehabilitation of offenders. Subsequently, a National Academy of Science panel reviewed the results and agreed with Martinson.[25]

Critics argued Martinson's conclusion was flawed for two major reasons. First, the research methodology that was available was so inadequate that only a few studies warranted any unequivocal interpretations, and, second, the majority of studies examined programs that were so poorly implemented they would hardly be expected to have an impact on future criminal activities. Despite the concern that the research did not support such a conclusion, the phrase "Nothing Works" became an instant cliché and exerted a powerful influence on both popular and professional thinking.

Several factors may explain why at that point in time Martinson's conclusion became so widely accepted. However, some argue, the historical times were ripe for a full-scale attack on rehabilitation and the indeterminate sentencing model.[26] The decade of social turbulence preceding the publication of Martinson's article profoundly affected many Americans. Inequities based on gender, race and class had been exposed and challenged. Protests, riots and bombings over issues such as civil rights and the war in Vietnam were common occurrences. Within the criminal justice system the 1971 riot

and slaughter of inmates and guards at Attica demonstrated the extent to which government officials would go to suppress offender protests over prison conditions. Could judges and correctional officials be trusted to exercise the extreme discretion permitted by the rehabilitative ideal?

For many, the answer to this question was "no" but liberals and conservatives differed in why they wanted to limit discretion. Conservatives argued that the judges and parole boards were too lenient; they used their discretion to release predatory criminals who continued to victimize innocent citizens. Liberals argued that the discretion given to officials was coercive and ineffective. Since officials could not really tell when offenders were rehabilitated, why should they have the power to decide when the individual should be released? If the professionals who were responsible for rehabilitation could not demonstrate that they could effectively change offenders, then their authority and autonomy in establishing the length of sentences should be severely restricted so they would have less control over people's lives. Furthermore, they argued, the wide discretion often results in disparity and unfair sentences that are not remedied through the parole release system. As a result of the wide discretion allotted to officials in the criminal justice system, offenders with similar past histories convicted of similar crimes often served widely disparate sentences while those with disparate histories and crimes served similar sentences. Critics of the indeterminate sentencing system argued that poor and minority offenders were discriminated against; imprisoned offenders were coerced into programs; and offenders who challenged prison conditions were denied parole.

2.3 The Justice Model of Sentencing and Corrections

The proposed solution to the problems of sentencing and corrections was to return to a Justice Model of sentencing and corrections.[27] Sentences should be decided on the basis of fair and just sentencing policies. The model is based on retributive notions of deserved punishment; the sentence should fit the crime. Offenders would receive their just deserts -- the deserved punishment -- nothing more, nothing less. Advocates argued that prisons should not be used to achieve any public end. In their opinion, it is not morally justified to use people in particular ways to achieve public goals. Punishment should be proportionate to the crime but not be designed to achieve some utilitarian motive like rehabilitation or crime control. The only relevant factors to consider in sentencing are the crime or crimes of conviction and the offender's past history of criminal activity. Under this model, individualized treatment and discretion would be eliminated. Thus, all offenders would be treated similarly by the criminal justice system.

The Justice Model carried with it direct implications for public policy. Offenders should be given substantial procedural protections throughout all stages of criminal justice system processing. Thus, legal rights of inmates became of great importance for the courts and corrections. Rehabilitation, if used, should be voluntary and not coerced. The largest policy impact was the need to change from an indeterminate sentencing model to determinate or "flat" sentencing. Under this sentencing method, a specific

crime would carry a clearly identified sentence length, not a broad minimum and maximum. Parole release would be eliminated. Sentence lengths would be determined by guidelines that considered only the past history of criminal activity and the current crime of conviction.

2.4 Crime Control: Incapacitation and Deterrence

While proponents of the Justice Model were arguing in favor of this change away from a rehabilitation model, others began to argue for changes that would increase the crime control aspects of sentencing and corrections through incapacitation and deterrence. The decade from 1965 until 1975 was a period of escalating crime rates (see Figure 6 below). "Law and order" advocates attacked rehabilitation as coddling criminals. They wanted to implement policies that would limit the ability of judges and correctional officials to mitigate the harshness of criminal sanctions. They advocated "get tough" proposals for mandatory minimum sentences and lengthy determinate sentences as methods for reducing criminal activities through incapacitation and deterrence.

The concept of incapacitation is simple – for as long as offenders are incarcerated they clearly cannot commit crimes outside of prison. Crime is reduced because the incarcerated offenders, while in prison, are prevented from committing crimes in the community. During the mid-1970s, interest in incapacitation as a crime prevention strategy grew, in part due to concerns about the efficacy of rehabilitation raised by the Martinson report, rising crime rates and public fear of crime. Incapacitation strategies were supported because of what seemed to be the logical utility of keeping offenders in prison so they could not commit crimes.

Most people accept the notion that crime prevention through incapacitation is one primary justification of imprisonment.[28] Generally accepted, also, is the fact that some individuals should be incarcerated for long periods of time as retribution for the seriousness of their offenses and because they pose a threat if released. However, questions arise over how broadly the incapacitation strategy should be used and whether it is a cost-efficient and -effective crime prevention strategy. Some ask that prison space be reserved for only a small, carefully, selected group of dangerous repeat offenders. Others advocate a general incapacitation strategy that would incarcerate a substantial number of felons. The success of incapacitation in reducing crime in the community remains a controversial subject.

Increases in prison populations and the research findings of the large differences in the crime rates of individual offenders moved societal attention towards a more selective strategy of incapacitating a small group of offenders. Encouragement for this selective incapacitation as a crime control strategy also came from research that revealed that a small number of very active offenders (six percent of the cohort) accounted for a disproportionately large number of the arrests (52 percent) in a Philadelphia birth

cohort.[29] Incapacitation advocates argued that crime could be reduced if these "career criminals" were identified and incapacitated.[30] This "selective incapacitation" strategy would identify offenders who are most likely to commit serious crimes at a higher frequency so that they could be incarcerated for longer periods of time. Further support for the benefits of incapacitation as a correctional strategy came from the proposal that, although there were enormous costs to incarcerating large numbers of felons, there were also substantial costs if they were released, and continued to commit crimes in terms of such factors as criminal processing, loss to victims, etc.[31] Some of the practices that can be attributed to these incapacitation strategies are habitual offender laws,[32] abolishing parole, mandatory sentences and the more recent three-strikes laws.

War on Drugs. The "War on Drugs" was another major factor that affected sentencing and corrections. The expansion of criminal sanctions for drug crimes began in the 1970s but picked up speed in the 1980s with the declaration of "War on Drugs," and the passage of the Anti-Drug Abuse Acts of 1986 and 1988. From the perspective of the crime control strategy, it was thought that increasing arrests and punishment for drug offenses would be effective in reducing illegal drug use and sales. As described subsequently, this "War" had and continues to have a profound impact on correctional populations and minorities.

Intermediate Sanctions. As a result of disillusionment with the effectiveness of rehabilitation and the focus on justice and incapacitation, intermediate sanctions were proposed as an ideal way to provide a range of sanctions between probation and parole.[33] Theoretically, these sanctions could be scaled in severity so as to be proportionate to the seriousness of the crimes committed. Furthermore, the additional control and threat of sanctions were expected to either deter offenders from future criminal acts or restrict them (in a sense incapacitate them) so they would not have the opportunity to reoffend.

Most jurisdictions in the U.S. have some type of intermediate sanctions programs. These programs have been variously called correctional alternatives, intermediate sanctions, community corrections or, more recently, correctional options. Intensive supervised probation or parole (ISP), house arrest, boot camp prisons, and day reporting centers are some of the more common intermediate sanctions. Frequently, they are used in conjunction with other tools of supervision such as urine testing or electronic monitoring. The sanctions are used as either "front-end" options for probationers or as "back-end" options for those released on parole or community supervision.

Prior to the 1970s, intermediate sanctions were referred to as community corrections; at that time the focus was on providing services and rehabilitation. In contrast, the intermediate sanctions of the 1980s and 1990s involved increased control over offenders. Typical requirements for offenders in ISP programs were more frequent meetings with correctional agents, periodic urine tests, substance abuse treatment and verification of employment. The focus was on increasing control over offenders and making community supervision more onerous so the punishment was retributive. In part, this was in response to the attitude that probation was nothing more than a slap on the

wrist and, therefore, did not provide either a deserved punishment or a method to reduce the criminal activities of offenders while they were supervised in the community.

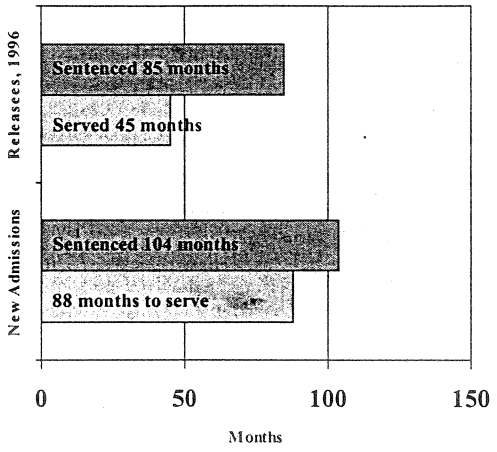
Truth-In-Sentencing. "The amount of time offenders serve in prison is almost always shorter than the time they are sentenced to serve by the court. For example, prisoners released in 1996 served an average of 30 months in prison and jail, or 44 percent of their 85-month sentences." [34] Under indeterminate sentencing, decisions are made by professionals in low-visibility settings with high discretion, unlikely to be influenced by public sentiment and passion. In the past three decades, sentencing requirements and release policies became more restrictive; pressure for longer sentences and uniform punishment led to mandatory minimums and sentencing guidelines. However, prison crowding, good-time reductions and earned-time incentives continued to result in early release of prisoners. In response, many states increased the severity of sentencing laws by enacting restrictions on the possibility of early release; these laws became known as "truth-in-sentencing." The truth-in-sentencing laws require offenders to serve a substantial portion of the prison sentence imposed by the court before being eligible for release. The laws are premised on the notion that juries, victims, and the public are entitled to know what punishments offenders will suffer at the time judges order it.

Truth-in sentencing gained momentum in the 1990s. To provide incentives to states to pass truth-in-sentencing laws, the U.S. Congress authorized incentive grants to build or expand correctional facilities through the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Program in the 1994 Crime Act. To qualify for the grants, states had to require persons convicted of violent crimes to serve not less than 85 percent of their prison sentences.

Two-thirds of the states established truth-in-sentencing laws under the 85 percent test. In part, to satisfy the 85 percent test (to quality for federal funds for prison construction), states limited the powers of parole boards to set release dates, or of prison managers to award good-time or earned-time, or both. The laws reduced the discrepancy between the sentence imposed and actual time served in prison (as shown in Figure 5 below).

Most states target violent offenders under truth-in-sentencing laws. However, the definition of truth-in-sentencing varies among the states, as does the percent of the sentence required to be served and the crimes covered by the law. "A few states, such as Florida, Mississippi and Ohio require all offenders to serve a substantial portion of the sentence before being eligible for release." [35] The percent of the sentence required to be served in most states varies from 50 to 100 percent of a minimum sentence.

Figure 5. Discrepancy between sentence and time served comparing state prisoners released from prison in 1996 to the expected time served for new admissions.



- Violent offenders released from state prison in 1996 were sentenced to an average of 85 months; they served about 50% or an average of 45 months
- Under truth-in-sentencing laws, violent offenders would serve 85% of sentence; new admissions to prison were sentenced to an average of 104 months so they would be expected to serve an average of 88 months (e.g., 85%)

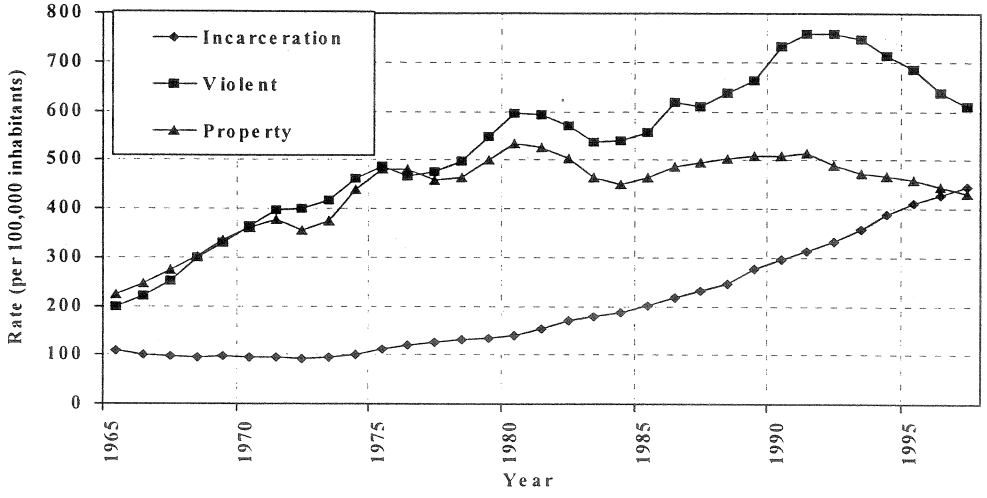
Dilton and Wilson, 1999

3. CHANGES IN CRIME RATES

One of the first questions many people ask after seeing the rising incarceration rate is what impact this has had on public safety. "Is the dramatic increase in correctional populations associated with a drop in the crime rate?" They want to know if the recent focus on crime control through incapacitation and deterrence has been effective in reducing crime in the community, preventing crimes, or increasing public safety. The answer is not clear. There are other factors that may be the cause of changes in one or both of the rates. Furthermore, there is no simple association between the two, as the graph below shows.

Figure 6 shows the rate of serious property and violent crimes (Index crimes[36]) known to the police and the rate of convicted offenders confined in state and federal prisons from 1965 until 1997. The relationship between crime and incarceration rates is not simple and varies greatly by the period examined. The incarceration rate was stable from 1965 until approximately 1972; after which it moved steadily upward.

Figure 6. U.S. Crime Rate (offenses known to the police) and Incarceration Rate (1965-1997)



Note: Property crime rates are divided by 10 in order to include them in the graph with the violent crime rates.
Sourcebook, 1998

Crime rates for adults fluctuated during this period. Violent crime rose from 1971 until 1981, fell from 1981 until 1985, rose again until 1991 and has been declining ever since. As shown in the figure, property crime rates (divided by 10 in the figure) fluctuated approximately the same as the violent crimes. Since approximately 1991, crime rates for both property and violent index crimes have been declining.

Victim surveys are another way of measuring crime that do not depend on victims reporting crime to the police. The National Crime Victimization Survey (NCVS), conducted by the U. S. Bureau of the Census for the U.S. Bureau of Justice Statistics, obtains data from interviews with individuals in households selected so as to be representative of the U. S. population. Changes in crime victimization rates over the past twenty-five years for both property and violent crime are very similar to the changes in official rates obtained through the UCR.[37] From the 1970s until 1980 crime rates increased to a peak in 1980, after 1980 the rates drop sharply and then fluctuate until 1990 when there is a substantial decline. Victimization rates in 1996 were lower than victimization rates in 1973.

Crime rates and incarceration rates may both be caused by some other factors at play during the time studied such as changes in demographics, labor markets or other economic, social, cultural, or normative factors. Any apparent relationship may be spurious. Researchers have attempted to study the relationships with complex statistical models. While almost everyone acknowledges that the increased incarceration rates have had some effect on crime rates, a great deal of controversy exists about the size of the impact. Researchers who have studied the effects of incapacitation and deterrence in reducing crime have generally concluded that these policies have had a modest impact on reducing crime in the community (see below).

The results from investigations of crime and incarceration rates in individual states are consistent with the above discussion. There is no simple and direct relationship between the two.

4. FACTORS ACCOUNTING FOR THE GROWTH IN THE INCARCERATION RATE

Blumstein and Beck asked a somewhat different question: "What accounts for the growth in the incarceration rates?"[38] They wanted to know whether the growth in incarceration is due to an increase in crimes committed or the policies and procedures of the criminal justice system. If the latter, then what specifically has changed to cause the growth? They investigated the sources of growth in the incarceration rate from 1980 to 1996 focusing on the six crimes that account for three-quarters of the state prison populations: murder, robbery, aggravated assault, burglary, drugs, and sexual assaults. For each of the crime types, they examined whether the growth in incarceration occurred as a result of increases in: offending rates; arrests per offense; commitments to prison per arrest; or time served in prison (including time served by parole recommitments).

They found only a small percentage 12 percent, of the increases in incarceration rates resulted from an increased number of offenses being committed.[39] Aggravated assault was the only one of the offenses examined that displayed an upward trend. Blumstein and Beck attribute this to an increase in the recording of domestic assaults. Eighty-eight percent of the growth in incarceration was attributed to increases in the imposition of sanctions, incarcerating more, and for a longer time.

Incarceration of drug offenders is the major component of the overall growth in incarceration rates. In 1980, the incarceration rates for state and federal prisons for drug offenses were approximately 15 inmates for every 100,000 adults. By 1996, the drug incarceration rate had grown to 148 inmates. Drug offenders make up 60 percent of the federal prison population and 23 percent of state prison populations.

Another way to examine the increase by crime type is to compare the percent of the total increase across crime types. As the following table demonstrates, drug offenses accounted for 29 percent of the total increase, much more than any other crime type.

However, if violent offenses (murder, sexual assault, robbery, assault, and other violent crimes) are combined into a single category, then this category would be more significant than drug offenses (a 43 percent growth).

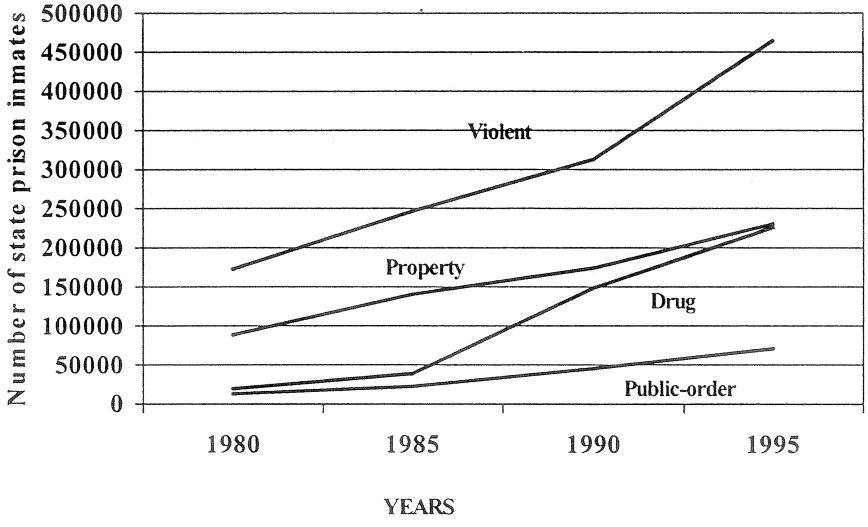
Table 2. Increases in the state prison populations from 1980 until 1996 showing differences by offenses.

	Increase, 1980-1996	Percent of Total
All Offenses	736,621	100%
Six Selected Offenses		
Drugs	215,100	29%
Murder	76,300	10%
Sexual assault	80,400	11%
Robbery	64,900	9%
Assault	73,900	10%
Burglary	59,200	8%
Other Offenses		
Other violent	19,300	3%
Other property	88,000	12%
Public order	57,800	8%

Blumstein and Beck, 1999.

As shown in Figure 7, the number of inmates serving time for drug and violent offenses has grown dramatically since 1980. There was a steady upward trend for property and public order offenses but of a much smaller magnitude. In 1980, violent offenders made up 58.6 percent of the prison population; in 1995 they made up only 46.9 percent. In comparison, drug offenders grew from 6.4 percent of the prison population to 22.7 percent during the same period.

Figure 7. Number of prisoners in custody of state correctional authorities showing most serious crime (1980 to 1995)



Beck and Gilliard, 1995; Beck and Mumola, 1999.

According to Blumstein and Beck, for non-drug crimes, the growth in the prison population was due first to increases in time served (60 percent of the growth) and, second, to increases in the number of arrests that led to prison sentences. The new sentencing laws (e.g., mandatory-minimum, sentencing enhancements and "three-strikes") and longer delays until initial release ("truth-in sentencing") are most likely contributing to the increase in time served.

The factors contributing to the increase in drug offenders in prison were different than those that were associated with increases in the other crime types. In contrast to the other offenses, the increased number of drug offenders in prison is predominantly attributable to a growth in the number of adult drug arrests. The second factor influencing the increase in drug offenders is the conversion of drug arrests into prison sentences. This increase in the use of prison may reflect the tendency to use incarceration as a principal weapon in the war on drugs. Thus, two factors account for the increased incarceration rates for drug offenses: more drug offenders were arrested, and after arrest, more were given prison sentences. Between 1980 and 1998 there were large changes in

the percent of sentenced offenders entering prisons convicted of drug offenses. With regard to the most serious offense, fewer than 10 percent of the entrants to prison in 1980 were convicted of drug offenses; by 1998, 30 percent of the entrants were convicted of drug offenses. Of the incoming prisoners in 1998, the most serious offense of approximately 30 percent was a drug offense, 30 percent was a violent offense, 30 percent a property offense and 10 percent a public order offense.

As noted previously, the growth in incarceration was greater for minorities and women. When Blumstein and Beck partitioned the growth in incarceration rates from 1980 to 1996 by gender, race and ethnicity, they found that drug offenders accounted for a far greater share of the total growth: (1) among females (43 percent of growth) compared to males (28 percent of growth); and among minorities (36 percent African-Americans and 32 percent Hispanic, respectively) compared to whites (17 percent).

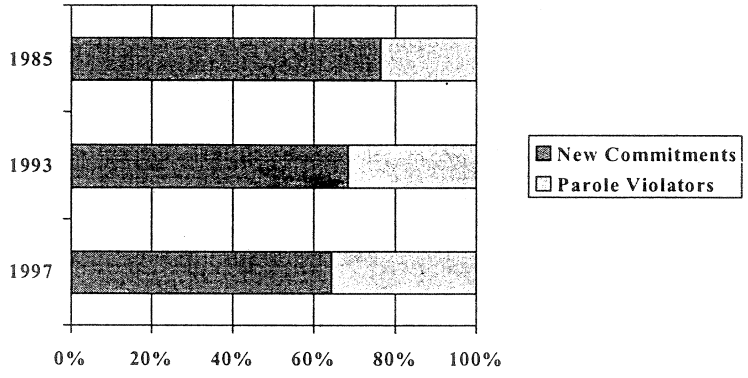
4.1 Community Supervision and Revocations

Approximately, 69 percent of the adults under correctional supervision are in the community on probation or parole. Many of these individuals will fail supervision and be sent to prison or jail. For example, 18 percent of those who left probation in 1998 were incarcerated for a new sentence (9 percent) or some other type of failure (9 percent); the others successfully completed (59 percent), absconded (3 percent), or left in some other way (11 percent).[40]

In comparison to probationers, even more parolees failed community supervision; 42 percent were returned to jail or prison with a new sentence (13 percent) or were revoked for technical violations or some other reason (29 percent); the remainder successfully completed parole (45 percent), absconded (9 percent) or left for some other reason (4 percent).[41 42]

Parole violation has been an increasing factor contributing to the growth in time served. An increasing percentage of prison admissions are parole violators (see Figure 8). Additionally, the percent of parole violators admitted to prison differs enormously by state. In some states a majority of those entering prison are parole violators. For example, in California, 64.7 percent of the admitted prisoners in 1997 were parole violators.

Figure 8. Percent of admissions to state prison (including technical and new crime violators)



Beck and Mumola, 1999; Cohen, 1995

5. IMPACT OF THE CHANGES

The changes in the philosophy of sentencing and corrections have had an enormous impact on the criminal justice system. Sentencing, release decisions and correctional populations have all been transformed.

5.1 Structured Sentencing

In contrast to the widespread use of the indeterminate model of thirty years ago, there is no standard approach to sentencing and corrections today. Some jurisdictions have parole; some have abolished it. Most still use some type of good time release but of more limited scope than in the past. A minority of states have adopted some form of structured sentencing, but more than 30 retain some form of indeterminate sentencing.

Early attempts to enact structured sentencing were designed to reduce sentencing disparities, to limit the possibility of gender or racial bias, and to achieve a form of "truth in policymaking" by linking sentencing policies to corrections spending policies. Neither increasing sentencing severity nor reducing crime rates were primary goals under the Justice Model. Later, guidelines were developed expressly based on the premise of incapacitation as a goal, enhancing the likelihood that judges will impose harsher sentences that could not be mitigated through early release on parole.

By 1990, substantial differences existed in sentencing and corrections in the United States. In the 1960s under indeterminate sentencing structures, there was a consistency among jurisdictions in the use of parole boards for release decisions, indeterminate sentences with wide minimum and maximum sentence ranges and release to parole. In contrast, current sentencing and corrections policies in different jurisdictions are characterized by widely different policies and practices. Thirty-six states and the District of Columbia continue with indeterminate sentencing systems. The remaining 14 states have eliminated parole release, but not necessarily parole supervision.[43] According to the Bureau of Justice Assistance, sentencing structures can be characterized by the classification system shown in Table 3.[44]

Table 3. State sentencing structures in 1997 (Tonry, 1999).

Number of States	Type of Sentence	Description
5	Statutory determinate sentencing	No parole release, sentencing standards in legislation
30	Indeterminate sentencing jurisdictions	Parole release, no guidelines
6	Voluntary/advisory sentencing guidelines	Voluntary guidelines, with or without parole
10	Presumptive sentencing guidelines states	With or without parole release, presumptive guidelines

5.2 Mandatory Sentences

Although many states did not change to a determinate sentencing structure, they did make other changes that limited the individualization of sentences and court and correctional discretion. Particularly popular were statutes eliminating parole for certain offenses or requiring mandatory minimums. For example, some states passed laws specifying that the penalty for aggravated murder must be a life term in prison without the possibility of parole. Mandatory minimum statutes eliminate discretion to choose a sentence below, but not above, the state minimum. For instance, a law might require a mandatory minimum sentence of ten years for a specific drug offense. Upon conviction, the judge must impose a prison term of not less than ten years but may impose a longer term. The penalty cannot be reduced even if, in the opinion of the judge, the individual case warrants it.

In the 1980s and 1990s, every state in the nation adopted some type of mandatory minimum sentencing law. Most of these "mandatories" applied to crimes involving serious violence, drugs or firearms. Another type of mandatory sentencing was tied to an

individual's criminal record. These "habitual offenders" laws had long been used to require heavier-than-normal sentences for criminals considered habitual or career because of the number and severity of their prior convictions.

5.3 Three-Strikes Laws

Variants of the habitual-offender laws that emerged in the 1990s were the "three strikes" laws. The "three-strikes and you're out" baseball metaphor is used throughout the country to refer to criminal sanctions that become increasingly severe for each conviction an offender receives until he or she is considered to be "out" or in prison for life. Under these laws, each conviction for a felony is considered another strike; penalties are increasingly severe; at the "third" strike the offender is "out" or in prison for life. The focus on tougher sentencing laws led to increasingly rigid sentencing statutes and these had a particular impact on repeat offenders. By 1994, 30 states had introduced "three-strikes" legislation and ten had passed tougher sentencing for repeat offenders. Twenty-four states had enacted three-strikes laws by 1997.[45]

Just as with other changes in the criminal justice system, the impact of these laws has differed greatly in their implementation. For example, the third strike is defined as "any felony" in some jurisdictions. This means that a conviction for stealing something can result in a sentence of life in prison without the possibility of parole. In such states, the impact on prison populations could be dramatic. Other jurisdictions define the third strike as a serious violent felony. Since many of these convictions would have resulted in a lengthy prison sentence even without the three-strikes law, the impact on the prison population is minimal.

In actuality, most three-strike laws have had minimal impact on states' prison systems because the laws were drafted to apply to only the most violent repeat offenders.[46] For example, in the state of Washington only 85 offenders have been admitted to the state prison system three years after the law took effect. California was the only state where the three-strike law had a dramatic impact on the prison population. After the first year the numbers of strike offenders entering prison was not as great as originally predicted; however, the numbers have still had a major impact on the prisons. Most of those given lengthy sentences under the second or third strike provisions have been convicted of nonviolent property or drug crimes.

5.4 Parole Release

While many states continue to use parole boards, the use of boards for discretionary release has changed dramatically. In the late 1970s, approximately 70 percent of prison releases were discretionary parole releases entering the community because of a parole board decision. By 1997, only 28 percent of the releases from prison were as a result of discretionary parole; most (40 percent) of the release decisions were

mandatory and not decided by a parole board (including determinate sentences, good-time provisions, or emergency releases); 17 percent were expiration releases (inmate served maximum court sentence) and 10 percent were other conditional releases (commutations, pardons, deaths).[47]

All states except Maine and Virginia have some requirement for post-prison or parole supervision despite the fact that they may call it by a different name (e.g., controlled release, community control, supervised release, community custody) to distance it from the negative image of "parole." Nearly 80 percent of all released prisoners in 1997 were subject to some form of conditional community or supervised release.[48]

5.5 Decision Making

Changes inside and outside the criminal justice system have had an impact on the relationship of symbolic and operational influences on societal responses to crime.[49] While politicians and decision makers have always been responsible symbolically for public safety and, therefore, have taken a "tough on crime" stance, they have not always been so involved in actual operational decisions. Thus, in the past politicians could and did argue for severe punishments for serious and violent crime. Today, however, they are involved more directly in decisions that have an impact on operations. According to Zimring, single issue lobbies (prison guards, victims rights advocates), distrust of criminal justice officials, single issue (crime) candidates for public office and new sentencing structures (determinate sentencing, mandatory sentences) have pushed the public and politicians into areas of operations where they can and do have a large impact.[50]

Under the indeterminate system of sentencing, there was insulation between the symbolic politics of punishment and the actual operation of the criminal justice system. Judges, parole boards and correctional officials had the power to consider individual cases and mitigate the seriousness of sentences. They could also use their decisions to regulate prison populations by letting more offenders out on parole when prisons were crowded. Changes in the system have reduced or eliminated their power.

Legislatively mandated sentencing terms under sentencing guidelines and mandatory minimum sentencing laws have shifted punishment from criminal justice professionals to the public.[51] Much of the power now resides in the prosecutors and legislatures. Some argue that prosecutors have "unchecked" power to decide whether to file charges under mandatory provisions or to bargain to lesser charges.[52] Federal prosecutors have been selective in their use of mandatory laws and have brought charges in only a fraction of the cases in which such laws apply. Politicians have been forced to take responsibility for the decisions made by the criminal justice system officials. Whereas once the criminal justice system would have been blamed for releasing a dangerous criminal back into society, now politicians suffer public anger for releasing

criminals such as Willie Horton, who was furloughed and murdered someone. This has made politicians more sensitive to the operation of the criminal justice system.

5.6 Prison Crowding

The enormous increase in prison populations has led to severe prison overcrowding. Changes in sentencing have limited the ability of criminal justice professionals to use early release mechanisms to provide a release valve when crowding becomes a problem. In the past, early release from prison through good-time reductions, earned-time incentives and parole permitted officials to individualize the amount of punishment or leniency an offender received and also provided means to manage the prison population. Despite the fact that half of all prisons in the United States have been built within the past twenty years, in 1998, state prisons were still operating at 115 percent of capacity and the federal prisons were at 119 percent above capacity.[53]

5.7 Behavioral, Cultural and Social Changes Impinge on Corrections

Changes in the larger society inevitably impinge on corrections. The most dramatic influence has been the growth in the use of illegal drugs. Three other changes impacting corrections are the aging of the population, diseases, particularly HIV/AIDS, and changes in the management of individuals with serious mental illness.

The fastest growing age group in the United States is those age 65 and older. This demographic change combined with correctional policies such as life without parole and increased prison terms have resulted in a growing number of older offenders in prison. Planning and programming for these older inmates have legal and fiscal implications. Some obvious examples are increased costs for medical care and necessary changes in prison cells and dormitories to accommodate physical disabilities and limitations of the elderly.

Diseases such as HIV/AIDS, sexually transmitted diseases and tuberculosis are disproportionately found among correctional populations, and these present serious challenges for correctional administrators and health service providers. In 1997, approximately 2.1% of all state and federal prison inmates were HIV positive, and 1 in 5 inmate deaths were attributed to AIDS-related causes.[54] In response to the increased numbers of terminally ill inmates, eleven jurisdictions and the Federal Bureau of Prisons have established formal prison hospice programs.

Correctional officials have had to manage an increasing number of individuals with serious mental illness.[55] Major changes in mental health policies in the United

States, such as de-institutionalization, have led to an increased number of persons with serious mental illness in the community. Where, they frequently receive inadequate care. Many of these individuals become involved with the criminal justice system. Correctional officials struggle to provide for the care and safety of these individuals. Limited funding for programs and for community services and treatment mean that many are not treated while they are under correctional supervision. Mentally ill inmates are more likely than others to be in prison for a violent offense and to have lived on the street or in a shelter in the year before arrest. There is a tremendous prevalence of drug abuse and dependence among those with serious mental illness, and this comorbidity presents additional management and treatment difficulties.

6. EXAMINING THE EFFECTIVENESS OF DIFFERENT STRATEGIES

6.1 Incapacitation and Deterrence

Understanding the relationship between sanctioning policy and crime rates has been the focus of considerable research in the areas of deterrence and incapacitation, requiring careful measurement and control for the numerous factors that may affect crime rates. Most reviews of the literature conclude that the effect of the policies on crime reduction has been modest. This was the conclusion of the most famous examination of the subject, the 1978 National Academy of Sciences Panel on Research on Deterrent and Incapacitative Effects.[56] Successive panels on Criminal Careers[57] and Understanding and Control of Violence[58] reached similar conclusions. However, there are many unresolved questions that have led to a debate about how large an effect incapacitation and deterrence strategies have had on the crime rate.

Most of the research uses complex statistical simulations to estimate the impact of incapacitation policies on crime in the community. While it is generally accepted that incapacitation policies prevent crime because offenders who are imprisoned do not have the opportunity to commit crimes, the estimates of the number of crimes prevented vary greatly.[59] Most researchers estimate crime savings of somewhere between 10 to 30 percent but this depends upon the policy being examined. True estimates of the crimes prevented are difficult to obtain because both the frequency of criminal participation and the duration of careers must be estimated. Large increases in the use of imprisonment may have limited returns because the additional offenders not now incarcerated may be lower frequency offenders who would not be committing many crimes in the community. Thus, every new incarceration would reduce the return on investment for every new dollar expended. There may also be limited returns because offenders who are finally incarcerated for lengthy periods of time may be at the end of their criminal careers and therefore would not be committing any crimes in the community even if they were free to do so.

A consistent finding in the literature is that there are a small number of offenders who commit a large number of crimes; if they could be incapacitated, a large number of crimes would be prevented. The problem that exists is that it is not yet possible to predict who will be the high frequency offenders in the future; therefore, targeting them for increased prison sentences is impossible. Increased use of incapacitation as a crime prevention strategy must also address the increases in imprisonment rates and the associated financial costs that accompany such strategies.

As a result of new sentencing structures like mandatory-minimum laws, sentencing enhancements and three-strikes laws, as well as longer delays until releases under truth-in-sentencing laws, those sentenced to prison are spending more time in prison. Time served in prison has been the major factor contributing to the growth in incarceration in state prisons. Research on whether certain criminal sanctions deter offenders raises some concerns about the benefits to be gained from extending the time served of incarcerated people. Indeed, increasing the probability of commitment to prison or the certainty of punishment has a stronger impact on reducing criminal activity than increasing the severity of the sanction such as time served.

Some of the research examining the impact of drug policies has also led to questions about the effectiveness of incapacitation and deterrence. As long as the drug market can continue to recruit new replacements for those scared out of the business or locked away in prison, it will continue to provide new offenders. Drug market trade provides a lucrative financial incentive for attracting new recruits. Therefore, a new recruit is always available to replace anyone who is arrested and confined to prison. On the other hand, if those who are locked up would have been committing serious and violent crimes in the community, their imprisonment could be contributing to an incapacitative effect of incarceration.

6.2 Controversy Over Costs

In the 1980s, as incarceration rates continued to climb, people began to complain about the rising costs of corrections. They questioned whether the high costs were worth the benefits gained by continually incarcerating such a large number of people. In response, Zedlewski pointed out that there were social costs to releasing offenders and these costs must be calculated and weighted against the costs of incarceration.[60] If an offender is released and continues to commit crimes there are additional costs for the criminal justice system such as the costs of arrests, revocation hearings and court proceedings; there are also costs for the victims such as loss or additional private security.

Zedlewski's argument that there are social costs to releasing offenders had direct policy implications. Policy makers could justify additional expenditures on prison construction as a means to keep offenders in prison and, thereby, save the social costs of

release. That is, if there were costs to releasing offenders, then the costs of operating and constructing prisons were worth the money because this would save the social costs that would be incurred if these offenders were in the community. This argument was used to support additional prison construction.

The idea that there are social costs if offenders are released from prison began a controversy that still rages. Some researchers continue to attempt to calculate the costs of crime and the controversy is over what numbers to use in calculations. These researchers differ in what costs they believe are legitimate for inclusion and how the elements should be calculated. For example, should the calculations include criminal justice system costs, monetary costs to victims, private security costs, health care expenses, pain and suffering of victims and/or risk of death? Should the costs include tangible and intangible costs to victims, cost to others (victim's family, insurance companies, businesses and society) and/or costs of preventing crime (theft insurance, guard dogs)?

Once decisions are made about what social costs to include, the actual number of crimes prevented by incarceration must be estimated. If each crime carries some social costs, the problem is to determine how many crimes offenders would commit if they were in the community and not in prison. All evidence suggests that official statistics do not provide adequate information for these estimates, so researchers have used self-report data for this purpose. Estimates vary across studies and recent findings suggest that the estimates of criminal activity will differ greatly if offenders are given a sentence to community supervision.[61] Furthermore, these estimates become more difficult because offenders have criminal careers that span a certain number of years. They are more active at some points in their careers and usually as they get older their criminal activity declines; therefore, estimates of the number of crimes offenders would commit if they were in the community must take career length into consideration.

Once the estimates of the cost of crime to society and the average number of crimes committed are calculated, the yearly social costs of not imprisoning an offender can be determined. This figure is weighted against estimates of what it costs to keep an offender in prison; the result represents the benefit of imprisonment.

Instead of arguing about the specific calculations of the costs and benefits of incarceration, others reject the social costs calculations completely. They argue that the imputed costs of victim "pain and suffering" takes no account whatever of suffering by imprisoned offenders or by offenders' partners, children and communities. From their perspective, the cost-benefit assessments require weighing inherently incommensurable values and the attempts to do so have reached a dead end. They argue that it may be more productive to compare the cost and benefits of alternative crime prevention policies and not attempt to calculate the social costs of crime. Both groups in this debate include knowledgeable scientists who are aware of the complexity of the problems. At this time, there is no clear answer to the debate.

6.3 Intermediate Sanctions

Throughout the 1980s and 1990s, the National Institute of Justice funded a wide range of evaluations of different intermediate sanctions and correctional alternatives including intensive supervision and correctional boot camps as well as tools of supervision such as electronic monitoring and urine testing. There is now a body of research that permits us to draw some conclusions about the effectiveness of these programs.[62] It is important to realize that the focus of most of the studies of intermediate sanctions have been on whether increased control and surveillance reduces recidivism. Few studies have focused on the rehabilitative aspects of the sanctions.

Intermediate sanctions were sold as methods to simultaneously divert offenders from incarceration, reduce recidivism rates, and save money while providing credible punishments that could be matched to the severity of offenders' crimes. While some jurisdictions may have achieved these goals, many did not. In particular, research provided little evidence that these intermediate sanctions successfully reduced recidivism. Studies show neither intensive supervision programs, electronic monitoring, correctional boot camps, home confinement/house arrest nor urine testing are effective in reducing the recidivism of offenders, if they are not combined with effective rehabilitation programs (see below). In fact, sanctions that increased the surveillance over offenders while they were in the community often resulted in higher levels of technical violations in comparison to less intensive sanctions. Offenders on community supervision are required to adhere to certain conditions of supervision, and, if they violate these conditions, even without committing a new crime, they can suffer consequences. Technical violations are violations of these conditions. These violations can result in a revocation and subsequent term in prison. There is little reason to believe that offenders receiving intermediate sanctions committed more actual crimes let alone more technical violations. Most likely, they were just caught more often for the violations they committed.

Nor were intermediate sanctions successful in diverting offenders from prison. Their use as diversions from prison was expected to achieve two goals. First, intermediate sanctions were expected to provide an intermediate range of punishments to provide for more fair and just sentences. Second, the sanctions would save money because some who would otherwise go to prison would be given an alternative punishment. Those who were convicted of crimes of intermediate severity could be given the intermediate sanctions. Since the intermediate sanctions were between probation and prison, they were expected to draw from both the populations of probationers and prisoners. Some who would otherwise be given probation would be given intermediate sanctions, others who would, in the past, be sent to prison would also be given intermediate sanctions. Thus, it was assumed that these sanctions would draw offenders from both the prison and the probation populations. The problem that arose was that few policy makers and correctional officials were willing to release higher risk offenders into the community. Thus, while policy makers supported the new intermediate sanctions, they took pains to limit the eligibility to low-risk offenders – those offenders who would otherwise be serving a sentence of probation. These

offenders were at lower risk for recidivism. Frequently, different intermediate sanctions in the same jurisdiction competed for participants from the same pool of offenders, and, as a consequence, there were a limited number of eligible candidates.

Intermediate sanctions are often criticized for increasing the costs of corrections and "widening the net." In general, it costs more to keep offenders in prison than in the community, and increases in control and surveillance in the community cost more than standard probation. Since many of the offenders who were placed in these alternatives were drawn from the least costly option, probation, intermediate sanctions often increased the cost of corrections instead of achieving the goal of reducing costs.

Additionally, by drawing from the population of offenders who would otherwise be on probation, the alternatives "widened-the-net" of control over offenders. That is, alternatives increase the control over a larger number of offenders. Net-widening was also a problem because increased surveillance and control over offenders increased the probability of detection for technical violations. This is, most likely, one of the reasons for the increase in the proportion of offenders who are admitted to prison as probation or parole violators.

6.4 Rehabilitation: What Works in Corrections?

Rehabilitation strategies focus on changing individual offenders so they will not continue their criminal activities. In spite of the fact that there have been large changes in the philosophy and practice of corrections, many people continue to be interested in the rehabilitation of offenders. Correctional administrators struggle to continue to provide rehabilitation and treatment programs. Frequently they combine treatment with punitive intermediate sanctions such as boot camps in order to garner funds for the treatment.[63]

Research attempts to identify and understand the individual differences that explain criminal behavior and how interventions can be used to change individuals so they will not continue to commit crimes. The work is based on psychological theories of learning, cognition and the general principles of human development applied to the analysis of illegal behavior.[64]

While there is still some debate about the effectiveness of rehabilitation, recent literature reviews and meta-analyses demonstrate that rehabilitation can effectively change some offenders and reduce their criminal activities.[65] During the 1980s and 1990s, when many U.S. criminologists were studying the effectiveness of the impact of increases in surveillance and control over offenders, Canadian researchers, many of whom were trained in psychology, continued to study the effectiveness of rehabilitation programs.

Reviews of the research literature find 48 to 86 percent of the studies examined report positive evidence of treatment effectiveness. Based upon the available evidence, some approaches to treatment are clearly better than others. Psychological researchers emphasize that effective treatment programs must follow some basic principles. First, treatment must directly address characteristics that can be changed (dynamic factors) and that are directly associated with an individual's criminal behavior (criminogenic factors). There are numerous risk factors associated with criminal activity. Age, gender and early criminal involvement are some examples. In comparison to others, young males who began criminal activities at a young age are at higher risk for future criminal activities. But "static" characteristics such as age, gender and past history, while predictive of recidivism, cannot be changed in treatment. Instead, "dynamic" or changeable factors should be the target of treatment programs.

Equally as important is the distinction between factors that are criminogenic and those that are not. Criminogenic factors are those that are directly associated with criminal behavior. Research has revealed some dynamic factors that are also criminogenic, e.g., attitudes, cognitions, behavior regarding employment, education, peers, authority, substance abuse and interpersonal relationships that are directly related to an individual's criminal behavior. Treatment programs that target non-criminogenic factors will not be particularly successful in reducing recidivism. For example, less promising targets for reducing future criminal behavior include increasing self-esteem without touching antisocial propensity, or increasing the cohesiveness of antisocial peer groups. In order to be successful, treatment must address factors that can be changed (e.g. dynamic factors) and that are directly related to an individual's criminal behavior (criminogenic).

A second factor important in determining whether a treatment program will be effective is the therapeutic integrity of the program or the need for effective programs to be delivered as planned and designed. Poorly implemented programs, delivered by untrained personnel, where offenders spend only a minimal amount of time in the program, can hardly be expected to successfully reduce recidivism.

A third factor in effective programming is that programs must target offenders who are at sufficient risk for recidivism so that this reduction is measurable. Many offenders are at low risk for future recidivism. Treatment programs that provide intensive services for such offenders will show little reduction in future criminal activities because few of these offenders will recidivate anyway.

The final principle of effective treatment is the need to deliver treatment in a style and mode that address the learning styles and abilities of offenders. For example, more effective programs follow a cognitive behavioral and social leaning approach rather than nondirective relationship-oriented counseling or psycho-dynamic, insight-oriented counseling.

Meta-analyses that have examined treatment studies have classified treatment programs as appropriate or inappropriate according to the above principles of effective treatment have found support for the importance of the proposed principles. In general, programs that follow the principles are found to reduce recidivism, although the extent of the reduction varies by study and principle being examined.[66]

In summary, there is evidence that rehabilitation is effective in reducing the criminal behavior of at least some offenders. The evidence from the meta-analyses suggests that effective correctional treatment programs appear to follow some basic principles. In order to effectively reduce recidivism, treatment programs appear to need to:

- Be carefully designed to target the specific characteristics and problems of offenders that can be changed in treatment (dynamic characteristics) and those that are predictive of the individual's future criminal activities (criminogenic) such as antisocial attitudes and behavior, drug use, anger responses;

- Be implemented in a way that is appropriate for the participating offenders and utilizes therapeutic techniques that are known to work (e.g., designed by knowledgeable individuals, programming provided by appropriately educated and experienced staff, use of adequately evaluated programs) and require offenders to spend a reasonable length of time in the program considering the changes desired (deliver sufficient dosage);

- Give the most intensive programs to offenders who are at the highest risk of recidivism;

- Use cognitive and behavioral treatment methods based on theoretical models such as behaviorism, social learning or cognitive-behavioral theories of change that emphasize positive reinforcement contingencies for prosocial behavior and are individualized as much as possible.

More information is needed regarding: (1) how to ensure that treatment programs have adequate integrity; (2) what should be targeted in the treatment (antisocial attitudes, values, employment behavior, education, etc.); and (3) what method should be used to deliver the treatment (required staff training, outpatient, in-prison programs). In summary, there is relatively strong evidence that some treatment programs work for some offenders. At this point, we need more information about the specific characteristics of the effective programs and the most appropriate target populations.

Another method for drawing conclusions about the effectiveness of programs is an assessment technique developed by University of Maryland researchers.[67] Using this technique, MacKenzie and her colleagues assessed the effectiveness of various programs for reducing the criminal activities of known offenders.[68] For each study identified within a program area, the researchers rated the quality of the science used in the

research. Decisions about "What works, what doesn't, what's promising and what we don't know" were made using clearly described decision making rules regarding the scientific merit, and the direction and significance of the results of the studies as well as literature reviews and meta-analyses.

Their conclusions regarding rehabilitation programs were:

What Works: The following are programs that can reasonably be expected to reduce recidivism in the kinds of social contexts in which they have been evaluated, and for which the findings should be generalizable to similar settings in other places and times.

- In-prison Therapeutic Communities (TC) and in-prison TCs with follow-up community treatment;
- Cognitive behavioral therapy: Moral Reconation Therapy and Reasoning and Rehabilitation;
- Non-prison based sex offender treatment programs;
- Vocational education programs;
- Multi-component correctional industry programs;
- Community employment programs.

What Doesn't Work: The following are programs that are reasonably certain to fail to prevent recidivism in the kinds of social contexts in which they have been evaluated, and for which the findings should be generalizable to similar settings in other places and times.

- Increased referral, monitoring, and management in the community;
- Correctional programs that increase control and surveillance in the community;
- Programs emphasizing structure, discipline and challenge (boot camps using old-style military models, juvenile wilderness programs);
- Program emphasizing specific deterrence (shock probation and Scared Straight);
- Vague, nondirective, unstructured counseling.

What's Promising: The following are programs for which the level of certainty available is too low to support generalizations, but for which there is some empirical basis for predicting that further research could support such conclusions.

- Prison-based sex offender treatment;
- Adult basic education;
- Transitional programs providing individualized employment preparation and services for high-risk offenders;
- Fines;
- Drug courts combining rehabilitation and control;
- Juvenile aftercare;
- Drug treatment combined with urine testing.

What's Unknown: Any program not coded in one of the three other categories is defined as having unknown effects.

- Intensity and integrity of substance abuse treatment programs receiving referred offenders;
- Anger/stress management programs;
- Victim awareness programs;
- Community vocational training programs
- Success of programs with different types of sex offenders;
- Life skills training programs;
- Work ethics training, in-prison work programs, halfway houses with enhanced services;
- Combinations of treatment with either control (ISP), (boot camps) or challenge (outward bound programs);

Rehabilitation programs that have specific characteristics are effective in reducing recidivism. Furthermore, research examining various types of programs can be used to determine which programs have been shown to be effective with specific types of offenders in particular contexts. In direct contrast to Martinson's earlier "Nothing Works" conclusion, most researchers in this field today agree that treatment programs can effectively reduce recidivism. However, similar to the earlier findings of Martinson, the quality of science is inadequate for drawing unambiguous conclusions about their effects because many of the programs are poorly implemented and funded.

7. UNINTENDED AND INTENDED CONSEQUENCES

7.1 Risk Management and the New Penology

According to Feeley and Simon, a new penology is emerging as a direct consequence of the changes in the philosophy and practice of corrections.[69] They do not believe that the shift is reducible to any one reigning idea (e.g., crime control or getting tough on criminals) but, instead, has multiple and independent origins. This new penology has a new language, new objectives and new techniques. It reflects a shift away from the traditional concerns of criminal law and criminology that focused on the individual and redirects it to calculating the risks posed by groups of people and managing them based on this risk assessment. The new focus on risk assessment has gained many adherents among criminal justice practitioners and the research community. According to Feeley and Simon, this new way of conceiving of the functions of criminal sanctions has contributed to the rise in prison populations.

Characteristic of the new penology is the replacement of moral or clinical descriptions of the individuals with actuarial discussions of the probabilities and statistical distributions. Improvement in statistics and the availability of computers have greatly facilitated this trend, as has the involvement of those interested in systems theory and operations research in public policy. However, even in the 1967 report, The Challenge of Crime in a Free Society, it is possible to see the beginnings of this change with the emphasis in the report on actuarial representation along with the commitment to rehabilitation.

The objective of the new penology is the identification and management of unruly people, not punishment or rehabilitation. While recidivism rates are still viewed as important, their significance has changed. Rather than focusing on recidivism rates as evidence of individual success or failure, the new penology views return to prison as evidence of the efficiency and effectiveness of parole officials to control people. The new penology perceives probation and parole as cost-effective ways of imposing long-term management and not as methods to reintegrate individuals into the community.

New techniques of more cost-effective forms of custody have been developed to manage offenders and to identify and classify risk. Management tools such as electronic monitoring or drug testing are not designed to rehabilitate, reintegrate, retrain or provide employment. They are justified as effective risk management. Incarceration is justified as a method to affect crime rates. Intermediate sanctions provide a "custodial continuum" for according groups differing control mechanisms based on their risk profiles.

Feeley and Simon provide many examples of the shift to the new penology in practice. Prisons are less apt to be classified according to specialized functions (rehabilitation for drug users or the mentally ill, vocational training, for young adults); now they are classified according to the level of security. Drug testing is used to classify probation and parole populations within a risk group.

The shift away from a concern for individuals to managing aggregates of dangerous populations has important implications for sentencing and corrections. Feeley and Simon's most serious concern is how the new penology relates to the emergence of a new view of poverty in America. Some are beginning to view poverty as a problem with the "underclass," a group permanently excluded from social mobility and economic integration. Most often this term is used to refer to those living in concentrated zones of poverty in central cities, separated physically and institutionally from the mainstream of American life. This is largely an African-American and Hispanic population. In contrast to other groups, the underclass is considered to be permanently marginal, without literacy, without skills and without hope. Other groups consider members of the underclass as different from themselves and dangerous.

If this is indeed a new view of poverty in United States, then the new penology may reflect, in part, these views and have implications about how this underclass should

be treated. From this perspective, the new penology will continue to focus on assessing risk and controlling behavior in lieu of attempts at rehabilitation, reintegration or education. Attempts at rehabilitation would be expected to fail for this population so the best that can be hoped for is management of risk. The "we versus them" philosophy will lead to neither sympathetic treatment by the criminal justice system nor a focus on rehabilitation. The impact on minority populations could be disastrous. Feeley and Simon are not suggesting that this is inevitable and permanent. They maintain the new penology changes the goals of corrections from rehabilitating individuals toward the, assumedly, more realistic task of monitoring and managing intractable groups. This change carries dangers that should be recognized.

7.2 Minority Populations

Nine percent of African-American adults were under some type of correctional supervision in 1996; only two percent of the white population was.[70] In comparison to white males, a much larger percent of the minority males were in prison in 1998. Expressed in terms of percentages, 8.6 percent of the African-American non-Hispanic males age 25 to 29 were in prison in 1997, compared to 2.7 percent of Hispanic males and 0.9 percent of white males in this age group.[71]

One of the original intents of sentencing reforms was to reduce racial disparity and discrimination. Whether this has been accomplished by the reforms is unclear. Evaluations of the effects of sentencing guidelines in both federal and state systems provide mixed results. The principal problem does not appear to be biased decision-making by criminal justice officials but rather the adoption of policies that disproportionately affect minority offenders.

African-Americans are over-represented in the U.S. prison system; this has been exacerbated by the rapid growth in prison populations in the past thirty years. The proportion of African-Americans in federal or state prisons or local jails has been increasing from approximately 30 percent in the 1970s to 40 percent in the 1980s and 50 percent in the 1990s.[72] There are at least two reasons for this increase. First, the war on drugs has disproportionately affected African-Americans. The war was designed to be tough on crime and to assure the arrest, prosecution and imprisonment of street-level drug dealers. As reported above, the war has resulted in increased arrests of drug offenders; more of these arrests result in prison sentences than previously. In urban areas where such arrests are common, most dealers are poor and minorities. Thus, the increased incarceration of African-Americans is, in part, a by-product of deliberate strategies employed in the war on drugs.

Second, changes in sentences such as three-strikes laws, mandatory minimum sentences and truth-in-sentencing laws that abolish parole release and require inmates to serve longer sentences also disproportionately affect minority offenders. These laws increase the length of time offenders convicted of violent offenses must serve in prison.

African-Americans constitute a large percentage of the people arrested for violent crimes and, thus, they are disproportionately affected by these changes in laws. Whether these policies are a result of malign neglect [73] (failure to consider the impact of the policies) or attitudes towards the underclass (as suggested by the new penology) is debated. What is obvious is the fact that the increased incarceration rates have disproportionately affected African-Americans and, most likely Hispanics also.

7.3 Impact on Individual Offenders

The majority of offenders who are convicted of crimes spend their sentences in the community under supervision; the majority of those who are sent to prison will be released back to the community some day. Thus, there is a legitimate concern about how arrest, conviction and imprisonment affect individuals and whether these experiences have long-lasting effects on the lives of ex-offenders. There is evidence that such experiences with the criminal justice system reduce ex-offenders' subsequent incomes and employment. The reasons for these reductions are not always clear. Potential employment is limited through various state and federal laws that deny ex-offenders the right to vote or hold office in some places, engage in certain occupations, and the right to receive various public benefits and services. There also appear to be other non-legal influences that are less obvious. The stigma of prison may reduce the chances for employment or marriage prospects.

Imprisonment has some additional negative effects on offenders and their families. For example, imprisonment often leads to a breakup of family or other social relationships, and lessens parental involvement with children. Problems such as financial stability or single-parenting arise for family members who remain in the community. Prisons may affect an individual negatively by increasing ties to criminal compatriots or creating stress overwhelming an inmate's ability to cope. Inmates may learn antisocial and criminal attitudes from other inmates. These influences could lead to increased criminal activity upon release.

While there are many potential negative impacts of prison, the treatment literature demonstrates that rehabilitation programs in prison can have a positive impact by reducing recidivism. However, problems with overcrowding and finances frequently limit the number of offenders who receive treatment. Alternatively programs may be offered but so poorly implemented and of such limited duration that they could not be reasonably expected to have an impact on recidivism. This is particularly a concern when there is strong evidence that many of those who are arrested have used illegal drugs and would most likely benefit from drug treatment.

Drug-Involved Offenders. Some question the wisdom of changes in sentencing that have sent increased numbers of offenders to prison to serve longer periods of time, particularly in regard to the impact on specific types of offenders. They argue that the more structured sentences that eliminate discretion require prison sentences for some

offenders who do not appear to be best served with lengthy prison sentences. An increasing number of individuals are being sent to prison for drug offenses; many of them have substance abuse problems. Drug tests of arrestees provide statistical documentation of the large number who have used illegal drugs within a short time before their arrest. For years, the emphasis on incapacitation in prison and surveillance and control in the community meant that only a small percent of those with substance abuse problems actually received treatment. However, the growing research evidence that drug treatment is effective in reducing both drug use and criminal activities has led many correctional jurisdictions and the federal government to support treatment programs for drug-involved offenders.

Women Offenders. Many people also argue that the elimination of discretion in sentencing and release decisions is inappropriate for many women offenders. A high percent of women are serving time in prison for drug offenses or other nonviolent crimes. Many are not given treatment while they are in prison. Furthermore, the majority of the women are single mothers responsible for rearing their children. Yet, the limited number of women offenders means that they are sent to prisons far from their homes or they are shipped to other jurisdictions to serve time. This means that they do not see their children for long periods of time while they are incarcerated. The emphasis of community supervision on control and surveillance also presents problems for the women when they return to the community. Upon release from prison, they must return to their family responsibilities and also complete the requirements of supervision. For many these responsibilities present insurmountable challenges that they are unable to overcome.

7.4 Unintended Consequences for the Community

There is growing concern that the increased incarceration rates, especially the unprecedented rates in the U.S. today, may affect other institutions like families, communities or schools in a manner that increases crime and social disruption or that, at a minimum offsets any crime reduction effect of increased incarceration.[74] The argument is that social institutions like families, neighborhoods, communities, educational institutions and labor markets provide and enforce norms of behavior that keep most people from engaging in criminal activity. When the ties or bonds to these institutions are weakened or lost individuals become more marginalized, and such individuals have higher levels of violence and crime. Historical changes have occurred that have particularly impacted young African-American inner city males.[75] In the past twenty years, among African-Americans in inner cities, labor force participation declined dramatically and the percent of female-headed households increased. At the same time, participation in the drug trade increased. The violence attendant to the drug trade further weakened ties to the social institutions.

The high rate of incarceration is thought to have exacerbated the problems in the inner cities. In the past, when incarceration rates were low, members of some families

were imprisoned but this was sufficiently unlikely that it did not have a strong effect on communities. However, when the incarceration rates are so high that 10 percent of the adult males in a community are affected, and the majority of males have been in correctional institutions at some point in their lives, incarceration may adversely affect the community in ways that it did not in the past. Incarceration weakens families by removing men from families. The remaining family members may be less effective in supervising and controlling teenage children. Furthermore, incarceration reduces the supply of marriageable men, leaving more single mothers to support and raise the children. The very communities hit hardest by incarceration are those already negatively impacted by recent historical changes. These low-functioning neighborhoods are depleted and every available resource is needed.

From one perspective, the removal of criminal males may benefit a community because they are no longer committing crimes. On the other hand, this assumes that these offenders are solely a drain on the community. This may be a faulty assumption. Offenders, even while being involved in criminal activities, may provide important sources of support for the community or its individual members. Some ethnographic research demonstrates offenders represent both assets and liabilities to their communities. The point is not that they are model citizens but that they provide some resources to the community. If they are incarcerated these resources are withdrawn and they might not be restored even after the offender is released because ties are loosened or broken beyond repair. In any case, the importance of this discussion is the possibility that incarceration policies may have had negative effects on inner-city, underclass communities that exacerbated already existing problems. Thus as a direct consequence of correctional policies, these communities may experience more, not less, disorganization and crime.

8. EMERGING PARADIGMS

An examination of the state of corrections as we enter the 21st century reveals some emerging paradigms that may influence the future of corrections in the United States. The following is a short review of some of these new developments.

8.1 Restorative and Community Justice

In the past decade, simultaneously with tough-on-crime initiatives, restorative and community justice programs have been proliferating across the United States.[76] The programs provide new ways of viewing the justice system and how to respond to crime. The basic assumption is that crime damages individuals, communities, and relationships. Restorative justice includes all responses to crime aimed at doing justice by repairing the harm or healing the wounds that crime causes. Under this model, justice involves the victim, offender and the community in search for solutions. The solutions must promote repair, reconciliation and reassurance. From this perspective, justice requires more than

just punishing or treating those found guilty of lawbreaking. Crime harms the victim and the community so the primary goal should be to repair the harm and heal the victim and the community. Harmony should be restored between victims and offenders; victims should be repaid for tangible and emotional losses; offenders should take responsibility, recognize the shame and regain dignity.

Some examples of the types of programs included under the restorative justice model are:

- Victim-offender mediation. Offenders and victims meet with volunteer mediators to discuss the effects of the crime and to decide on restitution.

- Family group conferencing. Offenders, victims, families and other people significant in their lives meet to discuss the impact of the crime and restitution. These are usually organized and run by criminal justice officials or social service agencies.

- "Sentencing circles." Decision-making involves the victim, the offender, their supporters, key community members and is open to everyone in the community.

- Reparative probation and other citizen boards. Offenders sentenced to probation are required to meet with a citizen board of volunteers, and together they draw up a contract that the offender must carry out.

Currently, except in a few locations, restorative programs are only used for a limited number of case, and they are used more with juveniles than adults and for minor offenses rather than for serious crime. There is still a great deal of debate about how many of the restorative and community justice programs should be implemented and operated and by whom. Furthermore, it is often difficult to mobilize and involve the community, particularly in disadvantaged, inner-city environments where the need may be greatest.

Community justice has a less explicit definition and people mean many different things when they use the term. At the broadest level community justice includes any program, including restorative justice programs, involving or focusing on the community. Some use the term to describe a new community-corrections focus on problem solving, and community empowerment similar to how the term is used in the context of community policing. It is also used to describe strategies that focus on neighborhood locations that offer flexible working hours and services and close contact among supervising agents and various members of the community including offenders, victims, offenders' families. Community service and payment of restitution by probationers or parolees are also included under the umbrella of the term community justice.

Community-corrections, variously called "neighborhood probation or parole," "corrections of place" or "police-corrections partnerships," is a new model of community

supervision involving engagement of the community in supervision similar to the way community policing has involved the community in policing. Some of the key components are: (1) strengthening the ties between law enforcement and the community; (2) offering a "full-service" model of supervision including both services and surveillance; and (3) attempting to change the lives of offenders through personal, family and neighborhood interventions. Rather than managing offenders in the conventional caseload model, agents are responsible for more actively supervising offenders, problem solving to initiate changes in offenders, and providing help for the offenders in obtaining employment, social support and needed treatment. Unlike earlier community corrections programs that focused on rehabilitation, the new community corrections focuses on involving the community (including law enforcement) to help with combinations of supervision, accountability, and rehabilitation, including coercing the offender into treatment. Thus, community corrections combines rehabilitation with strict control and uses the help of members of the community and technology to insure compliance.

Interest in police-corrections partnerships has been growing. The partnerships take various forms from enhancing supervision, to apprehending fugitives, sharing information and problem solving. Critics are concerned about due process rights of offenders because probation and parole agents have broad powers (such as to conduct warrantless searches) that officers do not have. Furthermore, some difficulties have arisen in the implementation of the partnerships related to coordinating activities, identifying goals and dealing with limited resources.

8.2 Reemerging Interest in Treatment

With the growing body of research demonstrating the effectiveness of treatment programs with some offenders, interest has returned to rehabilitation as a goal of sentencing and corrections. However, rather than accepting the rehabilitation model of the past, the new focus from researchers, practitioners, administrators and decision makers is on how rehabilitation can be combined with methods that either coerce offenders into treatment or demand accountability. The large number of drug-involved offenders in the criminal justice system and the mounting evidence that treatment can be effective for this group has encouraged many jurisdictions to initiate drug treatment programs in prison and require drug treatment during community supervision.

8.3 Specialized Courts

One response that has become particularly popular for managing and treating drug involved offenders is a specialized drug court. The wide acceptance of the drug courts as well as preliminary information about the effectiveness of the programs in reducing illegal drug use and other criminal behavior has led some jurisdictions to develop other types of specialized courts to address specific groups of offenders. Jurisdictions are

experimenting with specialized courts for: juveniles and families, probation violators, prisoner's re-entry from prison, and mental health clients.

Drug Courts were developed to manage correctional sentences given to low-level drug offenders. The courts stress rehabilitation, community integration and accountability. A judge manages a caseload of drug-involved offenders, requiring them to make regular appearances in court, requiring them to participate in some form of drug treatment, subjecting them to regular urine testing to determine drug use, and administering a predetermined set of graduated, parsimonious sanctions for violations of the contract with the drug court.

Juvenile and Family Courts. Many justice system practitioners have recognized that substance abuse problems are a problem with youth on juvenile, family or criminal dockets. To address the problems of the substance-abusing juveniles some jurisdictions have attempted to develop juvenile and family drug courts. However, the development of these court have proven to be a more complex task than the development of adult drug courts because juveniles may be less motivated to change, they are negatively influenced by peers, gangs and family members, and there are stringent confidentiality requirements for juvenile proceedings.

8.4 Reintegration and Re-entry.

How to facilitate the reintegration and re-entry of prisoners when they are released from prison is a critical issue for corrections today. Approximately 500,000 prisoners are released from state prisons each year.[77] According to one Bureau of Justice study, within three years of release, approximately 62 percent of these individuals will be rearrested for a felony or serious misdemeanor and 41 percent will be sent back to prison.[78] The risk of recidivism is highest during the first year after release.

The rapid growth in the numbers of parolees means that caseloads have grown correspondingly and supervising agents have limited time to spend with each individual. Caseloads on regular parole have grown from 30 parolees to 1 agent in the 1970s to 84 to 1 agent.[79]

Frequently, serious offenders are released with little or no supervision because they have completed their sentence in prison. Many of those being supervised in the community are returned to prison for a new crime or violation of the conditions of supervision. As a consequence, a high percent of the people entering prison have failed community supervision. This revolving door has led many to rethink the processes of re-entry and to recognize the need to develop new concepts that will frame the mix of governmental, private, community, and individual responsibilities for the reintegration of prisoners into society. Various methods have been proposed for managing reentry including community corrections (described above), increased rehabilitation programs,

graduated sanctions that can be used before the parolee is returned to prison and re-entry courts.

Re-entry Courts. Modeled after the drug courts, the proposed re-entry courts would manage the return to the community of individuals being released from prison. The court would use its authority to apply graduated sanctions and positive reinforcement as well as to marshal resources to support the prisoner's reintegration to promote positive behavior by the returning prisoner. The goal would be to reduce the recidivism rate of returning prisoners and gather a broad-based coalition to support the successful reintegration of those released from prison. The court essentially performs a resource triage. Releasees who are the most dangerous are identified and they are given the most resources during supervision.

8.5 Technology

Perhaps the greatest impact on corrections in the 21st century will be new technology. One of the most immediate impacts is the use of computers to collect and share information. Theoretically, through the use of computer networks, information collected at one stage of criminal justice processing (e.g., arrest) can be shared as the offender progresses deeper into the criminal justice system. For example, risk and needs assessments, urine test results, or self-report substance-involvement determined pre or post sentencing can be shared with probation agents and prison administrators. Performance during probation and parole can be used to determine the management and treatment of those who are returned to prison. Information on releasees' performance during community supervision can be fed back to prisons and programs to give them information about what happens to people who leave (recidivism, employment, treatment, etc) and whether their programs are successful (in helping releasees get jobs, having an impact on recidivism). New software will permit correctional facilities to record and track inmate records, bed assignments, medical data, account information, etc. Barcode printing and scanning can be used to track inmate movements and perform cell checks. Information from the criminal justice system could be shared with other federal, state and local agencies (e.g., welfare, health, insurance, etc.) or with the public through the Internet (e.g., sex offender notification).

Technology will go far beyond computer networks. Surveillance techniques will benefit from the use of video, and new tracking technology such as cellular or satellite tracking. Prisons may be made safer through the use of digitized ID cards, hand held metal detectors, stab and slash resistant vests, and improved perimeter security systems. Drug use may be monitored more closely with hair testing instead of the more invasive urine testing. Problem solving and management will be facilitated by mapping techniques showing where most probationers and parolees reside. New medical techniques such as chemical castration or other drugs may be used to reduce sex offending or violent offending or to treat other behavior associated with criminal activity. Sex offenders or violent offenders' names and faces could be posted on the Internet. New trends in

medicine might cut correctional costs using telemedicine. DNA banks and profiles will help identify offenders and additional information provided by the Human Genome Project may have psychiatric and behavioral management applications.

Technology holds many promises. Despite its potential value in reducing crime and controlling criminals, technology also carries risks. These risks must be clearly identified and examined.

8.6 Evidence-Based Corrections

It is generally recognized that research is needed if we are to make reasonable, rational, cost-effective decisions regarding correctional policies. While many verbalized this interest in the past, it is only recently that corrections has been moving towards more research and research-based decision making. There is interest in using performance measures to hold departments of corrections accountable. Ideas such as Criminal Justice Extension Agents[80] and partnerships between state agencies and universities have been proposed as methods to encourage collaboration between researchers and criminal justice agencies. Criminal Justice Extension Agents, working with local, state and federal agencies and the community, would facilitate and promote the close exchange of information among these constituents. University research faculty would be informed of new developments in the community; practitioners, decision makers and others in the community would be informed about the latest research findings. The agents would work to facilitate the interaction between university researchers to increase the amount of research. They would be experts in effectively communicating research results to policymakers and citizens. Federal, state and local partnerships modeled after the Land-Grant University Agriculture Extension Agents (who provide a bridge between universities and the community) will insure adequate funding for long term continuing projects.

If we are to move ahead and not make the mistakes of the past, we must begin to use empirical knowledge to guide decision-making. For example, we should choose to implement programs that have been proven to work. A stronger relationship among universities and criminal justice agencies, community members, decision makers and others will be necessary as we enter the 21st century. When we want to win wars, walk on the moon or solve medical problems we use science. There is every reason to believe that scientific knowledge will be valuable in helping us to address the problems in sentencing and corrections.

9. SUMMARY

This paper has examined sentencing and corrections in the United States in the past thirty years – the goals, the policies and the impacts of the policies. As we begin the 21st Century, it is time reflect on the goals of sentencing and corrections. What are the goals? Have we achieved these goals? What can we do to achieve them? Perhaps most important is to begin to ask what society expects from corrections? Are these expectations feasible? If not, can we educate the public to understand the challenges of sentencing and corrections? If yes, how will we go about meeting the expectations?

[1] Numerical data given in this report and presented in tables and figures were taken from the following Bureau of Justice Statistics (Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice) reports: Cohen, R.L. Probation and Parole Violators in State Prison, 1991; Beck, A.J. and D.K. Gilliard, Prisoners in 1994; Stephan, J.J. State Prison Expenditures, 1996; BJS, Correctional Populations in the United States, 1995; BJS, Correctional Populations in the United States, 1996; BJS, Prison and Jail Inmates at Midyear 1998; Ditton, P.M. and D.J. Wilson (1999) Truth in Sentencing in State Prisons; Bonczar, T.P.; and L.E. Glaze, Probation and Parole in the United States, 1998; Beck, A.J. and C.J. Mumola, Prisoners in 1998; Sourcebook of Criminal Justice Statistics, 1998. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

[2] Blumstein, A. and A.J. Beck (1999) Population Growth in U.S. Prisons, 1980-1996. In Tonry, M. and J. Petersilia, (eds) *Prisons*. Chicago: University of Chicago Press.

[3] State and federal prisons housed two-thirds of the incarcerated population. Jails, which are locally operated and typically hold persons awaiting trial and those with sentences of a year or less, held the other third.

[4] Sourcebook, 1998.

[5] Probationers include adult offenders whom courts place in community supervision instead of incarceration; parolees include those adults conditionally released to community supervision whether by parole board decision or by mandatory conditional release after serving a prison term.

[6] Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

[7] Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

[8] Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

[9] Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

[10] Beck and Mumola, 1999. Bureau of Justice Statistics; Beck and Gilliard, 1995. Bureau of Justice Statistics.

[11] Blumstein and Beck, 1999.

[12] Blumstein and Beck, 1999.

[13] Bureau of Justice Statistics, 1999. correctional Populations in the United States, 1996. Washington, DC: Bureau of Justice Statistics.

[14] Sourcebook, 1998; Dollar comparisons are given in constant dollars.

[15] Camp, G.M. and c. Camp. 1995. *The Corrections Yearbook 1995: Probation and Parole*. South Salem, NY: Criminal Justice Institute.

[16] Stephan, J.J. 1999. State Prison Expenditures, 1996. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice.

[17] Stephan, J.J. 1999.

[18] Good-time and earned-time are reductions in the length of a prison sentence for satisfactory prison behavior (good time) or as incentives for participation in work or educational programs (earned-time).

[19] Parole boards, in various forms, have the responsibility to set conditions of release for offenders under conditional or supervised release, the authority to return an offender to prison for violating the conditions of parole or supervised release, and the power to grant parole for medical reasons.

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[21] President's Commission on Law Enforcement and Administration of Justice, 1967, p166-169.

[22] Ibid. (President's Commission on Law Enforcement and Administration of Justice, 1967, p170-174)

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[28] Zimring, F.E., and G. Hawkins. 1995. Incapacitation: Penal Confinement and the Restraint of Crime. New York: Oxford University Press.
[29] Wolfgang, Figlio, and Sellin 1972. Delinquency in a Birth jCohort. Chicago, IL: University of Chicago Press.
[30] See below section on examining the effectiveness of incapacitation and deterrence for a discussion of the difficulties of identifying these career criminals.
[31] Zedlewski, E. 1987. *Making Confinement Decisions.* Washington, DC: National Institute of Justice.
[17] While habitual offender laws had been enacted by many states in the 1960, they became popular again during this time.
[33] Morris, N. and M. Tonry, 1990. *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System.* New York: Oxford University Press; Tonry, M. 1996. Intermediate Sanctions. In M. Tonry (Ed.) *The Handbook of Crime & Punishment*, New York: Oxford University Press.
[34] Ditton and Wilson, 1999. Truth in Sentencing in State Prisons, Washington, D.C. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.
[35] Ditton and Wilson, 1999.
[36] Index crimes are the crimes used by the FBI in the Uniform Crime Reports (UCR) as indices for recording changes in crime rates over time and consist of violent crime index offenses (murder, forcible rape, robbery and aggravated assault) and property crime index offenses (burglary, larceny-theft, motor vehicle theft, arson).
[37] Tonry, M. 1998. Introduction: Crime and Punishment in America. In M. Tonry (ed) The Handbook of Crime & Punishment. New York: Oxford University Press.
[38] Blumstein, A. and A.J. Beck, 1999.Population growth in U.S. prisons, 1980-1996. In M. Tonry and J. Petersilia (Eds) Prisons. Chicago: University of Chicago Press.
[39] To investigate this they used index offenses known to the police, since drug offenses are not one of the index crimes their research could not determine if drug offenses had increased during this time.
[40] Bonczar and Glaze, 1999.
[41] Many of those who have violated parole have been rearrested for an new crime and therefore these are not just technical violations of conditions of parole.
[42] Bonczar and Glaze, 1999.
[43] While discretionary release from prison by a parole board has been eliminated by these states, post-release supervision still exists and is generally referred to as community or supervised release.
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Chapter 9

CRIMINAL JUSTICE AND CRIME PREVENTION[1]

By Doris Layton MacKenzie

1. INTRODUCTION

Past behavior is the best predictor of future behavior. From this perspective, it is reasonable to attempt to prevent crime by preventing known offenders from continuing their criminal behavior. This chapter focuses on the options for dealing with actual perpetrators once they are identified so that crime in the community can be reduced. While traditional crime prevention efforts are directed toward those who are not yet involved in crime, our broader definition includes any setting that reduces crime in the community. By definition, therefore, we include as crime prevention, programs in the courts and corrections that focus on reducing the criminal activities of offenders.

For policy purposes, recent interventions for reducing crime through the courts and corrections can be classified into six categories:

(1) **Incapacitation** or depriving the offender of the capacity to commit crimes usually through detention in prison or capital punishment.

(2) **Deterrence** or punishment that is so repugnant that neither the punished offender (specific deterrence) nor others (general deterrence) will commit the crime in the future.

3) **Rehabilitation** or treatment directed toward changing the offender and thereby preventing future criminal behavior of the treated individual.

(4) **Community Restraints** or the surveillance and supervision of offenders in the community in order to reduce their capacity and/or opportunity for criminal activities.

(5) **Structure, Discipline and Challenge** programs that use physically and/or mentally stressful experiences to change the offenders in a positive way or deter them from later crime (specific deterrence).

(6) **Combining Rehabilitation and Restraint** in order to insure that offenders make changes that are associated with a reduction in future criminal behavior.

As shown in Table 9-1, these are not mutually exclusive categories. The categorization is a heuristic device to classify a wide range of programs currently existing in criminal justice systems throughout the United States. They represent different strategies for controlling crime in the community. Most have some theoretical rationale for expecting a reduction in crime; they differ enormously in the mechanism anticipated to produce the reduction in crime.

Support for these different strategies of crime prevention in the courts and corrections have changed enormously in the past thirty years. In the 1970s, the strong emphasis on rehabilitation that had existed since the turn of the century gave way first to a focus on equality and fairness in sentencing, and then to an increased focus on incapacitation, deterrence and restraint strategies of crime prevention. Today, incapacitation is the primary justification for imprisonment in the U.S. criminal justice system (Zimring and Hawkins, 1995).

A dramatic increase in offender populations accompanied this change in philosophy. The increase was

unprecedented. It followed a period of relative stability in incarceration rates that had existed throughout most of the twentieth century. For example, from 1945 to 1974 the average incarceration rate was 106 inmates per every 100,000 individuals in the population. Incarceration rates fluctuated only slightly, from a w of 93 inmates per 100,000 to a maximum rate 119 (Blumstein and Cohen, 1973). Since that time, however, incarceration rates have grown enormously. By 1985, the number of inmates per 100,000 U.S. residents was to 313; this grew to 600 by 1995 (Bureau of Justice Statistics, 1996).

This increase impacted the total correctional populations and not just prisons. Since 1980, the total estimated correctional population rose 179 percent from 1.8 million in 1980 to 5.1 million in 1994 (BJS, 1995). For parole populations the increase was 213 percent, for probation populations the increase was 1,565 percent (BJS, 1995).

While this analysis of crime prevention focuses on how effective these different strategies are in reducing crime, it is important to remember that each strategy has impacts other than crime reduction. For example, analysis of the costs and benefits is critically important in any examination of policy relevant issues. This has been the focus of much of the incapacitation discussion because of the large impact associated with policies that increase the need for building, operating and maintaining the prisons necessary for incapacitation. On the other hand, with the exception of some drug treatment analyses, there are fewer discussions and less research

examining the costs and benefits of rehabilitation. Yet, such analysis is important. A high quality, intensive treatment program for offenders can be relatively costly. The advantages of the program must be weighed against the costs. Such issues, among others, are important in policy decisions.

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able 9-1. Different strategies for preventing crime by the courts and corrections showing the anticipated mechanisms for impact.

	CRIME PREVENTION IN THE CORRECTIONS				
	Incapacitation	Deterrence	Rehabilitation	Community Restraints	Struc Disci Chall
MECHANISM FOR IMPACT	Imprisonment removes offenders' capacity to commit crimes in community (General) Small number of high rate offenders can be identified and imprisoned during their active criminal career (Specific) General and	General: Punitive punishment will keep those in the community from committing crimes Specific: Punitive punishment will keep punished individuals from committing more crimes	Change aspects of offenders that are changeable and associated with criminal behavior Intensive, adequately implemented programs (with treatment integrity) of sufficient duration (dosage) Target higher risk cases	Increased surveillance and control in the community will decrease offenders capacity to commit crimes Increased surveillance and control in the community will decrease offenders' opportunity to commit crimes Specific deterrence	Exper will offen posit so th not c to co crime Gener speci deter

Specific deterrence	Cognitive, skill oriented and behavioral treatment methods

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However, the focus of this chapter is on strategies that reduce crime in the community. From this perspective, issues such as costs, prison crowding, reducing risk factors, public opinion, and the politicalization of decision making are considered important only if they have a direct impact on criminal activities and crime prevention. In the following sections of this chapter, these topics are discussed only when they are such an important part of the interpretation of the impact of some programs that they cannot be easily dismissed. In general, the focus of this review is on activities in the courts and corrections that have a direct bearing on preventing crime by reducing the criminal activities of known offenders.

Given the scope of programs and evaluations, examining crime prevention techniques in the criminal justice system is a very large assignment and decisions had to be made about what was important to emphasize in this review. Given the limitations on time, some important topics had to be omitted from this report. Four obvious examples are: Capital punishment; deterrence research not directly related to court or correctional programs; transferring juveniles to adult courts; and community treatment for drug-involved offenders. Another topic that was not described is the relatively new programs on restorative justice and mediation. These are important and current topics, and the interested reader should refer to the recent summaries of the work.

1.1 Examining the scientific evidence

In evaluating the research and assessing the effectiveness of the six identified strategies of crime reduction, this chapter uses three different methods: (1) reviews of the research literature; (2) reviews of meta-analyses used to examine groups of studies; and (3) the scientific methods score combined with significance tests. There were several reasons for this decision to use the different methodologies to review the research and draw conclusions about effectiveness in crime prevention. First, some strategies of crime prevent do not lend themselves to program evaluation that can be easily categorized using the scientific methods score we designed. For example, incapacitation research uses complex statistical models to estimate the crimes prevented by various policy decisions. Such studies do not easily lend themselves to the scoring methodology used for evaluating specific programs. We decided that reviewing the literature on incapacitation, and not scoring each study was more valuable for drawing conclusions about the effectiveness of incapacitation strategies.

Reviews of the literature were also used to judge the effectiveness of several other programs. Most often this was because current reviews of the literature were available, and there was little research that had been completed in the past five or six years that would change the conclusions of the previous reviews. For example, the discussion of shock probation and the Scared Straight programs were based on past literature reviews.

Broad assessments of treatment effects have greatly benefited from the rise of a new statistical technique, meta-analysis that enables researchers to aggregate the continuously growing research literature in order to examine and compare the effect sizes for treatment versus control groups comparisons. In some areas, such as the rehabilitation literature, there is a body of research using meta-analyses to examine the effectiveness of programs. Wherever possible, these meta-analyses are used to draw conclusions about programs. The

rationale for this decision is that meta-analysis techniques are respected statistical techniques that are more rigorous than the scientific methods score we are using in this project. The meta-analysis technique permits the aggregation of a large body of research literature in order to examine and compare the effect sizes for treatment versus control group comparisons. The meta-analyses reported herein summarize a large number of studies and control for important methodological issues.

There is an enormous body of literature on crime prevention efforts in criminal justice. Much of this literature is not research examining the impact of crime prevention strategies. Few of the research studies are of sufficient quality to permit conclusions regarding the effectiveness of the program studied. In order to evaluate the quality of the research, as described in Chapter 1, this report uses a scale of 1 to 5 to summarize the scientific rigor of the studies examined. A score of 5 indicates the strongest evidence for inferring cause and effect, a score of 1 indicates the weakest. Studies scoring a 1 were considered so low in scientific rigor that they were excluded from conclusions about a topic. Topics were chosen and the previously described categories were identified by examining current research publications. The focus was on research that had been completed since 1987. In most other cases, the discussion of a topic is based on published reviews of the literature or meta-analyses.

Most of the studies reviewed examine the recidivism of offenders who receive some treatment, service or regime. Studies with scientific method scores of 5 are random assignment studies with successful assignment of cases to treatment conditions, sufficient numbers to reasonably expect that the experiment had sufficient statistical power to detect a difference in recidivism if indeed one was there, and limited attrition during the study.

Two problems that continually arose in the research were the small number of subjects and attrition. Even if a strong experimental design is used, a study will not have sufficient power to detect a difference that may exist if the number of subjects are small. This was particularly a problem with studies using juvenile subjects. Attrition is another problem. Some studies used as comparison groups those who had dropped out of the program being studied. At times this is referred to a comparison between the motivated individuals and others. The problem is these groups can be assumed to differ prior to receiving any treatment and, therefore, no conclusion can be drawn about the effect of the program being studied. This is a serious problem with some of the drug treatment studies.

Frequently studies did not fulfil the requirements for a score of 5 because the assignment process was not successful, there were too few subjects, or subjects were lost during the study. If the effect of these problems could be assumed to be minimal from a research perspective, such studies were given a score of four. Other studies that scored a 4 were quasi-experimental designs with careful statistical controls for differences among subjects. These studies were also required to have limited attrition during the study and sufficient numbers of subjects.

A score of 3 indicated more serious problems with the research design such as limited information on the subjects and comparison groups so that it was impossible to determine how similar the groups were before the study began. Attrition, uncontrolled group differences, and few subjects would also contribute to a score of 3.

A score of 2 revealed serious flaws with the research design, therefore only tentative conclusions could be drawn from such a study because the scientific rigor was so limited.

The next sections of this report review the proposed strategies for preventing crimes through the use of the criminal justice system. Studies for juveniles and for drug-involved offenders are evaluated in separate sections because of the particular focus of these studies. Conclusions about what works, what doesn't and what is promising are based on a careful examination of the literature reviews, meta-analyses, statistical significance, and the scientific methods scores.

2. INCAPACITATION

The concept of incapacitation is simple -- for as long as offenders are incarcerated they clearly cannot commit crimes outside of prison. Crime is reduced because the incarcerated offenders are prevented from committing crimes in the community. At least while they are in prison, they cannot continue to commit crimes. A secondary benefit of incarceration is thought to be the indirect effect of deterring (or inhibiting) others from committing crimes because of the threat of incarceration (general deterrence effect). Furthermore, individuals who spend time in prison may be deterred from continuing their criminal activities when they are released (a specific deterrence effect).

Most people accept the notion that crime prevention through incapacitation is a primary justification of imprisonment (Zimring and Hawkins 1995). Generally accepted also, is the fact that some individuals should be incapacitated for long periods of time because of the seriousness of their offenses and the threat they pose if released. Questions arise over how broadly the incapacitation strategy should be used and whether it is a cost efficient and effective crime prevention strategy. Some ask that prison space be reserved for only a small select group of dangerous repeat offenders. Others advocate a general incapacitation strategy that would incarcerate a substantial number of felons. The success of incapacitation in reducing crime in the community remains a controversial subject.

During the mid-1970s, interest in incapacitation as a crime prevention strategy grew, in part due to concerns about the efficacy of rehabilitation, rising crime rates and public fear of crime. Originally, incapacitation strategies were supported because of what seemed to be the logical utility of keeping offenders in prison so they could not commit crimes. In some jurisdictions increases in incarceration rates were found to be accompanied by decreases in crime rates. This correlation was used to justify incapacitation policies. However, careful scientific examination requires more than an association between two variables because both could easily be caused by some third factor. Furthermore, correlational studies examining the association between incarceration rates and arrest rates within jurisdictions have not found any consistent relationship between the two (Zimring and Hawkins 1995).

More rigorous research examining the effectiveness of incapacitation in reducing crime has focused on developing models to estimate the impact of incarceration on individual level offending (Zimring and Hawkins 1995; Spelman 1995). Estimating the crime prevention benefits that can be obtained through incarceration is a complicated process. The researcher must estimate how frequently offenders commit crimes and the duration of active criminal careers. The majority of studies examining incapacitation effects demonstrate a small but positive effect in reducing crime. Frequently, however, this crime prevention effect is associated with significant increases in prison populations. Issues of concern relate to whether this reduction is worth the additional costs for building and maintaining prisons and jails, and whether there are other more cost-effective methods of crime reduction.

Early research on incapacitation used official-records to estimate individual-level offense rates (Clarke 1974; Greenberg 1975; Van Dine, Conrad, and Dinitz 1977; Petersilia and Greenwood 1978; Blumstein and Cohen 1979). In a review of these studies, the National Academy of Sciences Panel on Research on Deterrent and Incapacitative Effects (1978) reported that the incapacitation studies offered widely divergent estimates of the incapacitative effect of imprisonment. While some studies indicated that incapacitative effects were negligible, others claimed major potential impacts on crimes through increased use of imprisonment. The panel concluded that the principal disagreement was over the value of the individual crime rates that were used to estimate the effectiveness of incapacitative policies. That is, models of the crime reduction effectiveness of imprisonment required estimates of how frequently individuals commit crimes when they are in the community. There were no generally accepted estimates of these rates nor did researchers know how long criminals continued to commit crimes (e.g., the length of the "career" of crime).

Surveys of prisoners conducted during the late 1970s and early 1980s were designed to answer the questions

about the individual crime rates and criminal careers of offenders (Peterson, Greenwood, and Lavin 1977; Peterson and Braiker 1980; Peterson and Braiker with Polich 1981; Marquis and Ebener 1981; Peterson, Chaiken, Ebener, and Honig 1982; Chaiken and Chaiken 1982; Greenwood with Abrahamse 1982). If searchers could discover how frequently individuals committed crimes when they were in the community (e.g., individual crime rates) and for how long they continued committing crimes (the career), the information could be used to refine the models predicting how much crime would be reduced by locking them up in prison. The surveys asked prisoners to report on their criminal activities before they had been incarcerated.

Using these estimates, researchers examined the number of crimes prevented by actual and hypothetical criminal justice practices and sanctioning policies. In general, reviews of these "collective" incapacitation strategies demonstrated a modest reduction in crime combined with substantial increases in prison populations. For instance, in a 1987 review of the research on general incapacitation, Visher (1987) concludes that the sentencing practices and policies, that doubled prison populations during the 1970s and early 1980s, resulted in an estimated crime reduction of 10 to 30 percent.

Increases in prison populations and the research findings of large differences in crime rates of individual offenders moved attention towards a more selective strategy of incapacitating a small group of offenders. Encouragement for this selective incapacitation as a crime control strategy also came from research that revealed a small number of very active offenders (six percent of the cohort) accounted for a disproportionately large number of the arrests (52 percent) in a Philadelphia birth cohort (Wolfgang, Figlio, and Sellin 1972). That is, a relatively small number of offenders were responsible for a large amount of crime. Incapacitation advocates argued that crime could be reduced if these "career criminals" were identified and incapacitated. This "selective incapacitation" strategy would identify the offenders who were predicted to commit serious crimes at high rates so that they could be incarcerated for long periods of time. Further support for the benefits of incapacitation as a correctional strategy came from the proposal that, though there were enormous costs to incarcerating large numbers of felons, there were also substantial costs if they were released and continued to commit crimes (in terms of such factors as criminal processing, loss to victims, etc.) (Zedlewski 1987). Some of the practices that can be attributed to these incapacitation strategies are habitual offender laws, mandatory sentences and the more recent three-strikes laws.

In support of the selective incapacitation sentencing policy, Greenwood and Abrahamse (1982) argued that increasing the length of time served by the predicted high-rate offenders while at the same time reducing the time served by those who were predicted to be low-rate offenders could reduce crime rates without a corresponding increase in prison populations. From this perspective, in the face of constraints on available prison resources, the issue for criminal justice policy was how to allocate a limited number of cells among competing offenders. Ideally, the worst (those who commit the most and/or the most serious crimes), active (not yet at the end of the "career" of crime) criminals would be identified and put in the prison cells. Greenwood and Abrahmse (1982) examined whether such policies could reduce the robbery rate in California. They found evidence that through the use of a selective incapacitation strategy the robbery rate could be reduced by about 15 percent, and the number of incarcerated robbers would be reduced by about five percent, but they cautioned that their analysis had several limitations and they suggested that the work should be replicated in other jurisdictions.

Other researchers reviewed Greenwood and Abrahamse's results and concluded that the original analysis greatly overstated the effects of the proposed selective incapacitation (Cohen 1983, 1984; Spelman 1984; von Hirsch and Gottfredson 1984; Visher 1987). And, in 1983 the National Academy of Sciences panel on Criminal Careers commissioned a reanalysis of the original survey data. The estimates resulting from this tudy indicated substantially smaller incapacitative effects than those found by Greenwood and Abrahamse. urthermore, substantial increases in the prison population were predicted (Blumstein et al. 1986).

For selective incapacitation to be effective, it must be possible to identify and incarcerate offenders who will

commit the most crimes in the future. The estimates of crime commission rates used in the incapacitation studies were derived from the RAND studies using inmate self-reports of criminal activities prior to incarceration. Greenwood and Turner (1987) investigated whether this retrospective data could be used to predict future arrests. They found their data had poor predictive accuracy and, furthermore, the small differences in arrest rates between the groups classified as high- and low-risk did not justify the large differences in sentence lengths that would be required for these offenders if significant selective incapacitation effects were to be achieved. This research, as well as the more recent work of Gottfredson and Gottfredson (1994), suggests that identifying future offenders in order to selectively incarcerate them will prove difficult.

Surprisingly there was little research on the magnitude of incapacitation effects during the decade of the 1980s when the incapacitation philosophy drove the largest increase in incarceration in American history (Zimring and Hawkins 1995). A few more recent studies were completed in the early 1990s (Miranne and Geerken 1991; Horney and Marshall 1991; English and Mande 1992). In one recent study, Cohen and Canela-Cacho (1994) studied the relationship between incarceration and levels of violent crime using both national data and corrections data from six states. The study focused on the crime control effects of incarceration especially whether incarceration was an effective strategy for controlling violent crimes and the merits of pursuing alternative incarceration policies. Their data indicate that changing prison policies such as guidelines, mandatory minimum prison terms, and restrictions on parole release, have played a major part in the rising prison populations over the last decade. In comparison to the past, a higher proportion of those who are arrested in the U.S. are sentenced to prison and those who are committed to prison stay there for longer periods of time. This increased risk of being sent to prison after arrest, and of spending more time if committed to prison was true, in general, for those convicted of various types of crimes and across different jurisdictions.

In their research, Cohen and Canela-Cacho (1994) used sophisticated estimating techniques that took into consideration the fact that high-rate offenders are over-represented among inmates while low-rate offenders are disproportionately found among the offenders who remain free, and the fact that termination of criminal careers reduces the crime prevention effects derived from increased in incarceration. They estimate that the incapacitation effects during periods of low incarceration rates are probably much greater than previously estimated, and that the increasing numbers of offenders being incarcerated today bring only marginal returns for incapacitation effects. This occurs because the expanding prison populations are likely to include an increasing number of offenders who would be low-rate.

The focus on tougher sentencing laws has led to increasingly rigid sentencing statutes and these have particularly impacted repeat offenders. By 1994, 30 states had introduced "three-strikes" legislation and ten had passed tougher sentencing for repeat offenders (Benekos and Merlo 1996). The "three-strikes and you're out" baseball metaphor is used throughout the country in reference to criminal sanctions that become increasingly severe for each conviction an offender receives until they are consider to be "out" or in prison for life. Greenwood, Rydell, Abrahamse, Caulkins, Chiesa, Model and Klein (1994) estimated the crime prevention impact of the California three-strikes law, one of the most sweeping of the laws. Although the first two "strikes" accrue for serious felonies, the third strike that triggers the life sentence can be any felony. According to their estimates the new law would reduce serious felonies committed by adults in California between 22 and 34 percent below what would have occurred had the previous law remained in effect. One third of these prevented felonies would be violent crimes such as murder, rape, and assaults. The remaining two-thirds of the prevented crimes would be less violent felonies such as less injurious assaults, and most robberies, and burglaries of residences. Several alternative models were tested to see if other less costly options would be predicted by the model to be as effective as the three-strikes laws. Although these options were predicted to drop the costs, they would also drop the effectiveness. The researchers caution, that while these results appear encouraging for crime prevention, it will come at great financial cost due to the large estimated increase in prison population. For example, the California three-strikes law, if applied in all eligible cases, would reduce the number of serious felonies in a year by about 28 percent or 329,000

crimes. However, this would cost an additional $5.5 billion a year in additional criminal-justice funding for the additional costs of the construction and operation of prisons. This can be translated as a cost of $16,000 per serious felony prevented.[2]

In summary, there is now a body of research examining the crime prevention effectiveness of incapacitation policies. In general the results indicate:

o Incapacitation policies prevent crime because offenders who are imprisoned do not have the opportunity to commit crimes;

o There are a small number of offenders who commit a large number of crimes. If they could be incapacitated a large number of crimes would be prevented.

However, there are many unresolved questions that make the effectiveness of this strategy questionable. Most important are the following issues:

o It is not yet possible to predict who will be the high frequency offenders in the future; therefore targeting them for increased prison sentences is impossible;

o Increased use of incapacitation as a crime prevention strategy must address the expected increases in imprisonment rates and the associated financial costs that accompany such strategies;

o Large increases in the use of incapacitation may have limited returns because the additional offenders not now incarcerated are lower frequency offenders who would not be committing many crimes in the community, thus, reducing the return on investment for every new dollar expended;

o Large increases in the use of incapacitation may also have limited returns because offenders who are incarcerated for lengthy periods of time may be at the end of their criminal career and therefore would not be committing crimes in the community;

o True estimates of the crimes prevented are difficult to obtain because both the frequency of criminal participation and the duration of careers must be estimated.

Furthermore, recent studies of the impact of the increases in imprisonment rates that have occurred in the past twenty five years have revealed that the impact has had a major impact on minority populations in urban environments (Tonry, 1995). Other disadvantages of increased use of imprisonment strategies are the unintended consequences of imprisonment on the families and communities of those who are imprisoned (Clear, 1996).

3. DETERRENCE

Deterrence strategies are based on early criminological theory proposing that sufficiently repugnant punishments will inhibit individuals from committing crime. As is obvious from Table 1, deterrence could be an expected impact of incapacitation, community restraints and challenge programs. However, this is secondary to the primary mechanism that is expected to have an impact on crime prevention for these strategies. Here, the programs classified as deterrence are those with a primary purpose of deterring either the individual offender or others through the repugnant nature of the sanction. At the individual level, specific deterrence is explained by the fact that the pain generated by the punishment will serve to discourage future criminality. It assumes a rational choice model of decision making where the offender perceives that the cost and benefits of punishment are not outweighed by the crime. General deterrence refers to the impact of the threatened punishment has on other potential offenders, thus reducing the chance

that they will commit crimes.

Deterrence is the rationale given for programs such as Scared Straight, chain gangs and shock probation. These are distinguished from other strategies because the major emphasis is on the punitive nature of the punishment and not on reducing crime through restraint, discipline or challenge. Another deterrence strategy is that of fines, particularly day fines. These fines are designed to be fair given the difference in the economic circumstances of the individual offenders thereby making this sanction more punitive than the tradition fines.

Research examining two types of deterrence programs is reviewed in this section. It is important to note, as shown in Table 9-1 that other programs such as incapacitation policies that threaten offenders with longer prison sentences as well as the programs requiring offenders to participate in emotionally and physically strenuous programs (e.g., structure, discipline and challenge) are also expect to deter offenders. However, they are also viewed as potentially having other impacts and, therefore, they have been examined in separate sections.

3.1 Monetary Penalties

Fines are frequently used as criminal penalties for a wide variety of cases in American courts (Hillsman, 1990; Hillsman, Sichel, and Mahoney 1984; Casale and Hillsman 1986; Cole et al. 1987). However, many of the fine sentences are composites of fines and other noncustodial sanctions and not stand alone sanctions. Judges have wide discretion in setting fines. They are not uniformly imposed, and jail sentences are sometimes used as alternatives to fines particularly for the poor. Rarely are fines in the U.S. used as the sole sanction for more serious cases or for repeat offenders. In contrast, in Western Europe fines are the most often imposed sentence for most crimes and are a major alternative to imprisonment (Hillsman 1990). One of the differences between the use of fines in the United States and other countries is the fact that American judges are not able to set fines that are proportionate to the severity of the offense but are also equitable and fair given the difference in the economic circumstances of the individual offenders. "Day" or "unit" fines as they are called in Western Europe are linked to both the offender's daily income and to the gravity of the crime.

In terms of crime prevention, fines may act as a deterrent to criminal activities. Most studies of fines, however, have focused on setting just and proportionate levels for the amount of the fine, or on compliance, cost savings, or prison population impact issues. Until recently little was known about the use of fines as criminal penalties in the United States. NIJ has filled this gap by supporting studies to examine fining practices (see Hillsman et al. 1984; Casale and Hillsman 1986; Cole et al. 1987; Glaser and Gordon 1988; Hillsman and Green 1987, 1988). These studies are discussed in this chapter only if they examine the impact of fines on crime prevention. However, it is important to note that the results from these studies demonstrate that the use of fines is widespread throughout the U.S. and they are used for a wide range of offenses. Collection rates vary greatly by court, however, these difference may be due to differences in collection techniques and enforcement strategies. The assumption is that these practices could be improved to achieve greater compliance (Casale and Hillsman 1986).

Gordon and Glaser (1991) did examine the impact of traditional fines on recidivism in a quasi-experimental study comparing financial penalties versus similar sentences (probation or probation plus jail). While there were no significant difference between groups, as shown in Table 9-2, offenders who received a fine with probation have lower recidivism rates than offenders who received only probation. Similarly, those who received a fine with probation and jail had lower recidivism than offenders who received only probation and jail without the fines.

As yet, there are few jurisdictions in the United States that use the day fine concept. However several courts are currently adapting day fines to the American context and they are experimenting with their use

(Hillsman 1990). Two studies have examined the impact of day fines on the recidivism of offenders. One study assessed the recidivism of offenders sentenced in Milwaukee's Municipal Court Day-Fine Pilot Project and compared the recidivism rates to a comparison group who received traditional fines (Worzella 992). A larger proportion of the day-fine offenders paid their fine in full. There was no difference in the percent of the groups who committed further violations of municipal ordinances but the day-fined group had fewer arrest warrants (neither measure was significantly different).

In 1991, the Bureau of Justice Assistance funded a multi-site demonstration project, "Structured Fines Demonstration Project," designed to enhance the application and enforcement of structured fines (day fines) as sanctions for drug offenders and other misdemeanants and felons. NIJ awarded funding to Turner and Petersilia (1996) to complete an evaluation the project. While most of the research focused on the implementation and development of the day fine programs, there was some outcome data from one of the jurisdictions. As shown in Table 2 , day fines were associated with reductions in both technical violations and rearrests.

Overall, there is a limited amount of research examining the effectiveness of fines in reducing the recidivism of offenders. The Gordon and Glaser (1991) study suggests that fines as additions to other sanctions may be effective in reducing recidivism. Since fines could potentially reduce the cost of courts and corrections, and day fines address the problems of inequality, this strategy appears to be a promising avenue for future research.

3.2 Shock Probation, Shock Parole, and Split Sentences

The programs is this section have been grouped together because the major emphasis of the programs has been on specific deterrence of the offender participants. Shock probation or parole programs are a form of split sentence in which offenders are incarcerated for unspecified short periods of time in prisons or jails followed by a period of community supervision. The idea is that a short period of time incarcerated would "shock" offenders into abandoning criminal activity and into more conventional and law-abiding behavior. During their incarceration there are no special programs for them and they are mixed with other offenders in the jail or prison. Reviews of the research examining shock programs has provided little evidence of a deterrent effect. Studies examining the recidivism of shock probationers with similar probation groups have found no differences and in some cases the shock probationers have done demonstrably worse (Vito, 1984; Vito and Allen, 1981; Boudouris and Turnbull, 1985; Finckenauer, 1982).

"Scared Straight" is another program designed to deter young offenders or at-risk juveniles from continuing criminal activities. They are taken to maximum security institutions where inmates tell them the horrors and difficulties of life in prison. Studies of these programs have not indicated any differences between those who participated in the programs and comparison groups and in some cases the re-arrest rates were higher for those who participated in the program (Buckner and Chesney-Lund 1983; Lewis 1983).

Overall there is no evidence that deterrence programs such as these effectively reduce the future criminal activities of the offender participants (see also section on rehabilitation in this chapter).

Table 9-2. Studies of fines and recidivism showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Gordon and Glaser (1991)	3	Probation + fine had fewer arrests (25%) than probation only (36%), S.

		Probation + jail + fine had fewer arrests (37%) than probation + jail only (50%), S.
Worzella (1993)	3	No differences between day fine group in new ordinance violations (33%) and conventional fine group (34%), NS.
Turner and Petersilia (1996)	5	Day fine group had fewer technical violations (9%) than conventional sentenced group (22%), S. Day fine group had fewer rearrests (11%) than conventional sentenced group (17%), NS.

Note: NS=nonsignificant, S=significant

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4. REHABILITATION AND TREATMENT

In contrast to incapacitation, rehabilitation strategies focus on changing individual offenders so they will not continue their criminal activities. The research goal is to identify and understand the individual differences that explain criminal behavior and how interventions can be used to change individuals so they will not continue to commit crimes. The work is based on psychological theories of learning, cognition and the general principles of human development applied to the analysis of illegal behavior (Andrews and Bonta 1994). Research has focused on examining the components of programs that are effective in reducing recidivism.

Since the mid-1970s there have been major changes in how the courts and corrections manage offenders in this country. One of the most visible influences on this change was the report by Martinson (1974) that was widely interpreted as showing that "nothing works" in rehabilitation. Distilled from a larger coauthored research report by Lipton, Martinson, and Wilks (1975), Martinson's essay described the results of the research teams' assessment of 231 evaluations of treatment programs conducted between 1945 and 1967. From this research, he concluded "With few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism (1974:25; see also Sechrest, White, and Brown 1979 and Martin, Sechrest, and Redner 1981).

Critics (Gendreau 19811; Gendreau and Ross 1979, 1981, 1987; Gottfredson 1979; Cullen and Gilbert 1982, Greenwood and Zimring 1985; Halleck and Witte 1977; Palmer 1975; Palmer 1983; Van Voorhis 1987) argued against this conclusion, saying it was not that treatment programs could not potentially reduce recidivism, but instead that it was impossible to draw any conclusions from the research because:

1. The research methodology was so inadequate that few studies warranted any unequivocal interpretations about what works; and,

2. The programs studied were so poorly implemented and delivered in such a weakened form that they would not reasonably be expected to have an impact.

The predominantly negative reviews of rehabilitation that dominated the 1970s were challenged by researchers such as Palmer (1975; 1983) who argued that the broad generalizations of the conclusions

overlooked many positive instances of success and the researchers gave little attention to such important issues as the fit between the type of offender and the type of treatment provided. Reviews of evaluations published after Martinson's essay indicated that substantial research exists showing the effectiveness of correctional treatment (Gendreau 1981; Gendreau and Ross 1979, 1981, 1987; Gottfredson 1979; Cullen and Gilbert 1982;, Greenwood and Zimring 1985; Halleck and Witte 1977; Van Voorhis 1987). However, despite the critiques of the work and its questionable validity, the phase "nothing works" became an instant cliche and exerted an enormous influence on both popular and professional thinking (Walker, 1985; Cullen and Gendreau 1989; Tonry 1996; Stojkovic 1994). The perception of the conclusion became widespread throughout the U.S. and it gave rise to a strong movement to change both the philosophy and control of imprisonment policy and this impact was felt throughout the 1980s.

Today, while there is still some debate about the effectiveness of rehabilitation (e.g., Lab and Whitehead 1988; Whitehead and Lab 1989) recent literature reviews and metaanalyses demonstrate that rehabilitation programs can effectively change offenders (Andrews and Bonta 1994; Andrews, Bonta, and Hoge 1990; Andrews, Zinger, Hoge, Bonta, Gendreau, and Cullen 1990; Palmer 1975; Gendreau and Ross 1979, 1987). In general, according to Andrews et al. (1990), reviews of the literature show positive evidence of treatment effectiveness. For example, in a series of literature reviews, the proportion of studies reporting positive evidence of treatment effectiveness varied from near 50 percent to 86 percent: 75 percent (Kirby 1954), 59 percent (Bailey 1966), 50 percent (Logan 1972), 48 percent (Palmer's 1975 retabulation of studies reviewed by Martinson in 1974), 86 percent (Gendreau and Ross 1979) and 47 percent (Lab and Whitehead 1988).[3] In reviewing these studies, Andrews et al. (1990) conclude that "This pattern of results strongly supports exploration of the idea that some service programs are working with at least some offenders under some circumstances." The important issue is not whether something works but what works for whom.

What is clear is that some approaches to treatment are better than others. Psychological researchers emphasize that effective treatment programs must follow some basic principles (Gendreau and Ross 1979, 1987; Gendreau and Cullen 1989). First, treatment must directly address characteristics that can be changed (dynamic) and that are directly associated with an individual's criminal behavior (criminogenic factors). There are numerous risk factors associated with criminal activity. Age, gender and early criminal involvement are some examples. In comparison to others, young males who began criminal activities at a young age are higher risks for future criminal activities. But these "static" characteristics such as age, gender and past history, while predictive of recidivism, cannot be changed in treatment. Instead, the "dynamic" or changeable factors should be the target of treatment programs.

Equally as important is the distinction between factors that are criminogenic and those that are not. Criminogenic factors are those that are directly associated with criminal behavior. Research has revealed some dynamic factors that are also criminogenic: attitudes, cognitions, behavior regarding employment, education, peers, authority, substance abuse and interpersonal relationships that are directly related to an individual's criminal behavior. Less promising targets for reducing future criminal behavior include increasing selfesteem without touching antisocial propensity, or increasing the cohesiveness of antisocial peer groups. While factors such as self esteem many be correlated with criminal behavior, changing them will not necessarily reduce future criminal activities. That is, criminals may have relatively strong self concepts but they may continue to commit crimes. Treatment programs that target such noncriminogenic factors will not be particularly successful in reducing recidivism. In order to be successful, treatment must address factors that can be changed (e.g., dynamic factors) and that are directly related to an individual's criminal behavior (criminogenic).

In a recent metaanalysis examining predictors of adult recidivism, Gendreau, Little and Goggen (1996) found antisocial cognitions, values, and behaviors (dynamic, criminogenic factors) along with static factors (history, age, gender, race) were the strongest predictors of recidivism. This provides support for the proposal that these changeable factors should be targeted in treatment. In contrast, self esteem, depression and anxiety were relatively weak predictors of recidivism. These characteristics are commonly targets of

treatment despite the fact that they appear to have little association with recidivism.

Also important in determining whether a treatment program will be effective is the therapeutic integrity of the program or the need for effective programs to be delivered as planned and designed. Poorly implemented programs, delivered by untrained personnel, where offenders spend only a minimal amount of time in the program, can hardly be expected to successfully reduce recidivism.

Furthermore, programs must target offenders who are at sufficient risk for recidivism so that this reduction is measurable. Many offenders are low risk for future recidivism. Treatment programs that provide intensive services for such offenders will show little reduction in future criminal activities because few of these offenders will recidivate anyway.

The final principle of effective treatment is the need to deliver treatment in a style and mode that addresses the learning styles and abilities of offenders. For example, more effective programs follow a cognitive behavioral and social leaning approach rather than nondirective relationship-oriented counseling or psychodynamic, insight-oriented counseling.

Using these principles as the basis to classify studies of treatment as appropriate or inappropriate, Andrews et al (1990) undertook a meta-analysis of 154 treatment comparisons.[4] Most often studies were classified as appropriate because the treatment was behavioral in nature. Few studies could be classified on the basis of risk or treatment integrity. Inappropriate treatments were those that employed deterrence (e.g., "Scared Straight"), nondirective approaches, non-behavioral milieu approaches, and group interactions. They found an effect size of .63 for appropriate treatment and this was significantly larger than the mean values for inappropriate services and criminal justice sanctions (warnings, probation, intensive probation, custody). Over all they found an effect size of .21 for the effectiveness of treatment programs. The researchers do note that, considering the enormous number of offenders who have passed through the criminal justice system, there are a comparatively small number of evaluations of appropriate correctional programming.

Lipton and Pearson (1996) found some, but limited, evidence corroborating the finding that treatment programs could be classified by the appropriateness of the treatment provided. These researchers are currently working on a comprehensive, detailed review of the evaluation research on rehabilitation programs for offenders, the Correctional Drug Abuse Treatment Effectiveness Project (CDATE). The project, funded by The National Institute on Drug Abuse (NIDA) at the National Institutes of Health, has been collecting evaluation studies conducted from 1968 until 1994 in order to assess the effects of correctional interventions on various outcome measures (e.g., drug use, recidivism). Preliminary findings from a meta-analysis of the first 500 coded evaluation studies (they anticipate over 1,500 studies) replicated the findings of the Andrews et al. (1990) study on the significance of the appropriateness of treatment. However, while Andrews et al. found a correlation of .69 between appropriateness of correctional service (as defined by the Andrews group) and recidivism (using effect size), Lipton and Pearson found a correlation of only about half that size (.34). They speculate that part of this difference may be because the conceptualization of appropriateness of correctional service still has some ambiguity that results in differences in the categorization of studies used in meta-analyses. From the perspective of crime prevention, the implication is that there are some difficulties in identifying what is appropriate treatment. However, the preliminary analysis of the CDATE data does support the conclusion that specific types of correctional treatment are associated with lower rates of recidivism. The difficulty appears to be in identifying exactly what characteristics are associated with effective treatment.

In summary, there is evidence that:

o Rehabilitation is effective in reducing the criminal behavior of at least some offenders.

The evidence from the meta-analyses suggests that effective correctional treatment programs appear to

follow some basic principles. In order to effectively reduce recidivism, treatment programs appear to need to:

Be carefully designed to target the specific characteristics and problems of offenders that can be changed in treatment (dynamic characteristics) and those that are predictive of the individual's future criminal activities (criminogenic) such as antisocial attitudes and behavior, drug use, anger responses;

o Be implemented in a way that is appropriate for the participating offenders and utilizes therapeutic techniques that are known to work (e.g., designed by knowledgeable individuals, programming provided by appropriately educated and experienced staff, use of adequately evaluated programs) and require offenders to spend a reasonable length of time in the program considering the changes desired (deliver sufficient dosage);

o Give the most intensive programs to offenders who are at the highest risk of recidivism;

o Use cognitive and behavioral treatment methods based on theoretical models such as behaviorism, social learning or cognitive behavioral theories of change that emphasize positive reinforcement contingencies for prosocial behavioral and is individualized as much as possible.

More information is needed regarding: (1) how to ensure that treatment programs have adequate integrity; (2) what should be targeted in the treatment (antisocial attitudes, values, employment behavior, education, etc.); and, (3) what method should be used to deliver the treatment (required staff training, outpatient, in-prison programs).

5. COMMUNITY RESTRAINTS

Many of the sanctions and correctional options categorized as community restraints are frequently referred to as intermediate sanctions or alternative punishments. However, here the term community restraint refers to the fact that a group of these alternative punishments increase the amount of surveillance and control over offenders while they are in the community. In a sense, they might be referred to as "semi-incapacitation" because they are expected to reduce offenders' ability to commit crimes. Examples of restraint programs are intensive supervision, house arrest, electronic monitoring, and halfway houses. Theoretically, increasing the surveillance and control over offenders in the community will prevent criminal activities by reducing both their capacity and their opportunity to commit crimes. Additionally, it is expected that the punitive nature of the sanctions will act as a specific deterrence to reduce the offenders future criminal activity.

In response to the record numbers of convicted offenders and widespread prison crowding, correctional officials in recent years have expanded the range of intermediate sanctions that fall between traditional probation and complete incarceration (Cullen, Wright, and Applegate 1996; Tonry and Lynch 1996; Byrne, Lurigio and Petersilia; Harland 1996; Smykla and Selke 1995). House arrest, intensive supervision, curfew, day reporting and other intermediate sanctions fulfill many purposes. They provide graduated punishments that may be more appropriate than either probation or prison for some offenses, and they maintain a higher level of offender restraint and accountability than does standard probation or parole supervision. In addition, intermediate sanctions may provide enhanced levels of treatment or services for problems that are common among criminal offenders, such as drug abuse, low education levels and unemployment. Finally, when used in lieu of confinement, intermediate sanctions may reduce prison or jail populations and associated costs.

This section examines sanctions that increase the restraints on offenders in the community and studies assessing the effectiveness of these restraints in reducing criminal activity. The term restraints is used to refer to activities such as contacts with agents, urine testing (see section on drug-involved offenders, this chapter) and employment verification that represent control over offenders and increased accountability. Since these restraints and not rehabilitation are the primary focus of the research, this section examines

whether the sanctions are effective in preventing the future criminal activities of these offenders. That is, the research is designed to investigate such factors as the number of contacts with probationers, curfews, or confinement to home, and not the amount of rehabilitation provided within the programs. However, when available, follow-up studies or components of studies that examine the effectiveness of rehabilitation within these restraint-focused sanctions are reviewed as well. All of these sanctions increase the restraints above what would usually occur in traditional probation or parole.

Most jurisdictions in the U.S. have some type of intermediate sanctions programs. These programs have variously been called correctional alternatives, intermediate sanctions, community corrections or, more recently, correctional options. As a result of disillusionment with the effectiveness of rehabilitation and the focus on justice and incapacitation, intermediate sanctions were proposed as an ideal way to provide a range of sanctions between probation and parole (Morris and Tonry 1990; Tonry 1996). Theoretically, these sanctions could be scaled in severity so as to be proportionate to the seriousness of the crimes committed. Furthermore, the additional control and threat of sanctions were expected to either deter offenders from future criminal acts or restrict them (in a sense incapacitate them) so they would not have the opportunity to reoffend.

Throughout the 1980s and 1990s, NIJ funded a wide range of evaluations of different correctional alternatives. There is now a body of research that permits us to draw some conclusions about the crime prevention effectiveness of these programs. This section reviews the literature and research on some of the major alternative sanctions. The focus of most of these studies has been the recidivism rates of offenders who are given sanctions that increase the degree of control and surveillance over their activities. In the majority of cases no significant differences are found between offenders placed in alternative sanctions and the comparison groups. Except in a few instances, there is no evidence that these alternatives are effective in reducing crime as measured by official record data. The problem is that most of these alternatives increase the probability of detection. It is unknown whether the actual offense rates change. That is, the increased probability of detection may mean that the intensively supervised offenders are at higher risk of being caught when a criminal act is committed, compared to the comparison offenders, who may commit crimes much more frequently.[5]

The most hopeful sign from this work is in the exploratory research that has followed most of these evaluations. This research focused on alternative sanctions that increase the treatment and therapeutic aspects of the programs and compares the effectiveness of such programs with similar alternatives that do not include treatment or therapy. The findings suggest that if sanctions include appropriate treatment, the recidivism of the offenders receiving the treatment may be reduced. From this perspective, it is not the restraints that are effective in reducing the criminal activities of the offenders, but rather, their criminal activities are reduced through the treatment they receive.

5.1 Intensive Community Supervision

Compared to regular probation and parole services, Intensive Community Supervision, usually called Intensive Supervised Probation (or Parole) or ISP, was designed to provide increased restraints on offenders in the community (Lurigio and Petersilia 1992; Petersilia and Turner 1993; Cullen, Wright and Applegate 1996; Tonry and Lynch 1996) Studies of ISP do indeed reveal that there are increased direct contacts between the offenders and the supervising probation or parole agent. Many programs combine other options such as electronic monitoring and/or home confinement with the increased agent-offender contacts. Furthermore, indirect methods of observation are also frequently combined with the ISP programs. Many times offenders are required to report for more frequent urine testing or agents may conduct regular employment verification. In all, these direct and indirect observations provide substantially increased levels of control within probation and parole programs. However, the type and level of demands placed on offenders differs enormously by jurisdiction. Offenders are often required to pay fines, keep a mandatory curfew, or provide community service and these additional requirements also differ by jurisdiction.

ISP programs grew dramatically in the 1980s, and by 1990 virtually every state in the nation had developed some type of ISP program. In part, this was the result of the initial research examining the programs in New Jersey and Georgia where the findings suggested that ISP led to a significant decrease in reincarceration (in eorgia, see Erwin 1986) and rearrests (in New Jersey, see Pearson 1987). However, critical reviews of the research demonstrated that the data did not support the initial unqualified conclusions about the ability of the ISP programs to reduce crime.

Recognizing the limitations of the prior research, the National Institute of Justice funded RAND to evaluate fourteen ISP programs in nine states using an experimental design (Petersilia and Turner 1993). The research was greatly facilitated by the addition of funds from the Bureau of Justice Assistance to assist sites in the additional costs for the increased probation and parole staff required to provide the additional supervision. This experimental design with random assignment of offenders to ISP and control groups eliminated many of the past methodological problems of the earlier studies. Recidivism was measured using arrests and technical violations. The results were disappointing for the ISP advocates. When ISP participants were compared to the control group, there were no significant differences in arrests. At the end of the one year study period, about 37 percent of the ISP participants and 33 percent of the control offenders had been arrested. In comparison, the researchers found a significant difference when the technical violation rates were examined. The average ISP violation rate was found to be 65 percent for ISP participants compared with 38 percent for the controls. In summary, while there was no evidence that the increased surveillance in the community deterred offenders from committing crimes, it did appear that this additional control increased the probability that criminal or technical violations would be detected.

In another study funded by NIJ, Deschenes, Turner and Petersilia (1995) found similar conclusions -- no difference between comparison groups and two groups of offenders on ISP programs. One ISP group was diverted from prison and the other was given ISP after release from prison. Supporting the results of the previous 14 site study, findings revealed no significant difference between groups. As shown in Table 9-3, ıere is a fairly substantial body of research now available on ISP. Few of the studies found statistically significant differences and the direction of the differences between the ISP groups and the comparison groups varied, sometimes favoring ISP, sometimes favoring the alternative.

Although research has not revealed a significant relationship between levels of surveillance and recidivism, there is some evidence that increased treatment of offenders in ISP programs may be related to significant reductions in rearrests. Follow-up analyses by the RAND researchers (Petersilia and Turner 1993) and also researchers evaluating ISP programs in Massachusetts (Byrne and Kelly 1989), Oregon (Jolin and Stipack 1991) and Ohio (Latessa 1993) have found evidence that rearrests are reduced when offenders receive treatment services in addition to the increased surveillance and control of the ISP programs. For example, Petersilia and Turner (1993) reported a 10 to 20 percent reduction in recidivism for those who were most active in programs while they were in the community. However, the research designs used in these evaluations do not reach the experimental rigor of the random assignment study by RAND that examined the effect of increasing the surveillance and control of ISP participants.

In summary the results indicate:

o Increasing the surveillance and other restraints on offenders in ISP programs is not associated with decreases in recidivism;

o The increased surveillance of ISP is often associated with increases in technical violations of the conditions of the ISP programs;

o Incorporating treatment into the requirements of ISP programs may lead to a reduction in recidivism but this research has not be as rigorously examined.

5.2 Home Confinement

Home confinement is designed to regulate and restrict the freedom of the offender within the community (Renzema, 1992; Baumer and Mendelsohn 1992). The terms "house arrests," "home confinement" and "electronic monitoring" are often used interchangeably. However, it is important to note that house arrest, home confinement and more recently "community control" are terms describing the programs, while electronic monitoring is a tool used to monitor the compliance with the requirements of the sentence. During the 1980s, technological advances made it possible to monitor offenders electronically to insure that the offender was complying with the requirements of the program. Unlike ISP, house arrest is usually a sentence given by the court that are much more restrictive than ISP.

In general home confinement programs had targeted low-risk offenders such as those convicted of Driving While Intoxicated (DWI). However, more recently home confinement has been used for parolees (Beck and Klein-Saffran 1989) or other more serious offenders (Baumer, Maxfield and Mendelsohn 1993; Baumer and Mendelsohn 1991; Austin and Hardyman 1991). Early research examining the effectiveness of the home confinement programs suffered from poor research designs, lack of program integrity, and the low risk offenders placed in the programs.

Recidivism rates of the low-risk offenders placed in home confinement programs are usually very low. Therefore, many studies do not have the power to detect small differences that might be expected between the participants and control groups. Two studies using experimental designs shown in Table 9-4 found no significant difference in recidivism when the behavior of offenders who are electronically monitored on home confinement is compared with those being manually supervised (Baumer and Mendelsohn 1991; Austin and Hardyman 1991).

In summary:

o Most likely because of the low-risk offenders in the programs, most home confinement programs have low recidivism and technical violations rates;

o The available evidence indicates no significant differences in recidivism outcome when the participants are compared to control groups.

Table 9-3. Studies of intensive supervised probation/parole (ISP) showing scientific methods score and findings (from Cullen et al. 1993 and Byrne and Pattavina 1992).

Study	Scientific Methods Score	Findings
Fallen et al. (1981)	3	Recidivism lower for ISP
Erwin (1986)	3	Recidivism rates lower for ISP than probationers and lower for prison releasees.
Mitchell et al. (1986)	3	Recidivism higher for ISP than parolees and CCC.
Pearson (1987)	3	ISP recidivism rates lower
Byrne and Kelly (1989)	3	ISP lower recidivism

Molof (1991)	2	ISP lower recidivism than probationers
Tolin and Stipack (1991)	4	Recidivism rates higher for ISP than EM and work release groups
Latessa (1991a)	3	Recidivism rates higher for ISP offenders than three comparison samples
Austin and Hardyman (1991)	3	ISP-EM offenders arrested more than parolees
NCCD (1991)	3	Recidivism rates for ISP-jail probationers and ISP-parolees higher than comparisons but rates lower for ISP parolees than comparison
Latessa (1992)	3	Recidivism rates higher for ISP
Latessa (1993)	2	Offenders in drug and mental health units had higher recidivism rates than those in sex-offenders and alcohol offender units.
Moon and Latessa (1993)	3	ISP drug program participants had lower recidivism rates
Latessa (1993b)	3	ISP groups had higher recidivism than probationers.
Petersilia and Turner (1993)	5	ISP sample in 10 states had higher recidivism than comparison. ISP samples in 4 states had lower recidivism than comparison.

Table 9-4. Studies of home confinement and electronic monitoring showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Baumer and Mendelsohn (1991)	5	EM had more revocations (21%) than Manual supervision (18%), NS.
Austin and Hardyman (1991)	5	EM arrested (14%) more than controls (11%), NS.

Note: NS=nonsignificant, S=significant**5.3 Community Facilities: Residential and Day Reporting**

Halfway houses, also called community residential centers, pre-release centers, or restitution centers, are onconfining residential facilities for adjudicated adults or juveniles, or those subject to criminal or juvenile proceedings (pre-trial period). They are intended as an alternative to confinement for persons not suited for probation or who need a period of readjustment to the community after imprisonment. More halfway houses provide services for juveniles than for adults, and some houses specialize by client or treatment modality such as women only, pre-release, substance abusers, or developmentally disabled (Latessa and Travis 1991). The facilities are included as community restraints because most of the research reviews have focused on their use as additional restraint and not on the details of the services provided.

Research examining the effectiveness of halfway houses in reducing recidivism has indicated mixed results. In an early evaluation of correctional halfway houses, Allen et al. (1976) reviewed 35 studies. The majority of the studies used quasi-experimental designs or nonexperimental designs; only two used true experimental designs. The evidence was about equally divided between lower recidivism for the halfway house residents and no differences in recidivism in comparison to control groups in the quasi-experimental and experimental designs. In a later study focusing on parolees in halfway houses, Latessa and Allen (1982) examined 44 studies with sufficiently rigorous methodology to enable the researchers to draw reasonable assessments of post-release outcomes. As Allen et al. (1976) had found earlier, the results were mixed -- at times showing halfway house residents having lower recidivism rates and at time showing no differences or that halfway house residents did worse on recidivism rates.

Day reporting centers are a more recent correctional option that require offenders who are on pretrial release, probation, or parole to appear at specific location on a frequent and regular basis. Unlike the halfway houses, the day reporting centers are non-residential, offenders are required to report to the centers but they return to their homes to sleep at night. While at the centers they are required to participate in ervices (treatment, employment search, etc) or activities (urine test, meetings with agents) provided by the agency or other community agencies. These programs are currently being widely implemented in the United States. In 1990, a study by the NIJ found only 13 centers in the United States, by 1995 there were at least 114 centers in 22 states (Parent, Byrne, Tsarfaty, Valdae and Esselman 1995). The centers emphasize both strict surveillance and high levels of treatment and other services to offenders. As with the other intermediate sanctions, there is a tension between providing increased surveillance and increased treatment in the day reporting centers, and centers vary greatly in the emphasis placed on one or the other. While there have been some descriptive studies of day reporting programs, to date there have been no impact evaluations examining the effectiveness of the programs in preventing crime.

5.4 Summary of Community Restraints

A large body of research, much of it funded by NIJ, including random assignment studies, consistently shows the failure of these programs to lower recidivism. Restraining offenders in the community by increasing surveillance and control over their activities does not reduce their criminal activities. In general, they are arrested as often as their counterparts who receive less surveillance. Most research has focused on the restraining aspects of these community programs and not the treatment services delivered to the offenders. That is, the research fails to clearly identify and rigorously examine (from a research perspective) the impact of the therapeutic aspects of the community programs. When the researchers have mentioned the therapeutic integrity of the programs, it is often to note that the anticipated services or staffing did not occur (see for instance, Sontheimer and Goodstein's study or Greenwood et al.'s study of the Skillman aftercare program discussed in the juvenile programs section of this chapter). Questions remain about the impact of dditional treatment within a program that increases restraints.

6. STRUCTURE, DISCIPLINE AND CHALLENGE

Correctional boot camps for adults and for juveniles and wilderness programs have been grouped together because they all focus on structure, discipline and physical and/or mental challenge. The experiences of the offenders in the programs is anticipated to change them in a positive way so that their future criminal activities will be reduced. The mechanism for this change is attributed to various factors such as self esteem, or increased bonds with staff and peers. Some also expect that these punitive programs will discourage others from committing crimes or that the individuals who spend time in the programs will be deterred from future criminal activities. At times programs combine therapeutic programming with the structure, discipline and challenge aspects. The studies of the programs focus on the recidivism rates of those who are released from the programs and compare these rates to comparison groups who served different sentences. Thus, the studies examine the specific deterrence or positive change impacts of the programs.

6.1 Boot Camps for Adults

Boot camp prisons, alternatively called shock incarceration, regimented discipline or intensive incarceration, are correctional programs designed to be similar to military basic training. These relatively new programs began in 1983 in Georgia and Oklahoma but rapidly spread throughout the nation (MacKenzie 1990; MacKenzie and Parent 1991). The early programs emphasized the military aspects of discipline, comportment and drill and ceremony.

More recently the programs have changed to include more programming and treatment and many have de-emphasized the military focus of the programs. As has occurred with other correctional options, the boot camp programs vary tremendously when cross-program comparisons are made in type of population served, treatment components, aftercare or follow-up supervision, and emphasis on military drill and ceremony. The majority of the state department of corrections have opened boot camp programs and increasing numbers of programs are being opened for juveniles and for jail inmates.

To date, there have been no random assignment studies examining the effectiveness of boot camp prisons for adult offenders. As shown in Table 9-5, most of this research had limited scientific rigor (scores of 3). Some of the research has made use of statistical controls to adjust for original differences between the boot camp releasees and comparison groups to examine their performance in the community (see for example, MacKenzie et. al 1995). In general, the results show no significant differences in recidivism between offenders who are sent to boot camps when compared to others including those who either served a longer period of time in prison or those who served their sentence on probation (MacKenzie et. al. 1993; MacKenzie and Shaw 1993; Flowers, Carr and Ruback 1991; Florida Department of Corrections 1990). However, in programs where a substantial number of offenders were dismissed from the boot camp prior to completion, the recidivism rates for those who completed the program were significantly lower than the rates for those who were dismissed (MacKenzie et al. 1995; NYDCS and NYDP 1993). Thus, while there is no evidence that the boot camps actually change offenders, there is some indication that the programs can be used to "signal" which offenders will have difficulty completing probation or parole. That is, offenders who remain in the program and complete it are at less risk for recidivism than those who are dismissed (either voluntarily dropping out or for misbehavior).

In a further exploratory analysis examining program differences and recidivism rates, MacKenzie et al. (1995) found some commonality among programs where the boot camp releasees had lower recidivism rates than comparison groups on some but not all, measures of recidivism. In particular, these programs: (1) devoted more than three hours per day to therapeutic activities such as therapy, counseling, drug treatment and education; (2) there was some type of follow-up for the offenders in the community after they left the boot camp; and (3) participants had to volunteer for the program.

The following conclusions can be drawn from the available research examining boot camps for adult offenders:

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o The military atmosphere, structure and discipline of correctional boot camps does not significantly reduce the recidivism of releasees in comparison to offenders serving time on parole or probation;

In programs where a substantial number of offenders are dismissed from the boot camp, the recidivism rates for those who complete the boot camp are significantly lower than the rates for those who were dismissed;

o Exploratory analyses suggest that programs incorporating components such as therapeutic activities during the boot camp and follow-up in the community may be successful in reducing recidivism but this conclusion is tentative until more research is completed.

6.2 Boot Camps for Juveniles

Recently, four random assignment studies have been completed examining the recidivism of juveniles released from boot camps. With cooperative funding from The NIJ and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) a carefully designed experimental study examining boot camps in three sites was completed. Funding was provided for sites to develop innovative demonstration programs, if they were willing to permit research to randomly assign juveniles to the boot camps or some alternative. Three sites were selected to participate. The research results are considered preliminary because data collection continued after these analyses were completed.

The fourth study of juvenile boot camps is being conducted by The California Youth Authority (CYA). This study used random assignment to evaluate the effectiveness of the CYA juvenile boot camp. The results are considered preliminary at this point because the juveniles have been in the community for only a short period of time.

As shown in Table 9-6, all of these studies are judged to be rigorous (methods score of 5). The results from three of the studies reveal no significant differences in recidivism between the boot camp youth and the control groups. In the fourth site, the CYA, more of the boot camp youth were reincarcerated than the control youth. Obviously, this presents little support for these boot camps as crime prevention techniques.

Table 9-5. Studies of correctional boot camps showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
N.Y. Department of Correctional Services and N.Y. Division of Parole (1992, 1993)	2	Male BC graduates reincarcerated less for new crimes and parole violations compared to: (1) parolees sentenced before the program began; (2) those who refused to enter; (3) dismissals from the program.
N.Y. Department of Correctional Services and N.Y. Division of Parole '1993)	2	Female BC graduates reincarcerated less for new crimes and parole violations compared to: (1) parolees sentenced before the program began; (2) those who refused to enter; (3) Dismissals from the

		program.
Flowers and Ruback (1991)	3	Compared with those sentenced to various alternatives, male BC graduates were reincarcerated less often. But when graduates where compared with groups most similar to BC graduates the reincarceration rates were higher for BC graduates.
MacKenzie (1991)	3	BC graduates had fewer arrests and reconvictions for new crimes when compared to samples of parolees and probationers but more arrests for technical violations. Those dismissed from the program had fewer arrests than graduates but were the same in reconviction rates.
Texas Department of Criminal Justice (1991)	2	BC releasees were reincarcerated more than parolees, ISP and restitution center releasees.
MacKenzie et al (1995)	4	Compared to probationers BC releasees had fewer rearrests in one state and more in two states; fewer revocations in three states, NS. Compared to parolees BC releases had fewer rearrests in four states; fewer revocations in five states and more revocations in one state NS.
Florida Department of Corrections (1990)	2	There were no differences between BC graduates and prison releasees in new felonies. BC graduates had more new misdemeanors but fewer technical violations.

Note: NS=nonsignificant, S=significant

Table 9-6. Studies of juvenile boot camps and recidivism showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Peters et al. (1996a)	5	More boot camp youths (38.8%) recidivated than control group (35.5%), NS.
Peters et al. (1996b)	5	Fewer boot camp youths (28.1%) recidivated than control group (31%), NS.

Peters et al. (1996c)	5	More boot camp youths (71.8%) recidivated than control group (50%), S.
Bottcher et al. (1996)	5	More boot camp youths (77.7%) rearrested than control group (77.1%), NS.

Note: NS=nonsignificant, S=significant

6.3 Summary

The boot camps reviewed in this section do not, as a whole, appear to be good candidates for crime prevention. In general, findings indicate no difference between the offenders who participated and those who did not. There was some suggestion in the research examining adult boot camps that enhanced therapeutic programming within the boot camps may have had an impact on reducing recidivism, but the research is exploratory and did not use a strong methodology. The juvenile programs appeared less hopeful. Several questions remain. First, more information is needed about the therapeutic integrity of the programs and how the programs compare to the alternatives where the control groups spent time. Possibly, the failure to find differences in recidivism may be because the control groups were receiving enhanced treatment while the juveniles in the boot camps were spending time on physical activities. Such physical activities may have health benefits but they may not address the criminogenic needs of these offenders. Questions remain about how rehabilitation can be combined with these programs and whether this would enhance or conversely reduce the effectiveness of the rehabilitation.

7. JUVENILE OFFENDERS

7.1 Treatment Programs for Juveniles

Rehabilitation has particular appeal for use with juveniles. Juvenile crime is often serious and it may represent a large proportion of the total criminal activity in a community. However, it is usually assumed that adolescents deserve and require special handling because at this stage of life they are in a formative period and criminal behavior at this stage will not necessarily be continued into adulthood. Theoretically, rehabilitation has been the focus of correctional programs for juveniles. However, in practice, as occurs with adult programs, juvenile programs are generally poorly implemented. Juveniles have a potentially long adulthood in front of them, therefore, strategies that reduce the future criminal activities of juveniles are also particularly important. An effective preventive intervention at an early age, that results in reduced criminality over a lifetime, can have a substantial payoff.

The most extensive meta-analysis examining the effectiveness of delinquency outcome studies was conducted by Lipsey (1992). In a meta-analysis of juvenile delinquency programs, Lipsey examined the effectiveness of 443 different research studies.[6] This meta-analysis improved on previous reviews of delinquency treatment research by: (1) broadening the coverage of the literature through an exhaustive search for relevant studies; and, (2) coding sufficient detail from each eligible study.

Among other criteria, the studies included in Lipsey's analysis were those that provided some intervention : treatment that had as its aim the reduction, prevention, treatment, or remediation of delinquency or antisocial behavior problems similar to delinquency. Delinquency was defined as behavior chargeable under applicable laws. Studies were included in the analysis only if the majority of the subjects were between the

ages of twelve and twenty one.

Findings from the Lipsey (1992) study revealed that overall in 64.3 percent of the studies the treatment group did better (in most cases this refers to a reduction in recidivism) than the control group. The mean effect size for the studies was .172 which was comparable to previous meta-analyses of more highly selected sets of studies. One way to understand this effect size is to translate it into a comparison to a baseline of 50 percent. This effect size is equivalent to an average reduction in recidivism from 50 to 45 percent. That is, considering all treatment program studies combined, 45 percent of those who received treatment would be expected to recidivate in comparison to 50 percent of the non-treated control group.

In more detailed analyses, Lipsey worked to identify those characteristics most important in determining differences among treatment and control groups. Table 7 shows the estimated recidivism rates for the treated group if 50 percent of the control group had recidivated. He examined both methodological aspects of the study (sample size, equivalence of groups, attrition, outcome measures, etc.) and treatment aspects (subjects, dosage, treatment modality, philosophy). As expected, differences in study methodology were associated with effect sizes. More important for purposes here are the findings for the treatment effects (once the methodology effects are controlled). As shown in Table 7, the more effective programs were predicted to reduce recidivism substantially. For instance, in comparison to 50 percent recidivism rate for the control group, only 32 to 38 percent of the juveniles who were given employment, multi-modal and behavior programs were estimated to recidivate.

Overall, the results of the meta-analysis indicate that more effective programs were:

o Judged to provide larger amounts of meaningful contact (treatment integrity) and were longer in duration (more dosage);

Provided by the researcher or in situations where the researcher was influential in the treatment setting;

o Behavioral, skill-oriented and multi-modal treatment.

There was also some evidence that more effective programs targeted higher risk juveniles but this effect was small and nonsignificant. On the other hand, treatment in public facilities, custodial institutions, and in the juvenile justice system were less effective than other alternatives. This suggests that treatment provided in community settings may be more effective. However, Lipsey cautions that this conclusion is confounded with dosage (intensity) and needs a more refined breakdown before definite conclusions can be drawn.

It is interesting that effective programs were those that were either provided by the researcher or where the researcher was influential in the treatment setting. This may indicate that treatment delivered or administered by the researcher was better implemented than typical programs.

Table 9-7 shows his results for individual treatment modalities. Lipsey cautions the reader to interpret the individual categories carefully because crude descriptions of treatment programs in the studies as well as the multiple elements in some programs made coding extremely difficult. He suggests instead that the reader examine the broader patterns of the rankings of treatment modalities. From this perspective, the more structured and focused treatment (e.g., behavioral, skill-oriented)[7] and multi-modal treatments[8] seem to be more effective than the less structured and focused approaches (e.g., counseling). Interestingly, while programs that emphasized employment are near the top in effectiveness, vocational treatment programs were associated with increased recidivism for the treated group. The reason for this is difficult to determine. Possibly the employment programs were more directly related to skills needed to find and keep jobs while the vocational training programs were school based and less directly associated with obtaining employment.

The best treatment types show delinquency effects of meaningful practical magnitude, in the range of 10 to 20 percentage points reduction in recidivism. On the other hand, there is no evidence that programs emphasizing deterrence treatments are effective and, in fact, such programs were estimated to increase recidivism (e.g., 62 percent of those who received a deterrence program were estimated to recidivate in comparison to 50 percent of the controls.

In comparing his results to the earlier findings by Andrews et al. (1990), Lipsey asserts that with few exceptions the largest effect sizes occurred for treatment that would be classified by Andrews et al. as clinically relevant. Similarly, as found by Andrews et al., deterrence treatments were associated with negative effects (e.g., an increase in recidivism). Few studies of interventions deal exclusively with the most serious or most violent juvenile offenders so, at this point, little can be said about the effectiveness of programs for these offenders.

Table 9-7. Effect size estimates for different treatment modalities after controlling for study methodology for juvenile delinquency treatment programs (Lipsey, 1992).

Treatment Modality	Estimated Recidivism Treated Group/Control Group
Employment	32/50
Multi-modal	38/50
Behavioral	38/50
Institutional, other	40/50
Skill-oriented	40/50
Community residential	42/50
Any other juvenile justice	43/50
Probation/Parole, release	45/50
Probation/Parole, reduced caseload	46/50
Probation/Parole, restitution	46/50
Individual counseling	46/50
Group counseling	47/50
Probation/Parole, other enhancement	47/50
Family counseling	49/50
Vocational	59/50
Deterrence programs	62/50

7.2 Juvenile Residential Programs

One type of program particularly popular during the late 1970s and early 1980s was the wilderness or outward bound-type programs. These programs emphasize physical challenge and demand that individuals excel beyond what they feel they can do. Winterdyk and Roesch report that they found well over one hundred wilderness programs for treating delinquent youths in North America in the early 1980s. Outcome evaluations have been extremely rare (Gendreau and Ross 1987). Recently, several other wilderness-type programs have been studied. The results are shown in Table 8. All of these programs consider themselves wilderness programs. Perhaps the most frequently cited study of this type of program in the VisionQuest study by Greenwood and Turner (1987). They examined the behavior of the juveniles during the six to 18 months after release from the program (controlling for prior arrests). Youth from VisionQuest had fewer rearrests than youth who had served time in a probation camp or who had refused to accept the VisionQuest placement and were placed in other programs. While the results appear positive, as noted on the table the research methodology makes it impossible to draw conclusions regarding the program's effectiveness.

In a more recent study, Deschenes, Greenwood and Marshall (1996) examined the Nokomis Challenge Program in the Michigan Department of Social Services. Nokomis was designed as an intensive treatment program for low to medium risk juveniles. The focus of the program was on relapse prevention. Male youth were expected to spend less time in the residential facility but a longer time in community treatment when compared with youth in the training schools. Findings (see Table 9-8) indicated that the Nokomis youth had more felony arrests after release than did the comparison (significant). It is important to note that the examination of the implementation of the program revealed that the aftercare phase of the program failed to provide many of the expected treatment programs. There was limited substance abuse treatment and control group youth had more family counseling than the treatment group.

Castellano and Soderstrom completed a study of the Spectrum program in Illinois. This wilderness program was modeled after outward bound. The thirty day course focuses on teaching wilderness survival and group living skills to pre-delinquent and delinquent juveniles. A comparison of recidivism rates indicated that 75 percent of the Spectrum participants were rearrested in the follow-up period compared with 62.6 percent of the matched comparison group (nonsignificant).

In a random assignment study, RAND researchers examined the effectiveness of the Paint Creek Youth Center (PCYC) in southern Ohio (Greenwood and Turner 1993). The program targeted youth convicted of serious felonies who were required to spend an average of almost a year in residential treatment. While the program was located in a rural setting, it would not be classified as a wilderness or challenge program because these activities were not a major component of the program. The distinguishing features of the PCYC were: small size, problem oriented focus, cognitive/behavioral methods, family group therapy and intensive community reintegration and aftercare. Youth were randomly assigned to either the PCYC or regular training schools. Their behavior in the community after release was compared. The design was weakened because a relatively large number of the youth (25 percent) were removed from the PCYC and sent to the training schools to serve the remainder of their term. Furthermore, 27 percent of the remaining youth did not complete all three phases of the residential program. Official records of recidivism indicated that 50.7 percent of the PCYC youth (including those who were removed) and 61.3 percent of the control group had been arrested during a one-year follow-up. The difference was nonsignificant. The small numbers of offenders in the study limits the power to detect differences between groups. This along with the loss of 25 percent of the PCYC youth makes it difficult to draw any definitive conclusions from the research.

Overall, these studies of juvenile residential programs had very mixed results. Although several of the studies were well designed, problems with the small number of subjects, attrition and program implementation limit the conclusions that can be drawn about the effectiveness of the programs in preventing crime. The one program that included both a strong research design and a reduction in recidivism, although this difference was not significant, was Paint Creek. Interestingly, this program

followed many of the principles proposed by Andrews et al. (1990). High risk youth were targeted for participation an the intensive program that used a cognitive/behavioral mode of treatment. However, problems with the research design severely limited the potential for detecting differences even if the program had indeed been effective. Most notably, the focus of the program was not on wilderness or challenge activities.

The other programs reviewed in this section either targeted individuals who were lower risks for recidivism (Nokomos, Spectrum), were of short duration (Spectrum), were less behavioral in treatment philosophy, or focused on non-criminogenic factors such as physical challenge (Spectrum). Thus, from the perspective of the research on rehabilitation (see section on rehabilitation and the Andrews et al. 1990 study), we would not expect them to be effective in reducing future criminal behavior.

Table 9-8. Studies of youth residential programs showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Greenwood and Turner (1987)	2	VisionQuest (39%) fewer arrests than YCC Control (71%), S.
Deschenes et al (1996)	3	Nokomis group (48%) had more arrests than control (23%), S.
Greenwood and Turner (1993)	3	Paint Creek youth had fewer official arrests (51%) than control youth (61%), NS. Paint Creek youth self-reported more serious offenses (75%) than control (62%), NS.
Castellano and Soderstrom (1992)	2	Spectrum youth did not differ from control youth in recidivism, NS.

Note: NS=nonsignificant, S=significant

7.3 Community Supervision and Aftercare for Juveniles

Approximately 55 percent of adjudicated juveniles are given probation (Butts, Snyder, and Finnegan 1994). Furthermore, those knowledgeable about juvenile corrections increasingly argue for aftercare and transitional services for juveniles following a period of incarceration. Both of the recent meta-analyses (e.g., Andrews et al. 1990; Lipsey 1992) suggest there will be greater reductions in recidivism if treatment is provided in community settings instead of in institutions. However, national surveys of intensive supervision and aftercare programs for juveniles completed during the 1980s revealed that few programs had been evaluated (Armstrong, 1988; Krisberg et al., 1989). Additionally, the evaluations that had been completed were severely limited in scientific rigor. Two exceptions to this were the New Pride Study sponsored by NIJ and OJJDP (NIJ, 1985) and The Violent Juvenile Offender Study implemented by OJJDP

(Fagan et al., 1988). However, in neither study did the group who received the additional aftercare or supervision have significantly lower recidivism rates.

Most recent studies of community programs have focused on the increased surveillance and restraint aspects of the programs and not the enhanced services. While some of the programs enhance services, the research is designed to compare the increased surveillance and restraint with or without increased services. For this reason, the research is included in this section on community restraints instead of the rehabilitation section. The treatment and restraint components cannot be untangled, and since the research designs focus on surveillance the outcomes are more indicative of the effectiveness of restraints than rehabilitation. Additionally, when the treatment integrity is examined, few differences are found between the experimental program and the control in either the services delivered or the impact on risk factors. For example, in the Greenwood et al. (1993) study described below researchers did not find that the aftercare program they studied had an effect on the targeted risk factors. This section examines some of the recent studies of increased restraints over juveniles in the community (see Table 9-9).

Using a random assignment design, Land, McCall and Williams (1990) examined the North Carolina Court Counselors' Intensive Protective Supervision Project (ISP). The majority of the subjects were status offenders who entered the program as runaways or truants. The program was designed to enhance both the surveillance and services provided to the juveniles. As shown in Table 9-9, the results indicated that youth with no prior delinquent offenses had fewer delinquent offenses compared to the control group (11.9 percent to 27.5 percent) but the ISP youth with prior delinquent offenses had more delinquent offenses (57.1 percent compared to 33.3 percent). However, there were only a small number of youth with prior delinquencies. Whether the results were the effect of surveillance or services could not be distinguished in the research design.

In another study of youth in the community, Wiebush (1993) compared the performance of youth on intensive supervision (ISP) with comparison groups of youth on probation and parole. During the 18 month follow-up, a larger percent of the ISP youth received felony complaints (50.6 percent) than the probationers (37.9) but fewer felonies than the parolees (56.6 percent). Similarly, a larger percent of the ISP group were adjudicated (76.5) when compared to the probationers (61.6 percent) but fewer than the parolees (77.6). The results were not significant. Furthermore, it is difficult to draw conclusions because the groups were not randomly assigned and the groups differed prior to the treatment.

Sontheimer and Goodstein (1993) examined whether a juvenile intensive supervision program (ISP) in Pennsylvania had an impact on juvenile's propensity to reoffend (a rehabilitative or deterrent effect) or whether the restraints provided by the officers limited the opportunity juveniles had to reoffend. The program was an intensive aftercare program for serious juvenile offenders. Probationer officers supervising juveniles in the aftercare program were required to have frequent contacts with the juveniles and significant others; however, other than these additional contacts, there was no statement of the mission or philosophy of the program. Significantly fewer of the experimental group were rearrested (50 percent) than the controls (74 percent) and their mean number of rearrests were fewer (1.02 compared to 2.07 for the controls). The researchers interpret their findings as support for the restraining effect of ISP and not necessarily a reduction in the criminal propensity of the juveniles.

There were problems with the implementation of the program studied by Sontheimer and Goodstein. Contacts were substantially less than the mandated number and there was a large turnover of staff. This turnover would be expected to create turmoil for participants and uneven staff training and accountability. This combined with the failure to clearly define the mission of the program led the researchers to question whether the results were indicative of problems in the implementation of the treatment components of the program and not what could be achieved in such programs.

Minor and Elrod (1990,1992) examined the impact of an enhanced treatment program for juveniles on

intensive and moderate levels of supervision. While there were no significant differences between the groups, juveniles in the enhanced treatment ISP program had more criminal offense complaints than the juveniles on ISP but without the enhanced treatment. Follow-up analyses also indicated that the intervention did have an effect on those who had more lengthy criminal backgrounds (e.g., the higher risk group). The major problem with this research was the number of subjects was so small there was no power to detect any difference that might have existed.

Greenwood, Deschenes and Adams (1993) studied the Skillman aftercare program in Michigan and Pennsylvania. The programs were designed to provide treatment components, hence the term "aftercare", along with intensive supervision. Subjects were randomly assigned to either the aftercare ISP or the control. Results indicated no significant difference between the experimental and control groups in the proportion of the youth who were rearrested, or who self-reported either offending or drug use in a one year follow-up period. However, an examination of what the programs provided for the youth indicated that in comparison to the control group the aftercare group: did not participate more in education or work activities; had little family support; and did not associate less with delinquent peers. Thus, despite the fact that the program was designed to promote changes in these risk factors there was little evidence of such change. Consistent with the previous meta-analyses of rehabilitation, it appears that the program did not have the required "treatment integrity" to bring about the changes in the risk (criminogenic) factors associated with criminal behavior.

The above studies compared the ISP programs in the community to other community alternatives. The following studies were designed to compare the recidivism of those who spent time on community supervision with others who had spent time in training schools.

Barton and Butts (1990) evaluated an in-home ISP program compared to commitment to traditional training schools in a random assignment study. They found that the ISP groups had a higher mean number of charges but the mean seriousness of the charges was greater for the control group. These differences were not significant when time in the community was controlled in the statistical analysis.

Gottfredson and Barton (1993) used a nonequivalent comparison group design to compare the effect of the closing of a juvenile training facility to the performance of juveniles who were then managed in the community. They found that the juveniles who had spent time in the institution had significantly lower recidivism rates than the comparison group. It is important to note that the comparison group was not intensively supervised in the community and there is little information about what services they may have received in the community.

In summary, most of the results reveal no significant difference between the experimental condition and the controls. In part, this reflects the small number of subjects in the studies so there is little power to detect any differences that might exist between the groups. The two studies by Land et al. (1990) and Sontheimer and Goodstein (1993) did find lower recidivism rates for the experimental groups. In both cases it appears that the experimental group received more services than the comparison. Again, this suggests the importance of meeting the rehabilitative needs of such offenders. This may also be why the institutionalized juveniles in the Gottfredson and Barton (1993) study had lower recidivism rates -- because of the services and rehabilitation they received when they were in the institution. Whether or not the juvenile is in a facility or on ISP may not be as important as whether appropriate rehabilitation programs are a part of the correctional option.

Table 9-9. Studies of juvenile community supervision and recidivism showing scientific methods score and findings.

Study	Scientific	Findings

	Methods Score	
Land et al (1990)	5	ISP youth (mostly status offenders) with no prior delinquent offenses had fewer delinquent offenses (12%) than control group (28%), S. ISP youth with prior delinquent offenses had more delinquent offenses (57%) than control group (33%), NS.
Weibush (1993)	3	ISP youth had more felony complaints (51%) than probationers (38%) but fewer than parolees (57%), NS. ISP youth had more adjudications (77%) than probationers (62%) but fewer than parolees (78%), NS.
Sontheimer and Goodstein (1993)	5	ISP juveniles had fewer rearrests (50%) than parolees (74%), S.
Minor and Elrod (1990)	2	ISP group had more self-reported criminal and status offenses, NS.
Elrod and Minor (1992)	2	ISP group had fewer status offenses but more criminal offenses (68%) than control group (67%), NS.
arton and Butts (1990)	5	ISP juveniles had more charges but control group had more serious charges, NS.
Greenwood et al (1993)	5	Detroit: Aftercare group (22%) had more arrests than controls (18%), NS. Pittsburgh: Aftercare group had fewer arrests 49%) compared to controls (48%), NS.
Gottfredson and Barton (1993)	4	Institutionalized juveniles had fewer arrests than non-institutionalized, S.

Note: NS=nonsignificant, S=significant

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8. DRUG-INVOLVED OFFENDERS

8.1 Treatment in Prison

Advocates of treatment and rehabilitation have perhaps made the strongest arguments in favor of increased treatment for substance abusing offenders. The need for treatment is demonstrated by the large body of research indicating the relationship between criminal activity and use of alcohol and other drugs (Chaiken 1986; Chaiken and Chaiken 1982; Inciardi 1979; Johnson and Wish 1986; Nurco, Kinlock and Hanlon,

1990; Speckart and Anglin, 1986). Furthermore, the National Institute of Justice (NIJ)'s Drug Use Forecasting (DUF) program consistently finds high rates of illicit drug use among arrestees in the 24 participating cities. In 1995, between 47 and 78 percent of the men and 44 to 85 percent of the women test positive for use of illegal drugs.

Documentation of this high level of use and the strong association between drug use and crime clearly indicates the critical need for treatment for these offenders. However, the recent focus of criminal justice policies on incapacitation and deterrence did not easily provide the necessary funds. In 1987, approximately 11 percent of prison inmates were involved in some type of drug treatment (Chaiken 1989). Although the numbers are sizeable (51,500), the majority of inmates with substance abuse problems still do not receive treatment while in prison. In 1991, 48 percent of state prisoners and 43 percent of the Federal prisoners reported that they had been in a drug program since admission to prison (BJS 1994). Yet the intensity and quality of these treatment programs is unknown.

Despite the fact that many drug-involved offenders are not treated while they are under the control of the criminal justice system, a growing body of research indicates that treatment for substance-involved offenders can effectively reduce substance use and criminal recidivism (Gerstein and Harwood 1992). Effectiveness of drug treatment is directly related to the length of time an individual remains in treatment. This is true for various treatment modalities. Furthermore, the treatment is effective whether the offender enters voluntarily or under some form of coercion (Anglin and Hser 1990a, b; Anglin and Maugh 1992; Falkin, Wexler, and Lipton 1992; Leukefeld and Tims 1992; Travis, Wetherington, Feucht, and Visher 1996). From this perspective, the criminal justice system presents an ideal opportunity to require offenders to participate and remain in treatment.

Some of the most promising evaluations of drug treatment for criminal justice have focused on the effectiveness of prison-based therapeutic communities (TCs) that operate as 24-hour live-in facilities within the prison. We examined evaluations of five such programs (Wexler et al. 1992; Martin et al. 1995; Wexler et al. 1995; Field 1989; Eisenberg and Fabelo 1996). As shown in Table 9-10, the studies were judged to be of sufficient rigor to draw conclusions about the effectiveness of the treatment programs. In all studies, the researchers found that the graduates of the programs had lower recidivism rates than those who spent less time in the programs. They concluded that the programs were effective in reducing recidivism of the offenders (See Table 9-10).

Although these studies are widely cited as evidence of the success of drug treatment, there are some concerns about the research methodology. In particular, the programs have high attrition rates (large numbers of offenders leave the programs before completing). Many of the research designs do not take this attrition into account in the data analysis. As a result, it is difficult to conclude that the programs are effective in reducing recidivism. The alternative conclusion is that the programs identify those who are ready to change and these will be the individuals who will be successful in the community. That is, the research design does not permit one to draw conclusions about the effect of the program because offenders who complete the TC program may be very different from those who do not, a difference which could have existed prior to the program. More work needs to be done to examine program attrition and how programs can be carefully matched to the needs of offenders so that larger numbers will complete the program. It may also be possible to use the power of the criminal justice system to coerce offenders to remain in programs.

In summary research examining the effectiveness of drug treatment shows:

o Drug treatment is effective is reducing the recidivism of offenders;

o Offenders coerced into treatment by the criminal justice system do as well as those who enter voluntarily.

Dropouts from treatment present a major problem in terms of both evaluating the effectiveness of the

programs and in the determining how successful the program will be.

Table 9-10. Studies of in-prison therapeutic communities for drug treatment and recidivism showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Wexler, et al. (1992)	4	Males: Therapeutic Community had fewer rearrests (27%) compared to Milieu (35%), S: Counseling (40%), S; No Treatment (41%),S; and all groups combined, S. Females: Therapeutic Community had fewer rearrests (18%) compared to counseling group (29%), S; No Treatment (24%)NS: and both groups combined, S.
Martin, et al. (1995)	3	Combined KEY-CREST (3%) fewer rearrests than Comparison group, S; KEY (19%) fewer rearrests than Comparison group(29%), NS.
Wexler, et al. (1995)	3	Fewer Treatment (Amity TC) plus Aftercare (Vista) participants (26%) returned to prison than control group (63%); than Treatment Drop-outs (50%), and Treatment Only (43%), S.
Field (1989)	2	Cornerstone graduates had fewer rearrests (63%) than non-graduates with 6+ months of exposure (79%); than non-graduates with 2 to 6 months of exposure (88%); and than non-graduates with 0 to 2 months of exposure, (92%). No significance tests.
Eisenberg and Fabelo (1996)	2	Texas Initiative graduates had fewer rearrests (13%) than non-completers (31%), S; and than comparison group (29%), S. Texas Initiative graduates had fewer reincarcerations (7%) than non-completers (19%), S; and than comparison group (19%),S.

Note: NS=nonsignificant, S=significant

8.2 Urine Testing

There are a wide array of drug testing technologies including urinalysis, hair assays, and other emerging technologies such as saliva tests and sweat patches (Travis, Wetherington, Feucht, Visher 1996). These technologies are viewed as an important component of criminal justice programming for drug-involved offenders because they provide objective evidence of drug use independent of self-reports. While the new technologies hold great promise for overcoming some of the limitations of urinalysis, at this point in time urinalysis in the most commonly used testing technology.

Urine testing is currently applied throughout the criminal justice system in order to achieve a variety of program objectives. From the perspective of crime prevention, urine testing can be useful to help assess risk or to deter offenders from continued use of drugs and the associated criminal activities.

During the pretrial period, urine testing can be used as a tool for assessing the risk that defendants will reoffend or fail to appear in court. This information could be used to make decisions about who to release from jail during the pretrial period. Evaluations of the efficacy of such use of urine testing show mixed results (Travis et al. 1996; Rhodes, Hyatt and Scheiman 1994). There is some evidence that recent use of cocaine is associated with an increased risk of failure to appear for trial but this is true in only some jurisdictions. Additionally, it does not seem to be the case with other drugs. Similarly, there has been some evidence that opiate use predicts pretrial re-offending but this is not true of other drugs nor is it the case in all jurisdictions. However, in a recent study in Washington, D.C., Smith and Polsenberg (1992) found that arrestees who tested positive for any drug were significantly more likely to be rearrested before trial.

Offenders on probation or parole in the community are often required to submit to urine tests. Deschenes, et al. 1996 evaluated the effect of 3 levels of urine testing on recidivism rates for drug offenders on probation. All subjects were sentenced to standard probation supervision and then randomly assigned to one of the levels of testing conditions. Group one received no urine testing (n=168). Group two received random monthly urine testing (N=141) and group three received twice weekly, scheduled testing (N=145). Rearrest rates for "any technical violation" after 12 month follow-up were: "No Test" 39.9%, "Low-Rate" 44.7%, and "High-Rate" 54.5%. There was a significant difference between "No" and "High-Rate" testing ($p<.05$). Average number of violations" also showed a significant difference between "No" and "High-Rate" (2.1, 4.1, $p<.05$), as well as between "Low" and "High-Rate" testing, (2.5, 4.1, $p<.05$). While there were several other recidivism outcome measures, such as "average number of arrests and "percent with any arrest", there were no other significant differences among the groups, in terms of criminal recidivism. The authors conclude that increased testing frequency does not effect arrest or conviction rates. They suggest that increased testing does serve to identify sooner, rather than later, offenders "who continue to use drugs while on probation".

9. COMBINING REHABILITATION AND RESTRAINT

Some programs have begun to combine components of community restraints or challenge programs with rehabilitation. As previously reported, there is some evidence, not yet fully tested, suggesting that ISP programs that combine surveillance and treatment may be successful in reducing the recidivism of offenders. Similarly, correctional boot camps that combine the military aspects of the camps with rehabilitation and aftercare show some promise for reducing recidivism. Programs combining urine testing and treatment and the relatively new drug courts are examples of programs designed to combine restraints with rehabilitation. The research examining the crime prevention effectiveness of such programs is described in the following sections.

9.1 Urine Testing and Drug Treatment

Drug testing in combination with drug treatment can be useful as a method of monitoring progress in treatment and holding offenders accountable for treatment participation. The question is whether such testing can reduce the criminal activities of offenders while they are in treatment. As shown in Table 11,

four studies were identified that used testing and treatment interventions for offenders in the community.

Nurco, Hanlon, Bateman, and Kinlok (1985) used an experimental design to examine the effectiveness of .ug abuse treatment coupled with urine monitoring compared to two groups: (1) an intensive urine-monitoring and (2) routine parole involving random urine monitoring. While the group receiving treatment and urine monitoring had fewer revocations (48 percent) than the two control groups of intensive monitoring (50 percent) and routine parole (56 percent), the differences were not significant. The study is a preliminary report and so the results are based on a small number of subjects.

In a study funded by NIJ, Hepburn and Albonetti (1994) examined the effectiveness of drug monitoring and treatment compared to drug monitoring alone using 718 probationers. While the study was designed to use random assignment, the procedure was not followed. The researchers statistically controlled for sample differences; however, this greatly reduced the scientific rigor of the study. Furthermore, the researchers describe the intervention as relatively weak.

Taxman and Spinner (1996) used a random assignment study to compare a jail-based treatment program using TASC (Treatment Alternatives to Street Crime). Approximately 80 percent of the offenders underwent drug testing while they were in community treatment programs. The experimental group who received jail-based treatment as well as follow-up treatment and urine monitoring in the community had fewer rearrests than comparison groups.

The fourth study, by Anglin, Longshore, Turner, McBride, Inciardi, and Pendergast (1996) examined the impact of five TASC programs on recidivism and drug use. Groups were randomly assigned in two sites and a quasi-experimental design was used in the remaining sites. There was no evidence that treatment plus testing decreased recidivism.

Overall, of the four programs only the jail-based treatment programs showed a significant impact on rearrests.

9.2 Drug Courts

Faced with the enormous growth and impact of drug-related criminal caseloads in most jurisdictions across the United States, many court systems have searched for alternatives to traditional methods of processing the drug-involved offenders. One solution has been drug courts. Earlier versions of drug courts were designed to rapidly process offenders through the system. However, the recently developed drug courts are treatment-oriented courts that seek to bring substance abuse treatment to bear on the problems of drug-involved felony defendants in a diversionary, alternative processing approach. A courtroom-based team approach with specially adapted outpatient drug abuse treatment is used to coerce offenders into treatment. Judges play a central and active role in the team in the unorthodox courtroom approach that brings the defense, prosecution, treatment, and other court-related agencies together. This approach combines elements of both criminal justice and drug treatment -- two perspectives accustomed to different methods and sometimes competing aims regarding drug-involvement and its reduction. Drug use is monitored through urine testing and the results are reported to the court. Frequently the courts emphasize individual accountability through a system of rewards and graduated sanctions for misbehavior.

The relatively recent development of these programs means there has been little time for outcome evaluations (see Table 9-12). We could identify only four evaluations. Harrell and Cavanagh (1996) are studying the DC Superior Court Drug Intervention Program under a grant from the NIJ. Preliminary data are ıcouraging because offenders who receive treatment and sanctions for noncompliance with the drug-free requirements, as well as those who receive only sanctions, test free of drugs more often than those who are on standard dockets. However, recidivism data are not yet available from this study.

Table 9-11. Studies of drug treatment and urine testing showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Nurco et al. (1995)	3	Treatment with urinalysis had fewer revocations (48%) than intensive urine monitoring (50%) and routine supervision (56%), NS.
Hepburn and Albonetti (1994)	2	No differences in revocations when treatment with urinalysis was compared to two urinalysis only conditions, NS.
Taxman and Spinner (1996)	5	Treatment with urinalysis reduced rates of new arrests (55.1%) compared to the no treatment condition (68.1%), S.
Anglin et al (1996)	3	TASC treatment with urinalysis did not reduce re-arrest rates at any site, NS.

Note: NS=nonsignificant, S=significant

Gottfredson, Coblentz and Harmon (1996) examined the Baltimore City Drug Treatment Court Program. While the numbers are quite small, the results suggest that the program may have very different impacts depending upon the court and characteristics of the offenders involved. Males in the circuit and district courts had fewer arrests and convictions than their comparison groups when their criminal risk was controlled in the statistical analysis. On the other hand, women in these two drug courts and cases that entered as probation violators had fewer new arrests and convictions than their comparisons.

Goldkamp (1994) completed a study of the original Miami Drug Treatment Court in Dade County co-funded by the State Justice Institute and The NIJ. As shown in Table 9-12, the results demonstrate a lower rearrest rate for participants in the drug court. However, there were several problems with the study making in difficult to definitely conclude that the effect can be attributed to the drug court. In particular, the groups were not randomly assigned, and, furthermore, the failure to report rates differed tremendously between the drug court participants (55 percent) and the comparisons (9 percent).

Unlike many drug courts the Maricopa County (Arizona) Drug Court is a post-adjudication program for probationers with a first-time felony conviction for drug possession. Participants are required to participate in an outpatient comprehensive drug treatment program and their progress is monitored by the judge. Under grant from the NIJ, Deschenes, Turner and Greenwood (1996) completed a random assignment study of this court. The analysis of recidivism after twelve months indicated that drug court participants had fewer rearrests (nonsignificant) and fewer incarcerations (significant) in comparison to the control group offenders (see Table 9-12).

In contrast to many of the other intermediate sanctions, drug courts attempt to combine increased surveillance with treatment. The court's responsibility for oversight of the offender, the treatment programs, and the supervising agents also means that all involved can be held accountable for outcomes. There is yet little research to examine how effective the programs are in reducing crime but the early results appear hopeful.

Table 9-12. Studies of drug courts showing scientific methods score and findings.

Study	Scientific Methods Score	Findings
Goldkamp (1994)	2	Fewer Miami Drug Court participants were rearrested (33%) than comparisons (52%), S. More Miami Drug Court group failed to appear (52%) than comparisons (9%).
Deschenes et al. (1995)	4	Fewer Drug Court participants were rearrested than probationers, NS. Fewer Drug Court arrestees sentenced to prison (9%) compared to probationer arrestees (23%), S.
Gottfredson et al. (1996)	3	When seriousness was statistically controlled, male: drug court participants had fewer rearrests, NS, and fewer reconvictions than comparison, NS; female drug court participants had fewer rearrests, S, and fewer convictions, NS.

Note: NS=nonsignificant, S=significant

10. SUMMARY AND RECOMMENDATIONS

10.1 Scientific Conclusions

It is obvious from this review of the research on crime prevention in the criminal justice system that no one strategy is appropriate for all offenders and all situations. Careful system planning is required to maximize the crime prevention potential of these different strategies. Shown in Table 9-13, are some of the issues that remain unresolved in the research on these strategies. What has not been addressed in this review of the scientific evidence supporting these strategies is the differential impacts of the strategies. For example, important in any consideration of the combination of incapacitation and deterrence strategies is the effect these policies have had on the minority community (Tonry, 1995) and the unintended effect of incarceration of inmates' families (Clear, 1996). Similarly, types of rehabilitation programs may be more effective with some offenders than others. Differences in gender, mentally illness, or risk level, for instance, may be associated with program effectiveness.

Despite the fact that many such topics have had to be omitted due to time and length constraints, some conclusions can be offered regarding the crime prevention effects of the different criminal justice strategies reviewed.

What works? The research examined herein provides evidence that the following strategies are effective in reducing crime in the community:

o Rehabilitation programs with particular characteristics;

o Prison-based therapeutic community treatment of drug-involved offenders;

o Incapacitating offenders who continue to commit crimes at high rates.

There is now substantial evidence that rehabilitation programs work. There is a body of research supporting the conclusion that some treatment programs work with at least some offenders in some situations. Effective rehabilitation programs:

o Are structured and focused, use multiple treatment components, focus on developing skills (social skills, academic and employment skills), and use behavioral (including cognitive-behavioral) methods (with reinforcements for clearly identified, overt behaviors as opposed to non-directive counseling focusing on insight, self esteem, or disclosure); and,

o Provide for substantial, meaningful contact between the treatment personnel and the participant.

The best treatment programs reduced recidivism by as much as 10 to 20 percentage points.

However, in order to be effective, treatment must follow some important principles. Programs must be designed to address the characteristics of the offenders that can be changed and that are associated with the individual's criminal activities. Furthermore, the treatment provided to offenders must be of sufficient integrity to insure that what is delivered is consistent with the planned design.

The research demonstrates that drug treatment is effective in reducing the criminal activities of offenders. The current examination of prison-based therapeutic community treatment for drug-involved offenders demonstrates that these programs are an effective method of providing prison-based treatment. These intensive, behaviorally-based programs target offenders' drug use, a behavior that is clearly associated with criminal activities.

Incapacitating offenders who will continue to commit crimes at a high rate and who are not at the end of their criminal careers is effective in reducing crimes in the community. Studies investigating the effectiveness of these incapacitation techniques show there are advantages in locking up the high-rate career criminals who commit serious crimes. The difficulty is in identifying who these high-rate offenders are, and the diminishing return on invested dollars with the increased incarceration rates. It is clear that the most serious offenders such as serial rapists should be incapacitated. However, locking up those who are not high-rate, serious offenders or those who are at the end of their criminal careers is extremely expensive.

Table 9-13. Different strategies for preventing crime by the courts and corrections showing issues unresolved by the research.

CRIME PREVENTION BY TH

CORRECTIONS

	Incapacitation	Deterrence	Rehabilitation	Community Restraints	Struc Disci Chall
UNRESOLVED ISSUES	Limited ability to predict future high risk offenders. Financial costs and increases in imprisonment rates. Diminishing returns with increased incarceration rates. Adequacy of estimates of length of criminal career and rates of offending unknown. Negative impact on minorities Unintended Consequences. Increased use may decreases deterrent effects. Self-reported crime rates of those monitored in the community.	What types of deterrents (e.g., day fines) are effective with what types of offenders (e.g., DWI)?	Retaining offenders in treatment. How to insure well-implemented intensive rehabilitation programs. Most effective targets(attitudes, values, employment) for change. Most effective service delivery methods for change.	How to combine with treatment. Does increased surveillance reduce criminal activities? Do violations of conditions of supervision "signal" new criminal activity?	Do su progr enhan conve reduc effec of tr What compo assoc with or fa

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What Does Not Work? Studies of poorly implemented rehabilitation programs given to low risk offenders using vague behavioral targets were not be effective in reducing crime. Nor were programs that emphasized characteristics such as discipline, structure, challenge, and self esteem that are not directly associated the offender's criminal behavior. Rehabilitation programs that did not reduce the recidivism of offenders:

o Emphasized specific deterrence such as shock probation and Scared Straight;

o Used vague, nondirective, unstructured counseling.

Studies demonstrate little evidence that continuing the policies of the past several decades emphasizing the increased use of incarceration will have a major impact on reducing crimes at this point in time. As incarceration rates grow there appear to be diminished returns (e.g., reduced impact on crime rates) because lower rate offenders are being locked up. It may also be counterproductive by limiting the deterrent effect of prison because people have less fear of incarceration. The impact on minority communities has been disastrous. An additional difficulty with the strategy is that, at this point in time, we cannot intelligently make the distinction between those who will commit serious crimes in the future and those who will not.

Community restraints without programming and services were not effective in reducing the recidivism rates of offenders. There is now an extensive body of research examining the crime prevention effects of community sanctions designed to restrain offenders while they are in the community. The studies are scientifically rigorous, so it is possible to draw conclusions about the effectiveness of these efforts. The following programs were not effective in reducing the criminal activities of either adult or juvenile offenders, if they were not combined with rehabilitation:

o Intensive supervised probation or parole (ISP)

o Home confinement

o Community residential programs

o Urine testing

Evaluations of these programs have focused on the impact of increased control. The results have been discouraging because there are usually no differences between those in the intermediate sanctions and the comparison groups. In fact, in many cases the group receiving the intermediate sanction has had more technical violations. It is important to note that, while these sanctions may not reduce recidivism, they do not do any worse than other forms of "management as usual" and they may have other advantages when compared to incarceration such as reduced costs. The failure to find differences in recidivism means these sanctions do not result in increased public safety concerns by increasing the recidivism. Therefore, they may compare favorably with other sanctions on grounds other than recidivism.

Other programs that were not shown to be effective (again, if they were not combined with rehabilitation) are those emphasizing structure, discipline and challenge such as:

o Correctional boot camps using the old-style military model

o Juvenile wilderness programs

As with the research examining community restraints, there are a reasonable number of scientifically credible studies that have been completed, so conclusions about the effects of the programs are clear. It is unclear why these programs have failed to show crime reduction effects. Possibly individuals in the programs spend more time in the physical challenge activities and not in therapeutic activities that would more directly address the problems they have that are associated with their criminal activities. Another possibility is that the programs are group-oriented and do not offer enough individualized programming to address specific difficulties of the individual participants.

Deterrence programs that increase the punitive impact of the sentence such as Scared Straight or shock probation do not reduce crime. Reviews of the literature on these programs as well as the meta-analyses of

rehabilitation continually show that these programs are not effective in preventing crime. In fact, some research suggests that such programs are associated with increases in the later criminal activities of the participants (see the meta-analysis by Lipsey, 1992).

What's promising? There are, however, some promising signs. Several strategies have been shown in only one study to reduce recidivism of offenders so we classify these as promising. The following are promising programs:

o Drug courts combining both rehabilitation and criminal justice control.

o Day fines

o Juvenile aftercare

o Drug treatment combined with urine testing

What we don't know. We do not know whether rehabilitation combined with ISP or with boot camps will be effective in reducing the recidivism of offenders because the research has been exploratory in nature (e.g., a one or two on our scale). Research examining these programs reveals that these combinations may be effective in preventing the criminal activities of offenders. The exploratory follow-up studies of ISP have investigated the differences in recidivism that can be attributed to treatment. The results from these investigations suggest that rehabilitation programs combined with community restraint programs may be effective in reducing recidivism. Similarly, the research from the discipline, structure and challenge programs suggests that combining these programs with rehabilitation may effectively reduce the later criminal behavior of participants. The idea of combining control and rehabilitation is also supported by the drug treatment research revealing that substance abusing offenders who are coerced into treatment stay in treatment longer and they do as well as others who were not coerced.

From this perspective, intensive supervision programs, and correctional boot camps may be effective in reducing recidivism if the programs incorporate treatment programs that follow the principles of effective rehabilitation. The question is how to combine the programs so that the integrity of the treatment program is not lost. Those responsible for the control and surveillance and those responsible for providing the treatment will have to be held accountable for the component of the program they are expected to deliver. Furthermore, there will have to be close coordination between the groups to insure a close working relationship between the treatment and control providers.

Day reporting programs also hold potential program for combining the treatment and community control of offenders. However, to date there are no studies showing whether these can be effective. Furthermore, there is a possibility that the programs will emphasize the control and surveillance aspects of the program and not the combination of treatment and control.

10.2 The Effectiveness of DOJ Programs.

Research on the effectiveness of different strategies of crime prevention in the courts and corrections, much of it supported by the Office of Justice programs (OJP), has provided some clear guidance for the next steps in crime prevention in this setting. Shown in Table 9-14, are some of the major funds provided by OJP bureaus for programs in courts and correctional. Most of the funding goes to prison construction, correctional boot camps, residential substance abuse treatment for state prisoners, correctional alternatives, graduated sanctions and aftercare for juveniles, and drug courts. The following sections examine these programs based on the scientific evidence of effectiveness.

Alternative sanctions and community restraints. The OJP bureaus have completed exemplary work

examining the effectiveness of restraint-type programs for offenders in the community and old-style military boot camps models. There is an considerable body of high quality research examining various community restraint-type programs. The results point clearly toward the ineffectiveness of these programs in reducing criminal activities of offenders, at least as measured by official measures of recidivism. The research has focused on the restraint and control of offenders in the community. That is, the research has been designed to compare those in a restraint program versus those who are not. There has been little focus on the quality of the therapeutic programming within the different correctional options. Nor have studies examined other measures of criminal activities, such as self-reported crimes.

Under the Byrne Grant Funding, BJA has funded the local development of alternative sanctions and correctional options. The research evidence does not demonstrate that the programs will be effective in reducing the criminal activities of offenders unless they are combined with treatment. Much of research appears to replicate earlier studies examining the effectiveness of the restrain aspect of the programs. Thus, it does not provide additional information about how to improve the programs in order to maximize the crime prevention potential.

What is needed in the future are high quality studies with experimental assignment of subjects to programs with different rehabilitation components focusing on participants with varying characteristics. The meta-analyses reviewed in this manuscript suggest that it will be important to have researchers involved in the program design and implementation. Certainly the research on rehabilitation suggests that many offenders will benefit from treatment programs. Again, it is important to note that future research on rehabilitation will have to consider the costs and benefits of such programs.

OJJDP's Intensive Community-Based Aftercare. When intensive supervision programs are combined with treatment and follow a term in an institution, they are often referred to as "aftercare" programs. The as OJJDP aftercare program was designed first to document information about aftercare in various jurisdictions throughout the U.S. This information was used to develop a model aftercare program that will be tested in selected jurisdictions. The program targets chronic and serious juvenile offenders who initially require secure confinement; the community aftercare follows this period of confinement. A prototype model for the aftercare has been developed. According to the model, aftercare planning begins when the juvenile first enters a facility. Each youth is assessed for risk and service needs, and an individualized plan is developed to address the identified needs.

If this program is studied with a experimental design that will compare experiences of the juveniles who receive the aftercare to others, it will provide important information about the combination of rehabilitation and community restraint. The intensive aftercare for high-risk juveniles proposes a model of treatment that is consistent with successful treatment programs according to our review of the rehabilitation literature. The model fits many of the principles identified as necessary for effective rehabilitation programs by the meta-analysis by Andrew and his colleagues. It targets high risk juveniles for an intensive program. Surveillance and services are integrated in an attempt to coerce the juveniles to participate in rehabilitation programs.

Table 9-14. Major Federal Funding of the Office of Justice Programs for Corrections and Court Programs FY96 and FY97.

DOJ Office and Program	Purpose Areas	Total Funding	
Corrections Program Office	Residential Substance Abuse Treatment for State Prisoners	FY96 FY97	$ 27 million $ 30 million
	Prison Construction	FY96	$405 million

	Correctional Boot Camps	FY95	$ 24.5 million
'iolence Against Women ffice	Training Programs for Probation and Parole Offices to Work With Released Sex Offenders	FY96 FY97	$ 1 million $ 1 million
Drug Courts Program Office	Drug Courts	FY95 FY96 FY97	$ 12 million $ 15 million $ 30 million
Bureau of Justice Assistance			
Byrne Grant Funding[9]	Courts, Corrections, Drug Treatment	FYL96	$109 million
Local Law Enforcement Block Grants	Drug Courts	Unable to determine portion allotted to specific programs	
Office of Juvenile Justice and Delinquency Prevention			
Title V Comprehensive Strategy for SVCs	Graduated Sanctions for SVCs	unable to determine portion allotted to these two programs	
ntensive Community-Based Aftercare	Aftercare for Juveniles		

Correctional Boot Camps. There are a reasonable number of evaluations demonstrating that the boot camps do not have an impact on the recidivism rates of offenders. The only hopeful sign is in one follow-up study examining programs that provided intensive rehabilitation-type activities in the boot camp and aftercare upon release. The scientific rigor of this analysis was low as it was an exploratory analysis but it did suggest that such enhancements may reduce the recidivism of participants. Again, most of the research focus has been on the control aspects of the programs and not the rehabilitation components. It appears that these programs will have to be changed if they are going to have an impact on reducing crimes in the community.

During FY95, as directed by Congress, all prison construction money appropriated to OJP was given for the construction and planning of correctional boot camps. Prior to that time NIJ and OJJDP had funded studies of adult and juvenile correctional boot camps. The programs were not effective at reducing the recidivism of the participants once they were released. Using this results of this research, and the research on rehabilitation, OJP held meetings for interested applicants for the prison construction money. At these meetings, those who were developing boot camp programs were informed of the results of the research and they were encouraged to develop "new generation" models of correctional boot camps. These models would move the focus of the boot camps from the traditional old-style military boot camps that are not effective to new models emphasizing leadership, restorative justice or work skills.

We do not know if adding therapeutic programming into the boot camps will be more or less effective than similar programs that have the therapy but not the military aspects of the correctional boot camps. This is an ideal area for random assignment studies and several such studies are currently underway.

Prison construction. Approximately $471 million will be available in 1997 for formula grant awards to build or expand correctional facilities for violent offenders; build or expand temporary or permanent correctional facilities for nonviolent offenders and criminal aliens to free prison space for violent offenders; and build or expand jails.[10] Whether these funds will help prevent serious crime remains a matter of great debate and small scientific evidence.

From 1980 until 1995, there was an overall 242 percent increase in prison populations. In 1980 the total inmate population was 330,000, but by 1995 this had grown to approximately 1.1 million inmates. Reflecting this growth in inmate populations, U.S. prison annual operating costs have swelled from $3.1 billion in fiscal year 1980 to about $17.7 billion in fiscal year 1994. Forecasting groups anticipate that the growth will continue at least for the foreseeable future. According to a recent report by GAO (1996), the growth is a function of factors such as crime levels, sentencing laws and law enforcement policies, most recently it can be traced to major legislation intended to get tough on criminals, particularly drug offenders (GAO). The question is whether the increased funding for prison construction for such offenders will reduce crime in the community.

The research suggests that this massive increase in imprisonment does reduce the number of crimes because some offenders who would be active criminals will instead be locked in prison. However, the question is whether the incarceration rate has grown so large that now there is a diminished return on every dollar invested. That is, the offenders now sent to prison may be those who would be committing few crimes if they were in the community. Thus, relatively few crimes will be prevented by the continued expansion of the capacity to incarcerate. Furthermore, little is said about who will be incarcerated in the prisons built by the monies provided for prison construction. Studies reveal that the effectiveness of incapacitation will be dependent upon identifying and incarcerating high frequency offenders who are not at the end of their criminal careers. Researchers have not been able to identify these individuals so that the effectiveness of this strategy can be maximized.

Many state and local jurisdiction have begun to invest time and money into system planning in order to rationally distribute offenders in prisons and alternatives (boot camps, intensive supervision, etc.). There is little research examining the effectiveness of such system planning. What research there is focuses on descriptive studies and not the impact of such policies. This would be a fruitful avenue for future research if it uses rigorous research designs to examine impact.

Drug Courts. Given the enormous number of drug-involved offenders that are arrested each year, the association between drug involvement and criminal activities, and the enormous number of these offenders in prisons, one important body of research focuses on the drug-involved offenders. Two OJP funding programs address drug-involved offenders: drug courts and residential drug treatment for state prisoners. Both programs move beyond the deterrence options and increased restraints that have failed to reduce the criminal activities of these offenders. Substantial scientific evidence shows that drug treatment is an effective method of reducing both drug use and crime by these offenders. Furthermore, the criminal justice system can coerce offenders to remain in treatment longer. The longer they stay in treatment the better they do later, and those who are coerced do as well as comparisons who volunteer for treatment. One advantage of drug courts is that the court can oversee and supervise the coordination of the treatment and the community restraint. Theoretically the court has the authority to hold each provider accountable for their responsibilities in an effort to force the offender to change.

We rank the current scientific evidence on the effectiveness of drug courts as promising. While evaluations to date show encouraging results, the studies were of limited scientific rigor. Drug courts also vary widely in

the services provided, populations served, and when interventions are offered. Given these large differences in programs, it will be crucial to examine what components of programs are effective for what target population using what intervention.

As with the boot camps, it is anticipated that the people developing the programs will be hesitant to initiate a rigorous experimental design to examine these programs. Yet, this will be required in order to determine the effectiveness of the programs and to justify the proliferation of such courts without evidence of effectiveness. Programs that will be used as models for other new drug courts should be required to provide evidence of the effectiveness of the programs.

Residential Substance Abuse Treatment for State Prisoners. As with the drug courts, the prison-based substance abuse programs appear to be a promising way to reduce the drug use and associated criminal activities of offenders, once they leave prison. In general, the studies of in-prison therapeutic community programs demonstrated that such programs reduced the recidivism rates of offenders once they were released. While the studies suffered from design problems such as attrition and comparison group deficiencies, several used sufficiently strong methodology to warrant the conclusion that they successfully reduced the recidivism rates of participants. All of the programs studied provided intensive programming for participants in prison. Further reductions in recidivism were associated with the length of time offenders spent in the programs, and whether they participated in aftercare following release from prison.

Future research needs to focus on determining whether offenders who are at different stages in the change process would benefit from different types of programs. In addition, research should focus on methods of keeping offenders in the programs, once they have decided to enter.

10.3 Improving The Effectiveness Through Research

The development of more effective crime prevention in the courts and corrections would be improved if the following steps were taken.

Support research on incapacitation.

Large-scale research studies examining the effects of increasing the capacity of prisons are needed to determine the effects of incapacitation strategies. There has been little rigorous research examining the impact of incapacitation strategies. This is evident in a recent study of research articles published on the topic of deterrence, rehabilitation and incapacitation. Zimring and Hawkins (1995) examined the titles of articles found in Social Scisearch (SOSCISCH) system. From 1980 until 1989, over 4,000 studies had rehabilitation/recidivism in the title, 610 had deterrence but only 45 had incapacitation/preventive detention.

Self-report studies of the criminal activities of offenders are needed to determine crime rates after arrest or when offenders are serving time on probation, parole or in some alternative sanction in the community.

Require (and provide the substantial financial investment to enable) rigorous evaluation using experimental designs of rehabilitation models that are guided by the principles of effective programs revealed in meta-analyses.

While there appear to be an enormous number of studies examining the effectiveness of rehabilitation (see for instance, the Zimring and Hawkins study described above), researchers completing reviews of the literature and meta-analyses report that there are a relatively limited number of studies that use a scientifically adequate methodology. As a result, it is impossible to draw unequivocal conclusions about the effectiveness of the programs.

Support the development of a methodology to study the therapeutic integrity (implementation,

staff training, treatment modality) of rehabilitation to insure that programs can be held accountable for implementing programs that are effective in reducing recidivism.

Many times the evaluation of programs is unsuccessful because the program is not implement as designed or is designed so poorly that it would reasonably be expected to have an impact on the individual participants. More research needs to be completed to identify methods of hold rehabilitation programs accountable for the treatment and services delivered.

Provide funding for research test sites that enable researchers to be intimately involved in the design and implementation of programs.

Congress has earmarked funds for many of the OJP programs like prison construction, drug courts and boot camp prisons. To insure that these programs will be evaluated, OJP has transferred money to NIJ to be used for evaluations. For example, in FY 1996 OJP transferred over $3 million to NIJ for corrections. For some of the programs, jurisdictions receiving funding have been required to agree to participate in an evaluation. This arrangement between NIJ and the programming money causes some difficulties that require researchers to play "catch-up" in trying to design the research and obtain agreements from sites. Many programs would benefit greatly if the researchers were involved from the beginning and the money was tied to the requirement that sites would participate in studies. Such test-site research would insure close cooperation between the programs and the research. This is a particular concern with the funding for the boot camps and drug courts because the effectiveness of these programs have not been demonstrated.

Research examining intermediate sanctions, alternative punishments or correctional options should be carefully designed to address the questions that are still unanswered by the research.

These programs are not effective in reducing the recidivism rates of offenders as measured by official records. Self-report measures of criminal activities may reveal that the crime rates are reduced for offenders in such alternatives but that the increased attention to offenders means their misbehavior is more apt to be detected. Furthermore, research should examine whether combining these options with rehabilitation is successful in reducing criminal activity.

More research is need on the programs identified as promising in this report: Drug Courts; Day Fines; Juvenile Aftercare; and, Drug Treatment combined with Urine Testing.

In summary, what is clear from this report is that none of these strategies should be eliminated as an option. In particular situations, each strategy has some support for successfully reducing crime in the community. What will be important is a strategic plan defining who should be incapacitated, who should be rehabilitated, who can be deterred, and how to combine restraint and rehabilitation to effectively reduce crime. Important in this plan will be measures to insure that each program is held accountable for the expected outcome. The question is whether we can reduce the future criminal activities of offenders by holding the individual accountable for his or her own behavior, the treatment program accountable for outcomes and the criminal justice system for sanctioning offenders who do not comply with requirements. Equally as important are questions addressing the differential impacts of programs for individuals who differ in characteristics such as gender, home community (urban/rural), race/ethnicity and age. The argument is not which of these different strategies of crime prevention should be used, but when and where the effect of each strategy can be used to maximally prevent crime in the community.

NOTES

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It should be noted that this research made use of a complex statistical model with reasonable estimates of the relevant factors completed by a respected group of researchers. Although, there is still debate about the estimates used in the statistical models, it is important to distinguish the predictions from unscientific estimates given in some policy debates. For example, Hawkins and Zimring (1995) describe one unscientific estimate that would have produced a $300 billion savings in the cost of crimes prevented, and, as noted by Hawkins and Zimring this unreasonable estimate is greater than the federal deficit or the national defense budget.

[3]Note that this is the proportion of all the studies reviewed that show positive and significant reductions in recidivism when the treated group is compared to the control group.

[4]While this analysis included both adult and juvenile treatment programs, the majority of the studies dealt with juvenile programs.

[5]A current NIJ study is examining the self-reported crime rates of offenders on probation. This information will provide some estimates of the crime rates and the association between these rates and the conditions of probation in order to determine whether those who are more intensively supervised have lower self-reported crime rates (MacKenzie, Browning and Prui 1996).

[6]This was a more extensive analysis than previous meta-analyses that had focused on delinquents in residential programs (Garrett 1984;1985), at-risk juveniles (Kaufman (1985), and treatment of adjudicated delinquents (Gottschalk et al.1987; Whitehead and Lab 1989). While the conclusions from these analyses differed, all yielded a positive mean effect of about the same order of magnitude (1/4 to 1/3 of a standard deviation superiority for the treatment group outcome compared with the control group outcome). See also the early discussion of the Andrews et al. (1990) meta-analysis in this chapter.

[7]Behavioral interventions are strategies that focus on changing behaviors by setting behavioral goals and using positive and negative reinforcement to encourage or discourage clearly identified behaviors.

[8]Multi-modal or multi-components treatment programs are those that combine several different treatment strategies in one program.

[9]These amounts were extrapolated from the Dunworth, et al. (1997) analysis of the award of grants in 1989-94, proportionately applied to the FY96 allocation of $475 million.

[10]Office of Justice Programs Crime Act Programs Fiscal Year 1997 Update.

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Home

13

Assessing Correctional Rehabilitation: Policy, Practice, and Prospects

by Francis T. Cullen and Paul Gendreau

A theme that has persisted throughout the history of American corrections is that efforts should be made to reform offenders. In particular, at the beginning of the 1900s, the rehabilitative ideal was enthusiastically trumpeted and helped to direct the renovation of the correctional system (e.g., implementation of indeterminate sentencing, parole, probation, a separate juvenile justice system). For the next seven decades, offender treatment reigned as the dominant correctional philosophy. Then, in the early 1970s, rehabilitation suffered a precipitous reversal of fortune. The larger disruptions in American society in this era prompted a general critique of the "state run" criminal justice system. Rehabilitation was blamed by liberals for allowing the state to act coercively against offenders, and was blamed by conservatives for allowing the state to act leniently toward offenders. In this context, the death knell of rehabilitation was seemingly sounded by Robert Martinson's (1974b) influential "nothing works" essay, which reported that few treatment programs reduced recidivism. This review of evaluation studies gave legitimacy to the antitreatment sentiments of the day; it ostensibly "proved" what everyone "already knew": Rehabilitation did not work.

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ABSTRACT

ABSTRACT

In the subsequent quarter century, a growing revisionist movement has questioned Martinson's portrayal of the empirical status of the effectiveness of treatment interventions. Through painstaking literature reviews, these revisionist scholars have shown that many correctional treatment programs are effective in decreasing recidivism. More recently, they have undertaken more sophisticated quantitative syntheses of an increasing body of evaluation studies through a technique called "meta-analysis." These meta-analyses reveal that across evaluation studies, the recidivism rate is, on average, 10 percentage points lower for the treatment group than for the control group. However, this research has also suggested that some correctional interventions have no effect on offender criminality (e.g., punishment-oriented programs), while others achieve substantial reductions in recidivism (i.e., approximately 25 percent).

This variation in program success has led to a search for those "principles" that distinguish effective treatment interventions from ineffective ones. There is theoretical and empirical support for the conclusion that the rehabilitation programs that achieve the greatest reductions in recidivism use cognitive-behavioral treatments, target known predictors of crime for change, and intervene mainly with high-risk offenders. "Multisystemic treatment" is a concrete example of an effective program that largely conforms to these principles.

In the time ahead, it would appear prudent that correctional policy and practice be "evidence based." Knowledgeable about the extant research, policymakers would embrace the view that rehabilitation programs, informed by the principles of effective intervention, can "work" to reduce recidivism and thus can help foster public safety. By reaffirming rehabilitation, they would also be pursuing a policy that is consistent with public opinion research showing that Americans continue to believe that offender treatment should be an integral goal of the correctional system.

What should be done with those who break the law? This ostensibly simple question defies a simple answer. The answer most commonly given has changed over time, and which answer is most defensible has been, and continues to this day to be, a source of much dispute. In part, the disputes are contentious and continuous because they reflect *normative* differences—often inextricably linked to larger, deeply felt political ideologies—on what *should* be done to those who flaunt criminal statutes (England 1965). Also at issue, however, are *utilitarian* considerations: How *effective* is the approach we have chosen to take with criminally wayward citizens? Most important, does it "work" to reduce crime and make us safer?

Since virtually the inception of the modern criminal justice system, a persistent response to the question of what to do with lawbreakers has been to change them into law-abiders—that is, to rehabilitate them.

Since virtually the inception of the modern criminal justice system, a persistent response to the question of what to do with lawbreakers has been to *change* them into law-abiders—that is, to *rehabilitate* them (de Beaumont and de Tocqueville 1964 [1833]; McKelvey 1977; Rothman 1971, 1980; Rotman 1990). Notably, for the first seven decades of the 20th century, rehabilitation was most often the dominant ideal, especially among correctional elites and criminologists, for what the correctional system *should* be organized to achieve (Allen 1964; Cullen and Gilbert 1982; Gibbons 1999; Rothman 1980; Task Force on Corrections 1967, 16). But in the last quarter century, the ideological landscape has been transformed to the point that it is substantially unrecognizable. Today, commentators often assume that punitive responses to offenders—what Todd Clear (1994) calls "penal harm"—have achieved hegemonic status in the United States. Rehabilitation has often been depicted as a failed enterprise that should be purged from the American correctional system or, at least, relegated to a secondary status (Logan and Gaes 1993).

This portrayal is guilty of a measure of hyperbole: Treatment programs are still provided by many correctional agencies and are supported by the American public (Applegate, Cullen, and Fisher 1997). Even so, the viability of rehabilitation as an effective strategy to reduce crime remains a critical concern. If "treating offenders" does not work—if lawbreakers cannot, in fact, be changed into law abiders—then this eminently utilitarian goal of corrections would have no utility and should be abandoned. But if effective rehabilitation interventions do indeed exist and can be delivered in the context of correctional agencies, then the failure to do so would constitute imprudent policy.

The rejection of offender treatment by many parties in the 1970s had serious consequences. Policy changes reflect complex factors and typically cannot be attributed to single causes. Still, the tarnishing of the rehabilitative ideal created opportunities for other ways of "thinking about crime" to gain ascendancy and to influence the direction of correctional policy. As Blumstein (1997, 353) observes, "the vacuum created by the trashing of rehabilitation was soon to be filled by the other two crime control approaches available to the criminal justice system—deterrence and incapacitation" (see also Macallair 1993; Zimring and Hawkins 1995). Again, a central issue is whether the abandonment of, or loss of faith in, rehabilitation as a goal of corrections was deserved—whether other, more punitive approaches should have superceded treatment as the guiding correctional philosophy. Is there reason to conclude that offender treatment should be a core function of the correctional enterprise?

In this context, the main purpose of this essay is to assess the empirical status of correctional rehabilitation: Do correctional interventions reduce offender recidivism? Many definitions of "rehabilitation" abound (Gibbons 1999, 274; Sechrest, White, and Brown 1979, 20–21), but they tend to coalesce around three issues: (1) the intervention is planned or explicitly undertaken, not a chance or unwitting occurrence; (2) the intervention targets for change some aspect about the offender that is thought to cause the offender's criminality, such as his or her attitudes, cognitive processes, personality or mental health, social relationships to others, educational and vocational skills, and employment; and (3) the intervention is intended to make the offender less likely to break the law in the future—that is, it reduces "recidivism." We should note that rehabilitation does *not* include interventions that seek to repress criminal involvement through specific deterrence—that is, use punishment to make offenders too fearful of sanctions to recidivate. Again, we wish to assess whether interventions that conform to this general definition of rehabilitation "work" and, if so, to what extent and under what conditions.

This essay is divided into seven sections. In the first section, we discuss why rehabilitation's place as the dominant correctional approach was called into question. An answer that is commonly given is that research emerged that showed convincingly that "nothing works" to change offenders. We suggest, however, that broader social transformations led people at this particular historical juncture to be open to the message that rehabilitation was ineffective. Accordingly, many people, including criminologists and policymakers, took the position that rehabilitation was *not* simply based on a careful, objective reading of the research-based evidence. Therefore, perhaps we should be cautious about conclusions concerning offender treatment that are not based into the existing research into effective correctional interventions.

In this regard, the second section assesses the most influential review of research that questioned the effectiveness of rehabilitation—Martinson's (1974b) controversial essay "What Works?—Questions and Answers About Prison Reform." We examine "narrative" reviews of research that subsequently challenged the thesis that, for all intents and purposes, the correctional system was incapable of reforming offenders. In the third section, we consider the growing number of meta-analyses—quantitative syntheses of the results of evaluation studies—that have supplied important data on "what works" to change offenders (see Losel 1995). We pay special attention to the sophisticated meta-analyses conducted by Mark Lipsey (1992, 1995, 1999; Lipsey and Wilson 1998). In the fourth section, we review the efforts by Canadian psychologists to develop "principles of effective correctional intervention" (see, e.g., Andrews and Bonta 1998; Gendreau 1996b; Gendreau and Andrews 1990). We consider their conceptual framework and the empirical data they, and others, have accumulated that assess this approach. In the fifth section, we discuss a promising treatment program, adopted in a number of places in North America, that demonstrates that rehabilitation can reduce recidivism and be cost effective: "multisystemic therapy" developed by Scott Henggeler and associates (1997, 1999). In the sixth section, we explore the equally important issue of what *does not* work in changing offenders. In general, we report that punitively oriented approaches—many of which might be categorized as seeking to achieve specific deterrence—are not effective in reducing recidivism.

We end this essay in the seventh section, which urges the embrace of "evidence-based corrections" (see Sherman 1998). Although correctional policies are necessarily influenced by value, resource, organizational, and political factors (Rezmovic 1979), we suggest that programs that seek to reduce criminal involvement should be informed by the scientific data on what works. The goal should be to develop a clearer understanding of what the "best bets" are to successfully correct offenders (Rhine 1998). We also contend that rehabilitation should be "reaffirmed" as a goal of the correctional system—that the system should not be abandoned to other crime control approaches (see Cullen and Gilbert 1982). What precise role the treatment ideal should play in directing policy will, and undoubtedly should, remain an ongoing source of debate. Nonetheless, there are two reasons for supporting a prominent role for rehabilitation in the correctional enterprise: Rehabilitation reduces recidivism, and its use is supported by the public.

Attacking Rehabilitation

The rise of individualized treatment

The idea that correctional intervention should *reform* offenders—should change who they are so that they will be less criminal—goes back in the United States to the invention of the penitentiary in the first part of the 1800s (de Beaumont and de Tocqueville 1964 [1833]; Rothman 1971). The very word "penitentiary" suggests that the prison was not to be a place where offenders were merely warehoused or suffered their just deserts, but rather that the experience of incarceration was to transform their very spirit and habits of living. Why penitentiaries emerged is open to considerable debate. Some schclars see the American prison as a humanitarian invention—a step in the march of progress—that moved away from the gallows, the pillory, the whipping post, and other barbaric punishments; other scholars see it as emerging from a changing social context that prompted the view that solving crime could be achieved by removing offenders from the prevailing criminogenic, disorderly environment and placing them in the morally pure, orderly environment created behind institutional walls; and still others see prisons as part of a sinister plot by political and economic elites to create an institutional machine capable of disciplining the poor and transforming them into productive workers (see Foucault 1977; McKelvey 1977; Rothman 1971; see also Colvin 1997; Garland 1990; Ignatieff 1981). Regardless, it is clear that correctional interventions—including prisons—have a lengthy history in the United States of being justified as serving the goal of reforming their charges.

A collateral theme is that rehabilitation has typically been couched in terms of "doing good" for offenders (McGee 1969). To be sure, advocates rarely discount the idea that reforming offenders also has the general utilitarian effect of improving public safety. And critics have often claimed that, in reality, rehabilitation is not an instrument for encouraging good works but a "noble lie"—an ideology that allows coercion to flourish behind a mask of benevolence (Morris 1974; Rothman 1980). Still, at least ideologically, those endorsing rehabilitation do so in large part because it is believed to improve, invest in, or otherwise help the wayward. Importantly, this link between reforming offenders and doing good reflects Christian ideals. Until the 1900s, nearly all reform efforts were justified as religiously informed, if not inspired, undertakings. The religious overtones of the label "penitentiary" are obvious. But the appeal to religion can be found in numerous writings about corrections over time. Take, for example, Zebulon Brockway's (1871, 42) call for reform more than a century ago:

> If punishment, suffering, and degradation are deemed deterrent, if they are the best means to reform the criminal and prevent crime, then let prison reform go backward to the pillory, the whipping-post, the gallows, the stake; to corporal violence and extermination! But if the dawn of Christianity has reached us, if we have learned the lesson that *evil is to be overcome with good*, then let prisons and prison systems be lighted by this law of love. Let us leave, for the present, the thought of inflicting punishment upon prisoners to satisfy the so-called justice, and turn toward the two grand divisions of our subject, the real objects of the system, vis.: *the protection of society by the prevention of crime and reformation of criminals*. (Brockway's emphasis.)

The connection of rehabilitation to religion has been insufficiently explored by criminologists. It is likely, however, that religious belief, which remains extensive in the United States, contributes to the continuing appeal of rehabilitation as a goal of corrections and its association with doing good for offenders (Applegate, Cullen, and Fisher forthcoming). Even today, experiments are under way with "faith-based prisons" that seek to transform offenders through religious conversion and extensive programming and, both before and after release, to enmesh them in a community of Christian love (Niebuhr 1998; see also Cullen, Sundt, and Wozniak forthcoming).

If the principles of reforming offenders and doing good have informed rehabilitative efforts across time, the precise means of saving the criminally wayward has changed dramatically. Other scholars have provided accounts that detail the varied correctional interventions that have emerged at specific points in American history (see, e.g., McKelvey 1977; Rothman 1971, 1980; Rotman 1990, 1995). For our more limited purposes, however, we will focus on three major shifts that occurred in thinking about how best to reform offenders.

First, in the 1820s, the United States initiated its penitentiary experiment (Rothman 1971). Those with even a cursory familiarity with the history of corrections will recall the competition between the two classic designs for the penitentiary: the Pennsylvania "solitary" model and the Auburn "congregate" model. The reformative strategy underlying both these models, however, was the same. On one hand, insulate inmates—whether through solitary confinement or silence—from the corrupting influences in society and from associating with other offenders; on the other hand, reform their spirit and habits through religious influence and daily labor.

Second, by the latter part of the 1800s, this faith in the routines of prison to change offenders had lost its appeal. A belief in religious training and labor remained and, at times, education was added to the reformative prescription.

But a new ingredient—said to be the key to the whole enterprise—was added: the indeterminate sentence.

The field's leading practitioners, who were also its leading thinkers, met in Cincinnati in 1870 to develop a "new penology"; this was the first meeting of the National Congress on Penitentiary and Reformatory Discipline (Wines 1871). They noted that "the treatment of criminals by society is for the protection of society," but that the "supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering" (p. 541). The difficulty with past efforts, however, was that inmates had no clear incentives to change since, after all, their release date was fixed at the time of sentencing. "The prisoner's destiny should be placed, measurably, in his own hands," the Declaration of Principles read; "he must be put into circumstances where he will be able, through his own exertions, to continually better his own condition. A regulated self-interest must be brought into play, and made constantly operative" (p. 541). Such an incentive system should provide inmates with "hope" and stress "rewards, more than punishments" (p. 541). A "mark system" in prison would allow offenders to earn a higher level of prison classification that would provide more of life's amenities and more freedom. But the main incentive to change would be the indeterminate sentence that would link release from prison to reform. "Sentences limited only by satisfactory proof of reformation should be substituted for those measured by mere lapse of time" (pp. 541–542).

These prison reformers had only a rudimentary understanding of human behavior, basing their views on crime in the broader cultural views that lawbreaking was a sign that the offender lacked moral fiber, a fate caused by the offender's failure to be exposed to religion, education, and industrious labor. By the latter part of the 19th century, however, the social sciences were developing and advancing more academic and secular understandings of behavior. In the area of corrections, these insights were welcomed, for they ostensibly furnished deeper insight into what was causing an individual's criminality and, in turn, what a correctional intervention might then target for reformation (Rothman 1980). This marriage of the "new penology" and "positivist criminology" resulted in the creation of the "rehabilitative ideal"—a correctional paradigm that would reign supreme for nearly seven decades into the 20th century (Allen 1964). This paradigm had several interrelated components.

First, it embraced the belief that crime was caused by an array of psychological and social factors that, in a fashion unique to each individual, intersected to push a person to the other side of the law. Second and relatedly, the way to prevent future crime was to change the unique set of factors that drove each individual into crime. Third, the process of corrections should be organized to identify these crime-causing factors and to eliminate them. That is, the goal of

the correctional system should be rehabilitation. Fourth, since each offender's path into crime was different, the rehabilitation that was delivered had to be customized so that each offender was assessed on a case-by-case basis. That is, rehabilitation was to be *individualized*. Fifth, to provide individualized treatment, the state, through its agents in the correctional process, was to be invested with virtually unfettered *discretion*. Rather than base sanctions on the nature of the crime committed—a vestige of the unscientific approach to crime embraced by the classical school of criminology—sanctions would be directed to the individual needs and circumstances of offenders. Much like physicians do with those who are physically ill, correctional decisionmakers would use their expertise, rooted in the emerging social sciences, to diagnose and cure offenders. To do so effectively, they had to be *trusted* to exercise their discretionary decisions wisely and not coercively (Rothman 1980).

During the Progressive Era—roughly the first two decades of the 20th century—this line of thinking helped to refashion the criminal justice system. The roster of changes was remarkable: the invention of a nonadversarial juvenile justice system, whose purpose was to "save" wayward children; the development of substantial indeterminacy in sentencing; the spread of probation, with its focus on presentence reports and offender supervision; and the rise of parole boards, parole release, and parole officers. Together, this package of reforms was intended to make possible the individualized treatment of offenders. Thus, once an offender was convicted, the probation officer would study the offender's life and render a presentence report. Informed by this knowledge, the judge would have wide discretion in sentencing. Some offenders would be placed on probation, where they would be supervised by probation officers. These officers would both treat and control offenders, advancing their rehabilitation when possible and protecting public safety by sending the unreformed to prison for more intensive intervention. If sent to prison—by the judge initially or after failing on probation—offenders could earn their release through rehabilitation. Parole boards would make this judgement about which offenders were cured. Those returned to the community would be under the guidance of parole officers who would assist in their reintegration and, if necessary, return them to prison if their rehabilitation proved incomplete.

As Rothman (1980) and many others have pointed out, this ideal system was never implemented as intended. Although the contours of the correctional system changed—the juvenile court, indeterminate sentencing, probation, parole, and discretion became integral features of this system—the resources and knowledge needed to provide effective treatment to offenders were in short supply. Even so, these discrepancies between the ideal and reality were not viewed as fundamental flaws in the underlying paradigm of individualized

treatment but rather as shortcomings to be addressed. The goal of rehabilitation thus retained wide appeal, far outdistancing "get tough" ideas as the fashionable correctional philosophy.

A third period of reform, which sought to professionalize and sophisticate the rehabilitative ideal, was signaled by the conscious use of the term "corrections." In 1954, the American Prison Association—the professional organization to which the leaders in corrections belong—changed its name to the American Correctional Association. Prisons were now relabeled "correctional institutions" (Cressey 1958; Irwin 1980; Rotman 1995). This change was more than euphemistic. In the next two decades, an array of "treatment" programs was introduced inside prisons, such as individual and group counseling, therapeutic milieus, behavioral modification, vocational training, work release and furloughs, and college education. New and more sophisticated classification systems were implemented. Relatedly, there was a movement, which gained steam in the 1960s, to foster "community treatment" and the "reintegration" of offenders into the community.

Observers of American corrections were not unmindful of the problems associated with implementing programs that had the difficult task of changing lawbreakers (Cressey 1958; Gibbons 1999). The lack of resources and trained staff needed to carry out programs effectively was commonly cited. Still, in the mid-1960s, few criminologists or correctional administrators debated that rehabilitation was the enlightened course to pursue. Thus, it is instructive that Karl Menninger (1968) earned rave reviews for his book, *The Crime of Punishment.* Near the same time, Jackson Toby's (1964, 332) assessment of criminology textbooks led him to conclude "that students reading these textbooks might infer that punishment is a vestigial carryover of a barbaric past and will disappear as humanitarianism and rationality spread." Reflecting on that era, Don Gibbons (1999, 272) observes that "it seemed to many criminologists that they were about to become 'scholar-princes' who would lead a social movement away from punitive responses to criminals and delinquents and toward a society in which treatment, rehabilitation, and reintegration of deviants and lawbreakers would be the dominant cultural motifs." And the Task Force on Corrections (1967, 16), working under the auspices of the President's Commission on Law Enforcement and Administration of Justice, concluded their section on "the purpose of corrections" in this way: "The ultimate goal of corrections under any theory is to make the community safer by reducing the incidence of crime. Rehabilitation of offenders to prevent their return to crime is in general the most promising way to achieve this end." This consensus, however, would be shattered with remarkable force and speed in the years just ahead.

The decline of the rehabilitative ideal

Martinson's study: Does anything work?

In 1974, Robert Martinson published his celebrated review of evaluations of treatment studies, "What Works? Questions and Answers About Prison Reform." This essay, distilled from a 736-page book published a year later (see Lipton, Martinson, and Wilks 1975), provided a pessimistic assessment of the prospects of successfully rehabilitating juvenile and adult offenders. "With few and isolated exceptions," concluded Martinson (1974b, 25), "the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism." This technical phrasing would subsequently be reduced to its core idea: "Nothing works" in correctional treatment.

Despite reasonable criticisms that would have suggested a more moderate interpretation of the data reviewed by Lipton, Martinson, and Wilks, the "nothing works" doctrine assumed the status of unquestioned truth. Indeed, it is now clear that by the time Martinson's work appeared, many criminologists—and other commentators on corrections—had already decided that rehabilitation was a failed enterprise.

Martinson's coauthored research was based on the analysis of 231 studies, all of which had to have not only a treatment but also a comparison group, that were published between 1945 and 1967. In his essay, he organized his findings around a series of questions. For example, he posed the query: "Isn't it true that a correctional facility running a truly rehabilitative program—one that prepared inmates for life on the outside through education and vocational training—will turn out more successful individuals than will a prison which merely leaves its inmates to rot?" (Martinson 1974a, 25). Or, "Isn't what's needed is some way of counseling inmates, or helping them with deeper problems that have caused their maladjustment?" (p. 29). Or, "Isn't a truly successful rehabilitative institution the one where the inmate's whole environment is directed towards true correction rather than towards custody or punishment?" (p. 33). Again and again, however, Martinson found that these seemingly plausible views proved to be unsupported by existing studies.

Why was this the case? "Do all of these studies," asked Martinson (1974b, 48), "lead irrevocably to the conclusion that *nothing works*, that we haven't the faintest clue about how to rehabilitate offenders and reduce recidivism?" (emphasis added). Martinson stopped short of explicitly saying that "nothing

works," but he left little doubt that this is what he believed. A careful scholar, he admitted that the dismal performance of treatment programs could reflect two other factors: inadequate research studies that were incapable of measuring programs that really were working, and the inadequate implementation of programs that, if they had therapeutic integrity, would be effective. But "it may be," warned Martinson, "that there is a more radical flaw in our present strategies—that education at its best, or that psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behavior" (p. 49). Later in the year, Martinson (1974a, 4) noted that nowhere in the Lipton, Martinson, and Wilks (1975) book will one find the assertion that "rehabilitation is a 'myth.' " Still, he added, "that is a conclusion I have come to . . . based on the evidence made available by this volume" (p. 4).

The Lipton, Martinson, and Wilks (1975) analysis of studies should be recognized for what it was: a thorough, state-of-the-art review of existing literature. Its findings were not wildly misconstrued and were appropriately sobering for those holding utopian views on the prospects for rehabilitating offenders (see Sechrest, White, and Brown 1979). Still, Martinson's message that "nothing works" assumed an importance far beyond what a single review of research would normally achieve. Despite reasonable criticisms that would have suggested a more moderate interpretation of the data reviewed by Lipton, Martinson, and Wilks (Klockars 1975; Palmer 1975), the "nothing works" doctrine assumed the status of unquestioned truth. Criminologists did not, as is typical, manifest organized skepticism and call for more research; instead, they were resigned to eliminating the now obviously ineffectual practice of enforced therapy. As Blumstein (1997, 352) notes, Martinson's 1974 essay "created a general despair about the potential of significantly affecting recidivism rates of those presented to the criminal justice system." Writing not long after the essay appeared, Adams (1976, 76) stated that the "Nothing Works doctrine . . . has shaken the community of criminal justice to its root . . . widely assorted members of the criminal justice field are briskly urging that punishment and incapacitation should be given much higher priority among criminal justice goals."

It might be claimed that the quality of Lipton, Martinson, and Wilks' review and Martinson's provocative and persuasive publicizing of its dismal results combined to make the case against rehabilitation overwhelming. To some extent, criminologists and policymakers were persuaded by the evidence. We should realize, however, that in science, "anomalous" findings are often explained away so long as faith in the larger paradigm remains firm (see, e.g., Cole 1975; Kuhn 1962). And in criminal justice, one would be hard-pressed to show that correctional policies and practices hinge on "what the data say"

(England 1965; Finckenauer and Gavin 1999). Why the "nothing works" idea took on special salience involves more than a rational assessment of research.

It is instructive that Martinson was hardly the first to call into question the effectiveness of correctional intervention. In an early review of correctional interventions, Kirby (1954, 373) lamented that "most treatment programs are based on hope and perhaps informed speculation rather than on verified information." In 1958, Cressey poignantly observed that "most of the 'techniques' used in 'correcting' criminals have not been shown to be either effective or ineffective and are only vaguely related to any reputable theory of behavior or criminality" (p. 770). Echoing this view, Wooton's (1959, 334) review of existing studies led her to conclude that "as to the effectiveness of the comparatively humane methods now in use, surprisingly little evidence is available. . . . Clear evidence that reformative measures do in fact reform would be very welcome" (see also Glaser 1965). In the mid-1960s, Bailey's (1966) review of 100 studies from 1940 to 1960 reinforced the conclusion that current programs had no consistent impact on criminal involvement. "Evidence supporting the efficacy of correctional treatment," he observed, "is slight, inconsistent, and of questionable reliability." In 1969, Berleman and Steinburn's review of five major youth programs revealed "uniformly disappointing results: The provision of a preventative service seems no more effective in reducing delinquency than no service at all" (p. 471). Shortly thereafter, Robison and Smith's (1971, 80) assessment of correctional programs in California concluded that "there is no evidence to support any program's claim of superior rehabilitative efficacy." Surveying this landscape, Gold cautioned in January 1974 that it was a "time for skepticism" because "the best data at hand demonstrate that we have not yet solved the problem of the effective treatment of delinquency" (p. 22; see also Logan 1972).

It is equally instructive that as new data more favorable to rehabilitation appeared in the 25 years following Martinson's essay, the willingness of criminologists to accept these results has been grudging at best (Andrews and Bonta 1998; Gottfredson 1979). This is not to say that no changes in attitudes have taken place (Palmer 1992), but criminologists' skepticism about the possibility of effective intervention has been continuing and pervasive (Binder and Geis 1984). Again, the paucity of skepticism shown Martinson's essay is startling by comparison.

The "nothing works" doctrine in context

Together, these observations suggest that the inordinate appeal of the "nothing works" doctrine cannot be explained as merely a rational response to a persuasive argument. The key issue is why, at this particular historical juncture and not earlier in time, the message that nothing works in rehabilitation struck such

a chord. Indeed, it is now clear that by the time Martinson's work appeared, many criminologists—and other commentators on corrections—had already decided that rehabilitation was a failed enterprise. The empirical data only served to confirm what they already "knew." Subsequent contrary data supportive of treatment were resisted, if not dismissed, because they did not coincide with this view.

A number of commentators have traced the tarnishing of the rehabilitative ideal to the cataclysmic changes that transpired in the larger society from the mid-1960s to the mid-1970s (see, e.g., Allen 1981; Cullen and Gilbert 1982; Cullen and Gendreau 1989; Useem and Kimball 1991). During this period, protest and turmoil not only seemed ubiquitous but also was focused on the inability of the government to fulfill its promises that it would advance civil rights, pursue a just war in Vietnam, and conduct the political system ethically. Urban riots, deception by military officials and the apparently senseless deaths of soldiers, and Watergate belied these promises. "Grand expectations" were dashed, and a wide "confidence gap" involving the government grew commensurately (Lipset and Schneider 1983; Patterson 1996). Within criminal justice, the declining *trust in the state* was exacerbated by the 1971 riot and slaughter of inmates and guards at Attica Prison, which showed the willingness of the government to use extreme violence to suppress offender protests over prison conditions (Useem and Kimball 1991). An intense spotlight was placed on the actions of the state's representatives, especially judges and correctional officials. A defining question emerged: Could these people be trusted to exercise their *discretion*—the discretion legitimated by the rehabilitative ideal—in a prudent and benevolent way?

For *both* conservatives and liberals, the answer was decidedly negative (Cullen and Gilbert 1982). For conservatives, the problem was that judges and parole boards were too *lenient*; they used their discretion to release predatory criminals into the community where they would victimize innocent citizens. For liberals, the discretion given to state officials was applied inequitably and coercively. In their eyes, judges were free to discriminate against poor and minority offenders, while parole boards used their discretion to punish offenders who challenged the status quo of an inhumane prison regime. Under the guise of rehabilitation—the "noble lie" as Morris (1974) termed it—these officials were acting in bad faith (Cullen and Gilbert 1982).

It is noteworthy that many of the "reforms" proposed as an alternative to the Progressives' paradigm of individualized treatment involved the structuring or elimination of discretion. Both sides of the political spectrum thus embraced, initially, determinate sentencing and the abolition of parole. Liberals hoped that a "justice model" would limit the ability of the state to harm offenders; doing "less harm" replaced "doing good" as the goal to be pursued (see, e.g., Fogel

1979; Morris 1974). They argued that offenders should be given an array of legal rights to protect them and ensure their equal treatment during arrest, at trial, and in prison. Rehabilitation, to the extent that it was used, would be voluntary, not enforced. Inmates would be transformed from "correctional clients" into "citizens," with all the rights and obligations this status conferred (Conrad 1981).

Notably, the liberal "justice model" defined the purpose of sentencing as the imposition of just deserts. Advocates of this model thus forfeited any concern over crime control; only fairness was not to be the function of the criminal justice system. But this was a period of escalating crime rates and of the politicization of crime as an electoral issue. With disorder flourishing in society, conservatives thus rushed into this vacuum to give an unqualified answer about how to solve the crime problem: impose "law and order" (Macallair 1993). Accordingly, their attack on rehabilitation focused on ways to implement policies that would inhibit the ability of judges and correctional officials, especially parole boards, to mitigate the harshness of criminal sanctions. "Get tough" proposals for mandatory minimum sentences and lengthy determinate sentences were later followed by "three strikes and you're out" laws, which required life sentences for offenders with multiple convictions (Shichor and Sechrest 1996), and "truth in sentencing" laws, which required offenders to serve a high proportion (e.g., 85 percent) of a prison sentence imposed at trial by the judge (Ditton and Wilson 1999). Again, these initiatives shared the goal of increasing the time lawbreakers spent behind bars and of decreasing the discretionary power of judges and correctional officials to release offenders into the community.

We return, then, to the issue of the effectiveness of correctional rehabilitation. Conservatives greeted Martinson's study with the attitude of "we told you so," since they traditionally had viewed treatment as robbing the criminal justice system of its bite. But liberals, the heirs to the progressives who invented the rehabilitative ideal, were often harsher in their response toward offender treatment—sort of like a jilted lover seeking revenge. Martinson's study was held up triumphantly, as final proof of what they "knew to be true": that the correctional system was, as they suspected, morally and pragmatically bankrupt. In Attica's wake, such thinking resonated. A new language was created to speak about corrections. Wardens, prison guards, and probation and parole officers thus became "state agents of social control"; interventions were transformed into "degradation ceremonies" and instances of "net widening"; and offenders were portrayed as the "underdog, who tends to be seen as a romantic force engaged in a liberating struggle with retrogressive establishment institutions" (Binder and Geis 1984, 644). Revisionists, in an amazing exercise in reductionism, reconceptualized past reform efforts involving rehabilitation, such as the juvenile court, as being little more than thinly veiled strategies of power that

sought to discipline the poor and reinforce preexisting social inequalities (for a critical analysis, see Garland 1990).

There are, of course, elements of truth in these portrayals of rehabilitation as ineffective, excusing coercion, and diverting attention away from the class and racial inequalities that contribute to the uneven distribution of crime in the United States. These partial truths—these useful reminders of the dangers inherent in the rehabilitative ideal—were extreme in the early 1970s and beyond. Criminologists, a progressive bunch due to their self-selection into the field of criminology and disciplinary training, embraced an antirehabilitation position almost as a matter of professional ideology (Andrews and Bonta 1998; Binder and Geis 1984; Gottfredson 1979). The study of corrections became largely the study of social problems—of prison violence, crowding, and the like. In contrast to a field such as psychology, which has a commitment to develop effective interventions, criminologists paid scant attention to constructing knowledge about "what works" to change offenders (see also DiIulio 1987). If anything, they were praised and rewarded with opportunities to publish their research when they could show that an acclaimed program did not live up to its billing and that Martinson was right after all (Binder and Geis 1984; Gottfredson 1979).

In recent years, an important—albeit, not unassailable—technique for "making sense" of studies in corrections, and elsewhere, has emerged: the quantitative synthesis of research findings using meta-analytic techniques.

Palmer (1992) is correct in asserting that we must move beyond the naivete and exuberance that marked the advocacy of rehabilitation in the 1950s and early1960s and beyond the cynicism and pessimism that has reigned for much of the last three decades. Advocacy and criticism have their place, but the challenge is to escape ideology and rhetoric and think more openly regarding what the evidence has to say on effective correctional interventions (Adams 1976). Fortunately, a growing body of studies is now able to provide insights on this issue; it is to this topic that the remainder of this essay is devoted.

Reconsidering the "Nothing Works" Doctrine

Reviewing evaluation studies is tricky business. The studies often vary in quality and in the information conveyed. The types of studies included in a given treatment category—for example, group counseling or skill development—can

be so dissimilar in modality and clientele that one wonders if the within-group variation makes the categorization meaningless (Klockars 1975). And the findings can be so complex—reducing recidivism under some circumstances but not others—that providing firm answers about "what works" is a daunting exercise. How, then, can one make sense of the corpus of evaluation research on correctional interventions? Is it possible to see the forest through the trees?

In recent years, an important—albeit, not unassailable—technique for "making sense" of studies in corrections, and elsewhere, has emerged: the quantitative synthesis of research findings using meta-analytic techniques. We will return to this technique ahead, but, in essence, a "meta-analysis" measures statistically the average effect on recidivism that an intervention has across all studies; this "effect size" can also be computed for various conditions (e.g., characteristics of offenders, type of setting, study methodology). In the Martinson era, however, this technique was not yet generally available within the social sciences. Instead, scholars employed two interrelated strategies for assessing "what the research says": the narrative review and the vote counting or ballot box method.

In a narrative review, the author reads the existing literature and then conveys what this research has found. Sometimes studies are described in detail; sometimes conclusions are merely followed by a string of citations. Sometimes studies are given equal weight in making conclusions; sometimes one or two "high quality" studies will sway the interpretation of the research the author conveys. In the vote counting or ballot box method, the author gathers all the evaluation studies—usually breaking them down by different intervention categories (e.g., group counseling)—and then counts how many studies reduced recidivism, how many had no effect on recidivism, and how many may have increased recidivism.

Although these methods have value, they also have two common weaknesses. First, unless coding criteria are made explicit, they are open to considerable subjectivity. For example, how do we decide if a certain study is to be given more weight than another study? How much must recidivism be reduced to make it "count" as a positive finding? Must the difference between a treatment and comparison group be statistically significant even when the risk of a Type II error—of overlooking treatment effects that do in fact exist—is high? Second, even when the results are agreed upon, how do we decide if the glass is "half full" or "half empty"? How much success must treatment programs enjoy to say that they "work"? These and related issues marked the reaction to Martinson's (1974b) essay and to similar writings in the intervening years.

Martinson revisited

Following the publication of Martinson's (1976b) essay and the voluminous Lipton, Martinson, and Wilks (1975) report, the "nothing works" conclusion was challenged by a limited number of critics. Martinson and his associates, however, could draw solace not only from the widespread acceptance of their position but also from independent reviews conducted by other scholars that ostensibly confirmed their pessimistic findings (see, e.g., Bailey 1966; Berleman and Steinburn 1969; Fishman 1977; Greenberg 1977; Kirby 1954; Logan 1972; Lundman and Scarpitti 1978; Robison and Smith 1971; Sechrest, White, and Brown 1979; Wright and Dixon 1977). "Here and there a few favorable results alleviate the monotony," observed Greenberg (1977, 140–141), "but most of these results are modest and are obtained through evaluations seriously lacking in rigor. The blanket assertion that 'nothing works' is an exaggeration, but not by very much." Similarly, a panel commissioned by the National Academy of Science reviewed a sampling of studies taken from Lipton, Martinson, and Wilks (1975) and concluded that the authors had, with a few minor exceptions, accurately reported their results (Fienberg and Grambsch 1979; Sechrest, White, and Brown 1979). Due to the paucity of quality research on quality interventions, however, they remained agnostic about whether rehabilitation should be reaffirmed or replaced. "Given our current state of knowledge," the panel concluded, "no recommendation for drastic or even substantial change in rehabilitative efforts can be justified on empirical grounds" (Sechrest, White, and Brown 1979, 102).

In fundamental respects, therefore, the Lipton, Martinson, and Wilks (1975) volume was a responsible review of the existing literature at that time (1945 to 1967). Still, certain aspects of their study warrant closer attention because they affect how the findings of this classic work should be understood. First, in a claim invariably repeated in the criminological literature, Martinson (1974b) stated that the Lipton, Martinson, and Wilks research team reviewed 231 studies. Although technically correct, this figure is misleading. To be included in the research, a study had to include a measure for *any* of the following outcomes: recidivism, institutional adjustment, vocational adjustment, educational achievement, drug and alcohol readdiction, personality and attitude change, and community adjustment. Some studies contained data on more than one outcome, so that Lipton and colleagues were able to report the impact of treatment on 286 outcome measures. Importantly, however, their study was based on only *138* measures of recidivism—not 231 as is commonly believed.

Second, Lipton, Martinson, and Wilks (1975, 9) created 11 "treatment methods" or "independent variables" that were then cross-tabulated with the outcome measures, including recidivism: probation, imprisonment (sentence

length), parole, casework and individual counseling, skill development, individual psychotherapy, group methods, milieu therapy, partial physical custody (halfway house placement), medical methods (plastic surgery, castration), and leisure-time activities. Although useful to examine, it is difficult to see how probation, imprisonment, and parole can be classified as "treatments." If these categories are taken out of the analysis, the number of recidivism outcomes for the study, which started at 138, is reduced by 55 to 83 outcome measures. We might even argue that partial physical custody, medical methods, and leisure-time activities are not treatment modalities per se; if so, then the outcome measures for recidivism are lowered another 10 outcomes to 73. Regardless of where the line is drawn, the point is clear: The number of studies on which the "nothing works" conclusion was based was far lower than is commonly believed.

This is not a criticism of the study per se, since the Lipton, Martinson, and Wilks analysis was the most comprehensive review when it appeared. But it does mean that the number of studies per treatment category was not high: 7 for casework/individual counseling; 15 for skill development; 12 for individual psychotherapy; 19 for group methods; and 20 for milieu therapy. When the heterogeneity of studies falling into each category is examined, the difficulty in interpreting the results becomes clearer. As Klockars (1975, 58–59) points out, the "skill category," for example, included programs that provided such diverse services as vocational counseling, role modeling, training in data processing, and attending school. Although provocative, Klockars (p. 59) has a point when he claims "that the 'independent variable category' of 'skill development' is, at best, an editorial and organizational fiction that has no coherence on any other basis. It is thus preposterous," he continues, "to talk in any way about the effects of 'skill development' as a category, since as a category it simply doesn't exist."

Third, Lipton, Martinson, and Wilks did *not* include a category for "cognitive-behavioral" programs (for a description, see Andrews and Bonta 1998; Lester and Van Voorhis 1997). As Martinson (1974a, 5) noted, "methods not evaluated included work release, methadone maintenance, recent forms of so-called 'behavior modification,' and what have come to be called diversion methods" (see also Greenberg 1977, 130, who reviewed only three "behavior modification programs"). This omission is salient because there is growing evidence that these programs are among the most effective in reducing offender recidivism (Andrews and Bonta 1998; Gendreau 1996b). In any case, Martinson did not provide a systematic analysis of cognitive-behavioral programs, and thus the "nothing works" doctrine, as developed in his work, cannot be applied to this treatment modality.

Fourth, as Martinson (1976a, 1976b) pointed out, various intervention strategies did have positive impacts on outcome variables other than recidivism, such as institutional adjustment and educational achievement (see also Lipton, Martinson, and Wilks 1975, 532–558). Admittedly, the key criterion for assessing the utility of treatment interventions from a public policy perspective is whether crime is reduced; this is why recidivism is the primary focus of this essay. Even so, it is worthwhile to note that beyond their influence on recidivism, rehabilitation programs can have collateral beneficial effects on offenders—such as those identified by Martinson. In turn, in calculating the overall utility of treatment programs versus punishment-oriented sanctions that do not invest in improving offenders' lives, some weight might well be given to the collateral benefits gained by exposing offenders to varying treatment conditions.

In this regard, Gaes et al.'s (1999) review of existing research leads them to conclude that prison education and work programs likely reduce postprison recidivism. They also note, however, that an added advantage of these programs is that they tend to improve inmates' institutional adjustment (i.e., they have fewer disciplinary problems) and, after inmates are released into the community, to foster constructive employment and continued participation in education. In turn, when offenders are less disruptive while incarcerated and more productive in the community, society accrues benefits (see also Gerber and Fritsch 1995). Again, even if they are only of secondary importance, these benefits should not be overlooked when assessing the most prudent correctional interventions to implement.

Recounting the ballots

In his essay, Martinson (1974b) presented what amounted to a narrative review of the treatment studies analyzed. His main point was that "rehabilitation efforts . . . had no appreciable effect on recidivism." By rehabilitation *efforts*, Martinson (1976a) did not mean that no studies had positive effects in reducing recidivism. Instead, he was arguing that no *type* or category of intervention—such as group counseling or skill development—could be shown to *consistently* reduce recidivism across studies, across settings, and across offender types. In practical terms, then, a correctional administrator could not, with any confidence, say that the "best way" to rehabilitate offenders was to use one type of treatment rather than another.

In the best-known rebuttal to Martinson, Ted Palmer (1975) approached the "what works" issue from a different perspective: the vote-counting or ballot box approach. Palmer identified 82 studies cited by Martinson in his 1974 essay. He then counted how many of these studies showed that treatment had a "positive" or "partially positive" effect on recidivism. He calculated that 39

studies, *48 percent* of the total, could be categorized as reducing recidivism. This startling figure offered convincing proof, it seemed, that the "nothing works" doctrine was fallacious. Notably, subsequent analyses of other studies published at this time and later—most of which reached pessimistic conclusions about rehabilitation—revealed similar results. As Andrews et al. (1990, 374) observe, "reviews of the literature have routinely found that at least 40 percent of the better-controlled evaluations of correctional treatment services reported positive effects" (see also MacKenzie 1998).

Many programs fail to work because they either are ill-conceived (not based on sound criminological theory) and/or have no therapeutic integrity (are not implemented as designed).

The question, however, is what to make of this mixture of positive, null, and, to a lesser extent, negative findings. One possibility is that correctional intervention is chaotic and not patterned. Interventions that work occur almost randomly. In this view, Martinson's "nothing works" view would, at least pragmatically, be close to the truth; we would never know how best to intervene since a given treatment modality would be no more, or less, likely to decrease recidivism. The alternative view is that effective correctional intervention is not random but patterned. If so, then the task would be to uncover what it is about programs that work that distinguishes them from programs that do not work. This approach would move the discussion toward the demarcation of "principles of effective intervention"—an approach we will discuss in the upcoming section, "Principles of Effective Correctional Intervention."

Palmer (1975) made strides in this direction as he tried to identify patterns of results in the studies cited by Martinson (1974b). He concluded, for example, that positive results tended to be more plentiful in programs conducted in the community rather than in prison, for juveniles as opposed to adults, and for offenders at "middle risk." These provisional hypotheses underlie a broader insight—that future research should move beyond the global question of "what works?" to focus on this issue: "Which methods work best for *which* types of offenders, and under *what* conditions or in what types of settings?" (Palmer 1975, 150; Palmer's emphasis). The obvious risk to using this approach is that of unending specification—of arguing that rehabilitation would be effective if programs could be developed that could address an unending permutation of offender-treatment type-setting interactions. The practical limitations of the delivery of treatment services within correctional systems, however, means that treatment interventions cannot be customized to individual offenders. Instead, knowledge about "what works" will be useful only to the extent that it matches

offenders to treatment modalities that are broad and can be applied to *categories* of offenders (e.g., high-risk offenders to cognitive-behavioral therapy).

Finally, we must consider that the Lipton, Martinson, and Wilks review may alert us to an ongoing challenge in corrections: that many programs fail to work because they either are ill-conceived (not based on sound criminological theory) and/or have no therapeutic integrity (are not implemented as designed). Scholars undertaking reviews at this time were exasperated not only by the poor methodology used in many evaluations but also by the paucity of programs that made sense criminologically (see, e.g., Bailey 1966; Sechrest, White, and Brown 1979; Wright and Dixon 1977). As Greenberg (1977, 141) commented following his review of correctional interventions, "I never thought it likely that most of these programs would succeed in preventing much return to crime. Where the theoretical assumptions of programs are made explicit, they tend to border on the preposterous. More often they are never made explicit, and we should be of little surprise if hit-or-miss efforts fail." Thus, the question that hung in the balance after Martinson's sobering essay was whether the quality of programs and quality of research would improve to the point where meaningful conclusions could be drawn about the effectiveness of correctional treatments. Sykes' (1958, 133–134) observation ultimately proved prescient: "The greatest naivete, perhaps, lies in those who believe that because progress in methods of reforming the criminal has been so painfully slow and uncertain in the past, little or no progress can be expected in the future."

Martinson reconsiders

Following the Lipton, Martinson, and Wilks (1975) analysis, Martinson and Wilks received funding to update the previous study. Due to Martinson's untimely death, the findings of this synthesis of studies were contained only in a 1979 article by Martinson. This work presents only a sketchy discussion of the methods employed in the analysis. Apparently, however, Martinson first computed the average recidivism rate (which he called the "reprocessing" rate) for all offenders who entered the criminal justice system; presumably he also standardized this figure for the specific population that was being examined in any given analysis (i.e., offenders in the community versus those in institution). He then compared how programs using treatment faired when their results were juxtaposed with this average rate. A total of 555 studies, published between World War II and the late 1970s, was used to calculate both the average recidivism rate and the effectiveness of treatment programs.

Strikingly, Martinson (1979, 254) moved close to Palmer's (1975) view when he stated that the "critical fact seems to be the *conditions* under which the program is delivered" (Martinson's emphasis). His central finding was that treatments

delivered in prison reduced recidivism while those delivered in group homes increased recidivism. Regardless, Martinson retreated from his "nothing works" position. "On the basis of the evidence in our current study," he stated, "I withdraw this conclusion. I have often said that treatment added to the networks of criminal justice is 'impotent' . . . the conclusion is not correct." Instead, he observed that "treatments will be found to be 'impotent' under certain conditions, beneficial under others, and detrimental under still others" (p. 254). It is noteworthy that Martinson's retraction of the "nothing works" doctrine largely fell on deaf ears.

Bibliotherapy for cynics

The status of Martinson's essay (1974b) was so exalted that it remained, for some time, one of the most cited works in criminology (Cousineau and Plecas 1982). As Martinson (1979) himself understood, however, numerous evaluation studies—often with more rigorous methodological and/or statistically sophisticated analyses—were emerging. Even so, as noted earlier, many criminologists were content to treat the "nothing works" essay as the "final word." Empirical reality and their ideological preferences had conveniently coincided, and they now had no need to reopen the issue; rehabilitation was dead and new studies were of little interest.

In contrast, Paul Gendreau and Robert Ross—as well as their colleagues Don Andrews and James Bonta—came from a different sociopolitical context and thus examined the "nothing works" controversy without such intellectual predispositions. All were Canadian psychologists who had experience implementing, administering, and evaluating correctional programs (and later would be seen as comprising a "Canadian school" of rehabilitation). Unlike scholars in the United States, these psychologists did not view rehabilitation as being imbued with larger symbolic significance—it was not a case of "enforced therapy coercively applied by state agents of social control in a politicized criminal (in)justice system" (see Binder and Geis 1984). Instead, the issues surrounding rehabilitation, while important, were more prosaic and empirical: To what extent does correctional treatment reduce recidivism? Under what conditions? They came to the "nothing works" controversy, however, with one disciplinary bias. As clinicians schooled in learning theory, they believed that criminal behavior was largely learned. To the extent that this assumption was true, then, the "nothing works" idea made little sense to them. Offenders, like everyone else, acquire attitudes, beliefs, and behaviors through reinforcement and punishment. But the "nothing works" doctrine implicitly suggests "that criminal offenders are incapable of re-learning or of acquiring new behaviors" (Gendreau and Ross 1979, 465–466). "Why," Gendreau and Ross (1979, 466) wondered, "should this strange learning block be restricted to this population?"

Gendreau and Ross (1979, 1987) conducted two extensive narrative reviews of research published in journals and books in the post-Martinson era. Their first review, which assessed 95 studies, covered 1973 to early 1978; their second review, which assessed 130 studies, covered 1981 to 1987. Together, these two works pointed to three major conclusions.

First, a major reason why correctional programs fail is that they lack therapeutic integrity. We would not be surprised, for example, if young children turned out to be illiterate if their teachers were untrained, had no standardized curriculum, and met the children once a week for half an hour. Yet many treatment programs were in such a state. On closer inspection, even ostensibly well-designed studies often lacked the kind of "integrity" needed to change offenders' behavior. Quay's (1977) critical analysis of Kassebaum, Ward, and Wilner's (1971) evaluation study is instructive. Although the Kassebaum, Ward, and Wilner research was cited as a prime example of a methodologically rigorous evaluation that showed that treatment was ineffective, Quay found that the real culprit was the lack of integrity of the treatment program. Thus, the program had a weak conceptual base, had counseling groups that were unstable, and employed counselors who were unqualified, were not adequately trained, and did not believe the program would be effective. Similarly, in a study of 27 empirical investigations of applied behavioral programs for delinquency prevention, Emery and Marholin (1977) found that in only 9 percent of the cases were the behaviors targeted for change by the treatment individually selected for each of the youths in the program. Further, in just 30 percent of the studies were the referral behaviors and the behaviors targeted for change clearly related (e.g., one client was referred for stealing cars but was treated for promptness). For Gendreau and Ross (1979, 467), researchers had to move beyond the analysis of inputs and outputs and begin to examine what was going on inside the program:

> To what extent do treatment personnel actually adhere to the principles and employ the techniques of the therapy they purport to provide? To what extent are the treatment staff competent? How hard do they work? How much is treatment diluted in the correctional environment so that it becomes treatment in name only?

Second, despite the many obstacles that correctional programming had to surmount, Gendreau and Ross (1979, 1987) uncovered literally scores of examples of treatment interventions that were successful in reducing recidivism. The sheer number of these programs belied the idea that "nothing works" and, taken as a whole, provided much-needed "bibliotherapy for cynics." In particular, Gendreau and Ross (1979) revealed that behaviorally oriented programs (e.g., incentive systems, behavioral contracts)—heretofore largely ignored in the criminological literature—showed signs of being especially effective (see also

Gendreau and Ross 1983–1984). Further, they noted that successful programs targeted "criminogenic needs"—that is, known predictors of recidivism that are amenable to change (e.g., antisocial attitudes and behaviors).

Third, they observed that offenders—like other humans—are marked by individual differences. Some of these differences pertain to their criminality; offenders differ in their level of risk for reoffending. And some differences relate to their personalities and their ability to learn. Until recently—with the growing popularity of the life-course paradigm—criminologists had been disinterested in, if not outright hostile to, the idea that individual differences are important in understanding criminal involvement (Andrews and Bonta 1998; Binder and Geis 1984). Regardless, Gendreau and Ross (1979, 1987) presented evidence that the effectiveness of treatment programs can vary substantially, to the extent that offenders' individual differences are measured and taken into account in the delivery of services. They suggested, for example, that high-risk offenders benefited the most from treatment interventions and that offenders with low intellectual abilities would benefit more from programs in structured learning situations (1987, 370–374). These beginning insights, which built on the pioneering work of Andrews and colleagues (1986; see also Warren 1969), would subsequently evolve into more formal "principles of effective intervention" (see later section, "Ineffective Correctional Interventions").

Meta-Analysis and Treatment Effectiveness: Knowledge Construction in Corrections

The evaluation literature on correctional treatment programs often seems a bewildering mixture of programs that encompass different settings, treatment modalities, samples of offenders, quality of intervention, and so on. Making sense of this diverse research—discerning "what works"—is an enormous challenge. The narrative review, as we have seen, is one tool that can be applied to this task. It has the advantage of allowing the reviewer to focus on the richness of individual studies and, by giving different weights to different studies, to interpret what the research, taken together, "really means." The disadvantages of this approach, however, place limits on what the narrative review can contribute. As Redondo, Sanchez-Meca, and Garrido (1999, 252) note, traditional narrative reviews:

> tend to suffer from (a) selective inclusion of studies, (b) differential subjective weighting of studies in the interpretation of a set of findings, (c) misleading interpretation of study findings, (d) failure to examine other

study characteristics as potential explanations for consistent results across studies, and (e) failure to examine the effect of moderator variables in relationship to the outcome variable.

One strategy that is being used increasingly in both the physical and social sciences to review research studies is "meta-analysis" (Hunt 1997; *Science* 1994). This approach attempts to conduct a quantitative synthesis of the research findings of a body of literature. Instead of asking for a vote count (how many studies work and how many do not?), a meta-analysis computes for each study the "effect size" between the treatment and the outcome variable—which, in rehabilitation studies, is recidivism. The effect size for any study could be a negative number (indicating that the treatment increases recidivism), could be zero (indicating that the treatment had no effect), or could be a positive number (indicating that the treatment reduces recidivism). The computations in the meta-analysis include calculating the effect size in every study, regardless of whether a particular study found a treatment intervention to be statistically significant or nonsignificant. The end result of the meta-analysis is a number—the "average effect size"—that is a precise point estimate of the relationship of the treatment on the outcome measure across all studies. Typically, the effect size statistic is reported as a Pearson's r and its confidence interval (Rosenthal 1991; Schmidt 1996).

One issue is how to interpret the r value when trying to assess the difference in the recidivism rates of the treatment and control groups. It is noteworthy that under most circumstances, the r value can be read at face value (Gendreau, Goggin, and Paparozzi 1996). In other words, an effect size of r=0.20 means that there is exactly, or very close to, a 20-percent difference in the recidivism rates of the treatment and control groups. To illustrate further, Gendreau, Smith, and Goggin (forthcoming) examined the data that Andrews et al. (1990, 403–404, table A1) provided on "appropriate" correctional treatment programs, which, on average, reduced recidivism rates by 31 percent. In all, there were 53 effect sizes or r values reported. They compared the r value with the numerical difference in recidivism between the treatment and control groups under conditions where (1) the recidivism base rate was not overly extreme (30 to 70 percent) and (2) the ratio of the sample sizes between the treatment and control groups was less than three to one. In this case, the mean value of r was within one percentage point of the actual difference in recidivism between the treatment and control groups. When there were extreme base rates of recidivism and/or large differences in the samples sizes, the average difference between the r estimate and the difference in recidivism of the treatment and control groups was still only 2 percentage points.

Another way to convey the substantive meaning of the *r* value in a meta-analysis is through Rosenthal's (1991) "BESD" (or binomial effect size display) statistic. In this approach, the recidivism rate for a treatment and a control group are computed from a base rate of 50 percent. As Andrews and Bonta (1998, 7) note, if "the correlation between treatment and reoffending is r=0.20, then the recidivism rate in the treatment group is 40 percent (50 percent minus 10 percent) compared with 60 percent in the control group (50 percent plus 10 percent)."

No method of reviewing studies, however, is without its weaknesses, including meta-analysis (*Science* 1994). The validity of the conclusions suggested by a meta-analysis will be affected by "what goes into it." Obviously, whether the sample of studies is exhaustive and includes methodologically sound evaluations will affect the confidence we can have in the results. Less apparent but equally important is the coding scheme used by the researcher. The way studies are coded—into what treatment categories, for example—will influence what knowledge the meta-analysis will produce. In particular, if the coding is not theoretically informed, then important conceptual issues will not be addressed. Further, as with other types of research, a meta-analysis cannot guarantee that the knowledge that is produced is practically useful—that is, that the insights gained from quantitatively synthesizing existing studies can be employed effectively to guide the development of real-world programs. We will revisit these issues later.

There are, however, advantages to using the meta-analytic technique to organize research findings. First, meta-analysis can detect effects that traditional narrative or ballot box reviews fail to capture. Because the statistical power of many evaluation studies is low due to use of small sample sizes, real effects are often missed as studies are counted one by one (Schmidt 1996). By summing effect sizes across a sample of studies regardless of their statistical significance, however, meta-analysis avoids this problem. Thus, as Lipsey (1999, 619) notes, meta-analysis is able:

> to identify effects not clearly visible to traditional reviewers . . . because research findings come to us in the form of signal-to-noise ratios, where the signal is the intervention effect we are attempting to estimate and the noise is the background, sampling error, measurement error, and between-study variability that tends to obscure the signal. Meta-analytic techniques allow some of that background noise to be controlled statistically in ways not available to traditional reviewers and, hence, may reveal effects not previously detected.

Second, it is possible to assess whether methodological factors (e.g., the quality of the research design) influence the size of a treatment effect by introducing

them into a multivariate analysis. If a treatment effect is robust after these factors are taken into account, then confidence is increased that the effect is real and not a methodological artifact. Third, and relatedly, through a multivariate analysis, it also is possible to assess whether the magnitude of a treatment effect is conditioned by substantively important "moderating factors," such as the risk level of offenders or the type of treatment modality employed. Fourth, various statistical procedures (e.g., "fail safe N") have been developed to provide guidance on the likelihood that the findings of a meta-analysis are, or are not, vulnerable to being reversed as unpublished studies are uncovered and future evaluation studies are conducted (Orwin 1983; Rosnow and Rosenthal 1993). No such statistics, of course, exist for traditional reviews. Fifth, any given meta-analysis is open to replication by other scholars, either on the same data set or on a different data set. In this way, coding decisions or the sample of studies chosen for review can be assessed independently. Again, if a treatment effect is sustained in these replications, then we can have confidence that we have found that something does indeed work to reduce recidivism.

Sixth, and perhaps most noteworthy, by presenting information in a precise, parsimonious way, meta-analysis facilitates the process of constructing knowledge about a topic, such as correctional treatment. Narrative reviews are unwieldy and tend to permit only broad generalizations. In contrast, meta-analysis is better able to convey information that shows, in a more delimited and clear way (e.g., listing effect sizes and their confidence intervals in a table), what does not work, what does work, and (as noted) what factors moderate what works. Let us hasten to say that these data do not allow definitive answers; nonetheless, they do illuminate what we currently know from the existing body of research and what data need to be collected to advance our knowledge base. They also provide clearer guidance on what factors effective programs have in common and, in turn, on what empirically based features correctional personnel should consider including in the treatment interventions they initiate.

In summary, meta-analysis is, like all methodological techniques, open to biases that should be understood and weighed. It is not the only way to decipher the effectiveness of correctional treatment. These caveats stated, meta-analysis is an important means to synthesize research knowledge. It has revised a wide variety of potentially erroneous conclusions about the "reality" of effective intervention in medicine, education, and psychology (Hunt 1997; *Science* 1994). As we will see, meta-analyses have played an important role in challenging the "nothing works" doctrine in corrections. "It is no exaggeration," observes Lipsey (1999, 614), "that meta-analysis of research on the effectiveness of rehabilitative programming has reversed the conclusion of the prior generation of reviews on this topic."

Does treatment work?

Overall effect size

It is useful to place the issue of correctional effectiveness in the broader context of whether planned interventions are capable of improving problematic human behavior in general (e.g., mental health, educational performance, developmental difficulties). Might it be, as some have vehemently suggested, that human service interventions just do not work? In a review of 302 meta-analyses, Lipsey and Wilson (1993) addressed this issue. They discovered that across an array of psychological, educational, and behavioral treatments, there was a positive relationship between interventions and outcome measures, with problem behaviors targeted for change in treatment groups reduced by about 25 percent compared with control groups. "The number and scope of effective treatments covered by this conclusion are impressive," they observed, "and the magnitude of the effects for a substantial portion of those treatments is in a range of practical significance by almost any reasonable criteria" (p. 1199).

Even if interventions are effective with a range of other behaviors, the question still remains whether they are able to reduce delinquent and criminal behavior. Lipsey and Wilson (1993) listed 10 meta-analyses that were conducted on evaluations of treatment programs for offenders. In all cases, a positive effect size was reported. There was a tendency, however, for the treatment effect size for offender interventions to be lower than that for interventions targeting other outcomes for change. The lower effect size may reflect the difficulty of changing antisocial conduct and/or the lower quality of interventions with offenders (Losel 1995). Still, it is instructive to reiterate that every meta-analysis of offender treatment indicated that programs, in the aggregate, reduced problem behavior. As such, there is no evidence that offenders cannot be rehabilitated.

Losel (1995) has conducted the most comprehensive assessment of the meta-analyses of offender rehabilitation programs. In a review of 13 meta-analyses published between 1985 and 1995, Losel found that the mean effect size ranged from a low of 0.05 to a high of 0.18. This finding has been confirmed in an updated review by Redondo, Sanchez-Meca, and Garrido (1999, 252). The consistency of the positive effect of treatment in these meta-analyses is important because it suggests that this result, at least in broad terms, is not dependent on the sample of studies selected and coding decisions made by individual authors. Indeed, even meta-analyses conducted by scholars unsympathetic to rehabilitation produced positive effects (see Whitehead and Lab 1989). Losel estimates that across all the meta-analyses, "the mean effect size of all assessed studies probably has a size of about 0.10" (p. 89). Using Rosenthal's (1991) BESD statistic, this would mean that the recidivism rate for the treatment group would be 45 percent, while the rate for the control group would be 55 percent.

According to Losel (1995, 90–91), however, this overall effect size might be underestimated. Treatment groups, for example, are often compared with control groups that do not receive "no intervention" but some other type of criminal justice sanction, which might involve some kind of treatment. The use of dependent variables that are measured dichotomously and with official measures of recidivism also may attenuate the effect size. Thus, Lipsey (1992, 98) notes that official indicators of delinquency have low reliability because "it is largely a matter of chance whether a particular delinquent act eventuates in an officially recorded contact with an agent of law enforcement or the juvenile justice system." He calculates that when this fact in taken into account, the "deattenuated effect size" for the interventions "doubles" (p. 98).

Heterogeneity in effect size

It appears, then, that across *all* interventions, correctional rehabilitation programs reduce recidivism. Within any given sample of studies, however, the effect sizes for certain programs may range from zero (if not a negative number) to 0.40 or higher. What accounts for this heterogeneity in effect sizes? There are two possibilities. First, differences in effect sizes may be due to methodological strengths and weaknesses within studies. Second, the heterogeneity may reflect differences in program-related characteristics, such as the treatment modality, the setting in which the treatment is delivered, the quality and dosage of the intervention, and the type of offender receiving the treatment (for a thoughtful review of these issues, see Losel 1995). These methodological and program-related characteristics are often referred to as "moderating variables" because they condition whether the effect size for an intervention is higher or lower.

It is clear that methodology accounts for a portion of the variability in effect sizes across programs (see, e.g., Lipsey 1992; Redondo, Sanchez-Meca, and Garrido 1999). At this stage, however, it is difficult to establish which methodological variables might be most important in explaining program heterogeneity. In large part, this is because authors of meta-analyses often use different coding schemes to categorize methodological issues. Perhaps more important, many evaluation studies do not provide enough information to systematically code how the effect size varies by methodological consideration. There is some evidence, for example, that studies using more rigorous evaluation designs produce lower effect sizes, but this finding is not consistent across meta-analyses (see, e.g., Redondo, Sanchez-Meca, and Garrido 1999). It also is claimed that effect sizes are higher for published studies than for unpublished studies, because evaluation studies that have statistically significant effects are more likely to be submitted and accepted for publication in research journals. Not all

meta-analyses, however, have supported this contention (Redondo, Sanchez-Meca, and Garrido 1999). More generally, there is evidence that even when methodological considerations are taken into account, the "method adjusted" effect size does not differ dramatically from the "observed" effect size for most intervention categories (Lipsey 1999). That is, in general, methodological factors do not "explain away" the variation in effect sizes among treatment programs.

It also is challenging to discern what program-related characteristics moderate the effect size achieved by interventions. There is some evidence that interventions may be more effective in reducing recidivism when they are delivered in the community and for younger offenders (Andrews et al. 1990; Cleland et al. 1997; Losel 1995; Redondo, Sanchez-Meca, and Garrido 1999). Again, however, these relationships are not found in all meta-analyses and may be more complicated than they seem on the surface. For example, in their meta-analysis of 32 European programs, Redondo, Sanchez-Meca, and Garrido (1999) report that the effect size was nearly twice as high for youthful offenders as for adult offenders. But this difference, the authors contend, was likely due to the use of more effective programs with juveniles as opposed to an age-graded amenability or resistance to treatment (but see Cleland et al. 1997).

There is more consensus on what types of interventions achieve the lowest and highest effect sizes—that is, consensus on what does and does not work to reduce recidivism. As will be explored in more detail in a later section, deterrence-based interventions tend to be particularly ineffective in diminishing criminal involvement (see, e.g., Andrews et al. 1990; Lipsey 1992; Lipsey and Wilson 1998). According to Losel (1995, 91), it also appears that "less structured approaches such as casework or individual and group counseling are repeatedly less successful." In contrast, notes Losel, there is growing evidence from existing meta-analyses that "it is mostly cognitive-behavioural, skill-oriented and multi-modal programmes that yield the best effects" (p. 91); that is, programs that tend to be based on social learning principles, seek to create human capital in offenders, and use more than one treatment modality to target multiple problems that offenders may be experiencing (see also Andrews et al. 1990; Palmer 1995; Lipsey 1992; Redondo, Sanchez-Meca, and Garrido 1999).

Even so, Palmer (1995) cautions that in terms of recidivism, not all cognitive-behavioral programs are successful and not all less effective interventions—such as counseling programs—are unsuccessful. In part, this finding is due to the fact that treatment labels may mask what is actually done in the program (e.g., a counseling program can involve behavioral measures). This finding may also be due to an intervention's effectiveness reflecting other programmatic

characteristics, such as staff training, how services are delivered, the matching of staff and offender styles, and the offender population that was targeted for change. As Palmer points out, constructing knowledge about effective interventions involves exploring two interrelated concerns: First, we need to learn more about what combinations of program-related factors work in concert to reduce recidivism. Second, we need to move beyond inductively uncovering—through meta-analyses or other means—correlates of successful programs to developing more coherent theories for explaining *why* programs do or do not work. We will revisit these issues in the section on "Ineffective Correctional Interventions."

"Real world" issues

Treating serious offenders

Although rehabilitation appears to have a consistent effect in reducing recidivism, a skeptic might wonder whether these programs only work with low-risk, relatively petty offenders—the "less hardened" cases (Lipsey and Wilson 1998). If so, then the programs might be effective, but only in decreasing conduct that, while a nuisance, is not exceedingly consequential. But this does not appear to be the case. The main debate in this area is not over whether treatment interventions can diminish the criminality of high-risk, serious offenders, but rather whether they can be equally effective with lower risk offenders. Some meta-analyses suggest that rehabilitation works more effectively when it targets high-risk offenders, while others indicate that the effect size of interventions is not moderated by risk levels (Andrews et al. 1990; Losel 1995; Redondo, Sanchez-Meca, and Garrido 1999). Regardless, the research clearly shows that serious offenders are not beyond the reach of correctional treatment.

Lipsey and Wilson (1998) furnish the most convincing support of this conclusion in their meta-analysis of 200 studies that evaluated the effects of intervention on serious juvenile offenders. They report that across all studies, the difference in recidivism between the treatment and control groups was 6 percentage points (the equivalent of 44 percent for the treatment group versus 50 percent for the control group). This reduction "represents a 12 percent decrease in recidivism (6/50)" (p. 318).

As with meta-analyses of all offenders, however, the heterogeneity around this mean was considerable. While some programs did not affect or even increased recidivism, the most successful interventions had a difference between treatment and control groups of more than 20 percentage points. These results held for samples of youths who were institutionalized and in the community and held for samples of more serious youthful offenders under supervision in the community. They also were sustained when the effect sizes for interventions

were adjusted for methodological differences in studies. Finally, Lipsey and Wilson (1998) note that, with a few exceptions, the roster of effective and ineffective treatments appears similar to what meta-analysis of studies reveals for offenders in general. Programs thus tend to have effects that occur, with some variation, across offender populations.

In short, when lumped together, interventions reduced criminal involvement; and when the "best programs" were singled out, the crime savings were substantial. According to Lipsey and Wilson (1998, 338), the reduction in recidivism is "an accomplishment of considerable practical value in terms of the expense and social damage associated with the delinquent behavior of these juveniles." In this regard, Cohen (1998) has calculated the cost-effectiveness of "saving a high-risk youth." Such cost-benefit analyses are based on imprecise estimates of the rate of criminal participation by such youths (the so-called "lambda") and on assessments not only of property loss and lost wages but the more amorphous category of pain and suffering. Still, Cohen presents a thoughtful analysis that takes into account various values—higher and lower—for the components in the equation used to calculate what society is spared economically when a youth is diverted from a life in crime. The most noteworthy finding is that the tipping point for an intervention to be cost effective is remarkably low. The average high-risk youth will cost society an estimated $1.7 to $2.3 million. Depending on when the intervention takes place (how early) and what it costs, a treatment program can "pay for itself" with a success rate in the range of 1 to 5 percent (see also Aos et al. 1999; Greenwood et al. 1996; Lipsey 1984). Although not directly comparable, it is perhaps instructive nonetheless that medical treatments that reduce potentially serious illness by 3 to 5 percent are considered very cost effective (Hunt 1997; Rosnow and Rosenthal 1993).

In short, when lumped together, interventions reduced criminal involvement; and when the "best programs" were singled out, the crime savings were substantial. According to Lipsey and Wilson (1998, 338), the reduction in recidivism is "an accomplishment of considerable practical value in terms of the expense and social damage associated with the delinquent behavior of these juveniles."

This kind of cost-benefit analysis is not intended to be used to fully determine policy decisions. For example, although governmental jurisdictions that administer treatment programs may save costs for community residents who are spared victimization, they may strain their budget since the monetary savings from the crimes prevented do not bring in revenues to the jurisdiction. Of

course, this consideration is true for cost analyses of other criminal justice interventions, including whether prisons are cost effective (see, e.g., DiIulio and Piehl 1991; Piehl and DiIulio 1995). The broad point is merely that the reductions in recidivism achieved by many treatment interventions arguably are meaningful in the real world (see also Rosenthal 1991). They also may compare favorably with more punitive interventions that are ineffective in reducing recidivism when conducted in the community (Cullen, Wright, and Applegate 1996; Lipsey and Wilson 1998) and enormously costly when limited to incarceration (Greenwood et al. 1996). Further, the cost-effectiveness of rehabilitation programs will be commensurately enhanced to the extent that the treatment modality is prudently selected (based on the evidence of what works) and targets groups that include high-risk offenders (Lipsey 1984).

Practical programs

Okay, a skeptic may continue, rehabilitation programs seem to work with serious offenders. But even if that is true, isn't it also true that many treatment programs are established or guided by the researchers who conduct the evaluations? Might they not "cook" the data? Or, even if they do not, aren't these programs different than everyday, run-of-the-mill interventions that do not have researchers around to train the staff, to provide manuals detailing how to deliver treatment, to monitor and advise workers, and, more generally, to ensure therapeutic integrity? Also, isn't it true that what might work in the special circumstances of a well-controlled experimental study might not work in the real and bleak world of American corrections?

Lipsey's (1999) meta-analysis of 205 "demonstration" programs in which researchers were involved, as opposed to 196 "practical programs," sheds light on this issue. He found that the effect size for practical programs, while positive (3-percent reduction in recidivism), was only about half that of the demonstration programs. Skeptics might conclude that these results confirm their suspicions that everyday, real-world programs achieve, at best, modest reductions in recidivism. Those of a more optimistic orientation, however, might argue not only that treatment effects are, once again, positive, but also that the quality of demonstration programs might well be replicated in practical programs if efforts were made to do so. The lack of training for human service workers, the use of less effective treatment modalities, the failure to develop and utilize well-designed and comprehensive treatment manuals, and the failure to monitor therapeutic integrity—these and other problems are not inherent in correctional rehabilitation but are due to policy decisions that can be rectified. The difficulty with the skeptic's position is that it is self-fulfilling: By arguing that nothing can change, there is no possibility that anything will change.

But the issue does not end here. As Lipsey points out, there is considerable heterogeneity *among* practical programs—some do not work well at all, but others are quite successful. When method-adjusted effect sizes are examined, the differences in recidivism between the treatment and control groups for practical programs for the best categories of treatment programs are 10 percentage points or higher (or a 20-percent reduction in recidivism off the base rate of 50 percent).

Lipsey (1999) also presents an analysis that profiles programs in terms of whether they were more or less effective on four programmatic dimensions: (1) the type of service or intervention used with the offender (e.g., intensive aftercare versus shock incarceration); (2) the role of the juvenile justice system (e.g., those administered by juvenile justice personnel versus others; services delivered from a juvenile justice facility versus those not delivered from such a facility); (3) the amount of service furnished (e.g., longer versus shorter duration of service); and (4) the characteristics of participating juveniles (e.g., characteristics associated with higher recidivism rates versus those associated with lower recidivism rates). Programs were scored "1" or "0" on each dimension, revealing two major findings. First, programs with total scores of 3 or 4 achieved reductions in recidivism of 10 to 12 percentage points; those with 2 favorable characteristics had a 5-percentage-point reduction in recidivism; those with 1 or 0 had no effect on or increased recidivism. These results show that practical programs that are well designed are effective; those that are not do not work. Second, 57 percent of the programs studied fell into the ineffective category (0 or 1). This finding indicates that the majority of practical programs are not designed in a way that will allow them to be effective (see also Gendreau and Goggin 1997).

Again, this consideration returns us to the issue of whether the implementation of effective programs is realistic. It is instructive that even if only in the minority, numerous practical programs are, in fact, in place and operating effectively across the United States. In these cases, choices were made *in the real world* that have resulted in interventions that reduce recidivism. Lipsey is correct, we believe, in advising that meta-analyses have helped us to construct knowledge about treatment effectiveness; the challenge is whether that knowledge will be applied. What the research does show, observes Lipsey (1999, 641), "is that such beneficial effects do not come automatically—a concerted effort must be made to configure the programs in the most favorable manner and to provide the types of services that have been shown to be effective, and avoid those shown to be ineffective."

Principles of Effective Correctional Intervention

As we have seen, meta-analyses have played—and will continue to play—an important role in identifying the factors that are likely to increase treatment effectiveness. The limitation of such an inductive approach to knowledge construction, however, is that it is not guided by an underlying, coherent framework; it is not, in short, *theoretically* informed. The risk is that it will devolve into a matter of abstracted empiricism—of dredging the data for "significant" relationships without any understanding of why elements of successful programs should be interrelated (Palmer 1995). Let us hasten to say that we are not arguing that meta-analyses should be abandoned. Rather, we are suggesting only that, while an invaluable tool, they need to be supplemented by efforts to build theories of effective intervention.

Over the past decade or so, the aforementioned group of Canadian psychologists—Andrews, Bonta, Gendreau, and Ross most prominent among them—have attempted to move in this direction of developing "principles of effective correctional intervention." Beyond their own clinical experiences, they derived these principles from the empirical literature on "what works" with offenders—including meta-analyses, narrative reviews, and studies of individual programs—and, more generally, from the behavioral change literature in psychology. Their aim has been to illuminate the contents of the "black box" of treatment programs. As Gendreau (1996b, 118) observes:

> The thrust of [our] work . . . has been to look into the "black box" of treatment programs. Unlike Martinson and his followers, we believe it is not sufficient just to sum across studies or file them into general categories. The salient question is what are the principles that distinguish between effective and ineffective programs? What does it mean that an employment program was offered?—what exactly was accomplished under the name of "employment"? As a result of endorsing the perspective of opening the black box, we have been able to generate a number of principles of effective and ineffective intervention.

The principles of effective intervention have been conveyed in considerable detail in a number of forums, which readers are invited to consult (see, e.g., Andrews 1995; Andrews and Bonta 1998; Gendreau 1996b). Our goal here is to present the core ideas of this approach and then to share recent evidence assessing its validity.

Guiding interventions

The first principle is that interventions should *target the known predictors of crime and recidivism for change*. This principle starts with the assumption that correctional treatments must be based on *criminological* knowledge—what they call the "social psychology of criminal conduct" (Andrews 1995; Andrews and Bonta 1998). There are two types of predictors that place offenders at risk for crime: "static" predictors—such as an offender's criminal history—which cannot be changed, and "dynamic" predictors—such as antisocial values—that can potentially be changed. In this perspective, these dynamic predictors or risk factors are typically referred to as "criminogenic needs."

In general, behavioral interventions are effective in changing an array of human behavior. With regard to crime, they are well-suited to altering the "criminogenic needs"—antisocial attitudes, cognitions, personality orientations, and associations—that underlie recidivism.

In investigating risk factors or predictors of crime, it is possible that the research could have indicated that the major predictors are static. If so, then the prospects for rehabilitation would have been minimal. But this did not turn out to be the case. Meta-analyses reveal that many of the most salient predictors are *dynamic* (Andrews and Bonta 1998; Gendreau, Little, and Goggin 1996). These include: (1) "antisocial/procriminal attitudes, values, beliefs and cognitive-emotional states (that is, personal cognitive supports for crime)"; (2) "procriminal associates and isolation from anticriminal others (that is, interpersonal supports for crime)"; and (3) antisocial personality factors, such as impulsiveness, risk-taking, and low self-control (Andrews 1995, 37; see also Andrews and Bonta 1998, 224–225; Gendreau, Little, and Goggin 1996). Conversely, the research suggests that many factors thought to cause crime, such as low self-esteem, are unrelated or only weakly related to recidivism. Thus, targeting these factors for intervention will produce little, if any, change in offenders' conduct.

Second, *the treatment services should be behavioral in nature*. In general, behavioral interventions are effective in changing an array of human behavior. With regard to crime, they are well-suited to altering the "criminogenic needs"—antisocial attitudes, cognitions, personality orientations, and associations—that underlie recidivism. For this reason, Andrews argues that behavioral interventions satisfy the criterion of "general responsivity"; that is, they match the needs of offenders. Andrews (1995, 56) notes that these interventions would "employ the cognitive behavioural and social learning techniques of modelling, graduated practice, role playing, reinforcement, extinction, resource provision, concrete

verbal suggestions (symbolic modelling, giving reasons, prompting) and cognitive restructuring." Reinforcements in the program should be largely positive, not negative. And the services should be intensive, lasting 3 to 9 months and occupying 40 to 70 percent of the offenders' time while they are in the program (Gendreau 1996b). In contrast, other treatment modalities lack general responsivity. Andrews and Hoge (1995, 36) contend that less effective treatment "styles are less structured, self-reflective, verbally interactive and insight-oriented approaches." Punishment approaches do not target criminogenic needs and thus are among the most ineffective interventions with offenders.

Readers wishing to learn more about the nature of cognitive-behavioral programs might wish to consult general source material in psychology on this intervention (Masters et al. 1987; Spiegler and Guevremont 1998) and works discussing the application of this approach to offenders (Andrews and Bonta 1998, 286–288; Gendreau 1996b, 120–122; Lester and Van Voorhis 1997). Here, we have space to review several relevant points. At the core of any behavioral program is the principle of operant conditioning: that is, that a behavior will be learned if it is immediately reinforced. Reinforcers, which are usually pleasant or desirable, increase or strengthen the behavior in question. There are four basic types of reinforcers: (1) material (e.g., money, goods); (2) activities (e.g., recreation); (3) social (e.g., attention, praise, approval); and (4) covert (thoughts, self-evaluation).

The most common forms of behavioral programs nowadays are known as "cognitive-behavioral." There are several different types of strategies in this regard—some rather subtle in their differences—but essentially they all attempt to accomplish two aims: First, they try to cognitively restructure the distorted or erroneous cognition of an individual; second, they try to assist the person to learn new, adaptive cognitive skills. In the case of offenders, existing cognitive distortions are thoughts and values that justify antisocial activities (e.g., aggression, stealing, substance abuse) and that denigrate conventional prosocial pursuits regarding education, work, and social relationships. Most offenders also have minimal cognitive skills enabling them to behave in a prosocial fashion. In light of these deficits, effective cognitive-behavioral programs attempt to assist offenders: (1) to define the problems that led them into conflict with authorities, (2) to select goals, (3) to generate new alternative prosocial solutions, and then (4) to implement these solutions. Cognitive therapists must engender a relationship with the client that is open and caring, yet remains within the ethical limits of the therapist-patient relationship.

Thus, in any cognitive-behavioral program within corrections, an observer would witness some of the following scenarios or approximations thereof. The predominant antisocial beliefs of the offender in question are identified. In a

firm yet fair and respectful manner, it is pointed out to the offender that the beliefs in question are not acceptable. If the antisocial beliefs continue, emphatic disapproval (e.g., withdrawal of social reinforcers) always follows. Meanwhile, the offender is exposed to alternative prosocial ways of thinking and behaving by concrete modeling on the part of the therapist in one-on-one sessions or in structured group learning settings (e.g., courses in anger management). Gradually, with repeated practice, and always with the immediate application of reinforcers whenever the offender demonstrates prosocial beliefs and conduct, the offender's behavior is shaped to an appropriate level.

Third, *treatment interventions should be used primarily with higher risk offenders, targeting their criminogenic needs (dynamic risk factors) for change.* In contrast to conventional wisdom, higher risk offenders are capable of change. The most substantial savings in recidivism are acquired by providing them with treatment services. Further, "less hardened" or lower risk offenders generally do not require intervention because they are unlikely to recidivate. Subjecting them to structured, intrusive interventions is an imprudent use of scarce resources and, under certain circumstances, may increase recidivism (Andrews and Bonta 1998, 243). The most effective strategy for discerning the risk level of offenders is to rely not on clinical judgements but on actuarial-based assessment instruments, such as the Level of Supervision Inventory (Bonta 1996; Gendreau, Goggin, and Paparozzi 1996).

Fourth, *a range of other considerations, if addressed, will increase treatment effectiveness.* These include, among others, conducting interventions in the community as opposed to in an institutional setting; ensuring that the program uses staff who are well trained, are interpersonally sensitive, are monitored, and know how to deliver the treatment service; and following offenders after they have completed the program and giving them structured relapse prevention ("aftercare") (Andrews 1995; Andrews and Hoge 1995; Gendreau 1996b). Among the most important considerations is "specific responsivity." This concept refers to the practice of matching styles and modes of treatment service to the learning styles of offenders (Andrews and Bonta 1998, 245; Gendreau 1996b, 122–123). Factors that might be taken into account in service delivery are the offenders' lack of motivation to participate in the program, feelings of anxiety or depression, and neuropsychological deficits stemming from early childhood experiences (e.g., physical trauma). Cullen et al. (1997, 403) outline a concrete example of how specific responsibility functions in the case of offenders with intellectual deficits:

> [O]ffenders who have low IQs would perform more effectively than higher functioning offenders in an instructional format that requires less verbal and written fluency and less abstract conceptualizations. In addition, they would

likely profit from a more extensive use of tangible reinforcers and from repeated, graduated behavioral rehearsal and shaping of skills. Moreover, therapists should be selected who relate optimally to offenders' styles of intellectual functioning and to the content of the treatment modality.

Testing the principles of effective treatment

In 1990, Andrews et al. presented a systematic test of whether interventions reflecting the core principles of effective intervention achieve, as hypothesized, greater reductions in recidivism. In a meta-analysis of 80 program evaluation studies, they coded studies as to whether they: (1) delivered services to high-risk offenders, (2) targeted criminogenic needs for change, and (3) used "styles and modes of treatment (e.g., cognitive and behavioral) that are matched with client need and learning styles"—that is, were characterized by "responsivity" (p. 369). Based on this scheme, they categorized treatment interventions as "appropriate" (consistent with these three principles of effective intervention), "inappropriate" (inconsistent with these principles), and "unspecified" (could not be categorized due to lack of programmatic information). Recall that this approach differs from previous meta-analyses that categorized programs largely by generic treatment categories (e.g., counseling, skills enhancement, vocational, deterrence). In contrast, the Andrews et al. approach seeks to look inside the "black box" of programs and to code interventions according to an *a priori,* theoretically based scheme. This is why they contend that their meta-analysis is "clinically relevant and psychologically informed" (Andrews et al. 1990, 372).

Across all programs, the effect size was 0.10. There was considerable heterogeneity in effects, however, in the direction predicted by the principles of effective treatment. The effect size for appropriate interventions was 0.30, the equivalent of a 30-percent reduction in recidivism. The effect size for unspecified interventions was less than half this figure, 0.13. Notably, the effect size for inappropriate interventions was –0.07, meaning that these "treatment" groups had a recidivism rate 7 percentage points higher than the control groups.

Some critics have implied, if not directly stated, that Andrews et al.'s "appropriate" category was based on tautological reasoning: Anything that reduced recidivism—presumably found by dredging the data—was subsequently labeled "appropriate" (see, e.g., Logan and Gaes 1993; for rebuttals, see Andrews and Bonta 1998; Cullen and Applegate 1997). This is a strange criticism because, even if true, it would mean only that Andrews et al. had built their theory inductively (see Lipsey 1999). In fact, however, the framework used to code the data was preexisting (see Gendreau 1989), and the meta-analysis constituted a test of their theoretical views. Regardless, subsequent research from other scholars has independently lent support to main features of Andrews et al.'s principles of effective intervention.

"It is interesting," observed Lipsey (1992, 159) in his meta-analysis, "that the treatment types that show this larger order of effects are, with few exceptions, *those defined as most 'clinically relevant' in the Andrews et al. review*" (emphasis added). Antonowicz and Ross (1994), scholars familiar with the principles of effective intervention, reached the same conclusion in their meta-analysis. They found that "successful rehabilitation programs" were more likely to have these factors: "(a) a sound conceptual model; (b) multifaceted programming; (c) the targeting of 'criminogenic needs'; (d) the responsivity principle; (e) roleplaying and modeling; and (f) social cognitive skills training" (p. 97). Support can also be drawn from the preliminary findings from the meta-analysis conducted by the Correctional Drug Abuse Treatment Effectiveness Project. In this replication of the Andrews et al. study, Pearson, Lipton, and Cleland (1996) found that "appropriate" interventions had an effect size (0.22) that far outstripped the effect sizes for "unspecified" (0.09) and "inappropriate" (–0.07) programs.

It is also noteworthy that the original Andrews et al. (1990) meta-analysis has subsequently been extended twice to examine a larger body of studies (Andrews and Bonta 1998; Andrews, Dowden, and Gendreau 1999). The database from the 1999 work now consists of 230 studies that produce 374 effect sizes. The mean effect size across the studies is 0.08 or an 8-percentage-point difference in recidivism between the treatment and control groups. When analyzed by the extent to which the main principles of effective intervention are met (risk, need, and responsivity), the results are, once again, in the hypothesized direction. When no principles are addressed, the programs' mean effect size is –0.02; when the treatment conforms to one principle, the effect size is 0.02; for two principles, the effect size climbs markedly to 0.18; and when a treatment program conforms to all three principles, the effect size is 0.26. These findings reinforce the conclusion that programs that combine "favorable" or "appropriate" features are capable of achieving meaningful, if not substantial, reductions in offender recidivism (see also Lipsey 1999).

Further considerations

Two additional issues warrant consideration. First, a potentially important consideration is whether the principles of effective intervention differ by gender and race. The dearth of research on this issue precludes making definitive conclusions. An important research opportunity, for example, would be to explore whether gender and race function as "specific responsivity" factors that affect offender learning styles and the optimal way in which to deliver treatment services (Dowden and Andrews 1999).

There is beginning to be evidence, however, that the effects of treatment programs do *not* differ by gender; those that "work" for males also work for females, and those that "don't work" for males also don't work for females. Thus, in a meta-analysis in which programs were categorized according to the principles of effective intervention from "inappropriate" to "appropriate," the findings for women paralleled those for men (compare Dowden and Andrews 1999 with Andrews et al. 1999). Similarly, Lipsey (1999, 20) notes in his meta-analysis of juvenile programs that the "magnitude of program effects on recidivism" did not differ "according to the gender and ethnic mix of the juveniles in the sample." Thus, it might be possible to offer the *provisional* conclusion that the principles of behavioral change are similar across offenders, regardless of gender and race. Again, however, much more research into this issue is needed.

Second, a potential criticism of the treatment approach based on the principles of effective intervention is that as a psychological approach, it seeks mainly to change the offender rather than the criminogenic context in which he or she is enmeshed. A reasonable concern is whether such programs will work if offenders are "simply returned to the community that caused them to become criminals in the first place." A considered response to this issue is thus required.

In a sense, the data speak for themselves: The effectiveness of the treatment interventions is assessed by examining recidivism data of offenders who are, in fact, in the community. The assumption that community influences ultimately swamp treatment effects also risks being overly deterministic. It ignores the fact that many people with prosocial values who reside in the community with offenders are not lawbreakers, and it ignores the possibility that intra-individual cognitive change can allow people to resist the lures of crime. Nonetheless, advocates of the principles of effective intervention are not unmindful of potential community influences. Thus, it is instructive that they find that rehabilitation programs have larger effects on recidivism when conducted not behind bars but in the community. This finding may be attributable to the difficulties of delivering services within institutions, but it also may reflect the benefits of working to change offenders while they are living in, and are affected by, their "natural" social environment. Further, rehabilitation advocates also strongly favor "aftercare" programs that function much like "booster shots" in medicine, providing offenders with the guidance and support needed to deal with pressing problems, to develop effective solutions, and to stay on a prosocial life course.

None of these considerations, of course, precludes broader social reforms or community-based prevention programs that lessen the criminogenic factors in the local neighborhood. In a very real way, it is likely counterproductive to pit psychologically relevant correctional treatment interventions *against* programs

that seek to transform the fabric of the neighborhood. A more promising strategy might well be to pursue interventions that target for change the proximate causes of crime within offenders and the criminogenic forces that loom in the larger social context.

Finally, in the next section, we turn to a promising community-based treatment intervention—"multisystemic therapy"—that is predicated on the assumption that the "multiple social systems" that surround children and adolescents are implicated in their conduct problems. This approach embraces the principles of effective intervention but also seeks to specifically address features of the social context that foster antisocial behavior. In a very real way, multisystemic treatment offers one solution to the problem of correctional interventions that, although it can be shown to be effective through evaluation research, may not attack the full array of criminogenic forces that impinge on at-risk individuals.

Multisystemic Therapy: A Model Rehabilitation Program?

Meta-analyses are an invaluable resource in identifying the factors that are associated with successful rehabilitation programs. Even so, it must be remembered that meta-analysis is a statistical technique. This approach provides direction as to what features of interventions enable them to reduce recidivism and have other positive outcomes. Even so, this "direction" or guidance as to what works is not the same as identifying concrete programs that actually have worked in the real world. A special challenge, therefore, is to uncover programs that have proven to be effective in reducing recidivism, preferably in diverse locations. That is, we need "model programs" that can be "copied" successfully. It is beyond the scope of this essay to supply a lengthy catalog of such programs (see, however, Cullen and Applegate 1997; Gendreau 1996b, 119–120; Gendreau and Goggin 1996, 40; Ross, Antonowicz, and Dhaliwal 1995; Ross and Gendreau 1980), but we will focus briefly on one program whose prospects seem especially promising: Multisystemic Therapy (MST).

Developed by Scott Henggeler and associates (see, e.g., Henggeler 1997, 1999; Henggeler et al. 1998), MST has been implemented in 25 locations in the United States and Canada. It has been shown to produce marked reductions in recidivism and in other problem behaviors among "serious anti-social youths" (see, e.g., Borduin et al. 1995; Brown et al. 1999; Henggeler 1997; Henggeler et al. 1997; Henggeler, Pickrel, and Brondino forthcoming; Schoenwald, Brown, and Henggeler 1999; Schoenwald, Ward et al. 1999). In addition, MST has proved to be cost effective. In one estimate, the yearly cost per juvenile was $4,000 versus a cost of $12,000 for the "usual" criminal justice sanctioning for

serious delinquents (Henggeler 1999). Although transporting the intervention to other sites has been challenging (Henggeler et al. 1997), MST has achieved reductions in recidivism and has been cost effective in various locations and with various populations of troubled youths (Aos et al. 1999).

Conforming to the principles of effective intervention

Although developed independently of the Canadian school of effective correctional intervention (see again Andrews and Bonta 1998; Gendreau 1996b), MST conforms closely to the core principles of effective treatment. It would thus clearly be identified as an "appropriate" treatment by Andrews et al. (1990; see also Andrews, Dowden, and Gendreau 1999).

First, MST is rooted in social psychological theory and is empirically based. Second, it addresses the "need principle" by targeting for change the individual, family, school, and peer factors that underlie antisocial conduct. The selection of these factors is based on "causal modelling studies of delinquency and substance abuse" (Henggeler 1999, 2). It focuses on "changing the known determinants of youths' antisocial behavior" (Schoenwald, Brown, and Henggeler 1999, 3). Third, MST conforms to the "risk principle" by focusing primarily on high-risk youths. Fourth, this approach meets the "general responsivity principle" by employing behavioral treatment modalities. "MST interventions," observe Schoenwald and colleagues (1999, 5), "integrate techniques from those pragmatic and problem-focused child psychotherapy approaches that have at least some empirical support, including pragmatic family therapies (e.g., strategic, structural, behavioral family systems approaches), cognitive-behavioral techniques, and behavioral parent training." MST also attempts, as much as possible, to individualize interventions and thus be "specifically responsive" to youths in treatment.

Further, MST is consistent with the principle that for interventions to be effective, they must have therapeutic integrity and be intensive. MST thus provides counselors with 5 days of initial training, "booster" training sessions, constant supervision and support, and weekly 1-hour consultations with MST "experts" (Schoenwald, Brown, and Henggeler 1999). Similarly, services are delivered to offenders and their families for a period of 3 to 5 months. Contact is daily at first, and counselors are available for intervention 24 hours a day, 7 days a week.

The success of MST is instructive. Given the extent to which this program conforms to the principles of effective intervention, it can be seen as a field test of the principles' validity. In short, MST provides added confirmation that "appropriate" treatments are our "best bet" for reducing recidivism among serious offenders.

Unique features of MST

The principles of effective intervention are broadly stated and can encompass a variety of treatment programs. Accordingly, it is useful to learn about the unique features of MST that may also contribute to its success. In fact, it is these more specific factors that may be useful to replicate in the delivery of other intervention strategies. Three "unique features" warrant consideration (for more detail on MST, see Henggeler et al. 1998; Schoenwald, Brown, and Henggeler 1999).

First, MST is *not* based on an intrapsychic view of human behavior that believes that antisocial conduct is altered merely by probing an individual's personality orientation. Instead, its approach is social-ecological in the sense that it views individuals as enmeshed in multiple systems, including the family, peer group, school, and community. Interventions thus must be "multisystemic," targeting for change criminogenic aspects of the individual and the contexts in which he or she is situated. In practical terms, this means intervening not only with an antisocial youth but also with how parents supervise and otherwise interact with the youth, steering the youth into prosocial peer-group interactions, and working with schools to enhance the youth's educational and vocational skills. This approach involves defining a broad set of goals to be reached in a given intervention (e.g., improve parental supervision, decrease truancy). In turn, intermediary goals (e.g., teach a parent how to supervise, monitor a youth's school attendance each morning) are identified that, if systematically and sequentially attacked, will allow the broader goals, including the reduction of the youth's recidivism, to be attained (Henggeler et al. 1998; Schoenwald, Brown, and Henggeler 1999). The goals and strategies to achieve these goals are constantly monitored and, if necessary, revised.

Second, MST provides intensive services within the home and community; its goal is to avoid placing youths in institutions. To accomplish this goal, an intervention team made up of one doctoral-level supervisor and three to four master's-level therapists is employed. Each therapist carries a caseload of 4 to 6 youths/families; the group supervises 50 cases yearly. The advantage of the group approach is that it facilitates supervision (which is conducted mainly in a group meeting) and creates a pool of resources—knowledge, specialized skills, time available—to help intervene with cases that would not be available to a therapist who was a sole practitioner (Schoenwald, Brown, and Henggeler 1999).

Third, MST provides therapists with considerable support (e.g., training, supervision, resources) but also holds therapists accountable for the results of their efforts. As Henggeler (1999, 4) notes, "MST does not follow the 'train and

hope' approach to mental health services." MST thus is based on the dual considerations that therapists must be given the knowledge and resources to be successful and know that the failure to intervene effectively may mean that the therapist should, as Henggeler (p. 8) puts it, "consider another line of work." More generally, MST is assiduous in its fidelity to treatment integrity, which cannot be ensured in the absence of therapists' support and accountability.

Ineffective Correctional Interventions: Do Control-Oriented Programs Work?

A central policy issue is whether the movement to "get tough" on crime has enhanced public safety. In particular, the massive rise in the prison population—which increased sixfold in three decades, with more than 1.2 million offenders now in State and Federal institutions (Gilliard 1999)—has created an intense interest in whether the extensive use of imprisonment has a meaningful incapacitation effect or, at the aggregate level, deterrent effect. Other scholars have focused on this issue; thus, we will not do so in this essay (compare, for example, Bennett, DiIulio, and Walters 1996 with Clear 1994 and Currie 1998; see also Nagin 1998). Instead, we will concentrate on a byproduct of this more general "get tough" movement: the evolution and assessment of correctional programs that seek to reduce crime by placing greater controls on offenders. These approaches include, for example, longer rather than shorter prison terms, "scared straight" programs, intensive supervision programs, and (to a degree) "boot camps."

We should reiterate that an important focus of the effort to develop principles of effective intervention is not only to discern what "works" to inhibit recidivism but also to identify correctional programs that do not reduce crime and improve public safety. Again, the "principles" approach to corrections is, at its core, social scientific, starting with the premise that the predictors of criminal behavior can be known empirically and then targeted for change through carefully designed interventions. In contrast, most of the control-oriented correctional programs that emerged from the recent "get tough" era were not based on a social-scientific perspective on criminal behavior but on the "common sense" understanding that increasing the pain and/or surveillance of offenders would make them less likely to commit crimes. In the case of boot camps, the theory of criminality was somewhat different: It was assumed here that conformity was caused by a lack of character, which was rectified first by "breaking down offenders" and then "rebuilding them." But the reliance on a folk understanding of criminal conduct was no less pronounced. In the end, those embracing the principles of effective intervention predicted that control-oriented programs, which meet few if any of these principles, would prove ineffective in reducing recidivism. The data suggest that this prognostication was correct.

First, there has been a longstanding debate over whether the prison experience is a deterrent or, in fact, provides a "school of crime" (Bonta and Gendreau 1990, 1991; Murray and Cox 1979). The empirical research on this issue is complex and fairly limited (see Lipton, Martinson, and Wilks 1975). It is instructive, however, that a recent meta-analysis conducted by Gendreau, Goggin, and Cullen (1999) questions whether prison can be considered a "treatment" that reduces recidivism. Their investigation indicates that even when the risk level of offenders is taken into account, those sent to prison have a higher rate of recidivism than those given community sanctions. Further, it appears that longer prison sentences are associated with *greater* criminal involvement, with offenders in the "more imprisonment" category having a recidivism rate 3 percentage points higher than those in the "less imprisonment" category. These results, of course, are inconsistent with the thesis of specific deterrence.

Again, there is no evidence that punishment-oriented "treatment" programs specifically deter or otherwise reform offenders.

Second, meta-analyses are consistent in showing that deterrence-oriented interventions are ineffective. Most meta-analyses include a limited number of evaluations of punishment-oriented programs as part of the sample of studies they assess. These programs fall into the category of "inappropriate" interventions according to the principles of effective treatment. The results are clear: They do not work to reduce recidivism. For example, in Lipsey's (1992, 124) meta-analysis, deterrence programs heightened recidivism 12 percentage points. In Lipsey and Wilson's (1998, 332) study of programs for serious, violent youths, deterrence programs heightened recidivism 3 percentage points. In Andrews et al. (1990, 382), sanctioning interventions without human service treatment increased recidivism 7 percentage points; in a followup to this study, the increase was found to be 2 percent (Andrews and Bonta 1998, 270; Andrews, Dowden, and Gendreau 1999). Again, there is no evidence that punishment-oriented "treatment" programs specifically deter or otherwise reform offenders (see also MacKenzie 1998).

Third, the intermediate sanctions movement of the 1980s and beyond was undertaken mainly as a means of reducing prison crowding by *punishing* offenders in the community. As one noted advocate of these sanctions commented, "we are in the business of increasing the heat on probationers . . . satisfying the public's demand for just punishment. . . . Criminals must be punished for their misdeeds" (Erwin 1986, 17). The main conduit for these sanctions was "intensive supervision probation (or parole)"—commonly referred to as "ISPs." By watching offenders closely and presumably increasing the certainty that misdeeds would be detected, offenders were to be specifically deterred from

offending. ISPs also often involved other means of detection, especially random drug testing but also electronic monitoring and house arrest. Restitution to victims was commonly part of a community-based sanction. "Boot camps," also called "shock incarceration," became fashionable as well.

How well did these types of programs work? With isolated exceptions, they did not fare well. There is some evidence that intermediate sanctions that included treatment achieved some reductions in recidivism (Gendreau, Cullen, and Bonta 1994). But aside from this glimmer of optimism, the research did not show that purely punitive intermediate sanctions diminished recidivism rates. Thus, the best experimental and quasi-experimental studies revealed that these programs had virtually no influence on recidivism (see, e.g., Petersilia and Turner 1993; MacKenzie and Shaw 1993). Narrative reviews, some of which were quite extensive, reached the same conclusion (Cullen, Wright, and Applegate 1996; Fulton et al. 1997; Gendreau et al. 1993; Gendreau and Ross 1987; MacKenzie 1998).

More recently, Gendreau, Goggin, and Fulton (2000) conducted a thorough meta-analysis of 88 comparisons of ISP-type programs with control groups that received "lesser or no sanction." Only restitution was associated with a decrease in recidivism (4 percentage points) with a comparison with controls. Two sanctions, ISP and drug testing, had no effect on recidivism. Scared straight and electronic monitoring produced a 5-percentage and 7-percentage point increase in recidivism, respectively. Subsequently, Gendreau et al. (1999) have expanded the database to include 150 comparisons involving 56,602 offenders. The overall effect size for all types of intermediate sanctions was found to be 0 percent. Together, these results reveal that relying on punishment to achieve "correctional treatment" is unlikely to work and thus is an imprudent investment of resources.

Conclusion

Robert Martinson's role in the debate over correctional rehabilitation proved to be both pivotal and enduring. His "nothing works" essay was pivotal because it lent legitimacy to the movement, already under way, to replace rehabilitation as the dominant, if not ideologically hegemonic, correctional philosophy. What had been a matter of opinion seemingly now became a matter of facts, as opponents of rehabilitation could wave Martinson's (1974b) study in the air and proclaim that science had shown offender treatment to be a fraud. In the subsequent years, however, the opponents of rehabilitation have not shown fidelity to the proposition that evidence should help to guide correctional policy and practice. At times, it appeared as though only a few people seemed able, or at least willing, to read the literature on rehabilitation.

But this much must be said: This was not Martinson's fault. In fact, Martinson's most enduring and important legacy might well be that he helped redefine what *should* be the terms of the debate about the efficacy of rehabilitation. Thus, in conjunction with Lipton and Wilks (1975), he argued that we should: (1) focus on what works to reduce recidivism in corrections, (2) make judgements based on the *evidence,* and (3) derive the evidence from a comprehensive review of methodologically sound evaluation studies. Martinson (1979) also argued that assessments about treatment's efficacy should be revised in the face of new evidence—that the empirical status of rehabilitation was not written in stone but was an issue that warranted continuing study, reappraisal, and "rewriting."

Discretionary decisions continue to be made each day that intimately affect the lives of offenders and influence public safety. An evidence-based approach would argue that these decisions should not be based merely on custom or common sense but on our research knowledge about what is the "best bet" to reduce offender recidivism.

Martinson's work thus encouraged the formation of two distinct and incompatible "camps" in the rehabilitation debate: one that stressed that "rehabilitation was dead" and that no further study was needed, and one that took Martinson's empirical challenge seriously and then went about the business of collecting and analyzing data. Obviously, we are partial to the latter approach—of basing correctional policy and practice on the *best empirical evidence* available. Of course, on one level, no one would be against consulting "the evidence," since to do so would be manifestly irrational. In fact, however, only a minority of treatment programs in corrections are rooted in the existing research on "what works." At the risk of being accused of hyperbole, we would go so far as to say that much of what is done within the field is a matter of *correctional quackery*—practices akin to the "treatment" of bloodletting once practiced in medicine (Gendreau 1999).

To be sure, others may wade through the extant research and be more or less optimistic about the prospects of rehabilitation than we are (see, e.g., Andrews and Bonta 1998; Gaes 1998; Gaes et al. 1999; Gibbons 1999; Lab 1997; MacKenzie 1998; McGuire and Priestley 1995); readers are invited to consult these alternative assessments of the data on correctional treatment. Regardless, we believe that the evidence favors these interpretations because: (1) across all interventions, rehabilitation is more effective in reducing recidivism than alternative criminal justice sanctions; (2) programs that conform to the principles of effective intervention achieve meaningful, and possibly substantial, reductions in recidivism; and (3) numerous individual programs—such as multisystemic

therapy—have been notably efficacious and offer the potential to serve as model interventions in other jurisdictions.

In this context, we will close this essay by focusing on two themes that have informed and that flow from our analysis: the need to pursue "evidence-based" corrections and the wisdom of "reaffirming rehabilitation."

Evidence-based corrections

In a provocative and important essay, Sherman (1998) has argued that law enforcement should, like medicine, adopt an "evidence based" paradigm to guide police practice. In this paradigm, evaluation research is used to construct guidelines for effective law enforcement approaches to reducing crime. This paradigm is process based and dialectical; guidelines are not rigid, but rather they change as new evaluation evidence from programs based on an initial set of practice guidelines is evaluated. This approach stresses "accountability and continuous quality improvement"; it also implies fostering a professional ethic in which research results, as in medicine, are embraced as fundamental to effective practice.

In the end, it would call on criminology to move beyond its tendency to be a discipline that seeks merely to debunk foolish policy proposals and to engage in the more daunting, but consequential, task of creating knowledge on how best to rehabilitate offenders and protect the social order.

Similarly, we would concur that such an approach is also appropriate for the field of corrections. As Andrews and Hoge (1995, 36) observe, "It is time for evidence-based correctional treatment services." We understand that corrections will never be the exclusive domain of "what works"; policy decisions will reflect fundamental cultural values, organizational resources, and political realities—among other factors. Even so, an evidence-based approach would place research more systematically and prominently into the mix of factors that shape current correctional policies and practice. Discretionary decisions continue to be made each day that intimately affect the lives of offenders and influence public safety. An evidence-based approach would argue that these decisions should not be based merely on custom or common sense but on our research knowledge about what is the "best bet" to reduce offender recidivism.

An evidence-based approach must not be atheoretical. Indeed, a central task of this approach would be to construct theories of effective intervention and to

unmask theories of ineffective intervention. Thus, theories of correctional intervention would guide program development. Each program would then be evaluated to determine whether it "works," with the resulting "evidence" used to assess the merits of the theoretical framework on which the program is based. As noted, we believe that the most promising theoretical approach is the evolving "principles of effective correctional intervention" (Andrews and Bonta 1998; Gendreau 1996b). This approach has the advantage of being rooted in the empirical literature of criminology, behavioral psychology, and correctional evaluation. Still, other theories or conceptual approaches to effective intervention would be welcome to join in the competition—or the collaborative effort—to construct a scientifically based theory of rehabilitation (see, e.g., Prendergast, Anglin, and Wellisch 1995; Palmer 1995).

An evidence-based paradigm also has implications for the study and practice of corrections. Within criminology, this approach would encourage scholars to bridge the nexus between research and practice. It would also require criminologists both to abandon simplistic ideas—such as the view that "nothing works" to change offenders—and to engage in systematic research on what differentiates effective and ineffective correctional interventions. In the end, it would call on criminology to move beyond its tendency to be a discipline that seeks merely to debunk foolish policy proposals and to engage in the more daunting, but consequential, task of creating knowledge on how best to rehabilitate offenders and protect the social order.

An evidence-based paradigm would also suggest an overhaul of certain aspects of correctional practice: the embrace of a professionalism respectful of data; the training of practitioners based on research; the creation of "correctional training academies"—much like police academies—in which knowledge and treatment skills would be imparted (Gendreau 1996a); the implementation of programs informed by an empirically based theory of effective intervention; the acceptance by agency leaders and staff of program evaluation as an integral means of improving treatment effectiveness; and the auditing and accreditation of correctional agencies based on the delivery of effective programming.

In short, an evidence-based approach would mandate that knowledge about correctional effectiveness be (1) constructed, (2) disseminated, and (3) applied. Lest we be accused of naivete, we hasten to admit that each of these tasks presents formidable and ongoing challenges. For example, even within graduate school programs, as Henggeler (1999, 8) points out, "training often includes considerable attention to treatment models that have no empirical support." Blumstein and Petersilia (1995, 470) note the skepticism toward research among practitioners and policymakers—skepticism fueled at least in part by the failure of researchers to construct knowledge that is useful to the delivery of services. Similarly,

Gendreau and Goggin (1997) report that only a minority of correctional agencies—perhaps as few as 1 in 10—function in such a way as to satisfactorily deliver effective treatment programs (see also Gendreau, Goggin, and Smith 1999). Using the Correctional Program Assessment Inventory to study agencies comprehensively, Gendreau and Goggin (1997) identified such common deficiencies as: employing program directors and staff that have little professional training or knowledge about effective treatment programs; the failure to assess offenders with scientifically based actuarial risk instruments; the targeting of factors (e.g., low self-esteem) for change that are weakly related to or unrelated to recidivism; the use of treatments that were "inappropriate" or delivered with insufficient "dosage" or "intensity"; the failure to include aftercare in the treatment; and a general lack of therapeutic integrity.

Given this roster of disquieting shortcomings, skeptics might suggest that the barriers to constructing, disseminating, and applying evidence on correctional treatment are not merely formidable but insurmountable. We share the skeptics' caution but not their pessimism. There are, for example, effective ways of disseminating knowledge (Backer, Liberman, and Kuehnel 1986; Gendreau 1996a) and of achieving planned change in organizations (Hamm and Schrink 1989; Welsh and Harris 1999). Further, many correctional agencies are receptive to learning about "what works" and wish to implement the "best bets" for successful intervention (Rhine 1998). The intense interest in MST nationwide is but one example of this receptivity (Henggeler 1999). There also is an increasing demand for correctional programs to be accountable and effective, lest the taxpayers' money be squandered. Finally, the limits of control-oriented programs now are hard to dispute. If evidence-based rehabilitation programs are not to be embraced, it is difficult to know what the alternative would be.

Reaffirming rehabilitation

To a large extent, the prospects for an evidence-based form of corrections will depend on the view that rehabilitation should be reaffirmed as a central goal of the correctional enterprise, if for no other reason than it would seem inadvisable to invest resources in improving something—treatment programs—that one does not value. This is not the place to present the full debate about whether rehabilitation should be a guiding principle of corrections (compare Cullen and Applegate 1997; Cullen and Gendreau 1989; Cullen and Gilbert 1982; Macallair 1993; Welch 1995 with Logan and Gaes 1993). Even so, there are two considerations that warrant attention.

First, as Van Voorhis (1987) reminds us, there is a "high cost to ignoring rehabilitation." Beyond whatever prevention of crime that may accrue from incapacitation and general deterrence—an issue that is both complex and debatable

(see, e.g., Currie 1998; MacKenzie 1998; Nagin 1998)—there is no evidence that punitive correctional programs either reduce recidivism or produce other positive gains for offenders (e.g., institutional adjustment, development of human capital). In contrast, our "best bet" for reducing recidivism and improving the lives of those processed through the correctional system is to involve them in rehabilitation programs that have therapeutic integrity. This approach is not simply a matter of "doing good" for offenders but also of protecting public safety. Put in other terms, rehabilitation is a potentially important strategy for reducing recidivism and thus for preventing the victimization of citizens. The failure to pursue correctional treatment is tantamount to turning a blind eye to those among us whose victimization could have been avoided.

Second, it is commonly asserted that the American public is punitive and, by implication, that citizens will not support the rehabilitation of offenders. This thesis is only half right. Opinion polls do show that the public is punitive; however, surveys also demonstrate that Americans do not wish to have a correctional system whose *only* aim is to inflict "penal harm" or to warehouse offenders. The evidence is now virtually indisputable that citizens favor a correctional system that both punishes *and* rehabilitates (Applegate, Cullen, and Fisher 1997; Flanagan and Longmire 1996; for a review of the relevant research, see Cullen, Fisher, and Applegate 2000). For example, Applegate, Cullen, and Fisher (1997) found in a statewide survey of Ohio residents that more than 80 percent of the respondents agreed that "rehabilitation" was an "important" or "very important" goal of imprisonment. Accordingly, it appears that the American public is receptive to correctional rehabilitation—a level of support that potentially would solidify, if not grow, were intervention programs conducted more effectively.

In closing, it is well to keep in mind that people's futures are not wholly determined but, at least in part, are chosen (Cullen and Wright 1996; Sherman and Hawkins 1981). The chance to move in a different direction is perhaps more possible at the beginning of a new century when time seems to pause and we are struck by the wisdom of taking stock in where we have been and where we are going. For three decades, we have experimented with a correctional system that has decidedly tilted in the direction of "getting tougher." Rehabilitation programs have not been eliminated wholesale, relevant evaluation research has not stopped, and much of the public continues to endorse the goal of offender reformation. Still, advocates of correctional rehabilitation have faced an uphill struggle as the "nothing works" doctrine took hold and the political winds swept in an unfriendly direction.

The question we are confronted with, then, is: What future will be chosen for corrections? A century ago, the progressives, recognizing that the possibility for

reform was at hand, embraced a "new penology" that had at its core the rehabilitative ideal. Their unrestrained optimism about rehabilitation undoubtedly was misplaced; they underestimated the difficulty of changing human behavior within the confines of corrections and with techniques that had little basis in empirical social science. Today, we are perhaps more sober about the prospects of treating offenders, but we also are better informed about how to undertake this task effectively. Like our predecessors, then, we believe that the new century offers a propitious moment to fashion a new penology—albeit, with ours being more cautiously expressed and evidence based—that is informed by the rehabilitative ideal. The alternative prospect—to do more of the same, to argue that offenders cannot change, to get tougher and tougher—seems an uninviting future to contemplate. By contrast, reaffirming rehabilitation strikes us as a wiser and, we suspect, happier course to follow.

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14

Indiana Department of Correction
Annual Report 2001

MISSION

The mission of the Indiana Department of Correction is to protect the public by operating facilities and programs in a safe, secure, effective and accountable manner.

Inside this issue:

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LETTER FROM THE COMMISSIONER

Evelyn Ridley, Turner, Commissioner Indiana Department of Correction

As Commissioner of the Indiana Department of Correction, I take great pride in having this opportunity to share the many accomplishments of the Department during 2001 as well as sharing information regarding the state's prison system.

I believe the Department provides a valuable service to the citizens of Indiana. Not only is the Department providing protection of the public, it is attempting to offer the offender population the opportunity to change their lives to become productive citizens. I am proud of the dedicated men and women who strive everyday to meet those challenges while working within a correctional setting.

In the future, I hope to see a smaller department to house just the truly violent and repeat offenders. I envision a system where nonviolent offenders would be offered community-based correction programs, allowing them to stay close to their homes and families.

This past year has proven to be an exciting and challenging one for the Department. Many positive changes have occurred during the past year, and the Department has examined its present status and is actively planning for a positive and productive future.

Corrections is not immune from change. The biggest obstacle to change and the challenges is us—our fears of doing something we've not done before or doing it differently than we've always done it. I believe we are continuing in the right direction and are making the correct choices.

Sincerely,

Evelyn Ridley-Turner

History

Many prison facilities were chartered by the Indiana State Legislature long before the formation of the Indiana Department of Correction in 1953. The system today includes 25 adult facilities, as well as 10 juvenile facilities. The Department of Correction houses nearly 20,000 adult and juvenile offenders and employs over 8,000 staff. The average daily cost to operate the system is $53 per offender, or approximately $1 million per day.

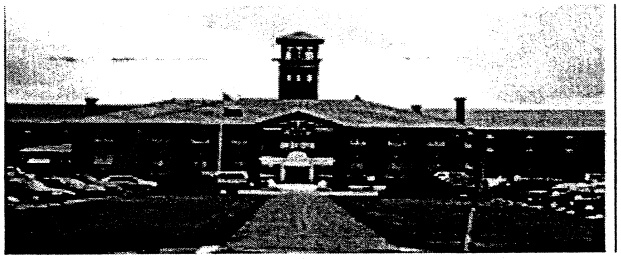
Jeffersonville, Indiana was the site of Indiana's first prison, which opened in 1823. In 1859, the Indiana State Prison North was authorized to be constructed at Michigan City and

Indiana Women's Prison located in Indianapolis, Indiana.

HISTORY (Continued)

opened in 1861. The "House of Refuge for Juvenile Offenders" (boys) was opened in Plainfield, Indiana in 1867. The first prison for women in the United States was approved by the legislature in 1869 and was known as the Indiana Reformatory Institution for Women and Girls. In 1899, the legislature separated this facility and renamed it as the Indiana Industrial School for Girls and the Indiana Women's Prison.
A hospital for insane criminals was opened at the Indiana State Prison in Michigan City in 1909. Just four years later, the legislature authorized the construction of the Indiana State Farm at Putnamville. This facility was constructed entirely by inmate labor and largely out of materials produced on the farm.

"A hospital for insane criminals was opened in Michigan City in 1909."



Today's Pendleton Correctional Facility, previously known as the Indiana Reformatory, built in 1923 to replace the Jeffersonville

A fire destroyed the Jeffersonville prison in 1918 and it was rebuilt in Pendleton in 1923. The name was changed from the Indiana State Prison South to the Indiana Reformatory.

The remainder of the department's 25 adult facilities and 10 juvenile facilities was established after the formation of the Indiana Department of Correction in 1953.

Early industrial operations within the prison included the manufacture of road signs, license plates, shoes, offender clothing, mattresses, cement blocks, sheet metal, printing, baskets, furniture, saw mill, flour mill, tiles, brooms and brushes, rustic furniture, and tailoring. Also, several large farming operations were operated throughout the prison system. Other offender jobs included those necessary to maintain the facilities, i.e., maintenance, food service, clerical, sanitation, grounds keeping, etc.

The Indiana Department of Correction contributes to the safety and welfare of Hoosier citizens by securely housing offenders, maintaining their health and providing them with varied work, program and education opportunities. In addition, the Indiana Department of Correction is the second-largest state agency in terms of employees and its payroll results in economic benefits not only to staff, but also to the communities and businesses throughout the state.

ADULT FACILITIES

The three main considerations in assigning an adult offender to a security level are the committing offense, the length of sentence, and prior criminal history.

Minimum Security Facilities.. Level 1
These facilities have the least restrictive security measures. Housing is dormitory style. Offenders in these facilities typically are serving short sentences of nonviolent, non-weapons-based offenses. Also included as minimum security are work release program offenders, who leave the facility for outside employment but return nightly.

- Atterbury Correctional Facility
- Chain O'Lakes Correctional Facility
- Edinburgh Correctional Facility
- Henryville Correctional Facility
- Indianapolis Men's Work Release Center
- Indianapolis Women's Work Release Center
- Madison Correctional Facility
- Medaryville Correctional Facility
- South Bend Work Release Center
- Wabash Valley Correctional Facility

Medium Security Facilities.. Level 2
These facilities have a modern degree of security measures. Housing is dormitory style. Offenders typically have shorter sentences than level 3 offenders. Medium security offenders are less aggressive than level 3's and 4's, have shorter sentences and a shorter criminal history.

- Branchville Correctional Facility
- Lakeside Correctional Facility
- Plainfield Correctional Facility
- Putnamville Correctional Facility
- Rockville Correctional Facility (Women)
- Westville Correctional Facility
- Westville Transition Facility

High Medium Security Facilities.. Level 3
These facilities have a moderately high degree of security measures. Housing is celled space. Typically, more aggressive offenders than level 1 and 2, serving longer sentences with a longer criminal history, are housed at level 3 facilities.

- Correctional Industrial Facility
- Miami Correctional Facility
- Wabash Valley Correctional Facility

Continued on next page.

ACCOMPLISHMENTS

Some of the accomplishments of the Department of Correction during 2001 include:

- In 2001, Commissioner Evelyn Ridley-Turner requested that each Department facility be reviewed by a cross-section of experienced DOC employees, as well as community leaders and knowledgeable concerned citizens. The Commissioner's goal was to provide community leaders and concerned citizens with a better understanding of the challenges that exist within a state-run prison facility, and encourage their feedback, so the DOC could meet or exceed community expectations.
- The Department made a strong effort to reduce incarceration expenses, and increase prison bed availability by promoting the Community Transition Program. This effort resulted in a greater than a 200% increase in community-based offender transition.
- To better protect the youngest criminal offenders, the Department initiated a "Youth Incarcerated as Adults" program. The youngest offenders sent to the Department's adult facilities remain together, separated from older, potentially threatening offenders. These youthful offenders are provided with increased educational and counseling opportunities and staffs that supervise them are afforded special training geared toward controlling and guiding young adults.
- In an effort to protect Hoosiers from repeat sex offenders, the Department has expanded upon its Sex Offender Management and Monitoring program (SOMM). In addition to requiring sex offenders to undergo treatment, this program includes the use of a containment team approach, including utilization of a polygraph to better determine the sex offender's current and past conduct. Information is shared with the Indiana State Police. The goal is to revoke a non-compliant sex offender's parole before they can re-offend.
- The Wabash Valley Correctional Facility received the "Program of the Year Award" from the National Commission on Correctional Health Care, for its Residential Treatment Unit. The RTU provides a therapeutic environment for mentally ill offender patients housed there.
- The Department, in conjunction with the Indiana State Police, improved the efficiency of law enforcement by implementing an automated fingerprint identification system, which allows fingerprints captured at adult intake sites to be sent electronically to the State Police.
- The Department has diverted over 17 million pounds of waste from Indiana landfills through its recycling and composting program, In fact, the "Excellence in Recycling" award given by Governor Frank O'Bannon went to the Plainfield Correctional Facility due to the comprehensive nature of its program, which includes educational, local, county, private, and solid waste district components.
- The Department completed construction of the second phase of the Miami Correctional Facility, on time and under budget.
- The Northeast Juvenile Correctional Facility in Fort Wayne was moved to a new facility as part of a cost-effective design/build/lease arrangement. The capacity of the facility was increased from 48 to 100 beds.
- During 2001, the Department increased by 10% the number of substance abuse treatment hours given to offenders. Only 3% of the offender population tested positive for drugs, down from 9% in 1997
- The Department secured $6,800,000 in federal grant funds to supplement the cost of various corrections-related programs.

ADULT FACILITIES (Continued)

Maximum Security Facilities.. Level 4

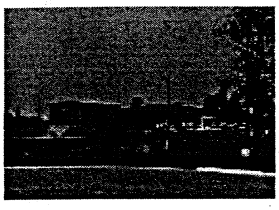
These facilities have very restrictive security measures. Housing is celled space. Level 4 offenders typically have been convicted of violent or weapons-based offenses. These offenders require close supervision and tight security to minimize risk to the public, staff and other offenders.

- Indiana State Prison
- Indiana Women's Prison (Handles Intake and Diagnostics for all Adult Females sent to DOC)
- Pendleton Correctional Facility
- Wabash Valley Correctional Facility
- Reception Diagnostic Center (Adult Male Intake)

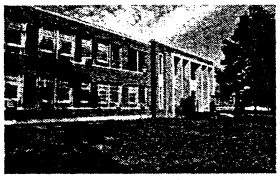
High Maximum Security Facilities.. Level 5

Denotes maximum control with the most restrictive security measures. Housing is celled space. Offenders in this category are assigned based on conduct histories at other DOC facilities. Level 5 offenders are not permanently assigned this level; emphasis is to modify behavior so that these offenders may re-enter traditional prisons at future date.

- Maximum Control Facility



Northeast Juvenile Correctional Facility—Fort Wayne



Indianapolis Juvenile Correctional Facility-Indianapolis

JUVENILE FACILITIES

Minimum Security Facilities

These facilities serve medium/low risk offenders.

- Bloomington Juvenile Correctional Facility
- Fort Wayne Juvenile Correctional Facility
- Indianapolis Juvenile Correctional Facility
- Northeast Juvenile Correctional Facility
- South Bend Juvenile Correctional Facility

Medium/Minimum Security Facilities

These facilities serve primarily juveniles with serious property offenses, drug dealing/possession offenses, and selected personal offenses.

- Camp Summit
- Indianapolis Juvenile Correctional Facility
- North Central Juvenile Facility

Maximum/Medium/Minimum Security Facilities

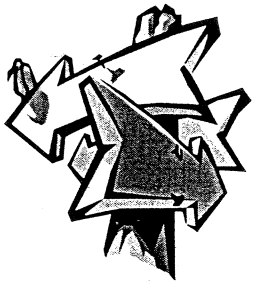
These facilities are set aside for more serious offenses with a recommendation of a one-year minimum stay.

- Indianapolis Juvenile Correctional Facility
- Pendleton Juvenile Correctional Facility
- Plainfield Juvenile Correctional Facility

Intake Facilities

Logansport Juvenile Intake/Diagnostic Facility for juvenile males, is self-contained; has locked cells in each day room; has segregation cells; has close observation cells; does not allow temporary leaves; and has restricted visitation. This maximum security receives any male juvenile between the ages of twelve and eighteen that is committed to the Indiana Department of Correction, Division of Juvenile Services. This facility also receives transfers from other DOC male juvenile facilities for reclassification or short-term disciplinary segregation.

"The Department has diverted over 17 million pounds of waste from Indiana landfills through its recycling and composting program" See ACCOMPLISHMENTS on page 3.



JUVENILE TRANSITION PROGRAM

The Juvenile Transition Program was established in 1993 when Youth Service Coordinators were hired to provide transition coordination to juvenile offenders in Allen, Marion, and St. Joseph counties.

The Youth Service Coordinators provide transition coordination services to approximately three hundred (300) youth both in and out of the State's juvenile correctional facilities. They work directly with the youth upon intake to the Indiana Department of Correction, during their incarceration period, and while on parole supervision. As part of the Comprehensive Case Management System, the Youth Service Coordinators also work with the youth's family to obtain pertinent information to assist the youth's treatment team with his/her treatment plan, rehabilitation, and transition process.

Upon a youth's release, the Youth Service Coordinators have available specialized contracted services to assist with a successful transition for the youth. All youth are eligible for electronic monitoring services, and some, based upon their need, receive family preservation and wraparound services, which are available throughout the state.

The AIM Program, a specialized contracted service through I.U.P.U.I., offers youth an excellent opportunity for successful transition from incarceration to their home community through the use of college students and volunteers as mentors. Facility based life skill training, and a university-justice system-community partnership has proven to lessen the likelihood of failure and relapse. To prepare youth for release, the mentors provide a life skills training program that focuses on educational planning, employment preparation, financial management skills, leisure time planning, health issues, transportation and living arrangements, and interpersonal skills. The mentors work with youth to develop plans to guide their activities after release, targeting specific youth identified goals. The program is currently offered to all juvenile correctional facilities.

Continued on next page.

JUVENILE TRANSITION PROGRAM (Continued)

Currently, each Youth Service Coordinator has an active caseload of approximately thirty-five (35) youths at various stages in the process. The target goal is for each to have a maximum caseload of twenty-five (25) youth and families.

For the past several years, the Youth Service Coordinators have conducted Parole Schools for all youth being released from the Indiana Department of Correction. These schools inform youth of the expectations upon release to the community and allows for active question and answer periods.

While a youth is on parole supervision, a Youth Service Coordinator or State Parole Agent will enforce a variety of special parole stipulations that apply to youth when released from a correctional environment. These stipulations vary from: mandatory mental health counseling; curfew requirements; participation in special treatment programs like substance abuse counseling; and, random drug testing.

Youth Service Coordinators are involved with the placement of youth in foster or group homes when it is determined that the youth should not return to their home environment. During the past year, an average of eighty (80) youth resided in foster care of group home care.

The Division of Juvenile Services currently has ten (10) Youth Service Coordinators assigned to the Transition Program. Youth that are not assigned to a specific Youth Service Coordinator are assigned to a State Parole Agent who has responsibility for both adult and juvenile caseloads.

"The Youth Service Coordinators provide transition coordination services to approximately 300 youth..."

PAROLE DISTRICTS

Indiana has eight Parole Districts. Each district office is responsible for the monitoring of offenders transferred from prison to parole supervision. Currently there are over 5,400 adults and juveniles on parole supervision.

PAROLE DISTRICT 2
4802 U.S. 30 East
Fort Wayne, Indiana 46803
Phone: (260) 424-3536
Assigned Counties: Adams, Allen Dekalb, Huntington, Kosciusko, LaGrange, Noble, Wabash, Wells and Whitley

PAROLE DISTRICT 3
3921 North Meridian Street
Indianapolis, Indiana 46208
Phone: (317) 931-4375
Assigned Counties: Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan and Shelby

PAROLE DISTRICT 4A
320 Martin Luther King, Jr. Blvd, #107
Evansville, Indiana 47708
Phone: (812) 424-9821
Assigned Counties: Davies, Dubois, Gibson, Knox, Martin, Pike, Posey, Spenser, Vanderburgh and Warrick

PAROLE DISTRICT 4B
605 Ohio Street, Suite 206
Terre Haute, Indiana 47807
Phone: (812) 235-0606
Assigned Counties: Carroll, Clay, Clinton, Greene, Fountain, Montgomery, Parke, Putnam, Owen, Sullivan, Tippecanoe, Vermillion, Vigo and Warren

PAROLE DISTRICT 5
P.O. Box 1144
Columbus, Indiana 47202
Phone: (812) 372-7356
Assigned Counties: Bartholomew, Brown, Clark, Crawford, Dearborn, Floyd, Franklin, Harrison, Jackson, Jeffer-

PAROLE DISTRICT 6
504 Broadway
Gary, Indiana 46402
Phone: (219) 880-2000
Assigned Counties: Benton, Jasper, Lake, LaPorte, Newton and Porter

PAROLE DISTRICT 7
P.O. Box 612
New Castle, Indiana 47362
Phone: (765) 529-2359
Assigned Counties: Blackford, Delaware, Fayette, Grant, Henry, Jay, Madison, Randolph, Rush, Union and Wayne

PAROLE DISTRICT 8
2421 S. Michigan Street
South Bend, Indiana 46614
Phone: (219) 234-4600
Assigned Counties: Cass, Elkhart, Fulton, Howard, Marshall, Miami, Pulaski, St. Joseph, Starke, Tipton and White

Facility Listing

Atterbury Correctional Facility
P.O. Box 95
Edinburgh, Indiana 46124
Phone: (812) 526-9829
Established: 1982
Minimum Security
Population: Adult Female

Bloomington Juvenile Correctional Facility
1500 Packing House Road
Bloomington, Indiana 47404
Phone: (812) 334-0582
Established: 1992
Minimum Security
Population: Juvenile Male

Branchville Correctional Facility
P.O. Box 500
Tell City, Indiana 47586
Phone: 9821) 843-5921
Established: 1982
Medium Security
Population: Adult Male

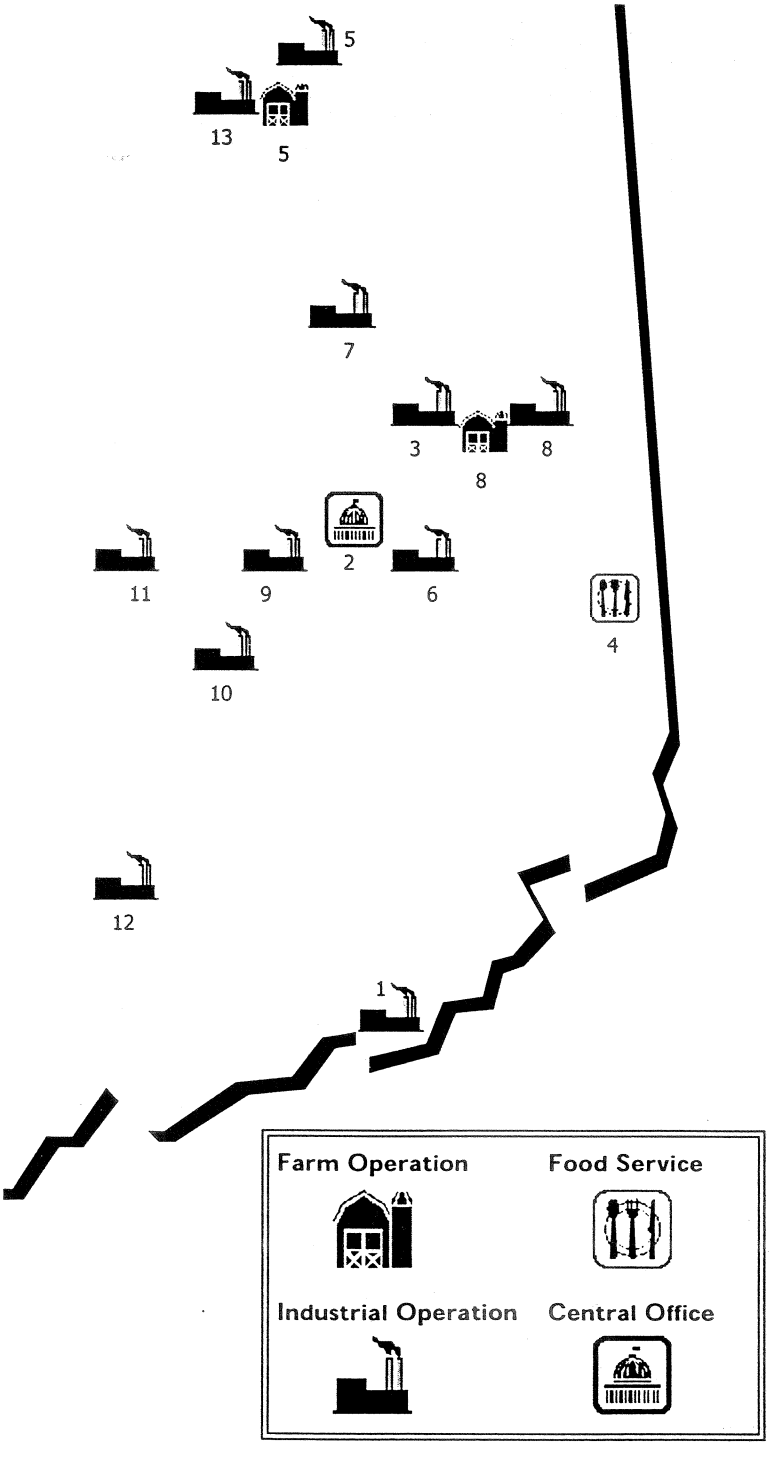
Camp Summit
P.O. Box 156
LaPorte, Indiana 46350
Phone: (219) 326-1188
Established: 1995
Medium Security
Population: Adult Male

Chain O'Lakes Correctional Facility
3516 East 75 South
Albion, Indiana 46701
Phone: (260) 636-3114
Established: 1968
Minimum Security
Population: Adult Male

Correctional Industrial Facility
P.O. Box 600
Pendleton, Indiana 46064
Phone: (765) 778-8011
Established: 1988
Medium Security
Population: Adult Male

Edinburgh Correctional Facility
P.O. Box 470
Edinburgh, Indiana 46124
Phone: (812) 526-8434
Established: 1991
Minimum Security
Population: Adult Male

INDUSTRIES



INDUSTRIES (Continued)

Acts 1917, Chapter 83, sec. 1, page 237, authorizes prisons in the state of Indiana to manufacture "articles and products as may be found practical" for use by the state, its institutions and political divisions and to sell the surplus upon the market. Indiana Department of Correction was established in Acts 1961, Chapter 343, sec. 3, page 1051. Under this act, The Division of Industries and Farms was created to administer the operation of offenders who produce goods and services for sale to state agencies and residents of Indiana.

Indiana Code 1991, 11-10-6-2 Sec. 2. (a) The department shall establish, maintain, and operate industry and farm programs for offenders assigned to equip the participant with a marketable skill which will provide to participant a means of earning a livelihood upon the participant's return to the community.

The Division of Industries and Farms changed its name to PEN Products in November 1993.

Indiana Code 1998, 5-22-11, mandates that all state agencies and political subdivisions of the state shall purchase from the department goods produced or manufactured by the department as listed in the department's printed catalogue, providing those goods meet the specifications and needs of the purchasing governmental body and can be purchased at a fair market price.

CORRECTIONAL FACILITIES & PRODUCTS

1. Branchville Correctional Facility	Remanufactured Automotive Parts
2. Central Office & Warehouse	Administration and Warehouse
3. Correctional Industrial Facility	Baked Goods, Cottage Cheese, Frozen Beef-Pork-Poultry Products, Frozen Fruits and Vegetables, Milk, Flavored Drinks
4. Correctional Training Institute	Food Service
5. Indiana State Prison	Cattle, Dog Tags, Grain, License Plates, Lockers, Metal Shelving, Metal Storage Cabinets, Offender Clothing, Outdoor Grills, Security Beds, Timber, Vegetables
6. Indiana Women's Prison	CAD (Computer Aided Design) and Commercial Laundry Services
7. Miami Correctional Facility	Offender Clothing, Janitorial Products, Laundry Products
8. Pendleton Correctional Facility	Beef Cattle, Chairs, Dormitory Furniture, Engraving, Grain, Mattresses, Office Furniture, Vegetables
9. Plainfield Correctional Facility	Commercial Laundry
10. Putnamville Correctional Facility	Wood Assembly
11. Rockville Correctional Facility	Data Entry, Coil Assembly, Electronic Component Assembly
12. Wabash Valley Correctional Facility	Corrugated Boxes, Data Conversion-GIS, Light Assembly, Offender Clothing, Printing Services including: 4-Color Process, NCR Form, Envelopes and Continuous Forms, Valida-
13. Westville Correctional Facility	Brooms and Mops, Hickory Furniture, Highway Signs, Offender Clothing, Park Furniture, Picnic Tables and Shelter Houses

Facility Listing (Continued)

Fort Wayne Juvenile Correctional Facility
P.O. Box 5175
Fort Wayne, Indiana 46895
Phone: (260) 484-6621
Established: 1979
Minimum Security
Population: Juvenile Female

Henryville Correctional Facility
P.O. Box 148
Henryville, Indiana 47126
Phone: (812) 294-4372
Established: 1961
Minimum Security
Population: Adult Male

Indiana State Prison
P.O. Box 41
Michigan City, Indiana 46361
Phone: (219) 874-7258
Established: 1860
Maximum Security
Population: Adult Male

Indiana Women's Prison
401 North Randolph Street
Indianapolis, Indiana 46201
Phone: (317) 639-2671
Established: 1869
Maximum Security
Population: Adult Female

Indianapolis Juvenile Correctional Facility
2596 Girls' School Road
Indianapolis, Indiana 46214
Phone: (317) 244-3387
Established: 1869
Maximum/Medium/Minimum Security
Population: Juvenile Female

Indianapolis Men's Work Release Center
448 West Norwood Street
Indianapolis, Indiana 46225
Phone: (317) 233-1454
Established: 1969
Minimum Security
Population: Adult Male

Indianapolis Women's Work Release
512 East Minnesota Street
Indianapolis, Indiana 46203
Phone: (317) 232-1443
Established: 1978
Minimum Security
Population: Adult Female

FACILITY LISTING (Continued)

Lakeside Correctional Facility
P.O. Box 9047
Michigan City, Indiana 46361
Phone: (219) 872-8239
Established: 1991
Medium Security
Population: Adult Male

Logansport Juvenile Intake/Diagnostic Facility
P.O. Box 209
Logansport, Indiana 46947
Phone: (219) 753-5549
Established: 1995
Maximum Security
Population: Juvenile Male

Madison Correctional Facility
P.O. Box 1079
Madison, Indiana 47250
Phone: (812) 265-6154
Established: 1989
Minimum Security
Population: Adult Male

Maximum Control Facility
P.O. Box 557
Westville, Indiana 46391
Phone: (219) 785-2554
Established: 1991
Super Maximum Security
Population: Adult Male

Medaryville Correctional Facility
5426 East 850 North
Medaryville, Indiana 47957
Phone: (219) 843-4131
Established: 1961
Minimum Security
Population: Adult Male

Miami Correctional Facility
P.O. Box 900
Bunker Hill, Indiana 46914
Phone: (765) 689-8920
Established: 1999
Medium/Minimum Security
Population: Adult Male

North Central Juvenile Correctional Facility
1118 South State Road 25
Logansport, Indiana 46947
Phone: (219) 753-7571
Established: 1994
Medium/Minimum Security
Population: Juvenile Male

PROGRAMS IN THE FACILITIES

Educational Services
Academic
- Diploma
- Adult Basic Education
- Graduate Education Diploma

Vocational
Post-Secondary
(*Correspondence courses are available to all offenders through Indiana University*)

Psychological & Social Services
- Mental Health Counseling
- Recreation
- Transition Program
- Individualized Pre-Release Orientation Program (less than 80 hours)
- Standardized Pre-Release Orientation (80 hours or more)
- Work Release

Sex Offender Program
Sex Offender Management and Monitoring (SOMM)

Religious Services
- General Christian
- Catholic
- Islam
- Native American
- Jewish
- Buddhist

Substance Abuse Services
- Substance Abuse Treatment
- Substance Abuse Education
- AA/NA Services

COMMUNITY TRANSITION PROGRAM (CTP)
INTRODUCTION

2001 has seen many changes in the Community Transition Program (CTP). The program has seen the growth of expectations, a statutory change, an expansion of partnerships, and an increase in participation. The Department of Correction committed to an objective of an average population of 500 offenders in the program for the fiscal year 2001-2002; an objective that has not yet been achieved. To reach that objective the Department has examined policies, practices, assumptions and attitudes that impact CTP to facilitate its use and remove barriers. In addition, we have formed new partnerships and collaborations that have been helpful. This process is ongoing.

CHANGES IN THE COMMUNITY TRANSITION PROGRAM

Recognizing the critical importance of the Community Transition Program in February 2001, Commissioner Evelyn Ridley-Turner directed that an evolution of the program take place, CTP is a program of multiple interacting agencies; the courts, local community corrections program, probation programs, sheriffs, and the offenders themselves. The challenge was to identify the interests and needs of the various participants, address those needs, and communicate any changes made to all involved.

One of the first changes made to CTP was an increase in per diem paid by the Department for each CTP offender from $7.00 to $15.00. Insufficient funding had been a complaint regarding CTP and had been used as a rationale to deny offenders. This change was implemented at the end of March and back dated to March 1, 2001 to make an immediate impact.

Another change made regarding the per diem was the decision to pay county jails $35.00 a day for each CTP offender housed in their jail. In order to encourage the transfer of offenders from the county jail to community corrections programs or probation, the $35.00 payment is restricted to a 5

Continued on next page.

COMMUNITY TRANSITION PROGRAM (Continued)

day period. Each county that created a CTP component and had it approved by the Department's Community Corrections could receive the county's portion of the funds up front, twenty-five percent of which could be drawn down immediately to act as startup funds. The remaining seventy-five percent of the funds would remain in an account in the county to be drawn down on a per diem basis for each offender the county accepted into the program. This option was also offered to non CCCGA counties.

Communicating with all the stakeholders in CTP has been difficult. In 2001, meetings were conducted and presentations were made to any interested party. To announce the financial changes, the Department hosted three "town-hall" meetings inviting judges, sheriffs, community corrections, probation, parole and other stakeholders. We also used these opportunities to seek the opinions and ideas of the other members in CTP for how to improve the program.

Prior to these meetings taking place, the Department sought the advice and counsel of Indiana Supreme Court Chief Justice Randall Shepard, who graciously offered to record a video statement supporting the Community Transition Program.

The support of the Supreme Court was also extended when Justice Sullivan with Commissioner Evelyn Ridley-Turner hosted an April meeting for several key judges from throughout the state. The meeting addressed specific concerns and established a core group of judges with whom the Department has since consulted for advice and opinions regarding CTP.

A number of other opportunities for discussion took place throughout the year. The Department was fortunate to be invited by the Indiana Judicial Center to present information regarding CTP and other Departmental projects at it's annual Judge's Conference in September. The Judicial Center also invited the Department to speak at it's panel discussions at two Indiana Correctional Association meetings and in June the ICA passed a resolution of support for CTP. Presentations and discussions also occurred at the Indiana Association of Community Corrections Act Counties (IACCAC) meetings in both the summer and the fall. In addition, many meetings took place with individual counties' courts, boards of Community Corrections, county commissioners, and probation officers. Any opportunity to support CTP and address concerns was accepted.

The Department also examined its own practices for supporting CTP. One of the first changes was a structural change when CTP and the Department's own Community Corrections program merged to form a more proactive unit. Through this merge, CTP tapped a wealth of knowledge and ability to work with individual communities. This also allowed for the development of the new financing methods that would assist CTP in the specific counties involved with Community Corrections.

One of the requests from individual Community Corrections counties was that directors of the Community Corrections programs be informed of offenders eligible for CTP. Community Corrections were often unprepared for the offenders assigned to their programs. The programs wanted to research the offenders and inform the courts whether or not they could work with the offenders in question. Additionally, many counties wanted to interview offenders prior to their release to CTP in order to have a better idea of how to place these offenders and in many cases use the Level of Service Inventory-Revised (LSI-R), a risk assessment tool. As a result, the Community Transition Program staff began to include Community Corrections and Probation departments in the mailings of eligibility notifications.

The Department held a meeting of representatives from certain key departmental facilities. Superintendents and staff of specific facilities were asked to act as pilot programs for the enhancement of CTP within the Department and with the offenders. The first meeting acted as an explanation of challenges involved and the second meeting was used to direct specific changes and enact some pilot programs

Continued on next page.

Facility Listing (Continued)

Northeast Juvenile Correctional Facility
P.O. Box 13069
Fort Wayne, Indiana 46867
Phone: (260) 422-8223
Established: 1992
Minimum Security
Population: Juvenile Male

Pendleton Correctional Facility
4490 West Reformatory Rd.
Pendleton, Indiana 46064
Phone: (765) 778-2107
Established: 1923
Maximum Security
Population: Adult Male

Pendleton Juvenile Correctional Facility
P.O. Box 900
Pendleton, Indiana 46064
Phone: (765) 778-4585
Established: 2000
maximum Security
Population: Juvenile Male

Plainfield Correctional Facility
727 Moon Road
Plainfield, Indiana 46168
Phone: (317) 839-2513
Established: 1964
Medium Security
Population: Adult Male

Plainfield Juvenile Correctional Facility
501 W. Main
Plainfield, Indiana 47957
Phone: (317) 839-7751
Established: 1867
Maximum/Medium Security
Population: Juvenile Male

Putnamville Correctional Facility
1946 West U.S. Highway 40
Green Castle, Indiana 46135
Phone: (765) 653-8441
Established: 1916
Medium Security
Population: Adult Male

Reception-Diagnostic Center
737 Moon Road
Plainfield, Indiana 46168
Phone: (317) 839-7727
Established: 1964
Maximum Security
Population: Adult Male

FACILITY LISTING (Continued)

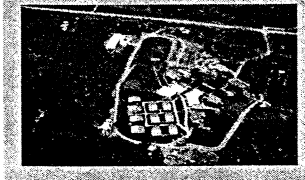
Rockville Facility
RR 3, Box 281
Rockville, Indiana 47872
Phone: (765) 569-3178
Established: 1994
Medium Security
Population: Adult Female

South Bend Juvenile Correctional Facility
4650 Old Cleveland Road
South Bend, Indiana 46628
Phone: (574) 232-8808
Established: 1980
Minimum Security
Population: Juvenile Male

South Bend Work Release Center
2421 South Michigan Street
South Bend, Indiana 46614
Phone: (574) 234-4094
Established: 1975
Minimum Security
Population: Adult Male

Wabash Valley Correctional Facility
6908 S. Old US Highway 41
P.O. Box 500
Carlisle, Indiana 47838
Phone: (812) 398-5050
Established: 1992
Minimum/Medium/Maximum Security
Population: Adult Male

Westville Correctional Facility
P.O. Box 473
Westville, Indiana 46391
Phone: (219) 785-2511
Established: 1997
Medium Security
Population: Adult Male



Branchville Correctional Facility
Tell City, Indiana

COMMUNITY TRANSITION PROGRAM (Continued)

within the facilities themselves.

Another major issue addressed was the dissemination of information. Courts, local Community Corrections programs, and Probation sought more information about offenders eligible for CTP. Specifically requested was information regarding what programs offenders had completed while with the Department, what sort of housing arrangements were in place for post release and any particular medical issues that might need addressed. This issue was given to the facility representatives for resolution. The solution was to use a progress report, a standardized report that contained much of the information desired. Prior to this, progress reports were not created until shortly before an offender's release. Instead the facilities would generate the reports as soon as they knew who was eligible for CTP, forward the reports to CTP staff who would in turn direct them to the various courts, Probation departments and local Community Corrections.

Another factor identified at the meetings was educating the offenders regarding CTP. The local Community Corrections programs were asked to provide a description of the requirements and expectations they had for CTP offenders. The program descriptions were compiled and distributed to each facility. This allows offenders to be aware of what each program can provide and what will be required.

Experimental programs coordinating CTP and the Department's traditional Transition Program, where class work and training prepares an offender to return to society, were begun at specific facilities with the goal of copying successful approaches into other Departmental facilities. This program began simply as having offenders organize their own affairs both inside the department and outside (such as residence and employment) and then informing the courts of their condition in hopes of increasing their likelihood of acceptance. Eventually, offenders will decide how best to use their time and the resources available to them to make themselves better candidates for CTP participation.

A change that the Department implemented was a case of linking another Departmental program to CTP. The Sex Offender Management and Monitoring (SOMM) Program works with one of the most difficult and challenging populations inside and outside the Department. Many sex offenders were immediately vetoed for CTP by courts, often when the local Community Corrections program explained that they had no experience working with this sort of offender. The Department arranged for training meetings throughout Indiana where representatives of the SOMM Program explained their methods and offered whatever support and help they could to anyone willing to work with this population which, no matter whether they participated in CTP or not, would be returned to the community.

Effective May 17, 2001 the legislature created a new category of CTP eligible offenders. Offenders serving charges only under IC 16-42-19 or IC 35-48-4 could have additional time added to their CTP period extending it from 90 to 120 days for C felons and from 120 to 180 days for B and A felons. This extension of time gives a greater amount of flexibility for the courts especially in regards to the A or B felons.

The talents and resources of the Department's Community Correction and facility staff have been employed, in conjunction with the money offered, to jumpstart the various counties' programs. However, due to various factors, many counties have only recently begun to truly utilize their resources. In some cases, counties may have been very interested in Community Correction programs but the judicial support may be sparse. Some counties are moving very slowly and cautiously, accepting only the most low risk offenders to try to demonstrate the success of the program and win support. However, it will take the acceptance of not only the "easy" offenders but also the more challenging offenders to optimize CTP, both in terms of numbers and in terms of effect. To that end, the Department continues to work with counties on an individual basis, trying to help each community find its own resources and comfort level for dealing with these offenders who, with or without the benefit of CTP, are coming back home.

COMMUNITY TRANSITION PROGRAM FACT SHEET

Initiated: July 1999 (H.E.A. 1001), Modified March 15, 2002 (S.E.A. 433), Modified May 2001 (H.E.A. 1001)

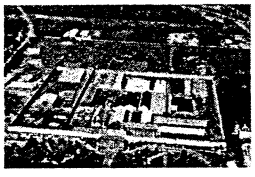
Legal Basis: IC 11-10-11.5, 11-12-10, 35-38-1-25 through 35-38-1-26.

Eligible Offenders: All felons, excepting murderers, with a sentence of at least two years, who are residents of Indiana, do not have detainers or warrants, and meet the time requirements of statute.

- A and B felons may serve up to 120 days on the Community Transition Program, if so ordered through court order.
- A and B felons who only have charges under IC 35-48-4 and/or IC 16-42-19 may serve up to 180 days on the Community Transition Program, if so ordered through court order.
- C felons must have 90 days to serve on the Community Transition Program and will be released to the receiving county if a court ordered denial is not received by the offender's Community Transition Program commencement date.
- C felons who only have charges under IC35-48-4 and/or IC 16-42-19 must have 120 days to serve in the Community Transition Program and will be released to the receiving county if a court ordered denial is not received by the offender's Community Transition Program commencement date.
- D felons must have at least 60 days to serve on the Community Transition Program and will be released to the receiving county if a court ordered denial is not received by the offender's Community Transition Program commencement date.

"Any victim of the offender is notified by DOC regarding CTP eligibility and the victim's rights to send written comment to the courts."

Administration: Notices of eligibility are computer generated 45 to 60 days prior to the offender's Community Transition Program commencement date and sent from DOC Central Office to the involved courts, prosecutors and community corrections director. All approvals and denials issued by the courts are sent to DOC central office. Facilities deliver offenders to communities as ordered by the courts.
All actions at the county level are directed by the court or may be delegated directly to a Community Corrections program, probation, or a contact provider.



The Indiana State Prison Michigan City, Indiana

County Programs: Program availability varies by county. Components provided through community corrections programs or probation include:

- Day Reporting
- Work Release/Residential
- House Arrest/Home Detention with Electronic Monitoring

Finance: Effective March 1, 2001, the per diem increased from $7.00 to $15.00 for all released CTP offenders except those housed in county jails. For those housed in county jails, a $35.00 per diem is paid. The offender is responsible for all medical expenses. The counties are not responsible for any medical expenses for CTP offenders.

Victim Notification: Any victim of the offender is notified by DOC regarding CTP eligibility and the victim's rights to send written comment to the court.

OFFENDER STATISTICS

Juvenile Female:

- Population has increased 96% over the last 20 years.
- Populations has increased 57% over the last 5 years.
- "At Risk" juvenile-base population continues to increase.
- Level 1 (violent) offenders are mandated by the Department's Juvenile Classification System to stay a minimum of one year.
- Law enforcement is more effective.
- Arrests have increased.

Juvenile Male:

- Population has increased 77% over the last 20 years.
- Population has increased 41% over the last 5 years.
- "At Risk" juvenile-based population continues to increase.
- Determinate sentencing legislation passed in 1995 has increased the offender's length of stay.
- Law enforcement is more effective.
- Level 1 (violent) offenders are mandated by the Department's Juvenile Classification System to stay a minimum of one year.

"Adult females are the fastest growing segment of the offender population, consistent with national trends."

Adult Female:

- Population has increased 480% over the last 20 years.
- Population has increased 56% over the last 5 years.
- Fastest growing segment of the offender population, consistent with national trends.
- Factors that contributed to the above increases:
  - A majority of our offenders are in an "at risk" group, whether due to educational, occupational, socioeconomic, or other social or structural factors.
  - Fewer court-ordered sentence modifications are granted.
  - Continued substance abuse by convicted felons.
  - Harsher criminal sanctions and a "get tough" on crime attitude.
  - More effective law enforcement.

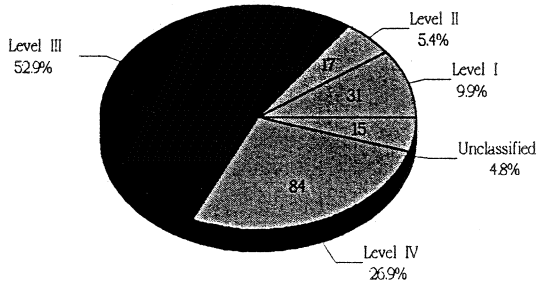
Adult Male:

- Population has increased 200% over the last 20 years.
- Population has increased 25% over the last 5 years—rated bed has only increased 20% over the same time period.
- Factors that contributed to the above increases:
  - A majority of the offenders are in an "at risk" group, whether due to educational, occupational, socioeconomic, or other social or structural factors.
  - Fewer court-ordered sentence modifications are granted.
  - Continued substance abuse by convicted felons.
  - More effective law enforcement.
  - Saturation of community correction programs.
- Effect on overcrowding:
  - Federal court ordered caps at the following facilities:
    - Indian State Prison
    - Pendleton Correctional Facility
    - Putnamville Correctional Facility
  - The Department continues to negotiate for either an increase, or a total removal of caps.

JUVENILE FEMALE

JUVENILE FEMALE POPULATION BY MOST SERIOUS COMMITTING OFFENSE LEVEL

(Includes Contracted Beds)
July 1, 2001



Offense Level I - Violent: A juvenile female convicted of a Level I offense will serve a minimum of one year at the Indianapolis Juvenile Correctional Facility. The most common offenses at this level are Battery, Criminal Recklessness and Intimidation.

Offense Level II - Serious: A low risk juvenile convicted of a Level II offense will serve a minimum of three months and a high risk juvenile will serve a minimum of nine months. The most common offenses at this level are Intimidation, Escape and Resisting Law Enforcement.

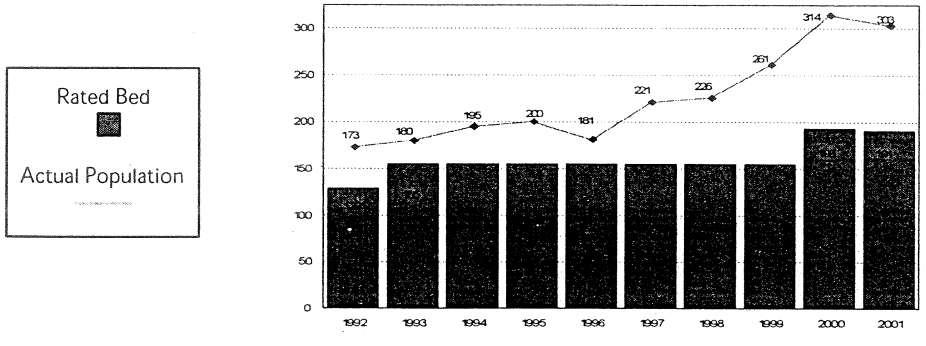
Offense Level III - Less serious: A low risk juvenile convicted of a Level III offense will serve a minimum of three months and a high risk juvenile will serve a minimum of six months. The most common offenses at this level are Theft, Battery and Conversion.

Offense Level IV – Minor: A high risk juvenile convicted of a Level IV offense will serve a minimum of six months. The most common offenses at this level are Probation Violation, Violation of Suspended Commitment to the Department of Correction and Truancy.

Unclassified: Juvenile has not been evaluated as of this date.

Source:
Juvenile Data System

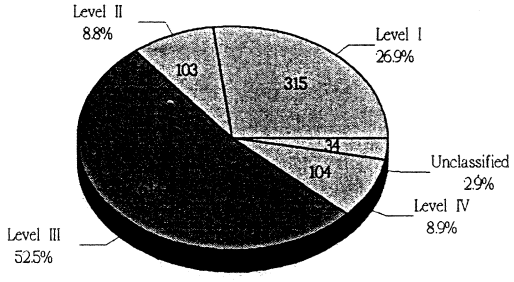
JUVENILE FEMALE POPULATION
POPULATION and RATED BED CAPACITY
July 1 each year 1992-2001



JUVENILE MALE

JUVENILE MALE POPULATION BY MOST SERIOUS COMMITTING OFFENSE LEVEL

(Includes Contracted Beds)
July 1, 2001



Offense Level I - Violent: A juvenile male convicted of a Level I offense will serve a minimum of one year at either the Plainfield Juvenile Correctional Facility or the Pendleton Juvenile Correctional Facility. The most common offenses at this level are Child Molesting, Robbery and Carrying a Handgun.

Offense Level II - Serious: A low risk juvenile convicted of a Level II offense will serve a minimum of three months and a high risk juvenile will serve a minimum of nine months. The most common offenses at this level are Intimidation, Resisting Law Enforcement and Escape (typically from a non-secure county placement).

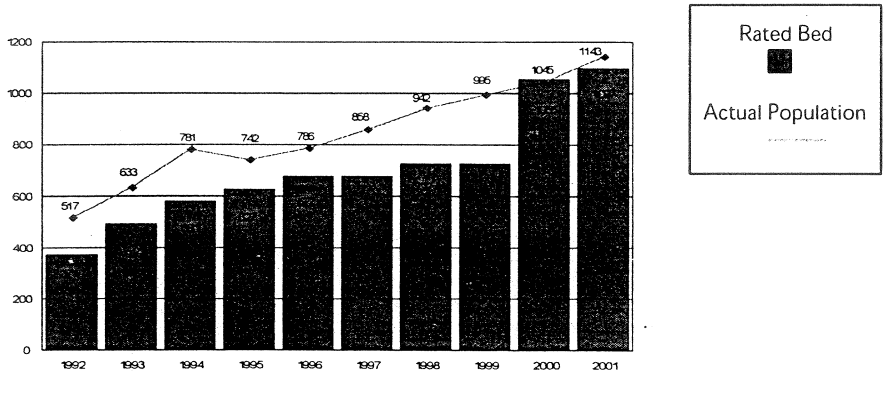
Offense Level III - Less serious: A low risk juvenile convicted of a Level III offense will serve a minimum of three months and a high risk juvenile will serve a minimum of six months. The most common offenses at this level are Theft, Battery and Burglary.

Offense Level IV – Minor: A high risk juvenile convicted of a Level IV offense will serve a minimum of six months. The most common offenses at this level are Probation Violation, Violation of Suspended Commitment to the Department of Correction and Possession of Marijuana.

Unclassified: Juvenile has not been evaluated as of this date.

Source:
Juvenile Data System

JUVENILE MALE POPULATION
POPULATION and RATED BED CAPACITY
July 1 each year 1992-2001

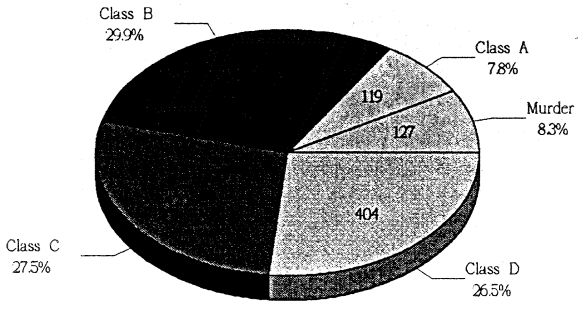


July 1 of Each Year

ADULT FEMALE

FEMALE FELON POPULATION BY MOST SERIOUS COMMITTING OFFENSE CLASS

(Includes Offenders Held In Jail And Contracted Beds Due to Overcrowding)
July 1, 2001



The three most common Class A offenses are: (1) Dealing in Cocaine or Narcotic Drug, (2) Conspiracy and (3) Voluntary Manslaughter. Forty-four percent of all Class A commitments are for drug offenses.

The three most common Class B offenses are : (1) Dealing in Cocaine or Narcotic Drug, (2) Burglary and (3) Dealing in a Schedule I, II or III Controlled Substance. Sixty-three percent of all Class B commitments are for drug offenses.

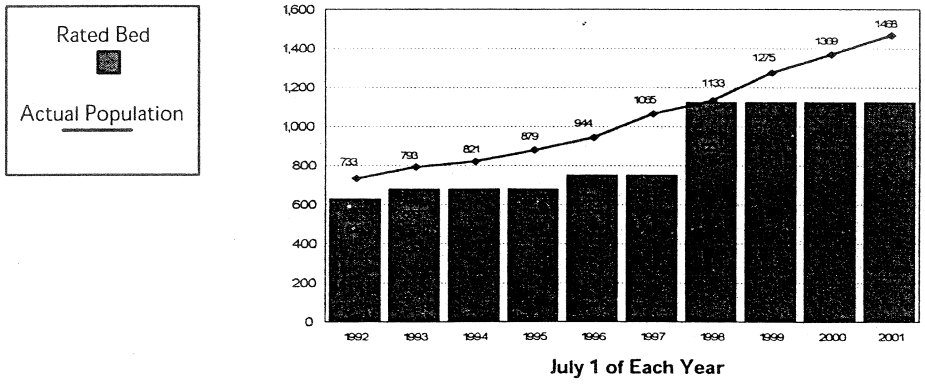
The three most common Class C offenses are : (1) Forgery, (2) Robbery and (3) Battery. Eight percent of all Class C commitments are for drug offenses.

The three most common Class D offenses are: (1) Theft, (2) Prostitution and (3) Possession of Cocaine or Narcotic Drug. Fifteen percent of all Class D commitments are for drug offenses.

*A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony. A conspiracy to commit a felony is a felony of the same class as the underlying felony. For example, if a person conspires to deal in cocaine and this is determined to be a Class A felony, then the person will be committed for Class A Dealing in Cocaine or Narcotic Drug.

Sources:
Monthly Statistical Report
Offender Information System

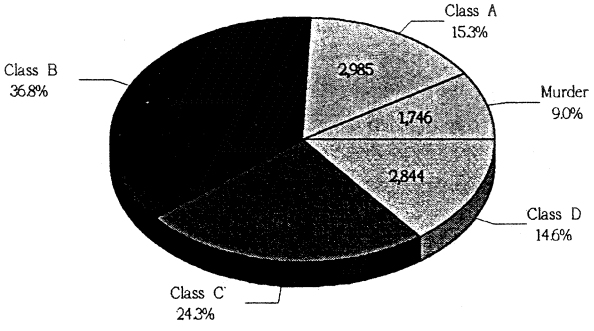
ADULT FEMALE POPULATION
POPULATION and RATED BED CAPACITY
1992-2001



ADULT MALE

MALE FELON POPULATION BY MOST SERIOUS COMMITTING OFFENSE CLASS

(Includes Offenders Held In Jail And Contracted Beds Due To Overcrowding)
July 1, 2001



The three most common Class A offenses are (1) Child Molesting, (2) Dealing in Cocaine or Narcotic Drug and (3) Conspiracy. Twenty-three percent of all Class A commitments are for drug offenses.

The three most common Class B offenses are (1) Dealing in Cocaine or Narcotic Drug, (2) Burglary and (3) Robbery. Thirty-four percent of all Class B commitments are for drug offenses.

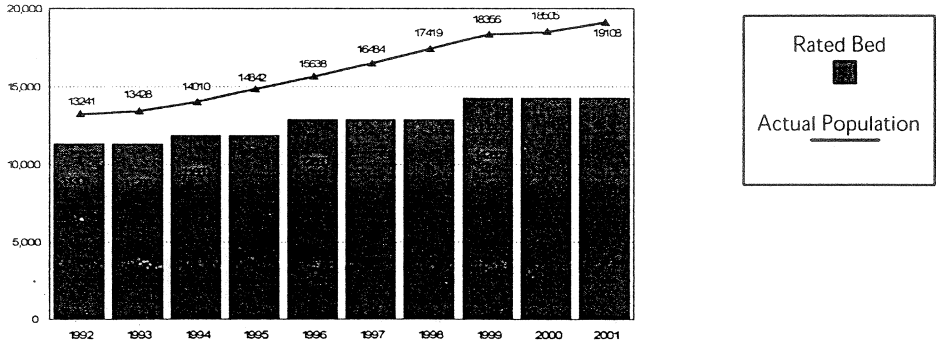
The three most common Class C offenses are (1) Burglary, (2) Forgery and (3) Operating Vehicle After Lifetime Suspension. Nine percent of all Class C commitments are for drug offenses.

The three most common Class D offenses are (1) Theft, (2) Operating Vehicle While Intoxicated and (3) Operating Vehicle While Intoxicated-Prior Conviction. Fifteen percent of all Class D commitments are for drug offenses.

*A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony. A conspiracy to commit a felony is a felony of the same class as the underlying felony. For example, if a person conspires to deal in cocaine and this is determined to be a Class A felony, then the person will be committed for Class A Dealing in Cocaine or Narcotic Drug.

Source:
Monthly Statistical Report
Offender Information System

ADULT MALE POPULATION
POPULATION and RATED BED CAPACITY
1992—2001

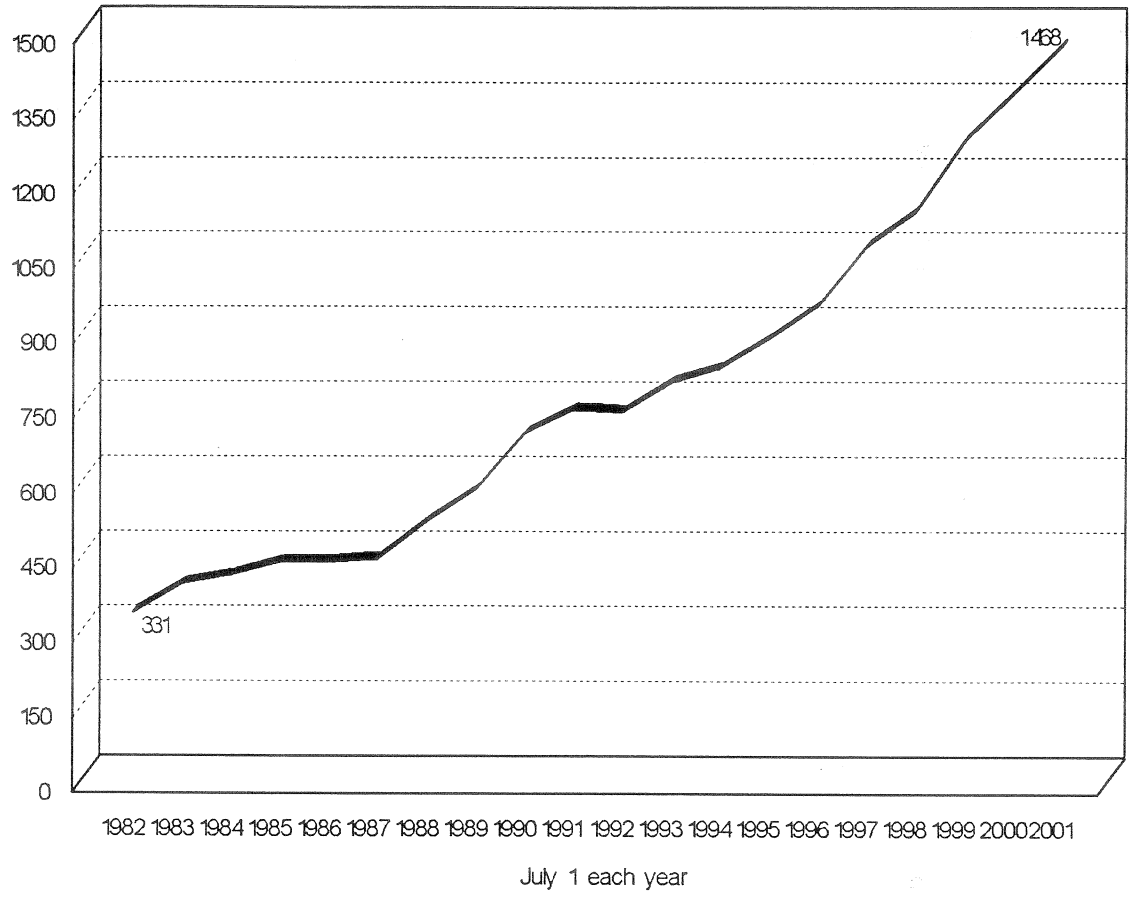


July 1 of Each Year

Adult Female Incarcerated Population on July 1

(Includes Offenders Held in Jail and Contracted Beds Due to Overcrowding)

Indiana Department of Correction



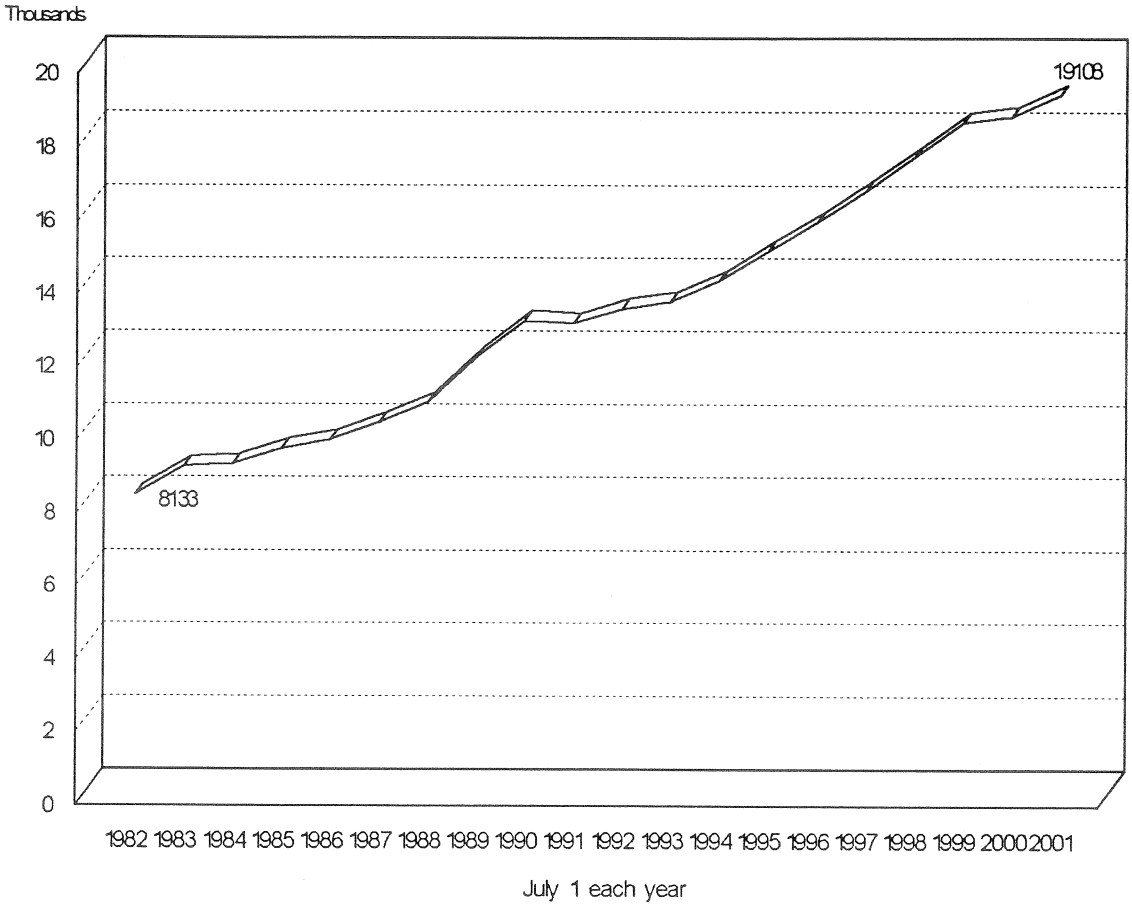
Source:
Indiana Department of Correction Offender Population Statistical Reports

See page 12 for information regarding Offender Statistics.

Adult Male Incarcerated Population on July 1

(Includes Offenders Held in Jail and Contracted Beds Due to Overcrowding)

Indiana Department of Correction

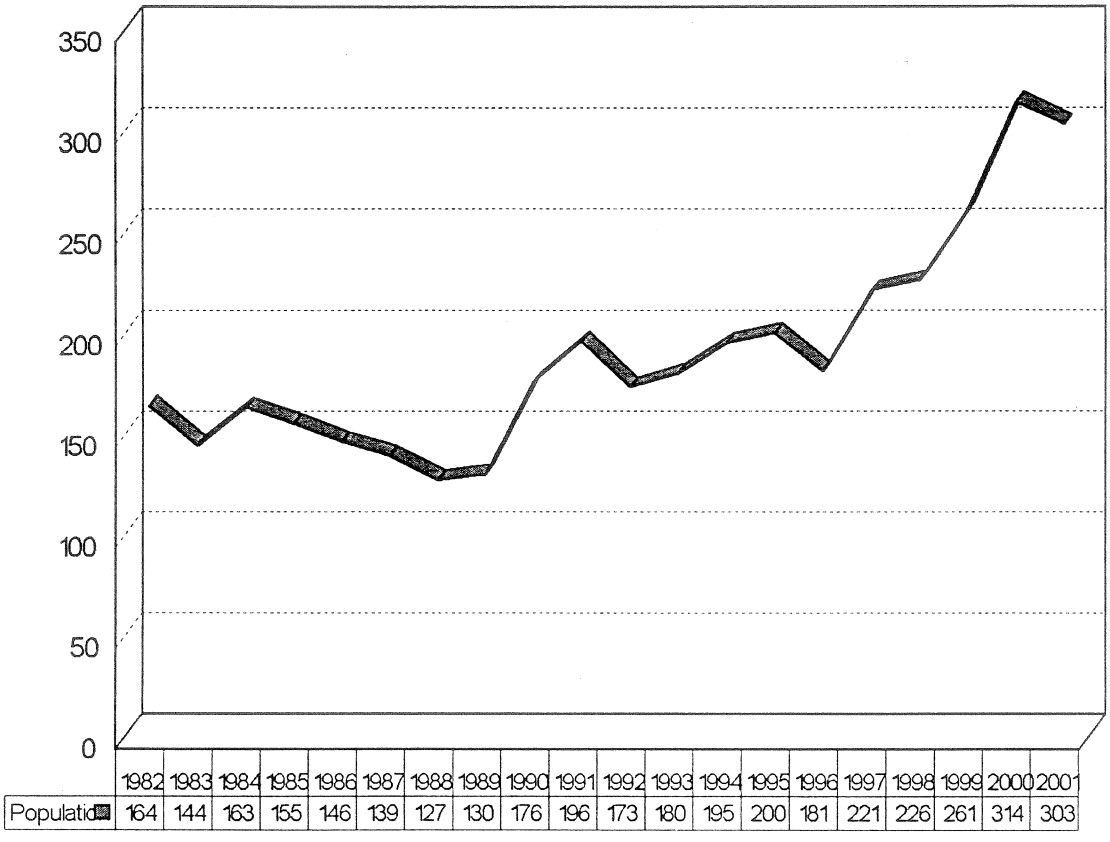


Source:
Indiana Department of Correction Population Statistical Reports

See page 12 for information regarding Offender Statistics.

Juvenile Female Incarcerated Population on July 1

Indiana Department of Correction



	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Population	164	144	163	155	146	139	127	130	176	196	173	180	195	200	181	221	226	261	314	303

July 1 each year

Source:
Indiana Department of Correction Offender Population Statistical Reports

Juvenile Male Incarcerated Population on July 1

(Includes Contract Beds)

Indiana Department of Correction

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Populati	614	655	540	564	562	563	614	657	603	616	517	633	781	742	786	858	942	995	1045	1143

July 1 each year

Sources:
Indiana Department of Correction Offender Population Statistical Reports

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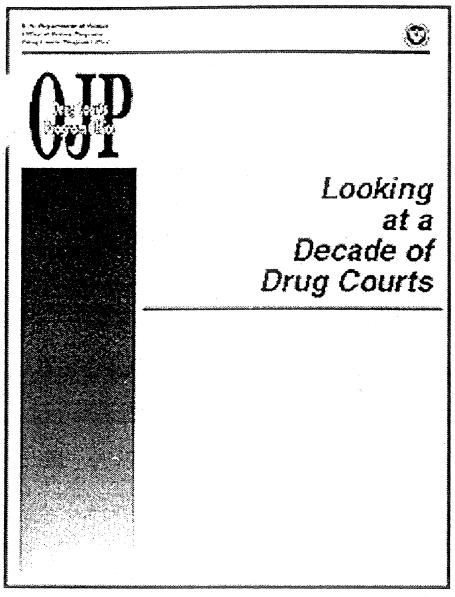

Looking at a Decade of Drug Courts

Prepared by the Drug Court Clearinghouse and Technical Assistance Project
A Program of the Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice

The OJP Drug Court Clearinghouse and Technical Assistance Project (DCCTAP) at American University, sponsored by the Drug Courts Program Office of the Office of Justice Programs, U.S. Department of Justice, compiles operational and evaluative information on adult, juvenile and family drug court programs throughout the United States. Summary reports of drug court activities are published and updated periodically by the DCCTAP, reflecting current developments, emerging issues, experiences reported by local drug court officials, and observations of staff during the course of providing technical assistance to local jurisdictions This report updates the Summary Assessment of the Drug Court Experience published in 1995 - 97 and reflects information provided by drug courts operating throughout the U.S. as of June 1998.

What began in 1989 as an experiment by the Dade County Circuit Court to call upon the authority of a sitting judge to devise -- and proatively oversee -- an intensive, community-based, treatment, rehabilitation, and supervision program for felony drug defendants in an effort to halt rapidly increasing recidivism rates, has become a national movement during the decade that has followed. –Drug Court" activity is now derway in 48 of the 50 states as well as in the District of Columbia, Puerto Rico, Guam, a number of ative American Tribal Courts, and one federal district court.

The appeal of the drug court lies in many sectors: more effective supervision of offenders in the community; more credibility to the law enforcement function (arrests of drug offenders are, indeed, taken seriously, even by court systems that are inundated with cases); greater accountability of defendants for complying with conditions of release and/or probation; greater coordination and accountability of public services provided, including reducing duplication of services and costs to the taxpayer; and more efficiency for the court system by removing a class of cases that places significant resource demands for processing, both initially as well as with probation violations and new offenses that otherwise would undoubtedly occur. These benefits, dramatic as they may be, do not, however, explain the tremendous personal impact that drug courts have on all who have been involved with them -- even the casual observer of a drug court session.

What has made the drug court movement so powerful and infectious is its human element. Close to 100,000 drug dependent offenders have entered drug court programs since their inception and over 70% are either still enrolled or have graduated -- more than double the rate of. traditional treatment program retention rates. Drug court participants reflect all segments of the community. Approximately two-thirds are parents of minor children. Approximately 15% are veterans. Men participate at twice the rate of women although the percent of female participants is rising. Most drug court participants have been using drugs for many, many years; many are polydrug users. Most have never been exposed to treatment previously although a large majority have already served jail or prison time for drug related offenses.

Unlike traditional treatment programs, becoming –clean and sober" is only the first step toward drug court duation. Almost all drug courts require participants (after they have become clean and sober) to obtain a D, maintain employment, be current in all financial obligations, including drug court fees and child support payments, if applicable, and to have a sponsor in the community. Many programs also require

participants to perform community service hours -- to give back to the community that is supporting them through the drug court program. One drug court requires prospective graduates to prepare a two year –life plan" following drug court graduation for discussion with a community board to assure the court that the participant has developed the –tools" to lead a drug-free and crime-free life.

The original goals for drug courts -- reductions in recidivism and drug usage -- are being achieved, with recidivism rates substantially reduced for graduates annd, to a lesser but significant degree, for participants who do not graduate as well. Drug usage rates for defendants while they are participating in the drug court, measured by the frequent, random urinalyses required of all participants, are also substantially reduced, generally to well under 10%, dramatically below that observed for nondrug court offenders.

The –outcomes" drug courts are achieving go far beyond these original goals, however: the birth of over 500 drug free babies to drug court participants; the reunification of hundreds of families, as parents regain or are able to retain custody of their children; education and vocational training and job placements for participants, to name a few. Most significantly, many of the judges who have served as the –drug court" judge have requested an extension of their assignment, and many have taken on the drug court duty in addition to their other docket responsibilities.

The following sections of this publication highlight the background of the drug court –movement", the major areas in which drug courts differ from traditional adjudication processes, and salient accomplishments that have been achieved to date.

BACKGROUND

Since the mid-1980's, many state and local criminal justice systems have been inundated with felony drug cases. Court dockets became overloaded with drug cases and drug-involved offenders, leaving fewer resources available to adjudicate serious, violent felonies. During this same period, it became increasingly clear that: (1) incarceration in and of itself does little to break the cycle of illegal drug use and crime, and offenders sentenced to incarceration for substance related offenses exhibit a high rate of recidivism once they are released; and (2) drug abuse treatment is demonstrably effective in reducing both drug addiction and drug-related crime if participants remain in treatment for an adequate period of time.

In the early 1990's, a number of jurisdictions began to rethink their approach to handling defendants charged with drug and drug-related offenses and explored ways to adapt the –drug court" concept, introduced by Dade County in 1989. Defendants targeted for the "drug court" have generally been non-violent offenders whose current involvement with the criminal justice system is due, primarily, to their substance addiction. Defendants eligible for the drug court are identified as soon as possible after arrest and, if accepted, are referred immediately to a multi phased out-patient treatment program entailing multiple weekly (often daily) contacts with the treatment provider for counseling, therapy and education; frequent urinalysis (usually at least weekly), frequent status hearings before the drug court judge (bi-weekly or more often at first); and a rehabilitation program entailing vocational, educational, family, medical, and other support services.

To date, drug court programs operate in 39 states, the District of Columbia, Puerto Rico, and one federal district, with programs planned or about to be implemented in Guam and nine additional states, including several Native American Tribal Courts. Almost 300 programs have been implemented, with at least 175 more program about to start or being planned. In addition, since 1995, 14 states have either enacted or have under consideration legislation dealing with the establishment of or funding for drug courts, and one state has implemented a statewide drug court program.

Initially, most drug courts focussed on first offenders but increasingly, jurisdictions are targeting more

serious offenders for several reasons: (1) recognition of the apparent futility of traditional probation and/or incarceration sentences which have already been imposed on many of these defendants and have failed to prevent continued drug use and criminal activity; and (2) a policy decision to use the limited resources available to the drug court for persons with serious substance addiction problems, rather than those with less severe problems who might be served through other programs.

Effectiveness of Drug Court Approach Compared with Traditional Case Disposition Process

Reductions in Drug Use

Traditional Adjudication Process

Drug Use Forecasting (DUF) Data collected on defendants in 23 cities indicates that 51% to 83% of arrested males and 41% to 84% of arrested females were under the influence of at least one illicit drug at the time of arrest. Defendants convicted of drug offenses are either sentenced to a period of incarceration or referred for probation supervision, with few jurisdictions requiring frequent drug testing to monitor drug use after conviction. Those which do, generally have significant drug usage rates but lack the capacity to promptly respond when a defendant has tested positive. Few jails or prisons provide any comprehensive treatment services for inmates and none provide long-term rehabilitation support once the defendant is released. In jurisdictions which require, as a condition of probation, completion of a treatment program, there is generally no monitoring of whether defendants who complete such programs actually cease or reduce their use of drugs. This situation, coupled with available recidivism data (see below), has led many justice system officials to conclude that the traditional case disposition process lacks the capacity to bring about any significant reduction in drug usage by persons convicted of drug offenses.

Drug Court Experience

Because drug court programs test defendants for drug use regularly (usually at least weekly), information regarding drug use by defendants under drug court supervision is available and known to the court on an on-going basis, and is responded to with appropriate sanctions. Consequently, the drug use of defendants participating in drug court programs is substantially reduced and significantly lower than that reported for nondrug court defendants and,, for participants who graduate from the programs (ranging from 50% - 65%), eliminated altogether. Recidivism among graduates also appears to be very low. (see below)

Reductions in Recidivism

Traditional Adjudication Process

Most criminal justice system professionals estimate that at least 45% of defendants convicted of drug possession will recidivate with a similar offense within two to three years. The more frequently a defendant has been arrested for a drug offense, the more likely he or she is to recidivate. A high percentage of defendants convicted of drug possession are also arrested for property offenses during the period they are using illicit substances, and a substantial percentage have either committed violent offenses or are considered likely to do so, particularly as their addictions progress. Defendants in drug court programs report they spent at least $ 50 per day on drugs before entering the drug court and many report spending considerably more. The money to maintain their drug habits was derived from theft and other criminal activity, whether reported or not.

Drug Court Experience

1 comparison, drug court programs are experiencing a significant reduction in recidivism among participants. Depending upon the characteristics of the population targeted and the degree of social dysfunction (e.g., employment status, family situation, medical condition, etc.) they reflect, recidivism among all drug court participants has ranged between 5% to 28% and less than 4% for graduates. The drastic reduction in drug use by drug court participants, and the consequent criminal activity associated with drug use, is confirmed by urinalysis reports for drug court defendants, usually well over 90% negative.

Intensive Supervision Provided Where Little Existed Before
Traditional Adjudication Process

Under the traditional adjudication process, supervision of defendants released pretrial usually consists of a weekly call-in and periodic reporting to a pretrial service agency during the pretrial period (usually 60 - 120 or more days following arrest); after conviction, supervision usually consists of monthly reporting to a probation officer. Urinalysis is generally conducted only periodically, and treatment services provided only if available. The court's involvement occurs only when probation violations are reported -- generally when new crimes are committed. Benchwarrants may be issued for defendants who fail to appear for court hearings,, but their actual execution (e.g. the defendantês arrest) may not occur for months and often is triggered only by a new arrest.

Drug Court Process

Defendant supervision and monitoring -- as well as treatment services -- in all of the drug court programs are significantly more immediate and intensive than woulld have been provided to the typical drug court defendant prior to the program. Drug court defendants come under the court's supervision very shortly after arrest, and throughout a typical 12-15 month period, are required to attend treatment sessions, undergo frequent and random urinalysis, and appear before the drug court judge on a regular and frequent basis. Almost all of the drug courts have instituted procedures for immediate execution of bench warrants (often within hours) for defendants who fail to appear at any court hearing.

Capacity to Promptly Deal with Relapse and Its Consequences
Traditional Adjudication Process

It is particularly common for defendants on probation for drug offenses to fail to comply with probation conditions entailing attendance at treatment programs or abstaining from drug use. Frequently, their failure to comply is evidenced by a new arrest for a drug or drug-related offense, generally becoming known to the justice system months after the defendant's drug use has resumed, if it ever ceased in the first place. This violation hearing, which generally results in imposition of the original sentence suspended when the defendant was placed on probation, and (2) conviction for the new offense, often resulting in an additional sentence of incarceration. It is common for this cycle to continue indefinitely once the defendant is released, with an enhanced incarceration sentence imposed each time to reflect the defendant's lengthening criminal history. At least 40% of offenders incarcerated in 1995 were imprisoned for drug or drug related offenses and over 60% of the correctional population had substance abuse problems.

Drug Court Experience

Recognizing that substance addiction is a chronic and recurring disorder, the drug court program maintains continuous supervision over the recovery process of each participant, through frequent court status hearings, urinalysis, and reports from the treatment providers to the supervising judge. Drug usage or failures to comply with other conditions of the drug court program are detected and responded to promptly. Immediate responses -- ranging from enhanced treatment services, more frequent urinalysis (daily, if necessary), imposition of community service rrequirements, and "shock" incarceration -- are some of the options drug court judges use to respond to program noncompliance. In appropriate situations, particularly where public safety is at issue or participants willfully fail to comply with program conditions, they are terminated from the drug court and referred for traditional adjudication, with standard penalties applied. Data reported by the 200 oldest drug courts indicates that drug use is being reduced for most participants, not simply drug court graduates.

Capability to Integrate Drug Treatment with Other Rehabilitation Services to Promote Long-term Recovery

Traditional Adjudication Process

Although there are strong correlations between drug abuse and other attributes of social dysfunction exhibited by drug users, such as poor reading skills, dysfunctional family relationships, low self esteem, etc., most courts do not address these problems when sentencing drug-using offenders. At best, they refer them to a treatment program and/or a special skills class, with no regular monitoring of their participation or its results, absent a violation of probation filed by the probation officer. (see above).

Drug Court Experience

In contrast, a fundamental premise of the drug court approach is that cessation of drug abuse requires not only well-structured treatment services but coordinated and comprehensive programs of other rehabilitation services to address the underlying personal problems of the drug user, and promote his or her long-term re-entry into society. While sobriety is a primary objective of the drug court program, no participant can successfully complete the program without also addressing needs relating to his\her long-term rehabilitation. As noted earlier, in addition to sobriety, most drug courts require participants to obtain a high school or GED certificate; obtain and/or maintain employment; and develop mentor relationships within the community to sustain them after they leave the drug court program.

Summary Results of the Drug Court Experience: The First decade

Programs Report High Participant Retention Rates

Despite their rigorous requirements, drug court programs are retaining a significant percentage of the defendants enrolled and, consequently, having a more significant impact on participants' lives than traditional pretrial and/or probation supervision. Data from the 200 oldest drug courts (and confirmed by the 1997 U.S. General Accounting Office study) reflect an average retention rate of over 70% (the total of graduates plus active participants), despite the difficult populations which most programs are targeting. These retention rates can be contrasted with significantly lower rates generally acknowledged for traditional drug treatment programs dealing with criminal defendants, with slightly higher rates for individuals not involved with the criminal justice process. It also has been noted that, in many cases, defendants may be terminated from a drug court program because they fail to meet the stringent requirements imposed by the court but have, nevertheless, made significant progress in terms of reducing drug use, and improving their employment status, educational development, and family relationships, and eventually succeed in subsequent treatment programs in which they enroll.

Nature and Extent of Addiction Among Drug Court Participants Varies Widely But Generally Tends) Be Severe

Most drug court participants, even first offenders, appear to have significant histories of substance addiction, frequently 15 or more years. Based on information provided by the 200 oldest drug courts, the primary drug used most frequently by drug court participants is crack/cocaine, although many are polydrug users. Sixty percent of the drug courts also reported heroin use among participants and over one-half report methamphetamine addiction, notably in the central and eastern regions of the country as well as the west where it had previously appeared to be concentrated. Marijuana and alcohol use, in conjunction with other substances, was also reported by most of the programs. Increasing prevalence of the abuse of prescription drugs and, among juveniles, toxic inhalants is also being reported.

Participants Note Judgesê Supervision, Coupled with Drug Court Treatment Services and Strict Monitoring, is Key to Their Success

Responses from two recent surveys of 400 drug court participants in the final phases of participation in more than 50 different programs indicated that the close supervision -- and encouragement -- provided by the drug court judge, coupled with the programs' intensive treatment and rehabilitation seervices and on-going monitoring, were the critical factors that promoted their success in the program. Over one-fourth of the respondents had been in at least one prior treatment program during the previous three years which they had left unsuccessfully.

ost Effectiveness of Drug Court Programs

The average cost for the treatment component of a drug court program ranges between $1,200 and $3,000 per participant, depending upon the range of services provided. Savings in jail bed days alone have been estimated to be at least $5,000 per defendant -- which does not factor in the value of the added capability (see below) to incarcerate the more serious offenders which manyy jurisdictions are also deriving from these programs. Similarly, prosecutors are reporting that the drug court programs have reduced police overtime and other witness costs, as well as grand jury expenses for those jurisdictions with an indictment process, that would otherwise be required if these cases proceeded in the traditional manner. Most programs also report that a substantial percentage of participants who came into the program unemployed and on public assistance have become employed while in the program and are now self-supporting. In addition, many participants who are employed at the time of program entry are able to maintain their employment, despite their arrest, because of their program participation.

Benefits for Families and Children

Approximately two-thirds of the drug court participants are parents of minor children. Many of these parents have lost custody or are in danger of losing custody of their children because of their drug use. Drug court participation has resulted in many of these litigantsê retaining or regaining custody upon completing the drug. court. Over 500 drug-free babies have been reported born to female drug court participants while rolled in drug court programs, thus obviating the substantial medical and social services costs (estimated at a minimum of $250,000 per baby) required to care for a drug-addicted infant, let alone the societal impact that results. Almost all drug courts provide family counseling and at least half provide aid with housing, food and clothing. Most also provide day care while participants attend treatment.

Criminal Justice Resources Freed Up for Violent and Other Serious Criminal Cases

addition to cost savings, all components of the justice system are reporting that the drug court programs e enabling their agencies to more efficiently allocate criminal justice resources. Staff and services, which had heretofore been consumed by the less serious but time-consuming drug cases now targeted for drug court assignment, can be directed to more serious cases and to those offenders who present greater risks to community safety. Some prosecutors and indigent defense counsel report that the case preparation and court appearance time freed up by drug court programs is equivalent to one or more FTE attorney positions. The caseloads assumed by the drug court judges have also permitted docket time of other judges to be freed up and made available for other criminal matters as well as civil cases which, in many jurisdictions, have been relegated to secondary priority because of the drug caseload. In jurisdictions where jail space has been freed up, this space is now being used to house more serious offenders or to assure that they serve their full sentences.

Benefits to Prosecutors and Police

Prosecutors and police in many jurisdictions report that the drug court has significantly enhanced the credibility of the law enforcement function, provides their agencies with a more effective response to substance abuse, and is a significant alternative to the "revolving door" syndrome that has frequently resulted from the traditional case process. Defendants are no longer released back into the community -- and back using drugs -- shortly after arrest but, rather, placed in a rigorous, court supervised treatment program which caarries an important message to the community regarding the seriousness of illegal drug use. A recent poll of 318 police chiefs found that almost 60% advocate court-supervised treatment programs over ther justice system options for drug users. In a number of jurisdictions, prosecutor and/or police agencies ts.

Highlights of National Drug Court Survey Findings

The 1997 Drug Court Survey Report, recently published by the Office of Justice Programs Drug Court Clearinghouse and Technical Assistance Project at American University, provides a comparative profile of the 95 oldest drug court programs and includes operational information and comments from drug court judges, prosecutors, defender offices, law enforcement agencies, corrections departments, and treatment providers involved with the operation of the drug courts in their respective jurisdiction. The Survey report also includes comments from 256 participants in the final phases of 55 drug court programs in 23 different states and the District of Columbia.

The following are the most salient observations that emerge from the survey.

Program Growth

The number of drug courts, in both the planning and operational stage of development, has tripled during the past year. As of June 1, 1998, there were over 425 drug courts in the following stages of development:

drug courts operating for at least two years	124
drug courts more recently implemented	140

drug courts about to start	2
drug courts being planned	151
jurisdictions exploring the feasibility of a drug court program:	13
TOTAL	430

Drug courts are now operating or being planned in 48 states plus the District of Columbia, Puerto Rico, Guam and two federal jurisdictions, including over 15 Native American Tribal Courts

Primary Services Being Provided
Physical and Mental Health Services

Drug courts are providing a range of physical and mental health services to participants as well as substance abuse treatment.

Almost all of the drug courts provide public health services, including HIV and TB screening and referral. Many programs have components to provide special services for dually diagnosed participants who have mental health problems, frequently as a result of their substance abuse. A number of drug courts routinely utilize the services of a physician and/or nurse.

ducation, Job Training, Employment and Other Rehabilitation Services
The range of treatment and rehabilitation services being delivered by drug courts is expanding significantly.

Many of the early drug courts focussed primarily upon treatment services, with ancillary support for education and job training and placement. Most of these early drug courts, and their numerous progeny, have expanded their treatment and rehabilitation services significantly, recognizing the diversity of both treatment and other needs presented by the drug court populations. The expanded services being developed also reflect, in large part, the growing recognition that the drug court must treat not only the participant's addiction but the numerous associated personal problems most participants encounter -- physical, mental, housing, family, employment, self esteem, etc. -- if long-term sobriety and rehabilitation is to be achieeved and future criminal activity is to be significantly reduced. Many of the treatment program components, for example, are developing differentiated "tracks" to address the diversity of treatment needs of drug court clients. Special components are also being developed for specific ethnic and/or cultural groups represented, and other "special populations", including pregnant women, mothers, fathers, persons who have been sexually abused, and others.

Offenders Targeted

- Focus on Long-Term Drug Users

Drug courts are increasingly targeting the chronic recidivists as well as first offenders.

Many drug courts that began as pretrial diversion programs are expanding their focus to target individuals

with more extensive criminal histories who require the rigid supervision and monitoring of the drug court and can benefit from the treatment and rehabilitation services provided. Less than 20% of presently operating drug courts restrict their services to first offenders. Although generally not eligible for diversion because of their more extensive criminal history, defendants with more extensive criminal histories are generally offered some incentive to complete the drug court, such as suspension of a jail or prison term or a reduction in the period of their probation.

Most programs report that participants are presenting moderate to severe crack/cocaine addiction with other drug usage and alcohol addiction as well.

Crack/cocaine addiction is prevalent among most drug court participants. In addition, approximately 75% of the drug courts report moderate to severe marijuana addiction and 53% of the programs report moderate to severe heroine addiction. Approximately one-third of the programs also report moderate to severe methamphetamine addiction presented by participants. Since the earlier Drug Court Survey in 1995, a notable prevalence of methamphetamine has been reported by programs in the central and eastern regions of the country as well as in the west where it had previously appeared to be concentrated. Two-thirds of the responding programs also report moderate to severe alcoholism presented by their clients. Approximately sixty percent of the programs routinely test for alcohol consumption as well as illegal drug use. All of the drug courts either prohibit or strongly discourage the use of alcohol by drug court participants. For juvenile drug courts, the most prevalent drugs reported had, until recently, been alcohol and marijuana. However increasing prevalence of crack/cocaine, methamphetamine, and toxic inhalants is being noted. The average age at first use in juvenile drug courts is 10-12 years, with some programs reporting usage as early as eight years.

Who is The Drug Court "Client"?

Over 90,000 individuals have enrolled in drug courts to date, with approximately 70% having graduated or still participating. A profile of 256 drug court participants in the final phases of 55 different drug courts in 23 different states and other data reported by operating programs, indicates the following:

Participant Enrollment and Performance

Significantly more males than females are enrolling in drug court programs; in some programs, females who participate in drug courts are more heavily involved with drugs by the time they become involved in the criminal court process than males. o Where day care, special women's groups, and other special services are offered, females are graduating at a higher rate than their male counterparts. o For voluntary programs, a high percent age of defendants offered the opportunity o participate in the drug court accept it despite the more rigorous requirements of the drug court compared with the traditional sanction to which they are exposed.

Participant Demographics

- The average age of drug court participants is generally over 30; the average age of graduates in individual programs is often older than the average age for all participants in the program.
- In a number of programs, the average age for female participants is younger than for male participants.
- Most participants who responded to the 1997 questionnaire were single, divorced or widowed.

Twenty-five percent were currently married. Men were more frequently single or never married (56% vs. 41%). More women were currently married (28% vs. 21%). The marital status of the respondents was as follows:

Marital Status of Responding Participants
Marital Status By Gender

Gender	Female	Male
Single	41%	56%
Divorced	28%	22%
Married	28%	21%
Widowed	3%	1%

This data is consistent with 1998 data reported by 100+ drug courts.

- Approximately 16% of the 256 participants surveyed were either veterans (13%) or in the active military (3%).

Drug Usage of Participants

- Most drug court participants have been using drugs for at least 15 years, and generally much longer. Most are using multiple illegal drugs at the time of program entry, and are also using alcohol. Some have also abused prescription drugs.
- Approximately one quarter of drug court participants have participated unsuccessfully in at least one [3] and often more [3] prior treatment programs.
- Many drug court participants have served time in prison for prior drug offenses

Educational Status of Participants

Almost all of the drug court programs require a high school or GED certification in order to graduate. The educational profile of the 256 participants surveyed revealed 5% had less than an eighth grade education, 25% had some high school, 36% were high school graduates or had a GED certificate, 9% had post high school technical training, 15% had two years of college, 6% had three to four years of college, 2% held an undergraduate college degree, and 3% had completed some or all post graduate study.

Children of participants

- Many drug court participants are parents. About 60% of the 256 drug court participants surveyed were parents of minor children, many of whom were in foster care at the time the parent entered the drug court. More recent information from 100+ drug courts indicates that a similar percentage of participants in these programs are parents of minor children, with an estimated 30,000 children represented among drug court parents.

- **Participant Retention**

The retention rates for drug courts remain high, generally between 65% and 85%, despite the difficult populations most programs are targeting, the rigid participation requirements of these programs, the

recent proliferation of drug court programs, and their expansion to more complex caseloads.

The proliferation of drug courts also does not appear to have had any negative impact on the high retention rates (total graduates plus active participants divided by total number ever enrolled) experienced by early programs. Moreover, retention rates do not appear to decrease as the period of program operation lengthens. Retention rates for programs begun during the period of 1989- 92 are similar to those of the more recently implemented programs.

The retention rates also do not appear to be influenced by the population size of the jurisdiction served. Drug courts in large metropolitan areas (e.g., with populations over 750,000) appear to retain participants at a rate similar to drug courts in smaller jurisdictions with populations under 200,000, and in rural areas.

- **Impacts Being Achieved**
  Recidivism
  Recidivism rates continue to be significantly reduced for graduates as well as for individuals who don't complete the program.

Recidivism rates reported by drug courts continue to range between 2% and 20%, depending upon the characteristics of the population targeted. Almost all jurisdictions observe that recidivism is substantially reduced for participants who complete the drug court program and, to a considerable, although generally lesser degree, for those who do not complete the program as well.

Less than three percent of the recidivism rates for drug court graduates involve violent offenses and almost all of the small number of violent offenses reported have been misdemeanors. Most of the recidivism reported involves new drug possession charges or traffic violations arising out of driving license suspensions resulting from the initial charge drug court charge.

Maricopa Co. (Phoenix), AZ:	$112,077
Denver, CO:	$1.8- 2.5million
Washington D.C.:	$4,065 - $ 8,845per client in jail costs (amount fluctuates, depending upon use of jail as a sanction while the defendant is enrolled in the drug court); and $ 102,000 in prosecution costs.
Bartow, FL:	$531,900
Gainesville, FL:	$200,000
Kalamazoo, MI :	$299,754
Klamath Falls, OR:	$86,400
Beaumont, TX:	$443,520

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COMMITTEE: SENATE JUDICIARY

SUBCOMMITTEE: YOUTH VIOLENCE

HEADLINE: TESTIMONY **DRUG COURT** REVIEW

TESTIMONY-BY: MARY LOU LEARY , SUBCOMMITTEE ON YOUTH VIOLENCE

BODY:
OCTOBER 3, 2000 STATEMENT OF THE HONORABLE MARY LOU LEARY ACTING ASSISTANT ATTORNEY GENERAL OFFICE OF JUSTICE PROGRAMS BEFORE THE SUBCOMMITTEE ON YOUTH VIOLENCE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to provide you with information about the work of the Office Of Justice Programs (OJP) in preventing and controlling illegal drug use, particularly among young people. Drug prevention has long been a priority for OJP, and we currently support a wide range of initiatives to prevent and intervene in drug use, sanction and treat drug-abusing offenders, and follow up with community-based services after incarceration. As a former state and federal prosecutor, I have seen the terrible consequences of illegal drug use and trafficking - ruined lives, families torn apart, and communities devastated by drug- related crime. But through my experience at the United States Attorney's Office here in Washington, DC, I have also had the opportunity to see how communities-working together with criminal justice, health, education, and other agencies--can reduce illegal drug use and drug-related crime and improve opportunities for young people to grow up in an environment free from drugs, crime, and fear. As you may know, Mr. Chairman, I had the privilege of working with former U.S. Attorney Jay Stephens to establish the first Weed and Seed Program in the District of Columbia. That program, based in Washington's Langston-Carver neighborhood, has had remarkable success in driving out drug traffickers, closing crack houses, and making the streets safe for the families who live there. Later, working with former U.S. Attorney and now Deputy Attorney General Eric Holder, we expanded our Weed and Seed efforts to four sites in D.C. OJP currently supports Weed and Seed programs in over 200 communities throughout the nation. These programs support law enforcement initiatives to weed out drug dealing, gang activity, and violent crime and seed the targeted area with educational, treatment, and social services and employment opportunities. Drug abuse prevention and other youth programs are essential components of many Weed and Seed programs. In addition, most Weed and Seed involve youth in their community crime prevention, school-based, and neighborhood As you know, Mr. Chairman, from the Weed and Seed sites in Mobile, these programs have tremendous community and neighborhood support. In addition, their methodologies have been independently evaluated and determined to work in reducing crime and improving the vitality of neighborhoods. A National Impact Evaluation of Weed and Seed also shows that the small amount of federal funding provided to sites, and the emphasis on broad-based community participation, has stimulated sites to mobilize a far greater amount of local resources for their Weed and Seed programs, particularly for the seeding component. Our strategy in administering Weed and Seed is to provide funding and technical assistance

to help communities leverage resources to sustain their efforts, and many communities have responded overwhelmingly to this challenge. We are now working to enhance Weed and Seed site data collection and evaluation capabilities, so that sites can use the results of these performance measures to further improve their programs. I would like to briefly describe for the Subcommittee OJP's other major drug-related initiatives in five categories: prevention, enforcement, intervention and treatment, post- incarceration supervision, and research and evaluation. Together, these initiatives constitute a comprehensive approach to the prevention of illegal drug use and the control of drug-related crime. Prevention Prevention is the first step toward ensuring the public safety, and, for that reason, is an integral component of OR's comprehensive approach to reducing drug use and its consequences. We know, for example, that 16 percent of all jail inmates and about 25 percent of property and drug offenders said they committed their offense to get money to buy drugs. At the same time, research also shows that young people who refrain from using illegal drugs before the age of 18 are likely to avoid drug problems throughout their lives. Clearly, prevention is an important key to community safety. OR supports a broad array of initiatives designed to educate young people, their parents, and adults who work with youth about the dangers posed by drug use. As you know, Mr. Chairman, while OR funds some drug prevention efforts directly, such as Weed and Seed, many states use OR funds awarded through the Edward Byrne Memorial State and Local Law Enforcement Assistance (Byrne) Formula Grant and Local Law Enforcement Block Grant to support drug prevention initiatives. However, most OR initiatives designed to prevent drug use by young people are supported through our Office of Juvenile Justice and Delinquency Prevention (OJJDP). For example, OJJDP partners with the Office of National Drug Control Policy (ONDCP) on the Drug-Free Communities Support Program. This program supports community coalitions that engage youth, parents, media, schools, and law enforcement to reduce and prevent youth substance abuse. Under this program, funds have been provided to over 300 communities. OJJDP also supports the Drug Prevention Program for Youth. This school-based program provides Life Skills Training to youth to enable them to resist pressure to use drugs. OJJDP also supports the Drug Prevention Program for Youth. This school-based The program also tests and demonstrates promising drug prevention strategies to reach children in grade school, middle school, and high school and develop a comprehensive, strategic approach for replicating model drug prevention programs for youth. Drug prevention also is an important component of many other programs OJJDP supports. Under the Safe Schools, Healthy Students Initiative, OJJDP-in partnership with the Departments of Education and Health and Human Services-last year provided more than $ 1 00 million to 54 communities to design comprehensive, community-based programs to prevent aggressive behavior and drug and alcohol abuse by young people. The program involves a partnership among educational, mental health, social service, law enforcement, and juvenile justice agencies. OJJDP and BJA also support Boys & Girls Clubs of America (BGCA), which operates facilities where young people can participate in positive recreational, educational, and social activities. Through its Smart Moves program, BGCA helps local clubs provide drug and alcohol prevention programming for youth. In addition, drug abuse prevention is an objective of the Juvenile Mentoring Program (JUMP), which pairs at-risk youth with adult role models to prevent drug use and delinquency and to improve school work and life skills. Through these and other efforts, OR is working to deter young people from illegal drug use. Enforcement Enforcement programs are another critical component of OJP's comprehensive effort to prevent illegal drug use and to help states and local communities enforce drug laws. Of the approximately $900 million in program funding that OR certifies to ONDCP as drug-related, two-thirds of these funds are for enforcement initiatives. For example, states use approximately 40 percent of funds awarded under the Byrne Formula Grant Program to support multi- jurisdictional law enforcement task forces that target drug trafficking. As you know, Mr. Chairman, the Byrne program was created by the Anti-Drug Abuse Act of 1988 specifically to help states enforce state and local drug laws. In providing guidance to states on their use of Byrrie funds, BJA emphasizes controlling violent and drug-related crime and serious offenders through multi jurisdictional and multi-state efforts to support national drug control priorities. Funds awarded to states and localities under BJA's Local Law Enforcement Block Grant (LLEBG) Program also may be used for drug

enforcement efforts. LLEBG funds may be used to hire law enforcement officers, pay overtime, procure equipment, enhance school security, create drug courts, adjudicate violent offenders, establish multi-jurisdictional law enforcement task forces, and support crime prevention programs. State and local jurisdictions determine how they will use their LLEBG funds. BJA also is helping local jurisdictions safely investigate and close down clandestine drug laboratories. These labs illegally manufacture controlled substances, often endangering the nearby neighborhood and the officers who investigate the labs, as well as increasing the availability of illegal drugs. For example, under a BJA grant, the National Sheriffs' Association provides training and technical assistance to state and local law enforcement and regulatory personnel on safe methods for investigating and cleaning up illegal drug labs. Intervention and Treatment Intervention and treatment are important linchpins of OJP's comprehensive drug control initiative. Research has shown that combining criminal justice sanctions with substance abuse treatment is highly effective in breaking the cycle of drug use and crime. Many studies have demonstrated the effectiveness of treatment, particularly treatment in prison or other long-term residential settings followed by aftercare treatment in the community. OR administers several major initiatives that combine drug treatment with criminal justice sanctions and incentives for good behavior. One of the most widespread and effective programs is drug courts. Drug courts use a cannot and stick" approach. Intensive supervision and sanctions are combined with the prospect of reduced charges or shorter sentences for offenders who successfully complete treatment. Although drug courts vary among communities, such courts typically involve active participation by judges, regular drug testing of offenders, and prompt, graduated sanctions. Drug courts use a partnership approach that integrates drug treatment with other health and social services. As an alternative to traditional incarceration or probation, drug courts are an effective means to reduce drug use and recidivism and are less costly than traditional supervision. In 1994, the Violent Crime Control and Law Enforcement Act (Crime Act) authorized a new Drug Courts Grant Program in the Department of Justice. To administer this new grant program, the Drug Courts Program Office (DCPO) was created within OJP. Since 1995, DCPO has awarded more than $125 million to support the planning, implementation, or enhancement of drug, courts in over 600 local communities. DCPO also provides technical assistance to communities in designing, implementing, and operating drug courts. Much of this technical assistance is provided through DCPO's Drug Courts Clearinghouse at American University. The Clearinghouse provides technical assistance to DCPO grantees, conducts research, and collects and disseminates information on drug courts. DCPO also sponsors the mentor drug court program, through which jurisdictions establishing new drug courts have the opportunity to learn from established drug courts, thereby avoiding potential problems. In addition, DCPO sponsors regional training conferences for drug court grantees. DCPO closely monitors the drug court programs supported with OR funds. When problems are detected, DCPO staff step in to provide additional training and technical assistance. If problems persist, drawdowns of federal funds are prohibited until corrective measures have been taken. As a last resort, for programs that fail to take remedial measures, grant funds are rescinded. DCPO also relies on evaluations to measure drug court performance. In 1998 and again in 1999, Columbia University's National Center on Addiction and Substance Abuse (CASA) released findings from reviews of 77 drug courts. CASA reported that evaluations have shown that drugs courts are effective in addressing drug abuse among nonviolent offenders, in reducing the burdens imposed on the criminal Justice system by drug-related cases, and in helping offenders become law-abiding, drug-free, and self-sufficient members of their communities. Among the CASA findings are the following: - Compared to other treatment programs, drug courts provide more comprehensive supervision and monitoring, increase the rates of retention in treatment, and reduce drug use and criminal behavior while participants are in the drug court program. - Drug use for participants while in the program remains low, as compared with similar defendants not in a drug court. CASA found that an average of 10 percent of drug tests of drug court clients were positive, compared to an average of 31 percent for similar defendants not in a drug court, but under probation supervision. - Retention and graduation rates among drug court participants remain high, as compared with other outpatient treatment programs. Sixty percent of those who entered drug courts were still in treatment

after 12 months, compared to 50 percent of individuals treated in outpatient programs. - Recidivism for participants while in the drug court program remains low for graduates. Post-graduation recidivism rates are also low. In an evaluation of the Jefferson County, Kentucky drug court, only 13 percent of drug court graduates were convicted of a felony in the one-year following graduation, compared to 60 percent of those who failed to graduate and 55 percent of the comparison group of eligible offenders who declined to participate in the drug court program. Other evaluations found nondrug court clients were about twice as likely to recidivate as compared to drug court clients. In Portland, 27 percent of drug court clients were arrested for a new offense, compared to 46 percent for the comparison group. In Las Vegas, 39 percent of drug court clients were rearrested, compared to 66 percent for the control group. Drug courts can also help communities save money. For example, Denver reports savings of $2.15 million annually, and Washington, DC saves an average of $6,455 per client per year compared with the cost of incarceration. A comprehensive cost analysis of the drug court program in Portland, Oregon, found that every taxpayer dollar spent on the drug court saved $2.50 in other costs to the public. When broader cost savings were taken into account, such as costs to crime victims, the ratio of the benefit to the taxpayer was estimated at $ 1 0 saved for every $1 spent. As of June 1, 2000, there were 533 operating drug courts with another 293 in the planning stages. While drug courts originally served only adult offenders, today specialized drug courts have emerged to serve juveniles, Native Americans, families, and individuals charged with driving under the influence (DUT). More than 57,000 individuals have graduated from a drug court. More than 1,000 drug-free babies have been born to drug court participants. And over 90 percent of drug court graduates are gainfully employed. Research also has shown a tremendous need for prison-based drug treatment. The National Center on Addiction and Substance Abuse found that 80 percent of the 1.7 million adults incarcerated at the time of its study were under the influence of drugs or alcohol when arrested, stole property to buy drugs, or had a history of drug and alcohol abuse. From prisoner surveys conducted by OJP's Bureau of Justice Statistics, we know that over 80 percent reported drug use prior to incarceration, and between 30 and 40 percent report having been under the influence of alcohol immediately prior to or during the commission of their offenses. A study by OJP's Corrections Program Office (CPO) in 1997 indicated that approximately 70 to 80 percent of all state prison inmates are in need of substance abuse treatment. However, only a fraction of the substance-abusing offenders in the nation's correctional facilities have access to treatment. Studies have shown a tremendous difference in recidivism rates for drug-abusing offenders who receive treatment as compared with those who do not undergo treatment. A Delaware study, for example, found that inmates who completed the state's drug treatment program were three times more likely to be drug and crime-free after 18 months than nonparticipants or those who failed to complete the program. To help fill the treatment gap, OJP's Residential Substance Abuse Treatment for State Prisoners (RSAT) program provides formula grants to states for substance abuse treatment programs in state or local correctional facilities. Last month, OJP awarded more than $57 million to all 50 states and eligible territories to continue to provide substance abuse treatment to state and local prisoners. Originally authorized in the 1994 Crime Act, RSAT has allowed OR to provide more than $230 million to the states and territories since 1996. In implementing RSAT, states are encouraged to adopt comprehensive approaches to substance abuse testing and treatment for offenders, including relapse prevention and aftercare services. RSAT programs must last from six to 12 months, be provided in residential treatment facilities set apart from the general correctional population, focus on the substance abuse problems of the inmate, and work to develop the inmate's behavioral, social, vocational, and other skills needed to reduce substance abuse and related problems and improve the ability to remain drug and crime-free upon the offender's return to the community. Another major OJP program is Breaking the Cycle (BTQ, a system- wide, coordinated program designed to reduce substance abuse and criminal activity of drug-involved offenders by combining drug treatment with criminal justice sanctions and incentives. It is based on research suggesting that early identification and assessment of drug users, followed by treatment and supervision tied to the court's coercive powers, can reduce drug use and crime. BTC's focus is on maintaining continuous treatment as the

defendant moves through the justice system. In 1996, OJP's National Institute of Justice (NIJ) selected Birmingham, Alabama as the first Breaking the Cycle demonstration site. In 1998, NIJ expanded the initiative to Jacksonville, Florida and Tacoma, Washington, and, in 1999, selected Lane County (Eugene), Oregon as the first Breaking the Cycle project in a juvenile justice system. Each site brings a strong collaborative framework to the initiative, which includes partners from the justice and treatment communities and the local political system. Each also has undertaken other innovative strategies to treat and monitor drug-using defendants. Each site has an active drug court and networks to promote criminal justice and treatment system coordination. In fact, the court plays a critical role in each BTC project, both in offender management and in oversight of program implementation and operation. Judges are responsible for ensuring that sanctions and incentives are applied appropriately and that treatment and other services are coordinated among the various program partners. Under Breaking the Cycle, Birmingham has significantly improved its handling of drug- using defendants. Substance abuse assessments that once were conducted six months after arrest are now completed within two days of arrest. The number of defendants on the project's active caseload has more than doubled from 900 a month to over 1,800, and the median length of supervision has increased from about 150 days to 232 days. Treatment also includes case management, frequent urinalysis, and other needed services. Criminal justice and service providers are now engaged in developing a seamless transition of drug treatment and supervision data from the pretrial stage to post-adjudication supervision. Birmingham's experience as Breaking the Cycle's "pioneer site" reinforced the importance of elements such as strong system collaboration, a comprehensive management information system, and the availability of wide-ranging treatment options. The Birmingham I I experience also showed that Breaking the Cycle's collaborative structure can be used to address other system issues. NIJ has incorporated the lessons learned in Birmingham into its partnership with the other Breaking the Cycle sites. It also is working with site officials to transition Breaking the Cycle to other local, state, and federal funding sources. Post-incarceration Supervision Experience with these and other treatment programs, as well as research, have documented the need for post-incarceration supervision and follow-up treatment, or aftercare, in the community to reinforce institutional interventions. OR is developing approaches to help offenders stay crime and drug-free when they return to their communities following incarceration. The objective of these efforts is to hold offenders accountable for their behavior, to reduce recidivism, and to increase public safety. About half a million offenders are released from prison or jail each year and return to our communities. Too often, these offenders fail to receive the close supervision, drug treatment, and other services they need. About I 00,000 offenders are under no supervision at all. Mr. Chairman, as you and I know from our experience as former prosecutors, many of these offenders recidivate. In fact, we know that about two-thirds of released offenders will reoffend and be reincarcerated if they are not closely monitored to prevent recidivism and drug abuse relapse. OR has begun testing two approaches to help communities more effectively supervise offenders following incarceration. The first initiative is a reentry court, along the lines of a drug COLIrt,whichsupervisesreleasedoffendersusingjudgesinsteadoftradit ionalparoleboards. Law enforcement and correctional officers, along with treatment and service providers, set up a reentry plan, monitor offender behavior, and apply sanctions and incentives. OJP is providing intensive technical assistance to nine state and county agencies-including Broward County, Florida, San Francisco, and the states of Delaware, Iowa, Kentucky, and West Virginia-to develop a variety of models for reentry courts. The second approach involves reentry partnerships, where law enforcement, corrections, and the community work together to prepare for and manage the reentry process. Under this initiative, reentry plans are developed for individual offenders based on a network of community resources, including employment, housing, substance abuse treatment, family counseling, and other services. This comprehensive approach draws upon the resources of a broad range of partners, including corrections agencies, community police, treatment providers, and community- based organizations. The offender, the offender's family, the victim, and the community all work together to develop a comprehensive strategy for managing an offender's reentry to community life. Eight states are participating in this

initiative-Florida, Maryland, Massachusetts, Missouri, Nevada, South Carolina, Vermont, and Washington. In addition, to maximize the impact of federal funds in the reentry partnership sites, OJP plans to collaborate with the Departments of Labor (DOL) and Health and Human Services (HHS). DOLwouldprovideassistanceindevelopingandoperatingjobs-relatedprogramsinthe reentry sites, and HHS would support substance abuse and mental health services. We have also set aside monies under this program to support an evaluation, and, in fact, our National Institute of Justice has just recently issued a Request for Proposals for this purpose. Research and Evaluation In addition to these programmatic efforts, OJP supports research and statistical analysis to inform programming, as well as evaluations to measure program performance and effectiveness. At the Justice Department, from the Attorney General on down, research and evaluation are real priorities. Research and evaluation are not isolated endeavors, but an integral part of our efforts to administer justice in this country and to improve the operations of the criminal and juvenile justice systems. Our goal is to have data and knowledge driving policy, so that our programming and funding decisions are based on sound performance measures, hard data, and ongoing analysis. Starting with the passage of the 1994 Crime Bill, we worked with Congress to allow us to take money off the top of all the new program funds to support research and evaluation in those areas and to help inform future federal spending. At OJP, we are working to make evaluation a part of every program we support and to use the results of research and evaluation to inform our programming and spending decisions. For example, since 1995, we have committed $ 5 million to evaluate drug court programs, and we plan to expend additional monies in Fiscal Year 2001 to expand these efforts. Our National Institute of Justice has designed a multi-phased, multi-year, multi-site evaluation of over 30 drug court programs. Some preliminary findings from the first evaluations were released this past spring, and we are using those results to improve our drug Court programming. In addition, we are supporting an evaluation of the effectiveness of the various treatment services used by drug courts and research that will develop an assessment tool that can be used by drug court programs throughout the country to provide reliable information on program costs and cost-savings. In addition, we are supporting initiatives that incorporate research and evaluation into programs from their inception. In these programs, researchers and practitioners work together to identify local crime-related problems, guide the implementation of interventions, evaluate progress, and disseminate data. I am committed to continuing to ensure that performance measures are built into every program that OR supports. As a public institution, OR has a responsibility to ensure that taxpayer monies are spent wisely and effectively. For that reason, I am working to ensure that OR staff closely monitors every grant program to measure effectiveness, and to quickly intervene with training and technical assistance where needed to improve program operations. If a program continues to flounder in spite of additional assistance, I believe we must learn from our mistakes and end funding for projects that simply do not work. In addition to federally supported initiatives, we are also working to build research and evaluation capacity at the state and local levels. Federal support for research and evaluation is critical. But at the same time, we must build capacity at the state and local levels to enable those officials to better understand and respond to crime. Because crime in this country is primarily a state and local responsibility, we must enhance state and local capacity to assess their crime statistics, analyze risk factors, and conduct research and evaluation to inform local planning and programming. OJP is working to foster performance measures at the state and local level. Assistance provided to drug courts is one example. Although OJP closely monitors the drug courts supported with its grant monies, provides training and technical assistance where needed, and rescinds funds from ineffective programs, many drug courts are supported with funds from state and local government, private industry, and foundations. In fact, as you know, Mr. Chairman, drug courts began as a grass-roots movement, without federal assistance, and spread across the nation. In an effort to ensure the effectiveness of all drug courts, OJP entered into a cooperative agreement with the National Association of Drug Court Professionals to develop standards and performance measures for drug courts. A Drug Court Standards Committee, composed of drug court practitioners from throughout the country, developed recommendations published in DCPO's 1997 report, "Defining Drug Courts: The

Key Components." This landmark report describes the IO key components of a drug court and provides performance benchmarks for each component. The Conference of Chief Justices, the Conference of State Court Administrators, and several states have adopted they key components and performance benchmarks as standard measurement tools for drug courts. OJP also is working to help jurisdictions collect and analyze drug use data, and then use those data in local criminal justice planning. Through the Arrestee Drug Abuse Monitoring (ADAM) program, 35 jurisdictions across the country collect and analyze interviews and urinalysis of adult and juvenile arrestees and detainees in police lock-ups. Analyses of these data help jurisdictions understand local and regional drug use trends, as well as the links between drug use and crime, and make informed decisions about deployment and spending. ADAM was the first national indicator, for example, to document an alarming rise in Western jurisdictions in methamphetamine use. ADAM has also found that marijuana was the most commonly used drug among juvenile detainees. ADAM is designed so that each participating local Jurisdiction can customize information to meet its unique needs. ADAM makes it possible to identify levels of drug use among arrestees; track changes in patterns of drug use; identify specific drugs that are abused in each jurisdiction; alert officials to trends in drug use and the availability of new drugs; provide data to help understand the drug-crime connection; and evaluate law enforcement and jail-based programs and their effects. ADAM also serves as a research platform for a wide variety of related initiatives, including the relationship of drugs and crime to related social problems, such as alcohol abuse, domestic violence, drug markets, firearms, gambling, gangs, and sexually transmitted diseases. For example, in Indianapolis, a special committee convened by the mayor's office consisting of law enforcement officials, court officials, and service providers, used ADAM data to develop a plan to address problems such as prostitution, drug use, and other crimes. Through an agreement with the Bureau of the Census, OJP's Bureau of Justice Statistics collects additional data regarding drug use by prison and jail inmates, drug-related programs in state and local police agencies, and the adjudication and sentencing of drug offenders. For example, BJS surveys found that more than 80 percent of jail and prison inmates reported prior drug use, compared to 36 percent of the general population. Conclusion These data highlight the need for continued national attention to the problem of illegal drug use and drug-related crime. OJP has adopted a comprehensive approach to preventing II legal drug use, enforcing drug laws, providing appropriate interventions and sanctions for drug- abusing offenders, ensuring post- incarceration supervision and treatment, and supporting research and evaluation to inform these efforts. I look forward to working with you, Mr. Chairman, and the Members of this Subcommittee to prevent illegal drug use in this country, part CLI largely by our nation's young people, and to reduce drug-related crime. This concludes my formal statement. I would be happy now to answer any questions you or the Subcommittee Members may have.

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OJP Drug Court Clearinghouse and Technical Assistance Project

A Project of the Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice

2000 Drug Court Survey Report:

Program Operations, Services and Participant Perspectives

Executive Summary

[Draft]

November 2001

Caroline S. Cooper

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FOREWORD

With the number of drug courts more than doubling since the *1997 Drug Court Survey Report* was published, the *2000 Drug Court Survey Report* has been prepared to provide a more current overview of drug court activity nationwide. Like its predecessor, the *2000 Drug Court Survey Report* has been designed to focus on the critical operational elements and implementation issues that have emerged during the course of the drug court experience generally and, where possible, note trends and/or divergences, based on comparison with the 1997 data.

The 2000 Drug Court Survey Report provides a comparative profile of 171 of the 194 adult drug court programs in operation for at least six months as of January 1, 2000, and updates the information contained in the *1997 Drug Court Survey Report* which reflected the experiences of ninety-three programs. The information reported reflects responses from judges, prosecutors, defense counsel, law enforcement agencies, corrections agencies, treatment professionals, and participants involved with the 171 drug court programs included. In all, 1,600 responses were received and incorporated in this report – almost four times the number of respondents reflected in the *1997 Report.* The *2000 Survey Report* also expands on the *1997 Survey Report* with a special section on DUI Drug Courts.

The *2000 Drug Court Survey Report* consists of eight parts, reflecting responses from the principal agencies involved in drug court program operations: (1) general program information provided by the court; (2) a special section for DUI/DWI drug court programs completed by the DUI drug court judge or his/her designee; (3) prosecution office perspectives; (4) defense counsel perspectives; (5) law enforcement agency perspectives; (6) corrections agency perspectives; (7) treatment provider perspectives; and (8) the perspectives of over 800 participants in the final phase of program participation. In addition, the *Executive Summary* provides a synopsis of the major findings presented in these sections. Although the focus of the *2000 Drug Court Survey Report* is upon adult drug court program activity underway in state courts, the *Executive Summary* also references relevant developments in juvenile, family and tribal drug court activity.

While the *1997 Report* included the specific responses from each respondent to the principal survey questions, the increased number of responses to the *2000 Survey* has made it impossible to report program by program responses in most cases. Individual program responses have therefore been limited to the following survey topics for each Part: "Most Serious Problems Encountered and Strategies to Resolve Them;" "Most Significant Benefits Resulting;" "Unanticipated Issues Arising and Strategies to Resolve Them;" "Advice to Counterpart Agencies in Other Jurisdictions; and Suggestions for Program Improvement." The entire survey database, however, is available for querying by readers with interest in obtaining more detailed information on any of the topics covered.

The *2000 Drug Court Survey Report* is presented in the following six volumes:

Executive Summary	
Volume One:	Part One: Judicial System Perspectives
Volume Two:	Part Two: DUI Drug Courts
Volume Three:	Justice System Agency Perspectives (Part Three: Prosecutors; Part Four: Defense Counsel; Part Five: Law Enforcement; and Part Six: Corrections)
Volume Four:	Part Seven: Treatment Provider Perspectives
Volume Five:	Part Eight: Participant Perspectives

The 171 drug courts reflected in the *2000 Drug Court Survey Report* include 167 state courts and four tribal courts.[1] The reporting programs operate in 38 different states, the District of Columbia, and Puerto Rico and represent 88% of the 194 adult drug courts then known to be in operation for six months or longer at the time the survey was distributed. Between the time of the survey's distribution and the publication of this report, 297 additional adult drug courts have become operational, for a total of 491 adult drug court programs now under way. An additional 306 adult programs are being planned.

Special appreciation is extended to the following individuals who provided suggestions on issues to capture in the survey and/or reviewed the draft survey instrument and offered valuable suggestions for its improvement:

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Judge Tomar Mason, San Francisco Superior Court, San Francisco, California;

Valerie Moore, Executive Director of InAct, Inc., Portland, Oregon, which provides treatment services for the Multnomah County, Oregon Drug Court;

Judge John Parnham, First Judicial Circuit Court, Pensacola, Florida, founding judge for the adult, juvenile and family drug court programs in the First Judicial Circuit of Florida;

Roger Peters, Ph.D., Professor of Psychology, University of South Florida, Tampa, Florida;

Marilyn Roberts and staff of the OJP Drug Courts Programs Office, U.S. Department of Justice, Washington D.C.;

[1] The one federal District Court drug court (Yosemite District, California) in operation, which had also provided information for the 1997 survey, had suspended operations at the time of the 2000 survey because of the loss of its drug court probation officer.

Michael Smith, M.D., Director of the Substance Abuse Clinic, Lincoln Hospital, New York, New York;

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Special thanks are extended to the staff of National TASC, who assisted in the development of the survey instrument focusing on treatment issues (Part VII), and to the following student interns and other staff who painstakingly assisted in the entering of the data which has formed the foundation for this report series:

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Rita Wilson

It is impossible to adequately thank: Gamze Zeytinci whose skill in designing the data base to capture the information provided by survey respondents and to promote its analysis has made this report possible; Anya Arthur, whose editorial skill, attention to detail and quality, and perseverance were instrumental in the preparation of this report; and Lizbeth Schmiel, whose organizational, management and follow-up skills accounted, in large part, for the systematic entry of the 1,600 survey responses received, and the high program response rate reflected in this report. Their insight, good humor, patience and enthusiasm through the many months of this survey development and reporting process were the critical ingredients in making possible the completion of this report.

The true "producers" of this report, however, are the 1,600 individuals involved with adult drug court program operations across the country who took the time to complete the survey instrument and to share their experience, insights and suggestions. The names and contact information for these officials are listed in the Appendix of the relevant Part to which they contributed. We extend our deepest appreciation to each of these individuals for the insights and experience they have shared and for their considerable – and enthusiastic – assistance in advancing the "state of the art" and knowledge regarding drug court operations. Through their efforts, we have been able to develop the expanded "profile" information presented in these volumes and to disseminate it to their colleagues in the field.

Caroline S. Cooper, Director
OJP Drug Court Clearinghouse and
Technical Assistance Project
School of Public Affairs
American University
Washington D.C.

Agencies Responding to Drug Court Clearinghouse Information Update Request

Name of Court	State	Part 1 (Court)	Part 2 (DUI)	Part 3 (DA)	Part 4 (Def.)	Part 5 (L.E.)	Part 6 (Correct)	Part 7 (Trmt)	Part 8 (Partic)
Cullman Co. Circuit Court	AL	Y	Y	Y	Y	Y	Y	Y	Y
Mobile Co. Circuit Court	AL	Y				N/A		Y	Y
Tuscaloosa Co. Circuit Court	AL	Y		Y		Y		Y	Y
Maricopa County Superior Court	AZ	Y						Y	Y
Maricopa Co. Superior Court–DWI	AZ		Y		Y			Y	
Pima County Superior Court	AZ	Y		Y	Y	Y	Y	Y	Y
Yuma County Superior Court	AZ	Y		Y					Y
Butte County Superior Court	CA	Y		Y	Y	Y	Y	Y	Y
Contra Costa Co. Superior Court	CA	Y				Y	Y	Y	Y
Bakersfield Municipal Court	CA	Y						Y	Y
East Kern County Municipal Court	CA	Y				Y		Y	Y
North Kern County Municipal Court	CA	Y		Y	Y			Y	Y
South Lake County Superior Court	CA							Y	
Los Angeles Co./Compton Superior Court	CA	Y		Y	Y			Y	Y
Los Angeles Co. Superior Court	CA	Y		Y	Y			Y	
Los Angeles Co. Superior Court/ Van Nuys	CA	Y		Y	Y			Y	
Los Angeles Co. Superior Court/Rio Hondo	CA							Y	
Mendocino Co. Superior Court	CA	Y		Y	Y		Y	Y	Y
Napa Co. Superior Court	CA	Y		Y	Y		Y	Y	
Orange Co. Superior Court	CA	Y		Y	Y	Y	Y	Y	Y
Placer Co. Superior Court	CA	Y							
Riverside Co. Superior Court/ Desert Drug Court	CA	Y		Y	Y	N/A	Y	Y	
Riverside Co. Superior Court/Riverside	CA	Y		Y	Y			Y	Y
San Bernardino Co. Superior Court/Redlands	CA	Y			Y	Y		Y	Y
San Bernardino County Superior Court/San Bernardino	CA	Y		Y	Y	Y		Y	Y
El Cajon	CA	Y		Y			Y	Y	Y
San Diego Superior Court/ North County	CA	Y					Y	Y	Y
San Diego County Superior Court/San Diego	CA	Y			Y		Y	Y	Y
San Diego Municipal/Superior Court	CA	Y				Y	Y	Y	Y
San Francisco Superior Court	CA	Y			Y	Y	Y	Y	
San Joaquin Co. Superior Court	CA	Y		Y	Y	Y	Y	Y	Y
Santa Barbara Co. Superior Court	CA	Y		Y	Y			Y	Y
Santa Clara Co. Superior Court	CA							Y	Y
Santa Cruz Co. Superior Court	CA	Y		Y	Y	Y		Y	Y
Shasta County Co. Superior Court	CA	Y		Y		Y	Y	Y	Y
Solano Co. Superior Court	CA	Y	N/A	Y	Y	N/A	N/A	Y	Y
Sonoma Co. Superior Court	CA	Y			Y		Y	Y	Y
Stanislaus Co. Superior Court	CA	Y		Y			Y	Y	Y
New Haven Co. Superior Court	CN	Y		Y	Y			Y	Y
Waterbury Superior Court	CN	Y							
Alachua Co. Circuit Court	FL	Y		Y	Y			Y	Y
Bay Co. Circuit Court/ Panama City	FL	Y		Y	Y			Y	Y
Brevard Co. Circuit Court	FL	Y	Y	Y	Y	Y	Y	Y	Y
Broward Co. Circuit Court	FL	Y		Y	Y	N/A	Y	Y	Y
Dade Co. Circuit Court	FL			Y	Y			Y	Y
Duval Co. Circuit Court	FL	Y		Y		Y		Y	Y
Escambia Co.Circuit Court	FL	Y		Y	Y	Y	Y	Y	
Hillsborough Co. Circuit Court	FL	Y		Y	Y			Y	Y
Monroe Co. Circuit Court	FL	Y				Y	Y	Y	Y
Orange Co. Circuit Court	FL	Y						Y	
Volusia Co. Circuit Court	FL					Y			
Fulton Co. Circuit Court	GA	Y		Y	Y			Y	Y
Glynn Co. Circuit Court	GA			Y		Y		Y	Y
Honolulu Circuit Court	HI	Y		Y	Y	Y	Y	Y	
Polk Co. District Court	IA	Y		Y	Y		Y	Y	Y
Woodbury Co. District Court	IA	Y							Y

Name of Court	State	Part 1 (Court)	Part 2 (DUI)	Part 3 (DA)	Part 4 (Def.)	Part 5 (L.E.)	Part 6 (Correct)	Part 7 (Trmt)	Part 8 (Partic)
Ada Co. District Court	ID	Y		Y	Y				Y
Kootenai Co. District Court	ID	Y		Y	Y	Y		Y	Y
Kankakee Co. Circuit Court	IL	Y		Y		Y		Y	Y
Madison Co. Circuit Court	IL	Y		Y	Y			Y	Y
Peoria Co. Circuit Court	IL	Y							
Winnebago Co. Circuit Court	IL	Y	N/A	Y	Y	Y	Y	Y	
Allen Co. Circuit Court	IN	Y		Y	Y				Y
Lake Co./Gary City Court	IN	Y		Y	Y			Y	Y
Marion Co. Circuit Court	IN	Y		Y	Y			Y	Y
Vigo Co. Circuit Court	IN	Y		Y	Y	Y	Y	Y	Y
Sedgwick Co. District Court	KS	Y		Y		Y	Y	Y	N/A
Clark Co. Circuit Court	KY	Y		Y	Y	Y	Y	Y	N/A
Franklin/Richland/W. Carroll Cos. Circuit Court	LA	Y		Y	Y	Y	Y	Y	Y
Iberia Parish District Court	LA	Y		Y	Y			Y	Y
Jefferson Parish District Court	LA	Y		Y	Y				Y
Lafayette/Acadia/Vermillion Parish District Court	LA			Y	Y	Y	Y		Y
Lafourche Parish District Court	LA	Y		Y	Y	Y	Y	Y	Y
Livingston/ Tangipa / St. Helene Parish District Court	LA	Y		Y			Y	Y	Y
Orleans Parish District Court	LA	Y				Y		Y	Y
Ouashita Parish District Court	LA	Y		Y	Y	Y	Y	Y	Y
Rapides Parish District Court	LA	Y	N/A	Y	Y	Y	Y	Y	Y
St. Mary's Parish District Court	LA	Y	N/A	Y	Y	Y	Y	Y	Y
Washington Parish District Court	LA	Y				Y	Y	Y	Y
Essex Co. District Court	MA	Y		Y				Y	Y
Franklin Co. District Court	MA	Y		Y	Y			Y	
Worcester Co. District Court	MA	Y	N/A	Y	Y	N/A	Y	Y	Y
Baltimore City District Court	MD	Y		Y	Y		Y	Y	Y
Harford Co. District Court	MD	Y		Y	Y	Y	Y	Y	Y
Eaton Co. District Court	MI	N/A	Y	Y	Y	N/A	N/A	Y	Y
Kalamazoo Co. Circuit Court (male)	MI	Y		Y	Y	Y	Y	Y	Y
Kalamazoo Co. Circuit Court (female)	MI								Y
Kent Co. Circuit Court	MI	Y	N/A	Y	Y	Y	N/A	Y	N/A
Macomb Co. District Court	MI	Y		Y		Y	Y	Y	Y
Wayne Co. Circuit Court	MI	Y		Y	Y			Y	Y
Hennepin Co. District Court	MN	Y	N/A	Y	Y	Y	Y	Y	Y
Boone Co. Circuit Court	MO	Y		Y	Y	Y	Y	Y	Y
Butler Co. Circuit Court	MO	Y		Y	Y	N/A	Y		Y
Cole Co. Circuit Court	MO	Y		Y	Y			Y	
Jackson Co. Circuit Court	MO							Y	Y
Jackson Co. Circuit Court	MO	Y		Y	Y	Y	Y	Y	Y
Saline Co. Circuit Court	MO			Y	Y	Y	Y	Y	Y
Scott Circuit Court	MO	Y		Y	Y	Y	Y	Y	Y
St. Louis City Circuit Court	MO	Y		Y	Y			Y	
Pike Co. District Court	MS		Y	Y	Y				
Blackfeet Tribal Ct.	MT	Y		Y		Y	Y	Y	Y
Warren Co. Superior Court	NC			Y					
Douglas Co. Superior Court	NE	Y		Y	Y	Y	Y	Y	Y
Camden Co. Superior Court	NJ	Y		Y	Y		Y	Y	
Passaic Co. Superior Court	NJ	Y							
Union Co. Superior Court	NJ	Y		Y	Y			Y	
Mercer Co. Superior Court	NJ	Y		Y				Y	
Bernalillo Co. District Court	NM	N/A	Y	N/A	N/A	N/A	Y	Y	Y
Bernalillo	NM	Y		Y	Y	Y		Y	Y
San Juan Co. District Court	NM	Y		Y	Y			Y	Y
First Judicial District Court/ Santa Fe	NM	Y			Y			Y	Y
Santa Fe Municipal Court	NM	Y	Y					Y	Y
Taos Co. District Court	NM	Y	Y	Y	Y	Y			
Clark Co. District Court	NV	Y		Y	Y		Y	Y	Y
Washoe Co. District Court	NV	Y							
Bronx Co. Court/Bronx	NY	Y		Y	Y			Y	Y
Erie Co./Buffalo City Court	NY	Y		Y	Y			Y	Y
Cheektowaga Co. Court	NY	Y		Y	Y	Y		Y	Y
Lackawanna Co. Court	NY	Y		Y	Y	Y		Y	Y

Name of Court	State	Part 1 (Court)	Part 2 (DUI)	Part 3 (DA)	Part 4 (Def.)	Part 5 (L.E.)	Part 6 (Correct)	Part 7 (Trmt)	Part 8 (Partic)
Tonawanda Co. Court	NY	Y		Y	Y	Y		Y	Y
King County Co urt/Brooklyn	NY	Y		Y	Y			Y	Y
New York Co. Court/ Manhattan	NY	Y		Y	Y			Y	Y
Monroe Co. Court	NY	Y		Y	Y	Y		Y	Y
Niagara Co. Court	NY	Y		Y	Y	Y		Y	Y
Onondaga Co. Court	NY	Y		Y	Y			Y	Y
Queens Co. Court	NY	Y		Y	Y			Y	Y
Renssalear Co. Court	NY	Y		Y	Y		Y	Y	Y
Troy City Court	NY	Y							N/A
Rockland Co. Court	NY	Y		Y	Y			Y	Y
Suffolk Co. Court	NY	Y		Y	Y			Y	Y
Tompkins Co. Court	NY	Y		Y	Y				Y
Butler Co. Court of Common Pleas	OH	Y		Y			Y	Y	Y
Cuyahoga Co. Court of Common Pleas	OH	Y			Y	Y	Y	Y	Y
Erie Co. Court of Common Pleas	OH	Y		Y	Y		Y	Y	Y
Hamilton Co. Court of Common Pleas	OH	Y		Y	Y	N/A	N/A	Y	Y
Lucas Co. Court of Common Pleas	OH	Y						Y	Y
Mahoning Co. Court of Common Pleas	OH	Y		Y				Y	Y
Mansfield Co. Court of Common Pleas	OH	Y				Y	Y	Y	Y
Richland Co. Court of Common Pleas	OH	Y		Y		N/A		Y	Y
Stark Co. Court of Common Pleas	OH	Y		Y	Y	Y		Y	Y
Summit Co. Court of Common Pleas	OH	Y		Y	Y	Y	Y	Y	Y
Garvin Co. District Court	OK	Y		Y	Y	Y		Y	Y
Hughes Co. District Court	OK	Y			Y				Y
McClain Co. District Court	OK	Y		Y	Y	Y		Y	Y
Pontotoc Co. District Court	OK	Y	N/A	Y	Y	Y	Y	Y	Y
Seminole Co. District Court	OK	Y		Y	Y	Y		Y	Y
Muscogee Creek Tribal Court	OK	Y	Y	Y	Y	Y	Y	Y	Y
Douglas Co. Circuit Court	OR	Y		Y	Y	Y	Y	Y	
Josephine Co. Circuit Court	OR	Y		Y	Y	Y	Y	Y	Y
Klamath Co. Circuit Court	OR	Y	Y	Y	Y	Y	Y	Y	Y
Lane Co. Circuit Court	OR	Y		Y	Y	Y	Y	Y	Y
Multnomah Co. Circuit Court	OR	Y		Y	Y			Y	Y
Allegheny Co. Court of Common Pleas	PA	Y		Y	Y			Y	
Chester Co. Court of Common Pleas	PA	Y		Y	Y			Y	Y
Philadelphia Mun icipal Court	PA	Y	Y	Y	Y	Y	Y	Y	Y
York Co. Court of Common Pleas	PA	Y		Y	Y	N/A		Y	Y
San Juan District Court	PR	Y		Y		Y	Y	Y	Y
Sisseton Wahpeton Tribal Court	SD	Y		Y					Y
Shelby Co. District Court	TN	Y	N/A	Y	N/A	N/A	N/A	Y	Y
Montgomery Co. District Court	TX	Y		Y	Y	Y	Y	Y	Y
Tarrant Co. District Court	TX	Y	N/A	Y	N/A	N/A	N/A	N/A	Y
Travis Co. District Court	TX	Y		Y	Y	Y	Y	Y	Y
Albemarle Co. District Court	VA	Y		Y	Y		Y	Y	Y
Roanoke City Court	VA	Y		Y	Y	Y	Y	Y	Y
Newport News City Court	VA	Y	N/A	Y	N/A	Y	Y	Y	Y
Rappahonnock	VA	Y		Y	Y		Y	Y	Y
Clallam Co. Superior Court	WA	Y		Y	Y	Y	Y	Y	Y
King Co. Superior Court	WA	Y			Y			Y	
Kitsap Co. Superior Court	WA	Y					Y	Y	Y
Skagit Co. Superior Court	WA	Y		Y	Y		Y	Y	Y
Thurston Co. Superior Court	WA	Y		Y	Y	Y	Y	Y	Y
Whatcom Co. Superior Court	WA	Y		Y				Y	Y
Dane Co. District Court	WI	Y		Y	Y	Y	Y	Y	Y
Sheridan Co. District Court	WY	Y							
Uinta Co. District Court	WY	Y		Y	Y	Y	Y	Y	Y

I. DRUG COURT PROGRAM DEVELOPMENTS AND ACTIVITIES: MAJOR OBSERVATIONS

During the four years since the *1997 Drug Court Survey Report* was published, the rapid growth of drug courts has continued, with drug court activity now underway or planned in every state plus the District of Columbia, Puerto Rico, and Guam The early imprimatur provided by the 1994 Crime Bill's recognition of the importance of drug court activity generated support for drug courts from many sectors – public and private – with financial as well as policy and in-kind contributions. The subsequent availability of federal funding, with growing additional support provided by state legislatures and county governments, has been a major impetus for drug court program development.

As the drug court experience matures, researchers and policy makers alike are asking common questions: what impact are drug courts having? what do these programs cost? Will they play a permanent role in the criminal justice system and the way substance involved offenders are handled? If so, what mechanisms and resources will be needed to sustain them when federal funds are no longer available? The range of programs underway, the diversity of populations being served, and the variety of judicial system structures in which these programs operate have both enriched this initial period of drug court activity as well as made it difficult to conclusively evaluate. Nevertheless, judges involved with drug court programs – many of whom are former prosecutors -- continue to unequivocally endorse the drug court approach.

The following are the most salient observations that emerge from the information gathering activities conducted in the course of preparing the *2000 Drug Court Survey Report*, coupled with other information compiled by the OJP Drug Court Clearinghouse and Technical Assistance Project and issues raised in the various technical assistance and training activities it conducted.

Developments Since the 1997 Drug Court Survey Report was Published:

• General Observations

- Increasingly, programs appear to be targeting and serving more severely addicted defendants and defendants who have had more extensive prior contact with the justice system; conversely, very few programs focus on the first offender.
- A small percentage of programs permit participants on methadone maintenance to graduate, although the prevailing philosophy of most drug courts is to require total abstinence.
- The percentage of assessed drug court fees collected by drug court programs has increased from 67% in 1997 to 75% in 2000. The total fees collected by the 45 programs which reported this information was almost $3,000,000.
- The percentage of judicial time allocated by drug court judges to drug court hearings and related matters in the reporting programs is approximately 30% -- an increase from 10% -20% reported in 1997.
- The percentage of programs that are solely pretrial/preplea is decreasing; conversely, the percentage of programs that are post-plea (with plea stricken upon successful completion), probation-oriented and/or for probation violators is increasing. This shift is consistent with the more heavily justice system involved offenders that many programs are targeting. Many programs are using a combination of these approaches.
- Responsibility for initial substance abuse screening appears to be shifting from the court to treatment providers.
- The percentage of drug courts that work regularly with an oversight committee of community representatives has decreased from 73% in 1997 to 53% in 2000, but renewed interest in working with such committees is being expressed in a number of jurisdictions.
- While drug court activity continues to develop in large metropolitan areas, drug court activity is increasingly underway in jurisdictions with smaller (e.g., under 250,000) populations and in rural settings.

GROWTH

- **The number of drug courts, in both the planning and operational stages of development, continues to grow rapidly.**

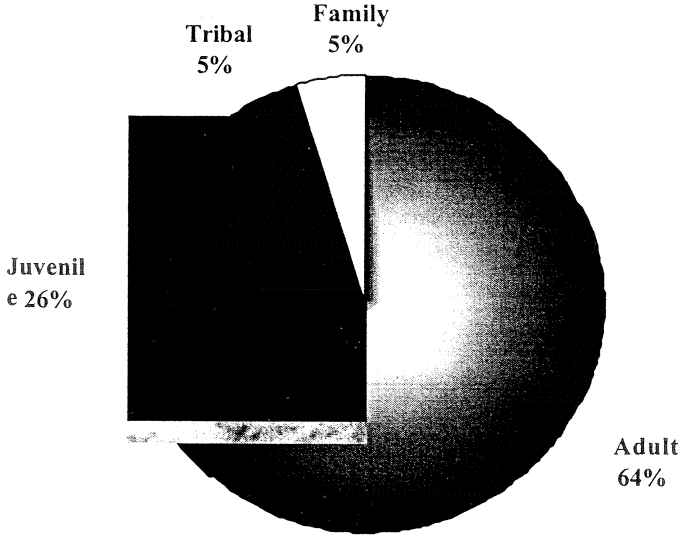
Drug court activity continues to increase dramatically. In a number of jurisdictions, multiple drug court dockets have been established to address the diversity of misdemeanor and felony defendants coming through the justice system. In many jurisdictions, drug courts also meet in multiple court locations. The states with the most active drug court activity with at least 50 programs underway or being planned are: California (143 programs); Florida (81 programs); New York (79 programs); Missouri (63 programs); Louisiana (61 programs); Kentucky (53 programs); and Ohio (50 programs).

During the 1997-2001 period, the growth in drug court activity has been particularly marked for juvenile and family drug courts, as Charts E-1 and E-2 below indicate.

In addition to the drug court activities underway in every state, drug court activity is also rapidly developing in Native American Tribal Courts. These *healing to wellness* courts are currently operating in 39 tribal courts, located in 14 states, with additional programs being planned in 54 additional tribal courts, involving 10 additional states.

Currently, approximately two thirds of the operating drug courts are adult programs, with the remaining drug courts focusing on juveniles (26%); family/abuse and neglect cases (5%) and tribal matters (5%).

Chart E-1: Drug Courts in Operation by Type



In all, there are currently over 1,200 drug courts – four times the number in existence in 1997 -- in the following stages of development:

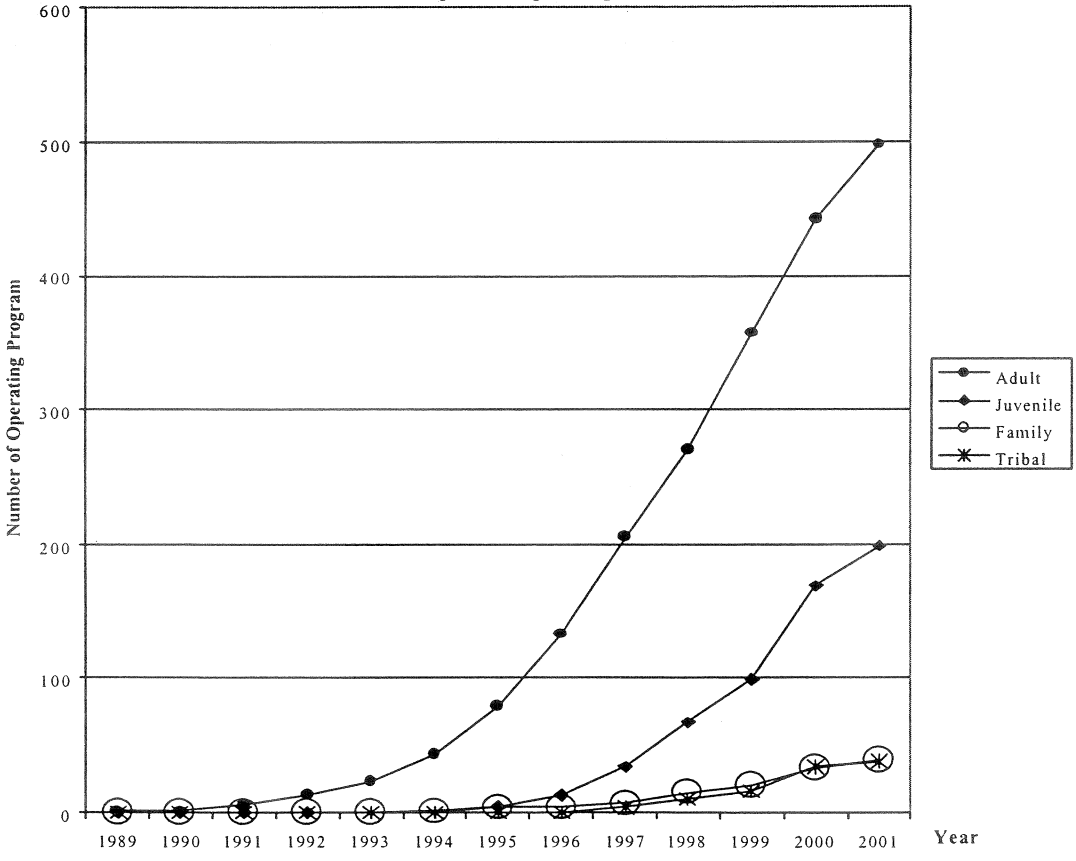
Drug courts operating for at least two years:	434
Drug courts more recently implemented:	337
Drug courts being planned:	467

To date, very few drug courts have discontinued their operation, and most of those that have, either subsequently resumed their activity, with a more appropriate management structure, or consolidated with other courts.

Chart E-2: Drug Court Implementation Activity: By Year

Year	Adult	Juvenile	Family	Tribal	TOTAL
1989	1				1
1990					0
1991	5				5
1992	7				7
1993	10				10
1994	20		1		21
1995	36	4			40
1996	54	9	3		66
1997	74	22	3	4	103
1998	65	33	7	7	112
1999	86	32	5	6	129
2000	87	62	13	18	180
2001 (through Oct.)	57	29	7	4	97
TOTAL	502	191	39	39	771

Chart E-3: Number of Operating Drug Courts by Type by Year



JUVENILE/FAMILY MATTERS

- **Increasingly, many jurisdictions are adapting the adult drug court model for juvenile populations and family matters.**

Since 1997, 156 juvenile and 35 family drug courts have been implemented and an additional 130 juvenile and 66 family drug courts are being planned. The juvenile and family drug courts focus, respectively, on delinquency and dependency matters, using the adult drug court model of intensive, on-going judicial supervision and coordination of services, and the development of a structured system of sanctions and incentives. The development of *juvenile* drug courts, however, has presented special challenges not previously addressed by the adult drug court, the most significant of which include: the sense of "invulnerability" evident in many juvenile substance abusers and their lack of having

experienced "hitting bottom" as have many of the successful adult drug court participants; the different nature of drug dependency presented by juveniles compared with long-term adult addicts; the frequent low self esteem, serious mental health problems, academic deficiencies, and other personal problems presented by adolescent participants; and the critical role which the juvenile's family and environment play in both his/her addiction and recovery.

Like their adult counterparts, the early goals of juvenile drug courts were designed to reduce drug use and recidivism by means of close monitoring of each participant through frequent (generally weekly) court appearances, in-home contacts, supervision by probation officers/case managers, treatment services and random drug testing. It quickly became apparent, however, that, to achieve these goals, programs needed to provide participating youth with a wide range of support to aid them in changing their behavior *over the long term* so as to resist further drug use and criminal activity generally -- *after* the period when the juvenile drug court's jurisdiction had terminated. Juvenile justice system officials, therefore, soon recognized that such long term behavioral change required promoting family support systems to assume the supervision and support of the youth once the court's involvement ended, and to work with adolescent participants to: (1) develop positive relationships within the school and the community; and (2) develop skills that would aid them in leading productive, substance-free lives.

From the start, the development of juvenile drug courts has proved to be a much more complex task than development of the adult drug court. Among the special challenges presented have been the need to:

- develop strategies to motivate the participating adolescents to *want* to change -- as well as change their behavior;
- design assessment, treatment and other services which are appropriate for adolescents and the range of needs presented by participants;
- counteract the negative influences of peers, gangs and, often, family members;
- adequately address the needs of the family as they relate to the family's capacity to provide constructive support for the youth;
- comply with state and federal confidentiality requirements for juvenile proceedings, while, at the same time, obtain necessary information to meaningfully address the youth's problems and progress;
- respond to the numerous developmental changes that occur in the lives of the juveniles while they are under the court's jurisdiction; and, most significantly;
- provide training for judges, probation staff, treatment, and other service providers on adolescent development; adolescent substance use; and the philosophy of the juvenile drug court program.

While no two juvenile drug courts are alike, juvenile drug courts share the following general characteristics that distinguish them from the traditional juvenile justice case disposition process:

- much earlier and more comprehensive intake assessments of youth entering the juvenile justice system;
- much closer integration of the information obtained during the intake and assessment process with subsequent decisions made in the case;
- much greater focus on the functioning of the family -- as well as the juvenile -- throughout the period of the drug court program's jurisdiction;
- provision of more intensive and broadly focused support services, such as mentoring and parenting programs, to address personal and family needs;
- much greater coordination among the court, the treatment providers, the school system, and other community agencies in addressing the needs of the youth, both at the time of program entry and as new needs emerge during the period of program participation;
- much more active and continuous judicial supervision of the juvenile's progress in treatment, participation in other program activities, and compliance with program conditions, through frequent (often weekly) court hearings;
- increased reliance on a range of personal and skill development activities, such as music and art, physical fitness, computer technology, and creative writing, as critical components of the juvenile court's service delivery system to enhance participants' self-confidence, self esteem, and personal competencies to sustain them after the court's jurisdiction has ended; and
- immediate judicial use of both sanctions applied for noncompliance and incentives to recognize participant progress.

In the dependency arena, focus is primarily upon adults who are in danger of losing custody and/or visitation rights with their minor children – primarily through the civil abuse and neglect process.[1] The recent passage of the Adoption and Safe Families Act, and the reduced period for permanency planning now applicable to abuse and neglect cases, has served as a significant impetus for development of family drug courts and the judicial coordination of services being provided.

Even in the absence of a specific juvenile or family drug court program per se, however, there is increasing recognition among the adult drug court judges that children and other family members who live with an adult substance abuser are at special risk for becoming substance involved and/or suffering other consequences from this living situation. Consequently, a number of adult drug courts are developing special screening strategies to identify the potential needs of family members of drug court participants who are at risk, whether or not they are already involved with the adult or juvenile justice system.

Additional information regarding juvenile and family drug court activity is available in publications specifically addressing these topics.

RECIDIVISM

- **Reported recidivism rates continue to be significantly reduced for graduates and, to a lesser degree, for individuals who enter but don't complete the program.**

Almost all drug courts have observed that recidivism is substantially reduced for participants who complete the program and, to a considerable though lesser degree, for those who do not complete the program as well. However, because programs vary widely in terms of the nature of populations being served, follow-up periods and sources of information used to compile recidivism data, and definitions being used to compile "recidivism" information (e.g., arrests vs. convictions; the nature of offenses being included, etc.), this data is not comparable from jurisdiction to jurisdiction. A more accurate comparison to be made is between specified recidivism data for drug court participants in a specific jurisdiction and comparable data for a comparison group of non-drug court defendants in that same jurisdiction.

RETENTION

- **The retention rates (total graduates plus active participants) for drug courts continue to remain high, generally between 60 and 80 percent, despite the difficult populations most programs are targeting, the strict program requirements, the lengthy period of participation required, the proliferation of drug court programs, and their expansion to more complex caseloads.**

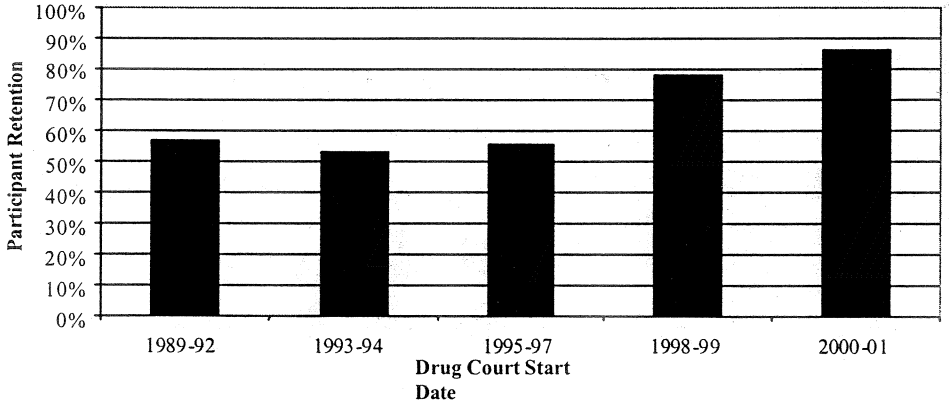
Despite the proliferation of drug courts, retention rates remain consistently high, similar to rates experienced by the early programs. Moreover, retention rates do not appear to have decreased as the period of program operation has lengthened. As Chart E-4 below illustrates, retention rates for programs begun during the years from 1989 through 1997 are similar. While the retention rates for programs begun in 1998 and subsequently may *appear* higher, these higher rates are due in large part to the fact that most of these programs were still in the process of reaching full capacity at the time of the survey and consequently did not have a sufficient period of operation to develop an accurate profile of participant retention experience.

Program retention rates do not appear to be influenced by the population size of the jurisdiction served. Drug courts in large metropolitan areas (e.g., with population over 750,000) appear to retain participants at a rate similar to drug courts in smaller jurisdictions with populations under 200,000, and in rural areas. The capacity of drug courts to maintain these relatively high retention rates, compared with

[1] The only family drug court currently using the criminal process is located in Jackson County (Kansas City), Missouri and focuses on mothers who have given birth to drug addicted babies.

the experience with comparable populations of most jurisdictions prior to the drug court, may be attributed, at least in part, to the continuous judicial supervision provided, including frequent status hearings (generally weekly initially); the immediate execution of bench warrants (within hours frequently) in many jurisdictions when participants fail to appear at court hearings; and the differential treatment modalities and rehabilitation and support services being provided to address the diversity of treatment and other personal needs presented by the drug court population.

Chart E-4: Drug Court Retention Rates Based on Age of Drug Court



REACHING THE DEFENDANTS WHO NEED THE DRUG COURT

- **With the tremendous growth in drug court programs, there is also increasing focus on who, among drug court-eligible defendants, is not entering the program; who is being terminated unsuccessfully, as well as on who is successful. There is also increasing awareness among many drug court programs regarding the need to improve strategies for engaging all eligible defendants and building the rapport with them that is critical to the therapeutic process.**

Traditional courts generally do not take into consideration cultural issues relating to individual defendants that may contribute to his/her criminal activity and recidivism. Drug courts, however, with their therapeutic orientation, must necessarily deal with a range of cultural issues that may relate to a defendant's initial desire – e.g., appearance of "motivation" – to participate and his/her capacity to succeed in a drug court program These cultural issues include those relating to ethnicity, race, gender, age, family situation, religion, and socio-economic status. The Drug Courts Program Office and many state conferences, in particular, have given significant focus to these issues in training and technical assistance activities.

DRUG USAGE PATTERNS

- **Most drug court participants have a history of many years of moderate to severe substance dependency and many are poly-drug users.**

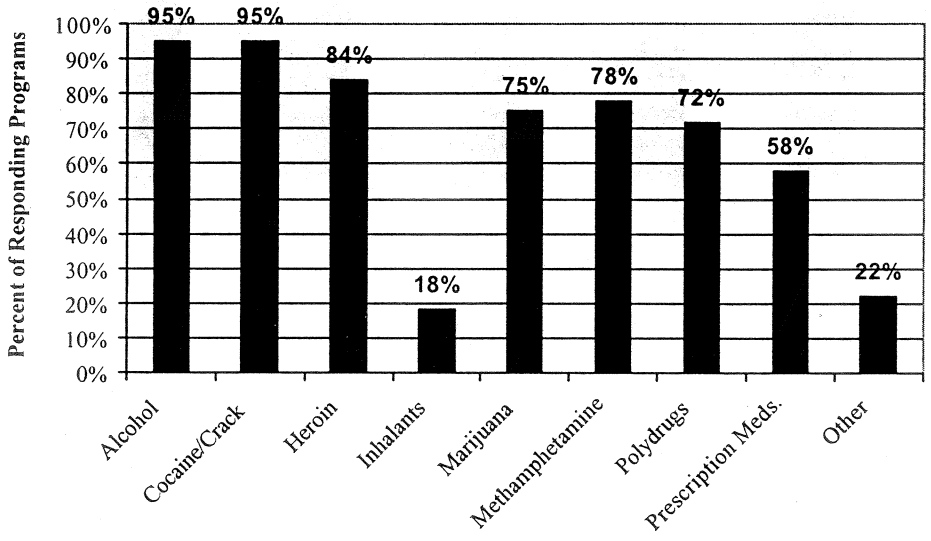
Most programs report that participants are presenting increasingly severe drug use patterns, with frequently moderate to severe crack/cocaine addiction in combination with other drug use and alcohol addiction as well. Crack/cocaine addition is prevalent among most drug court participants. In addition, approximately 75% of the responding programs report moderate to severe marijuana addiction and 84% of the programs (up from 53% in 1997) report moderate to severe heroin addiction. Approximately 78% (up from one-third in 1997) of the responding programs also report moderate to severe methamphetamine addiction presented by participants. A noticeable prevalence of methamphetamine use is also being reported by programs in the central and eastern regions of the country as well as in the western region where it had previously appeared to be concentrated.

Ninety-five percent of the responding programs (up from 66% in 1997) also report moderate to severe alcoholism presented by their clients. Approximately 81% of the programs routinely test for alcohol consumption (up from 60% in 1997) as well as illegal drug use.

For juvenile drug courts, the most prevalent drugs reported are alcohol and marijuana (identical to the drugs reported in 1997). The average age of first use is reported to be 10-12 years, with some programs reporting usage as early as eight years.

For drug courts that compile information relating to the amount of money participants reported spending for drugs before program entry, half of the participants reported spending over $100.00 per day.

Chart E-5: Drug Usage Patterns Reported by Drug Courts



- **Drug usage is being reduced for most participants, not just graduates.**

The average rate of positive urinalyses for all participants while in the drug court program continues to be well under 20%, compared with significantly higher rates reported for nondrug court participants, with significantly fewer urinalyses conducted.[2]

COMPILING NECESSARY INFORMATION

- **Drug courts are still struggling with the task of compiling necessary information, on an on-going basis, particularly for program evaluation purposes. The task is complicated by the absence of readily available comparison data for cases handled and defendants treated through the traditional criminal justice and treatment processes.**

While most drug court programs appear to be able to compile (through a combination of manual and automated systems) necessary information to monitor and manage their caseloads, they are still struggling to address the need for readily available and on-going comprehensive descriptive historical and evaluative information. The problem is complicated by (1) the multiple sources from which this information must be derived; and (2) the absence of available comparison data for cases handled and defendants treated through the traditional criminal justice and treatment processes.

[2] In June 2001, the overall average rate of positive urinalysis reported to the OJP Drug Court Clearinghouse and Technical Assistance Project for all participants while in the drug court program was approximately 17%, based on 1,403,008 tests of 71,596 participants compared with 35%+ positive urinalyses reported for nondrug court participants under probation supervision and tested significantly less frequently.

TARGET POPULATIONS

- **Drug Courts are increasingly targeting the chronic recidivists and defendants who have extensive periods of drug use.**

Although the early drug courts focused primarily on pretrial diversion cases, most drug courts are expanding their focus to target individuals with more extensive criminal histories who have already had significant involvement in the criminal justice system and for whom significant justice system and other resources (often including correctional) have already been expended. Although frequently not eligible for diversion because of their more extensive criminal histories, these defendants are generally offered some incentive for drug court completion, such as suspension of the imposition of a jail or prison term or a reduction in the period of their probation. Most programs report that current drug court participants have at least one-two prior felony convictions and additional misdemeanor convictions. Over fifty percent of drug court participants have been previously incarcerated for charges relating to their drug use.

TREATMENT SERVICES PROVIDED

- **The range of treatment and rehabilitation services being delivered by drug courts continues to expand.**

Many of the early drug courts focused primarily upon treatment services, with ancillary support for education and job training and placement. Most of these early courts, and their numerous progeny, have expanded their treatment and rehabilitation services significantly, recognizing the diversity of both treatment and other needs presented by the drug court populations. The expanded services being developed also reflect, in large part, the growing recognition that the drug court must treat not only the participant's addiction but the numerous associated personal problems most participants encounter – physical, mental, housing, family, employment, self esteem, etc. – if long-term sobriety and rehabilitation is to be achieved and future criminal activity is to be significantly reduced. Many of the treatment program components are also developing differentiated "tracks" to address the diversity of treatment needs presented by drug court clients. Special components are also being developed in many programs for ethnic and/or cultural groups represented, and other "special populations", including pregnant women, mothers, fathers, persons who have been sexually abused, and others.

SERVICES TO PARTICIPANTS WITH MENTAL HEALTH CONDITIONS

- **Although some drug courts have developed special services for dually diagnosed participants (e.g., participants with a mental health condition in addition to their substance addiction), there does not appear to be a consistent policy among programs regarding services to dually diagnosed defendants who are otherwise eligible for the drug court program.**

Approximately 80% of the responding treatment programs (down from 90% in 1997) appear to be accommodating individuals with at least some mental health disorders who are otherwise eligible for the drug court program. There does not appear to be a consistent policy among programs, however, regarding diagnosis of mental health conditions and their effect on drug court program eligibility and services.

PUBLIC HEALTH SERVICES PROVIDED

- **Increasingly, drug courts are screening participants for possible infectious diseases and other medical conditions and referring them for treatment to local providers.**

Almost all of the drug courts report that they are screening participants for possible infectious diseases and other medical conditions, including HIV and TB, and referring them to local medical service

providers for treatment. In a number of instances, relationships are also being developed with local physicians to remove tattoos, and/or with dentists to provide services for persons who have developed dental conditions, particularly those that are a result of their drug use.

MULTI-DISCIPLINARY AND CROSS-TRAINING

The multi-disciplinary nature of drug court programs and the collaborative process underlying their operation has highlighted the need for multi-disciplinary and cross-training for personnel involved with the program. Among the training topics of particular import have been those relating to the physiologic, cognitive and emotional aspects of: substance addiction and recovery; pharmacology; gender issues; and adolescent development. In terms of cross-training, most programs are focusing on providing training on the orientation and provision of treatment services; relevant protocols; confidentiality issues; and the criminal justice process as it applies to drug court-eligible defendants. This training has been significant in alerting judges and others involved with drug court programs to the ramifications of the complex process of addiction and recovery on program operations and expectations. The Drug Courts Programs Office-sponsored training programs and many state and local conferences have included significant programs segments dealing with these issues.

COMMUNITY RELATIONSHIPS

- **Drug courts are developing close working relationships with a broad base of community organizations to promote the long-term sobriety and rehabilitation of participants.**

Almost all drug courts are working closely with community groups to provide support services for participants. Through both community networks and involvement with local AA and NA groups, participants are often linked with community mentors shortly after entering the drug court. Drug courts are also developing close working relationships with local chambers of commerce, medical service providers, community service organizations, local education systems, faith communities and other local institutions to provide a broad-based network of essential services that can be drawn upon to serve the needs of their participants. Frequently, representatives from these agencies serve on the oversight committees of local drug courts for those programs that have established such committees.

COLLABORATION WITH LAW ENFORCEMENT

- **Increasing collaboration is developing among drug courts and law enrollment agencies.**

Many drug courts are developing working relationships with local law enforcement agencies. Drug court judges are making increasing efforts to explain the drug court process to line officers who are the arresting officers in many drug court cases. The police department in several jurisdictions (New Haven, Connecticut and San Diego, California, for example), have assigned an officer fulltime to the drug court to assist with monitoring and supervision of participants and to immediately execute bench warrants for any participants who fail to appear in court or who are otherwise in noncompliance with drug court orders. A number of drug courts also provide arresting officers with update information on the progress of drug court defendants whom they had arrested and many drug courts invite the arresting officer to graduation ceremonies.

OVERALL PROGRAM COSTS

Analysis is still needed to determine the actual cost for a drug court program in a local jurisdiction. The subject is complicated by a number of factors including: (1) the various, and different, functions which may be performed by staff of existing agencies (e.g., pretrial service agency, probation, court, law enforcement, etc.) and those additional functions which may be contracted out; (2) the offsets that need to be factored into these costs, such as traditional services/functions which are taken over by the

drug court program and therefore no longer needed to be performed by the original agency (e.g., probation supervision, for example); (3) the various payments being paid to the program by clients, including program fees, additional treatment provider fees, if applicable, and drug testing fees, if applicable; and (4) the additional income treatment providers may be receiving for program services from insurance carriers, and/or Medicaid, for example. Because of the diversity of mechanisms jurisdictions are using to provide – and fund – drug court services, and the range of services being provided, comparison of overall program costs among jurisdictions based on existing available information is therefore problematic. The 2000 *Survey Report* provides some rudimentary information regarding individual program costs and the services these costs include and applicable Medicaid rates in drug court jurisdictions for various drug court functions (See Part Seven of the *Survey Report).* Hopefully, this information can provide a foundation for further development in this area.

JUSTICE SYSTEM SAVINGS

- **Drug courts are continuing to report significant justice system savings, particularly in the use of jail space and probation services, but in other areas as well.**

Drug courts are increasingly reporting savings in costs and resource use, particularly in the more efficient use of jail space and probation services, which frees up these resources to focus on other offenders who present greater public safety risks. Savings are also reported in prosecutor and law enforcement functions, particularly in regard to preparation time and court appearance costs for attorneys and witnesses. All sectors of the justic e system have also noted "cost avoidance" results from the reduced recidivism. For the 84 programs reporting annual cost savings in jail/prison days resulting from the drug court in June 2001, the average annual savings reported was $ 697,652 (9,980 days) per program, and the median was $330,000 (4,015 days).

RELEVANCE TO OTHER DOCKETS

- **The drug court experience appears to be providing a model for other community-based justice system initiatives that focus on (i) chronic repeat offenders whose criminal activity is aggravated by coexisting substance abuse and/or related problems, and/or (ii) situations that entail long term judicial system monitoring and management.**

A number of jurisdictions are developing special dockets, commonly called "problem-solving courts", modeled after the drug court approach. Generally, these dockets are designed to handle other classes of: (i) chronic criminal offenders whose criminal activity is aggravated by coexisting substance abuse and/or related problems and for whom the conventional sanctions available to the criminal justice system are inadequate or inappropriate; and/or (ii) other classes of criminal and or cases that entail long-term judicial system monitoring and management. Domestic violence matters, for example, with their special supervision and follow-up needs, and the multiple ramifications that these cases often generate for the "system" (custody, support, medical services, housing needs, etc.) appear to be particularly appropriate for the continuing supervision, monitoring, and coordination of community resources that the drug court approach provides. Similarly, a number of jurisdictions are giving consideration to the development of "mental health" courts which can provide supervision of defendants who are incarcerated frequently for petty offenses relating to mental health conditions that can be more appropriately managed through the provision of mental health services Many jurisdictions are also looking at the drug court model to apply to the high volume of "quality of life crimes" (noise and nuisance ordinance violations, trespassing, loitering, etc.) which, although less serious in terms of criminal sanction exposure, can seriously erode the life of many communities.

TEAM BUILDING/STRATEGIC PLANNING

As drug court programs have matured, many have witnessed turnover in the composition of the drug court team and other staff providing services to drug court participants. In a number of jurisdictions, significant changes have occurred in criminal offense eligibility criteria, relevant statutory provisions, and court structure. To address these changes and their impact on program operations and services, as well as to plan for the future of the program, many programs are engaging in team building and strategic planning exercises. The Drug Courts Program Office has provided significant support for these efforts.

INSTITUTIONALIZATION

Although most drug courts are still developing as local programs, some noticeable trends toward institutionalization within the larger judicial system are emerging. Legislation relating to the formation of drug court programs has been enacted in over 30 states and state funding has been appropriated in over fifteen states. In addition, staff have been designated in approximately two thirds of the state court administrative offices to provide support to local drug court programs. In most cases, state financial support is being provided on a pilot basis, pending evaluative information on drug court program impact – particularly recidivism experience and cost/benefits. In one state (New York), the Chief Justice has articulated, as formal policy, the establishment of drug courts in every jurisdiction.

Other indicia of institutionalization are: the inclusion of the drug court assignment as part of the formal rotation assignment in an increasing number of local courts[3]; the increasing involvement of the trial court administrator in the management of local drug court programs; and the development of court rules (currently in ten states) relating to drug court practice.

ALUMNI ACTIVITIES

- **Drug court graduates are forming alumni groups, serving as mentors for new participants, and undertaking a diversity of community service activities in many jurisdictions.**

In a number of drug court programs (Jacksonville, Portland, Rochester, and San Bernardino, for example), drug court graduates are, at their own initiative, forming alumni groups, continuing the network of support they developed during drug court participation, as well as serving as mentors for new participants. Several drug court alumni groups publish regular newsletters and undertake regular community service activities, such as holiday gift programs for needy families, annual picnics, etc.

ACHIEVEMENT OF THE *KEY COMPONENTS* BENCHMARKS

Judges, prosecutors, defense counsel, and treatment professionals -- the principal disciplines that make up the drug court "team" – were asked to report the progress their respective drug courts had made in achieving the *key components*.[4] Their responses, summarized below, indicate a substantial consensus among these disciplines regarding the degree to which drug courts are achieving these benchmarks. Comments on only two components reflected significant divergence among the disciplines, with members of one of the disciplines viewing the component as significantly less developed than members of other disciplines: Component Two: Use of a nonadversarial approach. . . protecting participants' due process rights (29% of defense counsel view this component as not yet addressed or still being developed); and Component Seven: judicial interaction (22% of treatment providers view this component as not yet addressed still being developed). At least 20% of all respondents viewed Components Eight (monitoring

[3] Currently, over 1,500 judges have served as drug court judges.

[4] See National Association of Drug Court Professionals. *Defining Drug Courts: The Key Components*. Drug Courts Program Office, Office of Justice Programs, U.S. Department of Justice. 1997.

and evaluation); Nine (interdisciplinary education); and Ten (forging of partnerships) as not yet addressed or still being developed.

Chart E-6: Achievement of Key Component Benchmarks

Key: 1 – not yet addressed
2 – addressed somewhat; still developing
3 – as fully developed as is practical at this time
4 – fully developed

J – Judges
P – Prosecutors
D – Defense Counsel
T – Treatment Providers

Key Component		Degree of Development				
		1	2	3	4	No response
1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.	J	5%	5%	21%	64%	5%
	P	4%	11%	41%	40%	4%
	D	3%	10%	38%	43%	6%
	T	4%	6%	26%	50%	14%
2. Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.	J	2%	11%	25%	59%	3 %
	P	3%	12%	44%	37%	4%
	D	3%	26%	36%	37%	3%
	T	3%	14%	26%	42%	15%
3. Eligible participants are identified early and promptly placed in the drug court program..	J	2%	20%	36%	38%	4%
	P	0%	21%	42%	33%	4%
	D	1%	26%	36%	36%	1%
	T	2%	16%	30%	38%	14%
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.	J	1%	10%	23%	62%	4%
	P	1%	7%	40%	48%	4%
	D	1%	12%	30%	56%	1%
	T	1%	7%	27%	53%	12%
5. Abstinence is monitored by frequent alcohol and other drug testing.	J	3%	2%	17%	74%	4%
	P	1%	7%	28%	60%	4%
	D	--	3%	23%	72%	2%
	T	2%	2%	23%	61%	12%
6. A coordinated strategy governs drug court responses to participants' compliance.	J	1%	7%	24%	64%	4%
	P	1%	13%	34%	48%	4%
	D	1%	15%	29%	52%	3%
	T	3%	6%	32%	45%	14%
7. Ongoing judicial interaction with each drug court participant is essential.	J	2%	2%	15%	77%	4%
	P	1%	2%	23%	70%	4%
	D	--	2%	23%	72%	3%
	T	2%	20%	38%	27%	13%
8. Monitoring and evaluation measure the achievement of program and gauge effectiveness.	J	5%	25%	38%	27%	5%
	P	1%	24%	37%	34%	4%
	D	1%	26%	37%	31%	5%
	T	3%	23%	32%	28%	14%
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.	J	3%	23%	50%	20%	4%
	P	6%	26%	39%	25%	4%
	T	2%	37%	40%	17%	4%
		2%	20%	38%	27%	13%
10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.	J	3%	34%	40%	19%	4%
	P	4%	38%	32%	22%	4%
	D	7%	39%	30%	20%	4%
	T	3%	22%	35%	29%	11%

II. WHO IS THE DRUG COURT CLIENT?

Over 225,000 individuals have enrolled in drug courts to date. A profile of drug court participants that emerges from the annual "activity updates" undertaken by the OJP Drug Court Clearinghouse and Technical Assistance Project, and other data reported periodically by operating programs, indicates the following:

ENROLLMENT AND PERFORMANCE

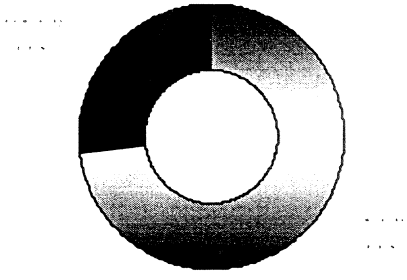
- Significantly more males than females are enrolled in drug court programs; in some programs, those females who participate in drug courts appear to be more heavily involved with drugs and a drug "lifestyle" (including prostitution) by the time they become involved in the criminal court process than males.
- Where day care, special women's groups, and other special services are offered, females are graduating at a higher rate than their male counterparts.
- For voluntary programs, a high percentage of defendants offered the opportunity to participate in the drug court accept it despite the more rigorous requirements of the drug court compared with the traditional sanctions to which they are exposed.
- It is difficult to predict who will be successful in the drug court program. Participants with lengthy criminal histories and years of substance abuse frequently succeed while persons with less serious records sometimes do not.

DEMOGRAPHICS

- **Gender**

The gender breakdown for drug court participants is 73% male, 27% female – a pattern that has been consistent.

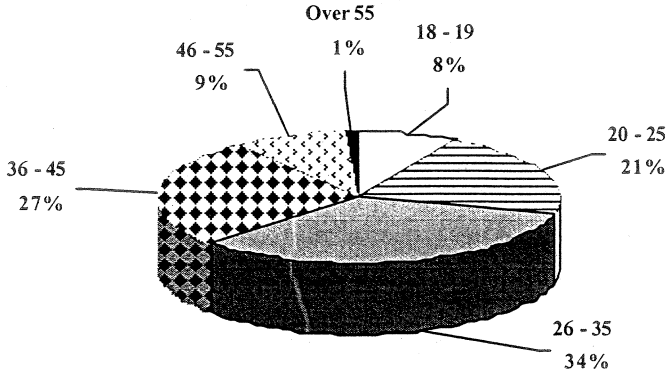
Chart E-7: Gender of Program Participants



- **Age**

The average age of drug court participants has continued to be 30 for males and 31 for females; the average age of graduates in each program is often older then the average age for all program participants. Overall, the average age for graduates has been 32 for males and 32 for females. The age range for participants in the 374 adult drug court programs responding to the OJP Drug Court Clearinghouse Adult Drug Court "Activity Update" in June 2001 was as follows:

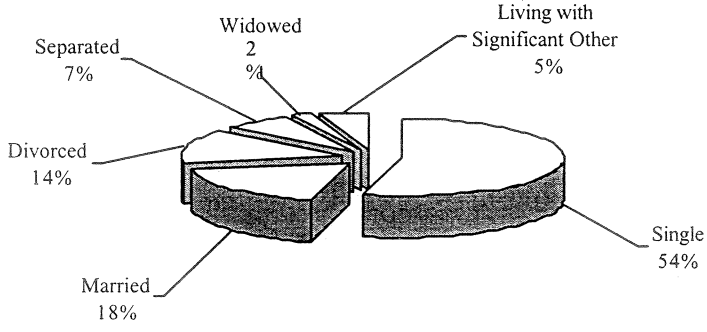
CHART E-8: Age Range of Drug Court Participants



- **Marital Status**

Over half of the participants are single. Only 18% are married (down from 25% in 1997).

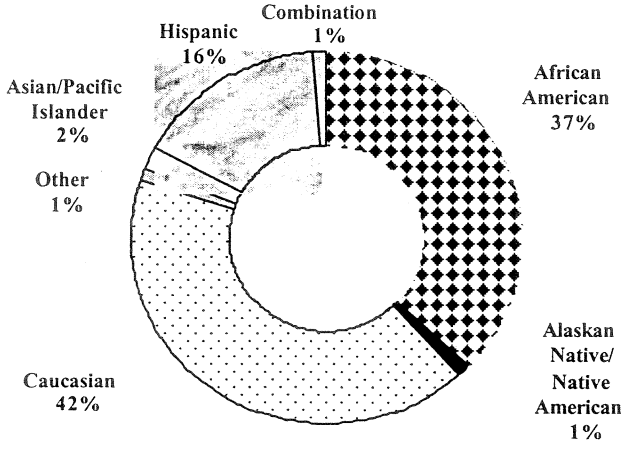
Chart E-9: Marital Status of Drug Court Participants



- **Racial/Ethnic Background**

Drug courts appear to be serving a diverse racial and ethnic population, as Chart E-10 below depicts. Increasingly, drug court program officials are comparing the demographic backgrounds of arrestees for drug court eligible offenses with that of the drug court participants to increase the likelihood that the program is equitably reaching its intended population.

Chart E-10: Racial/Ethnic Background of Drug Court Participants

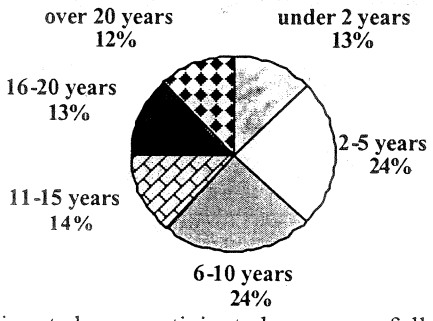


Approximately 3 percent of current participants are veterans (down from 8 % in 1997).

DRUG USE HISTORY

Most drug court participants have been using drugs for at least ten years, and generally, much longer. Most use multiple drugs, including alcohol. The reported history of drug use by participants in the responding programs was as follows:

Chart E-11: Drug Use History of Drug Court Participants at Time of Program Entry

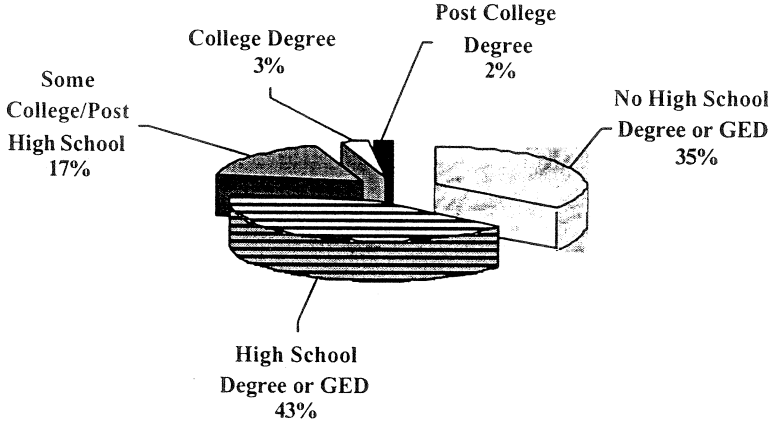


Most drug court participants have participated unsuccessfully in at least one – and often more – prior treatment programs. Over half of current drug court participants have previously been incarcerated for a drug offense.

EDUCATIONAL STATUS

The educational profile of participants in the drug courts which provided information for the June 2001 *Activity Update* was as follows:

Chart E-12: Educational Status of Drug Court Participants at Time of Program Entry

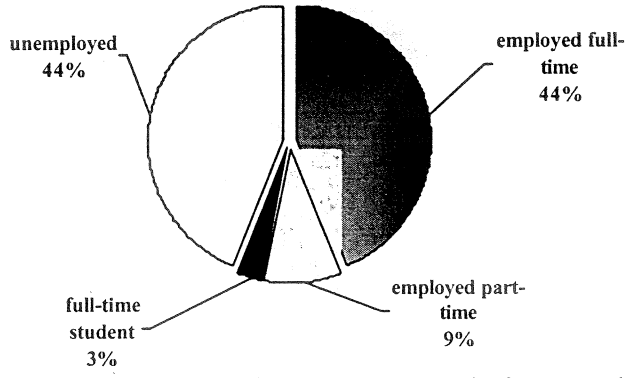


With over one third of the drug court participants not having a high school degree or GED certificate, almost all of the drug court programs require a high school diploma or GED certification in order to graduate.

EMPLOYMENT STATUS

Many individuals participating in the drug court have been either able to *retain their jobs* or *obtain employment* as a result of drug court participation. A relatively small percentage of drug court participants in most programs have steady fulltime jobs at the time of program entry; a substantial number of participants (often 40% or more) are unemployed or employed on a sporadic basis. Many of the individuals who are employed at the time of program entry report that they were able to retain their employment despite their arrest by demonstrating participation in the drug court and a high proportion of unemployed individuals obtain employment while enrolled.

Chart E-13: Employment Status of Participants at Time of Entry



A number of drug courts (Portland, Oregon and Las Vegas, Nevada, for example) have a job counselor on site dedicated to working with drug court participants. Almost all of the drug courts provide vocational training and job development services. Many judges also work with local employers to guarantee daily supervision and regular drug testing of persons in the drug court in order for them to either retain or obtain employment.

Overall, programs report that close to 80 percent of drug court participants are able to either retain or obtain employment as a result of drug court participation.

INFORMATION RELATING TO CHILDREN OF PARTICIPANTS

Approximately seventy-five percent of the participants in adult drug courts were parents of minor children; 37% were mothers and 63% were fathers. Not all of these children were necessarily in the custody of the drug court participant. Some were living with a custodial parent (to whom the participant was frequently in arrears on child support) and others were living with relatives or in foster care. Regardless of the participant's individual situation, drug courts are having a significant impact on the children of participants, including:

- **family reunification**. In many programs, parents who have lost custody or are in danger of losing custody of their children because of their drug use have regained (or retained) custody upon completion of the drug court program.
- **payment of child support arrearages**. In many instances, drug court participants are becoming current in child support obligations, with payment of arrearages frequently a condition of drug court graduation.
- **provision of family services**. As noted earlier, drug courts are providing an increasing array of family services. Almost all of the drug courts provide family counseling and at least half provide assistance with housing, food and clothing. Most of the programs also provide parenting classes as well as include special segments on stress management and anger management.

- **birth of drug-free babies** has been an unanticipated program benefit. Well over 2,100 drug free babies have been reported born to drug court participants, including one set of twins in Rochester, and a number of pregnant women are currently participating in drug court programs across the country.

In **Pensacola**, for example, the first two graduates of the dependency drug court established in early 1996 illustrate the impact of the drug court on the families of these women: one of the women had four minor children, the other had five minor children. Both had a long history of drug usage; one had been in state prison for three years, having been sent to prison by the drug court judge when he presided over her previous criminal case. She was a crack addict while the other was primarily alcohol and marijuana addicted; neither had any permanent residence and neither had any work history. Together, their cumulative total of nine children all lived in foster care.

Both now have a home; (one rents; one owns); one is working; both families are reunited; neither mother currently uses drugs and both have been clean for over four years at the time of the writing of this report.

In **Portland**, almost all of the over 100 female participants who have lost custody of their minor children due to their substance abuse have retained custody of their children at the conclusion of their participation in the Drug Court.

In **Kalamazoo**, at least 15% - 20% of the participants in the female drug court are usually also involved with Probate Court proceedings regarding the loss of custody of their children. Almost all of those who complete the program regain custody of their children. Participants in the more recently established male drug court, while not as extensively involved with the loss of custody of their children, have brought in letters from their children and wives to the drug court judge, expressing their gratitude at having their fathers and husbands "back" from drugs.

In **Las Vegas**, at least forty women who have lost custody of their children have regained them after completing the drug court program.

IV. GENERAL BACKROUND INFORMATION ON THE RESPONDING PROGRAMS

Populations Served, Court Caseloads, Drug Court Jurisdiction and Case Volume

Information in this section is based on responses to the 2000 Drug Court Clearinghouse "Information Update Request" from 171 judges working with adult drug court programs in 38 states and Puerto Rico; these counts represent approximately 88% of the drug courts with at least nine months of operational experience as of January 1, 2000, the date the update request was distributed.

- **Size of Population Served**

Slightly over half (53%) of the responding programs served populations of over 250,000, with thirteen percent serving populations of over 1,000,000. The percentage (47%) of responding programs serving populations of 250,000 or under represents a marked increase from that reflected in the program response in 1997 (29%). This relative increase in responses from smaller populated jurisdictions reflects the increasing drug court activity underway in jurisdictions with smaller populations, particularly in rural settings, rather than any shift away from drug court activity in larger metropolitan areas. Drug court activity in large population centers continues to develop.

Chart E-14: Population Size of Reporting Jurisdictions

POPULATION SIZE	NUMBER OF PROGRAMS	
	1997 Survey	2000 Survey
Over 1,000,000	17%	13%
750,000 - 999,999	11%	9%
500,000 - 749,000	12%	7%
250,000-499,999	31%	23%
100,000-249,999	17%	29%
50,000- 99,999	9%	11%
Under 50,000	3%	7%

- **Age of Responding Drug Courts**

Two thirds of the reporting programs had been operating for over two years at the time they prepared their survey response. Twelve percent had been operating over five years. Below is a breakdown in the age of the responding programs:

Programs operating over 5 years	12%
Programs operating 3-5 years	23%
Programs operating 2 years	30%
Programs operating 1 year	21%
Programs recently implemented	13%

Although some of the older (i.e., pre-1996) programs did not respond to the 2000 survey, the number of years of program experience reflected in the 1997 and 2000 responses were similar.

- **Criminal Jurisdiction of Responding Courts**

The criminal jurisdiction of the responding courts is as follows:

Misdemeanor only	8%
Felony only	40%
Felony and Misdemeanor	52%

- **General Criminal and Drug Specific Caseloads of the Reporting Courts**

Respondents were asked to indicate the total annual drug caseload of their courts for the most recent year available. Slightly over half of the responding drug courts were able to provide this caseload information. The total annual drug caseload reported by all courts was 375,466, reflecting 195,969 felonies and 179,497 misdemeanors. Of the programs that were able to provide annual drug caseload information, 51% also provided current enrollment information for the June 2001 Drug Court Update published by the DCCTAP. The total annual drug caseload reported by these 41 programs was 110,028 (59,654 felonies and 51,374 misdemeanors). The cumulative total number of current drug court cases reported by these same courts was 4,104, reflecting less than 4% of the annual drug caseload reported.

V. PRINCIPAL FINDINGS

PART ONE: GENERAL PROGRAM INFORMATION: JUDICIAL SYSTEM OPERATIONS AND PERSPECTIVES

A. Program Goals

All respondents agreed on the following primary goals for their drug court programs:

- reduce recidivism
- reduce substance abuse; and
- enhance the likelihood of the participants' recovery over the long term.

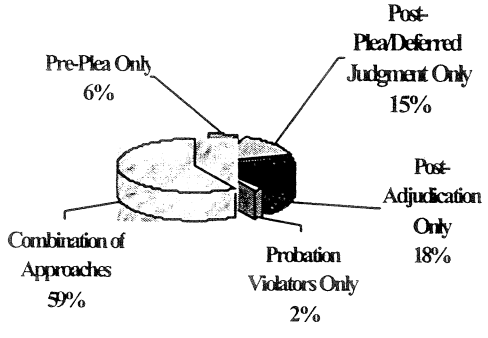
Respondents also noted the following additional program goals: reduce system costs; reduce incarceration rates; increase public safety. In addition, many noted other secondary goals for individual participants designed to promote their recovery over the long term: obtaining a high school or GED diploma; obtaining vocational training; obtaining employment; developing coping skills; developing parenting skills; and other personal development. Uniformly, respondents agreed that reuniting participants with their families and the birth of drug free babies were also important program outcomes to promote.

B. Locus of Program in Judicial Process

Over 90% of the responding programs are postplea, post conviction, for probation violators or a combination of these approaches, as reflected in Chart E-15 below. One hundred twenty eight (78%) of the responding programs permit dismissal of the charge or a striking of the plea if the defendant successfully completes the drug court program and the defendant is eligible for that type of disposition. Only 14 programs (9%) are pre-trial/pre-plea only; the remaining programs use a combination of dispositional approaches. This program structure represents a significant shift away from the pretrial/preplea model of the early drug courts, as reflected by the comparison below of the structures reported in the 1997 and 2000 surveys. This shift is due, in large part, to the significantly more serious offender most drug courts are now targeting. (See also Sections C and D below).

Locus of Program	1997	2000
-Pretrial/Preplea only	30%	6%
-Pretrial/Postplea only (with plea stricken upon successful completion of the program)	16%	15%
-Post conviction only (for probation eligible defendants only)	12%	18%
-Probation Violators only	0	2%
-Combination of two or more of the above (depending upon the nature of the charge, defendant's criminal history, and related factors) *also includes re-entry programs*	42%	60%

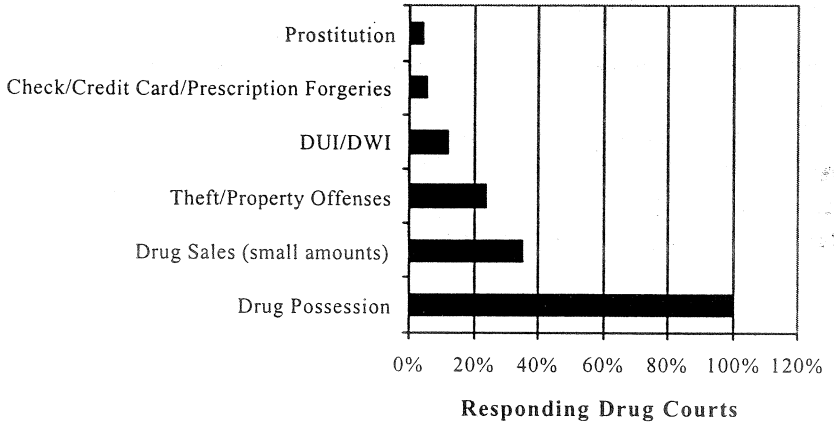
Chart E-15: Locus of Drug Court in Case Disposition Process



C. Targeted Offenses

The range of offenses targeted by drug courts has expanded significantly during the past several years. While all responding drug courts have been targeting drug possession charges, many more are now also targeting drug-related theft/property offenses, check/credit card and prescription forgeries, prostitution, and DUI/DWI. Chart E-16 below depicts the targeted offenses most frequently cited:

Chart E-16: Offenses Targeted by Drug Courts



D. Participant Eligibility Criteria

1. Criminal History

Most drug courts have expanded the range of permissible criminal histories since 1997. Only six (3.6%) of the reporting programs limit participant eligibility to defendants with no prior criminal charges (compared with 13% in 1997), and 76% accept an individual with any number of prior offenses as long as they meet current legal and clinical eligibility criteria. The criminal history limits required in the reporting programs were as follows:

Chart E-17: Eligibility Criteria: Criminal History

	1997	2000
No prior criminal convictions permitted	13%	3.6%
One prior conviction permitted:	--	3.0%
No more than three prior convictions permitted	26%	13.0%
Any number of criminal convictions permitted as long as they do not involve a violent offense	61%	76.0%
Other/individual case by case decision	15%	1.0%

Regardless of criminal history criteria, almost all programs now exclude defendants who have been convicted of a violent offense, most likely because they have either received federal funding or have set program requirements to be consistent with the federal guidelines. A number of programs, however, have expressed concern over the impact of withholding drug court participation from individuals who have had a violent offense conviction in the past particularly when that conviction occurred years ago and the defendant is not now involved with any type of violent behavior. The concern lies in both the programs' ability to serve drug-involved defendants in need of its services as well as being able to have a population that more closely mirrors the characteristics of the arrestee population.

3. *Extent of Substance Abuse Dependency*

All of the responding programs are targeting individuals with at least moderate illegal substance abuse and 90% indicate they are targeting individuals with severe illegal substance usage. Eighty-seven percent of the responding programs indicate that they accept participants with alcohol dependency, although these individuals usually come before the court in connection with offenses involving other drugs. Most programs also report that they will accept participants involved with any chemical substances, illegal or legal, including prescription drugs and inhalants. None of the programs, however, are dealing with nicotine addiction.

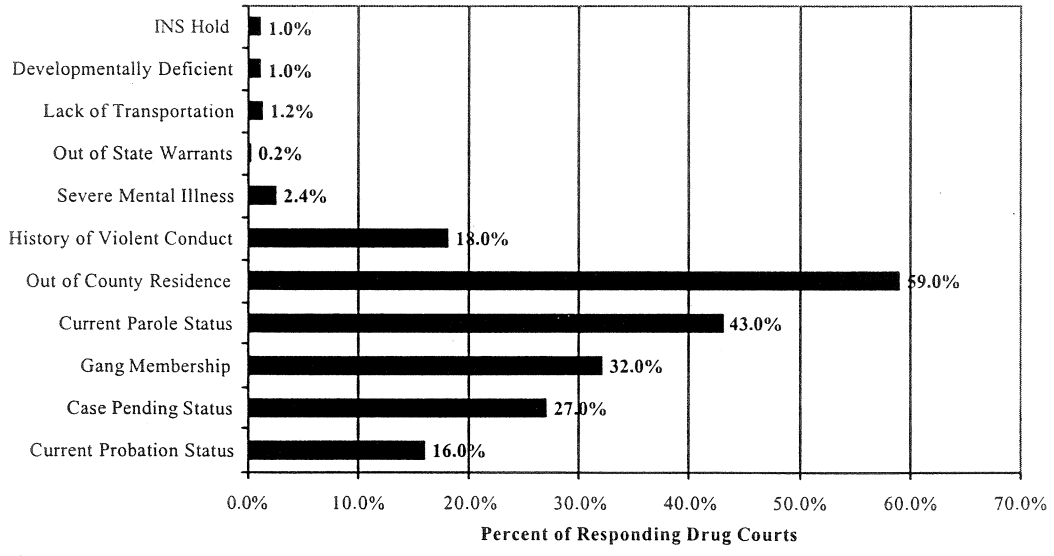
3. *Other Eligibility Factors*

Only one responding program (Tuscaloosa, Alabama for 19-30 year olds) restricts participation to a specified age group and only one responding jurisdiction (Kalamazoo) has separate gender specific drug court programs. All other respondents indicated no eligibility restrictions other than those relating to criminal charge, criminal history, substance abuse dependency, and the disqualifying factors noted below.

4. *Factors that disqualify an Otherwise Eligible Defendant*

The most frequent factors that will disqualify an otherwise eligible defendant from drug court participation are depicted in the chart below:

Chart E-18: Factors Disqualifying Otherwise Eligible Defendants from Drug Court



5. *Changes Programs Have Made in Eligibility Criteria Since Implementing*

Almost half (48%) of the reporting programs indicate they have made changes in their eligibility criteria since the program began. Most of these changes entail expanding the criteria, either in regard to criminal history requirements or targeted offenses, based on the experience of the program's initial implementation period. Some programs, for example, have expanded their criteria to include individuals charged with prostitution, forgery and/or small amounts of sales or delivery when the circumstances indicate the activity generating the charge was to support the individual's drug addiction. A number of programs that began with a focus on misdemeanor offenses are now accepting felony defendants as well. In a number of instances, this expansion of eligibility criteria also resulted in adding a post-plea or post-

conviction component as well as the capacity to supervise probation-eligible individuals who may have more lengthy criminal histories and/or more complex substance abuse and other problems.

E. Program Enrollment, Graduation Rates, and Characteristics of the Client Population

1. Program Enrollment and Retention

The total number of persons ever enrolled in drug court programs as of June 2001 is approximately 226,000, with graduates numbering approximately 74,000 and current enrollees numbering approximately 77,000. Retention rates have remained fairly constant, generally well above 60%.

Note: Comparison among programs regarding retention should be made with great caution because of the wide range of differences among programs in regard to program population characteristics – particularly in terms of the severity of substance addiction, personal problems, and other factors potentially affecting the likelihood of participants' retention. A summary of the most current enrollment information for adult drug court programs is provided in the June 2001 Adult Drug Court Summary Update published by the DCCTAP.

2. Graduation Rates

In an effort to obtain *graduation* rates (as opposed to *retention* rates which include current participants as well as graduates), programs that had become operational prior to January 1997 were asked to provide information on the number of persons enrolled in their programs prior to that date and to indicate how many of these participants successfully completed the drug court program. The graduation rates for the responding programs for the period prior to 1997 ranged between 28% and 90%, with an average of 44%.

3. Participant Information

a. age and gender of participants

Approximately half of the reporting programs were able to provide age information by gender for both participants and graduates. As Chart E-19 below depicts, the average age for male and female drug court participants is 30 years and 31 years, respectively, and the average age for both male and female graduates is 32 years old. These age patterns have remained fairly constant since drug court programs began. The age range of participants – and graduates – also continues to be broad, with 10% of drug court enrollees aged 50 years or older.

Chart E-19: Age Ranges for Drug Court Participants and Graduates

	All Participants		*Graduates*	
	Male	**Female**	**Male**	**Female**
Age Range	18 – 78	18 – 68	18 – 78	18 – 68
Average	30	31	32	32

The male/female ratio in drug court program populations continues to be approximately 73% male and 27% female, with a similar gender ratio reflected in program graduates, although the percentage of female participants is generally slightly higher. The ratio of females participating in drug court programs is fairly consistent with their representation in the arrestee population for drug court eligible offenses, nationally.

b. primary drugs used and degree of usage

Most programs report that participants suffer from moderate to severe substance abuse. Based on information provided by drug courts for the June 2001 Drug Court *Summary Update,* most programs

(95%) indicate that participants are presenting severe crack/cocaine addiction and/or methamphetamine addiction (78%). In addition, approximately 84% of the responding programs report at least some participants are also presenting severe marijuana addiction and/or heroin/opiate addiction; 95% of the programs also report at least moderate alcohol abuse by at least some participants. At least some participants in approximately 22% of the responding programs also exhibit addiction to prescription medications and/or inhalants. All programs reported that the participant population presented abuse of multiple substances.

F. Referral, Screening and Assessment Process

1. Sources of Drug Court Referrals

Referrals to drug courts are being made from multiple sources. The most frequently cited referral sources were: public defenders (90%); prosecutors (88%); privately retained attorneys (88%); probation staff (66%); pretrial service agency staff (51%); and law enforcement officials (34%).

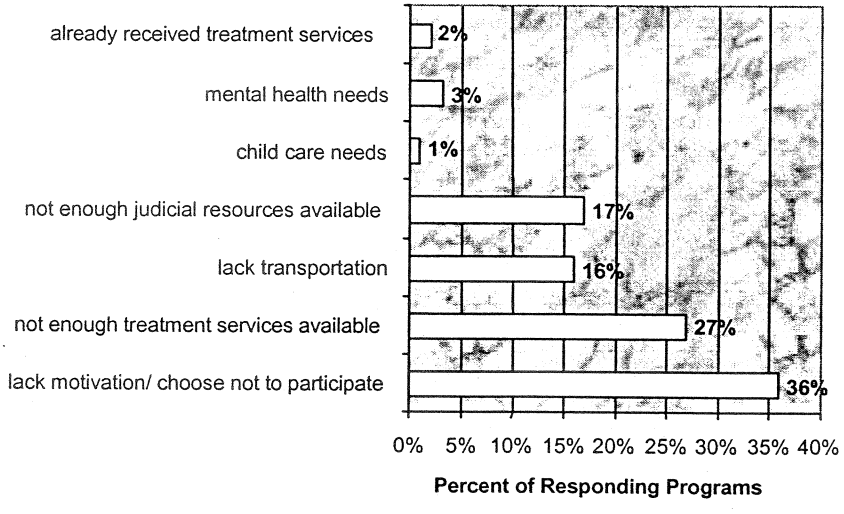
2. Initial Screening and Final Determination of Cases and Defendants Eligible for the Drug Court Program

a. justice system screening

The initial screening of cases and defendants for drug court eligibility is generally conducted by the prosecutor and, for pretrial programs, by the pretrial services agency or court staff. For post conviction programs, the screening is generally performed by the prosecutor and probation staff. In most cases, final determination of program eligibility rests with the drug court judge, often in conjunction with the prosecutor. Two jurisdictions (Shasta Co. and Contra Costa Co., California), however, indicated that a committee composed of representatives from the prosecutor's office defense counsel, and the court review cases to make the final determination. For both pretrial and postconviction programs, defense counsel also play a role in identifying cases potentially eligible for the drug court and in the final determination of program eligibility.

Slightly over half (56%) of the responding programs indicate that more people are eligible for the drug court than are accepted. Chart E-20 below depicts the principal reasons for not admitting an otherwise eligible offender were identified, with the frequencies noted:

Chart E-20: Frequency of Reasons for Not Admitting an Otherwise Eligible Defendant



Several programs also noted that defendants who might have been eligible for the drug court, based on their charge at disposition, were disqualified because their original charges were not within the drug court eligible offense categories at the time screening was conducted. Conversely, it was also noted that there had been instances when a defendant who would have been originally eligible for the drug court was no longer eligible at the time of conviction because his/her charges had been pled out or reduced so that he/she was no longer part of the drug court targeted population.

b. screening for substance abuse usage

Screening for substance addiction is a part of the eligibility determination process once initial criminal justice system eligibility is determined. Over 60% of the programs report that defendants initially identified as eligible for the drug court by justice system officials will be disqualified if their substance abuse screening indicates they are not addicted or exhibit only minimal addiction. Eighty-three percent of the reporting programs – increased from 55% in 1997 -- indicate they use a standard screening instrument, most frequently: SASSI (22%); ASAM criteria/ASI: (32%); a state screening instrument (6%); and an internally developed instrument (25%).

3. Written Documentation of Reasons for Not Accepting Potentially Eligible Participants

In terms of documenting in writing reasons for not accepting potentially eligible participants into the drug court program, the responding programs reflect the following practice:

always document in writing reasons for nonacceptance	69%
never document in writing reasons for nonacceptance	16%
sometimes document in writing reasons for nonacceptance	15%

4. Initial Assessment of Substance Abuse Treatment Needs

In terms of initial assessment of substance abuse treatment needs, 78% of the reporting programs indicate they use a standard assessment instrument, most frequently the SASSI; MAST; and ASF tests and/or the ASSAM criteria. Almost all respondents report that subsequent assessments of treatment needs of drug court participants are conducted routinely following the initial screening and assessment process. (See also *Part Seven: Drug Court Treatment Provider Services and Perspectives*).

G. Program Organization and Procedures

1. Program Phases

a. number and length of phases

Most programs (93%) are divided into phases, most frequently entailing three phases (52%) or four phases (32%). Those programs that have more than four phases generally include in the additional phase(s) a period of post-program supervision and/or aftercare services. A number of programs are also developing multiple "tracks" for drug court participants to address the diversity of treatment and other rehabilitation needs participants present.

b. Treatment, rehabilitation, and other services provided during each phase

While drug courts are providing a range of treatment and rehabilitation services throughout their period of operation, the most intensive treatment and related services are occurring during the initial phases of the programs, with job training and other life skills being provided as the individual progresses in treatment. The following is a summary of the services provided:

Chart E-21: Frequency of Treatment, Rehabilitation and Other Services Provided During Drug Court Phases

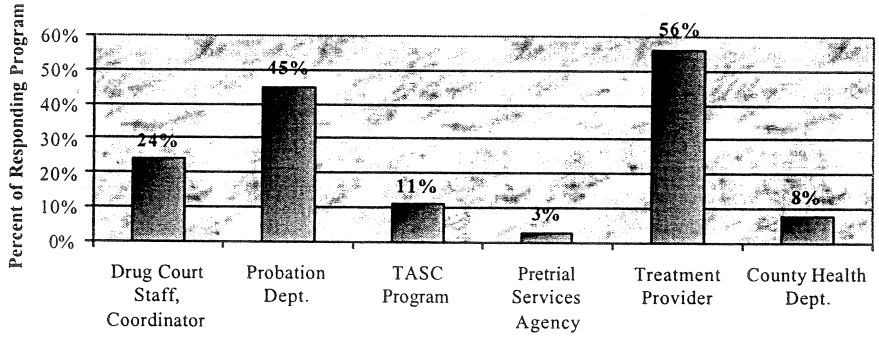
Services Provided	Phase I	Phase II	Phase III	Phase IV and V
Detox	73%	12%	7%	--
Counseling	87%	87%	80%	2%
Drug Education	84%	73%	62%	1%
Therapy	63%	71%	65%	1%
Medical Screening	60%	45%	38%	1%
Housing Services	44%	48%	45%	1%
Acupuncture	21%	18%	15%	<1%
Job Training	22%	55%	67%	1%
Educational Development	27%	68%	74%	1%
Employment Services/ Placement	28%	58%	70%	2%
Other Life Skills	36%	74%	74%	1%

See also *Part Seven*: *Treatment Provider Services*

c. case management services

Forty-one percent of the responding programs in 2000 (a significant decrease from the 74% reported in 1997) indicated that more than one agency is designated with responsibility for case management services. The following agencies are reported involved in this function:

Chart E-22: Agencies Performing Case Management



d. detox services

Of those programs indicating that detox services are available, (75% of the responding programs indicate that detox services are available to all participants) 85% indicated that these services are available for some drug court participants.

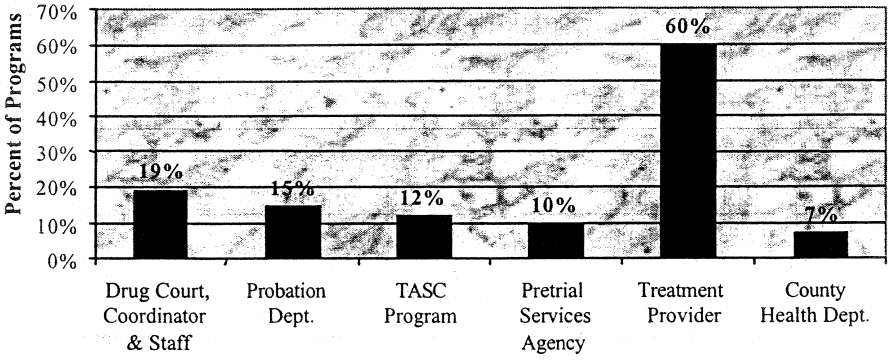
Drug courts are using multiple sources of detox services. Fifty-six percent of the responding programs utilize detox services through a private treatment provider and 36% through a local hospital. In addition, 22% of the responding programs are able to access detox services through their local jails. Programs are also utilizing detox services available through other city, county, and state facilities.

2. *Agencies Providing Clinical Screening, Assessment, and Case Management Services*

a. initial substance abuse screening

Substance abuse screening of drug court-eligible clients is increasingly being handled by treatment agencies although a variety of other agencies continue to be involved in this function. (See Chart E-23 below).

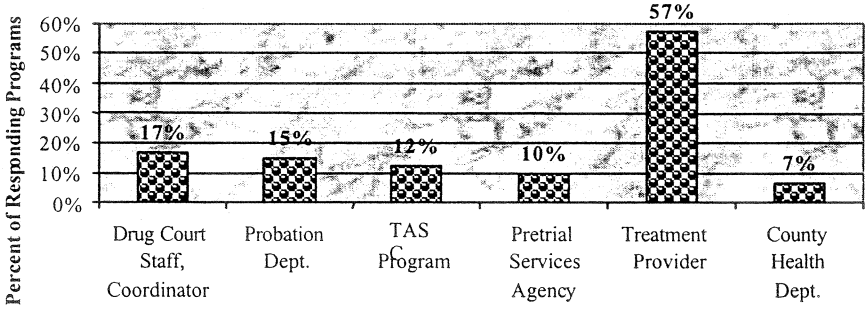
Chart E-23: Agencies Performing Initial Substance Abuse Screening



b. initial substance abuse treatment needs assessment

The types of agencies conducting treatment needs assessments of drug court-eligible clients have remained fairly constant with the exception of an increase in the frequency of court staff and a decrease in the frequency of probation staff being involved with these assessments. Although a few programs use multiple agencies to perform the assessment function, the use of multiple agencies for this purpose has declined significantly.

Chart E-24: Agencies Performing Initial Substance Abuse Assessment



3. *Provision of Treatment Services*

a. numbers of agencies involved in provision of treatment services

The pattern of treatment provider support for drug court programs has remained fairly constant, with the exception of an increasing number of programs utilizing a large number of multiple providers (e.g., more than ten). This pattern may be due, in part, to the termination of grant funds for at least some of these programs and the consequent need to rely on existing provider services and participant insurance benefits. The increasing frequency of drug court coordinator positions also may provide the coordination capability to work with multiple providers. Approximately one third of the programs utilize one dedicated provider (which may include in-house court staff) and one third use six or more providers. The remaining programs utilize two to five providers. The provider use is as follows:

Chart E-25: Number of Providers of Drug Court Treatment Services for Individual Programs

Number of Providers	1997	2000
One	40%	36%
Two	7%	9%
Three - five	21%	23%
Six – ten	31%	16%
More than ten	1%	16%

b. types of agencies providing treatment services

Provision of drug court treatment services are increasingly being provided by private treatment organizations, existing local providers and court hired staff. The involvement of county health departments and probation staff has decreased since 1997.

Chart E-26: Agencies Providing Treatment Services

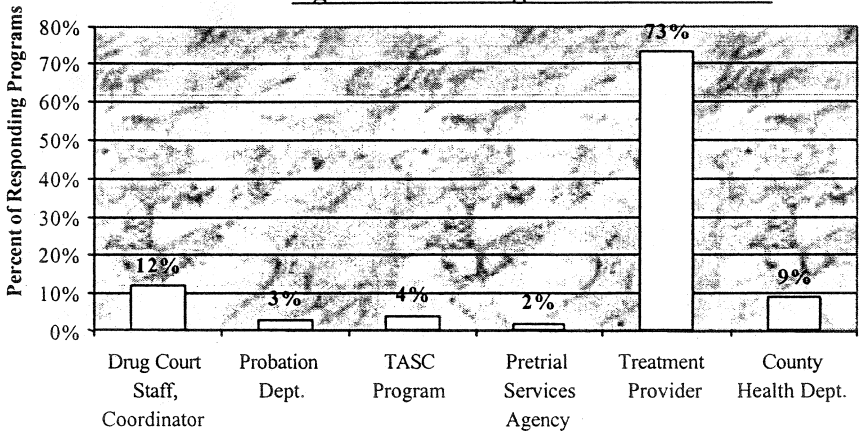


Chart E-27 below presents an overview of the various agencies involved in providing screening, assessment, case management and treatment services for drug court participants.

Chart E-27: Agencies Performing Drug Court Substance Abuse Screening, Assessment, Case Management, and Treatment and Rehabilitation Services*

Agency	Substance Abuse Screening	Initial Substance Abuse Assessment	Case Management	Treatment & Services
Drug Court Staff, Coordinator	19%	17%	24%	12%
Probation Department	15%	15%	45%	3%
TASC	12%	12%	11%	4%
Pretrial Services Agency	10%	10%	3%	2%
Treatment Provider	60%	57%	56%	73%
County Health Department	7%	7%	8%	9%

* multiple agencies frequently performing the same functions; total may therefore exceed 100%

c. coordination of treatment services

All of the responding programs indicated that a specific agency or agencies had been designated to coordinate the treatment services being provided for the drug court. Half of the reporting programs indicated that two or more agencies were designated for these purposes. The agencies or individuals most frequently involved in this function were reported to be the following:

Drug Court Staff	36%	Drug Court Judge	22%
Probation Department	13%	Private Treatment Organization	13%
County Health Department	8%	TASC	5%
Pretrial Service Agency	2%		

4. Services for Special Populations

Many (73%) of the responding programs indicated that they had developed special program components or segments to address the needs of special populations in their drug courts. Among the special components developed include those geared to: dually diagnosed participants (53%); female participants (48%); pregnant or postpartum participants (42%); foreign-speaking participants (primarily Spanish) (36%); participants who are parents (35%); victims of domestic violence (35%); participants dealing with childhood trauma (29%); and participants who are HIV positive (28%).

5. Aftercare

a. aftercare services provided

Aftercare services for a period following completion of the Drug Court are being provided by 60% of the reporting drug courts. Since many of the services traditionally considered as "aftercare" in nondrug court programs are provided as a component of the drug court program *before* a participant graduates, drug court "aftercare" services generally focus on promoting the continued recovery and stabilization of the participant as well as mentoring to new drug court enrollees. These services are generally provided by the drug court treatment provider and consist of relapse prevention, call-in "help" lines, providing peer support/mentoring, and support to new drug court participants.

b. mechanisms for referral to aftercare

Drug court graduates can enroll in the aftercare program voluntarily in some drug courts or upon referral by the treatment provider or judge in others.

c. length of time individual can enroll in aftercare

For most (80%) of the responding programs there is no limitation on the time in which participants can enroll in aftercare services; they can participate indefinitely. Twenty percent of the respondents, however, apply a limitation on the period for enrollment ranging between six months to one year, or the applicable period of probation, whichever is greater.

d. feedback to the judge regarding aftercare participants' progress

The drug court judge receives feedback regarding participants' progress in aftercare in two-thirds of the reporting programs. In one-third of the aftercare programs, participants can participate in the regular drug court status hearing docket of the court.

e. agencies providing aftercare services

Aftercare services for slightly over half (56%) of the responding programs are provided by the treatment provider; for 39% of the programs, the court/court coordinator provides them. The remaining drug courts use the faith community (2%), probation (2%) or case managers (1%).

6. Alumni Activities

Approximately half (52%) of respondents indicate that their program has an alumni association and an additional 35% indicate that one is being planned. Among the variety of services drug court alumni associations are providing include: mentoring, networking, and representational functions.

8. *Assignment of Cases to Drug Court Judge(s)*

Most (75%) of the reporting drug courts assign drug court cases to one judge who hears drug court cases for an average of 10 hours per week in addition to the rest of his/her docket. Nine percent of the reporting programs assign drug court cases to a full-time drug court judge whose only assignment is to hear drug court cases.

Twenty-five programs – up from 10 programs in 1997- report that drug court cases are assigned to two designated judges, both of whom hear drug court cases in addition to their non-drug court caseload. Generally, each of the judges maintains his/her own docket of cases although they also serve as back-up to one another when needed.

In many instances in which the drug court judge hears drug court cases in addition to his/her full regular docket, the drug court cases are scheduled before or after the regular trial day.

Approximately one third of the respondents indicated that the drug court assignment rotates among the judges. Some (20%) of these programs have a two-year rotation period; a few have a one year rotation period and one program uses a six month rotation period. For the remaining respondents, the rotation period extends until the drug court judge decides to step down or, in one instance, until the presiding judge appoints a replacement judges.

See also Section H (1) below: "Program Resources: Judge Time", which discusses in further detail the percentage of judge time allocated for drug court cases.

8. *Program Operations and Procedures*

a. policies and procedures manual

Almost all (90%) of respondents indicate that they have a written Policies and Procedures Manual for the program. In addition, 94% of respondents have established mechanisms to address issues that arise that are not covered by the Memorandum of Understanding (MOU) or the Policies and Procedures Manual.

b. creation of interagency memoranda of understanding (MOUs)

Over half (61%) of the responding programs indicate they have a written Memorandum of Understanding (MOU) with at least some of the agencies involved in the drug court program. Most of these MOUs cover the use of information regarding possible admission of drug use by the participant and many also address the participant's possible disclosure of criminal acts that he/she has committed during the course of treatment. Most, however, do not provide immunity for the participant's possible disclosure of criminal acts by others. Ninety-six percent of the respondents indicate that their MOU also covers the provision of staff and other resources to be provided by the agencies participating in the program.

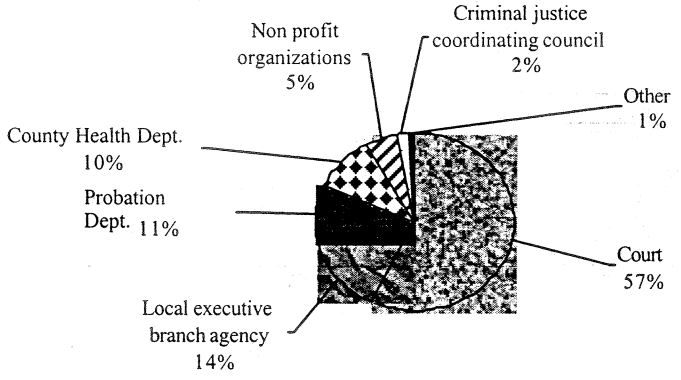
9. *Community Organizations/Agencies Contributing to the Drug Court Program*

Drug courts are utilizing an increasing array of community-based resources. Nearly all of the respondents utilize local AA/12-step programs, and, in addition, over half of the programs are utilizing the resources of their local faith communities, community colleges, and business groups. Other community resources being utilized include: local hospitals, medical societies, the bar, chambers of commerce, and social service organizations.

10. *Agency Responsible for Administering Drug Court Program Funds*

The following agencies were cited by the responding drug courts as responsible for administering the drug court program funds for their local jurisdictions:

Chart E-28: Agency Administering Drug Court Funds



Twenty-seven reporting programs (16%) indicated that the cognizant administrative agency had changed at least once since the drug court had been implemented.

11. Oversight/Advisory Committee

Slightly over half (53%) of the reporting drug courts have established oversight committees (a decrease from the 69% reported in 1997). These oversight/advisory committees provide advisory services and, frequently, guidance in policy and procedural development. In many instances, these committees also assist in gaining community support and resources. The size of these committees varies, with the majority consisting of nine or more members. In addition to justice system representatives, membership on the Drug Court oversight committees frequently includes representatives from the legal, medical, education, business, faith, and public health sectors of the local community. Many of the committees also have citizen representatives.

Since 1997, there has been a marked change in the composition of these committees with significant decreases in judicial, prosecutorial and defense representation and an increase in representation from the business community, the local executive branch, and law enforcement.

The roles of the drug court oversight committees working with the responding courts appear to be decreasing in terms of active involvement with drug court program issues. Many programs have indicated, however, their intentions to either establish/resurrect the drug court oversight committee and/or to more actively utilize it for program operations.

H. Program Resources

1. Judge Time

The percentage of bench time allocated by judges for drug court cases is directly correlated to the number of participants enrolled in the program. One hundred thirty-nine programs (85%) of the responding programs use one judge to hear the drug court caseload, with assigned benchtimes ranging from 10% to 100%. Ten of these programs have designated one full-time judge to hear the adult drug court docket. (See Chart E-29 below).

As noted in Section G7 above, twenty-five programs (15%) assign two judges to hear the drug court docket, with assigned benchtimes ranging between 10% to 50% for drug court cases.

In addition to benchtime for drug court hearings, drug court judges are contributing significant additional time (generally evenings, lunchtime and weekends) for drug court functions. These include: pre-hearing staffings and a variety of other services related to the management and funding of the program, its integration with other judicial system functions, necessary interagency relationships, and related outreach in the community.

Chart E-29 (a): Judge Bench Time Allocated to Drug Court Programs Utilizing One Judge

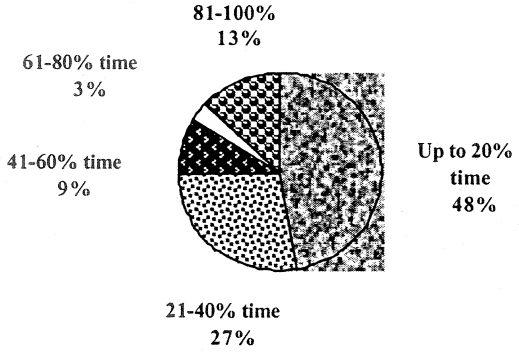
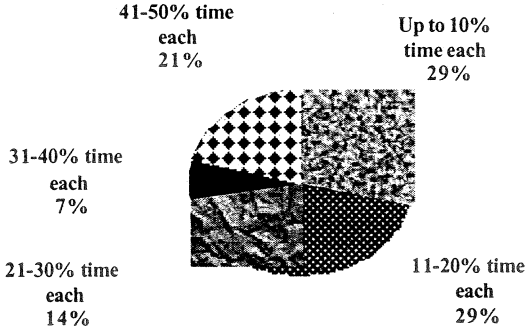


Chart E-29 (b): Judge Bench Time Allocated to Drug Court Programs Utilizing Two Judges



2. Judicial System Staff

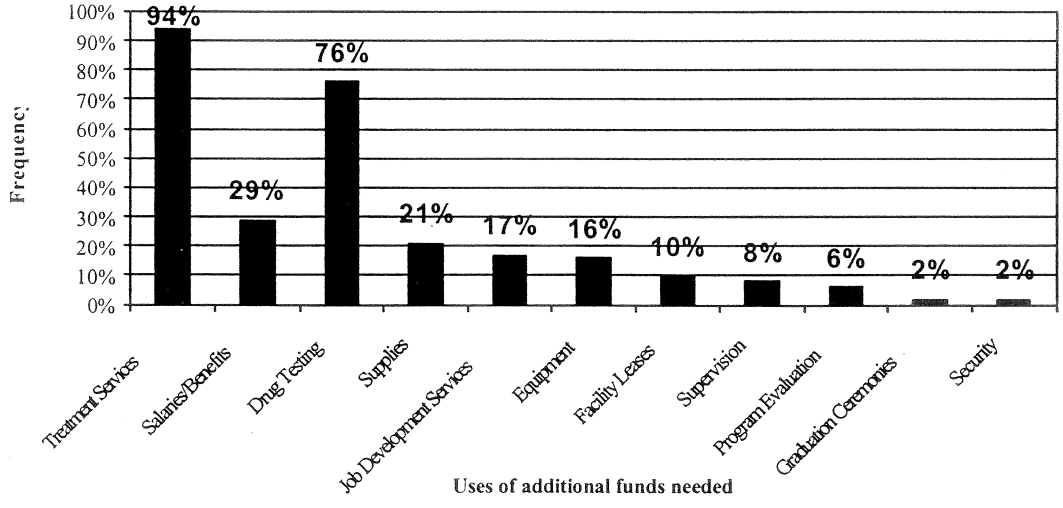
Programs appear to be allocating fewer judicial system staff to drug court programs, with 26% reporting the allocation of less than one FTE (full time equivalent) staff for the program, compared with only 4% in 1997. This reduction may be due, in part, to the increasing number of programs in smaller jurisdictions and with smaller caseloads. Forty-two percent of the responding courts are allocating three or more FTEs – slightly reduced from the 48% in 1997.

5. Additional Funds Needed Annually to Operate the Drug Court Program in Addition to the Resources Contributed by the Judicial System

a. additional funds needed annually

In addition to the judge time and services of other judicial system staff contributed by the judicial system, responding programs noted that additional funds were needed, averaging $ 259,667 per program, to operate the drug court. The uses for these funds were as follows:

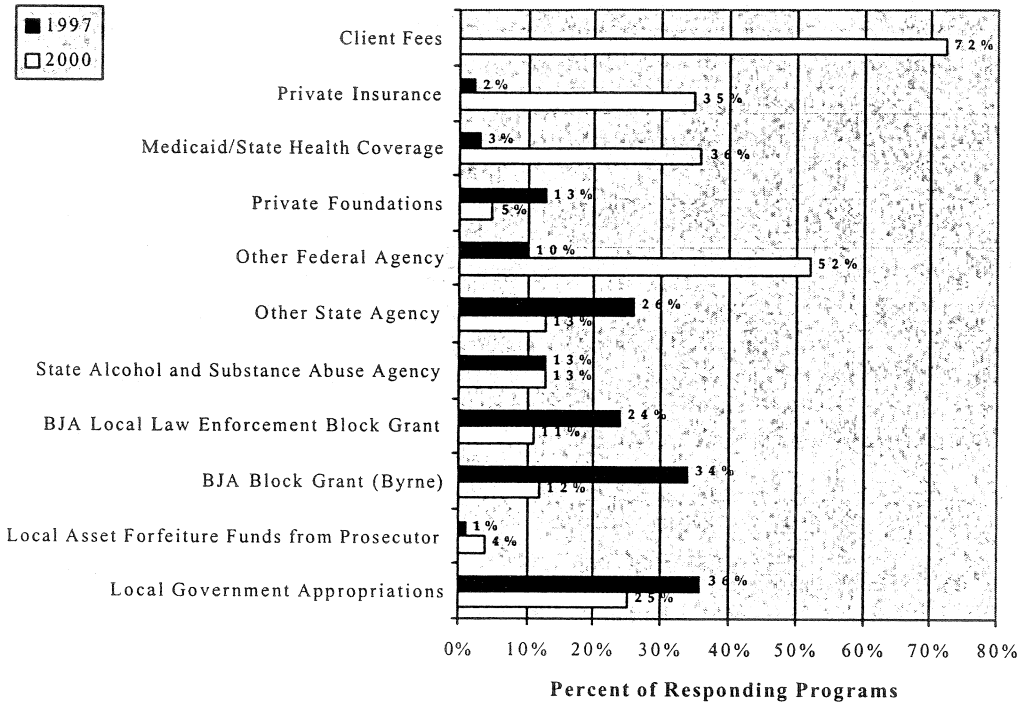
Chart E-30: Uses of Additional Funds Needed Annually



b. sources of additional funding received

Drug courts have continued to use a variety of funding sources to support program operations. Over half of the responding drug courts have been recipients of federal funds and 25% have received local funding to support the drug court. An increasing – though still relatively small – number of programs are also accessing Medicaid and third-party insurance benefits to which their participants are entitled. Chart E-31 illustrates the various sources of funds obtained by drug courts for their operations.

Chart E-31: Most Frequent Sources of Additional Funds for Drug Court Operations



4. Program Income

b. program fees

Note: See also Part Seven regarding additional payments participants may be required to make directly to the treatment provider in some programs and/or for drug testing.

Many (72%) of the reporting drug courts charge participant fees, ranging from $10 weekly to $4,000 during the period of enrollment. Most programs have set a "cap" on the program fees required, which the weekly payments offset. These "caps" are as follows:

up to $ 150	19%	$ 501-750	4%	$ 1,501 - 2,500	1%
$ 151-300	40%	$ 751-1,000	4%	$ 2,501 - 3,500	4%
$ 301-500	19%	$ 1,001-1,500	8%	$ 3,501 - 4,000	1%

Approximately one third of these programs waive fees for indigent clients, and 25% have instituted a sliding scale for payment, based on the participant's situation. Seventeen percent of the programs (up from 10% in 1997) waive assessed fees for good performance.

Cumulatively, the responding drug courts reported a total of $3,753,853 in participant fees assessed to date, and $2,818,220 (75%) collected. This rate of collection reflects a 8% increase from the 67% rate noted in 1997.

The responding programs indicate that the agency responsible for collecting program fees is most frequently the court (43%), treatment agency (22%), probation department (11%), or a combination thereof. A number of programs indicated that the clerk of the court collects drug court fees. Eighty-nine percent of the responding programs indicate that the same agency has been responsible for collecting the drug court fees since the program was implemented.

The uses for program fees were most frequently reported to be for: augmenting treatment services (36%); drug testing (33%); providing local match requirements for grants (17%); and administrative costs (6%).

b. third-party payments

The responding programs indicated a significant increase in the frequency in accessing insurance, Medicaid and other public benefits to which participants are entitled for treatment and related services, as summarized below:

Source	1997	2000
Medicaid Reimbursements:	3%	36%
Private Insurance Reimbursements:	2%	35%
Public Assistance:	23%	25%

In terms of systematic review of participants' insurance eligibility, only one third of the programs are conducting this review, up slightly from the frequency of review in 1997.

For those programs receiving insurance reimbursements and/or Medicaid payments for drug court treatment services, these funds are being used as a major funding source and/or a supplement to costs paid by the grant, if the program is grant funded, in over one third of the responding programs.

5. *Impact of Managed Care*

Over half (60%) of the reporting programs indicated that managed care developments had no impact on the drug court treatment services and an additional 15% were uncertain regarding the impact. The considerable extent to which these drug courts have been shielded from the impact of managed care may be explained by the fact that, up to this point, drug courts are drawing on resources outside of the general treatment funding stream—special federal and/or state grants; state and local government appropriations; private foundations, etc.

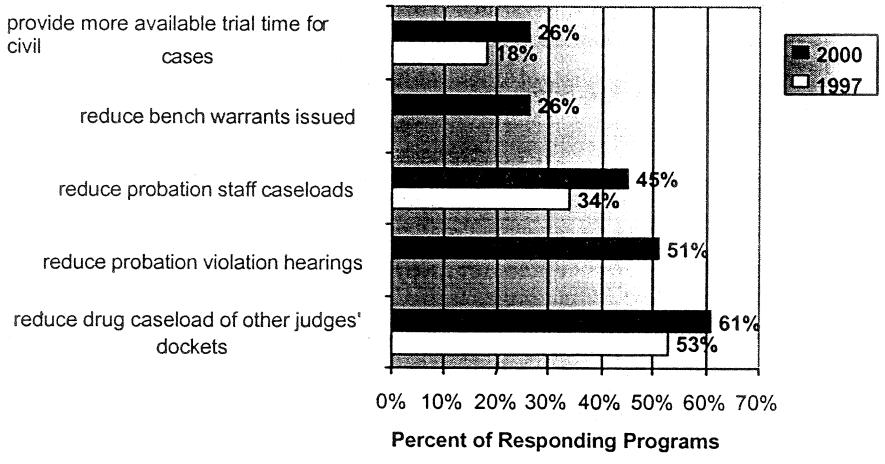
The 25% of respondents that indicated managed care developments were having an impact on the drug court cited problems related to: limitations on the nature and extent of treatment services available; eligibility of drug court treatment providers; rates of reimbursement; and the assessment process required to identify individuals in need of services. These issues are further discussed by drug court treatment providers in their comments in Part Seven of the *Survey Report.*

6. *Cost Savings*

a. court process

Over half of the responding courts reported reductions in the drug caseload of other judges' dockets and reductions in the number of probation violation hearings resulting from drug use. In addition, reductions in probation staff caseload and the number of bench warrants issued were also noted. Twenty-six percent of the responding courts also noted additional availability of trial time for civil cases had also resulted.

Chart E-32: Savings Reported in Court Process Resulting From Drug Court



b. other justice system cost savings[1]

Over one third (38%) of the responding programs reported savings in annual incarceration costs, totaling $35,030,667 in jail bed days; $1,680,119 savings in pretrial detention, and $33,350,548 savings in detention costs for adjudicated defendants. The programs also reported an annual savings of $20,003,926 in state prison days.

Reported annual cost savings in other areas included:

- savings in overtime costs and police court appearances ($3,571,937);
- prosecution costs ($158,444);
- indigent defense costs ($399,956);
- trial costs ($331,783); and
- court cost savings relating to motions not filed ($41,160).

More detailed information relating to cost savings are reported in Parts *Three, Four, Five* and *Six* of the *Survey Report.*

c. additional cost data and sources available for interested researchers

At the request of several drug court researchers, programs were also asked to indicate the availability of certain cost-related data relevant to drug court program evaluation. The responding programs therefore indicated, with the frequencies noted below, the availability of additional information relating to potential criminal justice system cost-offsets resulting from the drug court program. The most frequently available potential cost-offset data relates to jail and prison costs per day (72% and 55% respectively of the reporting programs); per day probation supervision costs (31% of the programs); and per case booking charges (20% of the programs).

I. Program Procedures

1. Time Between Arrest and Program Entry

a. pre-plea defendants

For pre-plea programs, the time reported between arrest and drug court appearance, and the time between the drug court appearance and entry into treatment, continues to be relatively short in over half of the programs. Twenty-one percent of the reporting pre-plea programs indicate that three days or less elapses between the arrest and the initial court appearance for pre-plea defendants, and 53% report less than three subsequent days elapse between the initial court appearance and entry into treatment. However, in 36% of the responding programs, the time between arrest and entry into treatment is longer than two weeks and, in a few instances, 90 days.

b. post-plea/post-adjudication programs

Forty-three percent of post-plea/post-adjudication programs report that ten days or less elapse between arrest and initial drug court appearance, and 19% report less than one subsequent day elapses between the initial drug court appearance and entry into treatment program. In over 40% of the responding programs, however, the time for post-plea and post adjudication defendants to enter drug court treatment is over three weeks.

[1] See also Parts Three, Four, Five and Six of the *Survey Report* addressing specific justice agencies involved with drug court programs.

c. programs for probation violators

Slightly less than half (46%) of the programs for probation violators report that ten days or less elapse between the probation violation and initial appearance, and 20% report less than one additional day elapses between the initial drug court appearance and entry into treatment.

d. re-entry drug court programs

Approximately one quarter (24%) of the responding programs indicated that their drug court includes a re-entry component for persons sentenced to an initial period of incarceration. Sixty percent of these re-entry programs reported that less than six months elapses between the offender's original sentencing in court and his/her initial drug court appearance; 15% reported that over two years elapses. Most (73%) programs reported that 10 days or less elapses between the offender's release from incarceration and his/her initial drug court appearance, and 23% reported that less than one day elapses between the offender's initial drug court appearance and his/her entry into the treatment program. (See also Part Seven of the *Survey Report* regarding screening, assessment and treatment services for defendants in Re-Entry Drug Court Programs while incarcerated).

2. Changes in Existing Criminal Case Process Required to Implement Drug Court Program

Most drug courts have made changes in the existing case disposition process to accommodate the drug court program. Almost all drug courts have established a special calendar for drug court cases, assigning these cases to one or two designated judges rather than criminal judges generally, and establishing a schedule of extra hearings to accommodate the frequent judicial review functions necessary. Most drug courts have also instituted special procedures for screening drug cases at the time of arrest and procedures to immediately execute bench warrants for individuals who fail to appear at the drug court hearing.

3. Court Response to Participant Progress and Relapse

a. measures to address participants' relapse

Drug courts are using a variety of strategies to respond to participant relapse, most often in combination and adapted to the specific facts of the situation. The most common judicial responses to participant relapse and/or noncompliance with drug court conditions are:

Chart E-33: Measures to Address Participants' Relapse Response

	1997	2000
Increase frequency or intensity of treatment services	80%	94%
Increase frequency of urinalysis	80%	93%
Increase frequency of court status hearings for participant	90%	91%
Order short-term incarceration for:		
• up to 3 days	60%	67%
• 4 – 7 days	48%	59%
• 8 – 15 days	27%	35%
• over 15 days	20%	23%

Other responses include: imposing house arrest; electronic monitoring; referring participant for acupuncture; referring participant to residential treatment; requiring participant to perform community service; and/or increased supervision of participant.

b. measures to address participants' progress

All programs recognize that judicial recognition of participant progress in a drug court is as important as judicial response to relapse. Praise from the drug court judge and accolades from peers are characteristic of all programs and, depending upon related factors, promotion of participants to a higher program phase is also common if other program conditions have been met. Eighty-six percent of the programs also reduce the frequency of status hearings as participants progress; however, only sixty-four percent of the programs reduce the frequency of urinalysis -- a fundamental gauge of substance use -- unless the participant is progressing to a higher program phase. Below is a summary of the most common methods currently reported by drug courts to recognize participant progress:

Chart E-34: Measures to Address Participants' Progress

Response	1997	2000
Praise from the judge at a status hearing	86%	99%
Promotion to subsequent phase	76%	90%
Reduce frequency of status hearings	90%	86%
Praise/accolades from other drug court participants	70%	76%
Award of special tokens/gifts	38%	67%
Reduce frequency of urinalysis	54%	64%
Early termination from the program	4%	28%
Other: parties, certificates, and reduction of fees	17%	10%

c. guidelines for applying sanctions and rewards

The final decision regarding the imposition of sanctions and rewards is made by the judge, taking into account the circumstances of each individual case and the recommendations of the drug court team. All of the reporting drug courts indicated that they have established guidelines regarding the application of sanctions and rewards. Sixty-four percent of the respondents indicated that the guidelines are written.

4. Specific Responses to New Arrests, Failures to-Appear and Positive Urinalyses

a. new arrests

Program responses to new arrests of program participants vary from program to program. Most (91%) programs terminate a participant if arrested for a violent offense or (81%) a drug trafficking offense. Response to arrests for other offenses, however, generally depends on the nature of the offense and the participant's individual situation. Even if a participant is not terminated, however, the new charge is prosecuted while the participant continues in the drug court.

b. failures to appear at drug court hearing

Bench warrants are issued by all drug courts for participants who fail to appear at court hearings, and in 69% of the programs – up from 56% in 1997 -- expedited procedures have been instituted to assure that the participant is picked up immediately and brought before the court. Participants who miss treatment appointments are often contacted by the treatment provider who frequently notifies the court of the participant's failure to appear as well.

c. positive urinalyses

Positive urinalyses usually trigger immediate response from both the treatment provider and the court. Generally treatment contacts are increased and judicial sanctions are imposed. Most programs, however, take into account the circumstances of each participant in determining the appropriate sanctions.

Sixteen percent of the responding programs terminate an individual after a specified number of positive urinalyses – up from ten percent in 1997.

5. *Termination of Unsuccessful Participants*

a. reasons

Apart from the commission of new offenses that trigger automatic termination (see section 4a above), the most frequently cited reasons for termination of unsuccessful participants by the responding programs were:

Reason	Always	Sometimes
Re-occurrence of drug use	1%	68%
Missed court appearances	3%	66%
Missed treatment appointments	1%	66%
Recommendation of treatment provider	9%	62%
New arrest	13%	55%
Alcohol use	1%	52%
Other	10%	15%

In most instances, program termination results from a number of factors; no one factor is determinative.

b. final decision-maker

Almost all of the drug courts reported that the final decision regarding termination of an unsucessful drug court participant was made by the drug court judge, almost always in consort with the drug court team. In seven programs (4%), however, the decision is made by the prosecutor, and in eight programs (5%), the decision is made by the treatment provider.

c. disposition of drug court cases terminated unsuccessfully

In situations in which an unsuccessful defendant is terminated from the drug court, sixty percent of the programs report that the drug court judge adjudicates the defendant's case and imposes a final disposition. Thirty-one percent of the respondents indicated that the case is referred for assignment through standard adjudication and calendaring processes. Pre-plea cases are generally referred to the prosecutor for prosecution.

d. applicable time-frame for adjudication

Nearly half of the respondents dispose of the case of a defendant terminated for non-compliance within 8-30 days of his/her termination from the drug court. Thirty-two percent adjudicate the case the same day as the termination, and 11% dispose of the case within seven days. Only six drug courts (4%) report that more than 60 days elapse between termination of the participant from the drug court and final disposition of his/her case.

e. sentence dispositions for unsuccessful participants

Most (80%) of the participants who were terminated for non-compliance from the drug court received sentences of incarceration. The incarceration sentences imposed ranged from up to 180 days (30%) to over 1 year (29%).

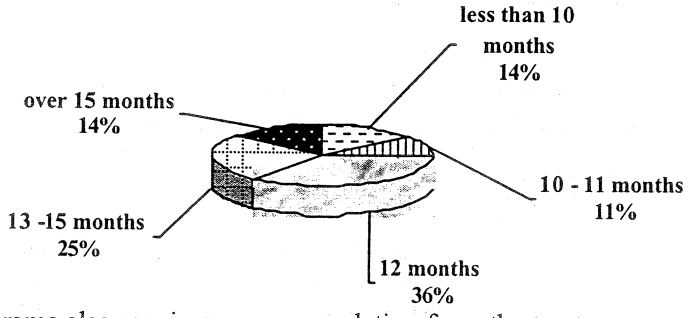
All of the responding courts indicated that the sentence the defendant receives following termination is generally the same as he/she would have received if he/she had never entered the drug court. Fifty-two percent, however, indicated the sentence may be more severe and 4% indicated it may be less severe, depending upon the circumstances of the participant's termination.

6. *Successful Completion and Graduation*

a. requirements

All drug courts require a minimum period of treatment program participation (generally at least 12 months) and sobriety (usually at least four to six consecutive months) for graduation.

Chart E-35: Required Period for Treatment Enrollment in Drug Court



In addition, most programs also require a recommendation from the treatment program and evidence that the participant is living in a stable, drug-free living situation. Most programs also require participants to comply with other program conditions (e.g. payment of program fees, obtaining employment, earning a GED or high school diploma, performing a specified amount of community service, etc.)

b. effect of graduation on case outcome

In many (70%) of the responding drug courts, participants who successfully complete the drug court program have their charges dismissed or guilty plea stricken. In the remaining thirty percent of the programs, drug court graduates receive some reduction in their sentence exposure or applicable probation period, depending upon their criminal history and circumstances of the current charge.

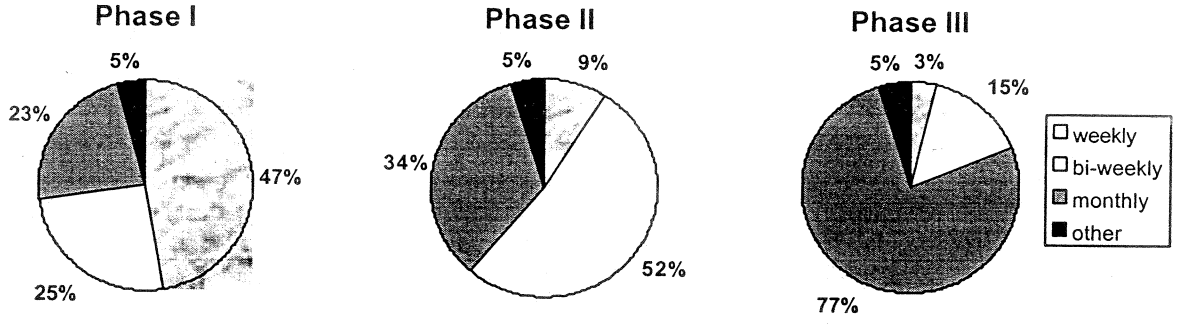
J. Program Contacts with Participants

1. Nature and Frequency of Contact Between Drug Court and Participant

a. participant contact with court and justice system program

Face-to-face contact between the drug court judge and drug court participants generally ranges from weekly and bi-weekly during the first two phases to monthly as participants progress, as depicted in Chart E-36:

Chart E-36: Participant Contact with Drug Court Judge



b. other follow-up with participant by justice system staff

Participant contacts with other justice system staff (e.g., prosecutors and defense counsel) is generally frequent and on-going, and most frequently occurs at each court status hearing, either in person or through reports provided.

c. participant contact with treatment services

Most programs require drug court participants to have at least three contacts per week with the treatment provider and many require four to five, at least during the first phase of program participation. (See *Part Seven* for further discussion of treatment program contacts).

d. required urinalysis

In addition to court status hearings and treatment provider contacts, participants are required to undergo frequent, generally random, urinalysis throughout their period of drug court participation. Chart E-37 below depicts the frequency of urinalysis scheduling in the responding programs:

Chart E-37: Required Frequency of Urinalysis

Required Frequency of Urinalysis	Phase I	Phase II	Phase III	Phase IV*
At least twice per week	20%	46%	20%	2%
At least once per week	16%	39%	46%	3%
At least every other week	5%	10%	23%	3%
Other	9%	5%	11%	3%

* for programs with Phase IV

e. participant contact with case manager

Required contacts with the case managers in the responding programs are at least weekly initially and decrease during the period of program participation. For most programs, they never decrease to less than bi-weekly, even in the final phases of the program.

f. other program requirements

Most drug courts impose additional program requirements (e.g., employment, curfew compliance, etc.) during the various phases of program operations. The frequency with which these requirements are imposed varies from program to program.

g. visits to participants' homes

Many (70%) of the responding programs indicate that periodic field visits are made to participants' homes as part of the drug court supervision process. Twenty-three percent indicate a law enforcement officer conducts the visits; 23% indicate it is made by the case manager; and 54% indicate that probation conducts the visits.

Some (23%) of the respondents stated that searches of the participants' homes are conducted during these visits (primarily for participants who have entered a guilty plea, been adjudicated guilty, and/or are probation violators). Forty-seven percent of the responding programs indicated that searches were not conducted; an additional 24% said that searches were conducted on some occasions. Five percent of the respondents indicated that searches were conducted only with a specific court order.

2. *Nature and Frequency of Court Contact with Defendant and applicable Sanctions/Sentence **Prior** to Implementing the Drug Court*

a. nature and frequency of judicial system contact

Respondents were asked to describe the nature and frequency of court contact and supervision that would have applied to defendants during the pretrial and post-trial periods prior to implementing the drug court program. Only 28% of the responding jurisdictions conducted weekly drug testing during the pretrial period for nondrug court defendants and only 35% required weekly in-person reporting to a pretrial supervision officer. During the post-adjudication period, only 17% of the jurisdictions required weekly in-person reporting and 23% required at least weekly urinalysis.

b. enrollment of defendants in treatment

Although 29% of the responding programs report that some treatment was generally available for substance-involved defendants prior to the drug court, only 8% of the responding programs indicate that it would have been available immediately. Over one third of the responding programs indicate that treatment services could be accessed only when slots were available. In over half the jurisdictions, the court would not have been notified when the defendant began treatment and in most jurisdictions (89%) the defendant would have been required to appear in court for a probation violation only.

c. applicable sentence

The range of sentences that would have been imposed in the responding jurisdictions prior to implementing the drug court generally falls between probation to three or more years incarceration. This sentence range is consistent with that currently applied to unsuccessful participants. (See Section I5e)

K. Information and Monitoring Systems

1. *Current Information Systems Capabilities*

Below is a summary of the nature of information compiled by the reporting drug courts for each participant. Over sixty percent of the responding programs report that they compile this information on a cumulative basis.

Information Item	All Events Cumulative	Most Recent Event Only
Appearance at scheduled court hearings	82%	18%
Appearance at scheduled treatment appointments	71%	22%
Appearance at urinalysis	77%	18%
Urinalysis results	81%	16%
Progress in treatment	75%	23%
Employment status and recent changes	63%	30%
Family status and recent changes	60%	28%
Educational activities	62%	26%
New arrests	71%	19%

2. *Use of Automation*

Approximately 58% – up from 40% in 1997 – of respondents indicate that they have some automation capability although not all management and/or tracking functions related to drug court operations are automated. The remaining 42% have no current automation capability for maintaining and/or exchanging information relating to drug court operations, functions, and/or participant progress.

3. Methods Used to Provide Reports to Drug Court Judge

In most drug courts, information regarding treatment, urinalysis and other aspects of participant progress is reported orally and in written reports to the drug court judge. Eighty-nine percent of programs provide the judge with a written report, 63% also provide information orally through a caseworker, and 16% provide online access to information from the bench.

4. Computer Resources

Twenty percent of the responding programs that have automation capacity indicate they use a mainframe computer; 41% of the respondents indicate they use stand alone personal computers, often in conjunction with other automated and/or manual systems; and 62% indicate that they have some access to a network server.

Approximately one quarter (26%) of the responding programs reported that an existing criminal justice computer system had been modified for drug court use; 58% indicated that a new system was developed. Among those programs that developed a special information system for the drug court, approximately one third (32%) indicated that they used an off-the-shelf commercial software package, most frequently Access and Excel. Twenty-two percent used a private vendor to develop the system; 17% indicated that the drug court staff developed the system; 7% reported the work was done by court information staff; and 5% indicated the county information staff developed the system.

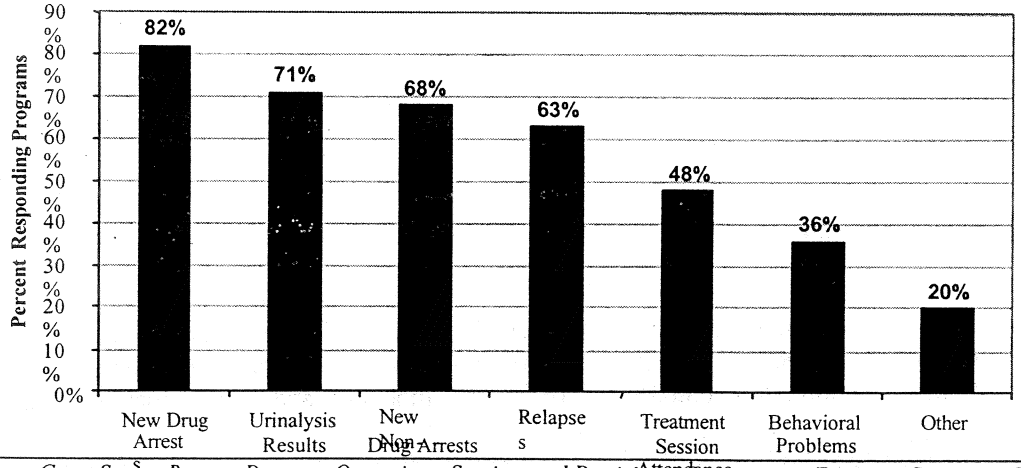
L. Program Evaluation and Assessment

1. Criteria Being Used to Assess the Effectiveness of the Drug Court Program During the Period of Client Participation

a. criteria most commonly used

The criteria used most frequently by drug courts to assess the effectiveness of their programs and the degree to which they are meeting program goals include: the frequency of new drug arrests (82%): percentage of urinalysis tests that are clean (71%); frequency of new nondrug arrests (68%); number of relapses per defendant (63%); percentage of treatment sessions defendants are attending (48%); and frequency of behavioral problems of program participants reported (conflicts with family members, etc.) (36%); and other indicia (education, employment, drug free babies, etc).

Chart E-38: Criteria Used to Assess Effectiveness of Drug Court by Judicial System Officials



2. *Impact Information Being Compiled by Drug Court Programs*

Responding programs report compiling a range of information regarding the impact of the drug court, the most common of which is the following:

Information Element	Reported Frequency of Available Information
Participants' recidivism rates	75%
Participants' employment status	74%
Demographic characteristics of participants	70%
Drug-free babies born to participants while in drug court	63%
Participants' educational status	63%
Participants' family/household status/relationships	48%
Participants' mental health	36%
Participants' physical health	32%
Participants' public assistance/welfare status	31%
Custodial status of participants' children (returned from foster care, etc.)	31%
Participants' income levels	30%
Currency of participants in child support obligations	22%

M. Follow-up With Program Participants After Program Termination

Almost half (47%) of the responding courts conduct follow-up with former program participants; most of these follow-up activities are with only participants who graduate. Forty-three percent of the responding programs follow up with participants during specific time frames. (e.g., for six months, 12 months, etc.)

> *Note: When treatment providers were asked to describe their follow-up activities with drug court participants, they reported a significantly higher frequency of follow-up contacts. (See Part Seven).*

N. Evaluation Activities

1. *Evaluation Activities Undertaken to Date*

Approximately two-thirds of the responding courts indicated that their drug courts have been the subject of one or more evaluative activities, as follows:

Periodic gathering of information but no published reports	53%
Commissioned report prepared by court or other agency involved with the drug court	51%
Subject of study by outside agency under contract	60%

2. *Future Evaluation Activities Planned*

Many (67%) of the responding programs reported that they will continue their existing evaluation activities, gathering internal data for program monitoring and management, while 41% reported that they plan to expand their activities. Thirty-eight percent of the respondents plan to issue an evaluation report by the court or other agency involved in the drug court program, and 52% plan to contract with an outside agency to prepare an evaluation report.

3. *Agreements to Protect Client Confidentiality*

Almost all (93%) of the responding courts reported that they have an agreement protecting client

confidentiality for use with an outside evaluator, and 84% have an agreement regarding the use and storage of data collected.

4. Evaluative Information Programs Are Maintaining

Over one third (38%) of the reporting drug courts indicate that they track specific information while conducting follow-ups with participants who have been terminated (both successfully and unsuccessfully) from the drug court program, most frequently: recidivism (92%); employment status (45%); drug usage (44%); alcohol usage (39%); educational status (34%); family/household status (29%); mental health of participant (24%); physical health of participant (21%), and public assistance/welfare status (11%).

O. Program Operational/Planning Issues

1. Most Serious Problems Encountered in Designing or Implementing Drug Court Programs and Their Resolutions

Respondents were asked to describe the most serious problems they had encountered in designing or implementing their drug court programs and the strategies used to resolve them. The most frequently cited problems related to: forging relationships among participating agencies; gaining support from other judges and the bar; and funding. The most common strategies used to address these issues were increased communication and team meetings, although many of these problems are still not resolved A summary of their responses is provided in Part One of this *Report.*

2. Unanticipated Issues That Have Arisen and Their Resolutions

Respondents were asked to identify unanticipated issues that have arisen since the drug court became operational and the strategies used to address these issues. Respondents noted a broad range of problems, including: dealing with the various treatment issues and drug/alcohol usage presented by defendants; transportation needs; attracting the anticipated target population; educating other judges and justice system officials about the drug court; compiling necessary data for program management and evaluation; and, almost always, funding. As with other problems encountered, the most frequent strategies for addressing these issues has entailed increased communication and discussions; many of these issues continue to be addressed. The specific responses of the reporting courts follow:

City	County	State	Unanticipated Issues Encountered since the Program Became Operational	Strategy to Address Issues
Cullman	Cullman	AL	The need for earlier intervention and entry into the drug court. We feel that there is too much time between arrest and entry into the court, due to the screening and entry process that exists now.	A pre-trial release program is being planned.
Mobile	Mobile	AL	Funding	Ongoing
Phoenix	Maricopa	AZ	A medical marijuana ballot initiative Proposition 200 was passed by 42 votes in 1996. It included a mandate for probation and treatment only for 1st and 2nd time drug possessors – no jail. Our drug court model includes 60 days deferred jail for all.	We are applying for DOJ grant funding to develop a 2nd drug court track for Proposition 200 defendants only. A new set of sanctions/ rewards will replace the carrot of deferred jail.
Tucson	Pima	AZ	The frequency of relapses and the periods of relapses that occur throughout the program.	Random UAs in all phases.
Richmond	Contra Costa	CA	Since the program operated for 2 years as a pre-plea program, I do not believe that unanticipated issues arose following the conversion to a post-plea program.	
Los Angeles	Los Angeles	CA	1) Use of methadone by clients (not allowed.) 2) Zero tolerance of use of alcohol. 3) How many cases could a drug court defendant have in drug court? (only 2 open cases). But more allowed if probation matter.	By drug court team and policies set by judge.

City	County	State	Unanticipated Issues Encountered since the Program Became Operational	Strategy to Address Issues
Santa Ana	Orange	CA	Gaining acceptance of Drug Court Program among the Bench.	(not as yet); Invitation to Drug Court graduations; peer judge meetings (Drug Court/ Non Drug Court)
Auburn	Placer	CA	Participants turning to alcohol, LSD and other difficult to detect drugs.	By more effective testing methods, probation varying times to visit, and conduct searches.
Auburn	Placer	CA	Are persons on prescribed Methadone or Marijuana appropriate?	All persons requesting entry have been allowed to enter program.
Riverside	Riverside	CA	Disagreement between drug court team and the district attorney on the incorporation of certain classes of offenses.	These issues remain unresolved.
San Bernardino	San Bernardino	CA	Our DA has been more strict in the eligibility criteria since expansion; they have insisted on a county-wide MOU that some judges do not agree with.	We are addressing the issue through continual meetings to resolve the issues
Stockton	San Joaquin	CA	Not enough personnel to handle certain jobs/calendars.	Some positions were incorporated in federal OJP Grants, while others in state grants.
Santa Maria/Santa Barbara	Santa Barbara	CA	Funds to sustain treatment service levels	Inclusion of Alcohol & Drug Program Administrator
Fairfield	Solano	CA	Type and characteristics of participants served. Began serving "diversion" type.	Legislation began "deferred entry of judgement, we let go of our diversion clients through attrition and focused on multiple offenders and probationers.
Modesto	Stanislaus	CA	We have spent hours collecting data. However, we have no money for this project. We also did not include a program evaluator in our grant and have not had the manpower or ability to fully evaluate our program.	Our program has reunited families, assisted participants to gain employment, education and housing and assisted people in getting off of public assistance. We are working to develop a system to track these things.
San Francisco		CA	Changing eligibility caused unanticipated rapid increase in client participation.	Eventually hired additional case managers.
Gainesville	Alachua	FL	Issues of confidentiality and how it affects drug court operation	It is still ongoing. Training and seeking advice from experts in the field has helped, but the public nature of courts in Florida and the Federal law do not mesh well.
Rockledge	Brevard	FL	Treatment provider changes had impact on the quality of services to be available to clients; personnel changes.	Ongoing process
Ft. Lauderdale	Broward	FL	Need for MIS; Resistance from management personnel.	Negotiations and meetings.
Tampa	Hillsborough	FL	Volume of cases.	We changed the format to give both judges equal caseloads.
Key West		FL	The impact of Juvenile Drug Court with limited resources.	On-going, limited funding, limited space.
Atlanta	Fulton	GA	OJP prohibition of accepting offenders with any history of violence or seemingly violent behavior prohibited the program from working with the vast majority of defendants who would otherwise benefit from the program.	Not resolved atthis time. Federal funding will expire by mid-year and eligibility may be expanded at that time.
Honolulu		HI	Maintaining necessary staff– turnover high	
Boise	Ada	IA	Target population; treatment.	Expand population. Meet regularly to address court needs.
Sioux City	Woodbury	IA	Program has been in operation for 6 months with 41 juveniles & 24 adults currently being served. We really have not experienced any "surprises" yet.	
Chicago	Cook	IL	1) Transferring jail inmates to treatment program. 2) Extradition.	1) Meetings headed by Judge Fox 2) Unresolved, after discussions with State's Attorney
Edwardsville	Madison	IL	1) Need for residential Tx; 2) Need for dually diagnosed Tx; 3)Low numbers of referrals; 4)Length of participant's stay in program	1)Referral network; 2) Specialists hired; 3) Ongoing education of referral sources; 4)Acceptance of the fact that it is usually a more than 12 month program.
Peoria	Peoria	IL	The problems other than substance abuse that must be addressed for a successful termination.	Education and cooperation.
Rockford	Winnebago	IL	High number of cases; No MIS	MIS still not resolved or installed
Fort Wayne	Allen	IN	Lack of qualified treatment providers who can provide a continuum of services.	By building coalitions with specific treatment providers to expand their programs.
Gary	Lake	IN	The rapidity of increase of participants.	Additional personnel involvement, longer work hours and added responsibilities.
Indianapolis	Marion	IN	Cost of drug testing & treatment services; perso nnel issues.	Reduction of drug testing, admitting the number of clients in the program, reorganization of personnel.

City	County	State	Unanticipated Issues Encountered since the Program Became Operational	Strategy to Address Issues
Terre Haute	Vigo	IN	Shortage of male technicians to collect urine sample.	Increase hourly rate to attract stable personnel. Work hard & feverishly to provide data.
Wichita	Sedgewick	KS	Lack of computer	Not addressed
Winchester	Clark	KY	Coordination with participants' physicians	Judge and MD on case-by-case scnario.
Monroe	Morehouse/Ouachita Parish	LA	Differences of opinion among team concerning sanctions for non compliance.	Addressed by talking as a team and setting down written criteria for specific non compliant behavior.
New Orleans	Orleans	LA	Overwhelming number of defendants who are in need of drug court services & the difficulty of providing services for these individuals.	Our court is beginning a pretreatment substance abuse group.
New Orleans	Orleans	LA	Growth faster than available treatment provided space and funding.	Working on resolving bed space and state more open to funding drug court
Gretna		LA	Transportation and problems with clients being able to pay fees.	We continue to work to resolve issues.
New Iberia		LA	Transportation; job availability.	
Haverhill	Essex	MA	Shortages of resources, housing, health care. Long waiting lists for residential treatment, daycare issues,etc.	Time, success & persistence. Shortage of resources remains unresolved.
Worcester	Worcester	MA	no major issues.	
Kalamazoo	Kalamazoo	MI	Medicaid switching to HMO. Sentencing guideline.	Accessed other funds for treatment, however treatment services have been reduced. In the process of being addressed.
Kalamazoo	Kalamazoo	MI	1). Medicaid switching to HMO 2). Sentencing guideline.	1). Accessed other funds for treatment, however treatment services have been reduced. 2). In the process of being addressed.
Grand Rapids	Kent	MI	Need for specific treatment dollars for participants.	Sill in discussion
Warren	MaComb	MI	Jurisdiction issues, probation department's lack of help	Avoidance of those individuals.
Detroit	Wayne	MI	Lack of support from the bench. Set back in developing MIS program due to technological problems in the building.	Still in process of resolving.
Minneapolis	Hennepin	MN	The prosecutors' & law enforcement strong desire to develop a prescriptive graduated sanctioning approach and excluding 1st & 2nd Degree possession/sales cases from drug court.	Longstanding discussion/debate, often with politicization of the issues.
Benton	Scott	MO	Probation and Parole refused to allow screening of certain defendants	
St. Louis	St. Louis	MO	In process of reprogramming.	
Omaha	Douglas	NE	Philosophical differences among team members with regard to various issues. These continue to be addressed appropriately by consultation among team members.	
Camden	Camden	NJ	Mental Health problems (MICA clients)	Still developing solutions
Trenton	Mercer	NJ	Number of applicants	Not resolved
Elizabeth	Union	NJ	Drug courts require the ability to change the usual manner of case processing. I was surprised at how difficult it was to make necessary changes.	Change has come about much slower than I hoped, but progress is steady.
Albuquerque	Bernalillo	NM	More drug courts are being implemented & there are finite resources for treatment.	have not resolved this issue
Aztec	San Juan	NM	Inconsistent performance by treatment providers.	New treatment provider
Taos	Taos	NM	Minor tweaking of point system	
Las Vegas	Clark	NV	Too many to recount.	Drug Court committee develops solutions.
Sparks	Washoe	NV	Lack of residential house arrest for violent offenders by the local sheriff.	We contracted with a private agency.
Bronx	Bronx	NY	The number and complexity of the methadone use in the Bronx.The fact that this court is methadone-to- abstinence (MTA) research on methadone completed.	Policy & procedure manual discusses the process of evaluating opiate/methadone use and our current methadone to abstinence program.
Amherst	Erie	NY	Relapse occurrence; attorney desire to evade court	Attorneys now request drug court; plans to monitor graduates more carefully
Cheektowaga	Erie	NY	Closing of files on post- plea cases.	Assistant District Attorney involved.
Lackawanna	Erie	NY	Initial resistance to implement what appeared to be a soft approach to the problem of crime and drugs as perceived by the community, police and other community groups.	We are addressing difficulties as they arise; we address them as a team and often draw on available technical assistance.
Tonawanda	Erie	NY	Transportation	Planning /scheduling
Rochester	Monroe	NY	It has been a smooth process since initial problems.	

City	County	State	Unanticipated Issues Encountered since the Program Became Operational	Strategy to Address Issues
Brooklyn	New York	NY	Inability to drug test incarcerated population; Difficulty in managing younger, marijuana only offender population	Still no access to drug testing for incarcerated population; Screening out the marijuana only users
New York	New York	NY	Difficulty placing MICA clients	Still working on obtaining timely placements, by utilizing a number of programs.
Niagara Falls	Niagara	NY	Specialty addiction problem: special needs due to reoffense, age, gender, mental illness.	Gender specific treatment available mental health counselors are active part of all dual diadnosis cases in drug court working on young adults programs, started re entry phase for past participants
Kew Gardens	Queens	NY	Developing consistent program provider reporting.	We developed a simplified and comprehensive checklist form for providers very effective.
Central Islip	Suffolk	NY	The M.I.C.A. component did not realize how extensive it was.	Severe MICA patients are ineligible to this Drug Court.
Ithaca	Tompkins	NY	Need for crisis advocate to assist participants with housing crises, getting public assistance, etc.	Short-term partnership with a community agency formed. Efforts now underway to find funding to make this a permanent position.
Hamilton	Butler	OH	Our court in the beginning was focused on implementing of the program, getting individuals into the program; there was little concern of the confidentiality issues which arise from directing the offender into a treatment program	Research was conducted to see what federal guidelines needed to be followed & then our court. had the part. Sign consent waivers to allow the DC team to talk & view their records.
Cleveland	Cuyahoga	OH	Referral issues regarding the police; not having any staffing to provide appropriate screening of eligible candidates. Disallowing "suspicion of trafficking involvement" offenders charged with drug abuse.	Efforts to streamline referral and identification process ongoing. New eligibility criteria under considerat ion.
Sandusky	Erie	OH	Inadequate space if the program continues to grow.	This problem is currently being addressed.
Toledo	Lucas	OH	Difficulty in obtaining participants because charges are not dismissed at the end.	No change in the case disposition, butthe program has started to grow over time. We are trying to increase incentives and are trying to get other judges to refer potential participants.
Mansfield	Richland	OH	Treatment dollars not sufficient to cover Tx costs.	Solicited local, state and Federal funding sources to compensate dollars.
Mansfield	Richland	OH	Treatment dollars from Federal Government not sufficient to cover costs.	Solicited local and state funding sources to compensate dollars.
Purcell	McClain and Garvin	OK	Finding alternative treatment programs (inpatient)	Treatment provider found; Low cost in-patient services, with payment based on income.
Okmulgee	Okmuloee	OK	Locations for counseling not available nation wide	By treatment provider agreeing to go to other treatment locations
Ada	Pontotoc	OK	Not having adequate office space.	Working with county commissioners for additional space.
Eugene	Lane	OR	Persons with very serious inoperable conditions who are on opiate pain meds - How to get them tx'd	1:1 counseling with close cooperation and assist: of single tx's MD and supervisor by court and tx agency.
York	York	PA	Cost of treatment per participant.	Supplemented by local funding.
Philadelphia		PA	Operational procedures involved in targeting cases to the program.	continuous meeting & the implementation of a "Routing Sheet" to serve as a checklist.
Ft. Worth	Tarrant	TX	Pre-trial diversion issues; Lawyers want all program participants to hire lawyers.	Negotiations in process.
Austin	Travis	TX	No MIS system	County finally worked glitches out.
Fredericksburg	Rappahannock Regional	VA	Conflicts between partnering agencies (more so with our juvenile program)	Technical assistance obtained, frequent meetings to resolve issues.
Seattle	King	WA	Lack of resources for in-patient ,which is greatly needed.	Unresolved
Mount Vernon	Skagit	WA	Drug court participants employed at Detox Center had access to confidential information.	Separation of participants from information.
Olympia	Thurston	WA	Determining how much non-compliant behavior and positive UA'S should be allowed before we "cut our losses" and terminate. And do we take "everybody" into the program even if some are not "ready".	Still working put some degree of consistency and looking at "Readiness and Anti-Social behavior" short assessments.

City	County	State	Unanticipated Issues Encountered since the Program Became Operational	Strategy to Address Issues
Bellingham		WA	I expected clients to be lined up trying to get in, but the last few have resisted initial entry.	We contacted these people from more than one source and convinced them that they needed this type of treatment.
Madison	Dane	WI	Confidentiality, eligibility, authority	At Advisory Committee
Evanston	Uinta	WY	We did not foresee that we would be dealing with almost 100% chronic clients and did not anticipate the time and effort to effectively deal with clients.	We are still struggling to meet client needs with existing staff.

P. Institutionalization of Drug Court Programs

Over half (60%) of the responding programs indicated that they believed their drug court programs has been institutionalized in their jurisdictions. Those programs that did not feel their drug court had yet been institutionalized provided comments regarding the actions they felt needed to be taken to institutionalize the program. Eighty percent of these suggestions focused on the need to develop a stable funding source. In addition, many cited the need to develop on-going evaluation data demonstrating the effectiveness of the drug court program. Approximately 20% of the respondents also cited the need to increase support from other members of the bench as well as local government officials and community organizations.

Q. Achievement of Drug Court "Key Components" Benchmarks

Judicial system officials were asked to what degree their drug court program has been able to develop the drug court benchmarks established in the "Key Components." The responses indicate that most programs have made substantial progress in achieving the Key Components. Those components which appear to warrant continuing focus are: No. Three (early identification of participants); No. Eight (Monitoring and evaluation); No. Nine (continuing interdisciplinary education); and No. Ten (developing interagency partnerships). A summary of their responses is provided in the Introduction to this Volume and in Part One of the *Survey Report*.

R. Suggested Program Improvements

Respondents were asked to indicate what, if any improvements they suggested in either the procedures or services of their respective drug court programs. Forty percent of the responding programs noted improvements they planned to make, falling into the following categories:

No improvements noted:	60%	Improvements in program services:	88%
Improvements in procedure:	48%	Additional funding/resources:	72%

A summary of their responses is provided in Part One of the *Survey Report*.

S. Planned Program Modifications and/or Enhancements

Respondents were asked to indicate what modifications and/or enhancements they planned to make in their drug court program during the next year. Seventy-six percent of the responding programs noted modifications they planned to make. Their responses, documented in Chart I-67 of Part One of the *Survey Report*, fall into the following categories:

Expand program services	80%	Expand participation criteria	45%
Improve Information System Capability	38%	Increase participation of other agencies	22%
Hire additional staff	20%		

T. Advice to Colleagues

Responding courts were asked what advice they would give to a counterpart office in another jurisdiction where a drug court program is being planned. Areas of advice focused on: the importance of getting started; securing – and developing – necessary interagency relationships and community organization support; developing an adequate information system capability for program management and evaluation; and devebping adequate program funding. A summary of their responses is provided in Part One of the *Survey Report.*

PART TWO: DUI DRUG COURTS

I. General Background Information

A. DUI Caseloads, Drug Court Jurisdiction and Demographic Characteristics of Reporting Programs

Information in this report is based on responses to the 2000 Drug Court Clearinghouse Survey from the following seven drug court programs (six state courts and one tribal court) which indicate they handle primarily (exclusively or almost exclusively) DUI (Driving While Intoxicated) cases:

AZ	Maricopa	Phoenix	Maricopa County Superior Court
MI	Eaton	Charlotte	56 A District Court
MS	Pike	McComb	Fourteenth Circuit Court District
NM	Bernalillo	Albuquerque	Bernalillo County Metropolitan Court
NM	Taos	Taos	Eighth Judicial District Court
NM	Santa Fe	Santa Fe	Santa Fe Municipal Court
OK	Okmulgee	Okmulgee	Muscogee (Creek) Nation Tribal Court

These DUI Drug Courts operate in five states, all but one of which are west of the Mississippi River. Three of the programs operate in New Mexico. One of the programs (located in Oklahoma) is a tribal court.

In addition to these seven programs, 49 additional drug court programs reported that misdemeanor and/or felony DUI cases are within their overall drug court caseload. Information regarding these programs is included with the general drug court program information compiled in Parts One and Three-Eight.

Two of the responding DUI Drug Courts have criminal jurisdiction over felony matters only; three of the responding courts have criminal jurisdiction over misdemeanor matters only; the remaining two have both felony and misdemeanor jurisdiction. Five of the seven respondents serve jurisdictions under 100,000 in population and all but one (Phoenix) of the respondents characterize themselves as at least partially rural. The Phoenix (Maricopa County) program serves a metropolitan population of almost 3 million and is one of three drug courts serving that jurisdiction.

B. Cases Handled by the Responding DUI Drug Court Programs

All but one of the programs (Phoenix, Arizona) focus primarily on DUI cases but handle non-DUI cases as well if they are referred to the drug court. These six programs also operate in jurisdictions in which there is no other drug court program. In Phoenix, where the DUI Drug Court targets exclusively DUI cases, other adult and/or juvenile substance abuse cases that do not involve a DUI offense but are drug court eligible are handled by the other drug courts established in the jurisdiction.

C. Special Management and Dispositional Issues Presented by DUI Drug Court Cases Compared with Other Adult Criminal Drug Court Cases

The most significant differences noted between the handling and management of DUI Drug Court cases and other drug court cases focus on: (1) the dispositional outcomes for these cases (in some instances charges and/or convictions by statute cannot be dismissed or expunged); and (2) the more frequent testing required to detect alcohol use.

D. Program Goals

All respondents reflected consensus on the goals for their respective DUI Drug Courts: (a) reduce recidivism; (b) reduce alcohol use; (c) reduce participants' use of other chemical substances; and (d) promote public safety.

E. Voluntary/Mandatory Nature of Program Participation/Incentives to Participate

Participation in all but one of the responding programs (Maricopa County) is voluntary. For those programs which are voluntary, respondents cited the following incentives to participate.

Period of incarceration is suspended	43%	Period of probation is shortened	29%
Charge is dismissed	43%	Driver's license is restored	14%

F. Eligibility Criteria for DUI Drug Court Participation

1. Criminal Justice

a. current offenses

As noted above, all of the responding programs target primarily DUI offenses. Seventy-one percent of the respondents target felony DWI/DUI offenses; 29% target misdemeanor DWI/DUI offenses.

b. criminal history

All of the responding DUI Drug Courts are targeting defendants with multiple prior DWI/DUI convictions, generally with no limitation on the number of prior convictions permitted.

2. Extent of Substance Abuse

Responding drug courts were also asked to indicate the degree of defendant substance use targeted. All respondents indicated that their targeted populations were defendants whose alcohol dependency ranged from moderate to severe. Two of the respondents (Charlotte, MI and the Muscogee Creek Nation) indicated they would accept defendants with severe alcohol dependency in combination with other drug use.

3. Other Eligibility Criteria

All of the responding programs limit eligibility to persons who are considered adults in their respective jurisdiction.

4. Factors that Disqualify an Otherwise Eligible Defendant

Programs were asked whether any additional factors would disqualify an otherwise eligible candidate from participating in the program. Respondents cited the following factors as disqualifiers:

Defendant lives out of the county	7%	Defendant is on parole	29%
Defendant has a pending case	14%	Defendant is on probation	4%

None of the programs disqualify participants because of gang affiliation.

G. Judicial System and DMV Status of Program Participants When Entering the DUI Drug Court Program

1. Judicial System Status of Participants

All of the responding DUI Drug Courts are post-plea programs for probation-eligible defendants. In six of the seven responding programs, participants have already served a period of incarceration, ranging from less than 30 days to 120 days, before they appear before the drug court judge and enter the drug court program. Generally, they have received no treatment during their incarceration and do not undergo a substance abuse needs assessment until after they enter the drug court program.

2. DMV License Status of Participants at Time of Program Entry and Impact of Program Participation on Driver's License Status

Participation in a DUI Drug Court does not appear to have any impact on the status of a participant's driver's license. Generally, the status of participants' driver's licenses are determined by the action of the state Motor Vehicle Administration and state statute. The National Highway Traffic Safety Administration (NHTSA) requires that states enact statutes for revocation or suspension of driver's licenses for individuals convicted of DUI offenses in order to qualify for federal funding for highway construction. As a result, the process of suspending or revoking driver's licenses upon arrest or conviction for DUI offenses operates independently from the DUI drug court program. The state of New Mexico recently enacted a limited licensing law permitting DUI offenders to obtain restricted licenses with conditions (ignition locks, maintenance of insurance, etc.) in order to drive to work or school. The state also recently passed legislation permitting limited licenses for DUI offenders to drive to court-ordered treatment.

H. Program Capacity, Enrollment, and Characteristics of Client Populations

Program enrollment in the seven responding programs ranges from a high of 701 participants (Charlotte, MI) to very small programs, such as that in the Muskogee Creek Nation with five participants. Program enrollment information for the reporting programs is provided in Chart II-7 of Part Two.

I. Drug Use Characteristics of the Population Served

1. Frequency of Use of Other Drugs in Addition to Alcohol

All of the responding programs reported that: (1) some defendants who enter the drug court on a DUI charge relating to the use of alcohol are also using other drugs; and (2) frequently the use of the other drugs is an underlying factor in the DUI charge.

Chart E-39: Frequency of Use of Other Drugs in Addition to Alcohol

State	City	Frequency of DUI clients using other drugs	Use of illegal drugs as cause of DUI charge
AZ	Phoenix	Less than 10% of the time	Less than 10% of the time
MI	Charlotte	Between 10-25% of the time	Between 10-25% of the time
MS	McComb	Uncertain	Uncertain
NM	Albuquerque	Over 25% of the time; less than 50% of the time	Over 25% of the time; less than 50% of the time
NM	Santa Fe	Over 50% of the time	Uncertain
NM	Taos	Over 25% of the time; less than 50% of the time	Over 25% of the time; less than 50% of the time
OK	Okmulgee	Over 50% of the time	Over 50% of the time

2. Primary and Secondary Drugs Used by DUI Drug Court Participants and Degree of Usage.

Respondents were asked to indicate the types of other drugs DUI drug court participants used in addition to alcohol and the frequency of that usage. Most of the reporting programs indicated that participants who used other drugs in many instances used multiple drugs. Chart II-9 in Part Two of the *Survey Report* lists the degree of other drug usage reported by the responding programs.

J. Age Range and Gender of Participants

DUI drug court participants appear to be somewhat older than other drug court participants. The age of male participants in the responding DUI drug court programs ranges between 16-76, with the median age for male participants approximately 34 years, compared with 30 years for other adult drug courts. The age of female participants ranges from 18-64, with the median age for female participants approximately 35 years (compared with 31 for other adult drug courts). The age of male graduates ranges between 18-65 and, for female graduates, between 18-64; the median age for both male and female graduates was approximately 36, compared with 32 male and female graduates in other adult drug courts.

II. Program Organization and Procedures

A. Composition of the DUI Drug Court "Team"

The composition of the DUI Drug Court teams is similar to that of other adult drug court teams. All programs include on their team the judge and the treatment provider and all but one program also includes the prosecutor, probation, defense counsel, and program coordinator as well.

B. Community Resources/Relationships

1. Oversight Committees

Four of the responding programs have established oversight committees. For three of these programs the oversight committee provides guidance on policy development and assists the program in gaining community support. For two programs, the oversight committee also assists in developing procedures for the program.

The size of the oversight committees ranges between five-eight members for three programs and nine-twelve members for the fourth program. Representation on the committees generally includes: the bar association, law enforcement, business community, and, in some instances, public health, M.A.D.D. (Mothers Against Drunk Driving), treatment, and other justice system representatives.

2. Community Resources Supporting the DUI Drug Court Program

The responding programs were asked to indicate the local community resources utilized by the DUI Drug Court to provide support services. All of the programs utilize AA/12-step programs. In addition a variety of other resources are utilized, as summarized below:

AA/12-Step programs	100%	Faith community	43%
Chamber of Commerce	14%	Other local business groups/res ources	14%
Community colleges	29%	Local community anti-drug coalitions	29%
Physicians' groups	29%	Other: MADD, DUI School	

3. Judicial Assignment of DUI Drug Court Cases

Five of the seven responding programs reported that one judge hears all of the DUI drug court cases in addition to other cases. One of the programs (Albuquerque) divides the DUI drug court caseload between two judges who hear these cases, alternating weeks, in addition to their other caseload. The Muscogee Creek Nation assigns one judge (part-time) to hear DUI drug court cases exclusively. Three of the responding programs indicated the approximate percentage of judge time entailed in hearing the DUI drug court caseload, which ranged between 10 % - 20% weekly.

4. Conduct of Staffings

All of the respondents except McComb, MS conduct staffings to discuss drug court cases prior to each session of the DUI drug court. The reported frequency with which various disciplines are represented at these staffings is as follows:

Judge	100%	Probation	83%
Treatment provider	83%	Prosecutor	67%
Defense counsel	0%	Program coordinator	33%
Law enforcement	14%		

5. Minimum Required Time Period for Program Participation

The required time period for program participation ranges between six and fifteen months, with one program (McComb, MS) requiring 24 months of participation for cocaine users. Chart E-40 below provides a summary of the minimum and actual time required for program completion of the responding DUI Drug Court programs.

Chart E-40: Time Required to Complete the DUI Drug Court Program

Jurisdiction	Minimum Time Required	Actual Time Required for Most Participants
Maricopa Co., AZ	12-15 months	12-15 months
Charlotte, MI	Six – nine months	Over nine months, less than 12 months
McComb, MS		Cocaine users: 24 months Others: 12-15 months
Albuquerque, NM	12-15 months	Six – nine months
Santa Fe, NM	Six – nine months	Six – nine months
Taos, NM	Six – nine months	
Muscogee Creek Tribe, OK.	Six – nine months (anticipated)	

6. Program Phases

a. description

Like other adult drug courts, DUI drug courts utilize a multiple phased approach. The chart below summarizes the number and length of program phases in the responding DUI drug courts:

Jurisdiction	No. of Phases	Phase I	Phase II	Phase III	Phase IV

Maricopa Co., AZ	4	Pretreatment (up to 30 days)	2-4 months	2-4 months	2-4 months
Charlotte, MI	4	Depends on indiv.	Depends on indiv.	Depends on indiv.	Depends on indiv.
McComb, MS	3	30-60 days	3-21 months	12 months	(See Part Two for discussion of special requirements for cocaine users)
Albuquerque, NM	4	60-90 days	2-4 months	2-4 months	Aftercare: 12 weeks
Santa Fe, NM	4	Up to 30 days	2-4 months	2-4 months	7 weeks
Taos, NM	3	30-60 days	2-4 months	2-4 months	
Muscogee Creek Nation, OK.	4	Depends on indiv.	Depends on indiv.	Depends on indiv.	Depends on indiv.

b. focus and services provided during each phase

The focus and services for each of the phases in the responding programs follow a similar organization to that of other adult drug courts: detox; stabilization initially, and counseling, education, employment and other services as the participant progresses. A detailed description of the services offered during each phase is provided in Chart II-16 of Part Two of the *Survey Report.*

7. Existence of Written Policy and Procedures

Six of the responding programs (86%) have a written Policies and Procedures Manual for the program.

8. Referral, Screening, and Assessment Process

a. referral sources

The following are the most common referral sources for the responding DUI Drug Court programs:

Probation staff	86%	Prosecutor's staff	86%
Pretrial service agency staff	57%	Public defender agency staff	57%
Privately retained attorneys	57%	Arresting officer	29%
Jail officials	29%		

b. initial screening for criminal justice eligibility

Initial screening for eligibility is made at various – and usually multiple – stages in the criminal justice process, including arrest; first appearance, and disposition.

c. final determination of program eligibility

The judge makes the final determination of program eligibility in all of the responding programs except for Maricopa County, which uses a random selection process to comply with a special research project in which the drug court is participating. In addition, the frequency with which other agencies participate in the program eligibility decision is reported as follows:

Prosecutor	29%	Defense counsel	14%
Probation staff	14%	Treatment provider	14%

Four programs (57%) reported that more people are eligible for the DUI drug court than are accepted into it, and cited shortages of staff and resources as well as lack of funding as the primary reasons for not accepting all eligible defendants. All of the programs indicated that the reasons for not admitting potentially eligible participants are documented.

9. Provision of Screening, Assessment, Case Management and Treatment Services

a. use of standard screening and assessment instruments

All of the responding programs indicated that they use a standard instrument to both screen for chemical dependency of potentially eligible program participants and to assess their substance abuse treatment needs. The instruments used include the following:

Screening: CAGE, ASI/ADE Needs/Beck Inventory/ DSM-IV; and the Addiction Severity Index.

Assessment: ASI/ADE Needs/Beck Inventory/DSM-IV; SASSI; and the Adult Substance Use and Driving Survey.

b. agency conducting substance abuse screening and treatment needs assessment

A variety of agencies are involved in conducting substance abuse screening of potentially eligible program participants and performing treatment needs assessment, including the drug court coordinator, probation, and treatment providers and case managers.

c. agency(s) providing treatment services for DUI drug court clients

Treatment services for DUI Drug Court clients are provided by local treatment providers except for participants in the Muscogee Creek Nation Tribal Court program who are served by the local health department. Three programs (Santa Fe, Taos, and Albuquerque) use one treatment provider; the remaining four use 3-5 providers. Two of the programs (Charlotte and Albuquerque) also indicated that some treatment services were available in the local jail.

d. agency(s) providing case management and monitoring

The responding programs indicated that the following agencies provide case management and monitoring of drug court clients regarding treatment needs and progress.

Drug court staff	14%	Probation department	43%
County health department	14%	Private nonprofit treatment service organization	29%

10. Program Contacts with Participants

The procedures and requirements for all of the responding DUI Drug Courts result in multiple program contacts with each participant during each month of program participation. The following required contacts apply to each participant in the responding DUI Drug Courts:

Status hearings before the drug court judge:	at least monthly, and frequently more often
Client contact with the treatment provider:	at least weekly, and frequently more often
Testing for use of alcohol:	at least weekly, and frequently more often generally
Testing for the use of other drugs:	weekly or more frequently
Client contact with the case manager:	at least bi-weekly and frequently more often

In addition, programs may impose additional conditions, such as home visits, resulting in additional regular and periodic contact.

None of the reporting programs conduct routine searches of participants' homes during home visits and none of the programs require the use of alcohol-sensitive ignition locking devices on participants' vehicles.

11. Program Response to Both Participant Progress and Noncompliance

a. measures used to recognize participant progress

Respondents were asked to describe the measures used to recognize participant progress. The following were noted:

Praise from the judge at a status hearing	100%	Promotion to subsequent phase	100%
Reduce frequency of alcohol/drug testing	86%	Reduce frequency of status hearings	86%
Praise/accolades from other drug court participants	71%	Award of special tokens/gifts	43%
Early termination from the program	29%		

other: early termination from probation/parole; participant is permitted to be first on the list to be called on the DUI calendar

b. program response to participant noncompliance

Participant noncompliance with program requirements triggers an immediate response, the nature of which generally depends upon the nature of the noncompliance. All of the programs apply graduated sanctions – e.g., a range of sanctions of increasing severity, where the ultimate sanction is program termination.

The following are the most common types of noncompliance and the most common program responses:

Chart E-41: Program Response to Participant Noncompliance

NATURE OF NONCOMPLIANCE	PROGRAM RESPONSE	FREQUENCY
(1) New Arrests		
OFFENSE	Termination from Program	Continues in Program and New Charges are Prosecuted
DUI	71%	29%
Drug Possession	58%	43%
Other Non-Violent	0	100%
Violent	86%	14%
(2) Failure to Appear in Court		
	Bench warrant issued/ expedited procedure/ attempt to pick up defendant immediately	71%
	Bench Warrant issued/ no special procedures for expediting pickup	29%
(3) Positive Alcohol Test		
	Graduated Sanctions Apply	100%
	Treatment provider discusses situation with defendant/ treatment services enhanced	57%
(4) Positive Drug Test		
	Graduated Sanctions Apply	100%
	Treatment provider discusses situation with defendant/ treatment services enhanced	57%
(5) Failure to Appear (FTA) at Treatment		
	Treatment provider attempts to contact participant	43%
	FTA immediately reported to Court for action	57%
	Probation Officer notified	14%

For those instances generating the imposition of graduated sanctions, the following are the most commonly noted graduated sanctions utilized by the responding programs:

Order more frequent alcohol testing	100%	Order short-term incarceration with/without	

Order more frequent drug testing		86%	treatment for:	
Order more frequent status hearings for the participant		86%	up to three days	71%
			four to seven days	57%
Order more frequent contact with the treatment provider		100%	eight to fifteen days	43%
			over fifteen days	14%
Other:	increased AA/NA participation	14%		
	in-patient referral	14%		

Five of the seven responding programs indicated that sanctions and rewards were applied in accordance with written guidelines.

12. Involuntary Terminations

a. common practices

The decision to terminate a participant from the DUI Drug court for unsuccessful performance is generally a case-by-case determination based on a number of factors relating to the participant's performance. Generally, no one factor, in and of itself, is sufficient to terminate a participant. The following grounds for program termination for unsuccessful performance were the most frequently cited by the respondents, with the responses as noted:

	Always	Sometimes
New Arrest	25%	75%
Missed court appearances	25%	75%
Missed treatment appointments	0	100%
Reoccurrence of alcohol use	25%	75%
Recurring Drug use	25%	75%
Recommendations of treatment provider	25%	75%

b. decision-making process regarding decision to terminate

The decision to terminate a participant for unsuccessful performance is generally made on the basis of the team's recommendation, with the ultimate decision made by the judge.

c. disposition of cases involving defendants terminated for unsuccessful performance

Defendants who are terminated for unsuccessful program performance are most frequently adjudicated and sentenced by the DUI drug court judge. The timeframe for disposing of their cases is generally within seven days of their termination, and the sentence imposed is generally the same as would have been imposed had the defendant never participated in the DUI Drug Court. In the Taos, NM program, however, the sentence is generally more severe. In both the Charlotte, MI and Taos, NM programs, the sentence to be imposed if the participant is terminated for unsucessful performance is agreed to at the time of the participant's entry in to the drug court.

13. Requirements for Graduation

Requirements for graduating from the DUI drug courts generally entail: a minimum period of program participation; a minimum period of sobriety (e.g., negative alcohol and drug tests); and, in addition, special requirements imposed by the various programs (e.g., employment, community service, etc).

14. Effect of Successful Program Completion on Case Outcome

Successful completion of the DUI drug court program can result in a range of dispositional outcomes for the participant, depending upon his/her prior criminal record and the nature of the current charge. Most programs include a range of alternatives, the most frequently cited of which were:

Defendant sentenced to probation in lieu of incarceration	43%
Defendant's probation shortened	43%
Defendant's driving privileges are restored	14%
Any of the above, depends upon defendant's prior history, current charges, etc.	29%
Other: defendant's sentence will not exceed mandatory minimum	14%

(See also Section ID above.)

C. Policies Regarding Medications Permitted and Use of Alcohol if Not Driving

1. Prescription Medications (including anti-depressants)

All of the responding programs permit the use of prescription medications.

2. Pharmacological Interventions

All of the responding programs permit the use of pharmacotherapeutic interventions except for the Muscogee Creek Nation Tribal Court, which indicated the issue had not yet been raised. None of the programs permitting pharmacotherapeutic interventions had established a specific period for terminating such interventions except for Albuquerque. The Albuquerque program requires participants on methadone to cease its use within a prescribed period; the specific timeframe is determined by the dosage used at the time of program entry.

3. Use of Alcohol When Not Driving

Six of the programs (86%) prohibit the use of alcohol under any conditions, even when the participants are not driving. The Muscogee Creek Nation Tribal Court reports that the issue has not yet been raised.

D. Information/Monitoring Systems

Programs were asked whether they had information systems that provide the court with information for each defendant regarding his/her compliance with program conditions. The following is an aggregate summary of their responses:

Item	All Events Cumulative	Most Recent Only
Appearances at scheduled court hearings	86%	14%
Appearances at scheduled treatment appointments	71%	29%
Appearances at urinalysis	100%	--
Alcohol/drug test results	86%	--
Progress in treatment	100%	--
Employment status and recent changes	57%	43%
Family status and recent changes	43%	29%
Educational activities	43%	14%
New arrests	57%	14%

Six of the programs indicated that the information is provided to the judge through a written report as well as orally by a caseworker. Four programs indicated that their reporting system is automated.

E. Description of Treatment Services Provided

1. Treatment Services Available to All Participants

Responding programs were asked to indicate the extent to which the treatment and related services listed below were available to drug court participants, using the following codes:

The following is a summary of their responses:

1-provided to all participants 2-provided to most participants 3-provided to some participants
4-provided to very few participants 5-not available

	1	2	3	4	5
outpatient group therapy (more than 3 hrs/wk)	29%	29%	14%	--	29%
outpatient individual therapy (more than 3 hrs/wk)	--	--	43%	--	57%
outpatient group therapy (up to 3 hrs/wk)	43%	14%	14%	--	29%
acupuncture	43%	--	--	--	57%
relapse prevention	14%	--	43%	--	29%
short-term residential (less than 30 days)	--	--	43%	29%	29%
longer term residential					
30-60 days	--	14%	29%	14%	43%
61-90 days	--	--	--	--	100%
over 90 days	14%	--	--	29%	57%

2. Services for Participants with Mental Disorders

Four programs (57%) indicated that they have special services for persons with mental disorders. Two programs (Maricopa Co., Arizona and Taos, New Mexico) have identified staff to serve as liaison/case managers for participants with mental health needs, and five programs (71%) have cooperative agreements with mental health agencies to provide services for participants with mental health disorders.

The four responding programs that include persons with mental disorders among their participants reported the frequency of these disorders ranging generally from 5% to 100%.

3. Services To Address Special Needs of Participants

Two of the responding programs (Maricopa County, Arizona and Santa Fe, New Mexico) provide special services for women and for non-English speaking participants. The Santa Fe program also provides an array of other services to address special participant needs, including those who are victims of domestic violence and HIV positive. One program (Charlotte, MI) provides childcare services for participants while they attend treatment sessions. Two of the programs (Charlotte, MI and Taos, New Mexico) also permit participants to bring their children to treatment sessions.

4. Other Services for Special Populations

One program (Taos, New Mexico) provides special services for persons who are physically handicapped (a participant who was an amputee was enrolled at the time of the program's response), and those below level in reading capacity.

5. Adjuncts to Treatment Used

The responding programs reported the frequency of use of adjuncts to treatment as follows:

Antabuse and remote alcohol testing	14%	Cognitive restructuring	57%
Naltrexone or other opiate blocker	43%	12-step programs	100%
Required sponsor	100%	Relapse prevention	71%

6. Provision of Ancillary Support and Rehabilitation Services

a. detox facilities

All of the programs reported that they have local detox facilities available for all DUI drug court participants. Three of these programs use local hospitals for this purpose; three use local treatment provider facilities; and one uses the local jail.

b. ancillary/support services

The ancillary support services most frequently provided by the responding programs were: referral to a 12-step program; education/GED training; anger management; and relapse prevention. The following range of support services were reported provided by the responding programs, with the frequencies noted:

Referral to a 12 step program	100%	Education/GED	86%
Anger management	86%	Relapse prevention	86%
Parenting	71%	Stress management	71%
Life skills	71%	Job development/placement	71%
Vocational training	57%	Family counseling	57%
Public health	43%	Housing	29%
Food/clothing	29%	Primary health care	14%
Segments for special ethnic or other special populations	29%	Child care	14%
Transportation allowance/bus tokens	14%	Mentors	43%
Programs to deal with the dually diagnosed offender	57%	Segments to deal with culturally sensitive issues	14%

F. Program Follow-up and Aftercare

1. Provision of Aftercare services

Four of the responding programs have an aftercare component to their DUI drug court. In two programs (McComb, MS and Albuquerque, NM), drug court staff provide these services; in the other two programs (Santa FE and the Muskogee Creek Nation), the aftercare services are provided by the treatment provider. Those programs that provide aftercare services include relapse prevention as a component of these services. One program (Santa Fe) also provides an emergency "help line"; and three provide support services to address new problems that occur. Timeframes permitted for participating in these aftercare programs are indefinite for two of the programs and, for the other two, range from six months to two years. In three of the programs (McComb, MS, Albuquerque, NM; and Santa Fe, NM), graduates also provide mentoring services to new participants.

2. Referral Process for Aftercare Services and Reporting

The referral process for aftercare services in the responding programs is generally initiated by the judge, the treatment provider and/or the participant. In two of the programs (McComb, MS and Albuquerque, NM), feedback is provided to the judge regarding the participant's participation in aftercare services and, in Albuquerque, status hearings are conducted when needed.

3. Alumni Groups

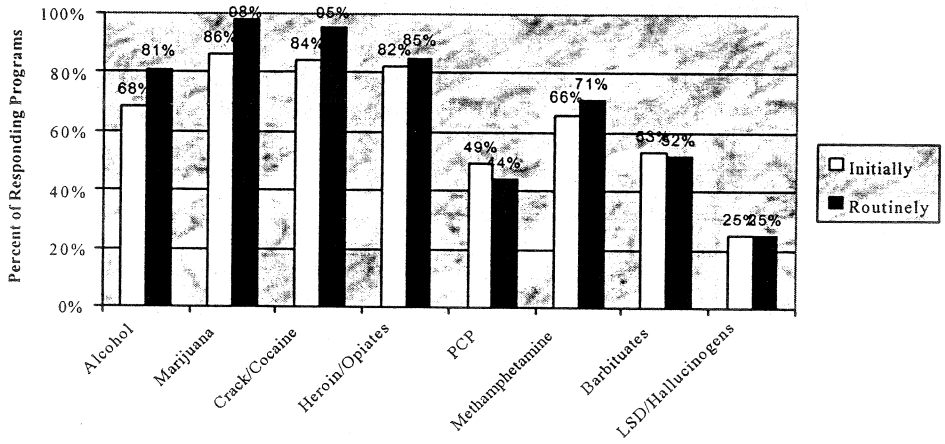
None of the responding programs had alumni groups at the time of their response. However, five of the programs (Maricopa Co., Arizona; McComb, Miss; Taos, New Mexico, Albuquerque, New Mexico; and Santa Fe, New Mexico) were in the process of planning one.

G. Testing for Consumption of Alcohol and Other Drugs

1. Drugs for Which Tests are Conducted

All of the responding programs use random testing procedures. Their practices in terms of initial and routine testing are as follows:

Chart E-42: Frequency of Drugs Tested for Initially and Routinely



2. Frequency of Alcohol and Other Drug Testing

Participants in all of the responding programs are tested for the use of alcohol and other drugs on a random schedule. The frequency of testing is generally at least twice weekly during Phase I and then with decreasing frequency during subsequent phases as the participant progresses in the program.

3. Testing Equipment Used

a. routine and confirmation testing

Most DUI drug courts are using breathalyzers and point of contact (e.g., cups, test strips, etc.) supplies for routine testing. Five of the seven responding programs perform confirmation tests, with confirmation testing reportedly employed generally between 10-30% of the time. Payment for confirmation tests is generally borne by the participant if the original test is confirmed except in the Taos, New Mexico program which pays for confirmation testing in all instances.

b. staff training on drug testing procedures

Four of the responding programs provide training for staff who administer drug tests. One additional program provides training on drug testing procedures for all staff. Two of the responding programs do not provide formal staff training.

4. Costs Per Test (Drug Screen)

Five of the reporting programs spend between $1.00 - $3.00 for each drug screened. Two of the reporting programs report costs between $9.00 and $12.00.

5. Agency Performing Alcohol and Drug Testing

The following agencies provide drug testing services to the responding courts. Three of the respondents use more than one agency for drug testing.

Pretrial services agency	29%	Probation department	43%
TASC	14%	Local law enforcement agency	14%
Private treatment provider under contract	43%	Local health department	14%
Private lab	29%	Other: court officer	14%

6. Timeframe and Method for Reporting Test Results to Court

a. timeframe and reporting method

Most programs obtain alcohol and other drug test results within 1-2 hours. The Maricopa County program can obtain test results for alcohol immediately but requires 24 hours for drug tests. The Charlotte, Michigan program also requires 24 hours for test results.

b. method for reporting results to court

Most of the responding programs use multiple methods for reporting drug test results to the court, the most common of which are:

Hard copy report mailed 43% Hard copy faxed 43% Telephone report made 43%

One program also receives the test results by e-mail report.

7. Program's Response to Positive Drug or Alcohol Tests

All of the responding programs reported that a positive test usually results in a response from the drug court judge, and that the responses is no different to a positive test for alcohol than to a positive test for other drugs. Six of the programs indicated that a positive test for alcohol results in intensifying treatment; one program (Charlotte, Michigan) indicated that the nature of the response depends on the relevant clinical factors. The decision regarding the program's response to a positive alcohol or other drug test is generally decided by the judge upon the recommendations of the drug court team.

H. Costs/Funding for Drug Court Treatment Services: Resources Required

1. Number of Treatment Providers and Staff Serving Each Drug Court Program

Three of the responding programs use one principal provider for treatment services; the other four programs use three to five treatment agencies. (See also Section B9c above and in Part II of the *Survey Report.)*

2. Number and Type of Judicial System Dedicated Staff

Responding programs were asked to indicate the number and types of judicial system staff dedicated to the DUI drug court program in addition to treatment providers. The core support for most

programs consists of the judge, probation, clerk, and bailiff. Three programs (Charlotte, MI, Taos, NM, and Albuquerque, NM) also utilize volunteer assistance.

3. Additional Funding Required to Implement the DUI Drug Court Program

Programs were asked to indicate the amount of additional funding required to implement the DUI Drug Court program. Only two programs responded: Charlotte, Michigan and McComb, Mississippi. The costs noted were the following:

Charlotte, MI: part-time secretary in Probation three days a week; additional treatment required $ 6,000 and additional supplies required $ 3,000.00.

McComb, MS: one probation officer

I. Program Costs

1. Average Annual Cost Per Client for Treatment Service

Five programs provided information on the average annual cost per client for treatment services. **Reported treatment costs ranged from less than $ 500 per client to $ 2,100. The program with the lowest cost per client (Maricopa County, Arizona) utilizes the Probation Department, primarily, to provide treatment services. The specific program costs reported were as follows:**

Additional Costs Reported to Implement the DUI Drug Court Program

City	State	Annual Capacity	Annual Cost Per Client
Maricopa Co.	AZ	n/a	less than $ 500
McComb	MS	40	$501 - $900
Albuquerque	NM	150	$1,201 - $1,500
Santa Fe	NM	70	$901 - $1,200
Taos	NM	30	$1,801 - $2,100

2. Services Covered in the Costs Reported

The chart below summarizes the costs covered in the annual cost per client reported by the responding programs.

Chart E-43: Drug Court Program, Services, Annual Enrollment and Costs

	Maricopa Co., Arizona	McComb, MS Capacity: 40 $501-$900	Santa Fe, NM Capacity:70 $901-$1,200	Albuquerque, NM Capacity: 150 $1,201-$1,500	Taos, NM Capacity: 30 $1,801-$2,100
Case management			X		
Drug testing			X	X	X
Outpatient Group # of sessions	36	40	64	50	36
Outpatient Individual # of sessions			4	20	36
Treatment Services	X	X		X	X
Screening for Substance Abuse Dependency	X			X	X
Assessment of Treatment Needs	X			X	X
Other Support Services				Acupuncture	Nutrition; Job development

J. Funding Sources for DUI Drug Court Services

1. Outside Funding Sources

In addition to potential (or received) grant funding from the Drug Courts Program Office of the Office of Justice Programs, U.S. Department of Justice, responding programs noted the following sources of outside funding:

Maricopa Co., Arizona:	--National Highway Traffic Safety Administration grant (Mid-America Research Grant)
McComb, Mississippi:	--Southwest Mississippi Interjurisdictional Narcotics Enforcement Unit --Office of the District Attorney
Taos, New Mexico:	--General State Appropriation

2. Participant Fees

All of the reporting programs charge participants for drug court services.

3. Third Party Insurance/Medicaid

a. insurance carriers

Programs were asked to indicate the degree to which insurance carriers provided reimbursement for treatment costs for DUI drug court clients. Two programs indicated they received insurance reimbursements, one of which indicated that these reimbursements were relied on as a primary source for treatment funding. Two programs were uncertain as to whether insurance reimbursements were received.

b. medicaid

None of the reporting programs indicated that Medicaid reimbursements were used to offset treatment costs.

c. systematic review of medical coverage entitlements of participants

One of the responding programs indicated that staff systematically reviews medical coverage and entitlements for DUI drug court participants.

K. Program Income

1. Program Fees

Fifty percent of DUI drug court programs charge a fee to participants in addition to other costs that may be assessed for treatment services or drug testing. One program (14%) indicated that it charges a uniform fee in the amount of $50. Two other programs (29%) set the fee on a sliding scale from $10-$40 per month. Two programs (29%) indicated that the fee is waived or reduced for indigent clients. None of the respondents waive fees for good performance. None of the respondents were able to provide information on the amount of participant fees assessed and/or collected to date.

2. Agency Collecting Participant Fees

Two programs use the treatment agency to collect participant fees. One program uses the circuit court to collect the fees.

3. Use of Participant Fees

Three programs use the fees collected from participants to pay for drug testing. Two programs use the fee to offset treatment costs, and one uses the fees to offset supervision service costs.

The chart below summarizes the multiple sources of funds used to support the reporting DUI drug court programs:

Chart E-44: Principal Funding Sources for DUI Drug Courts

Jurisdiction	Funding Sources and Percentage of Support Provided						
	3rd party insur. Payments	Medicaid	Participant fees	Dedicated federal funds	Dedicated state funds	Dedicated local funds	Other public funds
Maricopa Co., AZ	X-3%		X – 97%				
Charlotte, MI			X-100%				
McComb, MS			X			X – 100%	
Albuquerque, NM			X				
Santa Fe, NM			X-20%	X-60%			X-20%
Taos, NM					X-8%	X-8%	
Muscogee Creek Nation, OK.			X	X – 100%			

L. Treatment Provider Services to Program Participants

1. Type and Extent of Treatment Services Provided to Drug Court Participants

Participants in most of the responding DUI drug court programs are required to attend group counseling sessions at least twice a week during Phase I, with decreasing frequency required during subsequent phases. Some programs require more frequent counseling and also provide individual counseling. Generally, those programs which require more frequent contact conduct 30-45 minute sessions per contact; those with less frequent contact conduct sessions of at least 60 minutes each and also provide individual counseling.

2. Frequency of Provision of Acupuncture Services

For those programs that provide acupuncture services, these are generally provided on a daily basis during the first phase.

M. Comparison of Drug Court Treatment Services with Treatment Services Provided to Typical Drug Court Participants Prior to Instituting the DUI Drug Court

Respondents were asked to compare the treatment services provided to DUI drug court participants with those that would have been available to them prior to instituting the DUI drug court program. Three of the responding programs indicated that no treatment would have been provided to these participants. The other four programs indicated that, while some treatment services might have been provided, they would have been: much less frequent and intensive; less organized in terms of participant requirements and services to be provided; and would have entailed no judicial supervision of participant participation in required treatment services or monitoring of participant compliance and progress.

N. Treatment Program Experience to Date

1. Average Length of Time Drug Court Participants Require to Complete Treatment Services

The average time required for participants to complete the DUI drug court program was generally at least ten months and frequently eleven-twelve months – e.g., somewhat longer than the program design

requirements in most cases. All seven respondents indicated that DUI drug court participants are required to participate in treatment during the entire period of their participation in the drug court.

2. Timeframe and Situations Most Commonly Associated with Occurrences of Relapse

Respondents were asked to identify the timeframe in which relapses most frequently occurred and the situations most commonly associated with relapse. Their responses are summarized in Chart E-45 below.

Chart E-45: Timeframe and Situations Most Commonly Associated with Occurrences of Relapse

Jurisdiction	Timeframes When Relapses are More Common and Situations Most Commonly Associated with Relapse					
	First 30 days	31-60 days	61-90 days	121-150 days	Upon movement to higher phase	When successful trmt discharge is pending
Maricopa Co., AZ	X	X				
McComb, MS			X (15%)	X (10%)		
Albuquerque, NM	X					
Santa Fe, NM	X (50%)		X (30%)		X (10%) (also upon release from resid. Trmt)	
Taos, NM	X (50%)					
Muscogee Creek Nation, Ok.	Program too new to determine at this point					

O. Program Evaluation/Assessment

1. Changes in the Existing Criminal Case Process Required to Implement the DUI Drug Court Program

Programs were asked to describe the changes that were required to be made in the existing case process in order to implement the DUI Drug Court program. Almost all of the programs noted that changes were required to provide for periodic status hearings for DUI drug court participants and to establish a special docket to conduct these hearings. Other changes noted related to: screening for appropriate cases; development of expedited procedures to hear eligible DUI drug court cases; special procedures to execute bench warrants on a priority basis for participants who do not appear at court hearings; special assignment of prosecutor(s) and/or indigent defense counsel to drug court cases; and arrangements for assigning probation officers for monitoring participants.

P. Comparison of Procedures, Supervision and Services Provided to DUI Offenders *Prior* to Implementation of the DUI Drug Court Program

Respondents were asked to compare the provisions of the DUI drug court program, including sentencing, supervision, treatment, and testing, with those that would have been applicable to program participants prior to implementing the program. Respondents indicated that the sentences imposed for the pre-DUI drug court defendant were similar to those applicable to the DUI drug court defendants in terms of an incarceration period. The major differences between the pre- and post- DUI drug court program appear to be in the intensity and frequency of treatment services, alcohol and drug testing, and court supervision that is provided during the DUI Drug Court program. Most programs indicated that little, if any, services were provided for defendants in terms of treatment, testing, monitoring and/or judicial supervision once they were released from incarceration prior to instituting the DUI drug court. For those programs that provided these services, the court was rarely informed regarding their provision or the degree of participant compliance, and generally reviewed participant progress only in instances of alleged noncompliance.

Q. Criteria for Program Effectiveness

Respondents were asked to indicate the criteria being used to assess the effectiveness of their respective programs. All of the programs cited the primary indicator to be the number of relapses per defendant. Most also cited the frequency of new DUI or other drug-related arrests. The following is a summary of the principal criteria cited to assess the effectiveness of the responding programs.

Number of relapses per defendant	100%
Frequency of new DUI arrests	80%
Frequency of new drug arrests	80%
Percentage of treatment sessions defendants are attending	60%
Percentage of alcohol/drug tests that are clean	40%
Frequency of nondrug arrests	60%
Other: Frequency of behavioral problems of program participants reported (conflicts with family, etc)	20%
Other: Demographics, discharge, unemployment, education	20%

R. Evaluation Activities

1. Evaluation Activities Undertaken to Date

Programs were asked to describe evaluation activities undertaken to date. Three of the programs have been evaluated, with reports published (Maricopa County, Arizona; Charlotte, Michigan; Albuquerque, New Mexico). The other four responding programs have undertaken periodic gathering of information but no reports had been published as of the date of their response.

2. Future Evaluation Activities Planned

All of the responding programs indicated plans to conduct evaluations in the future, including expanding current data gathering to permit more comprehensive program assessments.

3. Agreements with Evaluators Regarding Client Confidentiality and Use and Storage of Data Collected

Programs using outside evaluators were asked whether they had developed agreements with the evaluator regarding (a) client confidentiality and (b) use the storage of data collected. Five programs of the responding programs indicated agreements in place that covered these issues.

4. Evaluative Information Compiled To Date

a. information compiled during participant's program participation

Programs were asked to indicate whether they had compiled evaluative information regarding participant progress during the period of program participation in the specified areas listed below relevant to general drug court program impact. Below is a summary of their responses:

Participants' employment status	100%	Participants' recidivism rates	75%
Participants' family/household status	75%	Participants' income levels	75%
Participants' educational status	75%	Participants' physical health	25%
Participants' mental health	50%		

None of the programs appear to be compiling information regarding participants' public assistance/welfare status; currency of participants in child support obligations; custodial status of participants' children or drug free babies born to participants during the period of enrollment, all of which are measures many general adult drug court programs are assessing.

b. participant follow-up information following program completion

Programs were also asked to describe follow-up activities undertaken with drug court participants following program termination, the information compiled and the follow-up period studied. One program (Maricopa Co.,AZ) indicated follow-up is conducted with all participants for a one year period regardless of whether they graduate. Three programs (McComb, MS, Albuquerque, NM, and Santa Fe, NM) follow-up with all graduates for 6 - 12 months. Follow-up information compiled is primarily recidivism and employment data.

S. Justice System Cost Benefits

Respondents were asked whether any justice system cost benefits had been identified as a result of the DUI drug court program. Although evaluations are still incomplete, the most frequently noted benefits derived from the program were: reduction in probation staff caseloads; reduction in the number of Violation of Probation Hearings scheduled; and reduction in the DUI drug caseload of other judges' dockets. In addition, savings in incarceration costs were noted.

III. Program Operational/Planning Issues

Respondents were asked to describe operational issues that had arisen during the course of planning and implementing the DUI drug court program and strategies used to address them. Their responses are summarized in Chart E-46 below:

Chart E-46: Most serious problems encountered and how they have been resolved/addressed

Jurisdiction	Problems	Resolution
Maricopa Co., AZ	Legal challenges by defense counsel to faulty testing equipment.	Pending
Charlotte, MI	Communication of coordination efforts; employing team concept with a smile; keeping up with data demands, time management of staff.	Working with resources and staff
McComb, MS	Lack of time and support staff.	Daily struggle
Albuquerque, NM	Ongoing funding concerns.	Ongoing
Muscogee Creek Nation, OK	Where to put juvenile offenders who need treatment and detention.	Working on an agreement with SACKFOX at this time

A. Unanticipated Issues and How They Have Been Resolved/Addressed

Programs were asked to identify any unanticipated issues encountered. Half of the responding programs noted such issues, primarily relating to difficulties in accessing adequate treatment and the time required to manage the program. All of these issues were still being addressed. The individual comments of the responding DUI drug court judges are reported in Part Two of the *Survey Report.*

B. Legislative and/or Case Law Developments Regarding DUI Drug Court Programs

Programs were asked whether any case law, court rules or legislation affecting the DUI drug court program had been enacted. No developments were noted in these areas.

C. Modifications/Enhancements Planned

Respondents were asked to note any modifications and/or enhancements that were planned for the DUI drug court program during the next year. The following is a summary of responses:

Maricopa Co., Arizona:	Make improvements to the treatment curriculum, including greater emphasis on cognitive behavioral components.
Charlotte, Michigan:	Eliminate some cases on fast track, focus on repeat offenders, add a fourth phase with less supervision.
McComb, Mississippi:	Expand the program if more funding is obtained.
Muscogee Creek Nation, OK:	Implement driving school to help restore driver's license to those qualified.

PART THREE: PERSPECTIVES OF PROSECUTORS

I. Introduction

A. Responding Prosecutors

Prosecutors in eighty-two percent of the drug court programs responding to the 2000 Survey provided responses to Part Three. Survey responses were received from 139 prosecutors involved with 138 drug court programs operating in 38 states and Puerto Rico.

A summary of the prosecutors' comments on issues addressed in the survey follows.

B. Characteristics of Respondents' Drug Court Programs

1. Eligible Offenses

Eligible offenses in the programs represented by the responding, with the frequencies noted, were:

Drug possession	100%	Check/credit card/prescription forgeries	80%
Theft	65%	Prostitution	47%
Drug trafficking/sales	36%	DUI/DWI	27%

Among other charges that responding prosecutors noted were included in the drug court were: possession of drug paraphernalia; destruction of property; and miscellaneous property crimes.

2. Role of Prosecutor's Office in Drug Court Program

Respondents were asked to indicate the role that the prosecutor's office in their jurisdiction plays in the local drug court. Almost all of the responding prosecutors screened cases for drug court eligibility and attended drug court hearings. In addition, they performed a number of other roles, including: attending drug court staffings (75%); participating in training/orientation programs for local criminal justice system officials regarding the drug court (63%); serving on the drug court policy/oversight committee (63%); and visiting treatment providers/observing treatment sessions from time to time (26%).

Among the other functions responding prosecutors indicated they were performing included: assisting in development of policies and criteria for participant monitoring; assisting with preparing grant requests and providing grant reports; preparing participant contracts; providing information to other jurisdictions;

speaking at community functions; and, for several programs, providing the coordination for the program.

II. Program Effectiveness

A. Criteria Used to Assess the Effectiveness of the Drug Court Program

Prosecutors were asked to indicate the criteria they were using to assess the effectiveness of the drug courts in their jurisdictions. All prosecutors agreed that the primary criterion for effectiveness of the drug court was the participants' remaining free of any further arrests. Over 80% of the responding prosecutors also look to: attendance at treatment; appearance at court status hearings; and urinalysis results. The following is a summary of the criteria cited by respondents, along with comparative responses provided in 1997:

Chart E-47: Criteria Used By Prosecutors to Assess the Effectiveness of the Drug Court Program

Response	1997	2000
New arrests for participants involving:		
Drug possession charges	**100%**	**100%**
Other drug charges	100%	100%
Non-drug (non-traffic) charges	70%	98%
Participant attendance in treatment program	80%	84%
Participant appearance at court status hearings	70%	84%
Participant urinalysis results	80%	84%
Percentage of persons graduating from the program	70%	81%
Participant employment status	n/a	60%

B. Impact of Drug Court on Office's Capability to Handle Criminal Caseload Functions

Over half of the responding prosecutors noted a positive impact from the drug court on the efficiency and/or effectiveness of the prosecutor's office operations. Fifty-seven percent (up from 45% in 1997) reported that the drug court had encouraged greater coordination with other justice agencies. Fifty-one percent reported that the drug court had also encouraged greater contact and coordination with community groups. Over one-third of the responding prosecutors indicated the drug court had permitted additional attorneys to be available for other cases, although this percentage was less than that reported in 1997. The other impacts cited by the respondents included: reductions in caseloads for trial divisions; reductions in recidivism rates; improved case management; reductions in the nonviolent jail/prison population; and reductions in the use and costs associated with grand juries.

Chart E-48: Impact of Drug Court on Prosecutor Office's Capability to Handle Criminal Caseload Functions

Response	1997	2000
More attorneys available for other cases	45%	37%
Greater coordination between the prosecutor's office and other justice agencies	**45%**	**57%**
Community groups	35%	51%

C. Other Benefits Derived from Drug Court Programs

Prosecutors were also asked to identify any benefits the drug court had brought about for their offices. Among the benefits cited, 97% cited the opportunity to offer treatment and rehabilitation to drug offenders (up from 80% in 1997); and 76% (up from 65% in 1997) cited the capacity for imposing swifter

sanctions in appropriate situations. Over half of the respondents also noted that the program promoted more efficient use of their office resources.

Chart E-49: Other Benefits for Prosecutor Offices Derived From Drug Court Programs

Response	1997	2000
Permits opportunity for treatment and rehabilitation in appropriate cases	80%	99%
Permits more appropriate response to cases involving substance abusing defendants	n/a	87%
Promotes swift sanctioning in appropriate cases	65%	80%
Has generated community support	43%	57%
Promotes more efficient use of office resources	50%	54%
Promotes more efficient use of community resources	41%	53%
Enhances office's ability to promote "no tolerance" policy	35%	27%

Respondents also noted other program benefits including: additional accountability derived through frequent testing; reductions in drug offense caseloads; and the successes that have led to implementation of similar programs.

D. Relationship Between Drug Court Program and Community Prosecution[1] Activities

Respondents were asked to comment on the degree to which their local drug court program was tied to and/or supported community prosecution activities. The respondents' comments indicate that, for the most part, drug court activity is developing apart from any community prosecution activities local prosecutors may be engaged in and has not been closely related with community prosecution activities. Only 26% of the respondents indicated that community prosecution activities were underway in their communities and, of those respondents, only 20% noted any support provided by the drug court to these activities. While the frequency of reported community prosecution activities is higher in 2000 than was reported in 1997 (13%) , the pattern of drug courts developing apart from such activity is consistent with the responses from prosecutors in 1997 as well.

E. Arrest Trends for Drug and Drug-related Offenses Since Drug Court Began

Prosecutors were asked whether there had been any change in trends regarding arrests for drug possession and/or drug-related offenses since the drug court began in their jurisdiction. Responses in 2000 did not change significantly from those provided in 1997. Eighty percent of the prosecutors indicated that there did not appear to be any change in trends regarding arrests for either drug possession and/or arrests for drug-related offenses since the drug court began – consistent with prosecutors' responses in 1997. Eight percent indicated that the number of arrests for possession had increased; twelve percent indicated it had decreased. Six percent indicated the number of arrests for drug related offenses had increased; fourteen percent reported the number of drug-related offense arrests had decreased.

III. Costs/Savings Incurred as a Result of the Drug Court Program

A. Total Staff Dedicated to Drug Court

Approximately 60% of the programs dedicate at least one part-time attorney to the drug court, and approximately 36% dedicate at least one full-time attorney. Approximately 42% of the programs

[1] The American Prosecutors Research Institute, which is the research and technical assistance affiliate of the National District Attorneys Association, has provided the following definition of *community prosecution*: "Community prosecution focuses on targeted areas and involves a long-term proactive partnership among the prosecutor's office, law enforcement, the community;, and public and private organizations, whereby the authority of the prosecutor's office is used to solve problems, improve public safety, and enhance the quality of life in the community." Source. American Prosecutors Research Institute, National District Attorney Association. *Community Prosecution Implementation Manual.* 1995.

dedicate part-time support staff to the program and 22% dedicate a full-time support staff position. Four programs also use volunteers, generally to assist with case preparation.

B. Staff Hired Specifically for the Drug Court

Most prosecutor offices appear to be handling the drug court program with existing attorney resources. Seventeen percent of the respondents indicated that new staff were hired to fill positions for the drug court, with approximately half of these new hires for non-attorney positions. The non-attorney positions that new hires filled included: paralegals, law clerks, secretaries, auditors, grant managers, investigators, diversion coordinators, and administrative staff. The degree to which new staff were hired for the drug court appeared to be closely related to the volume of participants served by the program and/or the extent of drug court coordination and administrative functions performed by the prosecutor's office.

C. Program Costs

Approximately 35% of the reporting prosecutors indicated that their offices had incurred additional costs to implement the drug court, primarily for attorney and non-attorney personnel. Many noted, however, that savings in other areas (see Section D below) offset these additional costs. Five respondents indicated that some of these additional costs were met with the use of asset forfeiture funds.

D. Savings Achieved

Prosecutors were asked to note any cost savings achieved as a result of the drug court. Over 70% of the responding prosecutors cited cost savings resulting from the drug court, ranging from savings in case preparation time for attorneys, to grand jury costs and witness fees, including those for expert witnesses. Over half of the respondents cited savings in court appearance time for attorneys. Several prosecutors also noted savings in trial costs, although hard data was not readily available.

IV. Program Implementation/Operational Issues

A. Most Serious Problems Encountered as a Result of Drug Court and Strategies Used to Resolve Them

Prosecutors were asked to identify the most serious problems they had encountered in designing or implementing the drug court and to describe the strategies used to resolve these problems. Problems noted ranged from the need to increase program referrals, develop more consistency in the screening and eligibility determination process, and improve interagency coordination to developing community support for the program, expanding treatment resources to meet the diversity of potentially eligible defendants, and increasing defense participation. Strategies to address these problems included: adjustments in the court calendar; special attorney/staff assignments, and increased "team" coordination and communication. The individual comments of the responding prosecutors are reported in Part Three of the *Survey Report.*

B. Most Significant Benefits to Prosecutors' Offices Resulting from Drug Court

Prosecutors were asked to identify the most significant benefits that had resulted for their offices because of the drug court. The most frequently cited benefits related to: increased efficiency in handling of the caseload, including reduced time and costs for litigation, earlier pleas and earlier case dispositions. Many also noted reduced recidivism rates and the importance of providing addicts with treatment. Chart E-50 provides a summary of their responses.

Chart E-50: Most Significant Benefits to Prosecutors' Offices Resulting from Drug Court

Name of Court	State	Most Significant Benefits Noted
Cullman	AL	Increased efficiency in adjudicating cases. Fewer cases have to be prepared for the grand jury.

Name of Court	State	Most Significant Benefits Noted
Tuscaloosa	AL	The caseload has been reduced in circuit court; recidivism appears to be decreasing among Drug Court Graduates.
Phoenix	AZ	Lower re-arrest for participants.
Bakersfield	CA	Defendants are sent to appropriate settings and supervision lowers arrest rates.
Indio	CA	Non-violent drug offenders are given the opportunity to participate in a rehabilitation program rather than being sent to state prison.
Los Angeles	CA	The number of drug possession cases proceeding to trial has been reduced.
Los Angeles	CA	Hopefully, we are reducing recidivism and the crime rate related to drug addiction.
Modesto	CA	Early guilty pleas for drug court cases reduce court appearances, etc.
Napa	CA	Getting quality treatment to addicts.
Oroville	CA	Helps resolve drug cases by providing a treatment, non-conviction track for drug programs.
Redding	CA	Long time criminals staying out of trouble.
Riverside	CA	Rapid resolution of routine cases.
San Bernardino	CA	Appropriate handling of drug possession offenses. Participation in rehabilitation.
San Diego	CA	Early pleas, treatment as opposed to jail for those who need it; reduction in recidivism
Santa Ana	CA	Hopefully, we can reduce the number of repeat offenders.
Stockton	CA	Some folks have stopped using drugs and not been arrested for new crimes.
Solano	CA	Reduced case litigation.
Fort Lauderdale	FL	Reduce costs for attorney personnel.
Gainesville	FL	9 babies born drug free.
Jacksonville	FL	Expedite cases, less recidivism, less overtime cost.
Miami	FL	The recovery of the defendants resulting in the reduction of recidivism
Tampa	FL	Community involvement. Treatment components.
Viera	FL	Take some workload off of trial attorneys.
Atlanta	GA	Affordable drug treatment/rehabilitation for criminal offenders who would otherwise not receive such services and would continue to become caught in the cycle of recidivist criminal activity. Also, there has been a significant decrease in the number of persons held in jail custody awaiting disposition of their criminal cases.
Brunswick	GA	No one else has to prosecute drug cases.
Camden	GA	Drug Court has enabled us to provide a better treatment option than traditional substance abuse counseling. The sanctions that the Drug Court can impose appears to motivate the participants to work in the treatment program more than they would in a traditional substance abuse program.
Honolulu	HI	Decreased caseloads
Des Moines	IA	Cases diverted from trial docket
Boise	ID	Decreased felony caseload (taken up by the drug court)
Coeur d'Alene	ID	Our graduates! Gaining support o f law enforcement; some of them even recruit new participants and believe it actually works. Besides, it saves lots of court time.
Rockford	IL	Saving on Grand Jury time for attorneys and police time that normally would be spent in court.
Fort Wayne	IN	Freeing up attorney preparation time
Gary	IN	Instead of just incarcerating individuals we are able to find the source of the problem and get individuals help. When defendants receive help for their addiction, this reduces recidivism.
Indianapolis	IN	This program has allowed the defendants to have an option in the criminal justice system. There has been a savings of time and labor, in that the cases in drug treatment are not taking up docket space on another court's calendar. Also, a more just result isobtained in many of these cases, and, hopefully graduates will continue to be crime-free and drug free
Terre Haute	IN	More intense monitoring of certain defendants and quick response to violations
Wichita	KS	Reduction in witness costs and coordination
Richmond/ Winchester	KY	To see some long-term drug abusers actually begin to change their behavior. And secondly, to see some who think that drug court is not serious, be sent to prison.
Alexandria	LA	Rehabilitated addicts/criminals whom we likely will not be required to prosecute in the future.
Franklin	LA	The proper disposition of cases involving drug abuse
Gretna	LA	Potential lower recidivism rate
Lafayette	LA	Decrease in recidivism and associated office work related to re-arrests. Favorable opinion of community that respects attempts to try treatment based solution to serious drug court problem in community.
Livingston	LA	Better supervision of probationers; Provides alternative to probation revocation for minor violations
New Iberia	LA	Docket reduction
Oak Grove	LA	Plea bargains beneficial to our office and defendant. Less time involved in particular cases, I.e. speeds up cases.
Thibidaux	LA	Treatment of individuals to keep them from committing more crimes
Ouachita	LA	Trying to alleviate some d rug court caseload
Haverhill	MA	Fewer drug trials

Name of Court	State	Most Significant Benefits Noted
Baltimore City	MD	Community & Judicial support, coordination, and communication; free docket space for other cases; graduates don't repeat crimes.
Bel Air	MD	The program has reduced the need to litigate all cases that were referred to and accepted into the program
Charlotte	MI	Reducing caseload for prosecution.
Detroit	MI	Decreased recidivism rate for drug offenses
Grand Rapids	MI	For once, a genuine option for drug users with respect to treating their addiction.
Minneapolis	MN	Consolidating all drug cases in a specialty court has simplified staff logistics. The consolidation has made it easier to track cases and evaluate case outcomes. Defendants' cases are handled more quickly.
City of St. Louis	MO	Cost of recidivism reduced in this population
Columbia	MO	General benefit to community of rehabilitating drug abusers.
Jefferson City	MO	Move cases quicker
Kansas City	MO	Quick and effective treatment for low level users who do not require incarceration.
Marshall	MO	The positive aspect of helping solve substance abuse problems as opposed to punishing individuals with substance abuse problems
Poplar Bluff	MO	Higher profits in county re: tackling problems with all available reasources.
Magnolia	MS	Satisfaction of seeing "hopeless" addiction cases become useful and respectable members of society. Also, lightened caseload.
Browning	MT	The ability to enforce zero -tolerance in a more effective and acceptable manner. Reduction of recidivism.
Warrenton	NC	The most significant benefit to our office has been the satisfaction of helping people whose criminal activity results solely from their drug or alcohol problem. These are not generally people who would be going to prison anyway.
Camden	NJ	Theoretically, fewer cases to try, but no data.
Trenton	NJ	Increased number of cases disposed
Albuquerque	NM	Alternative to prison or straight probation for addicts.
Farmington	NM	It provides a sentencing option less than incarceration but more demanding than regula r (or even intensive) probation
Taos	NM	Increased coordination/cooperation with community agencies and service providers
LasVegas	NV	It is a humane way to deal with drug addicted offenders
Amherst	NY	Fewer cases are being tried. Defendants with lengthy records take advantage of a non-incarceratory sentence upon successful completion.
Bronx	NY	Provides additional drug treatment opportunities to defendants who are in need of these services.
Brooklyn	NY	Successful rehabilitation of participants.
Cheektowaga	NY	Ability to assist defendants who would normally not gain from incarceration without the drug program. Also, this freed up time to concentrate resources on other cases.
City of New York	NY	The ability to offer drug treatment to non-violent first felony drug offenders
Ithaca	NY	Having a more effective way to deal with low level drug offenses and improve community safety.
Kew Gardens	NY	The diversion of a large number of cases into the treatment court within a time frame that is far shorter than observed with other treatment diversion programs. Also, a very short arrest to disposition time as a result of the early plea.
Lackawanna	NY	Allowing some defendants to change their lifestyles, achieve personal growth/success and become productive members of society.
Niagara Falls	NY	Many drug court defendants, who would normally be constant, repeat offenders, have "behaved" themselves during program, and stayed out of trouble after completion.
Rochester	NY	Reducing recidivism, community support, tempering the notion of harsh justice
Tonawanda	NY	Ability to assist defendants who would normally not gain from incarceration without drug program. Also this freed up time to concentrate resources on other cases
Troy	NY	Provides other sentence options
Rockland	NY	Provides alternatives to the typical case processing of defendants charged with any drug offenses and/or drug driven offenses.
Cincinnati	OH	We are helping those who truly want treatment and gaining jail space for those who should be incarcerated.
Mansfield	OH	More efficient use of attorney/support staff time; allows more time to prepare other cases and attend to other duties.
Sandusky	OH	Alternative sanctions for drug dependent defendants
Youngstown	OH	Fewer drug related cases to prosecute and supervise; reduction of recidivism.
Ada	OK	A more successful treatment of cases -- jail/prison has not proven effective in preventing subsequent offenses. Drug Court seems to be helping the participants refrain from reoffending.
Okmulgee	OK	Agencies involved in the Family Drug Court Program have collaborated more through staffings and more frequent contact. Family members of participants seem more willing to share information.
Seminole	OK	Seeing success of Drug Court participants to get off the drugs and alcohol and diverted from a life of crime. A reduction in repetitive offenses.

Name of Court	State	Most Significant Benefits Noted
Euguene	OR	Reduced staff time spent on our large drug caseload. Reduced time spent monitoring appearances, attending hearings, trying cases, and monitoring compliance with p robation.
Klamath Falls	OR	Time and money savings
Roseburg	OR	Dramatic savings . Decreased recidivism. Decreased associated property crimes.
Multomah	OR	By using one legal intern to oversee the program and the hundreds of cases in the program, it frees up the DDA to handle other cases.
San Juan	P.R.	The assignment of an additional prosecutor to work exclusively on Drug court cases.
Philadelphia	PA	Reduced caseloads in our felony waiver program
Pittsburgh	PA	To provide drug treatment in lieu of incarceration to nonviolent drug offenders.
West Chester	PA	Anticipated impact on recidivism rate.
York	PA	Seeing addicts successfully overcome their addiction.
Sisseton	SD	Reducing trial caseload
Austin	TX	Seeing addicts change their life – nice to see something productive come out of prosecuting.
Memphis	TN	By making a more appropriate response to a criminal act we have preserved valuable office resources while still adhering to our office mission of holding citizens accountable in a way that deters others.
Conroe	TX	Decreased docket; have shown bar and public we are empathetic to drug abusers and willing to help to solve the problem, while maintaining safety of community.
Ft. Worth	TX	Benefits inure to participants – program actually causes more work for office.
Charlottesville	VA	Less contested proceedings – suppression hearings and trials, individuals not using controlled substances for significant periods of times and therefore no drug-related offenses being committed
Fredericksburg	VA	Time savings in initial case handling
Newport News	VA	Being able to offer treatment alternatives to appropriate offenders
Roanoke	VA	Educate, rehabilitate and change the environment and work ethic of drug users
Bellingham	WA	It is too early in our program to feel the impact in any manner.
Mt. Vernon	WA	Providing another alternative to locking up another drug offender yet gaining accountability.
Neah Bay	WA	Possibly fewer trials
Olympia	WA	Non-drug court attorneys have more time to address other cases.
Madison	WI	Reduce recidivism

C. Unanticipated Issues Arising for Prosecutors' Offices and Strategies Used to Resolve Them

Prosecutors were also asked to identify any unanticipated issues that had arisen for their office since the drug court became operational and the strategies used to address these issues. The unanticipated issues noted included having defendant's driver's licenses suspended after entering a plea; fewer referrals than anticipated/greater referrals than anticipated; determining what criteria constitute program completion; and the reactions/responses from the bench and bar to the program. Strategies used to address these issues have included: development of appropriate procedures; drafting of requisite legislation; and increased dissemination of program information. In some instances, the problems worked themselves out over time; in others, they are still being addressed. The individual comments of the responding prosecutors are reported in Part Three of the *Survey Report.*

D. Degree to Which the Drug Court Has Developed the Benchmarks in the "Key Components"

Representatives from each discipline involved with drug court programs (e.g., judges, prosecutors, defense counsel, law enforcement, corrections and treatment professionals) were asked to comment on the degree to which they felt their drug court had been able to implement the "Key Components". Most responding prosecutors indicated that activity was underway in addressing all of the components, and seventy-five percent or more indicated that activity was as fully developed as practical at the time for Components One through Seven. Those components warranting additional attention relate to Components Eight through Ten (evaluation; interdisciplinary education; and community partnership development). A summary of responding prosecutors' comments is provided in the Introduction to this volume and in Part Three, Volume II of the *Survey Report.*

V. Improvements Suggested

Prosecutors were asked to offer suggestions for improving the drug court program. Their responses focus primarily on improving the screening process, increased treatment resources, shifting the program locus to post-plea or post-adjudication, and team building. The individual comments of the responding prosecutors are reported in Part Three of the *Survey Report.*

VI. Advice to Colleagues

Prosecutors were also asked to indicate any guidance they might offer to colleagues in other jurisdictions that were contemplating the implementation of a drug court. Their advice spans many areas but, most frequently entails: involve all agencies; recognize that relapse is a part of addiction; make sure all parties are on board; and maintain on-going communication among all involved agencies. The individual comments of the responding prosecutors are reported in Part Three of the *Survey Report.*

PART FOUR: PERSPECTIVES OF DEFENSE COUNSEL

II. Introduction

A. Responding Defense Counsel

Defense counsel from sixty-eight percent of the drug courts responding to the survey provided responses to Part Four. All of these attorneys were either public defenders or private attorneys providing contract services for the local drug court. Their comments are presented in the following sections of this report.

B. Eligible Offenses

Eligible offenses in the drug courts that the responding defense counsel served were as follows, with the frequencies noted:

Drug possession	100%	Obtaining drugs by fraud/forgery	40%	Theft	78%
Prostitution	65%	Drug trafficking/sales	43%	DUI/DWI	38%

Among other charges that defense counsel report meet eligibility requirements for their respective drug court programs include: drug purchases (small amounts); criminal contempt; check fraud; forgery; non-residential burglaries; nonviolent drug-related misdemeanor and felony offenses; and probation violations involving drug use.

C. Role of Defense Counsel in Drug Court Program

Defense counsel were asked to indicate the role(s) that they played in their respective drug court programs. All of the responding defense counsel confer with drug court-eligible defendants regarding their rights and the requirements of the drug court and almost all (93% and 92% respectively) confer with drug court-eligible defendants regarding their specific charges and defenses they may raise, and prepare/review with defendants required documents for participation (e.g., participation agreements, waivers, etc.). Additional functions responding defense counsel perform include: attend drug court hearings (87%); attend drug court staffings (77%); partic ipate in training/orientation of local bar (70%); screen cases for drug court eligibility (57%); serve on drug court policy/oversight committees (52%); and visit treatment provider/observe treatment sessions from time to time (43%).

Several defense counsel also noted that they participate in the drafting of program policies; attend conferences and other drug court training sessions; and speak on behalf of the drug court to community groups.

II. Program Effectiveness

A. Criteria Being Used By Defense Counsel to Assess Effectiveness of Drug Court Program

Defense counsel were requested to indicate the criteria they use to assess the effectiveness of the drug court in their respective jurisdictions. Criteria were cited in two general categories: (1) program policies and procedures; and (2) participant performance, as depicted in the following charts.

The following criteria were cited with the frequencies noted:

Chart E-51: Criteria Relating to Program Policies and Procedures

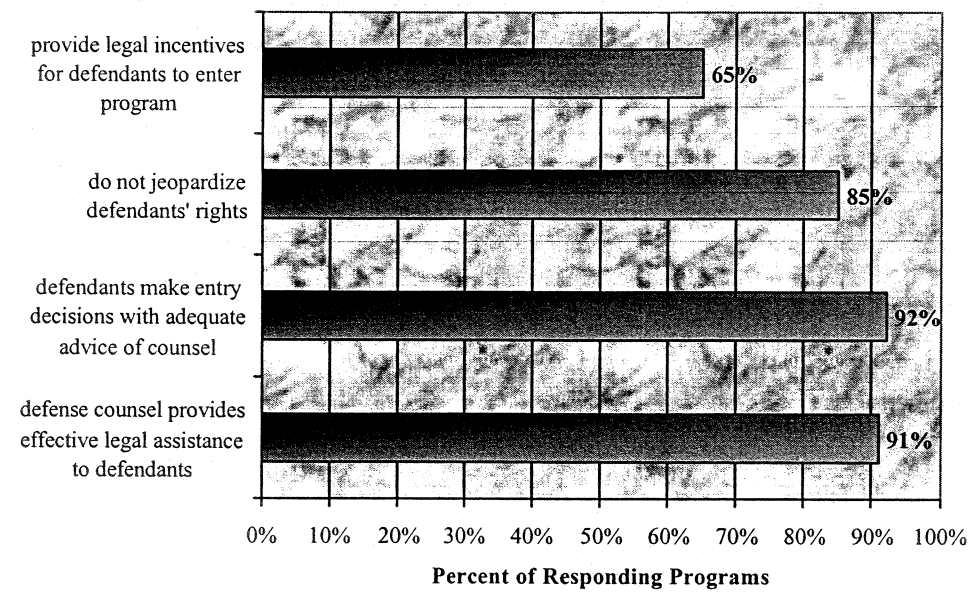
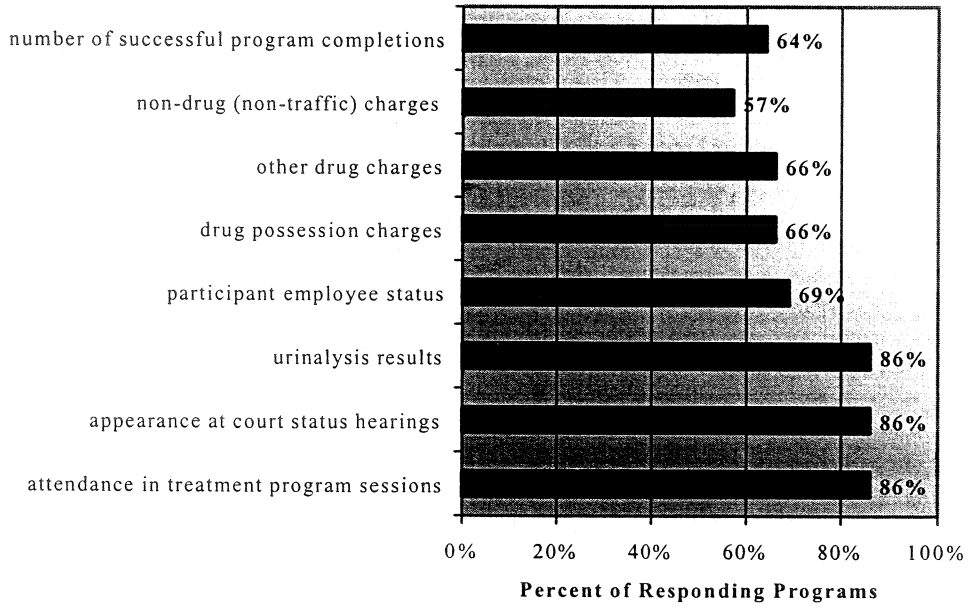


Chart E-52 Criteria Relating to Participant Performance



Other criteria for program effectiveness cited by responding defense counsel included: client satisfaction; birth of drug-free babies; and improved educational status of participants.

B. Impact of Drug Court on Indigent Defense Office's Capability to Handle Criminal Caseload/Functions

Defense counsel were asked to indicate the impact of the drug court on their office's capability to handle its criminal caseload. The most frequent impacts noted by the responding defense counsel were as follows:

- greater contact and coordination with other criminal justice agencies 60%
- greater coordination with community groups 44%

- permits additional attorneys to be available for other cases 34%

Other benefits cited included: increased awareness of client treatment needs by attorneys; and reduction in the active pending caseload.

Four (3.4%) respondents stated that the drug court had no significant impact on the public defender office caseload, and five (4.3%) respondents indicated that the drug court had increased the time required to handle drug cases.

C. Benefits for Public Defender Offices Resulting from the Drug Court Program

Defense counsel were asked to identify any benefits for the public defender office as a result of implementing the drug court program. Ninety percent of the responding attorneys indicated that the drug court provided a more appropriate judicial system response to cases involving substance abusing defendants. Over half of the respondents also noted that the program promotes more efficient use of community resources and has generated community support for addressing the needs of addicted defendants. Other respondents reported that the drug court presents an important dispositional alternative for their clients and obviates the need to "reinvent the wheel" each time an attorney seeks treatment for a defendant.

III. Costs to Indigent Defense Office for Drug Court Services

A. Total Staff Dedicated to Drug Court

Defense counsel were asked to indicate the nature of staff support dedicated to the drug court program. Fulltime attorney positions dedicated to the drug court have decreased slightly since 1997 (from 40% to 35%). The frequency with which a part-time attorney is dedicated to the drug court, however, has increased significantly (from 45% to 62%). Nine percent of the respondents also use volunteers, primarily for legal research, client and case support, program evaluation, liaison with the local court, and administrative tasks. The nature and extent of other indigent defense counsel personnel resources dedicated to the drug court has remained fairly constant since 1997. Defense counsel responses in 2000 are provided below, and along with comparable responses from 1997 in Section IIIA, Part Four of the *Survey Report.*

B. Approximate Additional Annual Cost to Indigent Defense Office to Support the Drug Court Program

Respondents were asked to indicate the additional annual costs to their office required to support the drug court in their jurisdiction and the functions these costs covered. Fifty-one percent of the responding attorneys noted additional annual costs for attorneys. The range of additional indigent defense costs for attorneys was generally correlated with the volume of participants handled by the drug court program. Two thirds of the defense counsel who noted additional costs resulting from the drug court also noted cost savings achieved (see Section C below). A more detailed breakout of the annual additional attorney costs reported is provided in Section IIIB of Part Four of the *Survey Report.*

Additional costs for paralegal staff were reported by seven programs[2], ranging from $2,000 (Purcell, OK) to $ 40,000 (Elizabeth, NJ). Twenty programs also reported costs for clerical staff, ranging from $ 2,374 (Maricopa County, AZ) to $ 122,425 (Las Vegas, NV). Two programs (Santa Barbara, CA, and Tampa, FL) also reported costs for social services staff.

[2] Santa Barbara, California; Fulton County (Atlanta), Georgia; Jackson County (Kansas City), Missouri; Camden, New Jersey; Union County (Elizabeth), New Jersey; McClain County (Purcell), Oklahoma; and Lane County (Eugene), Oregon.

C. Savings for the Public Defender Office Resulting from the Drug Court Program

In addition to costs incurred, defense counsel were also asked to indicate any savings for the public defender office that had resulted from the drug court. Forty-seven percent of the responding attorneys (compared with 33% in 1997), noted cost savings, most frequently in the following areas:

	1997 response	2000 response
Savings in case preparation time	30%	38%
Savings in court appearance time	22%	28%
Savings in witness fees	14%	22%

Other savings noted by the responding attorneys included: (1) elimination of the need to challenge drug test results in an evidentiary proceeding or summon expert witnesses; (2) ability to assign trial attorneys to other cases; and (3) savings in motion practice and trial time.

IV. Program Implementation/Operational Issues

A. Most Serious Problems Encountered as a Result of Implementing Drug Court and Strategies Used to Resolve Them

Defense counsel were asked to identify the most serious problems they had encountered in designing and/or implementing the drug court and to describe the strategies used to resolve these problems. The problems most frequently cited were those relating to concern over protection of defendants' constitutional rights; overly restrictive eligibility criteria; obtaining prosecutors' consent to admit referred eligible defendants; inadequate resources; and the workload pressures of handling the drug court caseload. In some instances these problems had been addressed through on-going communication and coordinated effort among the team; in other instances, resolution of these problems has been a continuing task. The individual comments of the responding defense counsel are reported in Part Four of the *Survey Report.*

B. Most Significant Benefits to Indigent Defense Offices Resulting from Drug Court

Defense counsel were also asked to identify the most significant benefits that had resulted for their offices from the drug court program. Almost all attorneys cited the improved access to treatment as well as to more appropriate resolution of cases involving drug-dependent defendants. Many also cited the greater efficiency that had resulted for their office in terms of its capacity to effectively represent its caseload.

Their responses are summarized below:

Chart E-53: Most Significant Benefits to Indigent Defense Offices Resulting from Drug Court

City	State	Significant Benefits
Tuscaloosa	AL	Improved & more appropriate response to the needs of our clients; program designed to assist client to succeed, where traditional probation typically sets client up for failure with multiple demands & little help.
Phoenix	AZ	It has been satisfying to work with the court and prosecution to help clients to succeed in addressing their addiction rather than simply punishing them.
Tucson	AZ	Large numbers of cases are disposed of quickly versus the slow plodding through the criminal justice system.
Chula Vista	CA	Handle significant numbers of cases in one courtroom with one attorney; actually help some clients overcome addiction.
Compton	CA	Eliminates minor cases from the courts to allow greater focus on serious cases; Drug Court provides a morale booster for the office because we see clients succeed.
Fairfield	CA	Most significant benefits have been for clients. Some benefits achieved by removing Drug Court cases from general caseload; however, drug court requires many more court appearances than normal case work.

City	State	Significant Benefits
Indio	CA	Good results for clients; good morale
Los Angeles	CA	Having available an outpatient, yet highly structured treatment program fo r public defender clients based on need, not ability to pay.
Napa	CA	This is a great opportunity to divert people from the criminal justice system and out of repeated crimes; we have worked well with courts & service providers.
Oroville	CA	Personal satis faction at being involved in a program that seeks to actively and genuinely help people as opposed to simply processing them through the system as quickly as possible.
Redlands	CA	Peace of mind, and the fact that most clients do not return into the criminal justice system; Drug Court tends to stop the "revolving door" or at least slow it down.
Riverside	CA	Offering to clients alternative resolutions of their pending criminal charges.
San Bernardino	CA	Decrease in jury trials and motions litigation
San Francisco	CA	Reduction in recidivism of client population; decreased necessity for attorneys to do program referral and placement (time saving).
Santa Ana	CA	Clients who complete a 180 degree lifestyle turns away from anti-social, often criminal conduct, much of which is self-destructive, to a productive, healthy, non-criminal lifestyle.
Santa Cruz	CA	Clearly, it feels good to catch people doing something right rather than responding when they do something wrong.
Santa Rosa	CA	Getting clients into appropriate treatment
Shafter	CA	Gives clients a sense of hope; Possibility to have conviction removed from record
Stockton	CA	increased number of our clients receiving effective drug treatment enabling them to overcome their addiction and re-enter society with new skills and attitudes.
Ukiah	CA	Some clients have gotten the benefit of therapeutic resources which they would not have been able to garner otherwise.
Van Nuys	CA	Clients achieve sobriety, no longer commit crime; trials are avoided.
Santa Barbara	CA	1. Client recovery 2. Morale 3. Communication with other departments and agencies
Ft. Lauderdale	FL	Exposure to the community agencies and a positive and favorable image of the Public Defender as helping the community stay drug-free
Melbourne	FL	Recidivism is reduced and our office, therefore, will not have these clients graduate into "repeat clients."
Miami	FL	The lives that have been saved
Tampa	FL	Consistency in sentencing; Decrease in recidivism; Specialized attorney sensitive to drug-related issues
Tampa	FL	Consistency in sentencing; Decrease in recidivism; Specialized attorney sensitive to drug-related issues
Atlanta	GA	Reduced recidivism and increased time for attorneys to spend with other clients
Honolulu	HI	Intensive drug treatment for cert ain clients who would otherwise be unable to receive it; having an alternative for certain fortunate clients who would be facing mandatory prison terms in the regular court system.
Boise	ID	Reducing caseload elsewhere
Coeur d Alene	ID	Availability of low-cost treatment for our clients.
Edwardsville	IL	Allowing clients to have their charges dismissed wholly by drug court compliance.
Rockford	IL	Client representation has become more effective in reducing recidivism and providing alternatives to Department of Corrections.
Ft. Wayne	IN	Reduced caseloads in the eligible offenses cases; Allows attorneys more time to prepare for other cases
Gary	IN	Those persons completing the drug court program have been able to get their charges dismissed upon completion of the program; In addition, the person enrolled in the drug court have been given the chance to get their addiction to drugs under control.
Indianapolis	IN	Clients who need treatment rather than incarceration are receiving it.
Terre Haute	IN	Offers clients the opportunity to get no conviction
Des Moines	IA	Success of clients
Madison	KY	The most significant benefit for our office is that our clients have the opportunity for treatment and rehabilitation rather than incarceration.
Alexandria	LA	A better wo rking environment between the P.D. office and the court. The court seems to have taken on a more compassionate role and understanding in all aspects of both the prosecution and treatment phase.
Franklin	LA	To provide clients with an alternative to serving jail time, all the while being treated for their addictions.
Lafayette	LA	Allowing our clients to receive rehabilitation as opposed to incarceration.
Monroe	LA	Lower recidivism--quicker access to justice & release from pretrial detention--additional time & resources for other serious felonies
New Iberia	LA	Tremendous drug addiction treatment at minimal expense for eligible indigent participants.
Oak Grove	LA	Makes it easier to resolve some cases; hopefully these people will not commit another crime.
Thibodaeux	LA	The satisfaction of doing our job by helping defendants in a meaningful manner
Baltimore	MD	Increased visibility in community, more interagency cooperation
Bel Air	MD	Availability of a holistic drug treatment program for our clients
Worcester	MA	Getting clients much needed help as a viable alternative to jail; these factors in turn, provide attorney satisfaction.
Charlotte	MI	Greater ability to facilitate treatment and education for clients through utilization of drug court regimen.

City	State	Significant Benefits
Grand Rapids	MI	Benefit is to client, not office.
Kalamazoo	MI	Observing career criminals rehabilitate and become productive members of our community.
Columbia	MO	Having additional options to explore with our clients
Jefferson City	MO	It's too early to see any benefit to the office or to our office's clients as a whole, although some individual clients are doing very well and should successfully complete the program, which will result in dismissal of all charges.
Kansas City	MO	Improved dispositions for clients.
Poplar Bluff	MO	Resolution of cases through Drug Court is more beneficial to everyone by dealing with the underlying causes of the problems, rather than just the symptoms.
St. Louis	MO	One attorney handles a large number of drug cases, relieving the rest of the legal staff of that burden.
Las Vegas	NV	We have experienced great benefits to our clients in this treatment program.
Camden	NJ	Client satisfaction when it works; saving lawyers from doing social work that is better done by experts in the field; to a limited degree, reduction in case preparation for trial.
Elizabeth	NJ	There have been no benefits to this office. A very few of our clients have benefited. The time expended by staff to realize these benefits greatly exceeds the time necessaryto handle a standard case.
Albuquerque	NM	That there is another alternative for our clients that actually works.
Farmington	NM	Very beneficial to clients whose only problem has centered around substance abuse and addiction. Many of these clients are otherwise very good people with much to offer if properly rehabilitated from substance addiction.
Santa Fe	NM	Clients getting help and hopefully not reoffending. Fewer cases to take to trial.
Santa Fe	NM	Additional treatment resources for out-patient, but in-patient detox is a major problem; Strengthen relationship with the Court, DA, Probation and other "players" in county system; Made central administration in Santa Fe more aware of issues.
Amherst	NY	Participation in effective system of criminal justice.
Brooklyn	NY	Drug treatment and dismissal of charges for our clients.
Central Islip	NY	The most significant benefit has been the "freeing up" of the time of the non-drug court attorneys attempting to get clients into treatment on their own. Drug court has tremendous resources that make the process of getting clients into treatment much quicker.
Cheektowaga	NY	Participation in an effective system of criminal justice.
City of Tonawanda	NY	Participation in an effective system of criminal justice.
Forest Hills	NY	Successful rehabilitation for our clients
Kew Gardens	NY	The program has reduced the number of active cases that the office has to prepare for trial and the number of clients who plead to probation and return a short time later with a new case and a violation of probation. The Queens criminal justice system has become more supportive of alternatives to incarceration.
Lackawanna	NY	Participation in an effective system of criminal justice.
New City	NY	Substance abuse education; familiarity with various treatment modalities
New York	NY	The benefit is to the clients, not our office. Our clients are being dealt with by a court system that wants to cure the drug-addicted defendant. The commitment to proper treatment by all components of the court is obvious.
New York	NY	1) Positive judicial dispositions of defendant's drug cases. 2) Staff load administrative efficiency.
Niagara Falls	NY	Lower recidivism rates. Favorable dispositions for many defendants.
Rochester	NY	The benefits have been for the clients who have successfully completed the drug treatment court program.
Syracuse	NY	The ability to get appropriate non-prison dispositions for defendants who would otherwise be sentenced to long state prison terms.
Troy	NY	Achieving a better disposition for clients; Fewer trials; Rehabilitation and treatment of clients
Akron	OH	1) Alternative for prostitution and theft defendants who are drug addicts, however very rare usage by such defendants. 2) Removing clients from the court system and ultimate dismissal of charges.
Canton	OH	Reduction in caseload for felony attorney not assigned to drug court.
Cincinnati	OH	Some cost benefits.
Cleveland	OH	The office can concentrate on other cases.
Sandusky	OH	The Drug Court program allows the attorney to spend more time on other clients; it also reduces the incidence of repeat offenders.
Ada	OK	Reduction of recidivism; Less government assistance; Increased employment & education
Holdenville	OK	We have an alternative avenue besides jail that actually helps the c lient to be a successful part of society
Okmulgee	OK	Appropriate resolutions to cases in which treatment is a viable alternative.
Purcell	OK	None
Seminole	OK	Nominal pay; successful completion by some participants
Grants Pass	OR	Expanded services to clients. Increased level of cooperation with criminal justice agencies.
Klamath Falls	OR	Cases concluded quickly and actually helped some clients get clean.
Pittsburgh	PA	Lighter caseload for the other attorneys, better treatment of our clients.

City	State	Significant Benefits
Philadelphia	PA	Clients are receiving quality drug treatment. Their cases are taken out of the criminal justice system resulting in saving other lawyers time in preparing their cases for trial.
Westchester	PA	There is no significant administrative benefit to our office; the benefit is that our clients are receiving much needed help to solve problems that lead to re-offending.
York	PA	Benefits to some clients; Some slight diversion of criminal caseload
Conroe	TX	Seeing participants work, live at home, become drug free.
Conroe	TX	1. Treatment 2. Optimize available resources – court cost, attorney's fees, etc.
Roanoke	VA	Some clients receiving much needed and successful treatment.
Mount Vernon	WA	Feeling we can do something constructive for our clients.
Neah Bay	WA	Clients' success; Clients' needs
Seattle	WA	More efficient allocation of staff resources; Reinforcement of empathy and compassion in the legal context; More and better options for clients
Madison	WI	Appropriate treatment/dispositions for offenders

C. Unanticipated Issues and Strategies to Resolve Them

Defense counsel were asked to identify the unanticipated issues that had arisen since the drug court became operational and the strategies used to address these issues. Most respondents noted issues relating to agreement on eligibility criteria and program participation; time required to represent drug court defendants; adequately addressing participant needs; and issues relating to turnover in the drug court team. The individual comments of the responding defense counsel are reported in Part Four of the *Survey Report.*

D. Degree to Which the Drug Court Has Developed the Benchmarks of the "Key Components"

Members of each of the disciplines responding to this survey were asked to comment on the degree to which they felt their respective drug court had developed the benchmarks indicated in the "Key Components". The responding defense counsel indicate that those components that appear to be most fully developed are components: Four (provision of continuum of services); Five (drug testing); Six (response to noncompliance); and Seven (judicial interaction with participants). Those components that they noted were still being developed are components: One (integrating treatment and justice system processing); Two (use of nonadversarial approach); Three (early identification of participants); Eight (monitoring and evaluation); Nine (early identification of participants); and Ten (interdisciplinary education; and court/community partnerships). A comparison of the responses from all of the disciplines responding is included in the Introduction to this report and the specific responses from defense counsel are provided in Part Four of the *Survey Report.*

E. Program Improvements Suggested

Defense attorneys were also asked to offer suggestions for improving the drug court program. Most of their suggestions address expansion of eligibility requirements, program participation, and program services. Their individual comments are reported in Part IV of the *Survey Report.*

F. Advice to Colleagues

The final topic on which defense counsel were asked for comment was to indicate any guidance they might offer to colleagues in other jurisdictions that were contemplating the implementation of a drug court. Their advice, reported in Part Four of the *Survey Report* , focuses on a range of issues relating to coordination, eligibility determination, procedural provisions, and planning/operational elements.

PART FIVE: PERSPECTIVES OF LAW ENFORCEMENT OFFICIALS

I. Introduction

Law Enforcement agencies working with approximately one-half of the responding drug court programs provided comments for Part Five. Survey responses were received from 80 officials from law enforcement agencies associated with 72 drug court programs. Eight of the responses were from local sheriff's departments; the remaining responses were from local police departments. Four programs sent responses from two different law enforcement agencies.

II. Program Overview

A. Eligible Offenses

Eligible offenses for the drug courts with which the responding law enforcement officials were involved were as follows, with the frequencies noted:

Drug possession	100%	Theft	71%	Prostitution	59%
Drug trafficking/sales	36%	DUI/DWI	34%	Obtaining drugs by fraud/forgery	24%

Other eligible offenses noted were: non-residential burglary; forgery; and retail fraud.

B. Role of Law Enforcement Officials in the Drug Court Program

Respondents were asked to describe the functions they performed within the drug court program. Over half of the respondents indicated that they: discussed possible drug court participation with offenders at the time of their arrest; referred cases of potentially eligible defendants to drug court staff; provided supervision of participants, including compliance with curfews and other court orders; and attended drug court hearings and graduations. Other functions noted include: conducting home visits; participating in training and orientation sessions; and visiting the treatment provider from time to time.

A number of the responding law enforcement officials also indicated that they serve bench warrants on an expedited basis for defendants who have failed to appear at court hearings.

III. Program Effectiveness

A. Criteria Used to Assess Effectiveness of the Drug Court

Law enforcement officials were asked to describe the criteria they are using to assess the effectiveness of the drug court in their jurisdictions. By far, the most common criteria cited were new arrests on drug charges (81% of the respondents). The next most frequently cited criterion was: the percentage of individuals graduating from the program (65%); participant appearance at court status hearings (63%); and participant attendance at treatment and participant urinalysis results (59%). The range of criteria cited by law enforcement officials relevant to the drug court program's effectiveness was considerably broader in 2000 than in 1997, as the summary below reflects.

	1997 response	2000 response

Participant attendance in treatment program	18%	59%
Participant appearance at court status hearings	15%	63%
Participant urinalysis results	15%	59%
New arrests for participants involving:		
Drug possession charges	45%	81%
Other drug charges	35%	81%
Non-drug (non-traffic) charges	20%	54%
Participant employment status	10%	41%
Percentage of individuals graduating from the program	18%	65%

Additional criteria noted by a few respondents included: the degree to which participants stayed away from trafficking areas, and feedback from community residents who reside in the area where drug arrests are occurring.

B. Impact of the Drug Court on Capability of Law Enforcement Agency to Respond to Criminal Activity and/or Carry Out Its Functions

Respondents were asked to indicate the impact that the drug court has had on the agency's capability to respond to criminal activity or otherwise carry out its functions. The most frequently cited impact related to the new relationships the program had generated between law enforcement and other justice system and community agencies (81%). Other frequently cited impacts related to: the additional tools provided to law enforcement to enforce "No Tolerance" policies, and the availability of a more effective response to arrests of substance abusers. Only 22% of respondents cited benefits relating to personnel utilization. The following is a summary of responses, along with a summary of responses to similar questions in 1997:

	1997 response	2000 response
Has permitted additional officers to be available for other cases	20%	22%
Has encouraged greater coordination with other justice agencies	35%	60%
Has provided more effective response to arrests of substance abusers	20%	66%
Has promoted new relationships with justice system and other agencies in the community	32%	81%
Provides law enforcement with additional tool to enforce Promotes "No tolerance" policy	18%	58%

C. Impact of Program on Other Aspects of Agency Operations

1. Arrest Policies

Respondents were asked to indicate the impact, if any, of the drug court program on arrest policies in their jurisdictions. Approximately 85% of the respondents indicated that the drug court had no impact on arrest policies. Approximately ten percent of the respondents, however, reported that the program had affected arrest policies – particularly in the treatment of "borderline" cases involving defendants who might not have been arrested prior to the drug court but were now arrested in order for them to enter the drug court and receive treatment. In contrast, all of the 1997 respondents cited no impact on arrest policies resulting from the drug court program.

2. Arrest Procedures

Like respondents in 1997, most respondents (90%) in 2000 indicated that the drug court had no impact on arrest procedures. However, ten percent of the respondents reported that arrest procedures had been modified as a result of implementation of the drug court program. These modifications included:

- paging the drug court liaison immediately if a drug court participant is arrested (San Diego, CA)
- referring drug-addicted defendants to the drug court (Lafourche Parish, LA)
- screening every arrestee for substance use as a condition of bond (St. Mary Parish, LA)
- immediate processing of all drug-involved arrestees rather than conducting further investigation that might affect the charging decision (Minneapolis, MN)
- following special procedures to refer eligible arrestees to the drug court before they can re-offend (Kansas City, MO)
- upon arrest and referral to drug court, completing a special form which the court then sends back to the officer (Rochester, NY)
- actively advising persons arrested for drug offenses of the availability of the drug court (Austin, TX)
- increased effort by prosecutors and police to identify those defendants charged with drug offenses who could best be dealt with through the drug court (Roanoke, VA)

3. Orientation/training Programs for Line Officers

Respondents were asked whether information regarding the drug court program had been incorporated into any of the orientation and/or training programs conducted for line officers. Thirty-five percent of the respondents (up from 15% in 1997) indicated that the drug court program was a component of line officer training. The following specific training areas were among those cited:

- drug court information is provided at roll calls, including information from the drug court judge and/or police liaison in some instances (Santa Ana, CA; Winnebago Co., IL; Rochester,NY)
- line officers attend drug court graduations (Santa Ana, CA;)
- line officers work with drug court probation (San Bernardino, CA;)
- line officers attend orientation workshops on the drug court program and/or special presentations at the Police Academy (San Bernardino, CA; San Diego, CA; Santa Cruz, CA; Redding, CA; Bel Air, MD; Austin, TX;)
- line officers receive peer orientation from other officers regarding the drug court program (San Diego, CA)
- state attorney discusses drug court program with line officers (Jacksonville, FL)
- drug court coordinator has given brief lecture on drug court to DTF officers (Coeur d'Alene, ID)
- special training programs are given on drug court; and/or alcohol and drug education are provided; and/or drug court is integrated into patrol activities; and/or training provided on relevant report writing skills for supervision functions (New Orleans, LA; Canton, OH; Seminole, OK; Purcell, OK; Roseburg, OR; Clallam Co., WA; Olympia, WA)

A full summary of respondents' comments is provided in Chart V-1 in Part Five of the *Survey Report.*

4. Relationships with Community Groups

Law enforcement officials were asked whether the drug court had any impact on their agency's relationship with community groups. Thirty-nine percent of the respondents (up from 20% in 1997) cited various areas in which the local law enforcement agency had expanded its relationships with community groups. The most frequently noted activities in this regard were greater interaction with local substance abuse treatment service providers and community groups representing neighborhoods with drug-related problems. A full summary of law enforcement agency officials' responses is provided in Chart V-2 of Part Five of the *Survey Report.*

5. *Relationship of Drug Court Program with Community Policing Activities*

Law enforcement officials in the drug court jurisdictions were asked whether their agencies had a community policing program, and if so, whether the drug court had provided any support for these activities. Seventy-nine percent of the respondents indicated that their agencies had established a community policing function. Eleven programs (14%) indicated that both the community police activities and the law enforcement agency's involvement with the drug court were coordinated – up from only one program (New Haven) reporting such coordination in 1997. An additional 24% indicated that, while the drug court and community policing functions weren't formally coordinated, the drug court provides support, indirectly, to the community policing function.

D. Changes in Possession and Drug-Related Arrests Since Drug Court Began

Law enforcement officials were asked whether any changes had occurred in the volume of arrests for drug possession and/or other drug-related offenses since the inception of the drug court program. Slightly over half (51%) of the programs indicated there had been no significant change in arrests for either drug possession or other drug-related offenses. Approximately 18% of the responding law enforcement officials indicated that drug possession arrests had increased since the drug court began and ten percent noted an increase in other drug-related offenses. On the other hand, an additional 18% of the programs reported a decrease in the number of drug possession arrests and 23% reported a decline in arrests for other drug-related offenses.

A comparison of law enforcement agency responses in 1997 with those of 2000 is provided in Part Five of the *Survey Report*, along with a list of jurisdictions reporting changes in arrest activity in 2000.

IV. Costs and Resources Required to Support Drug Court Program

B. Additional Costs Incurred

Approximately 24% of the responding law enforcement agencies reported additional annual costs to their offices to support the drug court program. The additional annual costs reported ranged between $700 and $60,000 and were generally associated with the range of supervision and other support functions provided by the local law enforcement agency to the drug court. Major items of expense cited were: police officer salaries (primarily for bailiff, transport, and supervision functions), training, equipment, and supplies.

B. Total Staff Dedicated to Drug Court

Approximately 15% of the responding law enforcement agencies (compared with 10% in 1997) dedicate at least one full-time officer to the drug court; an additional 43% dedicate at least one part-time officer (compared with 8% in 1997). Ten percent of the law enforcement agencies dedicate at least one full-time support staff member to the drug court, and an additional 13% dedicate at least one part-time support staff member. Six agencies also use volunteers for clerical duties, data entry, and fundraising. A summary of the dedicated staff provided for the drug court by the responding law enforcement agency officials is provided in Chart V-4 of Part Five of the *Survey Report.*

C. Savings Achieved

Approximately 18% (compared with 2% in 1997) of the responding law enforcement agencies noted cost savings resulting from the drug court for their agencies. These savings generally related to increased availability of officer time as a result of reductions in: overtime costs incurred in drug case investigations; and appearance time in court for motions, trials, and other case disposition events.

V. Program Implementation/Planning Issues

A. Most Serious Problems Encountered as a Result of Implementing the Drug Court and Strategies Used to Resolve Them

Law enforcement officials were asked to identify the most serious problems their agencies had encountered in designing or implementing the drug court and to describe the strategies used to resolve these problems. The most frequently cited problems related to obtaining buy-in from line officers and conducting adequate screening to identify substance abusing arrestees. Other problems related to procedural issues, including serving of warrants for non-appearing participants, and having adequate parking at the courthouse. The most common strategies for resolving these problems were reported to be developing mechanisms for inter-agency coordination and continuing dialogue among the team. Approximately 20% of the respondents had not encountered any significant problems. A summary of their responses is provided in Chart V-5 of Part Five of the *Survey Report*.

B. Most Significant Benefits to Agency Resulting From Drug Court

Law enforcement officers were asked to identify the most significant benefits that had resulted for their agencies from the drug court. The most frequently cited benefits related to: the constructive opportunity for treatment which the drug court offers; and the increased interaction with community agencies resulting from program participation.

The following is a summary of their responses:

Chart E-54: Most Significant Benefits Reported by Law Enforcement Agencies Resulting from Drug Court

Court	State	Benefits
Tuscaloosa	AL	We have a chance to see those people who need help get it. The drug court gives my officers a chance to prepare for the big cases going to trial and defer the small possession cases to the drug court.
Chico	CA	Cooperation with outside agencies.
Redding	CA	Initial findings are a 70 to 80 percent reduction in violations of long-term drug users who have participated in the drug court.
Redlands	CA	The joy of seeing the family reunification. The insight of the benefits that a Drug Court brings to the community and a department's community policing efforts.
Ridgecrest	CA	Drug Court gives our agency an additional tool to use in the field to help us with the war on drugs. (search & testing)
San Diego	CA	Officers see the benefit of Drug Court by seeing how the participants are held accountable.
San Francisco	CA	Offering addicts an alternative to incarceration. This is a long- term solution which is consistent with community policing.
Santa Cruz	CA	Sober clients, fewer violations written, community approval.
Stockton	CA	Fewer arrests of repeat offenders.
Jacksonville	FL	Working with community agencies and keeping the constant drug user from crowding the jail.
Brevard	FL	Fewer violation arrests related to drug relapse.

Court	State	Benefits
Brunswick Co.	GA	Closer working relations with the court, DA's office, law enforcement, probation, public defenders and counselors. Also the monitoring of drug court participants' activities.
Kingsland	GA	The cost savings of police officers working the streets instead of being in court.
St Mary's	GA	Getting to know the people in the drug program and keeping up with their status in the program.
Honolulu	HI	Having geographical restrictions put on these clients; clients cannot come into the area where they were getting their drugs.
Coeur d'Alene	ID	Court time has lessened for officers' testimony.
Kankakee	IL	Drug Court represents an alternative to traditional incarceration without "softening" traditional law enforcement philosophies. Participants have the choice to regain control of their lives.
Rockford	IL	It provides significant opportunities for offenders to make real lifestyle changes and thus reduce the offender pool.
Wichita	KS	Fewer search offenders.
Clark	KY	Meaningful alternative.
Alexandria	LA	Our officers are afforded a new resource for substance abusing offenders, and a new alternative for revocation on these cases, one that is effective and comprehensive.
Covington	LA	Better community relations.
Franklin	LA	Our officers understand that substance abuse defendants are getting help with their addiction, and the officers are not arresting the same defendants over and over.
Lafayette	LA	Presence of enhanced treatment opportunities for drug offenders.
Monroe	LA	More bed space for pre-trial offenders.
Oak Grove	LA	By placing individuals in the drug court, it has freed up much needed jail space for more serious offenders.
Thibodaux	LA	The sharing of information between agencies for client supervision and monitoring.
Bel-Air	MD	Fewer repeat offenders and a better relationship with those first line officers.
Kalamazoo-female	MI	Cut in repeated arrests of drug users.
Kalamazoo-male	MI	Cut in repeated arrests of drug users.
Minneapolis	MN	The possible lower thefts, street robberies, burglaries that are not committed by users trying to get money.
Kansas City	MO	Citizens who were criminally involved in a variety of crimes are now holding jobs.
Omaha	NE	I believe that some people are charged, and thus have the opportunity for treatment, who would not have had that opportunity in the past.
Albuquerque	NM	Although we do not have statistical information at this time, we do hope to see some reduction in possession of drugs as the program expands.
Cheektowaga	NY	Opportunity to attack the root of the problem.
Lockport	NY	Drug Court gives individuals an opportunity to receive treatment; without treatment, these individuals would be incarcerated or continue to be involved in drug-related criminal activity.
Rochester	NY	Improved communication, quicker follow up, a voice in court, directly impacting the crime rate.
Akron	OH	A closer working relationship with Oriana House. More knowledge gained concerning the drug culture and who's involved.
Canton	OH	Reduction in caseload for other officers.
Cleveland	OH	(No significant benefits). Just knowing that a small percentage of people are getting the help they need.
Mansfield	OH	Fewer repeat offenses.
Purcell	OK	It allows me to develop a rapport with the participants that most officers can not develop solely because of the us against them theory.
Seminole	OK	fewer re-arrests
Muscogee	OK	The Lighthorse Administration has been able to make referrals to the Family Drug Court Program for those people who have been arrested. This is a new option other than incarceration for the defendants.
Eugene	OR	It is a resource in helping us deal with chronic drug problems.
Grants Pass	OR	Lowering drug sales and use in county.
Grants Pass	OR	Getting officers involved with the graduates, allowing them to see a workable alternative to jail time.

Court	State	Benefits
Roseburg	OR	We see an end to the cases we make; we see the "human" side, that drug users can change and become good citizens.
Philadelphia	PA	Due to police officers not being required to appear in court, there has been money savings in police overtime and officers are present on duty in the streets.
San Juan	P.R.	Low levels of crimes in our jurisdiction.
Austin	TX	Positive image of police participating in program that is designed for treatment not just only incarceration. Before the only image public had was of police kicking doors and arresting persons (mostly of color), and incarceration. Now seen as part of health care and treatment services for drug addicts.
Conroe	TX	Fewer inmates in jail due to drug charges.
City of Roanoke	VA	It has streamlined the process for first offenders reducing the number of court appearances necessary.
Neah Bay	WA	Recidivism rate much lower
Olympia	WA	Getting drug addicts into a program that will help them get off drugs which positively impacts the arresting of the same people over and over again.

C. Unanticipated Issues That Have Arisen and Strategies Used to Resolve Them

Law enforcement officials were asked to identify any unanticipated issues that have arisen since the drug court became operational and the strategies used to address these issues. Twenty percent of the respondents indicated that no unantic ipated issues had arisen. Agencies that cited unanticipated issues focused primarily upon the need to clarify the function and role of the assigned law enforcement officer, and to gain support from other agency staff for program participation. On-going communication among the drug court team to address these issues, along with training activities, were the principal mechanisms used to resolve these issues.

A summary of the unanticipated issues cited by responding law enforcement agencies is provided in Chart V-7 of Part Five of the *Survey Report.*

D. Advice to Counterpart Agencies in Other Jurisdictions

Law enforcement officials were asked to indicate any advice they might offer to law enforcement colleagues in other jurisdictions contemplating the implementation of a drug court. While all of the respondents endorsed participating in the drug court, they also advised other law enforcement agencies to: obtain buy-in from line officers, particularly patrol; contact other programs that were already operating to gain perspective; provide staff training on both the program and the topics of addiction and recovery; and participate actively in the planning and operation of the program. A summary of all responses is provided in Chart V-8 of Part Five of the *Survey Report.*

E. Suggested Program Improvements

Law enforcement officials were also asked to offer suggestions for improving the drug court program. Their suggestions focused primarily on operational issues, increasing available treatment resources, particularly for special populations (e.g., women and ethnic groups), and increased staff training. A full summary of their responses is provided in Chart V-9 in Part Five of the *Survey Report.*

PART SIX: PERSPECTIVES OF CORRECTION AGENCIES

I. Introduction

Corrections agency officials working in 75 (slightly less than half) of the responding drug court jurisdictions provided comments for Part Six. Their responses regarding their agencies' involvement with the local drug court are provided in the following sections.

II. Role of Corrections Agencies in the Drug Court Program

A. Role of Corrections Agencies in Drug Court Programs

Corrections agency officials were asked to describe the role their agencies played in the drug court programs. Their responses were as follows:

Role	Frequency of Response
Provide detention space for drug court participants who are ordered into short-term detention as a sanction by the drug court judge	96%
Attend drug court graduations	51%
Serve on drug court policy/oversight committee	49%
Provide detox services for drug court participants who are ordered into short-term detention as a sanction by the drug court judge	48%
Participate in training/orientation sessions on drug court program	45%
Provide treatment services for drug court participants who are ordered into short-term detention as a sanction by the drug court judge	43%
Attend drug court hearings	40%
Participate in training/orientation sessions on addiction and related topics	39%
Provide detox services to defendants detained pretrial	32%
Visit treatment provider/observe treatment sessions from time to time	31%
Provide treatment services to defendants detained pretrial	29%

The responding corrections agency officials also indicated that they perform additional functions, including: serving drug court warrants; monitoring compliance of program participants; providing security for nighttime counseling sessions; and providing facilities for AA/NA meetings.

B. Frequency of Re-Entry Drug Court Components as Part of the Drug Court Program

Thirty-seven percent of the responding corrections agencies indicated that the drug court program in their jurisdiction included a "re-entry" component for sentenced offenders who have first served a period of incarceration. Eighty-six percent of these offenders serve their sentences in a local detention facility, and fourteen percent serve their sentences in a state prison. A list of the jurisdictions in which the corrections agency respondents indicate re-entry drug court programs have been established is provided in Chart VI-1 in Part Six of the *Survey Report.*

Responding corrections agency officials who oversee facilities in which re-entry drug court defendants are housed report that they provide the following services: screening for substance abuse (75%); assessment of treatment needs (8%); and provision of treatment services while detained (8%).

V. Criteria for Assessing Drug Court Effectiveness

A. Criteria Being Used By Corrections Agencies to Assess Effectiveness of Drug Court Programs

Corrections agencies were asked to indicate the criteria they are using to assess the effectiveness of the drug court program in their jurisdiction. The most frequently cited criteria were: new arrests on drug and/or drug-related charges and the percentage of participants who graduate from the program.

Below is a summary of their responses, and a comparison with corrections agency officials' responses in 1997 to the same question:

	1997 response	2000 response
New arrests for participants involving:		
drug possession charges	50%	85%
other drug charges	49%	79%
non-drug (non-traffic) charges	38%	59%
Percentage of participants graduating from the program	45%	85%
Percentage of participants who remain in the program	54%	72%
Participant urinalysis results	50%	62%
Frequency of contact between the participant and		
court	45%	52%
treatment provider	45%	38%
Participant employment status	37%	43%

B. Impact of Drug Court on Corrections Agency's Capability to Respond to Criminal Activity and/or Carry Out Its Functions

Corrections agency officials were asked to indicate the impact the drug court has had on the agency's capability to respond to criminal activity or otherwise carry out its functions. Compared with corrections agency officials' responses in 1997, significantly more respondents noted impacts on their agencies resulting from the drug court in 2000. Most respondents noted the increase in bed space resulting from the drug court program, as summarized below:

Response	1997	2000
Can make available more bed space for pretrial defendants	48%	74%
Can make available more bed space for sentenced defendants	48%	60%
Can reduce the number of early releases due to lack of space	38%	60%
Has reduced the number of substance dependent detainees	**40%**	**57%**

IV. Agency Resources and Other Costs Required To Support the Drug Court Program

B. Total Staff Agency Dedicates to Drug Court

Approximately two thirds of the responding correction agencies dedicate staff to the drug court program, compared with only 28% in 1997. These staff include bailiffs; warrant service officers; in-jail treatment counselors; transportation officers; and parole/probation officers. Descriptions of the number and type of staff dedicated are summarized in Chart VI-3 in Part Six of the *Survey Report.* The functions performed by these corrections agency staff include: screening of detained arrestees; providing security for the drug court; transporting inmates for court hearings; supervision of drug court participants;

providing educational and life skill educational programs; and providing detention-based treatment services.

B. Program Costs

Approximately 28% of the responding agencies indicated that their involvement with the drug court had imposed additional costs on their agencies, ranging from $160 - $575,000. These costs generally related to staff salaries; overtime pay; urinalysis testing; weekend sanctioning; treatment contracts; and participant supervision functions, and are relatively unchanged from the percentage reporting additional costs in 1997.

C. Savings Achieved

Fifty-two percent of the responding corrections agencies reported cost savings resulting from the drug court for their agencies, compared with 30% in 1997. The most frequently cited area of savings was in the increased availability of corrections bed space. Other costs savings noted included: cost savings associated with a decrease in probation revocation hearings; and supervision services that would otherwise have been required for detainees who are now drug court participants.

V. Program Implementation and Planning Issues

A. Most Serious Problems Agency Has Encountered as a Result of the Drug Court and Strategies Used to Resolve Them

Corrections agency officials were asked to identify the most serious problems they had encountered during the course of their involvement with the drug court and to describe the strategies used to resolve these problems. One-third of the respondents indicated no problems had been experienced. For those agencies which had encountered problems, the most common problems noted related to: increased transportation functions for inmates to/from court; clarifying the agency's role within the drug court program; need for staff training; the need to find bed space for short-term detainees given jail as a sanction; and coordinating with other agencies involved in the drug court program. Most of these problems were addressed through communication with the drug court stakeholders. However, problems relating to the provision of bed space for short-term incarceration still persist for some of the responding agencies. A summary of their responses is provided in Chart VI-4 of Part Six of the *Survey Report.*

B. Most Significant Benefits for Corrections Agencies Resulting from the Drug Court

Corrections agency officials were asked to identify the most significant benefits, if any, that had resulted for their agencies as a result of their involvement with the drug court. Seventy-five percent of the respondents cited benefits relating primarily to the freeing up of bed space and the development of new partnerships with other agencies.

The following is a summary of the responses from corrections agency officials:

Chart E-55: Most Significant Benefits for Corrections Agencies Resulting from the Drug Court

City	State	Benefits
Cullman	AL	Free up available bed space in jail.
Indio	CA	Sentencing alternative for the courts for drug abuse offenders. Greater awareness among the judges and DAs of alternatives for drug abuse offenders.
Modesto	CA	Recidivism rate has dropped for drug court participants.

City	State	Benefits
Redding	CA	There have been numerous drug court inmates released earlier than their actual release date would have been. This saves bedspace for other prisoners.
Santa Ana	CA	The development of new partnerships with other agencies in the Drug Court Program.
Santa Ana	CA	A better way of dealing with probationers with addiction problems, reduced recidivism.
Stockton	CA	Reduced the number of arrests made for substance abuse as well as freed up much needed jail beds for more serious and more violent offenders.
Brevard	FL	Fewer beds occupied related to drug relapse violations.
Honolulu	HI	To divert non-violent first-time pretrial offenders from incarceration.
Des Moines	IA	Reduced usage of drugs; employment; received GED; become self sufficient; reduced recidivism. Better able to interact socially without drug use.
Rockford	IL	Increased jail bed-space.
Terre Haute	IN	More bed space available
Wichita	KS	Fewer drug offenders being held long term.
Clark/Madison	KY	Some successes/ employment for participants.
Alexandria	LA	Giving inmates help by the treatment; reducing the population.
Franklin	LA	Increased jail space for more violent offenders.
Livingston	LA	Decreasing the number of repeat offenders somewhat; increased available bed space at times; decreased length of p re trial stay for some inmates.
Monroe/Bastrop	LA	Morehouse: Increase of Drug awareness & support in the community; Ouachita: added bed space
Oak Grove	LA	Frees up additional bed space in jail
Thibodaux	LA	The sharing of information between agencies for client supervision and monitoring.
St. Tammany	LA	Reduction in recidivism
Baltimore	MD	That we get first choice of persons who are assessed, been in treatment prior and we can readily address the problems with the residents.
Bel Air	MD	Learning to work with mental health and addiction issues from a counselors viewpoint.
Kalamazoo-male	MI	Fewer long-term stays by substance abusers.
Kalamazoo - female	MI	Fewer long-term stays by substance abusers.
Warren	MI	More bed space for violent offenders.
Kansas City	MO	Partnerships with other agencies, supervision cost savings to the department as a result of the contracted treatments program.
Poplar Bluff	MO	Seeing clients succeed; no arrests.
Omaha	NE	Economically and socially positive results, politically sound approach.
Camden	NJ	To be able to assist the court in available bed space in our treatment facility at the corrections facility. I.e. short-term/long-term treatment.
Albuquerque	NM	Reduction in general population; increased bed space availability
Las Vegas	NV	The initial release of some offenders upon earlier intervention in the judicial system.
Cleveland	OH	Identification, assessment and treatment provided to this lower-risk population rather than utilizing jail space.
Hamilton	OH	The Drug Court staff have been able to interact with the Drug Court inmates while they have been incarcerated.
Sandusky	OH	Reduced jail space and less recidivism
Ada	OK	Fewer detainees – open bed space.
Eugene	OR	Availability of jail beds that would normally be used for these inmates for drug court.
Grants Pass	OR	Intensive probation supervision and treatment of probation/parole offenders.
Roseburg	OR	Fewer incidents of recidivism by those who graduate from the program, resulting in fewer offenders to supervise.
Philadelphia	PA	Increase in bedspace in the general population.
Austin	TX	It is a resource alternative to long-term incarceration
Conroe	TX	Fewer inmates in jail due to drug court supervision; they live at home.
Charlottesville	VA	better communication with the judge and collateral agencies. One more "tool" in dealing with the offender population.
Fredericksburg	VA	Program has helped to free up bedspace for more serious/violent offenders.
Roanoke	VA	Those persons in the drug court program do not go to jail, therefore the jail has more jail space.
Mount Vernon	WA	Without the program, participants would be in jail and filling up valuable bed space.
Neah Bay	WA	Please refer to police/law enforcement portion of comments.
Olympia	WA	The drug court participants did not spend time in jail that they normally would have. Graduates do not become repeat offenders.
Port Orchard	WA	Bed space availability in our county jail.
Madison	WI	Providing an alternative to incarceration.

C. Unanticipated Issues Arising and Strategies to Resolve Them

Corrections agency officials were asked to identify any unanticipated issues that have arisen since the drug court became operational and the strategies used to address these issues. Twenty-five percent of the respondents noted unanticipated issues, focusing primarily upon: communication with other agencies involved with the program; providing detention space for participants undergoing short-term sanctions or who were terminated from the program and sentenced to a period of incarceration; and the time involved in working with program officials. As with other problems, the most frequent strategy for resolving these issues was through communication with other agencies involved in the drug court process. A full summary of their responses is provided in Chart VI-6 of Part Six of the *Survey Report.*

D. Advice to Counterpart Agencies in Other Jurisdictions

Responding corrections agency officials were also asked to indicate the advice they would offer to a counterpart agency in another jurisdiction contemplating the establishment of a drug court. All of the responding corrections agency officials indicated they would advise counterpart agencies to support a drug court and be involved with its planning and administration. The importance of clarifying roles, assuring adequate resources, and working closely with other involved agencies in developing and implementing the program were three common themes of the responses. A summary of respondent comments is provided in Chart VI-7 of Part Six of the *Survey Report.*

E. Suggestions for Program Improvement

Corrections agency officials were also asked to offer suggestions for improving the drug court program. Suggestions were submitted by approximately one-third of the respondents. These suggestions focused primarily upon: developing closer relationships with other agencies; broadening eligibility requirements; and increasing resources, primarily for detention space for short-term detainees. A full summary of their responses is provided in Chart VI-8 of Part Six of the *Survey Report.*

PART SEVEN: TREATMENT PROVIDER PERSPECTIVES

Part Seven reflects responses from 169 different treatment providers serving 154 drug court programs in thirty-eight states and Puerto Rico. Five programs sent responses from 2 treatment providers, and one program sent responses from 11 treatment providers. Information regarding the age of these drug court programs, the size of the jurisdictions in which they operate, and the caseloads handled by the drug courts they serve is provided in Part One of the Survey Report.

I. Organization of Treatment Program Services in Reporting Drug Courts

A. Program Phases

1. Duration of Each Phase

Responding treatment providers indicated that their drug court treatment components generally consist of three phases, the duration of which is described in Chart VII-1 in Part Seven. Approximately 25% of the responding treatment providers also indicated that a fourth and, less frequently, fifth phase of treatment were part of the drug court program. These fourth and fifth phases generally entailed post-program supervision and/or aftercare-related services. Approximately 15%-20% of the participants appear to require more time than initially planned by program officials in order to complete program phases, with the bulk of the extended time most frequently encountered during Phase I.

2. Services Provided in Each Phase

Counseling, drug education, stabilization, therapy, and medical screening/services are commonly provided during Phases I and II and, in some instances, throughout the program. Other services relating to personal and educational development, job skills, and employment services are most frequently provided during Phases II and III, after participants have responded to initial stabilization. Housing, family, and medical services are frequently available throughout the program. Chart E-56 below provides a summary of the services provided during each program phase.

Chart E-56: Summary of Treatment and Other Support Services Provided During Each Program Phase

Service	Phase I	Phase II	Phase III
Counseling	88%	86%	78%
Drug Education	85%	73%	57%
Stabilization	79%	25%	15%
Medical Screening/Services	71%	36%	31%
Therapy	70%	79%	69%
Detox	60%	10%	8%
Family Services	53%	62%	60%
Housing Services	51%	45%	44%
Other Life Skills	46%	72%	69%
Educational Development	31%	60%	59%
Acupuncture Services	24%	18%	15%
Job Training	21%	51%	51%
Employment Services/Placement	20%	50%	53%

3. Criteria Used to Move Participants Among Program Phases

Almost all of the programs rely upon participant attendance at treatment sessions and urinalysis results as critical criteria for moving participants among program phases. Most also look to the length of time a participant has been participating in the drug court and the degree to which he or she has fulfilled program conditions such as payment of fees, obtaining employment, etc., which are considered indicia of the individual's assumption of personal responsibility for his/her life.

4. Criteria Used to Increase/Decrease the Intensity and Length of Treatment Services

Drug court treatment professionals are recommending increases and/or decreases in the intensity and length of treatment services based on criteria similar to those used to make recommendations regarding the movement of participants among phases: urinalysis results; attendance at treatment sessions; and length of time in the program. The time in the program, however, appears to be used slightly less frequently (65% compared with 75%).

B. Providers of Drug Court Treatment and Related Services[1]

1. Substance Abuse Screening

Drug courts continue to use a range of agencies to perform substance abuse screening of eligible drug court participants. Among the reporting drug court treatment providers, substance abuse screening is performed by the following agencies, with 40% of the drug courts using more than one agency for substance abuse screening.

Chart E-57: Agencies Providing Substance Abuse Screening

Type of Agency	*Frequency* 1997	2000
Private treatment provider(s) under contract		
One	32%	68%
Two	--	13%
Three	--	2%
Four or more	--	17%
Staff supervised by the court system	35%	33%
Probation department	31%	25%
County public health agency	17%	16%
Pretrial services agency	22%	13%
TASC program	18%	12%
Other (Several programs also use screening services provided by local alcohol and drug agencies or nonprofit organizations)		18%
Programs which use more than one agency for substance abuse screening	38%	40%

2. Assessment of Treatment Needs

Assessment of treatment needs of drug court participants in the reporting drug courts is also performed by a range of agencies, with 33% of drug courts utilizing two or more agencies in the assessment process. Twenty-three percent of the responding treatment programs also provide services under supervision of court staff. Since 1997, there appears to be a significant increase in the reliance upon private treatment providers under contract to perform this function.

Chart E-58: Agencies Performing Substance Abuse Treatment Needs Assessment

	1997	2000
Private treatment provider(s) under contract		
One	51%	50%
Two	-	11%
Three	-	8%
Four or more	-	31%

[1] Note: The range of agencies identified by treatment providers as performing drug court screening, assessment, case management and providing treatment services did not always coincide with those identified by judicial system officials (see Part One).

Staff supervised by the court system	26%	23%
TASC program	17%	15%
Probation department	21%	14%
County public health agency	19%	14%
Pretrial services agency	6%	5%
Other (Several programs also use assessment services provided by local alcohol and drug agencies or nonprofit organizations)	--	17%
Drug courts using more than one agency for treatment needs assessment	38%	33%

3. Case Management

Like screening and assessment functions, a range of agencies is also being used to provide client case management services for drug court participants. Increasing reliance on private treatment providers under contract and, to a lesser degree, staff supervised by the court system and/or probation staff, is also noted. Over one third of the reporting treatment providers note that multiple agencies are being used to perform client case management.

Chart E-59: Agencies Performing Client Case Management Functions

	1997	2000
Private treatment provider(s) under contract		
One	54%	66%
Two	--	11%
Three	--	1%
Four or more	--	22%
Staff supervised by the court system	31%	34%
Probation department	29%	33%
TASC program	11%	13%
County public health agency	11%	9%
Pretrial services agency	11%	6%
Other (Several programs also use case management services provided by local alcohol and drug agencies or nonprofit organizations).		15%
Drug courts using more than one agency for case management		38%

4. Treatment and Rehabilitative Services

Approximately 40% of the reporting programs (down from 67% in 1997) use one agency to provide treatment and rehabilitation services. The remaining 60% are using more than one provider. Approximately one quarter are using two–three principal agencies to provide treatment services and approximately one-third of the reporting treatment programs use four or more treatment providers.

Chart E-60: Agencies Providing Treatment Services

	1997	2000
Private treatment provider(s) under contract		
One	67%	40%
Two	--	10%
Three	--	6%
Four or more	--	34%
Staff supervised by the court system	10%	16%
County public health agency	18%	13%
Probation department	14%	9%
TASC program	7%	6%
Pretrial services agency	3%	2%

Other	(Several programs also use treatment and rehabilitation services provided by local alcohol and drug agencies or nonprofit organizations)	--	26%

The increased use of multiple providers has presented special management and coordination issues for drug court programs, including those relating to oversight and quality control of services being provided.

II. Nature of Screening, Assessment and Case Management Services Provided

A. Screening and Assessment

1. Use of Standard Assessment Instrument to Diagnose Addictive Disorders

All of the responding treatment providers indicated that substance abuse eligibility screening of potential drug court participants is based on established written criteria. Almost all (93%) of the responding drug court treatment providers (up from 75% in 1997) use a standard assessment instrument, the most common of which are: Addictions Severity Index (ASI) (46%); SASSI (30%); Michigan Alcohol Screening Test (MAST) (21%); and the Offender Profile Index (OPI) (3%).

2. Criteria Used to Screen for Program Eligibility

The primary goal of the drug court substance abuse screening process is to assure that individuals who are eligible for the drug court from a criminal justice perspective do, in fact, present significant substance abuse problems to warrant the application of drug court treatment and rehabilitation services. The criteria most frequently considered for this purpose noted by all of the responding providers are: participant's history of drug use; participant's admission of drug use at the time of screening; and the participant's history of drug-related offenses. Eighty-three percent of the responding treatment providers also use "motivation for treatment" as a screening criteria.[2]

3. Timeframe for Determining Eligibility for Treatment Following Determination of Drug Court Eligibility

After a defendant has met the justice system criteria for drug court eligibility, the determination of treatment program eligibility is automatic in twenty-two percent of the programs (down from 33% in 1997) and occurs within less than three days in an additional 45% of the programs. In 15% of the responding programs, however, the treatment eligibility determination takes more than one week. The reported time frames reported by the responding treatment providers are summarized in Chart VII-10 in Part Seven.

4. Assessment of Special Needs

The assessment process of most programs is designed to identify special needs presented by drug court participants. For most programs, these include identifying participants who: are dually diagnosed; present evidence of HIV/AIDS infection, sexually transmitted disease, tuberculosis, hepatitis or other physical problems; have learning disabilities; have employment and housing needs; or may be victims of domestic or other violence. The frequency with which these needs are assessed by the responding treatment programs is summarized in Chart VII-11 in Part Seven.

5. Effect of Mental Disorders on Program Eligibility

[2] The issue of "motivation for treatment" has raised increasing concern among many drug court practitioners, particularly in situations in which lack of "motivation" may be confused with the absence of culturally appropriateprogram components to address special issues of drug court participants relating to their racial, ethnic, gender, age, and/or personal backgrounds. Many programs are therefore reviewing screening and monitoring practices to assure that they are designed to engage drug court eligible defendants to the extent possible.

Approximately 80% of the responding treatment programs (down from 90% in 1997) appear to be accommodating individuals with at least some mental health disorders who are otherwise eligible for the drug court program by providing them special services. Approximately 40% of responding programs disqualify participants who present psychosis. The frequency with which other mental health disorders disqualify an otherwise eligible defendant from participating in the drug court is summarized in Chart VII-12 in Part Seven.

B. Individualized Client Treatment Plans

Almost all (98%) of the reporting programs indicate that individualized client treatment plans are developed for drug court participants. Fifty-three percent of reporting programs indicate that the court receives a summary of this treatment plan. Half of the respondents indicated that the treatment plan is updated at least every 60 days. Sixteen percent of the respondents indicated that these plans were updated at other frequencies, including: daily; monthly; at transitions from one phase to the next; or as needed.

C. Client Case Management

As noted in Section IB above, treatment agencies provide approximately 60% of the case management services for drug courts. The drug court case management function entails a range of core functions common to most programs and additional functions which vary from program to program. The most frequent (e.g. "core") case management functions performed include: referrals to ancillary rehabilitation services; preparing court reports; appearing at drug court status hearings; assessment; client supervision; urine monitoring; and conducting client orientation. Additional functions reported performed, with lesser frequency, include: treatment program visiting/monitoring; counseling (on and off site), and treatment plan development.

Ten percent of the responding treatment programs noted additional functions performed as part of case management, including: arranging for the participant's transportation to/from treatment; conducting home visits; preparing medication evaluations; and assisting with child care needs.

IV. Drug Court Treatment and Other Services

A. Treatment Services Provided

Chart E-61 below provides a summary of the range of treatment services available to participants in the reporting drug courts and the degree to which these are available to **all** participants, **most** participants, **some** participants, **very few** participants, or **not available** to any. A comparison of services available to **all** participants in 1997 with those available to **all** participants in 2000 is also provided. Since 1997, the availability of more than three hours per week of outpatient group therapy has increased by 25% (from 45% to 56%). In addition, the availability of short-term residential services for up to 30 days for all participants, although still very limited, has increased significantly (from 3% to 8%). Approximately 40% of the responding treatment providers also indicate that at least some treatment services are available in the local jail.

Chart E-61: Treatment and Related Services Available to At Least Some Participants

Services Provided to:	all participants		most partics.	some partics.	very few partics.	not avail.
	1997	*2000*				
Short-term residential						
(up to 30 days)	3%	8%	5%	41%	17%	12%
Longer-term residential						
30-60 days	3%	6%	1%	29%	16%	8%
61-90 days	1%	4%	1%	23%	17%	6%
over 90 days	1%	6%	1%	22%	19%	7%

Services Provided to:	all participants	most partics.	some partics.	very few partics.	not avail.

	1997	*2000*				
Outpatient group therapy (more than 3 hrs/wk)	45%	56%	17%	10%	2%	2%
Outpatient group therapy (up to 3 hrs/wk)	55%	41%	22%	13%	1%	4%
Outpatient individual therapy (more than 3 hrs/wk)	21%	17%	10%	15%	22%	10%
Outpatient individual therapy (up to 3 hours/week)	n/a	34%	16%	23%	9%	2%
Acupuncture	21%	13%	5%	5%	5%	40%
Relapse prevention	72%	79%	12%	5%	1%	1%

B. Capability to Refer Participants to Inpatient Substance Abuse Treatment

As Chart E-61 above indicates, most programs have the capability to refer at least a few individuals for inpatient services. Twenty-nine percent of responding programs report they can have at least a few participants admitted for up to 30 days; 28% can have them admitted for 31-90 days, and 22% of the responding programs report they can have at least a few participants admitted for over 90 days. In regard to the number of admissions permitted per participant, the reporting programs indicated that, for most participants, admissions are limited to no more than two.

C. Addressing Mental Health Needs

1. Frequency of Participants with Diagnosed Mental Health Disorders

Respondents were asked to estimate the frequency with which drug court participants presented the following mental health disorders: depression; bipolar disorders; anxiety disorders and psychosis. Most (93%) of the responding programs reported the prevalence of individuals with at least some of these disorders. Seven percent of the responding programs indicated that no information was available on this topic. The conditions that appear to be presented with increased frequency are: depression and, to a lesser degree, bipolar disorders.

2. Specialized Treatment Services Provided for Persons with Mental Disorders

Sixty-five percent of the responding programs have special in-house components to address the needs of dually diagnosed participants and indicate they have dedicated staff to serve as liaison/case managers for participants with mental health needs. Many (83%) treatment programs also have cooperative agreements or affiliations with mental health agencies.

D. Services to Address Educational and Physical Disabilities of Participants

Approximately two-thirds of the responding drug court treatment providers indicated that they have adapted their services to address special education and physical disability needs of participants, including: learning disabled (47%); participants with below-level reading achievement; (61%); physical impairment (25%); services for the blind (25%); services for the deaf (29%); and accommodations for persons with impaired physical mobility (29%).

E. Medications Permitted

1. Prescription Medications (including anti-depressants)

All but three (1.7%) of the responding treatment programs permit participants to take prescription medications, including anti-depressants. This policy has remained consistent with that reflected in the 1997 survey. Most programs, however, indicate that the drug court works closely with the prescribing physician to make him/her aware of the participant's addiction and the need to prescribe non-addictive medications, if available.

2. Use of Pharmacotherapeutic Interventions

Approximately 20% of the reporting programs have specific policies prohibiting the use of any pharmacological interventions. An additional 19% indicate the issue as to whether to permit these interventions has not yet been raised. The remaining 61% of the reporting programs which permit pharmacological interventions usually limit these to specific interventions, such as antabuse or naltrexone. Approximately one-third [3] of these programs require the individual to withdraw from usage within a specified period following program admission. Chart VII-17 in Part Seven provides a list of the programs permitting pharmacological interventions and their policies regarding their use.

F. Use of Alcohol by Drug Court Participants

Over 94% (up from 75% in 1997) of the reporting programs prohibit the use of alcohol and an additional five percent strongly discourage its use. Ninety-four percent of respondents indicate there are sanctions for alcohol use by participants.

G. Adjuncts to Treatment

Responding treatment programs report the use of a variety of adjuncts to support the treatment services provided, the most frequent of which are: relapse prevention strategies; 12-step programs; and community mentors (80% compared with 42% in 1997). The following are the most frequently noted:

	1997	2000
Relapse prevention	96%	97%
12-step programs off premises	88%	95%
Community mentors	42%	80%
Cognitive restructuring	60%	75%
12-step programs on premises	46%	47%
Acupuncture	40%	28%

H. Provision of Support and Rehabilitative Services

A list of the general and special support and rehabilitation services provided by the responding drug court treatment programs to drug court participants is provided in Chart VII-18 of Part Seven. These include: relapse prevention; life skills; family counseling; anger management; education/GED; stress management; vocational training; parenting; public health; housing; transportation; food/clothing; mentors; and child care services. Increases in frequency of service provision has occurred in almost all areas since 1997, with particular increases noted in parenting, child care, and mental health services.

I. Services for Special Populations

1. Special Components Developed

Among the most common special service components being provided by drug court treatment providers include those for: women generally (69%); the dually diagnosed (59%); pregnant or post-partum women (49%); parents (45%); victims of domestic violence (40%); those who are HIV positive (34%); and those dealing with childhood trauma (31%). Thirty-five percent of the responding programs also indicated that their treatment programs had special segments for ethnic and other populations

2. Child Care Services for Participants While Attending Treatment Sessions

Approximately 27% (up from 20% in 1997) of the responding treatment programs provide childcare services for participants while they are attending treatment sessions. Forty-nine percent also report that they developed special treatment service components for pregnant or post partum women.

[3] A number of programs that reported permitting the use of pharmacological interventions without requiring participants to withdraw from their use within a specified period of time have since indicated that they have either changed or are considering a change in this policy.

3. Policies re: Permitting Participants to Bring Children to Treatment Sessions

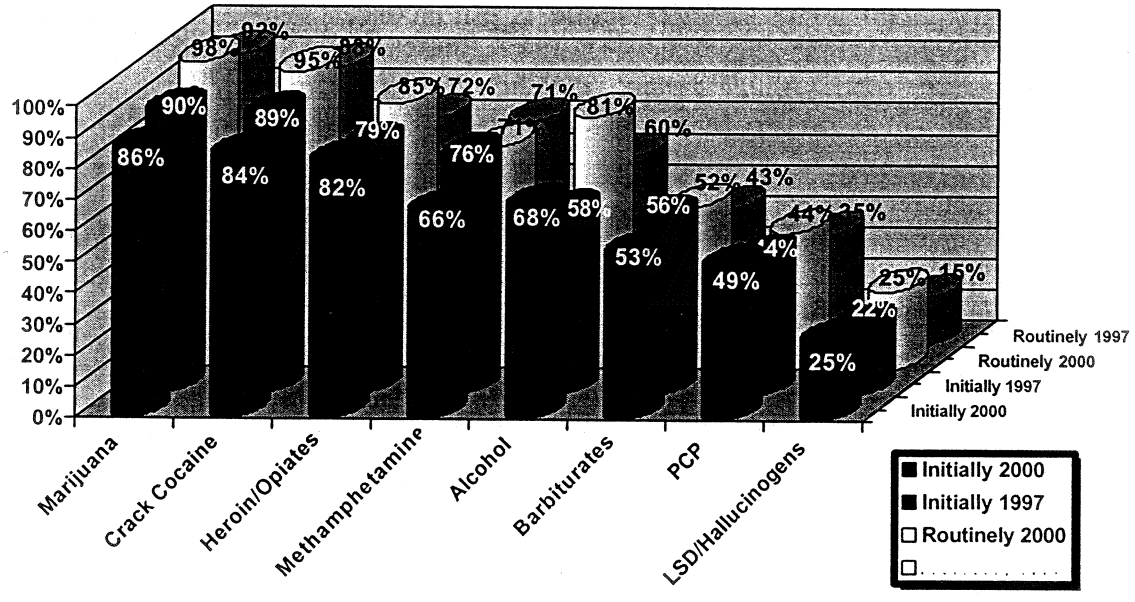
Approximately 21% of the responding treatment programs permit participants to bring children to the treatment sessions – a decrease from the 33% reported in 1997.

IV. Drug Testing

A. Drugs for Which Tests are Conducted

Ninety-three percent of the responding treatment programs indicate that they have a random testing procedure. Below is a synopsis of the drug testing practices of the reporting programs regarding the drugs for which initial testing is conducted and those for which routine testing is performed, with a comparison of the practices reported in 1997. The most significant change occurring since 1997 appears to be the increased frequency in routine testing for alcohol; heroine; PCP; barbiturates; and LSD or other hallucinogens.

Chart E-62: Drugs Tested For Initially and Routinely



B. Technology Used for Drug Testing

Most drug courts (73%) are using primarily point of contact processes (cups, strips, etc.). In addition, 61% of the treatment providers report the use of breathalyzers and 27% report the use of instrument testing – primarily either larger programs or programs that are using the drug testing services of agencies that are conducting drug tests for other programs in addition to the drug court. In most instances, multiple technologies are being used. In addition, three of the responding treatment programs utilize the patch, always in conjunction with at least one other drug testing technology and generally for a participant who has been out of the locality for awhile.

In terms of the substances used for drug testing, all of the responding treatment providers are using urine. A few programs also use blood and/or saliva when the urine sample is called into question, or when the participant is unable to provide a urine sample, as in the case of a participant with severe diabetes or with kidney problems.

C. Confirmation Testing

1. Frequency Conducted

Eighty-two percent of the responding programs indicated that they perform confirmation testing for positive tests. Sixty-five percent of the programs perform confirmation testing for less than 10% of the drug tests conducted. Twenty percent of the programs, however, perform confirmation testing for 50% or more of the tests conducted – a situation which warrants further review of the drug testing process in these programs.

Frequency of Conducting Confirmation Tests

For less than 10% of the tests	65%
Between 10-30% of the tests	15%
For about 50% of the tests	5%
For over 50% of the tests	15%

2. Frequency of Original Test Being Confirmed

For approximately two thirds of the programs (68%), the original positive result is confirmed over 95% of the time. However, for 21% of the programs, the original positive test is confirmed less than 70% of the time – an indication that the drug testing program and/or process may warrant review.

3. Policies Regarding Payment for Confirmation Testing

Over half (52%) of the responding treatment programs pay for the confirmation test regardless of the result. One third of the programs pay only if the original positive result is not confirmed; if the original result is confirmed, the participant pays. The remaining 15% of the programs require the participant to pay for confirmation testing, regardless of the result of the confirmation test.

D. Training On the Drug Testing Process

Respondents were asked whether training on the drug testing process was provided for the drug court staff. In 25% of the programs, training on the drug testing process is provided for all judges and other staff involved with the drug court. In the remaining 75% of responding programs, training is provided only for staff administering the test (61%) or not provided at all (14%).

E. Cost Per Test (Drug Screen)

Costs for each drug screen were reported to range between $1.00 – $2.00 for 36% percent of the responding programs, to over $5.00 for 35%. Below is a summary of the drug testing costs reported:

Cost	Frequency
$1.00 - $2.00	36%
over $2.00, less than $3.00	14%
over $3.00, less than $4.00	7%
over $4.00, less than $ 5.00	8%
over $5.00	35%

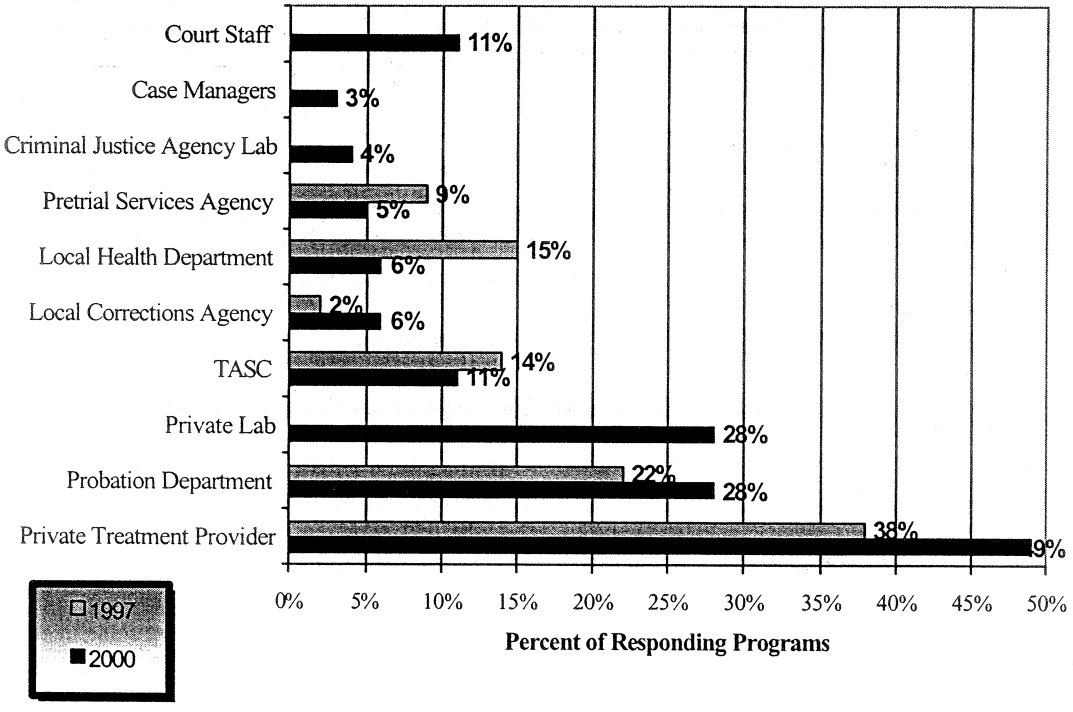
F. Number of Drugs Routinely Included in Drug Screens

Most drug courts (75%) are routinely testing for five or fewer drugs. Approximately one third test for three drugs. One-quarter of the responding programs, however, are routinely testing for six or more drugs.

G. Agency Performing Urinalysis

A variety of agencies are being used to conduct drug testing. Approximately 30% also indicate that two or more agencies are being used to perform the drug testing function for their programs. Increasing reliance is being made on treatment providers to perform urinalysis (49% in 2000 compared with 38% in 1997) and probation departments (28% in 2000 compared with 22% in 1997). Decreased use of pretrial services agencies and local health departments was also noted. The range of agencies involved in this function and the frequency of their involvement is summarized below:

Chart E-63: Agencies Performing Urinalysis for Drug Court Participants



H. Timeframe and Method for Reporting Test Results to Court

1. Time Frame

Time frames for reporting test results to the court appear to have remained constant for the approximately half of the programs providing results within less than 8 hours. However, for programs reporting more time for reporting test results, the frequency of requiring over 24 hours to report test results increased from 19% to 35%.

2. Method for Reporting Results to Court

Most programs provide written reports of urinalysis results to the drug court judge, frequently accompanied by oral reporting at court. Over half of the responding programs use multiple methods for transmitting the urinalysis results to the court. Thirty-two percent (up from 20% in 1997) are also entering the drug test results in a data base.

I. Maintaining Urinalysis Integrity

1. Detecting Waterloading

Fifty-eight percent (up from 45% in 1997) of the reporting programs indicate that waterloading is a significant concern in their jurisdiction; 12% were uncertain. Seventy-eight percent (up from 50% in 1997) of the responding programs indicated that procedures have been established to detect waterloading.

2. Detecting Other Adulteration

Sixty-five percent of respondents (up from 53% in 1997) indicated that sample adulteration was a significant concern in their jurisdiction; six percent were uncertain. Eighty-five percent (up from 62% in 1997) of respondents indicated that they have established procedures to detect adulteration.

J. Drug Court Program Response to Positive Urinalysis

1. Frequency of Judicial Response and Degree of Team Input into Response

Seventy-two percent of the responding treatment programs indicated that the judge usually makes some response to a positive drug test. While ultimately the judge makes the decision regarding the court's response to a positive drug test, responding treatment providers indicated that the judge's decision is reflective of recommendations from various participating agencies/entities. Fifty-two percent of the responding treatment providers felt the judge's response reflected the treatment provider's recommendation; 26% indicated that the judge's response was reflective of the team's recommendation. The remaining responding treatment providers felt it was reflective of recommendations of some, but not all, of the drug court team.

2. Common Judicial Responses to Positive Drug Tests

Judicial responses to positive drug tests reported by treatment providers include: a judicial statement of concern; intensifying treatment; ordering short-term incarceration; requiring more frequent urinalyses and/or more frequent status hearings, or a combination of these responses. Chart E-64 provides a summary of the various judicial responses reported by treatment providers. Generally, these responses appear consistent with those reported in 1997 except for a significant increase in the use of detention.

Chart E-64: Judicial Responses to Positive Drug Tests Reported by Treatment Providers

Judicial Response	1997	2000
Judicial statement of concern	77%	69%
Intensifying treatment	n/a	7%
More frequent urinalyses	67%	64%
More frequent contact w/ treatment provider	69%	75%
More frequent court status hearings	67%	62%
Assignment to "jury box"	26%	31%
Detention		
Up to five days	39%	57%
Five-ten days	16%	41%
Over ten days	10%	19%

3. Prior Notice to Participants of Potential Responses to Positive Drug Tests

All responding treatment providers indicated that the range of possible responses to a positive drug test were documented in writing and/or explained to the participant at time of program entry.

V. Costs/Funding for Drug Court Treatment Services

A. Number of Agencies and Staff Providing Services to Each Drug Court

1. Number of Providers Serving Each Drug Court Program

See Section IB4 above regarding the number of agencies providing drug court treatment services to individual drug courts.

2. Number of Treatment Staff Dedicated to the Drug Court

The level and number of staff dedicated to providing treatment and related services to drug court participants varies considerably among programs, often reflective of the number of participants served and the degree to which core drug court functions (e.g., case management, drug testing, etc.) are performed by other agencies. In general, the part-time and full-time staff (both counselors and support staff) reported as dedicated to the drug court has increased significantly since 1997, although this increase needs to be considered in light of the number of clients served and the counselor/client ratios resulting. Chart E-65 provides a summary of the number of treatment staff reported to be dedicated to drug courts in the following categories:

Chart E-65: Number of Treatment Staff Dedicated to the Drug Court

		1997	2000
Counselors	1-2 full-time	28%	34%
	1-2 part-time	19%	66%
	2-4 full-time	16%	28%
	2-4 part-time	14%	41%
	5 or more full-time	28%	28%
Support Staff			
	1-2 full-time staff	24%	37%
	1-2 part-time staff	25%	74%
	3-4 full-time staff	13%	17%
	3-4 part-time staff	42%	8%
Volunteers		25%	34%
Medical Personnel		7% (resident staff)	9%

In addition, three programs use two full-time acupuncturists, four programs use one full-time acupuncturist, and twenty-four programs use one or more part-time acupuncturists. The 34% of the reporting programs that use volunteers assign them to such functions as: assisting with relapse prevention services; clerical work; transportation; and residence verification. Several programs also use student interns.

B. Program Costs

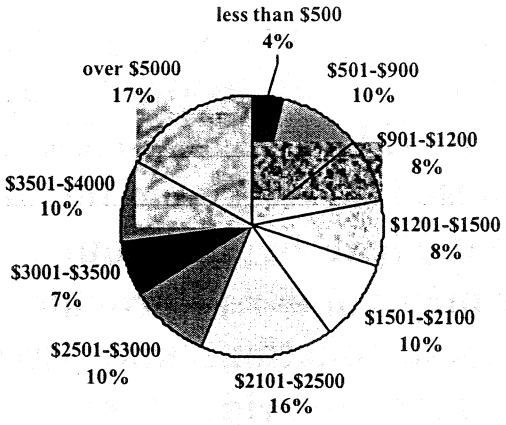
1. Average Cost Per Client for Treatment Services

The per client cost reported by treatment providers for drug court treatment services cannot be readily compared among programs because the nature and extent of

services provided by treatment providers varies significantly from program to program. Some treatment providers, for example, also conduct drug testing and/or provide case management; others do not, relying on these services to be provided by the probation department or the court. Even for those providers that may appear to provide similar functions, the extent of these functions may vary. For example, one provider may provide three outpatient group sessions per week of 45 minutes each for participants while another may provide four such sessions of one hour each. Given these factors which limit inter-program comparison, the following cost information was provided by sixty-percent of the responding treatment providers relating to costs per client for drug court treatment services.

Approximately 40% of those reporting cost information report that their cost per client is below $2,100; sixteen percent report annual costs per client between $2,100 and $2,500 per year. Twenty-seven percent of the responding treatment providers report annual costs from $2,501 - $4,000 per year, and 17% indicate their annual costs exceed $4,000 per year. The per client costs reported are closely related to the range and intensity of services provided, summarized in Chart VII-34 in Part Seven.

Chart E-66: Annual Treatment Provider Costs Per Client Reported



2. *Cost and Frequency of Drug Court Functions Performed*

The responding treatment providers were asked to indicate what services their reported annual costs per client covered. The covered services reported, in the order of frequency, included: outpatient group services; individual outpatient sessions; case management; and drug testing. There does not appear to be a correlation between the annual cost per client in the drug court program and the frequency with which these services are provided. See Chart E-67 below providing a summary of the functions performed within each cost classification reported.

Chart E-67: Frequency of Drug Court Functions Performed by Treatment Providers by Total Per Client Cost for Treatment Services

Services Provided by Treatment Agency	Less than $500 (N=5)	$501-$900 (N=13)	$901-$1,200 (N=10)	$1,201-$1,500 (N=10)	$1,501-$2,100 (N=12)	$2,101-$2,500 (N=20)	$2,501-$3,000 (N=13)	$3,001-$3,500 (N=9)	$3,501-$,4000 (N=12)	Over $4,000 (N=22)
Case Management	80%	69%	70%	70%	58%	80%	77%	100%	92%	76%
Drug Testing	80%	54%	70%	90%	75%	65%	92%	89%	100%	71%
Outpatient Group	80%	92%	100%	100%	92%	95%	100%	100%	67%	90%
Outpatient Individual	80%	69%	100%	100%	67%	95%	92%	100%	75%	86%

Services Provided by Treatment Agency	Less than $500 (N=5)	$501-$900 (N=13)	$901-$1,200 (N=10)	$1,201-$1,500 (N=10)	$1,501-$2,100 (N=12)	$2,101-$2,500 (N=20)	$2,501-$3,000 (N=13)	$3,001 - $3,500 (N=9)	$3,501-$,4000 (N=12)	Over $4,000 (N=22)
Inpatient	0%	15%	40%	70%	42%	20%	31%	33%	58%	38%
Screening for Substance Abuse Dependency	20%	62%	60%	80%	67%	90%	77%	89%	67%	71%
Assessment of Substance Abuse Treatment Needs	20%	85%	80%	80%	75%	85%	85%	100%	67%	71%
Medical Screening	0%	46%	40%	40%	33%	45%	31%	22%	25%	43%
Other Support Services	0%	23%	30%	10%	25%	10%	31%	44%	17%	38%

Overall, the frequency with which drug court treatment-related functions were reported to be performed by treatment providers was as follows:

Screening for subs tance dependency 68%
Assessment of substance abuse treatment needs 77%
Screening for infectious and/or contagious medical conditions 35%
Outpatient services:

- **Group sessions 91%**

(Approximate total number of sessions (average) per client = 70 sessions)

- **Individual sessions 84%**

(Approximate total number of sessions (average) per client = 22 sessions)

Some inpatient service availability for some clients 32%
Case management 77%
Drug testing 77%

Chart E-68, which follows, presents the responding program responses regarding costs per client and services covered in these costs, organized by increasing order of per client costs:

Chart E-68: Average Annual Cost Per Client for Treatment Services and Services Which Those Costs Cover

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Cullman	AL	$3,501-$4,000	YES	YES	YES	18	YES	24	YES	YES	YES			
Mobile	AL	$2,101-$2,500	YES	YES	YES		YES			YES	YES			
Phoenix	AZ	$501 - $900	YES	YES	YES	64	YES	6			YES			
Phoenix	AZ	$501 - $900			YES	36				YES	YES			

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Tucson	AZ	$1,501-$1,800			YES	88								
Chico	CA	$1,801-$2,100			YES	36	YES		YES		YES			
Compton	CA	Over $4,000	YES	YES	YES		YES	10		YES	YES	YES	YES	
Fairfield	CA	$3,001-$3,500	YES	YES	YES	78	YES	28		YES	YES			
Indio	CA	$1,801-$2,100	YES	YES	YES	215	YES	52		YES	YES		YES	Transportation costs
Lakeport/ Clearlake	CA	$2,101-$2,500	YES	YES	YES	36	YES	24	YES	YES	YES	YES		
Los Angeles	CA	$3,501-$4,000	YES	YES		200	YES	75	YES	YES	YES	YES		
Los Angeles	CA	over $4,000: $4500-$4800	YES	YES	YES	175	YES	30	YES	YES	YES			
Mendocino	CA	$501 - $900	YES	YES	YES	40	YES	160		YES	YES			
Modesto	CA	over $4,000	YES	YES	YES	3	YES	1						
Napa	CA	$3,501 $4,000	YES	YES					YES	YES	YES		YES	Mental Health.
Redding	CA	$1,501-$1,800	YES		YES	100	YES	20	YES	YES	YES			
Redlands	CA	$3,501-$4,000	YES	YES	YES	182	YES	52		YES	YES	YES		
Richmond	CA	$1,201-$1,500	YES	YES	YES	2	YES	1		YES	YES	YES		
Riverside	CA	$2,101-$2,500			YES	157	YES	78		YES	YES			
San Bernardino	CA	$3,001-$3,500	YES	YES	YES	182	YES	15		YES	YES	YES		
San Diego	CA	$3,001-$3,500	YES	YES	YES	182	YES	13		YES	YES			
San Diego	CA	Over $4,000: $7,680	YES	YES	YES	190	YES	15		YES	YES		YES	Medical
Santa Ana	CA	$2,501-$3,000	YES	YES	YES	75	YES	50	YES	YES	YES	YES		
Santa Clara	CA	Unavail	YES		YES				YES	YES	YES	YES		
Santa Cruz	CA	Unavail		YES	YES	213	YES	114			YES	YES		
Santa Maria/ Santa Barbara	CA	Over $4,000: $5,000-$6,000 min.	YES	YES	YES		YES	1		YES	YES	YES	YES	Job Training Network; Educational support
Santa Rosa	CA	$2,101-$2,500	YES	YES	YES		YES		YES					
Stockton	CA	Unavail	YES	YES	YES	60	YES	12						
Vista	CA	$2,501-$3,000	YES	YES	YES	182	YES	12		YES	YES			
Waterbury	CT	$3,501-4,000	YES	YES	YES		YES		YES	YES	YES			
Fort Lauderdale	FL	$1,201-$1,500	YES	YES	YES		YES			YES	YES			
Gainesville	FL	$501 - $900	YES		YES	80	YES	10		YES	YES	YES	YES	Transportation and childcare

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Hillsborough	FL	Over $4,000	YES	YES	YES		YES			YES	YES	YES		
Jacksonville	FL	$1,801-$2,100	YES	YES	YES	40	YES	6	YES	YES	YES	YES		
Jacksonville	FL	Over $4,000: $4169	YES		YES	38			YES	YES	YES			
Key West	FL	$1,201-$1,500	YES	YES	YES	52	YES	42		YES	YES			
Melbourne	FL	< $500	YES		YES	3	YES	2						
Miami	FL	$2,101-$2,500	YES	YES	YES		YES				YES			
Orlando	FL	Unavail	YES	YES	YES	44	YES	11			YES	YES		
Panama City	FL	$3,501 $4,000	YES	YES	YES	232	YES	18	YES	YES	YES	YES		
Pensacola	FL	$2,501 $3,000	YES	YES	YES		YES			YES	YES		YES	
St. Petersburg	FL	over $4,000	YES	YES	YES		YES		YES	YES	YES	YES	YES	
Tampa	FL	$501 – 900	YES	YES	YES	84				YES	YES	YES		
Tampa	FL	$901 - $1,200	YES	YES	YES	5	YES	6		YES	YES	YES	YES	Employment
Tampa	FL	$2,101-$2,500	YES	YES	YES	54	YES	15		YES	YES	YES		
Tampa	FL	$2,101-$2,500	YES	YES	YES	54	YES	15		YES	YES	YES		
Tampa	FL	$2,501-$3,000	YES	YES	YES		YES		YES	YES	YES	YES	YES	
Tampa	FL	over $4,000							YES					
Tampa	FL	Unavail	YES	YES										
Atlanta	GA	$1,501 $1,800	YES	YES	YES									
Glynn-Camden	GA	over $4,000: $6,000	YES	YES		5	YES	3		YES	YES	YES	YES	Literacy / Halfway house
Honolulu	HI	Unavail	YES	YES	YES					YES	YES		YES	Mental health screening
Coeur d' Alene	ID	$1,201-$1,500			YES		YES			YES	YES			
Kankakee	IL	$2,501-$3,000			YES	25	YES	18			YES			
Madison Co.	IL	$1,201-$1,500	YES	YES	YES	12	YES	1				YES	YES	Transportation Childcare, Vocational Education Counseling.
Rockford	IL	$2,101-$2,500	YES	YES	YES		YES			YES	YES			
Gary	IN	$501 - $900	YES	YES	YES	1	YES	1		YES	YES			
Gary	IN	$2,101-$2,500	YES	YES	YES	14	YES	6	YES	YES	YES	YES		
Indianapolis	IN	$2,101-$2,500			YES	110	YES	10		YES	YES	YES		

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Terre Haute	IN	$501 - $900	YES	YES	YES	36	YES	12	YES	YES	YES	YES	YES	Full I.P. Care, Psychiatrist, Nutrition, Therapy, Recreation, Aftercare, Relapse Prevention.
Des Moines	IA	Unavail	YES							YES	YES			
Wichita	KS	$501 - $900	YES	YES	YES	48	YES	6		YES	YES			
Alexandria	LA	$2,101- $2,500	YES	YES	YES	130	YES	5		YES	YES	YES		
Monroe	LA	$501 - $900		YES	YES	20	YES	2	YES	YES	YES	YES	YES	HIV, Voc.Rehab
New Iberia	LA	$2,101- $2,500	YES		YES	3	YES			YES	YES			
New Orleans	LA	$501 - $900	YES		YES	5					YES	YES		
New Orleans	LA	$501 - $900	YES		YES	5					YES	YES		
Oak Grove	LA	$901 - $1,200	YES	YES	YES	3	YES	3		YES	YES	YES		
St. Tammany	LA	$2,101- $2,500	YES	YES	YES		YES		YES	YES	YES	YES		
Thibodaux	LA	$2,501- $3,000	YES	YES	YES	156	YES	12		YES	YES	YES		
Franklin	LA	$2,501- $3,000	YES	YES	YES	132	YES	12	YES	YES	YES	YES		
Baltimore	MD	$901 - $1,200			YES		YES		YES		YES			
Edgewood	MD	< $500		YES										
Haverhill	MA	$3,001- $3,500	YES	YES	YES	200	YES	50		YES	YES			
Detroit	MI	$3,501- $4,000		YES		3	YES	1	YES					
Grand Rapids	MI	< $500	YES	YES	YES	18	YES	10		YES	YES			
Kalamazoo	MI	$2,101- $2,500			YES	12	YES	15		YES				
Kalamazoo	MI	$2,101- $2,500			YES	12	YES	15		YES				
Warren	MI	Unavail		YES	YES	20	YES	10	YES	YES	YES	YES		
Minneapolis	MN	$901 - $1,200	YES	YES	YES		YES		YES	YES	YES	YES	YES	
Columbia	MO	Unavail	YES	YES	YES		YES		YES	YES	YES	YES	YES	
Eaton	MO	< $500	YES	YES	YES	25	YES	12						
Jefferson City	MO	Over $4,000	YES	YES	YES	2	YES	1		YES	YES	YES		
Kansas City	MO	$2,501- $3,000		YES	YES	156	YES	55						
Kansas City	MO	$3,501- $4,000	YES	YES	YES		YES		YES	YES	YES			
Marshall	MO	$3,501- $4,000	YES	YES	YES	104	YES	52		YES	YES		YES	as/if needed

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Sykeston/ East Prairie	MO	$3,001-$3,500	YES	YES	YES	189	YES	30		YES	YES		YES	Family involvement, Co-dep. Group, Family Therapy
Omaha	NE	$3,001-$3,500	YES	YES	YES	12	YES	6	YES	YES	YES		YES	Office Visits telephone calls; unscheduled therapy appointments
Las Vegas	NV	$1,801-$2,100	YES	YES	YES		YES			YES	YES	YES	YES	Job training, housing, education
Collings-wood	NJ	$2,101-$2,500	YES	YES	YES		YES			YES	YES			
Elizabeth	NJ	$2,501-$3,000	YES	YES	YES		YES							
Albuquerque	NM	$1,201-$1,500		YES	YES	80	YES	10		YES	YES			
Albuquerque	NM	$1,801-$2,100		YES	YES		YES			YES	YES			
Farmington	NM	$2,501-$3,000		YES	YES		YES			YES	YES		YES	Relax therapy
Santa Fe	NM	$901 - $1,200	YES	YES	YES	64	YES	4						
Santa Fe	NM	$901 - $1,200	YES	YES	YES		YES	4		YES	YES			
Bronx	NY	Unavail		YES	YES		YES				YES	YES	YES	Vocational Educational
Central Islip	NY	$501 - $900					YES							
Kew Gardens	NY	Unavail	YES	YES										
Lackawanna	NY	Over $4,000: $12,480	YES	YES	YES	4	YES	1	YES	YES	YES	YES	YES	Case management
New City	NY	$3,501-$4,000	YES	YES										
Niagara Falls	NY	over $4,000:$ 13,500	YES	YES	YES	90	YES	30	YES	YES	YES	YES		
Rochester	NY	Unavail	YES	YES	YES		YES		YES	YES	YES	YES	YES	Residential, job training, etc. Referrals.
Syracuse	NY	Unavail	YES	YES	YES		YES		YES	YES	YES			
Town of Amherst	NY	$1,201-$1,500	YES	YES	YES	60	YES	15		YES	YES	YES		
Town of Cheektowaga	NY	$1,201-$1,500	YES	YES	YES	60	YES	15		YES	YES	YES		
Akron	OH	Unavail	YES	YES	YES	86	YES	12			YES	YES	YES	Acupuncture; Referral to other needs.
Canton	OH	$2,501-$3,000	YES	YES	YES					YES	YES			

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Cincinnati	OH	over $4,000	YES	YES	YES	106	YES	20	YES	YES	YES	YES	YES	food, transportation, residential care
Hamilton	OH	over $4,000; 5000+			YES	94	YES	73						
Mansfield	OH	$501 - $900			YES	18	YES	3						
Mansfield	OH	over $4,000: $4,000-$8,000			YES	32			YES				YES	Intensive Outpatient Program 12-16 sessions.
Sandusky	OH	$3,501-$4,000	YES	YES	YES	60	YES	34						
Toledo	OH	$1,201-$1,500		YES	YES	68	YES	10						
Youngstown	OH	$1,501-$1,800		YES						YES	YES	YES		
Ada	OK	over $4,000: 4500			YES		YES							
Okmulgee	OK	Unavail	YES	YES	YES		YES		YES					
Purcell	OK	over $4,000	YES	YES	YES	164	YES	8		YES	YES			
Seminole	OK	over $4,000: $9160			YES	60	YES	48						
Eugene	OR	over $4,000: yr /tx = $ 5,550	YES	YES	YES	54	YES	8		YES	YES			
Grants Pass	OR	$901 - $1,200	YES	YES	YES	156	YES	52			YES			
Klamath Falls	OR	$2,101-$2,500	YES	YES	YES	125	YES	12		YES	YES	YES	YES	Referrals
Roseburg	OR	$901 - $1,200	YES	YES	YES	3	YES	5	YES	YES	YES	YES	YES	
Chester	PA	$901 - $1,200			YES		YES		YES	YES	YES			
Philadelphia	PA	$1,501-$1,800	YES	YES	YES	2	YES	1	YES	YES	YES		YES	
Pittsburgh	PA	$3,501-$4,000	YES	YES	YES		YES		YES	YES	YES	YES		
York	PA	$3,001-$3,500	YES		YES	1	YES	1	YES		YES			
San Juan	PR	$2,101-$2,500	YES	YES	YES	48	YES	24		YES	YES	YES		
Memphis	TN	Unavail	YES	YES										
Austin	TX	< $500	YES	YES	YES		YES							
Conroe	TX	Over $4,000: $5,000	YES	YES	YES	160	YES	80		YES	YES			
Charlottesville	VA	Unavail	YES		YES				YES	YES				
Newport News	VA	$3,001-$3,500	YES	YES	YES		YES			YES	YES		YES	
Roanoke	VA	$901 - $1,200			YES	55	YES							

Jurisdiction	State	SERVICES PROVIDED												
		Ave. cost per client	Case Mgmt	Drug Testing	Out-patient Group	# of Out patient Group Sessions	Out-patient Individ.	# of Out patient Individ. Sessions	In-patient	Screening for Sub. Depend.	Assmnt of Substance Abuse Tx Needs	Med. Screen.	Other Support Services	Other Support Services
Bellingham	WA	$2,101-$2,500	YES							YES	YES			
Lacey	WA	$2,101-$2,500	YES		YES	85	YES	30		YES	YES		YES	
Mount Vernon	WA	$3,001-$3,500	YES	YES	YES		YES	48	YES	YES	YES	YES	YES	mental health
Neah Bay	WA	Unavail	YES	YES	YES	150	YES	50		YES	YES			
Port Orchard	WA	Unavail		YES	YES	3	YES	1	YES	YES	YES			
Seattle	WA	$1,201-$1,500	YES	YES	YES		YES		YES		YES			
Madison	WI	$2,501-$3,000	YES	YES	YES		YES		YES	YES	YES			
Evanston	WY	$2,501-$3,000	YES	YES	YES	3	YES	46		YES	YES		YES	Residential treatment in the jail plus 4 week of transitional care following residential treatment.

3. *Applicable Medicaid Reimbursement Rates*

Over half (55%) of the responding treatment providers indicated that there are established Medicaid reimbursement rates in their respective jurisdictions for substance abuse services. A summary of the applicable Medicaid reimbursement rates reported is provided below.

Chart E-69: Applicable Medicaid Reimbursement Rates for Drug Court Services

Service	Average Amount	Median Amount	Range
Assessment of substance abuse treatment needs	**$77**	**$75**	**$35-$200**
Outpatient group therapy session			
Indicated lengths of time:			
30 minutes	**$17**	**$17**	**$8 - $25**
45-50 minutes	**$32**	**$32**	**$18 - $46**
60 minutes	**$28**	**$26**	**$9 - $81**
90 minutes	**$33**	**$31**	**$15 - $78**
90 -120 minutes	**$41**	**$42**	**$23 - $56**
180 minutes	**$75**	**n/a**	**n/a**
Outpatient individual therapy sessions			
Indicated lengths of time:			
30 minutes	**$20**	**$20**	**$15 - $25**
50 minutes	**$62**	**$63**	**$8 - $68**

60 minutes	$65	$64	$48 - $120

The applicable Medicaid rates reported by individual responding jurisdictions are provided in Chart VII-37 (b) of Part Seven.

4. *Total Program Capacity Annually*

The total annual capacity for most of the reporting programs ranges between 100 and 500 participants, with some of the larger programs (Los Angeles, Miami, and Rochester, for example) handling significantly higher volume. The following is a summary of the annual enrollment capacities of the reporting programs:

Chart E-70: Annual Treatment Program Capacity

Annual Capacity	1997	2000
under 100	11%	36%
101 – 200	36%	29%
201 – 300	23%	13%
301 – 400	12%	7%
401 – 500	10%	9%
501 – over	8%	7%

5. *Funding Sources for Treatment Services*[4]

Fifty percent of the responding treatment providers indicate that Medicaid reimbursements are being used to contribute to the costs for treatment services – a significant increase from that reported in 1997. Below is a summary of the variety of funding sources reported by drug court treatment providers to be used to support the drug court treatment services being provided.

Chart E-71: Percentage of Responding Programs Receiving Funds From Sources Listed

Specially dedicated federal funds for the drug court program	33%
Specially dedicated local funds for the drug court program	6%
Participant fees	11%
Third party – insurance reimbursements	4%
Medicaid reimbursements	50%
Other public funding	6%
Private foundation	2%

6. *Participant Fees Charged For Treatment Services*

Eleven percent of the responding treatment programs indicate that participants are charged fees for drug court treatment services[5]. In most instances (87%), the fee is fixed; for the remaining providers, the fee is based on a sliding scale.

C. Impact of Managed Care[6] on Drug Court Treatment Services

[4] See also Part One regarding funding sources reported by judicial system officials to support all components of the drug court program.

[5] These fees are in addition to p rogram fees reported by judicial system officials in Part I.

[6] By "managed care" we refer to various strategies being used to control the utilization, cost, and delivery of health care services.

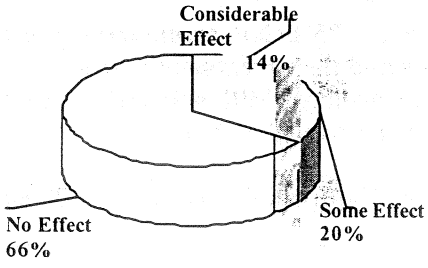
Drug court treatment providers were asked to identify the impact of managed care on the following areas of drug court treatment services: quantity of treatment services; quality of treatment services; entities authorized to provide services; and policies of the state licensing agency.

Note: Because a significant number of the responding treatment programs are using federal or state grant funding, they may not be subject to managed care requirements to the same degree as treatment providers who do not have access to these funding sources. The response summaries below should be reviewed with that caveat.

1. Quantity of treatment services available to participants

Chart E-72: Impact of Managed Care on QUANTITY of Services Available

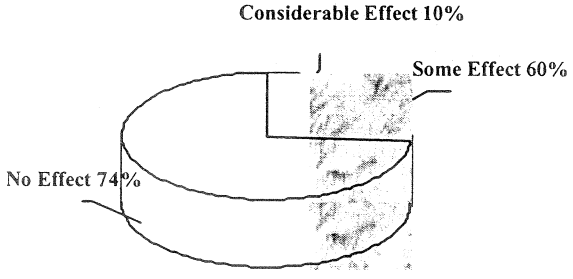
Sixty-six percent (up from 52% in 1997) of responding treatment programs indicate that managed care has had no effect on the quantity of services provided to drug court participants, 20% reported some effect, and 14% indicate managed care has considerable effect.



2. Quality of treatment services available to participants

Chart E-73: Impact of Managed Care on QUALITY of Services Available

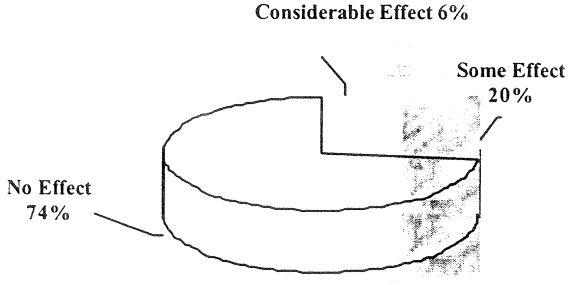
Seventy-four percent (up from 58% in 1997) of responding programs indicate that managed care has had no effect on the quality of treatment services available to participants.



3. Entity authorized to provide treatment services to participants

Chart E-74: Impact of Managed Care on ENTITY Authorized

In terms of the entity authorized to provide treatment services to drug court participants, 74% of the responding treatment providers (up from 59%) indicated that managed care had no effect.



4. Policies of State Licensing Agency

Seventy percent of respondents indicated that the state-licensing agency has not promulgated any special policies regarding the application of managed care provisions for drug court clients. However, respondents from the following states indicated that the state licensing agency had at least initiated policy in this area:

Florida: providers noted that the state has re-written laws (64D) to take managed care into consideration;

New York: providers noted that clients benefit from a statewide criminal justice "carve out", which provides that court mandated treatment is to be paid for by managed care Medicaid companies;

Illinois: providers noted that the state designates how many drug court hours of treatment one individual can access in a 1-year period;

Louisiana: providers noted that state requires a licensed counselor for drug court cases.

Respondents from Iowa and Oregon indicated that their state licensing agencies were supportive of drug courts although they did not reference any specific policies in effect at the time.

VII. Treatment Provider Contacts With Program Participants

A. Nature and Frequency of Contacts with Drug Court Participants

Chart E-75 below summarizes the nature and frequency of contact between drug court participants and their treatment provider during the duration of the drug court program. (See also Part One regarding additional contacts by the drug court judge and other justice system officials with drug court participants.)

Chart E-75: Nature and Frequency of Treatment Provider Contacts with Drug Court Participants

Service	Frequency Reported					
Treatment/ Counseling Sessions	Phase I-Group	Phase I-Individual	Phase II-Group	Phase II-Individual	Phase III-Group	Phase III-Individual
More than 4 sessions/ week	36%	21%	15%	11%	7%	9%
3-4 sessions per week	33%	9%	33%	12%	9%	5%
2 sessions per week	16%	10%	27%	7%	22%	8%
1 session per week	7%	40%	15%	40%	18%	37%

Chart VII-43 in Part Seven provides additional information relating to the nature of treatment provider contacts with drug court participants (e.g.,group sessions, individual sessions, length of sessions, etc).

Frequency of urinalysis is at least weekly for 92% of the programs during Phase 1, 87% of the programs during Phase II, and 59% of the programs during Phase III.

Chart E-76: Frequency of Urinalysis Required

Frequency	Phase I	Phase II	Phase III
Daily	11%	2%	1%
At least 2 x week	56%	44%	20%
At least weekly	25%	41%	38%
Every other week	4%	7%	27%
Monthly	3%	4%	12%
Other	1%	1%	2%

B. Comparison of Drug Court Treatment Services with Treatment Services Provided to Typical Drug Court Participants Prior to Instituting the Drug Court

Respondents were asked to compare the nature and availability of treatment services provided to drug court-eligible clients prior to the implementation of the drug court compared with those available following drug court implementation. Their responses were as follows:

1. Extensiveness of Treatment Services Available Prior to the Drug Court

Seventy-four percent of the responding treatment providers indicated that the services prior to drug court were less extensive than through the drug court program.

2. Agency Providing Treatment Services Prior to Implementation of the Drug Court

In those jurisdictions in which a drug court-eligible participant would have been able to access some court-ordered treatment through existing agencies prior to drug court, respondents indicated the treatment services were provided as follows:

probation supervision/referral to a private provider:	57%	provided by the TASC program	10%
probation supervision/referral to a county agency	21%	provided by probation	7%
provided by pretrial service agency	5%		

Sixteen percent of the responding programs indicated the services would have been provided by multiple providers.

3. Funding of Treatment Services

Responding treatment programs cited the following sources of funds for treatment services to drug court eligible participants prior to drug court program implementation

Participant fees	41%	State funds	33%	Private insurance	30%
Medicaid	27%	County funds	16%	Federal funds (unspecified source)	8%

VII. Treatment Program Requirements and Experience to Date

A. Average Length of Time Participants Spend in Treatment

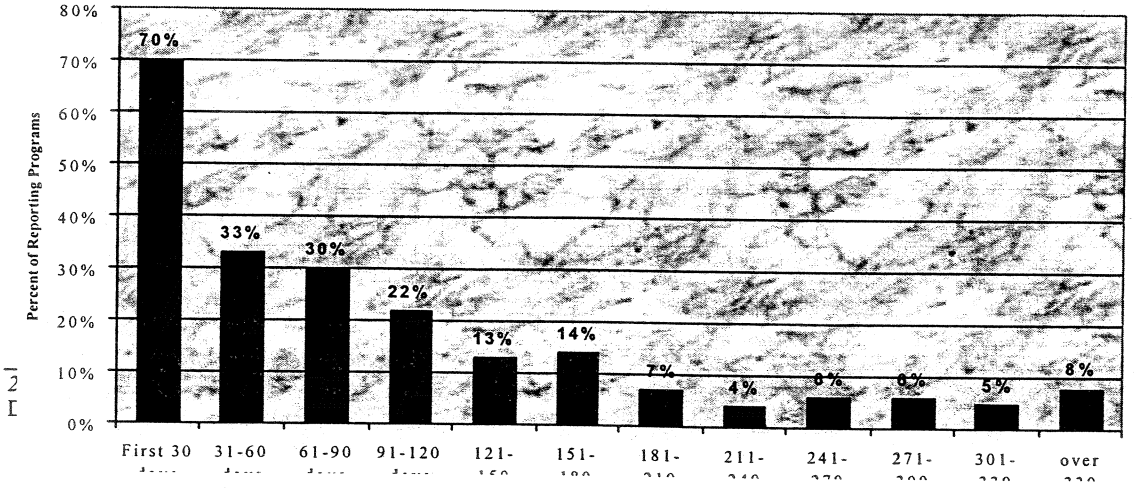
The length of time required to complete drug court varies by program. Most (74%) of the responding treatment programs require participants to spend twelve months or more in treatment. Only five percent of the responding programs permit participants to graduate with less than ten months of participation. Seventy-six percent of the responding programs indicated that participants must attend treatment sessions throughout the period of their participation in the drug court; the remaining 24% indicated that participants can complete the treatment component and then still be required to remain in the drug court for an aftercare phase which generally consists of required AA/NA attendance, drug testing, supervision, and court status hearings. (See also Section I6, Part I above).

B. Point in Time and Situations in Which Relapse Has Been Most Common

1. Timeframe

Chart E-77 below lists the most frequent time frames in which relapse treatment providers that relapse has most commonly occurred within the reporting drug courts. The first 30 days continues to be the period in which relapse is most common, with decreasing frequencies as participants progress. Slight increases were also noted during the sixth-seventh and eleven months.

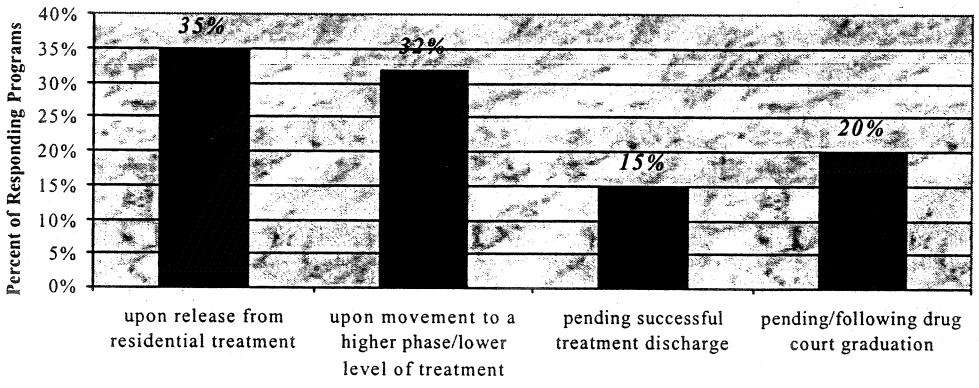
Chart E-77: Time Frame When Relapses Are Most Frequently Reported



3. *Situations Triggering Relapse*

The most frequently reported situations triggering relapse are:

Chart E-78: Situations Reported Triggering Relapse



Many drug courts have used this information to develop special relapse prevention components at these time intervals or for these situations. Several drug courts, concerned with the frequency of relapse occurring around the time of graduation, are also modifying the "graduation" ceremony to portray it more as a **milestone** than as completion of the treatment process.

VIII. Program Follow-Up and Aftercare

A. Aftercare Services

1. Mechanisms for Tracking Relapse by Graduates

Forty-one percent of responding treatment programs indicate that they have established mechanisms for tracking relapse of drug court graduates. These mechanisms include: telephone interviews; surveys; arrangements with prosecutors to review arrest and booking sheets; follow-up by prosecutor regarding new arrests; random urine tests (for participants on probation); and coordination with probation. See also Part One regarding justice system follow-up with drug court participants.

2. Provision of Aftercare Services

Approximately 78% of the treatment providers report that some aftercare services are provided to drug court participants, with slightly over half of these providers limiting services to drug court graduates and the rest providing aftercare services to any participant.[7] The aftercare services offered include: relapse prevention; mentoring assistance with current participants; emergency hotlines; and other support services. Compared with aftercare services reported in 1997, the frequency of provision of aftercare services appears to have declined. A summary of the aftercare services provided by the responding treatment programs is provided in Chart VII-48 of Part Seven.

3. Alumni Groups

Thirty percent of respondents indicate that they have formed an alumni association, and an additional 33% indicated that one is being planned. The responding programs described their alumni activities as consisting of the following components: support group for program alumni (100%); mentoring to current drug court participants (88%); mentoring to new alumni (80%); networking

[7] See also Part One for discussion of aftercare services based on responses from judicial system officials.

opportunities for alumni and participants (76%); representing drug court program in the community (62%); community service activities (50%); and relapse prevention/emergency hotline services (34%).

Other services reported performed by alumni include: recreational activities and establishment of in-house AA programs.

4. Funding, Referral, and Provision of Aftercare Services

a. agency providing aftercare services

Almost all programs providing aftercare services indicate that these services are provided by the treatment provider.[8]

b. referral procedures

Policies among the responding treatment providers regarding referral to aftercare services were reported to be as follows:

Referral by the drug court judge	27%	Referral by the treatment provider only	24%
Referral by the treatment provider	60%	Participant can enroll voluntarily	54%
Either treatment provider referral or participant's voluntary enrollment	26%		

c. funding of aftercare component

In terms of funding aftercare services, most of the responding programs noted that the aftercare component did not operate separately from the drug court. For those providers which had obtained funding for aftercare services, the principal sources of funding were: client fees and state or local funds. Several programs reported that no costs were incurred for the aftercare component, noting services were provided primarily by volunteers and support from alumni.

B. Follow-up With Participants

1. Exit Interviews

Eighty-five percent of the responding treatment providers conduct an exit interview with participants. Fifty-three percent of the respondents conduct an exit interview with all participants, and 32% conduct exit interviews with those who successfully complete the program. The nature of information compiled in those interviews frequently includes: participants' plans for sustaining their recovery (76%); employment status (74%); family/household status (67%); educational status (67%); mental health (54%); public assistance/welfare status (52%); and physical health (51%).

2. Conduct of Follow-up

Approximately 27% of the responding treatment providers indicated that they follow-up with graduates after they have left the drug court program, and 12% follow up with all participants. The follow-up periods range from six months to two years. In addition to the time frames referenced above, one program reported the follow-up period to be 30 days.

3. Follow-up Mechanisms

The responding treatment providers indicated that they utilize three primary mechanisms to obtain follow-up information on drug court participants: telephone interviews (44%), written surveys (28%), and focus group meetings (12%). Programs also rely on arrest records, probation contacts, and alumni activities for follow-up information.

[8] See also discussion of aftercare services in Part One.

4. Information Compiled

For those treatment providers who conduct participant follow-up, the following type of follow-up information is being compiled:

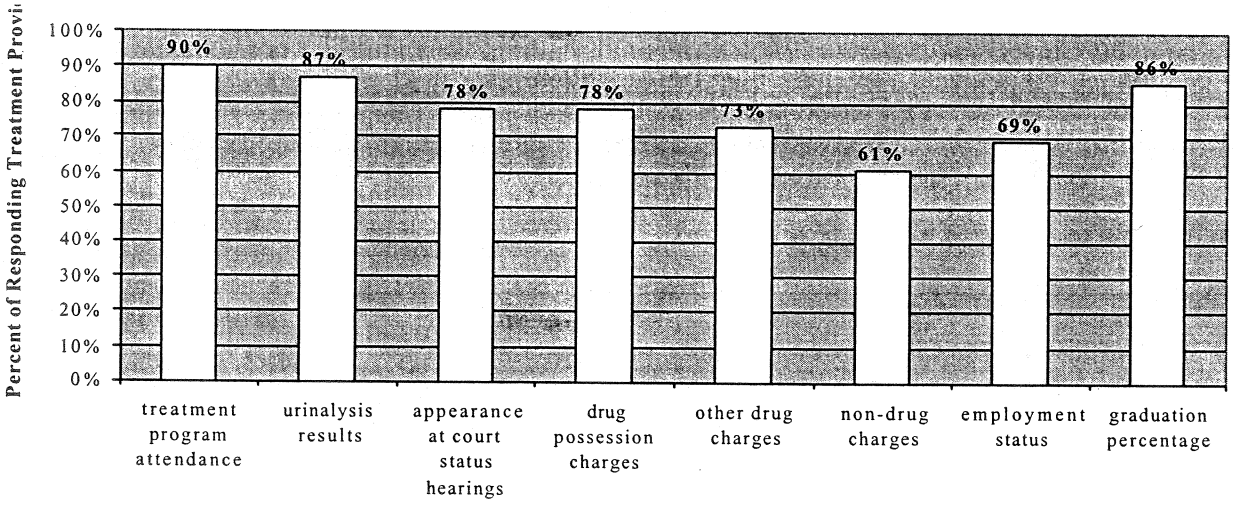
Chart E-79: Follow-up Information Compiled by Treatment Providers (for 39% of responding providers who conduct follow-up)

Recidivism	77%	Drug use	61%
Employment status	61%	Alcohol use	48%
Family/household status	39%	Educational status	35%
Physical health	31%	Mental health	31%
Public assistance/welfare status	27%		

C. Criteria Used to Assess the Effectiveness of the Drug Court Program

Like other agencies involved with the drug court program, the most frequently cited criteria by the responding treatment providers for assessing drug court program effectiveness is: participant attendance in treatment sessions; urinalysis results; and recidivism. A list of the criteria cited is presented in Chart E-80 below.

Chart E-80: Criteria Used to Assess Effectiveness of Drug Court Program by Treatment Providers



IX. Data and Automation

A. Agencies Compiling Client Information and Type of Information Compiled

All of the reporting treatment providers indicate they are compiling information relating to each participant's psychological, social, medical, and family situation, history of drug use, and related information. In addition, activities and developments relevant to each participant's participation in the drug court are recorded, including attendance at treatment; urinalysis results; and compliance with other treatment program requirements.

B. Information Reported by Treatment Provider to Court and Method of Reporting

1. Information Reported to Court

The information most commonly reported by the responding treatment providers to the court is: progress reports (97%); missed treatment appointments (95%); and urine test results (83%). (The

frequency of reporting urine test results may also be determined by the agency conducting the urinalysis if other than the treatment provider).

2. Mechanisms for Reporting Information to the Court From Treatment Providers

A variety of mechanisms are being used to provide treatment reports to the court, most frequently: written reports (90%); oral reporting (77%); through an automated data base (23%); and by mail (6%). Two-thirds of the reporting programs use more than one method.

C. Evaluative Information Being Compiled

Treatment providers were asked whether information is being compiled on clients that will contribute to evaluative information regarding participant demographic characteristics, substance abuse history, program success, and other factors. Thirty-seven percent of the responding treatment providers indicated they were compiling this information and, overall, 91% reported that this information is being compiled by various agencies involved with the drug court. Nine percent of the responding treatment providers indicated that no such evaluative information is being compiled to their knowledge.

X. Program Operational/Planning Issues

A. Most Serious Problems Treatment Providers Have Encountered as a Result of Implementing the Treatment Component of the Drug Court and Strategies Used to Resolve Them

Treatment providers were asked to identify the most serious problems they had encountered in designing or implementing the drug court and to describe the strategies used to resolve these problems. A wide range of problems are noted, including: having adequate services for women; need for an effective tracking/data management system; funding; maintaining qualified staff/staff turnover; reconciling federal confidentiality laws with court processes; coordination with court officials and processes; and interagency coordination and communication. The most common strategies for addressing these problems appears to have been through continued local effort, often through increased communication with other "team" members. In a number of instances, these problems are still being addressed.

Responses of the treatment providers to this question are presented in Chart VII-56 of Part Seven.

B. Unanticipated Issues and Strategies to Resolve Them

Respondents were also asked to identify the unanticipated issues that have arisen since the drug court became operational and the strategies used to address these issues. Among the issues cited included: participants entering the drug court who were taking prescription medications; the passage of a state ballot initiative mandating probation and treatment only for first and second time arrests for drug court possession (Arizona); differing ideas about who qualified for the program and what criteria should be used to determine success; the frequency of persons with co-occurring mental health disorders entering the program; funding uncertainties; and the extent of time required for service provision. Addressing these issues has usually entailed developing special relevant policies and/or procedures and/or working with the team to develop an appropriate response, if possible. In many instances, these issues are still being addressed.

The responses from the treatment providers are presented in Chart E-81 which follows.

Chart E-81: Unanticipated Issues and Strategies Used to Resolve Them

Jurisdiction	State	Unanticipated Issues	Resolution
Cullman	AL	Participants entering the Drug Court taking prescription medications.	Participants must show statement from physician stating condition and need for medication; Participants are encouraged to seek other alternatives to controlled medications; Particip ants may be sent for a psychiatric evaluation and second opinion of physician to determine need for medication.
Phoenix	AZ	A medical marijuana ballot Proposition 200 initiative was passed by 42 voter in 1996. It included a mandate for probation and treatment only for 1st and 2nd time drug possessors -- no jail. Our drug court model includes 60 days deferred jail for all participants-- imposed at the Judge's discretion.	We are applying for DOJ grant funding to develop a 2nd drug court track for Proposition 200 defendants only. A new set of sanctions/rewards will replace the "carrot" of deferred jail.
Phoenix	AZ	A medical marijuana ballot Proposition 200 initiative was passed by 42 voters in 1996. It included a mandate for probation and treatment only for 1st and 2nd time drug possessors -- no jail. Our drug court model includes 60 days deferred jail for all participants -- imposed at the Judge's discretion.	We are applying for DOJ grant funding to develop a 2nd drug court traffic for Proposition 200 defendants only. A new set of sanctions/rewards will replace the "carrot" of deferred jail.
Tucson	AZ	Higher than anticipated treatment costs combined with lower than anticipated revenue.	Extending credit to finance debt.
Chico	CA	The need for more intensive day t reatment and more residential treatment – both short- and long -term	In the process of being addressed now: 1). Working with community based treatment providers. 2). Grants helping pay for residential aftercare.
El Monte	CA	Housing for homeless; medical issues	Opened transitional living for clients --Not enough funding.
Fairfield	CA	Coordinator and management of funds from various grants and public funding.	Coordination between Court and Substance Abuse Services.
Indio	CA	Some differing ideas about whatconstitutes participants' success	Team discussion resulted in a graduation checklist
Lakeport/ Clearlake	CA	A grant which was received for data collection was turned back due to match requirements (Lake is a rural county); it has taken time to develop a p rocess to collect and track client progress	A database system is currently being established to allow accurate data collection; due to staffing levels, this development takes time
Los Angeles	CA	The DA's right to reject participants based on minor violent offenses.	By making the determination after reviewing police reports.
Mendocino	CA	The community felt the impact of many mandatory clients, as this community is very small	Ongoing efforts to keep clear and positive relationships
Modesto	CA	That we would grow from a pilot project to current capacity of 150.	Staff added.
Napa	CA	Loss of staff members	Hiring new staff
Redlands	CA	Due to mentor courts, we have addressed all issues	
San Diego	CA	Significant increase in urinalysis testing	Drug Court started their own testing program instead of relying solely on the providers
San Diego	CA	The need for better access to mental health services in a timely manner	Most clients are referred to county agencies and there is little control Drug Court has in expediting services
San Diego	CA	Drug testing help	Still an issue
Santa Ana	CA	Funding continues to be a problem. There is no predictability with regard to funding.	Still addressing.
Santa Cruz	CA	Demands of number of labor hours needed to operate in-house UA screening	Hard work; close management
Santa Maria/ Santa Barbara	CA	Transportation issues for clients; housing problems; climbing costs for supplies; childcare issues	Job Training Network assists with childcare, education and employment; community outreach and presentations; funding to assist with housing
Stockton	CA	Who makes counseling decisions or who is in charge of treatment.	Talking and sometimes court orders are crossing lines into how to provide treatment.
Vista	CA	Rotating treatment team members (judge, public defender, district attorney, program coordinator)	All new members are required to attend CADCP, NADCP conferences

Jurisdiction	State	Unanticipated Issues	Resolution
Waterbury	CT	Addition of anti-social behavior associated with chemical dependence giving need for extended treatment in therapeutic communities.	Use of state residential facilities that address anti-social behavior.
Fort Lauderdale	FL	Program size; client demographics; computer needs.	Through redesigning system operations.
Gainesville	FL	Conflict of interest around client advocacy when being paid by criminal justice system to provide services.	Will be an ongoing problem,
Hillsborough	FL	1). Higher % of mental health clients -higher pharmacy cost. 2) Medical needs unable to be addressed due to lack of funding. 3) Wait list and unable to get clients admitted to the tx quickly.	1). Working with pharmacy and pharmaceutical companies to access indigent opportunities. 2). Move effective medical screening of clients. 3). Educating court on wait list and section space.
Jacksonville	FL	The number of dually diagnosed clients that would enter the program.	Increased communication between agencies and the increase of staff to deal with dually diagnosed clients.
Jacksonville	FL	Housing opportunities for women in the community.	Not addressed.
Key West	FL	Staff turnover; Volume of cases; Incredible needs of juvenile; Increased cost	Still being addressed
Miami	FL	1. Expansion of the program to include second and third time defendants. 2. In 1992, a major natural disaster (Hurricane Andrew) severely damaged South Dade facilities.	1).Hired additional counseling staff. 2.) Secured another site for South Dade office.
Orlando	FL	The resistance to work that is sometimes exhibited by a team member.	These issues are addressed & monitored via the Drug Court coordinator.
St. Petersburg	FL	In the past 5 years the funding stream has changed	These have been resolved by seeking new sources of funding
Tampa	FL	Severity of dual diagnosis issues.	Referrals to mental health facilities for treatment.
Tampa	FL	None identified at this time	
Tampa	FL	Severity of dual diagnosis clients.	Referral to mental health treatment.
Tampa	FL	Fluctuation in funding and referrals.	Ongoing
Honolulu	HI	The expansion of the Drug Court concept has created a need for coordinated e fforts across jurisdictions (islands); securing funding for all programs is proving to be a challenge.	The Judiciary's administration has appointed a coordinating council of all possible involved administrations
Granite City	IL	The need for more residential services than originally planned; the need for access to dual diagnosis treatment.	Worked with 4 different agencies to access treatment beds; hired dual diagnosis counselors and working on getting set aside time from staff psychiatrist.
Rockford	IL	The need for more staff to observe urine drops by offenders, and transportation to treatment for clients.	TASC utilizes their staff from other funded programs to assist in observation, and providing bus tokens.
Gary	IN	Client manipulation	Meeting with Judge/ Administrative Staff
Indianapolis	IN	Geographic challenges - original planned to have treatment program services on site at or close to court system, has not been able to be completed. Transportation for some clients is an issue.	1). Some limited resources have been available 2). Other group members have assisted in providing rides to others.
Richmond	KY	They have not been addressed.	
Alexandria	LA	None	
Franklin	LA	Loss of program director	Hired clinical supervisor-reassigned administrative duties.
Monroe	LA	1)Need for additional space. 2).Need for more groups. 3) Need for more counselors.	1). Moved form 22,000 sq. ft. building to almost 50,000 sq. ft. 2). Added two new aftercare groups, PTOP, and relapse prevention. 3). Asked Drug Court to fund additional counselors.
New Iberia	LA	Clients submitting "purchased" urine.	Began temperature testing samples.
Oak Grove	LA	Delay getting funds.	
St. Tammany	LA	We were stopped from using on-site urine test cups because state law was interpreted to disallow use of any testing devices by persons not certified in forensics & testing.	We secured a contract with Secon, and ended up testing for more substances and paying less per test.

Jurisdiction	State	Unanticipated Issues	Resolution
Thibodaux	LA	Refining the referral process.	Drug Court team readdressed and restructured the referral process.
Minneapolis	MN	The shifting of fiscal responsibility for drug testing at the treatment programs.	The treatment programs now bear the cost for the first phase (190 days) of program involvement.
Jefferson City	MO	Problems with on-site UDS devices; randomization of UDS on site; program entrance criteria has changed due to small numbers; the broader entrance requirements have impacted the ability to meet client needs in the larger group setting; we have a client program capacity of 35.	Now seeking additional funding for random screening and confirmation of UDS; the (35) program capacity will limit the range of available services on-site; more emphasis and focus on individual tx goals has addressed this problem; We cooperate with other agencies for specialized services.
Kansas City	MO	1) Number of UA's required to monitor sobriety/random schedule; 2) Paperwork for case managers is overwhelming; 3) Development of database late in the implementation	1) Hired a youth worker to perform UA's; 2) Streamlining some procedures and instituting new policies (e.g., assigning a "day" in court to cover all cases.) Database is completed and now inputting is in progress
Kansas City	MO	Increase in salary expectations of staff without increase in reimbursements; amount of time required of clinical supervisor to be present in court; staff turnover at our treatment location.	First 2 not satisfactorily addressed; 3rd issue through increased contact by supervisor
St. Louis	MO	Treatment guidelines, meetings and staffings.	Continuing to work on this
Sykeston/ East Prairie	MO	Being creative in obtaining/presenting program incentives/inducements for participants (ie. rewards or sanctions); educating the community, obtaining donations from various community businesses, gift certificates, passes, etc.	Still working on this issue.
Browning	MT	High rate of unemployment; people wanting to move to find jobs.	1 person moved, but he has to attend group out of town.
Omaha	NE	Who's running the show (Drug Court judge, Court Administrator, or management team)? Getting us all to work together has been a need that still escapes us.	
Collingswood	NJ	A higher number of mental illness issues than anticipated.	We moved people around to agencies that can handle both mental health & substance abuse.
Elizabeth	NJ	Philosophy; team members disagree in many areas.	Discussion and compromise.
Las Vegas	NV	Integrated computer database.	Still working on it.
Bronx	NY	Court did not consider the volume of methadone clients.	Creating a policy, procedure and protocol manual to follow.
Kew Gardens	NY	Again, accommodating the large volume of treatment participants.	
New City	NY	The number of relapses during holidays.	Drug Court Office is consulting with treatment providers.
New York	NY	Different perceptions relative to completion of drug court program vs. completion of program.	Still in discussion stages.
Troy	NY	Concerns about net-widening	Addressed in monthly Drug Court TASK Force meetings, but not resolved
Troy	NY	Concerns about net-widening	Addressed in monthly Drug Court TASK Force meetings, but not resolved
Mansfield	OH	An abundance of case management – reports bi-weekly and monthly. More time in the court setting with hearings and pre-treatment meetings.	Hired a full-time coordinator to address all drug court participant cases.
Canton	OH	None	
Cleveland	OH	Random UA testing	Developed a system
Hamilton	OH	Mental health- We didn't anticipate the number of clients with mental health issues to come through drug court.	SAMI- The SAMI (Substance Abuse Mental Illness) track of drug court was developed to address this population.
Sandusky	OH	Decreasing number of applicants.	Exploring alternative referral resources, e.g., felony probation violators and municipal level misdemeanor clients.
Toledo	OH	Flexibility of moving clients between levels of care and dealing with waiting lists.	Worked with the judge, court administrator, coordinator to be creative in providing services without waiting lists.

Jurisdiction	State	Unanticipated Issues	Resolution
Ada	OK	Funding	Unresolved
Okmulg ee	OK	Payment for inpatient treatment, services included in budget. Contracting with other sources for inpatient treatment.	By setting aside or allowing for those services in the budget.
Purcell	OK	The lack of cooperation of area education facilities and their unwillingness to work with felons; The lack of cooperation of P&P for supervision	A separate location was provided to hold educational classes related to obtaining the participants' GED
Eugene	OR	1) Beginning to bill insurance companies for services. 2) Need for residential treatment services and methadone program availability. 3) Dually diagnosed clients.	1) Developing Procedures 2).Working one-on-one until services are available. 3). Federal grant recipient.
GrantsPass	OR	We didn't consider how d ifficult the UAs would be. We spend a lot of time researching drug screen issues. Lack of funding for intensity of treatment.	Lot's of discussion with all involved, visits from professionals.
Portland	OR	Increasing need has not been addressed. Restricted funding	Policy committee limited program capacity to meet available funding.
Philadelphia	PA	Accurate and timely progress reports.	Ongoing provider meetings.
Pittsburgh	PA	In order to be eligible, as a condition of our grant, all clients must be level 3 or 4 offenders. As a result, level one and two offenders with drug and alcohol problems are not eligible.	There have been discussions about starting a misdemeanor drug court for lower level offenders.
York	PA	When Drug Court ran out of the treatment funds, the volume of clients were a burden on our funding. We refer clients to treatment, however, clients (especially women) have non-drug free home environments.	Although we have eliminated waiting lists and processing clients of Drug Court with preferential treatment, our budget is on track and paced with creative case management, utilizing any program for women we can contact.
San Juan	PR	That the Department of Justice has limited our functions and has decided to even contract and monitor private treatment providers.	Still an issue.
Conroe	TX	Housing (temporary); medical screening of participating & court staff; misdemeanor charges	Community involvement
Fredericksburg	VA	Time involvement.	Reapportioning tasks.
Bellingham	WA	Local housing authority terminated section 8 housing for participant. Our judge, Pub Def., Corrections and Coordinator met with H. Authority and resolved the issue.	Housing Authority may not have been aware of their regulations that could have prevented the situation from arising. Info on DOJ + NADCP websites was helpful in letting them know the scope of their ability to work with Drug Court. After attending planning sessions, Whatcom County made a decision to begin their program and trust that we would be better served by being in operation than over-planning which has eliminated a rigid approach and has been very successful.
Lacey	WA	Available personnel to observe UA testing; insufficient staff time to do effective case management, especially when near capacity	Utilized personnel fro m other departments; hasn't been issue lately due to low census.
Mount Vernon	WA	The continued need for flexibility in redefining program objectives.	Consistent focused drug court team meetings
Seattle	WA	The increased number of active participants; It was estimated at <250, but is now close to 500	We were allowed to add a half time administrative assistant.
Madison	WI	Attention to protecting the confidentiality of program participants therapeutically while still addressing the criminal justice system's need to know; equitable application or decision rules for program participants	Ongoing discussions at advisory committee.
Evanston	WY	Numerous Drug Court Team meetings, lunches with the county attorney and we have asked for technical assistance from OSP. Not enough transitional care space or staff to comfortably provide the intensity of the services that are provided.	Continue to work on this.

C. Program Improvements Suggested

Respondents were also asked to indicate any improvements they would suggest for their drug court program. Their suggestions generally focused on increased funding and communication with other agencies involved with the program. A summary of their suggestions is presented in Chart VII-58 in Part Seven.

D. Degree to Which Treatment Providers Feel That Their Drug Courts Have Achieved the Benchmarks Established in the "Key Components"

Each discipline was asked to indicate the degree to which they felt their respective drug court had achieved the benchmarks established in the "key components". The components that have been most commonly developed, from the perspective of the drug court treatment providers, appear to be:

Component 1: integration of alcohol and other drug treatment services with justice system case processing
Component 4: access to a continuum of alcohol, drug and other related treatment and rehabilitation services
Component 5: monitoring abstinence by frequent alcohol and other drug testing
Component 6: coordinated strategy governs drug court responses to participants' compliance; and
Component 7: ongoing judicial interaction with each drug court participant

A summary of the drug court treatment providers' responses is provided in the Introduction to this Volume and in Part Seven of the *Survey Report.*

E. Advice to Colleagues

Responding drug court treatment providers were asked what advice they could offer to treatment professionals in other jurisdictions who were contemplating the implementation of a drug court. Their responses highlighted the importance of working as a team with other drug court officials; developing the capacity for addressing a variety of mental health needs presented by participants; and providing on going information and education to others involved with the program regarding relevant addiction and treatment issues. A summary of the comments provided is presented in Chart VII-60 in Part Seven of the *Survey Report.*

PART EIGHT: PERSPECTIVES OF PROGRAM PARTICIPANTS

As part of the 2000 survey of operational drug courts conducted by the OJP Drug Court Clearinghouse and Technical Assistance Project, each drug court judge was asked to distribute a brief questionnaire to at least five participants in the final phase of his/her drug court program. Responses were received from 844 participants in 153 programs from 31 states and Puerto Rico. These responses represent a significant increase from the 250 respondents reflected in the Participant Perspectives comments reported in the 1997 Survey Report. An overview of the background of the respondents and their perspective on generic components common to all drug courts is provided in this section of the report.

I. Background of Respondents

A. Prior Treatment Program Experience and Dates of Participation

Fifty-seven percent[1] of the respondents had never previously been enrolled in a drug treatment program. The following is a breakdown of the treatment program experience of the respondents:

No prior treatment program experience	57%	One prior treatment program	26%
Two previous treatment programs	8%	Three or more prior treatment programs	9%

For those participants who indicated that they had participated in more than one prior treatment program, the dates for participation in these prior treatment programs generally extended back at least fifteen years and, in two instances, over twenty years. The dates on which they had ended their last prior treatment program ranged between 1967 and 1999 – e.g., between 32 years and a few months prior to entering the drug court. For over half of the respondents who had participated in at least one prior treatment program, the period for participation in the prior treatment program was within four years of entering the drug court.

For those respondents who reported participating in one previous treatment program, the dates on which they had left those programs were as follows:

1980 – 1990	17%
1991 – 1995	25%
1996 – 1999	58%

B. Background of Respondents

1. Gender

The gender of the respondents was 37% female and 63% male, reflecting a significantly larger percentage of females than is reflected in the general drug court population.[2]

4. Age

The average age of all respondents was 34.0 years. Thirty percent of the respondents were 40 years of age or older. The average age of male respondents was 32.8 years, with ages ranging between 16–66; the average age of female respondents was 35.7 years, with ages ranging between 16–66. The average age by program ranged between 22.4 years (Lafayette, LA), 23 years (St. Tammany and

[1] The June 2001 information compiled by the OJP Drug Court Clearinghouse regarding prior treatment experience of all drug court participants indicates that only 25% have had no prior substance abuse treatment.

[2] The gender of the respondents differs from that of the general drug court population which has been approximately 73% male and 27% female.

Washington Parishes , LA); 23.2 years (Philadelphia, PA); 23.5 years (Gary, IN and Scott Co., MS); and 24.6 years (Harford County, MD) to 40.67 years (Blackfeet Tribal Court, Browning, MT); 42 years (Mahoning Co., OH); 44.17 years (Manhattan, NY); and 45 years (Brooklyn, NY).

The age categories of the responding drug court participants were as follows:

20 years and under	9%	40-49 years	22%
21-29 years	28%	50-59 years	7%
30-39 years	33%	over 60	1%

The average age of respondents by program was as follows:

Average Age of Respondents In Program	**Percent of Responding Programs**
Under 25	7.5%
25-29 years	22%
30-34 years	31%
35-39 years	27%
40-44 years	11%
45-49 years	1.5%

A list of the programs represented by the responding participants and the average age of the participants in each program is provided in Chart VIII-1 of Part Eight of the *Survey Report.*

5. Marital Status

Two-thirds of the respondents were single and not living with a significant other. Approximately one-quarter of the respondents were married and living with their spouse (15%) or living with a significant other (11%). The remaining respondents were either married or separated (9%) or widowed (1%).

4. Parental Status of Participants

Sixty-five percent (549) of the respondents were parents, reporting a total of 1,200 children. Forty-six percent (388) of the respondents were parents of minor children only, reporting a total of 930 minor children. Eleven percent of the respondents were parents of both minor and adult children[3] and eight percent were parents of adult children only. Half of the respondent parents of minor children reported that all of their minor children resided with them; the other half indicated that some or all of their minor children did not reside with them. Most (over 70%) of the respondents who were parents of adult children indicated that their adult children did not live with them. More detailed information regarding the number(s) of minor and adult children of the responding participants and their residential status is provided in Part Eight.

5. Educational Level of Respondents

Forty-four percent[4] (up from 30% in 1997) of the respondents had neither a high school diploma and/or GED certificate when they entered the drug court. Thirty-nine percent had a high school diploma or GED certificate, and the remaining 17% had some schooling beyond a high school diploma or GED.

[3] The percentage of respondents who were parents of minor children was lower than that indicated by recent surveys of all drug court participants, which indicate that approximately 75% of participants, at all stages of program participation, are parents of minor children.

[4] This percentage of participants with no high school or GED certificate is higher than the average of 35% reported for all drug court participants to the OJP Drug Court Clearinghouse in June 2001.

6. Military Status

Three percent of the respondents indicated that they were in the active military and an additional 7% indicated they were veterans.

C. Time Between Arrest and Entry into the Program

Only twenty-three percent of the respondents indicated they entered the drug court program within fifteen days of their arrest. The majority of respondents did not enter the drug court immediately after arrest, as is characteristic of the drug court concept. Over half of the respondents indicated that they entered the program 31 or more days following their arrest, with 42% indicating that the time frame was over 60 days.

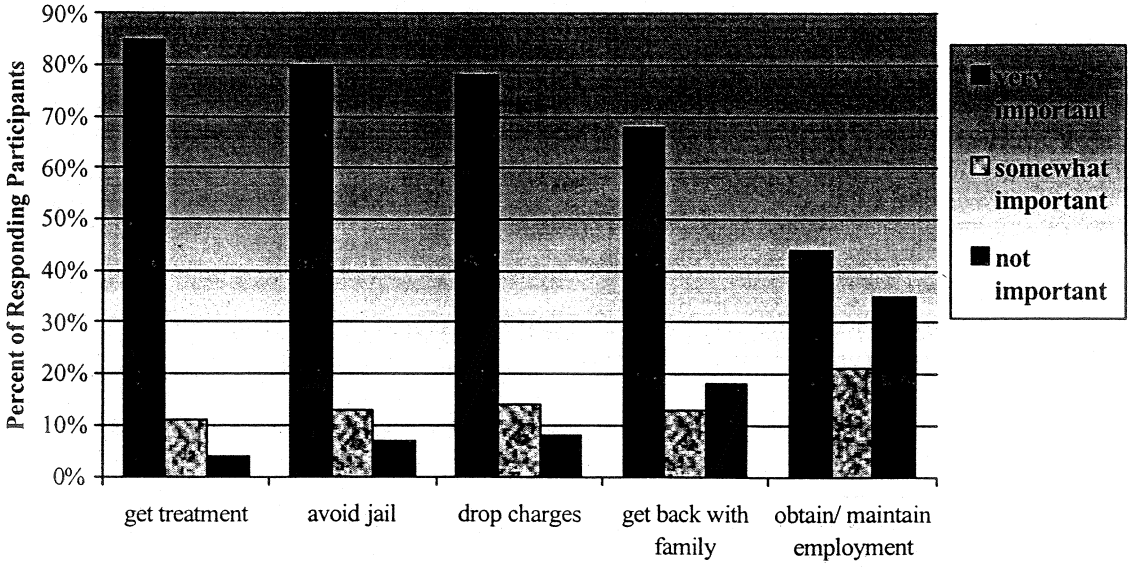
II. Participants' Comments Regarding Drug Court Experience

A. Most Important Reasons for Entering Drug Court Program

Participants were asked to indicate, by relative importance, the reasons they **entered** the drug court program. Their responses indicate that the most significant reasons they entered the drug court were: the opportunity to get treatment (85%); the chance not to go to jail (80%); the possibility of having their charges dropped (78%); and the chance to get back with their families (68%).

Apart from the opportunity for obtaining drug treatment, the significance of these responses must be interpreted in light of the specific characteristics of the respondents' programs (e.g., whether dismissal of charges is offered to successful participants, etc.). Additional reasons respondents offered for entering the drug court included: "the chance to rebuild my life"; "the chance to live a constructive and productive life"; and "the chance to gain self-respect". A more detailed summary of their responses is provided in Chart VIII-8 of Part Eight of the *Survey Report.*

Chart E-82: Reasons for Entering Drug Court

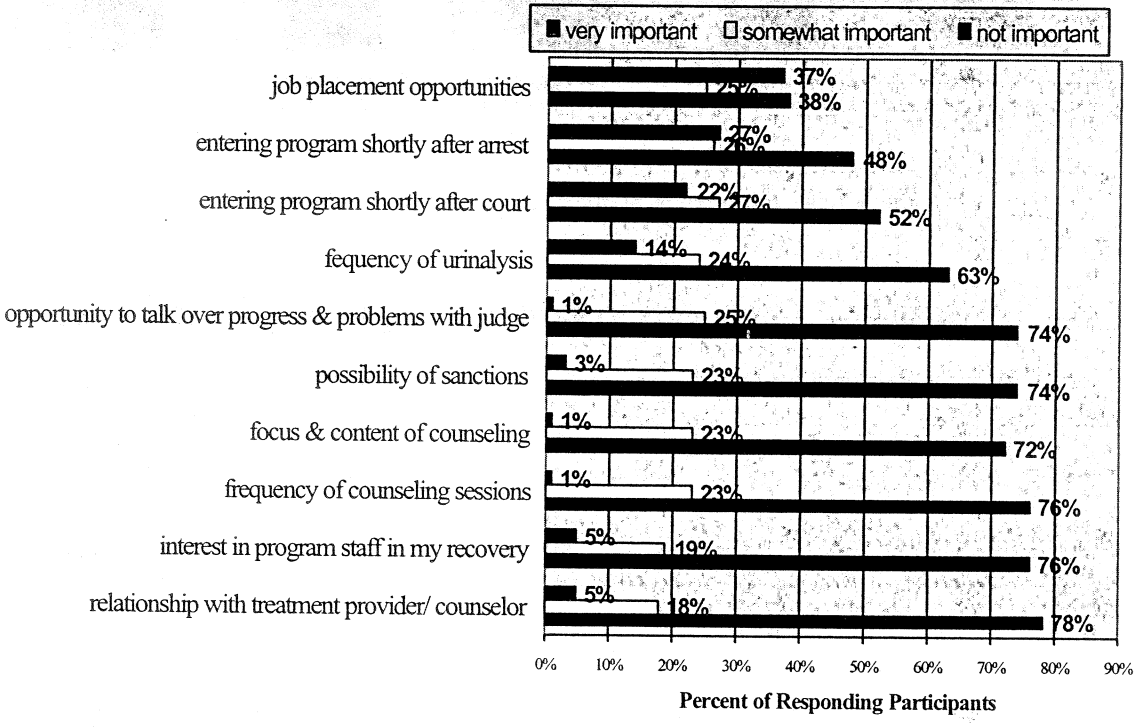


B. Most Important Reasons for Remaining in the Program

Participants were also asked to indicate the most important reasons they **remained in** the drug court program. The reasons cited by over 97% of the respondents as somewhat or very important were: the frequency of counseling sessions; the opportunity to talk over progress and difficulties with the judge; and the possibility of sanctions. Other frequently cited reasons were: the participant's relationship with the treatment provider/counselor; and the interest expressed by program staff in the participants' recovery.

Chart E-83 below summarizes reasons cited by respondents for remaining in the drug court program.

Chart E-83: Reasons for Remaining in the Drug Court Program by Levels of Importance

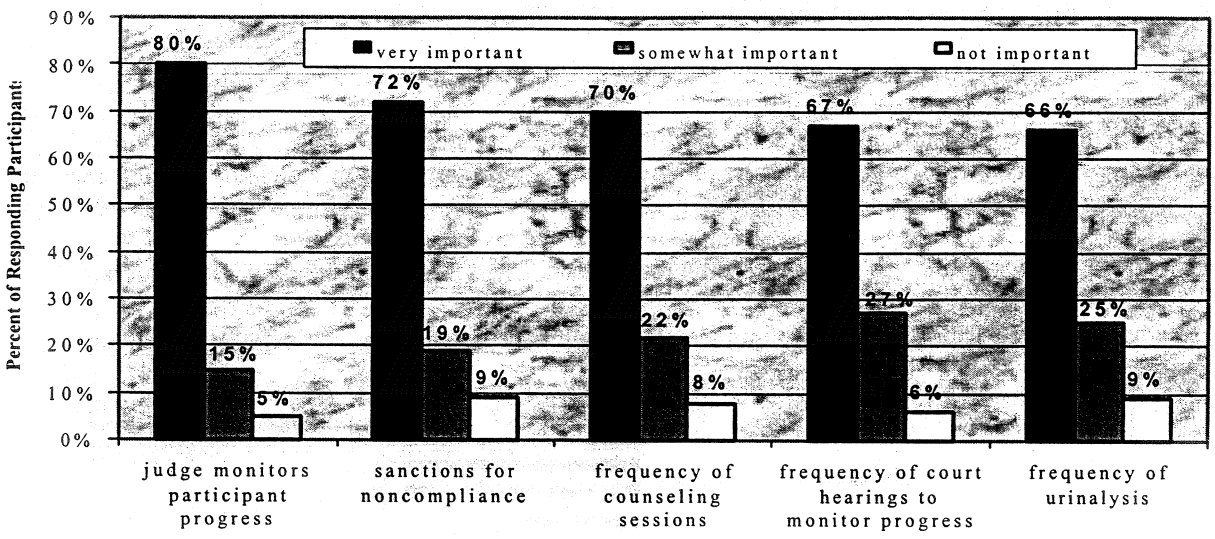


C. Most Significant Differences Between Drug Court and Prior Treatment Program Experience

Those participants (43%) who had been enrolled in at least one prior treatment program were asked to indicate the most significant differences between that program and the drug court. The most frequently cited differences were: a judge monitors participants' progress; the possibility of sanctions being imposed if a participant does not comply with program requirements; frequency of counseling sessions; frequency of court hearings to monitor participant progress; and frequency of urinalysis.

Below chart E-84 summarizes respondents' comments regarding these differences and their significance:

Chart E-84: Differences Between Drug Court and Prior Treatment Experience by Importance



Participants also noted the importance of the "policing aspect" of the drug court for recovery, especially at the early stages.

III. Participants' Comments Regarding Drug Court Components

A. Length of Time Required for Drug Court Program Participation and Participants' Perception of Its Appropriateness

Participants were asked to indicate the time period required for their drug court participation and whether they felt this time frame was appropriate, too long, or too short. Forty-four percent of the respondents participated in programs that were 12 months in duration; forty-two percent participated in programs that were longer than 12 months; and 12% participated in programs that were of shorter duration.

Sixty-six percent of the respondents felt the length of time required for program participation was appropriate. Twenty-three percent felt the duration should be shortened, five percent felt it should be lengthened, and six percent felt the duration of the drug court program should be tailored to the individual participant's needs. There did not appear to be a significant correlation between the length of the participant's program and his/her comment on its appropriateness.

B. Drug Testing Frequency During Initial Phase of Program Participation

Respondents were asked how frequently they were tested for drug use during the first three months of their participation and how frequently they felt they should be tested. Over two thirds of the respondents were tested at least twice weekly. Most respondents (83%) suggested a testing frequency of at least weekly during this period, with some variations reflected on additional recommended testing frequencies.

C. Participants' Perceptions Regarding Significance of Potential Changes of Critical Features of the Drug Court Program on the Likelihood of Their Remaining in the Drug Court Program

Participants were asked to indicate whether they felt they would have remained in the drug court program if critical features relating to judicial supervision and treatment services associated with the drug court concept were changed. Their responses, summarized in Chart VIII-9 in Part Eight of the *Survey Report,* reinforce the significant role that the judge plays in their retention in the drug court program. Seventy-nine percent of the respondents indicated that they would not have remained in the program as long as they did if they did not have to appear before any judge. Seventy-seven percent indicated that they would not have remained in the drug court as long as they had if they appeared before different judges rather than the same individual or team of judges.

The frequency of court appearances also appears to be a significant factor in their retention, with 65% of the respondents indicating they would not have remained in the drug court if their court appearances were less frequent. Respondents appeared satisfied with the current frequency of drug court hearings applicable to their respective programs (regardless of the actual frequency) and did not indicate they desired more frequent hearings. The respondents were approximately split (52% for; 48% against) on the likelihood of improving the chances for their remaining in the drug court if the frequency of hearing was increased.

Chart E-85: Significance of Potential Changes in Drug Court Structure on Likelihood of Participants' Remaining in Drug Court Program: Participant Perspectives

Potential Change	Would increase likelihood of remaining in program	Would reduce likelihood of remaining in program
The program provided drug testing and court status hearings but no treatment	37%	63%
Participants appeared before a judge less frequently	28%	72%
Participants appeared before a judge more frequently	52%	48%
Participants appeared before different judges rather than the same judge	23%	77%
Participants did not appear before any judge	21%	79%

DI. Adequacy of Explanation of Drug Court Program Requirements Prior to Program Entry and Unanticipated Program Requirements

Participants were asked whether the program requirements were clearly explained to them at the time they entered the program, and whether there were any aspects of the program requirements or procedures that they did not anticipate. Eighty-two percent of respondents indicated that the program requirements were clearly explained to them at the time they entered the program, and 68% of respondents said they encountered no unanticipated requirements or procedures.

Most of the respondents who indicated they encountered unexpected program requirements commented that the rules and guidelines for their drug court programs had changed during the period of their participation. Some also commented that they did not expect the fees and costs associated with the program, which were particularly difficult for participants who were not employed. A number of respondents commented on various aspects of the drug testing process, including the frequency required, sanctions imposed, and the fact that they were being observed. A number of respondents also indicated that the requirements for the drug court were much more extensive and difficult than they had anticipated.

Those respondents who noted unanticipated aspects to the program cited both positive and negative aspects, the most frequent of which were (in the order of frequency):

Program changes and inconsistencies	Amount of time involved
Duration of the program	Community service requirements
Program costs and fees required	Frequency of imposition of sanctions
Intensity of urine testing	Intensity of program structure/strictness of program policies
Number of AA/NA meetings required	The support of the judge and others
Intensity of supervision	Willingness of the program to include participant's family

E. Unanticipated Benefits Derived From Drug Court Participation

Respondents were also asked to note any unanticipated benefits they had derived from participating in the drug court program. Fifty-four percent of the respondents indicated they had derived benefits from the drug court program that they had not anticipated, the most frequently noted of which were: self respect; sobriety and benefits associated with it (restored family relationships, retaining/obtaining employment); and the resources (friends, support network, "tools", etc.) to stay sober and continue their recovery.

Below is a full listing of the unanticipated benefits noted by respondents

Chart E-86: Unanticipated Benefits from Drug Court Participation Noted by Responding Participants

City	State	Unanticipated Benefits
Cullman	AL	No drug use
Cullman	AL	Job, self-respect, different attitude
Cullman	AL	Learned that AA was good for me
Cullman	AL	I thought of it as a temporary thing; I didn't think I would want to stay straight.
Cullman	AL	Benefits from NA & AA
Cullman	AL	Never been sober before
Mobile	AL	A better understanding of my addiction behavior and destructive behaviors
Mobile	AL	I am actually beginning to consider the consequences of my actions.
Tuscaloosa	AL	At first I didn't think the program would help me, but it eventually sunk in and I feel I will be better off from here on out.
Phoenix	AZ	My counselor has helped me regain self-esteem and pride.
Phoenix	AZ	A stronger sense of self
Phoenix	AZ	That I would be sober for a year
Tucson	AZ	A different outlook in life
Tucson	AZ	The ability to learn more about the court system
Tucson	AZ	I learned many tools to help me stay clean.
Tucson	AZ	Getting to know some genuine & interesting people
Yuma	AZ	My life
Yuma	AZ	Sobriety; holding a job; responsibility
Yuma	AZ	Sobriety
Bakersfield	CA	I learned different ways to keep a good recovery.
Bakersfield	CA	I had never completed anything in my life, so it gave me ambition and confidence in myself.
Chula Vista	CA	I'm learning how to live a productive life by helping others and meeting a lot of recovering professional people; I like it; I'm working, going to school and doing volunteer work.
Chula Vista	CA	Structure in life
Chula Vista	CA	My length of clean time
Compton	CA	Caring about myself and how to live
Compton	CA	Finding out who I really am sober
El Cajon	CA	I never thought I would be where I am at today; I love myself & my life now.
El Cajon	CA	I learned that the NA program works.
El Cajon	CA	I never thought my life could have turned out this good.
Fairfield	CA	New life
Fairfield	CA	Fixed fines; return of driver's license; reduction of charges.
Fairfield	CA	Being assured that C.A.D.A.C. are truly here to help and not there just for a paycheck

City	State	Unanticipated Benefits
Fairfield	CA	That the counseling session would be as effective in helping my recovery
Modesto	CA	Respectability
Modesto	CA	I have really e mbraced recovery this time, so the program works better for me than 2 expensive treatment programs I attended previously; I think the AA/NA component is very important as we all need a higher power to get a clean new life.
Oroville	CA	I have just learned a lot about myself with & without drugs.
Oroville	CA	Recovery
Oroville	CA	I benefited when I realized that it works and I can stay clean.
Redding	CA	A God in my life; I'm learning to open up to people and learn more about myself
Redding	CA	A new way of living
Redding	CA	Self-respect; I look forward to the future with a sense of hope in becoming respected in the community.
Redding	CA	A clean and healthy and honest person
Redlands	CA	Job; family respect
Redlands	CA	Return of family respect
Redlands	CA	Community assistance; good friends
Redlands	CA	Job; respect
Richmond	CA	I never considered stopping, but now I have
Richmond	CA	A possibility to locate my kids' whereabouts; a productive person in society.
Richmond	CA	The humanitarianism of Judge Grossman
Ridgecrest	CA	Communication skills, understanding, and keeping & completing goals & tasks, keeping continuous sobriety; staying alive
Ridgecrest	CA	Counseling has showed me a lot about doing well.
Ridgecrest	CA	The need for commitment from all levels of recovery
Ridgecrest	CA	I really did find out that the program does work if you apply a little will power & positive direction & be honest with yourself.
Ridgecrest	CA	Knowledge of addiction & relapse; how to change my life to improve it and become a member of society
Riverside	CA	GED
Riverside	CA	Family Strengthening
Riverside	CA	Traffic tickets/fines cleared up
San Bernardino	CA	Anger management issues
San Bernardino	CA	The peace and serenity I find in recovery
San Bernardino	CA	I have better family relationships.
San Bernardino	CA	How much it helps
San Diego	CA	I remained clean & am getting over personal issues.
San Diego	CA	I went back to school & got grants.
San Diego	CA	Going back to school
San Diego	CA	Issues; helping hands
San Diego	CA	I didn't think I would make it.
San Diego	CA	Honesty; Law-abiding; Love for myself; I gained knowledge of the addiction process; I learned how to follow rules.
San Diego	CA	By staying in the program & staying clean & sober today
Santa Ana	CA	A productive life; happiness
Santa Ana	CA	Respect from others & self-respect
Santa Cruz	CA	Just to actually stop using drugs
Santa Cruz	CA	All my friends I have now
Santa Cruz	CA	A definite closeness and respect for the justice system and the employees of the court
Santa Cruz	CA	Recognition of your work by the team
Santa Cruz	CA	Close support group with the other participants; learning how to be responsible in all areas of my life; learning to live without using on a daily basis while living my normal life at home
Santa Maria/ Santa Barbara	CA	Better use of my time; scheduling
Santa Maria/ Santa Barbara	CA	A true desire to stay clean and sober
Santa Maria/ Santa Barbara	CA	Somebody to get help from
Santa Maria/ Santa Barbara	CA	Self awareness, honesty, and truly a new outlook on life
Santa Maria/ Santa Barbara	CA	Meeting new people and great counselors, loving my children more and going to school
Santa Maria/ Santa Barbara	CA	Staying clean and sober for this length of time

City	State	Unanticipated Benefits
Santa Maria/ Santa Barbara	CA	How my life was before drugs and now after
Santa Maria/ Santa Barbara	CA	Sobriety and serenity
Santa Maria/ Santa Barbara	CA	Drug Court saved my life; the program is fantastic.
Santa Maria/ Santa Barbara	CA	Good job; better relationship with all people
Santa Maria/ Santa Barbara	CA	Met awesome people and great counselors
Santa Maria/ Santa Barbara	CA	Clean and sober life, and my family's trust
Santa Maria/ Santa Barbara	CA	Being able to work with my counselor
Santa Maria/ Santa Barbara	CA	Emotional support
Santa Maria/ Santa Barbara	CA	New friends in recovery
Santa Maria/ Santa Barbara	CA	Financial help with school and free family counseling
Santa Maria/ Santa Barbara	CA	Desire to return to school
Santa Maria/ Santa Barbara	CA	Getting clean and wanting to stay clean
Santa Maria/ Santa Barbara	CA	Continued education
Santa Rosa	CA	I did not anticipate learning tools to better my life
Santa Rosa	CA	There is a great balance back in my life. Drug Court helped with that tremendously.
Santa Rosa	CA	The obsession to use has been lifted; I gained coping skills.
Shafter	CA	Receiving additional counseling; I did not feel I had a self-esteem problem, but discovered that I did; also, I enjoy attending AA meetings
Shafter	CA	Living a happier life
Shafter	CA	Learning about the people and signs about them
Stockton	CA	That they put me through a school
Ukiah	CA	Friends
Vista	CA	Desire
Vista	CA	To be so monitored (urine, etc.)
Vista	CA	I'm overcoming some big problems.
Waterbury	CT	Changing the way of thinking and behaviors that have proved spiritual growth
Waterbury	CT	Reminding me what my focus should be on
Waterbury	CT	More confidence; healthy, positive attitude
Ft. Lauderdale	FL	Physical improvement and acupuncture
Ft. Lauderdale	FL	Greater knowledge regarding drug use/recovery rehabilitation
Ft. Lauderdale	FL	A better understanding of myself
Ft. Lauderdale	FL	Able to look at other problems too
Ft. Lauderdale	FL	No chance to not comply with requirements
Ft. Lauderdale	FL	This program saved my life.
Gainesville	FL	Learned some things I didn't know about drugs
Gainesville	FL	Staying in school through the program
Jacksonville	FL	Introduction to living through 12 steps
Jacksonville	FL	I didn't realize the way I emotionally felt would improve as much as it has.
Key West	FL	Some of the reasons why I may have acted the way I do
Key West	FL	Feeling comfortable in sharing problems and hopes
Panama City	FL	Getting on track
Panama City	FL	Peace of mind
Rockledge	FL	New friends
Tampa	FL	Learning how bad that stuff in my body is for me
Tampa	FL	Group sessions allowed introspective analysis of self
Tampa	FL	Learning to live without drugs in my life
Atlanta	GA	The opportunity to have my schooling paid for & peace of mind
Atlanta	GA	A true lesson in how to live life
Atlanta	GA	A true desire to stay clean and change my thinking

City	State	Unanticipated Benefits
Des Moines	IA	Biofeedback
Des Moines	IA	Graduated high school & getting in Painters' Union
Des Moines	IA	Good self-esteem; I believe in myself; I held job for a whole year
Des Moines	IA	I did not anticipate that I would have so much support and encouragement.
Boise	ID	An understanding of how I perceived my relationships with men
Boise	ID	Support, friendships
Coeur d'Alene	ID	A sense of a support system
Edwardsville	IL	Group interaction; learned to trust in those trying to help me
Edwardsville	IL	Peace of mind
Kankakee	IL	A sense of self-worth, emotions, a new outlook
Fort Wayne	IN	Have better job & better outlook on life
Indianapolis	IN	I had been introduced to a fellowship unlike any other I've ever known & been blessed with a new way of life.
Indianapolis	IN	A very important support system after the program to help me
Indianapolis	IN	I was able to start a new life with hope.
Indianapolis	IN	A deeper awareness o f my strengths & weaknesses
Terre Haute	IN	The support
Terre Haute	IN	Self-respect
Terre Haute	IN	Educational outlook
Terre Haute	IN	Alcohol & drugs are major problems; I would encourage anyone needing help to take this program.
Terre Haute	IN	Aspects of drug addiction and how I feel about myself
Alexandria	LA	A new life that is fun
Alexandria	LA	One-on-one counseling; spiritual growth
Alexandria	LA	Communication skills & other skills that I had, but was just not using
Amile	LA	The feeling of achievement
Covington	LA	Turned my life around; got me to finally quit
Covington	LA	I got my whole life back
Franklin	LA	I am clean for over a year.
Gretna	LA	Sobriety
Lafayette	LA	Humility, gratitude
Lafayette	LA	True benefits I thought I could never get.
Lafayette	LA	Gaining family's trust back.
Monroe	LA	I learned that the people at Drug Court really do care about you and want to see you make it.
Monroe	LA	Did not anticipate the kind of environment (caring, friendly) that Drug Court provides
New Iberia	LA	Peace, happiness and control of my life
New Iberia	LA	I never used drugs again and got a steady job.
New Orleans	LA	Stopped smoking marijuana
New Orleans	LA	Learn more about drugs
New Orleans	LA	Closer to my family & God now
Thibobaux	LA	Was able to get life back on the right track
Thibobaux	LA	How to really live life
Thibobaux	LA	I've learned so many things about myself through counseling which were very beneficial.
Haverhill	MA	I didn't know if it would work for me, and it did in more waysthan expected.
Haverhill	MA	Got to know more people with inquiring minds
Worcester	MA	Helped in getting back driver's license
Worcester	MA	Sobriety, job, respect
Worcester	MA	Still clean with strong foundation
Worcester	MA	Learning tools to remain drug-free
Worcester	MA	Improved health
Worcester	MA	Medical care
Baltimore	MD	Better understanding of self & life
Baltimore	MD	Order restored to my life
Baltimore	MD	I learned how to live a drug-free life and I have the knowledge to stay that way afterwards.
Baltimore	MD	Self-control; learn about self
Bel-Air	MD	The euphoria of life itself
Bel-Air	MD	The realization of life without using
Bel-Air	MD	Self-esteem
Detroit	MI	I'm learning how to live clean; I'm getting my GED working thanks to this program
Detroit	MI	Help; concerned people; lots of love for one individual
Kalamazoo	MI	The concern of the judge & the staff about me; good relationship with the judge & hear other people's experiences

City	State	Unanticipated Benefits
Kalamazoo	MI	Going to college, being clean
Kalamazoo	MI	Better outlook on future
Kalamazoo	MI	Just feeling good about myself
Kalamazoo	MI	I stayed drug free.
Kalamazoo	MI	Enjoying life clean, and getting to know the Lord again
Warren	MI	Self-respect, discipline, self-worth
Warren	MI	My life is great without alcohol & I can face it with a renewed vigor
Minneapolis	MN	I feel that this made me a better person and now that I made it all the way, I'm going to keep going all the way.
Minneapolis	MN	I got trust in me and others; It got me on the right track.
Benton	MO	What I learned about myself
Columbia	MO	There were internal issues I had that prevented me from accomplishing something.
Columbia	MO	Able to organize my time better
Kansas City	MO	Stopped smoking weed
Kansas City	MO	I got more time with my family.
Browning	MT	The program worked for me, for the better.
Browning	MT	I feel it is up to the person.
Omaha	NE	Humility, confidence & control of myself
Omaha	NE	My problem was very serious.
Omaha	NE	I learned I can live my life clean and sober and still be happy.
Omaha	NE	Save money, feel better & no worry of getting busted
Omaha	NE	It's taught me patience.
Albuquerque	NM	Increased self-worth
Albuquerque	NM	Aftercare
Albuquerque	NM	Recovery
Aztec	NM	Finding out there is life without drugs
Aztec	NM	I'm clean and enjoy my new life.
Aztec	NM	Renewed self worth & gain responsibility
Santa Fe	NM	I was able to realize how bad my addiction was.
Santa Fe	NM	I have made new friends.
Santa Fe	NM	A chance to change my life and be a better person
Santa Fe	NM	That I'm doing good and I feel good about myself, and am not doing drugs anymore
Santa Fe	NM	I learned to accept undisciplined & changing rules with patience.
Santa Fe	NM	I learned how to live drug free.
Santa Fe	NM	New tools to deal with chronicpain
Las Vegas	NV	By talking to counselor after class
Las Vegas	NV	I feared the group would be boring to someone who'd been in so many groups before but I liked the groups.
Las Vegas	NV	I learned to be more responsible by having to attend classes and court at appointed times.
Las Vegas	NV	The desire to stay clean
Las Vegas	NV	Peace of mind and gain of respect from others
Amherst	NY	Getting to know myself sober
Amherst	NY	I believed that I've wanted recovery all along, but always relapsed and never feared anything; Drug Court makes me accountable & responsible.
Amherst	NY	I was able to stop and I matured a lot.
Amherst	NY	A life without drugs/alcohol
Amherst	NY	Group therapy allowed me to share with people with experience.
Amherst	NY	I didn't think I would learn as much about how my life was affected by my use.
Bronx	NY	Involvement with Hope program training
Bronx	NY	Understand to be own person; don't follow crowd.
Bronx	NY	My program is great, helping with my son
Brooklyn	NY	Encouragement & confidence
Brooklyn	NY	A sense of responsibility & clear way of thinking
Central Islip	NY	Better quality of life
Central Islip	NY	Verbal encouragement from case manager & judge
Central Islip	NY	I found that recovery is a big part of my life today, which it was never before.
Cheektowaga	NY	Blood samples are more accurate.
Cheektowaga	NY	It has helped me better my life.
Ithaca	NY	I am more responsible and I am closer with my family
Ithaca	NY	To hold a job and begin school
Kew Gardens	NY	Clean up after myself; better relationship with family

City	State	Unanticipated Benefits
Lackawanna	NY	A different attitude toward life and fellow human beings
Lackawanna	NY	I had a chance to see that hard work doesn't go unnoticed.
Lackawanna	NY	Behavior changes that are much nicer, extended clean time with no bulls**t, liking for every administrative person in the program
New City	NY	Carpentry, lifeguard, and computer training at inpatient
New City	NY	Become more responsible; graduated from community college; better relationship with family
New Yo rk	NY	School; get along with family & people; stop using
New York	NY	The chance to go to college
New York	NY	I like the group sessions & the residents.
New York	NY	Hearing others share their behavior; letting me know what I could have went through if I didn't stop
Niagara Falls	NY	Helps you see where your drug of choice has brought you and what help you will need
Rochester	NY	Counseling
Syracuse	NY	Certification of completion
Syracuse	NY	School
Tonawanda	NY	I'm now involved with AA & will stay involved.
Canton	OH	Get back into the swing of life
Canton	OH	Became a more responsible person & like myself again; became closer with my family & friends; created a better, happier life for myself
Canton	OH	I'm sober from alcohol now. I didn't think it was an alcohol problem at first. I thought it was just drugs such as coke & weed
Canton	OH	Finding all the feelings I hid behind with my drug of choice, finding me again
Canton	OH	Chance to get G.E.D.
Cincinnati	OH	Family counseling; the importance of not feeling like I'm the only one in this position
Cleveland	OH	Respect for system
Cleveland	OH	No drinking for 1 year 1 month
Cleveland	OH	It is a rigid schedule but I was surprised at how good the counselors were.
Hamilton	OH	Relationship back with my father and his love & trust
Hamilton	OH	Got GED
Mansfield	OH	My sobriety
Mansfield	OH	Support with parenting problems as a result of use
Mansfield	OH	Clean & sober for 16 months
Mansfield	OH	Attitude; sobriety
Toledo	OH	Get my life back in shape
Toledo	OH	A caring judge, probation officer, and counselor
Toledo	OH	Being aware
Youngstown	OH	A new attitude, positivity, standing for what I believe in
Youngstown	OH	Feeling whole & spirituality; long-term sobriety
Youngstown	OH	Stayed clean & good job & family together
Ada	OK	Freedom from drugs/new life
Ada	OK	Clean & sober
Ada	OK	All that I am today: happy, joyous, almost free
Ada	OK	A clean, sober life
Ada	OK	A caring & loving person, a job, a new life, and a family
Ada	OK	Building good relationships with law enforcement, district attorneys, Drug Court staff, judges
Holdenville	OK	Friends in recovery
Okmulgee	OK	My self-esteem is positive; job attendance is good
Purcell	OK	Getting clean
Purcell	OK	Learned to be close to God and anger management
Purcell	OK	Can't even name them, there are so many
Purcell	OK	Changing my whole way of thinking and viewing life in general
Purcell	OK	Great friendships & some enlightening to a true reality
Purcell	OK	I never thought life could be so good being clean; I have never felt better about myself.
Purcell	OK	Have realized that a lot of my problems in the past have been a result of lack of effort in dealing with them, blaming others for my problems
Seminole	OK	Help in getting a D2 and securing a good job
Seminole	OK	Honestly didn't think I would get my life back period
Seminole	OK	Life changes
Eugene	OR	Being praised in court
Eugene	OR	In finding myself
Grants Pass	OR	I found recovery.
Grants Pass	OR	Recovery

City	State	Unanticipated Benefits
Portland	OR	I was not sure I could quit, but I have; the other parts of my life were positively affected; I really feel like a good citizen again
Portland	OR	Opportunity to work on core emotional issues
Philadelphia	PA	Kept me focused to reaching my goals
Philadelphia	PA	Getting a job
West Chester	PA	There are a series of punishments that keep you on your feet, but also there are a few reward incentives for compliance with the program.
West Chester	PA	Along with getting clean it focused my mind to pursue other avenues in life (Exercise, business, recreation)
West Chester	PA	I feel better about myself.
West Chester	PA	Finding an alternative means to deal with and stop pain other than dependence on prescription drugs
York	PA	I know I would not be as far in accomplishments had it not been for the Drug Court program.
York	PA	All the help and support
Agency Village	SD	Discipline and responsible for me to attend meetings
Agency Village	SD	It helped me in a lot of ways; for one thing, to be patient and cooperative
Agency Village	SD	Learned more; more sobriety
Austin	TX	Wanting to change
Austin	TX	Clarity
Austin	TX	Constant urines are a good motivator, although monotonous
Austin	TX	Sobriety
Conroe	TX	GED; college; sobriety
Conroe	TX	When I was accepted into drug court I did not actually expect to change my way of life.
Conroe	TX	Help with other parts in my life besides the drug problem
Ft. Worth	TX	Happiness with myself
Ft. Worth	TX	Places I can go for help
Ft. Worth	TX	I am truly free from drugs & have learned all the coping mechanisms available to prevent returning to them.
Charlottesville	VA	I learned a lot about my addiction that I didn't know.
Fredericksburg	VA	In-patient drug treatment
Fredericksburg	VA	To have people talk to you when need someone to talk to you; it was good.
Fredericksburg	VA	I got a lot of support here
Fredericksburg	VA	Private counseling
Fredericksburg	VA	More organization
Fredericksburg	VA	Watching others fail, being sent to jail, and knowing that could be me
Newport News	VA	Foundation & stability
Newport News	VA	To control my anger better
Roanoke	VA	I've received a lot more support than expected and it helps to feel comfortable talking to my P.O. because I have a lot of trouble with being able to talk to people who are in authority over me.
Bellingham	WA	That I would recovery and the support from Drug Court staff
Bellingham	WA	Legal help with custody issues, etc.; such a positive encouragement with all involved, both the court/treatment staff & fellow clients
Mount Vernon	WA	The pleasures of clean & sober living
Mount Vernon	WA	I got my driver's license back and I'm working.
Mount Vernon	WA	Didn't know what to expect
Mount Vernon	WA	A life with meaning
Mount Vernon	WA	Help, caring/friendship
Olympia	WA	The counseling sessions & MRT helped me deal with my personal issues so I could remain drug-free.
Olympia	WA	I got to know a lot about me from information I gained.
Olympia	WA	Being so very active in AA; living in an Oxford house; staying clean & sober
Olympia	WA	Actually wanting to live a clean & sober life
Port Orchard	WA	Serenity; the list is long
Port Orchard	WA	Meeting new friends I can count on
Port Orchard	WA	The benefits of being clean & sober are far greater than I imagined
Port Orchard	WA	It got me clean.
Port Orchard	WA	Having more people on my side, like Judge Roof
Madison	WI	Stop doing drugs
Madison	WI	Getting and keeping a good job
Evanston	WY	More intense program

City	State	Unanticipated Benefits
Evanston	WY	This program is helping me get in touch with God and my inner-self.
Evanston	WY	Inner-self

IV. Suggestions to Make Drug Court More Effective

Respondents were asked for their suggestions to make the drug court program more effective. Sixty-five percent of the responding participants indicated they felt the program was well designed and did not require any improvements. Those respondents who provided suggestions addressed issues ranging from modifying drug testing schedules and providing transportation and child care services, to more family involvement, clarifying program requirements and expectations, and job placement assistance. A detailed list of their suggestions is provided in Chart VIII-11 of Part Eight of the *Survey Report.*

60 minutes	$65	$64	$48 - $120

The applicable Medicaid rates reported by individual responding jurisdictions are provided in Chart VII-37 (b) of Part Seven.

4. *Total Program Capacity Annually*

The total annual capacity for most of the reporting programs ranges between 100 and 500 participants, with some of the larger programs (Los Angeles, Miami, and Rochester, for example) handling significantly higher volume. The following is a summary of the annual enrollment capacities of the reporting programs:

Chart E-70: Annual Treatment Program Capacity

Annual Capacity	1997	2000
under 100	11%	36%
101 – 200	36%	29%
201 – 300	23%	13%
301 – 400	12%	7%
401 – 500	10%	9%
501 – over	8%	7%

5. *Funding Sources for Treatment Services*[4]

Fifty percent of the responding treatment providers indicate that Medicaid reimbursements are being used to contribute to the costs for treatment services – a significant increase from that reported in 1997. Below is a summary of the variety of funding sources reported by drug court treatment providers to be used to support the drug court treatment services being provided.

Chart E-71: Percentage of Responding Programs Receiving Funds From Sources Listed

Specially dedicated federal funds for the drug court program	33%
Specially dedicated local funds for the drug court program	6%
Participant fees	11%
Third party – insurance reimbursements	4%
Medicaid reimbursements	50%
Other public funding	6%
Private foundation	2%

6. *Participant Fees Charged For Treatment Services*

Eleven percent of the responding treatment programs indicate that participants are charged fees for drug court treatment services[5]. In most instances (87%), the fee is fixed; for the remaining providers, the fee is based on a sliding scale.

C. Impact of Managed Care[6] on Drug Court Treatment Services

[4] See also Part One regarding funding sources reported by judicial system officials to support all components of the drug court program.

[5] These fees are in addition to p rogram fees reported by judicial system officials in Part I.

[6] By "managed care" we refer to various strategies being used to control the utilization, cost, and delivery of health care services.

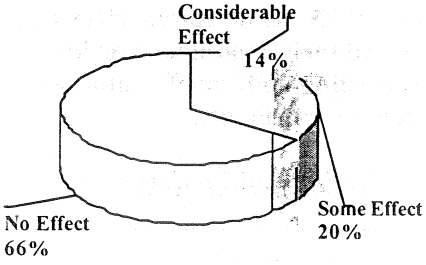
Drug court treatment providers were asked to identify the impact of managed care on the following areas of drug court treatment services: quantity of treatment services; quality of treatment services; entities authorized to provide services; and policies of the state licensing agency.

Note: Because a significant number of the responding treatment programs are using federal or state grant funding, they may not be subject to managed care requirements to the same degree as treatment providers who do not have access to these funding sources. The response summaries below should be reviewed with that caveat.

1. Quantity of treatment services available to participants

Chart E-72: Impact of Managed Care on QUANTITY of Services Available

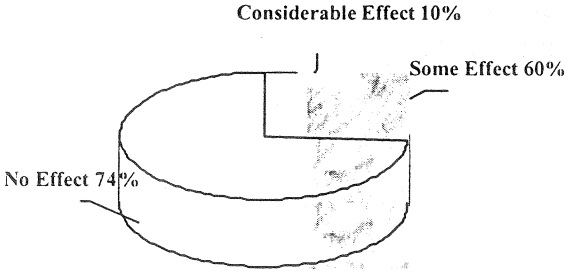
Sixty-six percent (up from 52% in 1997) of responding treatment programs indicate that managed care has had no effect on the quantity of services provided to drug court participants, 20% reported some effect, and 14% indicate managed care has considerable effect.



2. Quality of treatment services available to participants

Chart E-73: Impact of Managed Care on QUALITY of Services Available

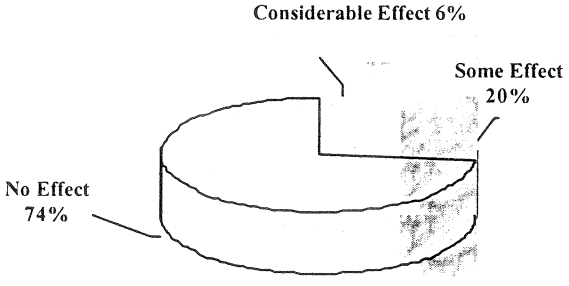
Seventy-four percent (up from 58% in 1997) of responding programs indicate that managed care has had no effect on the quality of treatment services available to participants.



3. Entity authorized to provide treatment services to participants

Chart E-74: Impact of Managed Care on ENTITY Authorized

In terms of the entity authorized to provide treatment services to drug court participants, 74% of the responding treatment providers (up from 59%) indicated that managed care had no effect.



4. Policies of State Licensing Agency

Seventy percent of respondents indicated that the state-licensing agency has not promulgated any special policies regarding the application of managed care provisions for drug court clients. However, respondents from the following states indicated that the state licensing agency had at least initiated policy in this area:

Florida:	providers noted that the state has re-written laws (64D) to take managed care into consideration;
New York:	providers noted that clients benefit from a statewide criminal justice "carve out", which provides that court mandated treatment is to be paid for by managed care Medicaid companies;

Illinois: providers noted that the state designates how many drug court hours of treatment one individual can access in a 1-year period;

Louisiana: providers noted that state requires a licensed counselor for drug court cases.

Respondents from Iowa and Oregon indicated that their state licensing agencies were supportive of drug courts although they did not reference any specific policies in effect at the time.

VII. Treatment Provider Contacts With Program Participants

A. Nature and Frequency of Contacts with Drug Court Participants

Chart E-75 below summarizes the nature and frequency of contact between drug court participants and their treatment provider during the duration of the drug court program. (See also Part One regarding additional contacts by the drug court judge and other justice system officials with drug court participants.)

Chart E-75: Nature and Frequency of Treatment Provider Contacts with Drug Court Participants

Service	Frequency Reported					
Treatment/ Counseling Sessions	Phase I-Group	Phase I-Individual	Phase II-Group	Phase II-Individual	Phase III-Group	Phase III-Individual
More than 4 sessions/ week	36%	21%	15%	11%	7%	9%
3-4 sessions per week	33%	9%	33%	12%	9%	5%
2 sessions per week	16%	10%	27%	7%	22%	8%
1 session per week	7%	40%	15%	40%	18%	37%

Chart VII-43 in Part Seven provides additional information relating to the nature of treatment provider contacts with drug court participants (e.g.,group sessions, individual sessions, length of sessions, etc).

Frequency of urinalysis is at least weekly for 92% of the programs during Phase 1, 87% of the programs during Phase II, and 59% of the programs during Phase III.

Chart E-76: Frequency of Urinalysis Required

Frequency	Phase I	Phase II	Phase III
Daily	11%	2%	1%
At least 2 x week	56%	44%	20%
At least weekly	25%	41%	38%
Every other week	4%	7%	27%
Monthly	3%	4%	12%
Other	1%	1%	2%

B. Comparison of Drug Court Treatment Services with Treatment Services Provided to Typical Drug Court Participants Prior to Instituting the Drug Court

Respondents were asked to compare the nature and availability of treatment services provided to drug court-eligible clients prior to the implementation of the drug court compared with those available following drug court implementation. Their responses were as follows:

1. Extensiveness of Treatment Services Available Prior to the Drug Court

Seventy-four percent of the responding treatment providers indicated that the services prior to drug court were less extensive than through the drug court program.

2. Agency Providing Treatment Services Prior to Implementation of the Drug Court

In those jurisdictions in which a drug court-eligible participant would have been able to access some court-ordered treatment through existing agencies prior to drug court, respondents indicated the treatment services were provided as follows:

probation supervision/referral to a private provider:	57%	provided by the TASC program	10%
probation supervision/referral to a county agency	21%	provided by probation	7%
provided by pretrial service agency	5%		

Sixteen percent of the responding programs indicated the services would have been provided by multiple providers.

3. Funding of Treatment Services

Responding treatment programs cited the following sources of funds for treatment services to drug court eligible participants prior to drug court program implementation

Participant fees	41%	State funds	33%	Private insurance	30%
Medicaid	27%	County funds	16%	Federal funds (unspecified source)	8%

VII. Treatment Program Requirements and Experience to Date

A. Average Length of Time Participants Spend in Treatment

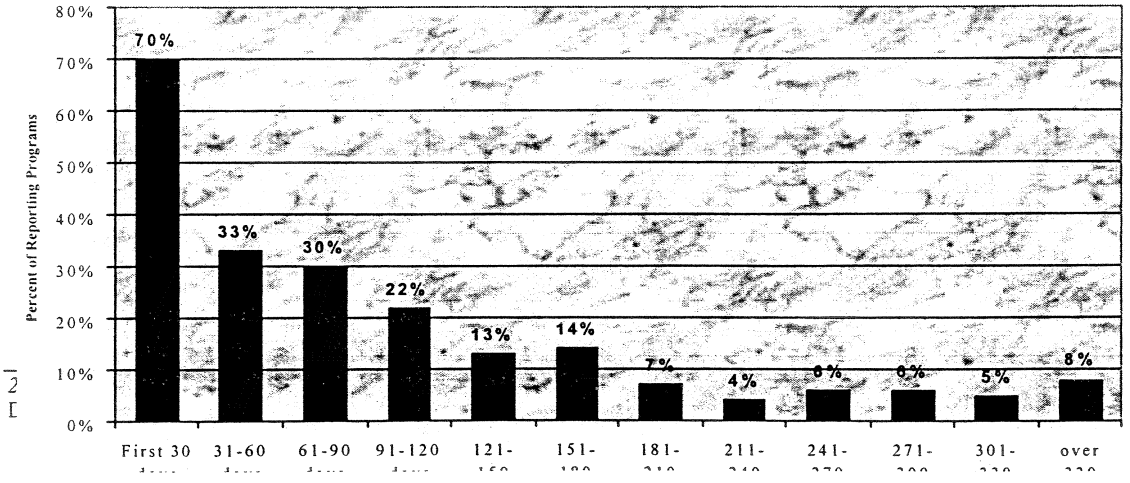
The length of time required to complete drug court varies by program. Most (74%) of the responding treatment programs require participants to spend twelve months or more in treatment. Only five percent of the responding programs permit participants to graduate with less than ten months of participation. Seventy-six percent of the responding programs indicated that participants must attend treatment sessions throughout the period of their participation in the drug court; the remaining 24% indicated that participants can complete the treatment component and then still be required to remain in the drug court for an aftercare phase which generally consists of required AA/NA attendance, drug testing, supervision, and court status hearings. (See also Section I6, Part I above).

B. Point in Time and Situations in Which Relapse Has Been Most Common

1. Timeframe

Chart E-77 below lists the most frequent time frames in which relapse treatment providers that relapse has most commonly occurred within the reporting drug courts. The first 30 days continues to be the period in which relapse is most common, with decreasing frequencies as participants progress. Slight increases were also noted during the sixth-seventh and eleven months.

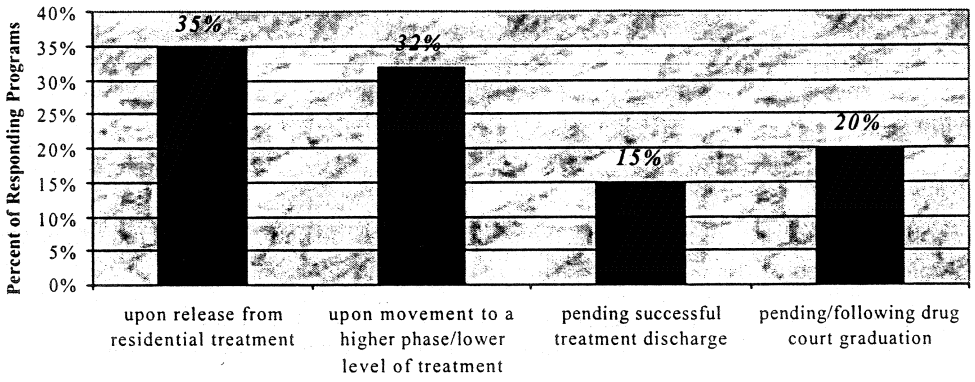
Chart E-77: Time Frame When Relapses Are Most Frequently Reported



3. *Situations Triggering Relapse*

The most frequently reported situations triggering relapse are:

Chart E-78: Situations Reported Triggering Relapse



Many drug courts have used this information to develop special relapse prevention components at these time intervals or for these situations. Several drug courts, concerned with the frequency of relapse occurring around the time of graduation, are also modifying the "graduation" ceremony to portray it more as a **milestone** than as completion of the treatment process.

VIII. Program Follow-Up and Aftercare

A. Aftercare Services

1. Mechanisms for Tracking Relapse by Graduates

Forty-one percent of responding treatment programs indicate that they have established mechanisms for tracking relapse of drug court graduates. These mechanisms include: telephone interviews; surveys; arrangements with prosecutors to review arrest and booking sheets; follow-up by prosecutor regarding new arrests; random urine tests (for participants on probation); and coordination with probation. See also Part One regarding justice system follow-up with drug court participants.

2. Provision of Aftercare Services

Approximately 78% of the treatment providers report that some aftercare services are provided to drug court participants, with slightly over half of these providers limiting services to drug court graduates and the rest providing aftercare services to any participant.[7] The aftercare services offered include: relapse prevention; mentoring assistance with current participants; emergency hotlines; and other support services. Compared with aftercare services reported in 1997, the frequency of provision of aftercare services appears to have declined. A summary of the aftercare services provided by the responding treatment programs is provided in Chart VII-48 of Part Seven.

3. Alumni Groups

Thirty percent of respondents indicate that they have formed an alumni association, and an additional 33% indicated that one is being planned. The responding programs described their alumni activities as consisting of the following components: support group for program alumni (100%); mentoring to current drug court participants (88%); mentoring to new alumni (80%); networking

[7] See also Part One for discussion of aftercare services based on responses from judicial system officials.

opportunities for alumni and participants (76%); representing drug court program in the community (62%); community service activities (50%); and relapse prevention/emergency hotline services (34%).

Other services reported performed by alumni include: recreational activities and establishment of in-house AA programs.

4. Funding, Referral, and Provision of Aftercare Services

a. agency providing aftercare services

Almost all programs providing aftercare services indicate that these services are provided by the treatment provider.[8]

b. referral procedures

Policies among the responding treatment providers regarding referral to aftercare services were reported to be as follows:

Referral by the drug court judge	27%	Referral by the treatment provider only	24%
Referral by the treatment provider	60%	Participant can enroll voluntarily	54%
Either treatment provider referral or participant's voluntary enrollment	26%		

c. funding of aftercare component

In terms of funding aftercare services, most of the responding programs noted that the aftercare component did not operate separately from the drug court. For those providers which had obtained funding for aftercare services, the principal sources of funding were: client fees and state or local funds. Several programs reported that no costs were incurred for the aftercare component, noting services were provided primarily by volunteers and support from alumni.

B. Follow-up With Participants

1. Exit Interviews

Eighty-five percent of the responding treatment providers conduct an exit interview with participants. Fifty-three percent of the respondents conduct an exit interview with all participants, and 32% conduct exit interviews with those who successfully complete the program. The nature of information compiled in those interviews frequently includes: participants' plans for sustaining their recovery (76%); employment status (74%); family/household status (67%); educational status (67%); mental health (54%); public assistance/welfare status (52%); and physical health (51%).

2. Conduct of Follow-up

Approximately 27% of the responding treatment providers indicated that they follow-up with graduates after they have left the drug court program, and 12% follow up with all participants. The follow-up periods range from six months to two years. In addition to the time frames referenced above, one program reported the follow-up period to be 30 days.

3. Follow-up Mechanisms

The responding treatment providers indicated that they utilize three primary mechanisms to obtain follow-up information on drug court participants: telephone interviews (44%), written surveys (28%), and focus group meetings (12%). Programs also rely on arrest records, probation contacts, and alumni activities for follow-up information.

[8] See also discussion of aftercare services in Part One.

4. Information Compiled

For those treatment providers who conduct participant follow-up, the following type of follow-up information is being compiled:

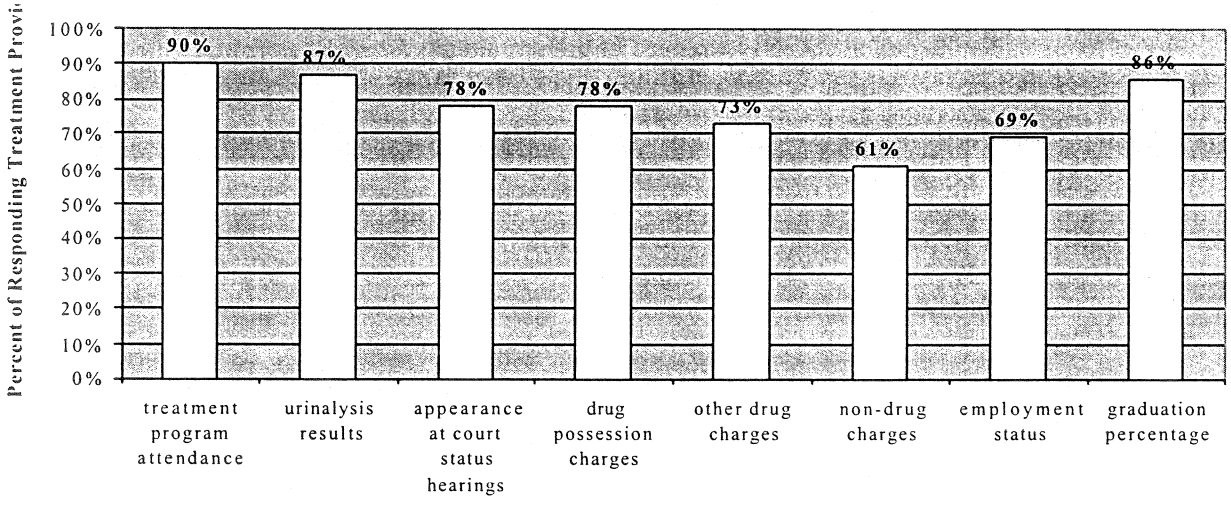
Chart E-79: Follow-up Information Compiled by Treatment Providers (for 39% of responding providers who conduct follow-up)

Recidivism	77%	Drug use	61%
Employment status	61%	Alcohol use	48%
Family/household status	39%	Educational status	35%
Physical health	31%	Mental health	31%
Public assistance/welfare status	27%		

C. Criteria Used to Assess the Effectiveness of the Drug Court Program

Like other agencies involved with the drug court program, the most frequently cited criteria by the responding treatment providers for assessing drug court program effectiveness is: participant attendance in treatment sessions; urinalysis results; and recidivism. A list of the criteria cited is presented in Chart E-80 below.

Chart E-80: Criteria Used to Assess Effectiveness of Drug Court Program by Treatment Providers



IX. Data and Automation

A. Agencies Compiling Client Information and Type of Information Compiled

All of the reporting treatment providers indicate they are compiling information relating to each participant's psychological, social, medical, and family situation, history of drug use, and related information. In addition, activities and developments relevant to each participant's participation in the drug court are recorded, including attendance at treatment; urinalysis results; and compliance with other treatment program requirements.

B. Information Reported by Treatment Provider to Court and Method of Reporting

1. Information Reported to Court

The information most commonly reported by the responding treatment providers to the court is: progress reports (97%); missed treatment appointments (95%); and urine test results (83%). (The

frequency of reporting urine test results may also be determined by the agency conducting the urinalysis if other than the treatment provider).

2. Mechanisms for Reporting Information to the Court From Treatment Providers

A variety of mechanisms are being used to provide treatment reports to the court, most frequently: written reports (90%); oral reporting (77%); through an automated data base (23%); and by mail (6%). Two-thirds of the reporting programs use more than one method.

C. Evaluative Information Being Compiled

Treatment providers were asked whether information is being compiled on clients that will contribute to evaluative information regarding participant demographic characteristics, substance abuse history, program success, and other factors. Thirty-seven percent of the responding treatment providers indicated they were compiling this information and, overall, 91% reported that this information is being compiled by various agencies involved with the drug court. Nine percent of the responding treatment providers indicated that no such evaluative information is being compiled to their knowledge.

X. Program Operational/Planning Issues

A. Most Serious Problems Treatment Providers Have Encountered as a Result of Implementing the Treatment Component of the Drug Court and Strategies Used to Resolve Them

Treatment providers were asked to identify the most serious problems they had encountered in designing or implementing the drug court and to describe the strategies used to resolve these problems. A wide range of problems are noted, including: having adequate services for women; need for an effective tracking/data management system; funding; maintaining qualified staff/staff turnover; reconciling federal confidentiality laws with court processes; coordination with court officials and processes; and interagency coordination and communication. The most common strategies for addressing these problems appears to have been through continued local effort, often through increased communication with other "team" members. In a number of instances, these problems are still being addressed.

Responses of the treatment providers to this question are presented in Chart VII-56 of Part Seven.

B. Unanticipated Issues and Strategies to Resolve Them

Respondents were also asked to identify the unanticipated issues that have arisen since the drug court became operational and the strategies used to address these issues. Among the issues cited included: participants entering the drug court who were taking prescription medications; the passage of a state ballot initiative mandating probation and treatment only for first and second time arrests for drug court possession (Arizona); differing ideas about who qualified for the program and what criteria should be used to determine success; the frequency of persons with co-occurring mental health disorders entering the program; funding uncertainties; and the extent of time required for service provision. Addressing these issues has usually entailed developing special relevant policies and/or procedures and/or working with the team to develop an appropriate response, if possible. In many instances, these issues are still being addressed.

The responses from the treatment providers are presented in Chart E-81 which follows.

Chart E-81: Unanticipated Issues and Strategies Used to Resolve Them

Jurisdiction	State	Unanticipated Issues	Resolution
Cullman	AL	Participants entering the Drug Court taking prescription medications.	Participants must show statement from physician stating condition and need for medication; Participants are encouraged to seek other alternatives to controlled medications; Particip ants may be sent for a psychiatric evaluation and second opinion of physician to determine need for medication.
Phoenix	AZ	A medical marijuana ballot Proposition 200 initiative was passed by 42 voter in 1996. It included a mandate for probation and treatment only for 1st and 2nd time drug possessors -- no jail. Our drug court model includes 60 days deferred jail for all participants -- imposed at the Judge's discretion.	We are applying for DOJ grant funding to develop a 2nd drug court track for Proposition 200 defendants only. A new set of sanctions/rewards will replace the "carrot" of deferred jail.
Phoenix	AZ	A medical marijuana ballot Proposition 200 initiative was passed by 42 voters in 1996. It included a mandate for probation and treatment only for 1st and 2nd time drug possessors -- no jail. Our drug court model includes 60 days deferred jail for all participants -- imposed at the Judge's discretion.	We are applying for DOJ grant funding to develop a 2nd drug court traffic for Proposition 200 defendants only. A new set of sanctions/rewards will replace the "carrot" of deferred jail.
Tucson	AZ	Higher than anticipated treatment costs combined with lower than anticipated revenue.	Extending credit to finance debt.
Chico	CA	The need for more intensive day t reatment and more residential treatment – both short- and long-term	In the process of being addressed now: 1). Working with community based treatment providers. 2). Grants helping pay for residential aftercare.
El Monte	CA	Housing for homeless; medical issues	Opened transitional living for clients --Not enough funding.
Fairfield	CA	Coordinator and management of funds from various grants and public funding.	Coordination between Court and Substance Abuse Services.
Indio	CA	Some differing ideas about whatconstitutes participants' success	Team discussion resulted in a graduation checklist
Lakeport/ Clearlake	CA	A grant which was received for data collection was turned back due to match requirements (Lake is a rural county); it has taken time to develop a p rocess to collect and track client progress	A database system is currently being established to allow accurate data collection; due to staffing levels, this development takes time
Los Angeles	CA	The DA's right to reject participants based on minor violent offenses.	By making the determination after reviewing police reports.
Mendocino	CA	The community felt the impact of many mandatory clients, as this community is very small	Ongoing efforts to keep clear and positive relationships
Modesto	CA	That we would grow from a pilot project to current capacity of 150.	Staff added.
Napa	CA	Loss of staff members	Hiring new staff
Redlands	CA	Due to mentor courts, we have addressed all issues	
San Diego	CA	Significant increase in urinalysis testing	Drug Court started their own testing program instead of relying solely on the providers
San Diego	CA	The need for better access to mental health services in a timely manner	Most clients are referred to county agencies and there is little control Drug Court has in expediting services
San Diego	CA	Drug testing help	Still an issue
Santa Ana	CA	Funding continues to be a problem. There is no predictability with regard to funding.	Still addressing.
Santa Cruz	CA	Demands of number of labor hours needed to operate in-house UA screening	Hard work; close management
Santa Maria/ Santa Barbara	CA	Transportation issues for clients; housing problems; climbing costs for supplies; childcare issues	Job Training Network assists with childcare, education and employment; community outreach and presentations; funding to assist with housing
Stockton	CA	Who makes counseling decisions or who is in charge of treatment.	Talking and sometimes court orders are crossing lines into how to provide treatment.
Vista	CA	Rotating treatment team members (judge, public defender, district attorney, program coordinator)	All new members are required to attend CADCP, NADCP conferences

Jurisdiction	State	Unanticipated Issues	Resolution
Waterbury	CT	Addition of anti-social behavior associated with chemical dependence giving need for extended treatment in therapeutic communities.	Use of state residential facilities that address anti-social behavior.
Fort Lauderdale	FL	Program size; client demographics; computer needs.	Through redesigning system operations.
Gainesville	FL	Conflict of interest around client advocacy when being paid by criminal justice system to provide services.	Will be an ongoing problem,
Hillsborough	FL	1). Higher % of mental health clients -higher pharmacy cost. 2) Medical needs unable to be addressed due to lack of funding. 3) Wait list and unable to get clients admitted to the tx quickly.	1). Working with pharmacy and pharmaceutical companies to access indigent opportunities. 2). Move effective medical screening of clients. 3). Educating court on wait list and section space.
Jacksonville	FL	The number of dually diagnosed clients that would enter the program.	Increased communication between agencies and the increase of staff to deal with dually diagnosed clients.
Jacksonville	FL	Housing opportunities for women in the community.	Not addressed.
Key West	FL	Staff turnover; Volume of cases; Incredible needs of juvenile; Increased cost	Still being addressed
Miami	FL	1. Expansion of the program to include second and third time defendants. 2. In 1992, a major natural disaster (Hurricane Andrew) severely damaged South Dade facilities.	1).Hired additional counseling staff. 2.) Secured another site for South Dade office.
Orlando	FL	The resistance to work that is sometimes exhibited by a team member.	These issues are addressed & monitored via the Drug Court coordinator.
St. Petersburg	FL	In the past 5 years the funding stream has changed	These have been resolved by seeking new sources of funding
Tampa	FL	Severity of dual diagnosis issues.	Referrals to mental health facilities for treatment.
Tampa	FL	None identified at this time	
Tampa	FL	Severity of dual diagnosis clients.	Referral to mental health treatment.
Tampa	FL	Fluctuation in funding and referrals.	Ongoing
Honolulu	HI	The expansion of the Drug Court concept has created a need for coordinated e fforts across jurisdictions (islands); securing funding for all programs is proving to be a challenge.	The Judiciary's administration has appointed a coordinating council of all possible involved administrations
Granite City	IL	The need for more residential services than originally planned; the need for access to dual diagnosis treatment.	Worked with 4 different agencies to access treatment beds; hired dual diagnosis counselors and working on getting set aside time from staff psychiatrist.
Rockford	IL	The need for more staff to observe urine drops by offenders, and transportation to treatment for clients.	TASC utilizes their staff from other funded programs to assist in observation, and providing bus tokens.
Gary	IN	Client manipulation	Meeting with Judge/ Administrative Staff
Indianapolis	IN	Geographic challenges - original planned to have treatment program services on site at or close to court system, has not been able to be completed. Transportation for some clients is an issue.	1). Some limited resources have been available 2). Other group members have assisted in providing rides to others.
Richmond	KY	They have not been addressed.	
Alexandria	LA	None	
Franklin	LA	Loss of program director	Hired clinical supervisor-reassigned administrative duties.
Monroe	LA	1)Need for additional space. 2).Need for more groups. 3) Need for more counselors.	1). Moved form 22,000 sq. ft. building to almost 50,000 sq. ft. 2). Added two new aftercare groups, PTOP, and relapse prevention. 3). Asked Drug Court to fund additional counselors.
New Iberia	LA	Clients submitting "purchased" urine.	Began temperature testing samples.
Oak Grove	LA	Delay getting funds.	
St. Tammany	LA	We were stopped from using on-site urine test cups because state law was interpreted to disallow use of any testing devices by persons not certified in forensics & testing.	We secured a contract with Secon, and ended up testing for more substances and paying less per test.

Jurisdiction	State	Unanticipated Issues	Resolution
Thibodaux	LA	Refining the referral process.	Drug Court team readdressed and restructured the referral process.
Minneapolis	MN	The shifting of fiscal responsibility for drug testing at the treatment programs.	The treatment programs now bear the cost for the first phase (190 days) of program involvement.
Jefferson City	MO	Problems with on-site UDS devices; randomization of UDS on site; program entrance criteria has changed due to small numbers; the broader entrance requirements have impacted the ability to meet client needs in the larger group setting; we have a client program capacity of 35.	Now seeking additional funding for random screening and confirmation of UDS; the (35) program capacity will limit the range of available services on-site; more emphasis and focus on individual tx goals has addressed this problem; We cooperate with other agencies for specialized services.
Kansas City	MO	1) Number of UA's required to monitor sobriety/random schedule; 2) Paperwork for case managers is overwhelming; 3) Development of database late in the implementation	1) Hired a youth worker to perform UA's; 2) Streamlining some procedures and instituting new policies (e.g., assigning a "day" in court to cover all cases.) Database is completed and now inputting is in progress
Kansas City	MO	Increase in salary expectations of staff without increase in reimbursements; amount of time required of clinical supervisor to be present in court; staff turnover at our treatment location.	First 2 not satisfactorily addressed; 3rd issue through increased contact by supervisor
St. Louis	MO	Treatment guidelines, meetings and staffings.	Continuing to work on this
Sykeston/ East Prairie	MO	Being creative in obtaining/presenting program incentives/inducements for participants (ie. rewards or sanctions); educating the community, obtaining donations from various community businesses, gift certificates, passes, etc.	Still working on this issue.
Browning	MT	High rate of unemployment; people wanting to move to find jobs.	1 person moved, but he has to attend group out of town.
Omaha	NE	Who's running the show (Drug Court judge, Court Administrator, or management team)? Getting us all to work together has been a need that still escapes us.	
Collingswood	NJ	A higher number of mental illness issues than anticipated.	We moved people around to agencies that can handle both mental health & substance abuse.
Elizabeth	NJ	Philosophy; team members disagree in many areas.	Discussion and compromise.
Las Vegas	NV	Integrated computer database.	Still working on it.
Bronx	NY	Court did not consider the volume of methadone clients.	Creating a policy, procedure and protocol manual to follow.
Kew Gardens	NY	Again, accommodating the large volume of treatment participants.	
New City	NY	The number of relapses during holidays.	Drug Court Office is consulting with treatment providers.
New York	NY	Different perceptions relative to completion of drug court program vs. completion of program.	Still in discussion stages.
Troy	NY	Concerns about net-widening	Addressed in monthly Drug Court TASK Force meetings, but not resolved
Troy	NY	Concerns about net-widening	Addressed in monthly Drug Court TASK Force meetings, but not resolved
Mansfield	OH	An abundance of case management – reports bi-weekly and monthly. More time in the court setting with hearings and pre-treatment meetings.	Hired a full-time coordinator to address all drug court participant cases.
Canton	OH	None	
Cleveland	OH	Random UA testing	Developed a system
Hamilton	OH	Mental health - We didn't anticipate the number of clients with mental health issues to come through drug court.	SAMI- The SAMI (Substance Abuse Mental Illness) track of drug court was developed to address this population.
Sandusky	OH	Decreasing number of applicants.	Exploring alternative referral resources, e.g., felony probation violators and municipal level misdemeanor clients.
Toledo	OH	Flexibility of moving clients between levels of care and dealing with waiting lists.	Worked with the judge, court administrator, coordinator to be creative in providing services without waiting lists.

Jurisdiction	State	Unanticipated Issues	Resolution
Ada	OK	Funding	Unresolved
Okmulgee	OK	Payment for inpatient treatment, services included in budget. Contracting with other sources for inpatient treatment.	By setting aside or allowing for those services in the budget.
Purcell	OK	The lack of cooperation of area education facilities and their unwillingness to work with felons; The lack of cooperation of P&P for supervision	A separate location was provided to hold educational classes related to obtaining the participants' GED
Eugene	OR	1) Beginning to bill insurance companies for services. 2) Need for residential treatment services and methadone program availability. 3) Dually diagnosed clients.	1) Developing Procedures 2).Working one-on-one until services are available. 3). Federal grant recipient.
GrantsPass	OR	We didn't consider how difficult the UAs would be. We spend a lot of time researching drug screen issues. Lack of funding for intensity of treatment.	Lot's of discussion with all involved, visits from professionals.
Portland	OR	Increasing need has not been addressed. Restricted funding	Policy committee limited program capacity to meet available funding.
Philadelphia	PA	Accurate and timely progress reports.	Ongoing provider meetings.
Pittsburgh	PA	In order to be eligible, as a condition of our grant, all clients must be level 3 or 4 offenders. As a result, level one and two offenders with drug and alcohol problems are not eligible.	There have been discussions about starting a misdemeanor drug court for lower level offenders.
York	PA	When Drug Court ran out of the treatment funds, the volume of clients were a burden on our funding. We refer clients to treatment, however, clients (especially women) have non-drug free home environments.	Although we have eliminated waiting lists and processing clients of Drug Court with preferential treatment, our budget is on track and paced with creative case management, utilizing any program for women we can contact.
San Juan	PR	That the Department of Justice has limited our functions and has decided to even contract and monitor private treatment providers.	Still an issue.
Conroe	TX	Housing (temporary); medical screening of participating & court staff; misdemeanor charges	Community involvement
Fredericksburg	VA	Time involvement.	Reapportioning tasks.
Bellingham	WA	Local housing authority terminated section 8 housing for participant. Our judge, Pub Def., Corrections and Coordinator met with H. Authority and resolved the issue.	Housing Authority may not have been aware of their regulations that could have prevented the situation from arising. Info on DOJ + NADCP websites was helpful in letting them know the scope of their ability to work with Drug Court. After attending planning sessions, Whatcom County made a decision to begin their program and trust that we would be better served by being in operation than over-planning which has eliminated a rigid approach and has been very successful.
Lacey	WA	Available personnel to observe UA testing; insufficient staff time to do effective case management, especially when near capacity	Utilized personnel from other departments; hasn't been issue lately due to low census.
Mount Vernon	WA	The continued need for flexibility in redefining program objectives.	Consistent focused drug court team meetings
Seattle	WA	The increased number of active participants; It was estimated at <250, but is now close to 500	We were allowed to add a half time administrative assistant.
Madison	WI	Attention to protecting the confidentiality of program participants therapeutically while still addressing the criminal justice system's need to know; equitable application or decision rules for program participants	Ongoing discussions at advisory committee.
Evanston	WY	Numerous Drug Court Team meetings, lunches with the county attorney and we have asked for technical assistance from OSP. Not enough transitional care space or staff to comfortably provide the intensity of the services that are provided.	Continue to work on this.

C. Program Improvements Suggested

Respondents were also asked to indicate any improvements they would suggest for their drug court program. Their suggestions generally focused on increased funding and communication with other agencies involved with the program. A summary of their suggestions is presented in Chart VII-58 in Part Seven.

D. Degree to Which Treatment Providers Feel That Their Drug Courts Have Achieved the Benchmarks Established in the "Key Components"

Each discipline was asked to indicate the degree to which they felt their respective drug court had achieved the benchmarks established in the "key components". The components that have been most commonly developed, from the perspective of the drug court treatment providers, appear to be:

Component 1: integration of alcohol and other drug treatment services with justice system case processing
Component 4: access to a continuum of alcohol, drug and other related treatment and rehabilitation services
Component 5: monitoring abstinence by frequent alcohol and other drug testing
Component 6: coordinated strategy governs drug court responses to participants' compliance; and
Component 7: ongoing judicial interaction with each drug court participant

A summary of the drug court treatment providers' responses is provided in the Introduction to this Volume and in Part Seven of the *Survey Report.*

E. Advice to Colleagues

Responding drug court treatment providers were asked what advice they could offer to treatment professionals in other jurisdictions who were contemplating the implementation of a drug court. Their responses highlighted the importance of working as a team with other drug court officials; developing the capacity for addressing a variety of mental health needs presented by participants; and providing on going information and education to others involved with the program regarding relevant addiction and treatment issues. A summary of the comments provided is presented in Chart VII-60 in Part Seven of the *Survey Report.*

PART EIGHT: PERSPECTIVES OF PROGRAM PARTICIPANTS

As part of the 2000 survey of operational drug courts conducted by the OJP Drug Court Clearinghouse and Technical Assistance Project, each drug court judge was asked to distribute a brief questionnaire to at least five participants in the final phase of his/her drug court program. Responses were received from 844 participants in 153 programs from 31 states and Puerto Rico. These responses represent a significant increase from the 250 respondents reflected in the Participant Perspectives comments reported in the 1997 Survey Report. An overview of the background of the respondents and their perspective on generic components common to all drug courts is provided in this section of the report.

I. Background of Respondents

A. Prior Treatment Program Experience and Dates of Participation

Fifty-seven percent[1] of the respondents had never previously been enrolled in a drug treatment program. The following is a breakdown of the treatment program experience of the respondents:

No prior treatment program experience	57%	One prior treatment program	26%
Two previous treatment programs	8%	Three or more prior treatment programs	9%

For those participants who indicated that they had participated in more than one prior treatment program, the dates for participation in these prior treatment programs generally extended back at least fifteen years and, in two instances, over twenty years. The dates on which they had ended their last prior treatment program ranged between 1967 and 1999 – e.g., between 32 years and a few months prior to entering the drug court. For over half of the respondents who had participated in at least one prior treatment program, the period for participation in the prior treatment program was within four years of entering the drug court.

For those respondents who reported participating in one previous treatment program, the dates on which they had left those programs were as follows:

1980 – 1990	17%
1991 – 1995	25%
1996 – 1999	58%

B. Background of Respondents

1. Gender

The gender of the respondents was 37% female and 63% male, reflecting a significantly larger percentage of females than is reflected in the general drug court population.[2]

4. Age

The average age of all respondents was 34.0 years. Thirty percent of the respondents were 40 years of age or older. The average age of male respondents was 32.8 years, with ages ranging between 16–66; the average age of female respondents was 35.7 years, with ages ranging between 16–66. The average age by program ranged between 22.4 years (Lafayette, LA), 23 years (St. Tammany and

[1] The June 2001 information compiled by the OJP Drug Court Clearinghouse regarding prior treatment experience of all drug court participants indicates that only 25% have had no prior substance abuse treatment.

[2] The gender of the respondents differs from that of the general drug court population which has been approximately 73% male and 27% female.

Washington Parishes , LA); 23.2 years (Philadelphia, PA); 23.5 years (Gary, IN and Scott Co., MS); and 24.6 years (Harford County, MD) to 40.67 years (Blackfeet Tribal Court, Browning, MT); 42 years (Mahoning Co., OH); 44.17 years (Manhattan, NY); and 45 years (Brooklyn, NY).

The age categories of the responding drug court participants were as follows:

20 years and under	9%	40-49 years	22%
21-29 years	28%	50-59 years	7%
30-39 years	33%	over 60	1%

The average age of respondents by program was as follows:

Average Age of Respondents In Program	**Percent of Responding Programs**
Under 25	7.5%
25-29 years	22%
30-34 years	31%
35-39 years	27%
40-44 years	11%
45-49 years	1.5%

A list of the programs represented by the responding participants and the average age of the participants in each program is provided in Chart VIII-1 of Part Eight of the *Survey Report.*

5. Marital Status

Two-thirds of the respondents were single and not living with a significant other. Approximately one-quarter of the respondents were married and living with their spouse (15%) or living with a significant other (11%). The remaining respondents were either married or separated (9%) or widowed (1%).

4. Parental Status of Participants

Sixty-five percent (549) of the respondents were parents, reporting a total of 1,200 children. Forty-six percent (388) of the respondents were parents of minor children only, reporting a total of 930 minor children. Eleven percent of the respondents were parents of both minor and adult children[3] and eight percent were parents of adult children only. Half of the respondent parents of minor children reported that all of their minor children resided with them; the other half indicated that some or all of their minor children did not reside with them. Most (over 70%) of the respondents who were parents of adult children indicated that their adult children did not live with them. More detailed information regarding the number(s) of minor and adult children of the responding participants and their residential status is provided in Part Eight.

5. Educational Level of Respondents

Forty-four percent[4] (up from 30% in 1997) of the respondents had neither a high school diploma and/or GED certificate when they entered the drug court. Thirty-nine percent had a high school diploma or GED certificate, and the remaining 17% had some schooling beyond a high school diploma or GED.

[3] The percentage of respondents who were parents of minor children was lower than that indicated by recent surveys of all drug court participants, which indicate that approximately 75% of participants, at all stages of program participation, are parents of minor children.

[4] This percentage of participants with no high school or GED certificate is higher than the average of 35% reported for all drug court participants to the OJP Drug Court Clearinghouse in June 2001.

6. Military Status

Three percent of the respondents indicated that they were in the active military and an additional 7% indicated they were veterans.

C. Time Between Arrest and Entry into the Program

Only twenty-three percent of the respondents indicated they entered the drug court program within fifteen days of their arrest. The majority of respondents did not enter the drug court immediately after arrest, as is characteristic of the drug court concept. Over half of the respondents indicated that they entered the program 31 or more days following their arrest, with 42% indicating that the time frame was over 60 days.

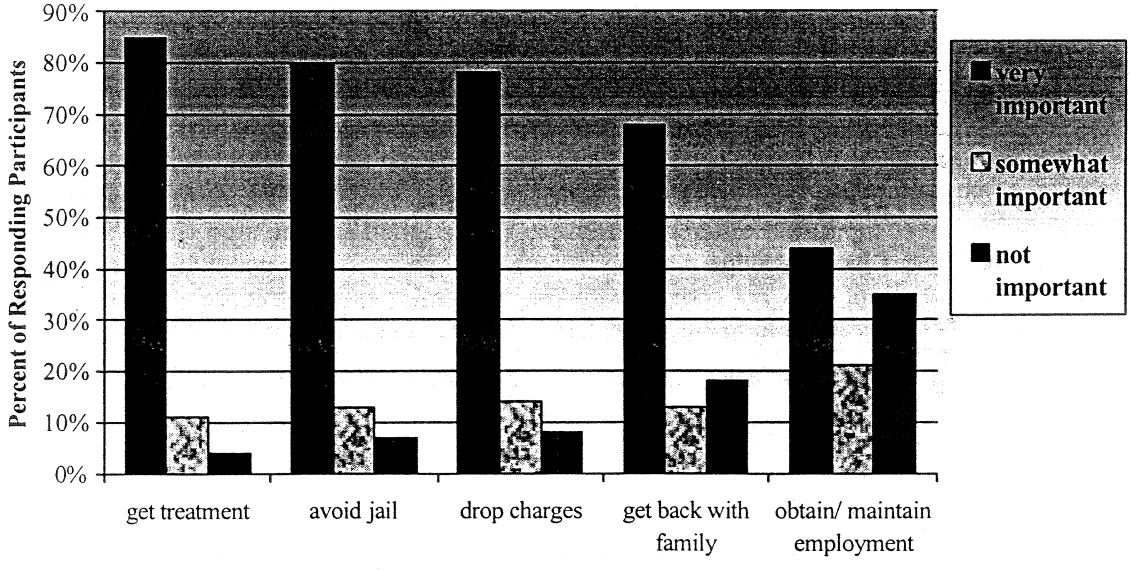
II. Participants' Comments Regarding Drug Court Experience

A. Most Important Reasons for Entering Drug Court Program

Participants were asked to indicate, by relative importance, the reasons they **entered** the drug court program. Their responses indicate that the most significant reasons they entered the drug court were: the opportunity to get treatment (85%); the chance not to go to jail (80%); the possibility of having their charges dropped (78%); and the chance to get back with their families (68%).

Apart from the opportunity for obtaining drug treatment, the significance of these responses must be interpreted in light of the specific characteristics of the respondents' programs (e.g., whether dismissal of charges is offered to successful participants, etc.). Additional reasons respondents offered for entering the drug court included: "the chance to rebuild my life"; "the chance to live a constructive and productive life"; and "the chance to gain self-respect". A more detailed summary of their responses is provided in Chart VIII-8 of Part Eight of the *Survey Report.*

Chart E-82: Reasons for Entering Drug Court

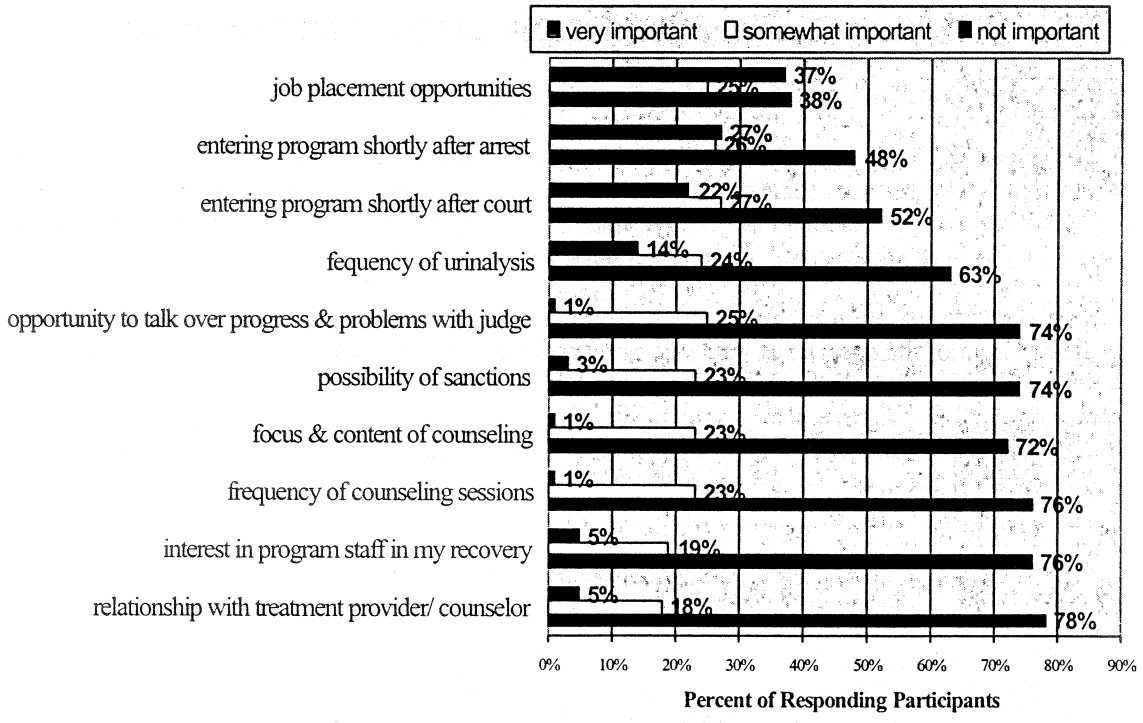


B. Most Important Reasons for Remaining in the Program

Participants were also asked to indicate the most important reasons they **remained in** the drug court program. The reasons cited by over 97% of the respondents as somewhat or very important were: the frequency of counseling sessions; the opportunity to talk over progress and difficulties with the judge; and the possibility of sanctions. Other frequently cited reasons were: the participant's relationship with the treatment provider/counselor; and the interest expressed by program staff in the participants' recovery.

Chart E-83 below summarizes reasons cited by respondents for remaining in the drug court program.

Chart E-83: Reasons for Remaining in the Drug Court Program by Levels of Importance

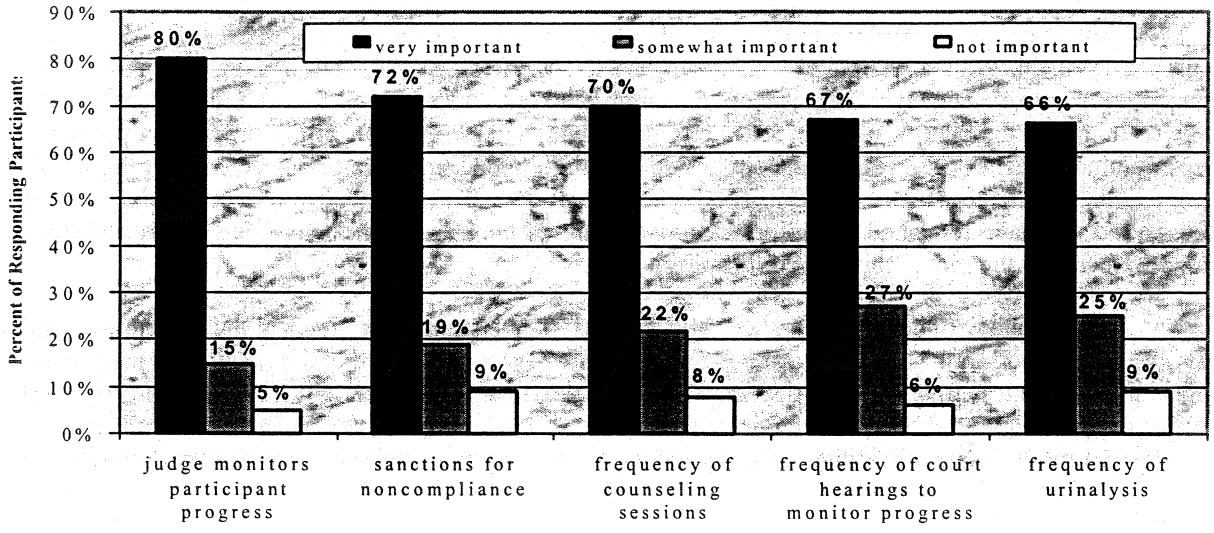


C. Most Significant Differences Between Drug Court and Prior Treatment Program Experience

Those participants (43%) who had been enrolled in at least one prior treatment program were asked to indicate the most significant differences between that program and the drug court. The most frequently cited differences were: a judge monitors participants' progress; the possibility of sanctions being imposed if a participant does not comply with program requirements; frequency of counseling sessions; frequency of court hearings to monitor participant progress; and frequency of urinalysis.

Below chart E-84 summarizes respondents' comments regarding these differences and their significance:

Chart E-84: Differences Between Drug Court and Prior Treatment Experience by Importance



Participants also noted the importance of the "policing aspect" of the drug court for recovery, especially at the early stages.

III. Participants' Comments Regarding Drug Court Components

A. Length of Time Required for Drug Court Program Participation and Participants' Perception of Its Appropriateness

Participants were asked to indicate the time period required for their drug court participation and whether they felt this time frame was appropriate, too long, or too short. Forty-four percent of the respondents participated in programs that were 12 months in duration; forty-two percent participated in programs that were longer than 12 months; and 12% participated in programs that were of shorter duration.

Sixty-six percent of the respondents felt the length of time required for program participation was appropriate. Twenty-three percent felt the duration should be shortened, five percent felt it should be lengthened, and six percent felt the duration of the drug court program should be tailored to the individual participant's needs. There did not appear to be a significant correlation between the length of the participant's program and his/her comment on its appropriateness.

B. Drug Testing Frequency During Initial Phase of Program Participation

Respondents were asked how frequently they were tested for drug use during the first three months of their participation and how frequently they felt they should be tested. Over two thirds of the respondents were tested at least twice weekly. Most respondents (83%) suggested a testing frequency of at least weekly during this period, with some variations reflected on additional recommended testing frequencies.

C. Participants' Perceptions Regarding Significance of Potential Changes of Critical Features of the Drug Court Program on the Likelihood of Their Remaining in the Drug Court Program

Participants were asked to indicate whether they felt they would have remained in the drug court program if critical features relating to judicial supervision and treatment services associated with the drug court concept were changed. Their responses, summarized in Chart VIII-9 in Part Eight of the *Survey Report,* reinforce the significant role that the judge plays in their retention in the drug court program. Seventy-nine percent of the respondents indicated that they would not have remained in the program as long as they did if they did not have to appear before any judge. Seventy-seven percent indicated that they would not have remained in the drug court as long as they had if they appeared before different judges rather than the same individual or team of judges.

The frequency of court appearances also appears to be a significant factor in their retention, with 65% of the respondents indicating they would not have remained in the drug court if their court appearances were less frequent. Respondents appeared satisfied with the current frequency of drug court hearings applicable to their respective programs (regardless of the actual frequency) and did not indicate they desired more frequent hearings. The respondents were approximately split (52% for; 48% against) on the likelihood of improving the chances for their remaining in the drug court if the frequency of hearing was increased.

Chart E-85: Significance of Potential Changes in Drug Court Structure on Likelihood of Participants' Remaining in Drug Court Program: Participant Perspectives

Potential Change	Would increase likelihood of remaining in program	Would reduce likelihood of remaining in program
The program provided drug testing and court status hearings but no treatment	37%	63%
Participants appeared before a judge less frequently	28%	72%
Participants appeared before a judge more frequently	52%	48%
Participants appeared before different judges rather than the same judge	23%	77%
Participants did not appear before any judge	21%	79%

DI. Adequacy of Explanation of Drug Court Program Requirements Prior to Program Entry and Unanticipated Program Requirements

Participants were asked whether the program requirements were clearly explained to them at the time they entered the program, and whether there were any aspects of the program requirements or procedures that they did not anticipate. Eighty-two percent of respondents indicated that the program requirements were clearly explained to them at the time they entered the program, and 68% of respondents said they encountered no unanticipated requirements or procedures.

Most of the respondents who indicated they encountered unexpected program requirements commented that the rules and guidelines for their drug court programs had changed during the period of their participation. Some also commented that they did not expect the fees and costs associated with the program, which were particularly difficult for participants who were not employed. A number of respondents commented on various aspects of the drug testing process, including the frequency required, sanctions imposed, and the fact that they were being observed. A number of respondents also indicated that the requirements for the drug court were much more extensive and difficult than they had anticipated.

Those respondents who noted unanticipated aspects to the program cited both positive and negative aspects, the most frequent of which were (in the order of frequency):

Program changes and inconsistencies	Amount of time involved
Duration of the program	Community service requirements
Program costs and fees required	Frequency of imposition of sanctions
Intensity of urine testing	Intensity of program structure/strictness of program policies
Number of AA/NA meetings required	The support of the judge and others
Intensity of supervision	Willingness of the program to include participant's family

E. Unanticipated Benefits Derived From Drug Court Participation

Respondents were also asked to note any unanticipated benefits they had derived from participating in the drug court program. Fifty-four percent of the respondents indicated they had derived benefits from the drug court program that they had not anticipated, the most frequently noted of which were: self respect; sobriety and benefits associated with it (restored family relationships, retaining/obtaining employment); and the resources (friends, support network, "tools", etc.) to stay sober and continue their recovery.

Below is a full listing of the unanticipated benefits noted by respondents

Chart E-86: Unanticipated Benefits from Drug Court Participation Noted by Responding Participants

City	State	Unanticipated Benefits
Cullman	AL	No drug use
Cullman	AL	Job, self-respect, different attitude
Cullman	AL	Learned that AA was good for me
Cullman	AL	I thought of it as a temporary thing; I didn't think I would want to stay straight.
Cullman	AL	Benefits from NA & AA
Cullman	AL	Never been sober before
Mobile	AL	A better understanding of my addiction behavior and destructive behaviors
Mobile	AL	I am actually beginning to consider the consequences of my actions.
Tuscaloosa	AL	At first I didn't think the program would help me, but it eventually sunk in and I feel I will be better off from here on out.
Phoenix	AZ	My counselor has helped me regain self-esteem and pride.
Phoenix	AZ	A stronger sense of self
Phoenix	AZ	That I would be sober for a year
Tucson	AZ	A different outlook in life
Tucson	AZ	The ability to learn more about the court system
Tucson	AZ	I learned many tools to help me stay clean.
Tucson	AZ	Getting to know some genuine & interesting people
Yuma	AZ	My life
Yuma	AZ	Sobriety; holding a job; responsibility
Yuma	AZ	Sobriety
Bakersfield	CA	I learned different ways to keep a good recovery.
Bakersfield	CA	I had never completed anything in my life, so it gave me ambition and confidence in myself.
Chula Vista	CA	I'm learning how to live a productive life by helping others and meeting a lot of recovering professional people; I like it; I'm working, going to school and doing volunteer work.
Chula Vista	CA	Structure in life
Chula Vista	CA	My length of clean time
Compton	CA	Caring about myself and how to live
Compton	CA	Finding out who I really am sober
El Cajon	CA	I never thought I would be where I am at today; I love myself & my life now.
El Cajon	CA	I learned that the NA program works.
El Cajon	CA	I never thought my life could have turned out this good.
Fairfield	CA	New life
Fairfield	CA	Fixed fines; return of driver's license; reduction of charges.
Fairfield	CA	Being assured that C.A.D.A.C. are truly here to help and not there just for a paycheck

City	State	Unanticipated Benefits
Fairfield	CA	That the counseling session would be as effective in helping my recovery
Modesto	CA	Respectability
Modesto	CA	I have really e mbraced recovery this time, so the program works better for me than 2 expensive treatment programs I attended previously; I think the AA/NA component is very important as we all need a higher power to get a clean new life.
Oroville	CA	I have just learned a lot about myself with & without drugs.
Oroville	CA	Recovery
Oroville	CA	I benefited when I realized that it works and I can stay clean.
Redding	CA	A God in my life; I'm learning to open up to people and learn more about myself
Redding	CA	A new way of living
Redding	CA	Self-respect; I look forward to the future with a sense of hope in becoming respected in the community.
Redding	CA	A clean and healthy and honest person
Redlands	CA	Job; family respect
Redlands	CA	Return of family respect
Redlands	CA	Community assistance; good friends
Redlands	CA	Job; respect
Richmond	CA	I never considered stopping, but now I have
Richmond	CA	A possibility to locate my kids' whereabouts; a productive person in society.
Richmond	CA	The humanitarianism of Judge Grossman
Ridgecrest	CA	Communication skills, understanding, and keeping & completing goals & tasks, keeping continuous sobriety; staying alive
Ridgecrest	CA	Counseling has showed me a lot about doing well.
Ridgecrest	CA	The need for commitment from all levels of recovery
Ridgecrest	CA	I really did find out that the program does work if you apply a little will power & positive direction & be honest with yourself.
Ridgecrest	CA	Knowledge of addiction & relapse; how to change my life to improve it and become a member of society
Riverside	CA	GED
Riverside	CA	Family Strengthening
Riverside	CA	Traffic tickets/fines cleared up
San Bernardino	CA	Anger management issues
San Bernardino	CA	The peace and serenity I find in recovery
San Bernardino	CA	I have better family relationships.
San Bernardino	CA	How much it helps
San Diego	CA	I remained clean & am getting over personal issues.
San Diego	CA	I went back to school & got grants.
San Diego	CA	Going back to school
San Diego	CA	Issues; helping hands
San Diego	CA	I didn't think I would make it.
San Diego	CA	Honesty; Law-abiding; Love for myself; I gained knowledge of the addiction process; I learned how to follow rules.
San Diego	CA	By staying in the program & staying clean & sober today
Santa Ana	CA	A productive life; happiness
Santa Ana	CA	Respect from others & self-respect
Santa Cruz	CA	Just to actually stop using drugs
Santa Cruz	CA	All my friends I have now
Santa Cruz	CA	A definite closeness and respect for the justice system and the employees of the court
Santa Cruz	CA	Recognition of your work by the team
Santa Cruz	CA	Close support group with the other participants; learning how to be responsible in all areas of my life; learning to live without using on a daily basis while living my normal life at home
Santa Maria/ Santa Barbara	CA	Better use of my time; scheduling
Santa Maria/ Santa Barbara	CA	A true desire to stay clean and sober
Santa Maria/ Santa Barbara	CA	Somebody to get help from
Santa Maria/ Santa Barbara	CA	Self awareness, honesty, and truly a new outlook on life
Santa Maria/ Santa Barbara	CA	Meeting new people and great counselors, loving my children more and going to school
Santa Maria/ Santa Barbara	CA	Staying clean and sober for this length of time

City	State	Unanticipated Benefits
Santa Maria/ Santa Barbara	CA	How my life was before drugs and now after
Santa Maria/ Santa Barbara	CA	Sobriety and serenity
Santa Maria/ Santa Barbara	CA	Drug Court saved my life; the program is fantastic.
Santa Maria/ Santa Barbara	CA	Good job; better relationship with all people
Santa Maria/ Santa Barbara	CA	Met awesome people and great counselors
Santa Maria/ Santa Barbara	CA	Clean and sober life, and my family's trust
Santa Maria/ Santa Barbara	CA	Being able to work with my counselor
Santa Maria/ Santa Barbara	CA	Emotional support
Santa Maria/ Santa Barbara	CA	New friends in recovery
Santa Maria/ Santa Barbara	CA	Financial help with school and free family counseling
Santa Maria/ Santa Barbara	CA	Desire to return to school
Santa Maria/ Santa Barbara	CA	Getting clean and wanting to stay clean
Santa Maria/ Santa Barbara	CA	Continued education
Santa Rosa	CA	I did not anticipate learning tools to better my life
Santa Rosa	CA	There is a great balance back in my life. Drug Court helped with that tremendously.
Santa Rosa	CA	The obsession to use has been lifted; I gained coping skills.
Shafter	CA	Receiving additional counseling; I did not feel I had a self-esteem problem, but discovered that I did; also, I enjoy attending AA meetings
Shafter	CA	Living a happier life
Shafter	CA	Learning about the people and signs about them
Stockton	CA	That they put me through a school
Ukiah	CA	Friends
Vista	CA	Desire
Vista	CA	To be so monitored (urine, etc.)
Vista	CA	I'm overcoming some big problems.
Waterbury	CT	Changing the way of thinking and behaviors that have proved spiritual growth
Waterbury	CT	Reminding me what my focus should be on
Waterbury	CT	More confidence; healthy, positive attitude
Ft. Lauderdale	FL	Physical improvement and acupuncture
Ft. Lauderdale	FL	Greater knowledge regarding drug use/recovery rehabilitation
Ft. Lauderdale	FL	A better understanding of myself
Ft. Lauderdale	FL	Able to look at other problems too
Ft. Lauderdale	FL	No chance to not comply with requirements
Ft. Lauderdale	FL	This program saved my life.
Gainesville	FL	Learned some things I didn't know about drugs
Gainesville	FL	Staying in school through the program
Jacksonville	FL	Introduction to living through 12 steps
Jacksonville	FL	I didn't realize the way I emotionally felt would improve as much as it has.
Key West	FL	Some of the reasons why I may have acted the way I do
Key West	FL	Feeling comfortable in sharing problems and hopes
Panama City	FL	Getting on track
Panama City	FL	Peace of mind
Rockledge	FL	New friends
Tampa	FL	Learning how bad that stuff in my body is for me
Tampa	FL	Group sessions allowed introspective analysis of self
Tampa	FL	Learning to live without drugs in my life
Atlanta	GA	The opportunity to have my schooling paid for & peace of mind
Atlanta	GA	A true lesson in how to live life
Atlanta	GA	A true desire to stay clean and change my thinking

City	State	Unanticipated Benefits
Des Moines	IA	Biofeedback
Des Moines	IA	Graduated high school & getting in Painters' Union
Des Moines	IA	Good self-esteem; I believe in myself; I held job for a whole year
Des Moines	IA	I did not anticipate that I would have so much support and encouragement.
Boise	ID	An understanding of how I perceived my relationships with men
Boise	ID	Support, friendships
Coeur d'Alene	ID	A sense of a support system
Edwardsville	IL	Group interaction; learned to trust in those trying to help me
Edwardsville	IL	Peace of mind
Kankakee	IL	A sense of self-worth, emotions, a new outlook
Fort Wayne	IN	Have better job & better outlook on life
Indianapolis	IN	I had been introduced to a fellowship unlike any other I've ever known & been blessed with a new way of life.
Indianapolis	IN	A very important support system after the program to help me
Indianapolis	IN	I was able to start a new life with hope.
Indianapolis	IN	A deeper awareness o f my strengths & weaknesses
Terre Haute	IN	The support
Terre Haute	IN	Self-respect
Terre Haute	IN	Educational outlook
Terre Haute	IN	Alcohol & drugs are major problems; I would encourage anyone needing help to take this program.
Terre Haute	IN	Aspects of drug addiction and how I feel about myself
Alexandria	LA	A new life that is fun
Alexandria	LA	One-on-one counseling; spiritual growth
Alexandria	LA	Communication skills & other skills that I had, but was just not using
Amile	LA	The feeling of achie vement
Covington	LA	Turned my life around; got me to finally quit
Covington	LA	I got my whole life back
Franklin	LA	I am clean for over a year.
Gretna	LA	Sobriety
Lafayette	LA	Humility, gratitude
Lafayette	LA	True benefits I thought I could never get.
Lafayette	LA	Gaining family's trust back.
Monroe	LA	I learned that the people at Drug Court really do care about you and want to see you make it.
Monroe	LA	Did not anticipate the kind of environment (caring, friendly) that Drug Court provides
New Iberia	LA	Peace, happiness and control of my life
New Iberia	LA	I never used drugs again and got a steady job.
New Orleans	LA	Stopped smoking marijuana
New Orleans	LA	Learn more about drugs
New Orleans	LA	Closer to my family & God now
Thibobaux	LA	Was able to get life back on the right track
Thibobaux	LA	How to really live life
Thibobaux	LA	I've learned so many things about myself through counseling which were very beneficial.
Haverhill	MA	I didn't know if it would work for me, and it did in more waysthan expected.
Haverhill	MA	Got to know more people with inquiring minds
Worcester	MA	Helped in getting back driver's license
Worcester	MA	Sobriety, job, respect
Worcester	MA	Still clean with strong foundation
Worcester	MA	Learning tools to remain drug-free
Worcester	MA	Improved health
Worcester	MA	Medical care
Baltimore	MD	Better understanding of self & life
Baltimore	MD	Order restored to my life
Baltimore	MD	I learned how to live a drug-free life and I have the knowledge to stay that way afterwards.
Baltimore	MD	Self-control; learn about self
Bel-Air	MD	The euphoria of life itself
Bel-Air	MD	The realization of life without using
Bel-Air	MD	Self-esteem
Detroit	MI	I'm learning how to live clean; I'm getting my GED working thanks to this program
Detroit	MI	Help; concerned people; lots of love for one individual
Kalamazoo	MI	The concern of the judge & the staff about me; good relationship with the judge & hear other people's experiences

City	State	Unanticipated Benefits
Kalamazoo	MI	Going to college, being clean
Kalamazoo	MI	Better outlook on future
Kalamazoo	MI	Just feeling good about myself
Kalamazoo	MI	I stayed drug free.
Kalamazoo	MI	Enjoying life clean, and getting to know the Lord again
Warren	MI	Self-respect, discipline, self-worth
Warren	MI	My life is great without alcohol & I can face it with a renewed vigor
Minneapolis	MN	I feel that this made me a better person and now that I made it all the way, I'm going to keep going all the way.
Minneapolis	MN	I got trust in me and others; It got me on the right track.
Benton	MO	What I learned about myself
Columbia	MO	There were internal issues I had that prevented me from accomplishing something.
Columbia	MO	Able to organize my time better
Kansas City	MO	Stopped smoking weed
Kansas City	MO	I got more time with my family.
Browning	MT	The program worked for me, for the better.
Browning	MT	I feel it is up to the person.
Omaha	NE	Humility, confidence & control of myself
Omaha	NE	My problem was very serious.
Omaha	NE	I learned I can live my life clean and sober and still be happy.
Omaha	NE	Save money, feel better & no worry of getting busted
Omaha	NE	It's taught me patience.
Albuquerque	NM	Increased self-worth
Albuquerque	NM	Aftercare
Albuquerque	NM	Recovery
Aztec	NM	Finding out there is life without drugs
Aztec	NM	I'm clean and enjoy my new life.
Aztec	NM	Renewed self worth & gain responsibility
Santa Fe	NM	I was able to realize how bad my addiction was.
Santa Fe	NM	I have made new friends.
Santa Fe	NM	A chance to change my life and be a better person
Santa Fe	NM	That I'm doing good and I feel good about myself, and am not doing drugs anymore
Santa Fe	NM	I learned to accept undisciplined & changing rules with patience.
Santa Fe	NM	I learned how to live drug free.
Santa Fe	NM	New tools to deal with chronic pain
Las Vegas	NV	By talking to counselor after class
Las Vegas	NV	I feared the group would be boring to someone who'd been in so many groups before but I liked the groups.
Las Vegas	NV	I learned to be more responsible by having to attend classes and court at appointed times.
Las Vegas	NV	The desire to stay clean
Las Vegas	NV	Peace of mind and gain of respect from others
Amherst	NY	Getting to know myself sober
Amherst	NY	I believed that I've wanted recovery all along, but always relapsed and never feared anything; Drug Court makes me accountable & responsible.
Amherst	NY	I was able to stop and I matured a lot.
Amherst	NY	A life without drugs/alcohol
Amherst	NY	Group therapy allowed me to share with people with experience.
Amherst	NY	I didn't think I would learn as much about how my life was affected by my use.
Bronx	NY	Involvement with Hope program training
Bronx	NY	Understand to be own person; don't follow crowd.
Bronx	NY	My program is great, helping with my son
Brooklyn	NY	Encouragement & confidence
Brooklyn	NY	A sense of responsibility & clear way of thinking
Central Islip	NY	Better quality of life
Central Islip	NY	Verbal encouragement from case manager & judge
Central Islip	NY	I found that recovery is a big part of my life today, which it was never before.
Cheektowaga	NY	Blood samples are more accurate.
Cheektowaga	NY	It has helped me better my life.
Ithaca	NY	I am more responsible and I am closer with my family
Ithaca	NY	To hold a job and begin school
Kew Gardens	NY	Clean up after myself; better relationship with family

City	State	Unanticipated Benefits
Lackawanna	NY	A different attitude toward life and fellow human beings
Lackawanna	NY	I had a chance to see that hard work doesn't go unnoticed.
Lackawanna	NY	Behavior changes that are much nicer, extended clean time with no bulls**t, liking for every administrative person in the program
New City	NY	Carpentry, lifeguard, and computer training at inpatient
New City	NY	Become more responsible; graduated from community college; better relationship with family
New Yo rk	NY	School; get along with family & people; stop using
New York	NY	The chance to go to college
New York	NY	I like the group sessions & the residents.
New York	NY	Hearing others share their behavior; letting me know what I could have went through if I didn't stop
Niagara Falls	NY	Helps you see where your drug of choice has brought you and what help you will need
Rochester	NY	Counseling
Syracuse	NY	Certification of completion
Syracuse	NY	School
Tonawanda	NY	I'm now involved with AA & will stay involved.
Canton	OH	Get back into the swing of life
Canton	OH	Became a more responsible person & like myself again; became closer with my family & friends; created a better, happier life for myself
Canton	OH	I'm sober from alcohol now. I didn't think it was an alcohol problem at first. I thought it was just drugs such as coke & weed
Canton	OH	Finding all the feelings I hid behind with my drug of choice, finding me again
Canton	OH	Chance to get G.E.D.
Cincinnati	OH	Family counseling; the importance of not feeling like I'm the only one in this position
Cleveland	OH	Respect for system
Cleveland	OH	No drinking for 1 year 1 month
Cleveland	OH	It is a rigid schedule but I was surprised at how good the counselors were.
Hamilton	OH	Relationship back with my father and his love & trust
Hamilton	OH	Got GED
Mansfield	OH	My sobriety
Mansfield	OH	Support with parenting problems as a result of use
Mansfield	OH	Clean & sober for 16 months
Mansfield	OH	Attitude; sobriety
Toledo	OH	Get my life back in shape
Toledo	OH	A caring judge, probation officer, and counselor
Toledo	OH	Being aware
Youngstown	OH	A new attitude, positivity, standing for what I believe in
Youngstown	OH	Feeling whole & spirituality; long-term sobriety
Youngstown	OH	Stayed clean & good job & family together
Ada	OK	Freedom from drugs/new life
Ada	OK	Clean & sober
Ada	OK	All that I am today: happy, joyous, almost free
Ada	OK	A clean, sober life
Ada	OK	A caring & loving person, a job, a new life, and a family
Ada	OK	Building good relationships with law enforcement, district attorneys, Drug Court staff, judges
Holdenville	OK	Friends in recovery
Okmulgee	OK	My self-esteem is positive; job attendance is good
Purcell	OK	Getting clean
Purcell	OK	Learned to be close to God and anger management
Purcell	OK	Can't even name them, there are so many
Purcell	OK	Changing my whole way of thinking and viewing life in general
Purcell	OK	Great friendships & some enlightening to a true reality
Purcell	OK	I never thought life could be so good being clean; I have never felt better about myself.
Purcell	OK	Have realized that a lot of my problems in the past have been a result of lack of effort in dealing with them, blaming others for my problems
Seminole	OK	Help in getting a D2 and securing a good job
Seminole	OK	Honestly didn't think I would get my life back period
Seminole	OK	Life changes
Eugene	OR	Being praised in court
Eugene	OR	In finding myself
Grants Pass	OR	I found recovery.
Grants Pass	OR	Recovery

City	State	Unanticipated Benefits
Portland	OR	I was not sure I could quit, but I have; the other parts of my life were positively affected; I really feel like a good citizen again
Portland	OR	Opportunity to work on core emotional issues
Philadelphia	PA	Kept me focused to reaching my goals
Philadelphia	PA	Getting a job
West Chester	PA	There are a series of punishments that keep you on your feet, but also there are a few reward incentives for compliance with the program.
West Chester	PA	Along with getting clean it focused my mind to pursue other avenues in life (Exercise, busin ess, recreation)
West Chester	PA	I feel better about myself.
West Chester	PA	Finding an alternative means to deal with and stop pain other than dependence on prescription drugs
York	PA	I know I would not be as far in accomplishments had it not been for the Drug Court program.
York	PA	All the help and support
Agency Village	SD	Discipline and responsible for me to attend meetings
Agency Village	SD	It helped me in a lot of ways; for one thing, to be patient and cooperative
Agency Village	SD	Learned more; more sobriety
Austin	TX	Wanting to change
Austin	TX	Clarity
Austin	TX	Constant urines are a good motivator, although monotonous
Austin	TX	Sobriety
Conroe	TX	GED; college; sobriety
Conroe	TX	When I was accepted into drug court I did not actually expect to change my way of life.
Conroe	TX	Help with other parts in my life besides the drug problem
Ft. Worth	TX	Happiness with myself
Ft. Worth	TX	Places I can go for help
Ft. Worth	TX	I am truly free from drugs & have learned all the coping mechanisms available to prevent returning to them.
Charlottesville	VA	I learned a lot about my addiction that I didn't know.
Fredericksburg	VA	In-patient drug treatment
Fredericksburg	VA	To have people talk to you when need someone to talk to you; it was good.
Fredericksburg	VA	I got a lot of support here
Fredericksburg	VA	Private counseling
Fredericksburg	VA	More organization
Fredericksburg	VA	Watching others fail, being sent to jail, and knowing that could be me
Newport News	VA	Foundation & stability
Newport News	VA	To control my anger better
Roanoke	VA	I've received a lot more support than expected and it helps to feel comfortable talking to my P.O. because I have a lot of trouble with being able to talk to people who are in authority over me.
Bellingham	WA	That I would recovery and the support from Drug Court staff
Bellingham	WA	Legal help with custody issues, etc.; such a positive encouragement with all involved, both the court/treatment staff & fellow clients
Mount Vernon	WA	The pleasures of clean & sober living
Mount Vernon	WA	I got my driver's license back and I'm working.
Mount Vernon	WA	Didn't know what to expect
Mount Vernon	WA	A life with meaning
Mount Vernon	WA	Help, caring/friendship
Olympia	WA	The counseling sessions & MRT helped me deal with my personal issues so I could remain drug-free.
Olympia	WA	I got to know a lot about me from information I gained.
Olympia	WA	Being so very active in AA; living in an Oxford house; staying clean & sober
Olympia	WA	Actually wanting to live a clean & sober life
Port Orchard	WA	Serenity; the list is long
Port Orchard	WA	Meeting new friends I can count on
Port Orchard	WA	The benefits of being clean & sober are far greater than I imagined
Port Orchard	WA	It got me clean.
Port Orchard	WA	Having more people on my side, like Judge Roof
Madison	WI	Stop doing drugs
Madison	WI	Getting and keeping a good job
Evanston	WY	More intense program

City	State	Unanticipated Benefits
Evanston	WY	This program is helping me get in touch with God and my inner-self.
Evanston	WY	Inner-self

IV. Suggestions to Make Drug Court More Effective

Respondents were asked for their suggestions to make the drug court program more effective. Sixty-five percent of the responding participants indicated they felt the program was well designed and did not require any improvements. Those respondents who provided suggestions addressed issues ranging from modifying drug testing schedules and providing transportation and child care services, to more family involvement, clarifying program requirements and expectations, and job placement assistance. A detailed list of their suggestions is provided in Chart VIII-11 of Part Eight of the *Survey Report.*

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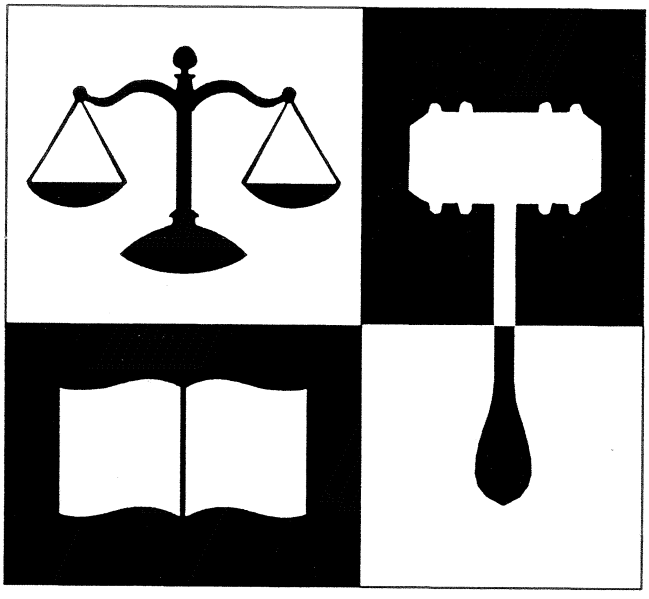

Kentucky Drug Court Outcome Evaluation: Behaviors, Costs, and Avoided Costs to Society

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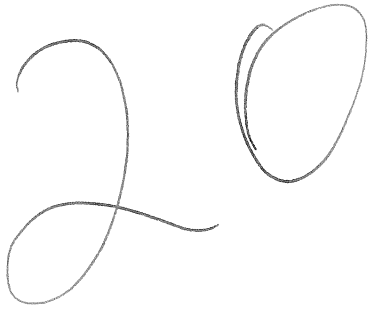

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Nation

Chamblee cheers drug court legislation

MARTIN DeAGOSTINO
Tribune Staff Writer

INDIANAPOLIS -- St. Joseph Superior Court Judge Roland Chamblee Jr. was stunned last year when Prosecutor Chris Toth abruptly stopped referring offenders to the drug court Chamblee had run for five years.

But Chamblee believes their dispute, still unresolved, might never have happened if Indiana had uniform standards in place for the creation and operation of drug courts.

Chamblee's belief remains speculative. But his desire for state standards advanced this week as a House committee approved a Senate-passed bill that recognizes drug courts and directs a state judicial agency to establish clear standards for them.The bill is now eligible for consideration by the 100-member House.

Chamblee said the bill would help guarantee that drug courts meet the minimum expectations of judges, prosecutors, legislators and the public. "When we say we're drug treatment courts," he said, "we're doing things by the book, so to speak."

Chamblee's court is one of 12 drug courts in Indiana, all operating under national guidelines but not state standards. Their purpose: to treat drug abuse as a health problem that requires treatment, and not just as a crime that requires punishment.

Typically, the courts agree to dismiss charges against people who successfully complete court-supervised treatment programs, which Chamblee calls "the most important bait we can give these folks."

Early evidence suggests that people are taking the bait, according to committee testimony.

Bill sponsor Sen. William Alexa, D-Valparaiso, said people prosecuted in drug courts re-offend at much lower rates than other offenders, even if "success" falls far short of 100 percent.

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He also said the courts have favorable financial outcomes, with typical costs of $2,200 per offender compared with $22,000 for a year in jail.

Court-supervised rehabilitation programs range from six to 36 months, Alexa said, with an average supervisory time of 16 months.

Vanderburgh Superior Court Judge Wayne Trockman said his program is "working fabulously" compared to the revolving-door of repeat offenders that he saw before launching a drug court a year ago.

"No one's committed a crime in a year while on my program," he said.

When Trockman sought state-level approval for the court, however, he found no legal framework to recognize or certify drug courts. Working with the Indiana Judicial Center, an arm of the state court system, Trockman is urging lawmakers to adopt standards and protocols for drug courts.Accordingly, Senate Bill 343 defines drug courts, sets some procedural requirements for them and directs the judicial center to write rules to certify and decertify them. According to Indiana Judicial Center staff, those rules will cover program management, administration, case management, and financial and personnel management.

The bill says no one has a right to drug court participation; prohibits participation by people charged with violent crimes, drug dealing or repeat drug offenses; and requires a prosecutor's consent before the court can accept a case.

It's "veto power" for prosecutors, Trockman said.

Crucially, the bill also removes a legal obstacle to drug court functions that arose from a recent Indiana Court of Appeals ruling.

That ruling prohibited courts from accepting guilty pleas from offenders before they entered treatment programs. That had the effect, according to drug court proponents, of removing an offender's carrot -- and the court's stick -- for treatment program compliance.

But Senate Bill 343 allows judges to accept pleas but withhold convictions until a person has completed treatment. If the court deems that effort successful, it can dismiss the charge. If not, it can enter a conviction and proceed with sentencing without the need for a trial.

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That provision will give prosecutors a sense of finality they now lack, Chamblee said, and could address some of Toth's concerns with the local drug court.

Toth was unavailable for comment Wednesday. But when he ceased making referrals to Chamblee's court last year, he criticized the program's success rate and accountability standards and said that too many people remained in the program despite drug relapses or additional offenses.

Chamblee has cited an overall success rate of 48 percent, which he said is consistent with national averages for drug courts. And treatment providers that work with Chamblee's court have noted success rates that range from somewhat to significantly better than those for non-drug-court defendants.

According to Bill Carey, of the Indiana Judicial Center, standards for the success of drug court programs are being developed separately by the National Association of Drug Court Professionals and the U.S. Department of Justice.

But Carey said those standards will likely recognize that relapses are common among people fighting substance abuse, and that the key standard should be the reduction of crime.

"We try to keep relapse from becoming recidivism," he said.

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---- INDEX REFERENCES ----

NAMED PERSON: CHAMBLEE, ROLAND JR; TOTH, CHRIS; TROCKMAN, WAYNE; CAREY, BILL

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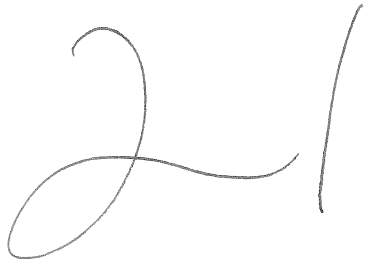

AMERICAN UNIVERSITY
WASHINGTON, DC

MEMORANDUM

RE: **COST BENEFITS/COSTS AVOIDED REPORTED BY DRUG COURT PROGRAMS** (rev.)

Prepared By: **OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice**

Date: **December 9, 2003**

This memorandum summarizes the range of cost benefit/cost avoidance findings emerging from drug court evaluation reports and related research, provides summaries of the findings of the individual research reports cited, and citations to the underlying research reports for further reference and additional, more detailed information. Unless otherwise noted, the findings reported focus on adult drug courts.

This memorandum is updated periodically to reflect current findings.

I. Overview

The field of cost analysis, as applied to drug courts, has been developing significantly during the past several years. Most studies focused initially on savings in jail and prison costs associated with the sanctions that would have been applied to defendants in drug court programs had they proceeded through the traditional adjudication process. More recent studies, however, are increasingly taking into account a variety of other cost factors. These have included:

- overall criminal justice system costs associated with arrests, prosecution, adjudication and disposition of drug cases;
- public health costs associated with drug-related physical illnesses, including costs for emergency room care, hospitalization, outpatient medical services, nursing home care and medications;
- costs relating to lost productivity, including workplace accidents and absences, and unemployment;
- costs relating to drug related mortality and premature death;
- social welfare costs, including foster care and other support of family members;
- costs related to specific impacts of drug use, including fetal alcohol syndrome and drug exposed infants; IVDU-related AIDS, Hepatitis and Drug-Related Tuberculosis; and

- a range of other costs resulting from drug use, including those incurred by crime victims, persons involved in vehicle accidents; and substance abuse detox and other treatment services

The following is a summary of major findings on the topic as of this date.

II Savings reported in jail/prison costs

(a) *Savings reported to the OJP Drug Court Clearinghouse by local programs*

The jurisdictions listed below reported in their response to the Drug Court Clearinghouse Surveys conducted in June 2000 and June 2001 the following savings in jail/prison days as a result of the drug court program:

	Median Reported		Average reported	
	2000	2001	2000	2001
• estimated annual per program jail/prison days saved	12,458 days[1]	6,900 days[2]	4,015 days[3]	10,133 days[4]
• estimated annual per program costs saved	$ 903,700[5]	$ 201,937[6]	$ 330,000[7]	$ 667,694[8]

The specific savings reported by these jurisdictions are as follows:

Jurisdiction	Estimated annual jail/prison Days Saved		Estimated Annual jail/prison Costs Saved	
	2000	2001	2000	2001
Maricopa Co. (Phoenix), Ariz	17,306 days	14,808 days	$ 657,628.00	$ 593,357.00
Maricopa Co. (Phoenix), Ariz DUI		7,317 days		
Butte Co., Cal		7,770 days		466,200.00
Fresno, Cal.-post -conv.				8,272.00
Kern Co., Cal.		12,167 days		

[1] Based on responses from 39 adult drug courts in 2000

[2] Based on responses from 49 adult drug courts in 2001

[3] Based on responses from 39 adult drug courts in 2000

[4] Based on responses from 49 adult drug courts in 2001

[5] Based on responses from 43 adult drug courts in 2000

[6] Based on responses from 62 adult drug courts in 2001

[7] Based on responses from 43 adult drug courts in 2000

[8] Based on responses from 62 adult drug courts in 2001

Estimated annual jail/prison Jurisdiction	Estimated Annual jail/prison Days Saved		Costs Saved	
	2000	2001	2000	2001
Los Angeles, Cal.	180 days		28,800.00	
Mendocino Co. (Ukiah), Cal	3,840 days		225,139.00	
Mendocino Co. (Mt. Sanhedrin Mun. Cts.		1,024 days		56,320.00
Nevada Co. (Nevada City), Cal.	1,460 days	1,912 days	118,260.00	154,872.00
Orange Co. (North Justice Center) Cal		11,277 days		
Orange Co. (West Justice Center) Cal.		13,025 days		
San Bernardino Co. (Big Bear), Cal			225,000.00	
San Joaquin Co. (Stockton), Cal	65,238 days	27,493 days	5,073,310.00	2,359.895.00
San Mateo Co. (North San Mateo Co.), Cal		6,900 days		
San Mateo Co. (South San Mateo Co.), Cal		8,500 days		
Santa Barbara Co. Mun. Ct. (Santa Maria) Cal.	10,869 days	24,221 days	699,971.50	
Santa Barbara Co. Sup. Ct. (Santa Maria), Cal.	24,350 days	28,628 days	1,099,614.00	
Santa Clara Co., (San Jose), Cal	23,000 days	28,000 days	1,500,000.00	2,842,400.00
Sonoma Co., Cal.		10,600 days		1,097,980.00
Stanislaus Co., Cal.		18,398 days		1,508,636.00
New Haven Co. (Waterbury), Conn.	365 days		10,950.00	
Alachua Co. (Gainesville), Fl			250,000.00	
Bay Co., Florida	1,500 days	1,500 days	55,550.00	58, 500.00
Brevard Co. (Rockledge), Fl	11,617 days		4,299,829.00	
Citrus Co., Florida		2,048 days		90,216.00[9]
Duval Co., Florida				25,000.00
Glades/Hendry Co., Florida		16,350 days	$	$ 645,825.00
Monroe Co., Florida				6,439,500.00

[9] For period: June 14, 2000 - April 2, 2001.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

Estimated annual jail/prison Jurisdiction	Estimated Annual jail/prison Days Saved		Costs Saved	
	2000	2001	2000	2001
Glynn Co./Camden Co. (Brunswick), Ga.	6,000 days			2,920,000.00
Honolulu, Hawaii				700,000.00
Polk Co (Des Moines), Iowa	50,874 days		2,543,651.14	
Woodbury (Sioux City), IA		1,350 days		90,000.00
Madison Co., Indiana		2,000 days		100,000.00
Kankakee Co. (Kankakee), Ill	210 days		10,500.00	20,000.00
Madison Co., Ill.		1,000 days		
Peoria Co (Peoria), Ill.	14,976 days		823,680.00	
Allen Co., Indiana		7,260 days		550,500.00
Kenton Co. (Covington), Ky	12,410 days			
Clark Co. (Madison), Ky	200 days	8,700 days		360,000.00
Laurel Co., Ky.				135,000.00
Baton Rouge Par. (Covington), La.	30,240 days		2,154,082.00	
Jefferson Par., La.		365 days		35,000.00
St. Mary Parish (Franklin),La		2,750 days	17,000.00	20,000.00
West Carroll/Franklin Par., La.				250,000.00
Harford Co, (Edgewood), Md.			540,000.00	2,520,000.00
Essex Co. (Haverhill), Mass.	4,015 days		140,525.00	
Berrien Co., Mich				14,600.00
Eaton Co., Mich.		3,450 days		120,750.00
Kalamazoo Co. (Kalamazoo), Mich			1,629,705.00	
Kent Co. (Grand Rapids), Mich.	4,400 days	9,000 days	581.,184.00	388,620.00
Macomb Co., Mich				1,875,000.00
Hennepin Co. (Minneapolis), Minn.	3,030 days	3,030 days	259,490.00	259,489.00
Boone Co., Mo.		4,770 days		223,875.00
Franklin Co., Mo.				100,000.00
Mississippi Co. (Charleston), Mo.	480 days		32,160.00	
Madison Co. Mun. Ct. (Ridgeland), Miss.	120 days		765,000.00	
Durham Co. (Durham), N.Car.	3,840 days		200,000.00	
Monmouth Co. (City of Long Branch), NJ	600 days		$ 240,000.00	$
Union Co. (Elizabeth), NJ	18,000 days	25,000 days	1,000,000.00	1,500,000.00

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

Estimated annual jail/prison Jurisdiction	Estimated Annual jail/prison Days Saved		Costs Saved	
	2000	2001	2000	2001
Bernalillo Co (Albuquerque), NM - DWI Court	18,000 days		1,000,000.00	
San Juan Co., New Mex.				733,000.00
Sante Fe Co. (Santa Fe), NM			30,000.00	
Taos Co. (Taos), NM	1,890 days	200 days	122,850.00	390,000.00
Washoe Co. Mun. Ct. (Sparks), Nev	720 days			
Erie Co. (Lackawanna), NY				1,885,000.00
Erie Co., (Town of Amherst), NY		27,720 days		554,400.00
Fulton Co. (Johnstown), NY	4,350 days		300,000.00	476,190.00
Kings Co. (Brooklyn), NY	81,076 days		10,374.944.00	
Tomkins Co. (Ithaca), NY		6,935 days		540,000.00
Westchester Co., (Yonkers), NY				29,000.00
Hamilton Co. (Cincinnati), OH			94,500.00	80,000.00
Mahoning Co. (Youngstown), Oh	7,663 days		409,000.00	
Richland Co. (Mansfield), Oh	10,098 days	10,098 days	561,589.00	561,589.00
Summit Co. (Akron), Oh.				164,000.00
Garvin and McClain Cos. (Purcell), OK	75,555 days		3,148,470.00	
Muscogee Creek Nation, Okmulgee , Ok	180 days			
Seminole Co., Ok			1,670.400.00	
Crook Co./Jefferson Co., Oregon		180 days		10,000.00
Lane Co. (Eugene), Or.	10,000 days	14,534 days		1,235,000.00
Chester Co. (West Chester), Pa.	651 days	875 days	35,805.00	48,125.00
Lycoming Co. (Williamsport), Pa.	365 days		823,805.00	
Philadelphia Co. Mun. Ct, (Philadelphia), Pa.			1,800,000.00	2,000,000.00
Lexington Co., S. Car.				160,000.00
Richland Co., S. Car.				28,000.00
Davidson Co. (Nashville), Ten			$ 1,971,000.00	$
Knox Co., Tenn.				150,000.00
Rutherford Co., Tenn.		7,665 days		275,940.00
Shelby Co., Tenn.		365 days		11,370.00
Uintah Co., Utah		600 days		28,200.00
Roanoke City, Va.		4,000 days	858,000.00	

Estimated annual jail/prison	Estimated Annual jail/prison

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

Jurisdiction	Days Saved		Costs Saved	
	2000	2001	2000	2001
Cowlitz Co., Wash.		5,200 days		300,000.00
Skagit Co. (Mt. Vernon), Wash.	365 days		20,075.00	
Snohomish Co., Wash.		1,132 days		
Spokane Co., Wash.				240,000.00
Thurston Co., Wash.		8,542 days		489,140.00
Dane Co., Wis.		2,760 days		179,920.00
Sheridan Co., WY.		3,600 days		180,000.00

This information is provided by courts using estimated costs for the jail/prison days that would have been imposed on drug court participants, based on prevailing statutory provisions and sentencing practices, had their cases been disposed of through the traditional process. Jail/prison day costs are generally calculated at a minimum rate of $ 40.00 per day, but frequently much higher; this daily cost does not include the costs for jail/prison construction.

Per day costs for drug court program participation and services generally range between $8.00 - $ 14.00[10], depending upon the nature and extent of treatment and ancillary services provided. The specific number of days and costs saved is based on the total daily costs for drug court participation compared with the total costs that would have been incurred for probation supervision and incarceration under the traditional disposition process.

In addition to the costs savings relating to incarceration costs achieved through drug court programs, jurisdictions are also reporting that the jail and prison capacity made available through the drug court program is permitting them to utilize this capacity for offenders who are public safety risks.

(b) *Savings reported in evaluations of local drug court programs*

•• **Robert Jameson and N. Andrew Peterson.** ***Jackson County, Missouri- Jackson County Drug Court Diversion Program.*** **1995.**

Analysis of the first 450 cases processed by the Jackson County (Kansas City), Drug Court, established in 1993, found that the 257 active participants at the time of the study would have served an average of 21 days in jail at an average cost of $ 45.55 per inmate day, resulting in 5,400 inmate days saved, totaling $ 246,000.

•• **Elisabeth Piper Deschenes and Sam Tores. June 1997.** ***Los Angeles Co., California.: Evaluation Of Los Angeles Municipal Court; Rio Hondo Municipal Court; Pasadena***

[10] Daily per participant costs (including staff time and drug tests) for drug court program participation in Kentucky is reportedly $ 7.20 compared with $ 48.41 per day for state prison incarceration, according to Joanie Abramson, acting manager for the Kentucky Administrative Office of the Courts, as cited in the *Lexington Herald-Leader*, February 9, 2003.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

Municipal Court; and Santa Monica Unified Municipal and Superior Court Drug Court Programs.

Evaluation of four of the 14 drug courts operating in Los Angeles County, established during the period of May 1994 - January 1996 found that the annual costs per client in these programs ranged between $ 3,706 - $ 8,924, compared with an average cost of $ 16,500 per year for prison or $ 13,000 for residential treatment.

- **Robert Granfield and Cindy Eby.** ***Denver County, Colorado-Denver Drug Court.*** **1997.**

Analysis of the Denver, Colorado Drug Court, established in 1994, found that savings between $ 360 and 840 in jail costs were being achieved for each participant. Based on the first 3,000 participants in the program, approximately 1.8 - 2.5 million dollars had been saved annually.

- **Santa Clara County Drug Court.** ***Santa Clara Co, California Drug Treatment Court.*** **1998.**

Analysis of 110 Drug Court graduates of the Santa Clara Co., California Drug Court, established in 1995 found that these graduates had served a total of 5,808 days (or 51 days per person), compared with an average of 86 days per person for those defendants who were eligible but chose not to participate in the drug court. These jail days were incurred during pretrial detention prior to drug court admission and through sanctioning during program participation. The average cost for jail days served by Drug Court graduates was $ 3,417 compared with $ 5,762 for non drug court participants. The average cost per jail day is $ 67.

- **Dale K. Sechrest and David Shichor.** ***Evaluation of the Riverside County, California Drug Court Program.*** **1999.**

Evaluation of the Riverside Co., California Adult Drug Court, established in 1995 found, found jail/prison cost savings achieved for 102 participants studied $ 2,519,400, based on sentences of 380 days of incarceration @ $ 65/day. Additional costs savings relating to parole supervision that would otherwise have been required were also cited.

- **Kalamazoo County Substance Abuse Diversion Program.** ***Kalamazoo County, Michigan-Kalamazoo County Substance Abuse Diversion Program-Women and Men's Drug Courts.*** **1999.**

Analysis of Kalamazoo's Women's Drug Court, established in 1992, found that 8,760 jail days were saved, totaling $ 183,960 calculated at the daily cost of $ 21, and that 10,545 prison days were saved, totaling $ 643,245 calculated at the daily cost of $ 65/day for the five year period studied.

Analysis of Kalamazoo's Men's Drug Court, established in 1997, found that 5,355 jail days were saved, totaling $ 112,455 and 9,670 prison days were saved, totaling $ 628,550 for the eighteen month period studied.

Calculations of incarceration days saved were based on the offense, sentencing guideline score, prior criminal history of each participant, prior incarceration, and probation/parole status.

- **Mitchell Mackinem.** ***Richland County, South Carolina Adult Drug Court Program.*** **2000.**

Evaluation of the Richland Co., South Carolina Drug Court, established in 1996, found that a savings in

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Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

prison costs of $ 17,000 per graduate per year was achieved, totaling $ 108,000, based on the 44 graduates at the time of the study.

- **Richard Washouski, Recovery Solutions Consulting and Training Inc., and Henry G. Pirowski with Jose Ferrer. City of Buffalo, New York: *Buffalo Drug Treatment Court. Process Evaluation.* 2001.**

Savings in jail bed days alone have been estimated to be at least $ 5,000 per defendant – which does not factor in the value of the added capacity to incarcerate the more serious offenders. These figures compare with the average cost fore the treatment component per participant of between $ 1,200 and $ 3,000. . .The Buffalo City Court District Attorneys Bureau Chief has indicated that it appears that the BDTC has reduced police overtime, witness costs, as well as grand jury expenses that would otherwise be r4equired if these cases proceeded in the traditional manner. The BDTC also reports that a substantial percentage of the participants who came into the program unemployed and on public assistance have become employed while in the program and are now self supporting. In addition, many participants who are employed at the time of program entry are able to maintain their employment, despite their arrest, because of their program participation.

- *Richmond, Virginia Juvenile Drug Court Evaluation.* **Conducted by the Office of the Executive Secretary, Supreme Court of Virginia and reported in *Summary Report on Virginia's Drug Court Programs.* March 2003**

Based on a finding that the total costs for 55 participants for services while enrolled in the juvenile drug court was $ 753,665 and the estimated institutionalization costs avoided for these participants during that period were $ 1,703,348, the estimated savings from avoided institutional costs for these participants were $ 949,683.

- ***A Detailed Cost Analysis in a Mature Drug Court Setting: A Cost-Benefit Evaluation of the Multnomah County Drug Court.* NPC Research, Shannon Carey, Ph.D., and Michael Finigan, Ph.D. Inc. July 2003.**

The study collected highly detailed data on a small, randomly selected sample of individuals eligible for the drug court. These individuals (some of whom participated in the drug court and some who received traditional court processing) were tracked intensively through both the criminal justice and drug court treatment system. The detailed data was collected by tracking drug court eligible offenders into court sessions, attorney visits and treatment sessions. This detailed information was then used to supplement the administrative data gathered on a larger sample consisting of 1,167 individuals who were eligible for the drug court (594 actually participated) and 573 non-drug court participants. These two groups were matched on demographics and criminal history. Data was collected on the use of resources for each individual in each agency involved in the drug court, including the court, the public defender, the district attorney, law enforcement, probation, drug court treatment, and treatment received by both groups outside of the drug court. Total costs to the system/taxpayer were calculated, including "investment" and outcome costs for both the drug court and"business-as-usual" process, for 30 months after the drug court eligible arrest.

The overall results of the study were:

- The "total investment cost per client of the drug court was $ 1,441.52 less than the funds expended per client for the "business as usual" process. Savings also resulted in outcome costs ($ 2,328.89 per participant) although these savings were not spread equally among the agencies. Total cost savings over a 30-month period, including victimization costs, averaged $ 5,071.57 per drug court participant.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

- The study also noted that, during the 30 months after the drug court eligible arrest, the public defender, law enforcement, and probation agencies experienced cost savings; the court, the District Attorney, and the treatment agency did not recoup their investment although the loss to the court and the district attorney was quite small and these agencies would likely have recouped their investments if the participants had been followed through the system longer and the outcome trends continued so that they would begin to see cost savings. However, in the short term, these agencies are excellent candidates for financial support from local county government or state and federal grants in order to offset the higher investment costs.

The study also addressed the following questions commonly asked by policy makers:

- *Does it cost more for drug court than for "business as usual"?*

No. The total investment cost by the agencies involved in the drug court (e.g., the court, district attorney's office, the public defender, law enforcement, corrections, and treatment) averaged $ 5,927.80 per participant compared with $ 7,369.32 per participant for "business as usual – $ 1,441.53 more. Thus, the drug court approach actually saved the taxpayer money in investment costs. This was in a large part due to the use of jail and probation time for "business-as-usual" processing and is also due to significant use of treatment and court resources.

- *Do agencies save money up-front from drug court vs. "business as usual"?*

Yes. Law enforcement/corrections and the public defender's office received an immediate savings from the drug court approach. All agencies saved money in outcomes.

- *Are there cost savings in outcomes due to drug court processing?*

Yes. When the outcome costs for drug court participants are compared to the outcome costs for "business as usual", the drug court saved an average of $ 2,328.89 per year for each participant. With victimization costs added, the average savings were $ 3,596.92 per participant.

- *What are the total cost savings (investment and outcomes) that can be attributed to the drug court process?*

Combining the outcome cost savings with the investment savings, over a 30-month period, the drug court was found to have saved an average of $ 5,071.57 per participant including victimization costs. Multiplied by the 300 participants who enter the Multnomah County drug court each year, this is a $ 1,521,471 cost saving for the local taxpayers each year. ...These savings relate to local taxpayer costs only and exclude any state or federal costs that might be saved by lessened welfare payments or Medicaid or by increased tax revenue from increased employment.

(c) Savings reported in state-wide program evaluations

Collaborative Justice Courts Advisory Committee: Annual Progress Report. **Judicial Council of California. February 7, 2003.**

The report reviews recent data regarding cost-benefit analysis of collaborative justice courts conducted by the Administrative Office of the Courts. Findings from the initial Phase I of drug courts operating in three counties (Los Angeles, San Diego, and Butte Counties), conducted by Northwest Professional Consortium included:

(a) avoided overall criminal justice system costs averaged approximately $ 200,000 annually per

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Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

court for each 100 participants;

(b) all drug courts in the study demonstrated cost avoidance for trial courts, specifically, after the first year of operation. Two of the three courts studied also showed reduced trial court costs that began in the first year and were estimated for each court to be approximately $ 50,000 over the course of the study.

(c) With 90 adult drug courts operating in California as of 2002, and the drug court caseloads conservatively estimated at 100 participants per year, the annual statewide cost savings for adult drug courts are projected to be $ 18 million per year based on the results of the study.

Drug Court Partnership Act of 1998, Chapter 1007, Statutes of 1998.Final Report. Prepared by The California Department of Alcohol and Drug Programs and Judicial Council of California, Administrative Office of the Courts. March 2002.

- A total of 425,014 jail days were avoided, with an averted cost of approximately $ 26 million.
- A total of 227,894 prison days were avoided, with an averted cost of approximately $ 16 million.

In addition to justice system cost savings, the report also noted other benefits resulting which have cost implications, including:

- participant arrest rates 85% lower in the two years after entering drug court than in the two years prior to entering the drug court (based on reports from 17 counties);
- participant conviction rate 77% lower in the two years after entering drug court than in the two years prior to entering drug court (based on reports from 17 counties)
- participant incarceration rates 83 % lower in the two years after entering drug court than in the two years prior to entering drug court
- 96% of drug tests of participants during drug court were negative;
- $ 1 million in fees/fines collected form participants completing drug court
- 95% (132) of the babies born to drug court participants while in the drug court were born drug free (based on reports from 28 counties)
- 70% of the participants were employed when completing drug courts whereas 62% were unemployed at time of program entry (based in reports from 28 counties)
- 20% of the participants obtained dr4ivers licenses and car insurance (based on reports from 28 counties)
- 12% transitioned out of homelessness and acquired housing

T.K. Logan, *William Hoyt, and Carl Leukefeld. Kentucky Drug Court Outcome Evaluation: Behavior, Costs and Avoided Costs to Society. (Outcome Evaluation of Three Kentucky Drug Courts* (Jefferson, Fayette and Warren Counties). Center on Drug and Alcohol Research, University of Kentucky. October 2001.

Cost savings to the state of 586 graduates equals $ 7,060,900 (586 graduates x $ 14,691 [year in prison] = $ 8,609,100; 586 graduates x $ 2,642 [1 year in drug court] = $ 1,548,200.

III. General Criminal Justice System Savings Resulting from Recidivism Reductions

Additional findings regarding, prosecution, jail and prison cost savings achieved through drug court programs and associated recidivism reductions are presented in independent evaluations conducted of

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Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

drug court programs, including the following:

NPC Research, Inc. and Administrative Office of the Courts. Judicial Council of California. *California Drug Courts: A Methodology for Determining Costs and Avoided Costs. Phase I: Building the Methodology. Final Report.* October 2002.

Case studies of three adult drug courts (first phase of a three phased statewide study) indicated the following:

"(1) Total avoided system costs:. . .

Court One: . . . Negative avoided costs experienced in Year 1 due to large initial investment in the drug court ($ 667,800) which was not outweighed by the $ 129,493 in net avoided costs realized in the first year (not including victimization costs). However, Court One realizes avoided costs in Years 2-4 of approximately $ 200,000 per year and, by Year 4, the court has paid off the initial investment and is realizing costs savings. if the trend in avoided costs continues, Court One will recognize additional avoided costs each subsequent year of approximately $ 200,000 per year for every 100 participants) and, by the ninth year, Court One would realize $ 1,000,000 saved for every 100 drug court participants. . . .

(2) Investments and Avoided Costs of Drug Court By Agency. . .

"Court 1 Investments and Avoided Costs by Agency over Four Years (Per 100 participants)"

Agency	*Investment*	*Cost Avoidance*
Superior Court	*$ 99,353*	*$ 1,166*
District Attorney	*$ 36,550*	*-$ 579*
Public Defender	*-$ 7,644*	*-$2,050*
Probation	*$ 109,865*	*$ 24,174*
Law Enforcement	*$ 141,060*	*$ 100,281*
Cal. Department of Corrections	*$0*	*$ 584,945*
Victimization Costs		*$ 695,000*[11]

[11] This figure assumes that an average of four crimes of these types were committed for every one that resulted in an arrest (based on the U.S. Bureau of Justice Statistics *National Crime Victimization Survey*). The National Institute of Justice's *Victim Costs and Consequences: A New Look* documents losses per criminal victimization, including attempts, in a number of categories, including fatal crimes, child abuse, rape and sexual assault, other assaults, robbery, drunk driving, arson, larceny, burglary, and motor vehicle theft. The reported costs include lost productivity, medical care, mental health care, police and fire services, victim services, property loss and damage, and quality of life. In our study, re-arrest charges (i.e, charges incurred after the initial drug court eligible charge) were tracked and categorized as either violent or property crimes. Costs from the victimization study were averaged for rape and sexual assault, other assaults, and robbery and attempted robbery to create an estimated cost for violent crimes. Arson, larceny and attempted larceny, burglary and attempted burglary, and moor vehicle theft were averaged for an estimated property crime cost. National Institute of Justice Research Report,

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

Total Criminal Justice System	*$ 379,184*	*$ 1,399,187*

When the investment of the criminal justice system in Court I in drug court is taken as a whole and compared to costs avoided (and victimization costs to the taxpayer are included), the return is well worth the investment. Yet, an examination of the specific criminal justice agencies reveals an uneven picture. Superior court, probation and law enforcement experienced some cost avoidance after four years but do not recoup their initial investments. Law enforcement almost recovers its investment and probably would have if the study time frame had been longer. It is clear that the biggest beneficiary due to drug court is the California Department of Corrections, which has no investment costs in drug courts, but saves more than half a million dollars for every 100 individuals who enter drug court.. . Although the system as a whole is experiencing a savings, the individual agencies that invest the most in drug court are not the agencies that experience the cost savings. . . "

Okamoto Consulting Group. ***First Circuit Court, State of Hawaii-Hawaii Drug Court Program.***

Analysis of the cost benefits achieved as a result of the first 40 graduates of the Honolulu, Hawaii Drug Court, established in 1996, found that 43% of them would have been incarcerated for periods ranging between 1 year 11 months and two years six months had they not entered the drug court. The estimated cost for their incarceration was over $ 945,160.00, based on an annual cost for incarceration of $ 27,740 per inmate. The remaining 57% would have been referred to probation. The monthly cost for providing services to each drug court client was $ 484.61, or a total of $ 6,784.54 for an average of 14 months of services.

Michael Finigan. ***Multnomah County S.T.O.P. Drug Diversion Program.*** **1998.**

Evaluation of the Multnomah County (Portland), Oregon Drug Court, established in 1991, over a two year period found that costs per person savings totaled $ 23,235.30 of which $ 4,320 consisted of per person jail cost savings. (The remaining savings related to other justice system and related savings referenced below).

Thomas B. Fomby and Vasudha Rangaprasad. Divert Court of Dallas County: Cost Benefit Analysis. August 31, 2002

Evaluation of the Dallas County "Divert" (Drug Court) Program indicated a benefit-cost ration of 9.43-1 – e.g., on average, every additional dollar spent on drug treatment in Divert Court resulted in a reduction of $ 9.43 in costs to society over a 40-month period.

T.K. Logan, ***William Hoyt, and Carl Leukefeld. Kentucky Drug Court Outcome Evaluation: Behavior, Costs and Avoided Costs to Society. (Outcome Evaluation of Three Kentucky Drug Courts*** **(Jefferson, Fayette and Warren Counties). Center on Drug and Alcohol Research, University of Kentucky. October 2001.**

Avoided criminal justice costs (savings) for each dollar spent for drug court graduates (total of 586 graduates studied) were $ 2.56.

Victim Costs and Consequences: A New Look (January 1996).

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

IV Estimated Reductions in Criminal Activity

Substantial reductions in recidivism are being reported by jurisdictions which have implemented drug court programs, based on various measures, most notably the following:

•• significantly lower arrest and conviction rates for both drug court participants and graduates

Recidivism rates for graduates continue to be significantly reduced, ranging between 1 - 20 percent for graduates, with additional (though lesser) with reductions for defendants who participated but did not complete the programs. (See Drug Court Statistical "update". December 2000). In December 1999, Columbia University's National Center on Addiction and Substance Abuse (CASA) released findings from their second major academic review and analysis of evaluations of drug court programs. Based on a review of over 75 programs, the CASA report found that recidivism for participants while in the drug court program continues to remain low for graduates. The *Multnomah County, Oregon Regional Drug Impact Index*, July 2000, found that half of the arrestees eligible for drug court but never attended treatment were re-arrested after one year. The Oregon Judicial Department reported that the Lane County (Eugene), Oregon Drug Court resulted in an overall decrease of over 82% in rearrests for drug court program graduates, reflecting a decrease of over 95% in felony arrests, over 86% in misdemeanor arrests, and over 90% in DUI arrests and traffic charges.

•• significantly reduced — and, in most cases, eliminated -- drug use, indicated by drug test results

Results of drug tests — weekly or more often — indicate substantial reductions in drug usage by drug court participants. Positive tests are generally 18% overall, decreasing as the period of program participation increases. Positive drug tests for defendants under probation supervision -- much less frequent if conducted at all -- are reported to be at least three times higher.

V. Estimated Rate of Employment for Drug Court Graduates (vs. Public assistance)

Less than half of drug court participants were employed either full or part-time at the time of program entry. Many were on public assistance. Most drug courts require participants to be employed or engaged in fulltime study as a condition of graduation and report that over 90% were employed by the time of graduation.

Drug Court Partnership Act of 1998, Chapter 1007, Statutes of 1998.Final Report. Prepared by The California Department of Alcohol and Drug Programs and Judicial Council of California, Administrative Office of the Courts. March 2002.

Seventy percent of drug court graduates were employed when they completed the drug court (compared with 62% unemployment rate at time of program entry.)

T.K. Logan, *William Hoyt, and Carl Leukefeld. Kentucky Drug Court Outcome Evaluation: Behavior, Costs and Avoided Costs to Society. (Outcome Evaluation of Three Kentucky Drug Courts* (Jefferson, Fayette and Warren Counties). Center on Drug and Alcohol Research, University of Kentucky. October 2001.

Avoided costs (savings) for each dollar spent for drug court graduates (586 graduates studied) resulting from the earnings of these graduates were $ 5.58.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

VI. Parental Regaining of custody of minor children/Currency in Child Support Payments

Over 3,500 drug court participants who were parents of minor children were able to regain custody of their minor children as a result of participating in the drug court. These children had previously been cared for by relatives or in foster care. Over 4,500 additional drug court participants who were in arrears for child support payments at the time of program entry have become current in these payments.

In February 1999, the Buffalo City Drug Court estimated that the financial benefits derived from foster care savings for 30 children of 143 drug court graduates who were returned to their parents totaled $ 488,010. In addition, child support arrearage payments for 16 children of the 143 graduates studied totaled $ 96,000.00.

Drug Court Partnership Act of 1998, Chapter 1007, Statutes of 1998.Final Report. Prepared by The California Department of Alcohol and Drug Programs and Judicial Council of California, Administrative Office of the Courts. March 2002.

Twenty-eight percent of graduates retained or regained custody of their children; 7% gained visitation rights with them; and 8% of graduates became current in their child support payments. (information not available regarding universe of those graduates who fell into these categories).

T.K. Logan, *William Hoyt, and Carl Leukefeld. Kentucky Drug Court Outcome Evaluation: Behavior, Costs and Avoided Costs to Society. (Outcome Evaluation of Three Kentucky Drug Courts* (Jefferson, Fayette and Warren Counties). Center on Drug and Alcohol Research, University of Kentucky. October 2001.

Cost savings realized from each dollar spent for drug court graduates (total of 586 graduates) in regard to child support payments made were $ 3.30.

VII. Estimated medical and related costs

Reductions in medical and related costs resulting from drug court programs evident through several indicators, most notably:

- birth of drug free babies

Well over 2000 drug free babies have been reported born to drug court participants. Experts estimate that the care and treatment for each child born addicted to drugs costs at a minimum of $ 250,000 for the first year of life, with additional medical and related costs accruing in subsequent years and estimated to be as high as $ 750,000 per child by age 18.

The Buffalo Drug Court conducted a study, in conjunction with the Erie County Division of Social Services, of 236 graduates as of January 200, and noted, among other savings, the following:

- out of 156 participants who had open social service cases (Medicaid, food stamps, and /or public assistance) when they enrolled in the drug court, 75 (involving 61 individuals) had such cases closed;
- 68 children who were in foster care were returned to their parents;
- 47 crack free babies were born to drug court participants, estimated to represent a cost saving of $ 20,000 per birth costs-only that would otherwise have been expended for a drug addicted baby.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

- 38 Child Protective Services cases were closed;
- 81 children involved with Child Protective Services were allowed to return to their homes;
- 9 children were removed from social service rolls due to increased child support from their parent (who was a drug court graduate); and
- more than $ 48,000 was collected in back child support payments

The gross costs Erie County will avoid over the next five years are estimated at over $ 5,000,000.

- referral to treatment for infectious diseases

Data is just beginning to be compiled on the frequency with which drug court participants are being referred for treatment of infectious diseases identified during drug court screening. The public health savings accrued through these referrals should be substantial.

VIII. Other System Cost Savings

Drug courts are achieving substantial cost savings in a number of other areas, including:

- savings in probation supervision costs

Costs for intensive probation for supervision services only (i.e., no treatment or other support services) have been estimated at $ 7,200.00. Costs for routine probation (i.e, less frequent contacts) have averaged $ 4,700.00 per year.[12] Per person cost for drug court participation is generally less than the cost for probation, with significantly enhanced services and supervision provided.

- Other criminal justice system savings

A comprehensive analysis of the impact oaf the Multnomah County (Portland), Oregon Drug Court found that for every $ 1 spent on the drug court resulted in a savings of $ 2.50 in criminal justice system costs. In addition to jail savings, the Finigan report calculated the resultant criminal justice system cost savings from the drug court program and the associated recidivism reductions as follows: arrest costs: $ 1,850 per arrest; adjudication costs: $ 1,192; and supervision costs: $ 2,117. When broader cost savings (including victimization and theft costs) were considered, Finigan calculated the savings to be at least $ 10 for every $ 1 expended, based on the costs of increased police protection, victimization, medical assistance, food stamps and other public assistance that would have been needed. [13]

Multnomah County's *Drug Impact Index*, July 2000, noted that direct savings from the drug court, including theft and costs to victims, totaled $ 5.60 per dollar spent.

The Oregon Judicial Department reports a total annual judicial process savings of $ 2,344,946 (in addition to jail/prison days saved) as a result of the Lane County (Eugene), Oregon Drug Court, including of the following:

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[12]National Institute of Justice. Joan Petersilia and Susan Turner. "Evaluating Intensive Supervision Probation/Parole: Results of a Nationwide Experiment. May 1993

[13]Michael Finigan. *Multnomah County S.T.O.P. Drug Diversion Program.* 1998.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003

Crime Lab Testing Savings	$ 27,000.00
Grand Jury Savings	57,999.00
Court Process Time Savings:	
Motions to Suppress Evidence Savings:	111,000.00
Trial Savings (including juror costs)	71,400.00
Parole and Probation Cost Avoidance	1,226,947.00

•• Domestic Violence

T.K. Logan, *William Hoyt, and Carl Leukefeld. Kentucky Drug Court Outcome Evaluation: Behavior, Costs and Avoided Costs to Society. (Outcome Evaluation of Three Kentucky Drug Courts* (Jefferson, Fayette and Warren Counties). Center on Drug and Alcohol Research, University of Kentucky. October 2001.

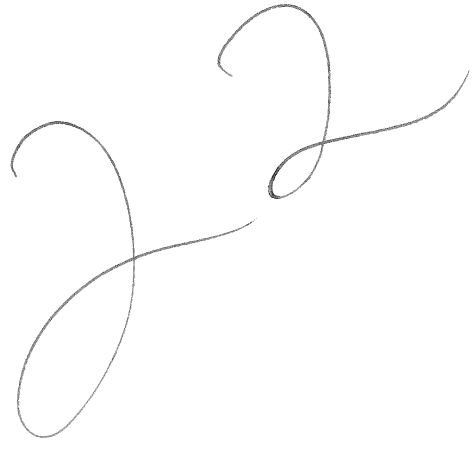
Avoided costs (savings) in the area of domestic violence for each dollar spent for drug court graduates (total of 586 graduates studied) were $ 2.72.

•• Accidents

T.K. Logan, *William Hoyt, and Carl Leukefeld. Kentucky Drug Court Outcome Evaluation: Behavior, Costs and Avoided Costs to Society. (Outcome Evaluation of Three Kentucky Drug Courts* (Jefferson, Fayette and Warren Counties). Center on Drug and Alcohol Research, University of Kentucky. October 2001.

Avoided costs (savings) in regard to accidents for each dollar spent for drug court graduates (total of 586 graduates studied) were $ 2.72.

Cost- Benefits/Costs Avoided Reported By Drug Court Programs. OJP Drug Court Clearinghouse, a program of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. December 9, 2003



OJP DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT

Drug Court Activity Update: Summary Information on All Programs and Detailed Information on Adult Drug Courts[i]

June 25, 2001

The information presented below reflects self reported information provided by 372 of the 420 adult family drug court programs which were in operation as of January 1, 2001. This information has been compiled by the OJP Drug Court Clearinghouse and Technical Assistance Project as of June 1, 2001 and, in most cases, has not been independently validated. *Retention rate,* as used in this report, is defined as the total number of current enrollees plus the total number of graduates divided by the total number of persons ever enrolled. *Recidivism, as used in this report,* is defined as new arrests and/or new convictions following the participant's entry into the drug court program. Because programs vary in terms of the length of time during which recidivism data is collected and the sources of information used to compile recidivism data, this data is not comparable from program to program and these numbers cannot be interpreted as national recidivism data.

SUMMARY INFORMATION ON ALL DRUG COURTS

I. **Drug** Court Activity Underway

No. of Programs Currently Operating:	697[ii] (includes 32 Tribal Drug Courts)
No. of Programs Planned:	427[iii] (includes 48 Tribal Drug Courts)
No. of Drug Courts with Alumni Groups:	85+
No. of States with Adult Drug Court Programs (operating or being planned):	All 50 (including Native American Tribal Courts), plus the District of Columbia, Guam, Puerto Rico, and two federal districts
No. of Judges Who Have Served as Drug Court Judges:	1,500+ (includes 39% former prosecutors; 32% former defense attorneys; and 30% who have served as both prosecutors and defense attorneys)

[i] Based on information provided by 372 adult drug courts through May 2001. See also separate summaries for juvenile, family and tribal drug court programs.

[ii] Includes 483 adult drug courts; 167 juvenile drug courts; 37 family drug courts; and 10 combination adult/juvenile/family drug courts.

[iii] Includes 257 adult drug courts; 113 juvenile drug courts; 49 family drug courts; and 8 combination adult/juvenile/family drug courts.

States That Have:

• Enacted Legislation Relating to the Planning, Operating and/or Funding of Drug Courts:	30 (including 3 allocating Tobacco Settlement Funds for drug courts)
• Introduced Legislation Relating to the Planning, Operating and/or Funding of Drug Courts:	8 additional states
• Court Rules Relating To Drug Courts:	10 states
Native American Tribal Councils which have enacted legislation relating to the planning/operation of drug court programs:	2

Adult Drug Court Activity

II. Summary Program Information

Estimated Total No. of Individuals Who Have Enrolled in Adult Drug Court Programs:	226,000
Estimated No. of Current Participants	77,000
Estimated No. of Graduates	74,000
Estimated No. Of Participants who died while enrolled	750
Participant Retention Rates (overall): (Based on number of graduates and current participants compared with total number of participants enrolled)	67%+

Participant Recidivism Rates

Most drug courts have noted substantial reductions in recidivism following program implementation. However, because programs vary widely in terms of the nature of populations being served, follow-up periods and sources of information used to compile recidivism data, and measures being used to compile "recidivism" information (e.g., arrests vs. convictions; the nature of offenses being included, etc.), this data is not comparable from jurisdiction to jurisdiction and any data that has been compiled by individual jurisdictions cannot be considered to comprise national recidivism data and is therefore not included in this report. A more accurate comparison to be made is between specified recidivism data for drug court participants in a specific jurisdiction and comparable data for a comparison group of non-drug court defendants in that same jurisdiction.

Average Rate of Positive Urinalyses* for All Participants While in Drug Court Program

17% (compared with significantly higher (at least 35%+ positive urinalyses reported for nondrug court participants, with

OJP Drug Court Clearinghouse and Technical Assistance Project. American University. *Summary Information on All Drug Court Programs and Detailed Information on Adult Drug Courts.* June 25, 2001.

significantly fewer urinalyses conducted)

*based on reported 1,403,008 tests of 71,596 participants

III. Nature/Admin. Locus of Program in Criminal Justice Process

Pre-plea only	6%
Post-Plea/deferred judgement (plea will be stricken upon successful program completion) only	15%
Post-adjudication (guilty finding not stricken upon successful program completion but prison/jail term or charge reduction results) only	18%
Probation violators only	2%
Combination of the above Approaches	60%

IV. Summary Participant Information (at time of program entry)

! **Age Range (years):**

18–19:	8%
20–25:	21%
26–35:	34%
36–45:	27%
46–55:	9%
over 55:	1%

• **Gender:**

Male	73%
Female	27%

! **Racial/Ethnic Background**

African American	37%
Alaskan Native[iv]	<1%
Asian/Pacific Islander	2%
Caucasian	42%
Hispanic	16%
Native American [v]	<1%
Combin. of 2 or more of above	1%
Other	1%

! **Marital Status:**

Single:	54%
Married:	18%
Divorced:	14%
Separated:	7%
Widowed:	2%
Living with Significant Other:	5%

! **Educational Status**

[iv] See also Tribal Drug/Healing to Wellness Court Summary

[v] See also Tribal Drug/Healing to Wellness Court Summary

OJP Drug Court Clearinghouse and Technical Assistance Project. American University. *Summary Information on All Drug Court Programs and Detailed Information on Adult Drug Courts.* June 25, 2001.

no high school degree or GED	35%
high school degree or GED	43%
some college/post high school	17%
college degree	3%
post college degree	2%

* See also Tribal Drug/Healing to Wellness Court Update

! **Employment Status** at

employed full time	44%
employed part-time	9%
FT student	3%
unemployed	44%

! **Parental Status:**

75% of participants were parents of minor children

Mothers:	37%
Fathers:	63%

Total no. of minor children of drug court participants: 75,000+

Percent of participants whose minor children were all living with them at time of program entry 40%

! **Veterans:** 3%

! **Prior Felony Convictions:**

Estimates provided by reporting programs of prior felony convictions of participants

No prior felonies: 9%

Note: most programs report participants have 1-2 or more prior felonies and additional misdemeanor convictions

• **No. Of Years of Participant Drug Use at Time of Program Entry**

	Male	Female		All Participants
Under two years	10%	14%		13%
two - five years	22%	22%		24%
six - ten years	26%	21%	24%	
eleven - fifteen years	21%	18%	14%	
sixteen - twenty years	13%	15%	13%	
over twenty years	9%	9%	12%	

! **Prior Treatment:**

Estimates provided by reporting programs of extent of prior treatment participants have received

OJP Drug Court Clearinghouse and Technical Assistance Project. American University. *Summary Information on All Drug Court Programs and Detailed Information on Adult Drug Courts.* June 25, 2001.

No prior treatment: 3%

Note: Most programs report participants have been enrolled in at least one prior treatment program and, frequently, in two or more prior treatment programs.

! **Previously Incarcerated:**

Graduates:	65%
All Enrollees	56%

! **Average daily cost participants reported spending for drugs prior to drug court program entry:**

< $ 50.00	25%
$ 51.00 - $ 100.00	25%
$ 101.00 - $ 199.00	20%
$ 200.00 - $ 299.00	17%
$ over $ 300.00	14%

! **Tobacco Use By Participants Reported by Drug Court Programs:**

	Percent of Reporting Programs
Most Participants smoke	54%
Some Participants smoke	11%
Few Participants Smoke	<1%
No Participants Smoke	0
Don't Track this information	34%

V. Outcomes Reported

! All Participants

No. of drug-free babies born to participants:	2,100+
No. of persons referred for medical treatment of contagious diseases	2,000+
No. of parents who:	
regained custody:	3,500+
became current in child support payments:	4,500+

! Graduates

- **Employment:**

Retained/obtained employment:	78%

- **Educational Status**

Remained/became fulltime student	10%
obtained high school/GED certification	21%
enrolled in college/vocational training	12%

OJP Drug Court Clearinghouse and Technical Assistance Project. American University. *Summary Information on All Drug Court Programs and Detailed Information on Adult Drug Courts.* June 25, 2001.

enrolled in vocational training 14%

Estimated savings in annual jail/prison days and costs by reporting programs:

		Average Reported	Median Reported
• estimated jail/prison days saved:	9,980	days	4,015 days
• estimated costs saved:		$ 697,652	$ 330,000

V. Participant Enrollment and Retention[vi] Information Reported by Adult Drug Courts

State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
AL	Cullman	Cullman Co. District Court	1/15/1999	73	37	13	69%
AL	Jefferson	Jefferson Co. District Court	1/12/1996	1487	667	367	70%
AL	Marshall	Marshall Co. Circuit Court	1/25/1999	123	43	64	87%
AL	Mobil	13th Judicial Circuit Court	2/1/1993	1215	470	217	57%
AL	Tuscaloosa	Tuscaloosa Co. Circuit Court	3/1/1997	454*	262*		61%~
AR	Pulaski	Pulaski Co. Circuit Court – STEP (pretrial) program	6/1/94-12/999	1,261*	351*	Na	*
AR	Pulaski	Pulaski Co. Circuit Court – Post Adjudication Program	12/1/1998	524	51	405	87%
AR	Washington	Washington Co. Circuit Court	4/1/2000	67	8	51	88%
AZ	Gila	Gila Co. Superior Ct.	6/1/1999	59~	5~		50%~
AZ	Maricopa	Maricopa Co. Superior Court-DUI Drug Court program	3/1/1998	360	118	159	77%
AZ	Maricopa	Maricopa Co. Superior Court – Adult Drug Court	10/1/1992	2489	610	451	43%
AZ	Pima	Pima Co. Superior Court	1/1/1998	738	164	235	54%
AZ	Yuma	Yuma Co. (Yuma)	3/1/1998	41!	NA	NA	88%!
CA	Alameda	Oakland Municipal Court	1/1/1991	2453	NA	NA	NA
CA	Alameda	Alameda Co. Superior Court	1/1/1995	3511	NA	NA	NA
CA	Alameda	Alameda Co. Superior Ct-Misd	3/1/1998	200	40	137	89%
CA	Butte	Butte Co. Superior Ct	5/1/1995	799	259	203	58%
CA	Contra Costa	Contra Costa Co. Municipal Ct (STAR)	1/1/1997	82	3	40	52%
CA	Del Norte	Del Norte Co. Superior Court	1/1/1999	153	19		NA

[vi] Note: Participant retention rates are based on aggregate information relating to the total number of current enrollees plus the total number of graduates divided by the total number of participants ever enrolled. The participant retention rates listed should not be considered a national "norm". Retention rates among reporting programs vary as a result of the range of eligibility criteria used by drug court programs and the nature and extent of substance abuse and other problems presented by participants. ***COMPARISONS AMONG PROGRAMS SHOULD THEREFORE BE MADE WITH GREAT CAUTION.***

[vii] See Note vii above.

OJP Drug Court Clearinghouse and Technical Assistance Project. American University. *Summary Information on All Drug Court Programs and Detailed Information on Adult Drug Courts.* June 25, 2001.

State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
CA	Fresno	Fresno Co. Superior Court/Post Conv. Progr.	3/3/1998	380	38	176	56%
CA	Glenn	Glenn Co. Superior Court	3/1/1999	75	7	59	88%
CA	Kern	Bakersfield Municipal Ct	7/1/1993	2660	666	872	58%
CA	Kern	Nrth Kern Co. Superior Court (Delano-McFarlan Branch)	2/1/1998	See Kern Co Bakerfield Mun. Ct			See Kern Co Bakerfield Mun. Ct
CA	Kern	North Kern Co. Municipal/Superior Ct (Shafter-Wasco Branch)	7/1/1994	See Kern Co Bakerfield Mun. Ct			See Kern Co Bakerfield Mun. Ct
CA	Lake	South Lake Municipal Court	3/6/1996	202	58	17	38%
CA	Los Angeles	Los Angeles Superior Court/Compton	4/27/1998	223	65	69	60%
CA	Los Angeles	East Los Angeles Superior Court	6/1/1998	113	47	45	82%
CA	Los Angeles	Inglewood Municipal Court	4/1/1997	270	90	111	75%
CA	Los Angeles	Long Beach Superior Court	9/1/2000	40	0	35	88%
CA	Los Angeles	Los Angeles Municipal Court	5/1/1994	1339	516	177	52%
CA	Los Angeles	Los Angeles Municipal Ct (Van Nuys)	6/1/1997	404	98	97	49%
CA	Los Angeles	Los Angeles Superior Court/Sentenced offender Drug Court	8/1/1998	229	47	122	74%
CA	Los Angeles	Pasadena Municipal Court	5/1/1995	231	84	40	54%
CA	Los Angeles	Pomona Court	6/14/1999	56	26	25	92%
CA	Los Angeles	Rio Hondo Court	7/1/1994	518	210	159	72%
CA	Los Angeles	South East Municipal Court	5/1/1997	147	64	50	78%
CA	Mendocino	Mt. Sanhedrin Municipal Cts	8/2/1996	303	53	42	32%
CA	Merced	Merced Co. Drug Court	1/4/2000	90		51	57%
CA	Monterey	Monterey Co. Coordinated Trial Court	6/1/1995	595	102	136	40%
CA	Napa	Napa Co. Superior Court	9/30/1999	88	5	64	79%
CA	Nevada	Nevada Co. Superior Court	10/1/1998	44	11	20	71%
CA	Orange	Orange Co. Superior Court/Central Justice Center	5/1/1995	1284	269	179	35%
CA	Orange	Orange Co. Superior Court/ Newport Beach	7/1/2000	44	1	34	80%
CA	Orange	Orange Co. Superior Court/Harbor Justice Center	1/1/1997	292	113	114	78%
CA	Orange	Orange Co. Superior Court/North Justice Center	1/1/1999	186	46	99	78%
CA	Orange	Orange Co. Superior Court/West Justice Center	1/26/2000	78	13	46	76%
CA	Placer	Placer Co. Superior Court	9/1/1995	687	348	180	77%

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
CA	Placers	Places Co Tahoe Municipal Court	7/1/1997	87	24	38	72%
CA	Plumas	Plumas Co. Superior Court	2/22/1999	21	4	NA	NA
CA	Riverside	Riverside Co. Superior Court/Desert Drug Court	12/1/1999	78	6	33	50%
CA	Riverside	Riverside Co. Superior Court/Riverside	9/25/1995	390	197	43	63%
CA	Sacramento	Sacramento Mun. & Sup. Cts	3/1/1996	1193~	213~		NA
CA	San Barnardino	Big Bear Superior Ct	9/19/1999	28	2	25	96%
CA	San Barnardino	Redlands Municipal Ct	4/1/1997	318	172	71	77%
CA	San Barnardino	Victor Valley Drug Court	3/20/2000	86	0	63	73%
CA	San Bernardino	Needles Superior Court	6/1/2000	48	0	41	86%
CA	San Bernardino	Rancho Cocamonga Superior Court	7/10/1998	257	67	85	59%
CA	San Bernardino	San Bernandino Co. Superior Ct (central)	11/1/1994	1139	506	153	58%
CA	San Diego	San Diego Superior Court-East County Division	8/1/1997	302	120	91	70%
CA	San Diego	San Diego Superior Court-North County Division	1/1/1997	535	180	118	56%
CA	San Diego	San Diego Superior Court-South County Division	10/1/1997	420	146	113	62%
CA	San Francisco	San Francisco Superior Court	11/1/1995	1297	298	297	46%
CA	San Joaquin	San Joaquin Drug Court	7/3/1995	1540	343	240	38%
CA	San Luis Obispo	Silo Co. Municipal Court	7/1/1999	100~	na		70%~
CA	San Mateo	Northern San Mateo County Drug Court	5/1/1999	365	99	88	52%
CA	San Mateo	Southern South Mateo Co. Ct	1/1/1995	882	253	109	41%
CA	Santa Barbara	Santa Barbara Co. Superior Court- Santa Maria	3/1/1996	293	77	53	45%
CA	Santa Barbara	Santa Barbara Co. Superior Court- Santa Barbara	3/1/1996	463	148	43	42%
CA	Santa Clara	Santa Clara Co. Superior Court	9/1/1995	1535	617	432	69%
CA	Santa Cruz	Santa Cruz County Superior Court	1/1/1999	324	62	97	50%
CA	Los Angeles	Los Angeles Superior Court/Santa Monica	1/1/1996	340	133	62	58%
CA	Shasta	Shasta Co. Superior Court	5/24/1999	194	63	46	57%
CA	Siskiyou	Siskiyou Co. Superior Court	3/1/2000	8	0	8	100%
CA	Solano	Solano Co. Drug Court (Fairfield and Vallejo)	3/14/1997	533	144	90	44%

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
CA	Solano	Valejo Municipal Ct	3/27/1997	See Solano Co. Drug Ct			See Solano Co. Drug Ct
CA	Sonoma	Sonoma Co Mun. & Sup.	2/1/1996	485	233	64	62%
CA	Stanislaus	Stanislaus Co. Superior Court	7/1/1995	826	282	118	49%
CA	Tulare	Porterville Municipal Court	3/1/1996	852+	na		84%+
CA	Ventura	Ventura Co. Superior Superior Court		460	230	43	59.35%
CA	Yolo	Yolo Co. Superior Court	3/3/1995	1959	892	279	60%
CA	Yolo	Yolo Co. Superior Court/Felony Probation Drug Court	8/1/1999	32	0	29	91%
CA	Yuba	Yuba Co. Superior Court	1/1/1995	99	13	18	32%
CT	Fairfield	Bridgeport Superior Court	11/1/1997	163	60	41	62%
CT	New Haven	New Haven Superior Court	7/1/1996	375	135	93	61%
CT	New Haven	Waterbury Superior Court	10/1/1997	64	22	27	77%
DC	District of Columbia	Superior Court of the District of Columbia	1/1/1994	2461	832	218	43%
DE	New Castle Co.	Superior Court of Delaware-post adjudication	4/1/94	2552	908	825	68%
DE	Kent Co.	Kent Co. Superior Court	4/1/1994	See New Castle Co. Above			
DE	New Castle Co.	Sussex Co. Superior Court-pretrial diversion	4/1/1994	2260	758	1010	79%
DE	Sussex	Sussex Co. Superior Court-post adjudication	4/1/94	See New Castle Co. above			
FED	[Federal District	U.S. District Court]	1/1/1995	44*	2*		68%*
FL	Alachua	Alachua County Circuit Court	10/1/1993	896	226	89	38%
FL	Bay	14th Judicial Circuit Ct	1/1/1997	232	84	59	62%
FL	Brevard	18th Judicial Circuit Ct	9/1/1994	735~	360~		59%~
FL	Broward	17th Judicial Circuit Ct	1/1/1990	7913		1136	NA
FL	Charlotte	20th Judicial Circuit Court, Criminal Post Conviction	4/27/2001	13		10	77%
FL	Citrus	Fifth Judicial Circuit Ct	6/14/2000	40	0	39	98%
FL	Collier	20th Judicial Circuit Court	9/14/1999	51	7	24	61%
FL	Dade	11th Judicial Circuit Ct	6/1/1989	22751	6308	1669	38%
FL	Duval	4th Judicial Circuit Court	10/1/1994	800	398	132	67%
FL	Escambia	Escambia Co. Circuit Court	6/1/1993	732	326	68	55%
FL	Glades	Glades Co.Circuit Court	10/18/1999	63	6	38	70%
FL	Hendry	20th Circuit Ct/ Hendry Court	2/1/2000	SeeGlades Co. Above			
FL	Hillsborough	13th Judicial Circuit Ct	1/1/1994			2217	NA
FL	Hillsborough	Hillsborough Co. Circuit Ct/:Pretrial Intervention	1/1/1992	16458	13166	239	82%

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
FL	Lee	20th Judicial Circuit Court	5/1/2000	22	0	0	NA
FL	Leon	2nd Judicial Circuit Ct	1/1/1994	200**	na		60%**
FL	Manatee	12th Judicial Circuit Ct	3/1/1998	116!	na		76%!
FL	Marion	5th Judicial Circuit Ct.	5/1/1994	48*	4*		Na
FL	Martin	19th Judicial Circuit Court	2/7/2001	23	0	23	100%
FL	Monroe	16th Judicial Circuit Ct Key West	10/1/1993	414	217	80	72%
FL	Monroe	16th Judicial Circuit Ct Marathon	10/1/1995	See Monroe Co.Key West			See Monroe Co.Key West
FL	Monroe	16th Judicial Circuit Ct Plantation Key	4/1/1996	See Monroe Co.Key West			See Monroe Co.Key West
FL	Orange	9th Judicial Circuit Court	8/11/2000	268	18	157	68%
FL	Polk	Polk Co. Circuit Court	1/1/1994	1526	NA	126	24.64%
FL	Sarasota	12th Judicial Circuit Court	3/1/1997	531	148	93	48%
FL	Volusia	Volusia Co. Circuit Court	7/1/1997	527	125		NA
GA	Bibb	Bibb Co. Superior Ct	1/1/1994	375!	na		83%!
GA	Camden	Camden Co. Superior Ct	11/1/1998	See Glynn/ Camden Cos			See Glynn/ Camden Cos
GA	Fulton	Fulton Co. Superior Court	3/13/1997	698	125	160	44%
GA	Glynn/ Camden	Glynn/Camden County Superior Ct	11/1/1998	254	12	200	84%
HI	Honolulu	1st Circuit Court	12/1/1995	443	187	163	79%
HI	Maui	Maui Circuit Court	8/4/2000	46	0	40	87%
IA	Polk	Polk Co. District Ct	8/1/1996	195~	65~		59%~
IA	Woodbury	Woodbury County District Court	7/1/1999	114	37	34	63%
ID	Ada	Ada Co. DistrictCourt	3/1/1999	246	51	118	69%
ID	Kootenai	Kootenai Co. District Ct	9/1/1998	98			NA
ID	Madison	7th Judicial District Ct	3/1/2000	10		7	70%
IL	Cook	Fourth Municipal District Court-Misdemeanor	4/1/1998	23	3	11	61%
IL	Cook	Fourth Municipal District-Felony	4/1/1998	145	12	57	48%
IL	Cook	Cook Co. Circuit Court/Criminal Division Program	4/1/1998	671	113	248	54%
IL	Cook	Sixth Municipal Court /Markham- Felony	6/1/1998	128	32	45	61%
IL	DuPage	18th Judicial Circuit Court	1/1/2000	21	7	7	67%
IL	Kankakee	Kankakee Co. Circuit Court	1/1/1997	191	50	56	56%
IL	Macon	Macon Co. Circuit Court	11/1/1998	74~	3~		79%~
IL	Madison	Madison Co. Circuit Court	3/4/1997	500	130	114	49%
IL	Peoria	Peoria Co. Circuit Court	12/1/1997	128~	24~		80%~

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
IL	Rock Island	Rock Island Co. Circuit Ct.	7/31/2000	35	0	26	75%
IL	Will	Will Co. Circuit Court	12/1/1999	7~	na		NA
IL	Winnebago	17th Judicial Circuit Court	10/1/1996	913	NA	240	NA
IN	Allen	Allen Co. Superior Court	1/1/1997	315	111	121	75%
IN	Johnson	Johnson Co. Superior Court	11/9/1999	79	6	44	65%
IN	Lake	Gary City Court	9/16/1997	655	NA	99	NA
IN	Madison	Madison Co. Unified Courts	3/3/2000	57	5	42	84%
IN	Marion	Marion Co. Superior Court	10/1/1998	348	NA	59	NA
IN	St. Joseph	St. Joseph Co. SuperiorCourt	2/1/1997	367	95	173	74%
IN	Vigo	Vigo Co. Superior Court	9/30/1996	301	95	92	63%
KS	Sedgwick	Wichita Municipal Court	8/1/1995	892~	260~		82%~
KY	Ballard	1st Circuit Court	11/6/1997	71	11	37	68%
KY	Bourbon/Scott /Woodford	14th Judicial Circuit Court	3/16/2001	3	0	3	100%
KY	Bowling Green	Bowling Green Co. Circuit Ct	4/1/1997	82+	na		80%+
KY	Campbell	Campbell Co. Circuit Court	1/1/1999	41	5	19	59%
KY	Carlisle	Carlisle Co. Circuit Ct	10/1/1999			32	See Ballard/ Carlisle/Fulton Hickman Cos
KY	Christian	Christian County Circuit Ct	1/1/2001	14	0	14	100%
KY	Clark/Madison	25th Judicial Circuit Ct	12/1/1998	21	1	10	53%
KY	Daviess	6h Judicial District Ct	2/7/2000	18	0	14	78%
KY	Fayette	Fayette Circuit Court	8/1/1996	491	146	89	48%
KY	Fulton/ Hickman	1st Judicial Circuit Ct	10/1/1999				See Ballard/ Carlisle/Fulton Hickman Cos
KY	Jefferson	Jefferson Co. District Court	7/1/1993	1182	NA	192	NA
KY	Kenton	Kenton Co. Circuit Court	4/1/1998	104	19	44	61%
KY	Laurel	27th Judicial Circ. Ct.	3/1/2000	14	0	9	65%
KY	Pike	Pike Co. Circuit Court	1/1/2001	5	0	5	100%
KY	Warren	Warren County Circuit Court	4/1/1997	367	134		NA
LA	Calcasieu Parish	14th Judicial District Ct	2/1/1997	228+	na		Na
LA	DeSoto/ Sabine Parish	11th Judicial District Court		15	2	6	54%
LA	East Baton Rouge Parish	19th Judicial District Court	1/1/1998	272	48	84	49%
LA	Iberia Parish	16th Judicial District Court/New Iberia	4/13/1998	392	88	157	63%
LA	Jefferson Parish	Jefferson Parish District Court	6/1/1997	434	NA	150	NA
LA	Lafourche Parish	17th Judicial District Court - Lefourche Parish	12/7/1998	129	16	91	84%
LA	Livingston/ Tangipahoa	21st Judicial District Court	7/1/1998	235	20	78	44%

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
LA	Orleans Parish	Orleans Criminal District Court	1/1/1999	911	212	NA	NA
LA	Rapides Parish	Rapides Parish District Court	10/1/1997	242	NA	76	NA
LA	St. Mary Parish	16th Judicial District Court	1/6/1997	577	133	149	51%
LA	St. Tammany Parish	22nd Judicial District Ct.	1/1/1998	401	111	191	76%
LA	West Carroll/ Franklin	5th District Court	6/1/1998	49	6	39	92%
MA	Essex	Haverhill District Court	2/1/1998	124	NA	25	NA
MA	Essex	Lawrence District Court	10/18/2000	66		42	64%
MA	Franklin	Franklin Co. District Court	1/1/1997	200	59	43	52%
MA	Middlesex	Framingham District Ct.	11/15/1999	40	7	18	64%
MA	Suffolk	[Dorchester District Court-reg./reorganized 2/99]	6/95,2/99(cont in local Suffolk Co. juris)	[285!]	Na		[93%!]
MA	Suffolk	Brighton District Court	6/6/2000	35	0	30	85%
MA	Suffolk	East Boston District Court	10/12/1999	98	17	58	77%
MA	Suffolk	Roxbury District Ct	2/19/1999	250	73	70	58%
MA	Suffolk	Dorchester District Court	2/1/1999	40!	Na		95%!
MA	Suffolk	South Boston District Court	2/1/1999	115	21	70	80%
MA	Worcester	Worcester District Court	1/1/1996	484*	192*		71%~
MD	Anne Arundel	Anne Arundel Co. District Ct	1/1/1997	787	355	132	62%
MD	Baltimore City	Circuit Court of Baltimore City	10/1/1994	See District Court for Baltimore City Below			See Baltimore City Cos.
MD	Baltimore City	District Court of Baltimore City	3/1/1994	3178	755	613	45%
MD	Harford	Harford Co. District Court	11/14/1997	191	126	40	89%
MI	Berrien	Berrien Co. Circuit Court	1/1/1993	177	114	34	84%
MI	Detroit	36th District Court	10/1/199	198	35	103	70%
MI	Eaton	56th A District Court	10/15/1997	1413	995	226	87%
MI	Eaton	Eaton Co. Circuit Court		23		23	100%
MI	Kalamazoo	Kalamazoo Co. District Ct/Male	1/1/1997	309	91	78	55%
MI	Kalamazoo	Kalamazoo Co. District Ct/Female	1/1/1992	458	163	56	48%
MI	Kent	61st District Court	6/2/1999	145	24	62	87%
MI	Macomb	District Court for Macomb Co.	7/1/1999	59	2	49	86.44%
MN	Hennepin	Hennepin Co. District Court	1/6/1997	6487	1423	3582	77%
MO	Boone	13th Judicial Circuit Court	1/1/1998	262	73	87	84%
MO	Butler	Butler Co. Circuit Court	1/1/1999	30	7	18	84%
MO	Christian	Ozark Circuit Court	2/1/1998	38*	10*		66%~
MO	Cole	Cole Co. Circuit Court	1/1/1999	14*			93%~
MO	Dunklin	Dunklin Co. Circuit Court	9/1/1998	63	20	18	61%
MO	Franklin	Franklin Co. Circuit Court	2/1/2000	46	0	28	61%

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MO	Greene	Green Co. Circuit Ct.	10/1/1998	118	26	80	82%
MO	Jackson	Jackson Co. Circuit Court	10/1/1993	3765	1717	313	54%
MO	Mississippi	Mississippi Co. Circuit Court	11/19/1999	29	4	17	73%
MO	Newton	Newton Co. Circuit Ct	3/18/1999	68	9	44	78%
MO	Saline	Saline County Circuit Court	5/1/1999	25*	2*		96%~
MO	St. Charles	St. Charles Co. Circuit Court	7/1/2000	25	0	20	80%
MO	St. Joseph	Saint Joseph Circuit Court	10/1/1997	379	134	NA	NA
MO	St. Louis City	22nd Judicial Circuit Ct	4/7/1997	1182	278	241	45%
MO	Stoddard	Stoddard Co. Circuit Court	8/1/1999	33	8	14	67%
MO	Taney	Taney Co. Circuit Court	8/1/1999	7~	Na		NA
MS	Madison	City of Ridgeland Municipal Ct.	10/1/1997	68~			88%~
MS	Pike/Lincoln/ Walthall	14th Circuit Court	2/1/1999	156	14	126	90%
MT	Gallatin	Gallatin Co. District Ct	10/1/1999	22	2	15	78%
NC	Durham	Durham District Court	10/1/1999	42	1	23	58%
NC	Forsythe	21th District Ct	6/1/1996	169*	40*		60%~
NC	Mecklenburg	Mecklenburg Co. District Court/Step Drug Treatment Program	3/1/1996	771	175	168	46%
NC	Mecklenburg	Mecklenburg Co. District Ct (Pre-Plea)	2/1/1995	See Mecklenburg Cos			See Mecklenburg Cos
NC	Mecklenburg	Mecklenburg Co. District Ct (Pre-Plea)	2/1/1995	See Mecklenburg Co,			See Mecklenburg Cos
NC	Mecklenburg	Mecklenburg DWI Court	3/1/2000	See Mecklenburg Co.			See Mecklenburg Cos
NC	New Hanover	New Hanover Co. District Court	5/1/1997	57	7	19	47%
NC	Person/ Casewell	Person/Casewell Co. District Ct.	7/1/1996	27!	na		75%!
NC	Wake	Wake Co. District Court	10/22/1999	40	6	24	75%
NC	Wake	Wake Co. Superior Court	7/31/1996	136	43	22	49%
NC	Warren	Warren Co. Superior Court	12/1/1996	47*	10*		NA
NE	Douglas	Douglas Co. Drug Court	4/1/1997	830	245	169	50%
NJ	Camden	Camden Co. Superior Ct	4/1/1996	673	128	130	40%
NJ	Essex	Essex Co. Superior Court	2/1/1997	160	15	138	96%
NJ	Monmouth	Long Branch Municipal Court	1/1/1999	108*	60*		80%~
NJ	Passaic	Passaic Co. Superior Court	9/1/1977	314		179	58%
NJ	Union	Union Co. Superior Court	9/1/1998	162	3	145	92%
NJ	Union	Union Co. Superior Court/post-adj.	4/1/1999	1	Na	NA	NA
NM	Bernalillo	Bernalillo Co. Metropolitan Court/ Adult DWI/Drug Court	7/1/1997	424		99	NA
NM	Dona Ana	Dona Ana Co. Magistrate Ct	2/1/1995				See Dona Ana

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
		(DWI)					Cos. 3rd JDC
NM	Dona Ana	Las Cruces Municipal Ct (DWI)	4/1/1995				See Dona Ana Cos. 3rd JDC
NM	Dona Ana	Mesilla Municipal Ct.	2/1/1995				See Dona Ana Cos. 3rd JDC
NM	Dona Ana	Mesilla Municipal Ct. (DWI)	2/1/1995				See Dona Ana Cos. 3rd JDC
NM	Dona Ana	3rd Judicial District Drug Ct	2/1/1995	700	277	78	51%
NM	McKinley	11th Judicial District Ct. (DUI)	3/1/2000	12*	na		NA
NM	San Juan	Eleventh Judicial District Court	10/1/1997	158	22	75	62%
NM	Santa Fe	Santa Fe Municipal Court	1/1/1998	312	113		NA
NM	Santa Fe	1st Judicial District Court	1/1/1997	176	53	35	72%
NM	Taos	Eighth Judicial District Court	7/7/1999	30	12	15	90%
NV	Clark	Clark Co. District Court	10/1/1992	6327	1859	2193	64%
NV	Clark	Clark Co. Laughlin District Ct.	2/1/1998	14+	na		NA+
NV	Clark	Clark Co. Reg Ct-N Valley	3/1/1998	20!	na		85%!
NV	Washoe	2nd Judicial District Ct	7/1/1995	1501	597	363	64%
NY	Albany	Albany City Ct	1/28/2000				See Albany Co. Reg. Tx.
NY	Albany	Albany Co. Ct	1/28/2000				See Albany Co. Reg. Tx.
NY	Albany	Albany Regional Drug Court	1/28/2001	42		34	81%
NY	Bronx	Bronx Criminal Court	3/1/1999	632	99	343	70%
NY	Erie	Cheektowaga City Court	6/10/1997	667	NA	228	NA
NY	Erie	Buffalo City Court	12/1/1995	1418	164	345	37%
NY	Erie	City of Tonawanda Court	4/1/1998	169	74	66	83%
NY	Erie	Lackawanna City Court	1/1/1996	261	119	65	71%
NY	Erie	Town of Amherst Court	9/1/1996	744	308	236	73%
NY	Fulton	Fulton Co. Court	7/1/1999	53	9	33	80%
NY	Genesse	Batavia City Court	2/23/1999				NA
NY	King	King Co. Supreme Court	6/1/1996	1840	613	461	59%
NY	Monroe	Rochester City Ct	1/1/1995	2999	484	765	44%
NY	Montgomery	Montgomery Co. Ct	2/1/2001	3	0	3	100%
NY	New York	New York Co./Manhattan Court/Misdemeanor Drug Court	7/17/2000			221	NA
NY	New York	New York Co./Manhattan Supreme Court/felony drug court	9/1/1998	188	44	82	67%
NY	Niagara	Lockport City Court	9/5/2000	36	0	30	84%
NY	Niagara	City Of Niagara Falls Ct	12/1/1996	647	207	72	44%
NY	Onondaga	Onondaga Co. City Court/Syracuse t	1/1/1997	397	109	118	58%
NY	Ontario	Ontario Co. Court/Finger Lakes Drug Ct	7/1/2000	4		4	100%
NY	Oswego	Oswego Co. Court	8/16/1999	43	2	30	75%

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
NY	Otsego	Otsego Co. Court	4/20/2000	22	0	20	91%
NY	Queens	Queens Co. Supreme Court	5/1/1998	506		254	51%
NY	Rensselaer	Rensselaer Co. Drug Treatment	11/1/1997	49	30	11	84%
NY	Rensselaer	Troy City Court	10/1/1997	62	35	9	71%
NY	Rockland	Rockland Co. Court	1/1/1998	57~	7~		74%~
NY	Suffolk	Suffolk Co. Supreme Court Ct	9/9/1996	515	242	98	66%
NY	Tompkins	Ithaca City Court	1/1/1998	170	50	44	56%
NY	Tompkins	Tompkins Co. Ct	6/1/2000	19	0	19	100%
NY	Washington	Washington Co. Court/Town of Kingsbury	5/1/2000	29	1	26	94%
NY	Westchester	City Court of Yonkers	1/2/2001	14	0	13	93%
NY	Westchester	Westchester Co. Ct/Mt. Vernon	10/12/2000	13			NA
OH	Belmont	Belmont Co. Court of Common Pleas	9/1/2000	17	0	16	95%
OH	Butler	Butler Co. Ct of Common Pleas	9/1/1996	352	116	62	51%
OH	Crawford	Crawford Co. Municipal Court	3/1/1999	32	2	12	44%
OH	Cuyahoga	Cleveland Municipal Court	3/1/1998	254	69	127	78%
OH	Erie	Erie Co. Common Pleas Court	4/1/1996	101	28	25	53%
OH	Hamilton	Hamilton Co. Court of Common Pleas	3/1/1995	1710	661	262	54%
OH	Huron	Norwalk Municipal Court	1/1/1999	19	6	6	64%
OH	Lucas	Lucas Co. Court of Common Pleas	8/1/1997	73	10	35	62%
OH	Mahoning	Mahoning Co. Common Pleas Court	7/1/1998	317	58	217	86%
OH	Mahoning	Mahoning Co. Court/misdemeanor	11/30/2000	8	0	8	100%
OH	Miami	Miami Co. Common Pleas Ct	1/1/2000	15	0	8	54%
OH	Miami	Miami Co. Municipal Ct	1/1/2000	45	1	27	63%
OH	Montgomery	Montgomery Co. Common Pleas Court	1/1/1996	556	274	98	67%
OH	Morrow	Morrow Co. Court of Common Pleas	4/1/2000	27		20	74.%
OH	Richland	Mansfield Municipal Court	4/1/1997	107	25	43	64%
OH	Richland	Richland Co. Ct. of Common Pleas	4/1/1997	204	49	91	69%
OH	Stark	Stark Co. Common Pleas Ct	7/1/1998	258	NA	46	NA
OH	Summit	Akron Municipal Court	6/1/1995	881	392	112	58%
OH	Trumbull	Trumbull Court of Common Pleas	2/1/2000	55	0	50	91%
OK	Cherokee	Tahlequa Dist. Court	5/18/00	13	0	13	100%
OK	Creek	Creek Co. District Court	5/1/1997	673	169	160	49%
OK	Garvin	Pauls Valley District Court	5/1/1998	38*	13*		Na
OK	McClain	21st Judicial District Court	5/1/1998	(See Garvin	(See Garvin		(See Garvin

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
				Co.)*	Co.)*		Co.)~
OK	Hughes	Hughes Co. District Court	4/1/1999	36	9	18	75%
OK	Le Flore	16th District Court	9/1/2001	40	0	34	85%
OK	Payne	Payne Co. District Court	3/1/1995	480*	154*		50%~
OK	Pontotoc	Pontotoc Co. District Court	7/1/1997	111*	29*		79%~
OK	Pottawatomie	23rd Judicial District Ct.	9/1/1998	70	20	31	73%
OK	Seminole	22nd Judicial District Ct	10/1/1997	123	20		NA
OK	Sequoyah	Sallisaw	8/16/00	33	0	31	94%
OK	Tulsa	14th Judicial District Ct	5/1/1996	155!	Na		79%!
OK	Wagoner Co.	27th Prosec. Dist/Wagoner	12/22/99	67	4	55	89%
OR	Clackamas	Clackamas Co. Circuit Court	1/1/2000	13*	Na		86%~
OR	Crook/Jefferson	22nd Judicial District Ct	10/1/1997	75	15	23	51%
OR	Douglas	Douglas Co. Circuit Court	1/1/1996	437*	123*		61%~
OR	Josephine	Josephine Co. Circuit Court	3/6/1996	318	182	24	65%
OR	Klamath	Klamath Falls Circuit Court	3/1/1996	157*	63*		62%~
OR	Lane	Lane Co. Circuit Court	10/1/1994	1378	383	430	59%
OR	Malheur	9th Judicial District Ct/Female	1/1/2001	11	0	10	91%
OR	Malheur	9th Judicial District Ct/Male	1/1/2001	23	0	19	83%
OR	Multnomah	Multnomah Co. Circuit Ct-	8/1/1991	5301	2724	344	58%
OR	Yamhill	Yamhill Co. Circuit Court	7/1/1999	146	35	41	54%
PA	Allegheny	Allegheny Court of Common Pleas	2/1/1998	271	62	133	72%
PA	Chester	Chester Co. Court of Common Pleas	10/30/1997	424	174	125	71%
PA	Lackawanna	Lackawanna Co. Ct of Common Pleas	7/25/2001	33	0	33	100%
PA	Lycoming	Lycoming Co. Court of Common Pleas	7/1/1998	105	38	33	68%
PA	Philadelphia	Philadelphia Municipal Court	4/2/1997	661	263	265	80%
PA	York	York Co. Court of Common Pleas	6/1/1998	170	36	88	73%
PR	Arecibo	Arecibo District Court	4/1/1996	245+	Na		Na
PR	Carolina	Carolina District Court	4/1/1996	145+	Na		87%+
PR	Ponce	Ponce District Court	4/1/1996	249+	Na		88%+
PR	San Juan	San Juan Dis trict Court	5/1/1997	281*	49*		87%~
RI	Providence	Rhode Island Superior Court	1/31/2001	5	0	5	100%
SC	Charleston	Charleston Co. District Court	7/22/1999	107	11	61	68%
SC	Greenville	13th Judicial District Ct	10/1/1998	81	16	36	65%
SC	Lexington	Lexington Co. District Court	7/25/1996	293	68	42	39%
SC	Richland	Richland Co. District Court	10/1/1996	280	59	78	50%
TN	Bloumt	Bloumt Co. District Court	1/1/1999	54	8	26	63%
TN	Davidson	Davidson Co. District Court	3/1/1997	376	106	98	55%
TN	Knox	Knox Co. District Court	2/1/1999	60	3	30	55%
TN	Rutherford	16th Judicial District Ct	12/1/1999	9	0	7	78%

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State	County	Name of Court	Impl. Date	Enrollment to Date	No of Graduates	Total Currently Enrolled	Retention Rate[vii]
TN	Shelby	Shelby Co. District Court	1/1/1997	918	302	204	55%
TX	Dallas	Dallas Co. District Court	1/6/1998	415	139	114	61%
TX	Jefferson	Jefferson Co. District Court	1/1/1993	903	232	124	43%
TX	Montgomery	Montgomery Co. District Court	9/23/1999	84	9	57	79%
TX	Tarrant	Tarrant Co. District Court	9/1/1996	552~	215~		60%~
TX	Travis	Travis Co. District Court	8/1/1993	1214	571	290	71%
UT	Davis	Davis Co. District Court .	9/1/1999	134	21	96	88%
UT	Salt Lake	Third District Court	6/15/1996	854	264	280	64%
UT	Uintah	Uintah Co. District Court	10/1/1998	70	25	35	86%
UT	Weber/Morgan	Ogden City District Court	3/1/2000	56	NA	21	NA
VA	Albemarle	Charlottesville-Albemarle District Court	7/1/1997	162	39	41	50%
VA	Chesterfield	Chesterfield/ Col. Hts. District Ct	9/1/2000	55		48	88%
VA	Newport News City	Newport News District Court	11/9/1998	124		80	65%
VA	Portsmouth City	Portsmouth District Ct	1/16/2001	17	0	17	100%
VA	Richmond City	Richmond District Court	9/15/2001	49	13		NA
VA	Roanoke City	23rd Judicial District Court	9/1/1995	441	211	85	68%
VA	Spotsylvania/ Stafford/ King Georges	Rappahannock Regional Adult Drug Treatment Ct	9/21/1998	107		57	55%
VA	Virginia Beach City	General District Ct	10/1/1997	96	35	38	77%
WA	Clallam	Clallam Co. Superior Court	9/9/1999	110	16	60	70%
WA	Clark	Clark Co. Superior Court	5/19/1999				NA
WA	Cowlitz	Cowlitz County Superior Court	8/1/1999	161		95	60%
WA	King	King Court Superior Court	9/1/1994	1763	386	423	49%
WA	Pierce	Pierce Co. Superior Ct.	10/1/1994	1263	365	242	49%
WA	Skagit	Skagit Co. Superior Court	10/1/1997	116	38	40	68%
WA	Snohomish	Snohomish Co. Superior Court	10/1/1999	118	7	62	59%
WA	Spokane	Spokane Co. Superior Court	1/1/1996	227	97	33	58%
WA	Thurston	Thurston Co. Superior Court	5/1/1998	251	46	72	49%
WA	Whatcom	Whatcom Co. Superior Court	7/1/1999	43	17	19	86%
WI	Dane	Dane Co. District Court	1/1/1999	332	157	74	70%
WY	Lincoln	Lincoln Co. Circuit Court	4/1/2000	13	3	9	93%
WY	Sheridan	Sheridan Co. Circuit Court	8/1/1998	84	19	42	74%
WY	Uinta	Uinta Co. Circuit Court	11/1/1997	188	71	47	63%

Note: Unless otherwise specified, data is derived from May 2001 information.

- • data derived from 2000 information
- ! data derived from 1999 information

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VI. Drug Usage Characteristics/Principal Drugs Used

M=Males F= Females

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
AL	Cullman	Cullman Co. District Court	X	X	X	X					X	X		X	X	X	X	X
AL	Dekalb	Dekalb Co. Drug Court	X	X	X						X	X	X	X	X		X	X
AL	Jefferson	Jefferson Co. District Court	X	X	X	X	X		X		X	X	X	X				
AL	Marshall	Marshall Co. Circuit Court	X	X	X	X			X	X	X	X	X	X	X	X	X	X
AR	Washington	Washington Co. Drug Treatment Court Program	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
AZ	Maricopa	Maricopa Co. DUI Court	X	X	X			X			X				X	X	X	X
AZ	Maricopa	Maricopa Co. Superior Court - Adult Drug Court	X	X	X	X	X				X	X	X	X	X	X		X
AZ	Pima	Pima Co. Superior Court	X	X	X	X	X	X			X	X	X	X				
CA	Contra Costa	STAR Drug Court/Contra Costa Co. Superior Court	X	X	X	X	X	X			X	X		X	X	X		X
CA	Del Norte	Del Norte Co. Superior Court	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CA	Fresno	Post Conviction Drug Court Superior Court of Calif.			X	X	X	X			X		X	X				
CA	Glenn	Glenn Co. Drug Court	X	X	X	X					X	X	X	X				
CA	Kern	Superior Court of California	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CA	Los Angeles	Compton Drug Court	X	X	X	X	X	X			X	X	X	X				
CA	Los Angeles	Los Angeles Municipal Ct (Van Nuys)	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
CA	Los Angeles	Rio Hondo Court	X	X	X	X	X	X			X	X	X	X				
CA	Mendocino	Mt. Sanhedrin Municipal Cts	X	X	X	X	X	X			X	X	X	X	X		X	X
CA	Napa	Napa Co. Superior Court											X	X				
CA	Nevada	Nevada Co. Alcohol & Drug Program		X			X				X		X	X		X		X
CA	Orange	Central Justice Center	X	X	X	X	X	X			X	X	X	X			X	
CA	Orange	Harbor Justice Center Superior Ct	X	X	X	X	X	X			X	X	X	X			X	X
CA	Orange	North Justice Center Superior Ct	X		X	X	X	X			X	X	X	X				X
CA	Orange	West Justice Center Superior Ct			X	X	X	X			X		X	X			X	
CA	Placer	Placer Co. Adult Courts	X	X	X	X	X	X			X	X	X	X	X	X	X	X
CA	Riverside	Desert Drug Court	X		X	X	X				X		X	X	X	X		
CA	San Barnardino	Big Bear Superior Ct	X	X	X								X	X	X	X		
CA	San Barnardino	Redlands Municipal Ct	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
CA	San Barnardino	Victor Valley Drug Court	X		X	X	X	X			X	X	X	X				X
CA	San Bernardino	Needles Superior Court	X	X			X	X			X	X	X	X	X	X	X	X
CA	San Bernardino	Rancho Cocamonga	X	X	X	X	X	X			X	X	X	X	X	X		
CA	San Bernardino	San Bernardino Co. Superior Ct. (central)	X	X	X	X	X	X			X	X	X	X	X	X		X

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
CA	San Diego	San Diego Superior Court-East County Division	X	X	X	X	X	X			X	X	X	X				
CA	San Diego	San Diego Superior Court-North County Division	X	X	X	X	X	X			X	X	X	X				
CA	San Diego	San Diego Superior Court-South County Division	X	X	X	X	X	X			X	X	X	X			X	X
CA	San Joaquin	San Joaquin Drug Court	X	X	X	X	X	X			X	X	X	X				
CA	San Mateo	Northern San Mateo County Drug Court	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CA	Santa Barbara	Substance Abuse Treatment Court	X		X	X	X	X			X	X	X	X	X	X		
CA	Santa Barbara	Substance Abuse Treatment Court	X	X	X	X	X	X			X	X	X	X				
CA	Santa Cruz	County of Santa Cruz Superior Court, Drug Court Program	X	X	X	X	X	X			X	X	X	X	X	X	X	X
CA	Santa Monica	Clarity Drug Court	X	X	X	X	X	X			X	X	X	X			X	X
CA	Siskiyou	Addicted Offenders Program	X	X				X			X	X	X	X	X	X	X	
CA	Solano	Solano Co. Drug Court (Fairfield and Vallejo)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CA	Stanislaus	Stanislaus Co. Adult Drug Court	X	X			X	X			X	X	X	X				X
CA	Yuba	Yuba Co. Drug Court					X				X	X	X	X	X	X		X
DC	District of Columbia	Superior Court Drug Intervention Program	X															
FL	Alachua	Alachua County Drug Court	X	X	X	X	X	X			X	X	X	X	X	X	X	X
FL	Broward	17th Judicial Circuit Ct	X	X	X	X	X				X						X	X
FL	Charlotte	20th Judicial Circuit, Criminal Post Conviction		X	X		X	X			X	X						X
FL	Citrus	Fifth Judicial Circuit Ct	X	X	X	X					X	X						
FL	Collier	20th Judicial Circuit	X	X	X	X	X	X	X		X	X			X	X	X	X
FL	Duval	4th Judicial Circuit	X	X	X	X	X	X	X		X	X	X		X	X	X	X
FL	Escambia	Escambia Co. Drug Ct	X	X	X	X					X	X			X	X	X	X
FL	Glades/ Hendry	Glades Co./Hendry Co. Florida Drug Court Program	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X
FL	Hillsborough	Tampa Pre-trial Intervention Drug Court	X	X	X	X	X	X			X	X	X	X	X	X	X	X
FL	Lee	20th Judicial Circuit	X	X	X	X							X	X			X	X
FL	Martin	19th Judicial Circuit Adult Drug Ct			X	X					X		X	X			X	X
FL	Okalosa	Okalosa Co. Drug Ct	X	X	X	X					X	X			X	X	X	X
FL	Polk	Polk Co. Drug Court	X	X	X	X					X	X	X	X	X	X	X	X
GA	Glynn/ Camden	Glynn/Camden County Drug Court	X	X	X	X	X		X		X	X	X	X	X	X	X	X
HI	Maui	Maui Drug Court Program	X		X	X		X			X	X	X	X	X			X
IA	Woodbury	Woodbury County Drug Court	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ID	Ada	Ada Co. Drug Court Program	X	X	X	X	X	X			X	X	X	X	X	X	X	X
ID	Kootenai	Kootenai Co. Drug Court	X	X							X	X	X	X	X	X		X
ID	Madison	7th Judicial District Court	X								X			X		X		X

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
IL	Cook	Fourth Municipal District Court-Misdemeanor	X		X		X				X						X	
IL	Cook	Fourth Municipal District-Felony	X	X	X	X	X	X			X	X			X	X	X	X
IL	Cook	RAP Program - Criminal Division Program			X	X	X	X			X				X	X		X
IL	Cook	Sixth Municipal Court – Felony	X	X	X	X					X	X						
IL	DuPage	18th Judicial Circuit			X	X	X	X				X						
IL	Kankakee	Kankakee Co. Drug Court Diversion Program	X	X	X	X	X				X	X	X	X				X
IL	Rock Island	Rock Island Co. Ct. Services,			X	X					X	X			X	X		
IN	Johnson	Greenwood Recovery Court	X	X	X	X	X				X	X		X				
IN	Madison	Madison Co. Unified Courts	X	X	X	X	X	X			X	X	X	X	X	X	X	X
IN	Marion	Marion Superior Court	X	X	X	X	X	X			X	X			X	X		X
IN	St. Joseph	St. Joseph Co. Superior Court	X	X	X	X	X				X	X	X	X			X	X
IN	Vigo	Vigo Co. Drug Ct	X	X	X	X					X	X	X	X	X	X	X	X
KY	Ballard	1st Circuit Drug Court	X	X	X	X					X	X	X	X	X	X		X
KY	Campbell	Campbell Adult Drug Court	X	X	X	X	X	X			X	X			X	X	X	X
KY	Christian	Christian County Adult Drug Court	X	X	X	X					X	X	X	X	X	X	X	X
KY	Clark/ Madison	25th Judicial Circuit Ct			X	X					X						X	X
KY	Daviess	6h Judicial District Ct	X		X						X		X	X			X	
KY	Fayette	Fayette Circuit Court	X	X	X	X					X	X			X	X	X	X
KY	Hardin	Hardin County Fiscal Court	X	X	X	X					X	X	X	X	X	X		
KY	Kenton	Kenton Circuit Court													X	X		
KY	Laurel	27th Judicial Circ. Ct.	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X
KY	Pike	Pike Co. Drug Court															X	X
LA	DeSoto/ Sabine Parish	11th Judicial District Court	X	X	X	X					X	X	X	X	X	X		X
LA	Iberia Parish	Fairview Outpatient/ New Iberia 16th JDC Drug Court	X	X	X	X					X	X		X	X	X		X
LA	Jefferson Parish	Jefferson Parish Adult Drug Court	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
LA	Lafourche Parish	17th Judicial District Court - Lefourche Parish Drug Treatment Court	X	X	X	X					X	X			X	X	X	X
LA	Livingston/ Tangipahoa	21st Judicial District Court	X	X	X	X	X				X	X	X	X	X	X	X	X
LA	Orleans Parish	Orleans Criminal District Court, Orleans Parish	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X
LA	Rapids Parish	Rapids Parish Drug Treatment Court	X	X	X	X	X				X	X	X	X				
LA	St. Tammany Parish	22nd Judicial District Ct. Program	X	X	X	X	X				X	X	X	X			X	X
LA	West Carroll/ Franklin	5th District Drug Court, Inc	X	X	X	X					X	X	X	X			X	X
MA	Essex	Haverhill District Court	X	X	X	X	X	X	X	X	X	X	X				X	X
MA	Essex	Lawrence Drug Court	X	X	X	X	X				X				X			

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
MA	Franklin	Greenfield and Orange	X	X	X	X	X	X			X	X	X	X	X	X	X	X
MA	Suffolk	Brighton District Court	X	X	X	X	X	X			X	X						
MA	Suffolk	East Boston District Court	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
MA	Suffolk	South Boston District Court			X	X	X	X										
MD	Baltimore City	Drug Treatment Court STEP Program			X	X	X	X							X	X		
MD	Harford	Harford Co. Health Dept. Drug Court Program	X	X	X	X	X	X			X	X	X	X	X	X	X	X
MI	Berrien	Berrien Co. Drug Court	X	X	X	X	X	X			X	X			X	X		
MI	Eaton	56th A District Court					X		X									
MI	Eaton	Eaton Co. Circuit Court	X	X	X													
MI	Kalamazoo	Kalamazoo Co. District Ct/Male	X		X						X		X		X		X	
MI	Kalamazoo	Kalamazoo Co. District Ct/ Female		X		X						X		X		X		X
MI	Kent	61st District Court	X	X	X	X	X		X	X					X	X	X	
MI	Macomb	City of Warren	X	X	X	X	X	X			X	X			X	X	X	X
MN	Hennepin	Hennepin Co. Drug Court	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MO	Boone	13th Judicial Circuit Drug Court	X	X	X	X					X	X	X	X			X	X
MO	Butler	Butler Co. Circuit Court	X	X	X	X					X	X	X	X	X	X	X	X
MO	Franklin	Franklin Co. Drug Court Union	X		X	X		X			X	X	X	X	X	X		
MO	Greene	Springfield Circuit Court	X	X							X	X	X	X		X		X
MO	Mississippi	Mississippi Co. Drug Court	X	X	X	X			X		X	X	X	X	X	X	X	X
MO	St. Charles	St. Charles Co. Drug Court				X					X		X		X	X		X
MO	St. Louis City	22nd Judicial Circuit Ct	X		X	X	X	X			X	X		X	X			
MO	Stoddard	Stoddard Co. Circuit Court	X								X	X	X	X	X	X		
NC	Durham	Durham Drug Treatment Court	X	X	X	X	X	X			X	X						
NC	New Hanover	New Hanover Co. Drug Court	X	X	X	X	X	X	X		X	X					X	
NC	Wake	District Court	X	X	X	X					X	X					X	X
NC	Wake	Wake Superior Drug Treatment Court	X		X	X	X				X	X	X	X		X	X	
NJ	Camden	Camden Co. Drug Ct	X	X	X	X	X	X			X	X			X	X		
NJ	Essex	Essex Vicinage Drug Court	X	X	X	X	X	X			X	X		X				
NJ	Passaic	Passaic Vicinage Drug Court	X	X	X	X	X	X	X	X	X	X						
NM	Bernalillo	Bernalillo Co. Metropolitan Adult DWI/Drug Court	X	X	X	X	X	X					X		X	X		
NM	Dona Ana	Third Judicial District Adult Drug Court	X	X	X	X	X	X			X	X			X	X		
NM	San Juan	Eleventh Judicial District Adult Drug Court	X	X	X	X	X	X			X	X	X	X	X	X		
NM	Santa Fe	First Jud. District Court													X	X		
NM	Taos	Eighth Judicial Adult Drug Court	X	X	X	X		X			X	X	X		X			
NY	Albany	Albany Regional Drug Treatment	X	X	X	X	X	X		X	X							

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
NY	Erie	Buffalo Drug Treatment Court	X	X	X	X	X	X			X	X						
NY	Erie	Lackawanna Court Drug Court	X		X	X	X	X			X				X	X		X
NY	Fulton	Fulton Co. Drug Court	X	X	X	X	X				X				X	X		
NY	Genesse	Batavia City Drug Court	X	X	X	X	X	X			X	X			X			X
NY	King	The Brooklyn Treatment Court	X	X	X	X	X	X			X	X			X	X	X	
NY	Monroe	Rochester Drug Treatme nt Court	X	X	X	X	X	X			X	X	X	X			X	X
NY	New York	Manhattan Misdemeanor Treatment Court		X	X	X	X	X			X	X					X	X
NY	New York	Manhattan Treatment Court	X		X	X	X	X			X	X						
NY	Niagara	Lockport City	X	X	X	X					X							
NY	Onandaga	Syracuse Community Treatment Court	X	X	X	X	X	X			X	X			X	X		
NY	Ontario	Finger Lakes Drug Court	X				X	X										
NY	Oswego	Oswego Co. Drug Court	X	X	X	X	X				X	X			X			X
NY	Otsego	Otsego Co. Drug Treatment Court	X	X	X	X			X		X	X	X	X	X		X	
NY	Queens	Queens Treatment Court	X	X	X	X	X	X			X						X	X
NY	Renssalear	Renssalear Co. Drug Treatment	X	X	X	X	X				X							X
NY	Renssalear	Troy Regional Drug Treatment	X	X	X	X	X				X	X						
NY	Suffolk	Suffolk Co. Drug Treatment Court	X	X	X	X	X	X			X	X			X	X	X	X
NY	Tompkins	Tompkins Co. Felony Drug Court	X	X	X	X		X			X				X			
NY	Washington	Washington Co. Misdemeanor Drug Treatment Court in the Town of Kingsbury	X	X	X	X					X	X	X		X	X		
NY	Westchester	City Court of Yonkers/Yonkers Drug Treatment Court			X	X	X	X										
OH	Belmont	Belmont Co. Common Pleas Court	X		X				X		X		X		X		X	
OH	Butler	Butler Co. Drug Ct	X	X	X	X					X	X			X	X		
OH	Cuyahoga	Cleveland Municipal Court	X	X	X	X	X	X			X	X						
OH	Erie	Erie Co. Common Pleas Court	X	X	X	X		X			X	X					X	X
OH	Hamilton	Hamilton Co. Drug Court	X	X	X	X					X	X					X	X
OH	Lucas	Lucas Co. Judicial Supervisory Intervention	X	X	X	X	X	X			X	X					X	X
OH	Mahoning	Mahoning Co. Misdemeanor Drug Court	X	X	X	X	X				X	X			X		X	
OH	Montgomery	Montgomery Co. Common Pleas Court	X	X	X	X					X	X			X	X		
OH	Morrow	Morrow Co. Substance Abuse Court	X		X		X				X				X	X		
OH	Richland	Mansfield Municipal Treatment Court	X	X	X	X					X	X						
OH	Richland	Richland Co. Ct. of Com. Pl.	X	X	X	X	X	X			X	X	X			X	X	X
OH	Stark	Stark Co. Common Pleas Court	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X
OK	Creek	Creek Co. Drug Court	X	X					X		X	X	X	X				

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
OK	Le Flore	District 16 Multi-Jurisdiction Drug Court	X								X	X	X	X	X	X		
OK	Pottawatomie	District Attorney's Office, 23rd Judicial	X	X	X	X		X			X	X	X	X			X	X
OR	Crook/Jefferson	22nd Judicial District Drug Court	X	X							X	X	X	X				X
OR	Lane	Lane Co. Circuit Court	X	X	X	X	X	X			X	X	X	X			X	X
OR	Malheur	9th Judicial District Ct/Female		X		X						X				X		
OR	Malheur	9th Judicial District Ct/ Male	X		X						X				X			
PA	Chester	Chester Co. Commissioners	X	X	X	X	X	X			X	X					X	X
PA	Lackawanna	Lackawanna Co. Treatment Court	X		X	X	X										X	X
PA	Lycoming	Lycoming Co. Drug Courts	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X
PA	Philadelphia	Treatment Court	X	X	X	X	X	X			X	X			X	X	X	X
PA	York	York Co. Drug Treatment Court	X	X	X	X	X	X			X	X			X	X	X	X
RI	Providence	Rhode Island Adult Drug Court			X	X	X	X				X			X	X	X	X
SC	Greenville	13th Judicial District Ct	X	X	X	X	X	X	X	X	X	X			X	X	X	X
SC	Lexington	Lexington Co. Drug Court	X	X	X	X	X	X	X	X	X	X	X	X			X	X
TN	Blount	Blount Co. Drug Court	X		X	X					X	X					X	X
TN	Davidson	Davidson Co. Drug Court	X	X	X	X	X	X			X	X	X	X	X	X	X	X
TN	Knox	Knox Co. Drug Court	X		X	X					X				X	X	X	X
TN	Rutheford	16th Judicial District Court	X	X	X	X					X	X		X			X	X
TX	Montgomery	2nd Administrative Judicial Region	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
UT	Uintah	Uintah Co. Drug Court		X							X	X	X	X			X	X
VA	Chesterfield	Chesterfield Co. Drug Court	X	X	X	X	X	X			X	X			X	X	X	X
VA	Portsmouth City	Portsmouth Drug Treatment Court	X	X	X	X	X	X			X	X						
VA	Richmond City	Richmond Adult Drug Treatment Court	X	X	X	X	X	X			X	X	X			X		
VA	Roanoke City	23rd Judicial District Drug Treatment Court	X	X	X	X	X	X			X	X	X	X	X	X	X	X
VA	Spotsylvania/ Stafford/King Georges	Rappahannock Regional Adult Drug Treatment Court	X	X	X	X	X	X		X	X	X			X	X	X	X
WA	Clark	Clark Co. Drug Court			X	X	X	X			X	X	X	X				
WA	Cowlitz	Cowlitz County Drug Court	X	X	X	X	X	X		X	X	X	X	X	X	X		
WA	King	King Court Drug Diversion Court	X	X	X	X	X	X			X	X	X	X	X	X	X	X
WA	Snohomish	Snohomish Co. Drug Treatment Court	X	X	X	X	X				X	X	X	X				X
WA	Spokane	Spokane Co. Adult Felony Drug Court	X	X	X	X	X	X			X	X	X		X	X		X
WA	Thurston	Thurston Co. Superior Court		X	X		X	X			X	X	X	X				X
WA	Wheaton	Wheaton Co. Superior Court Community Drug Treatment Court	X	X	X	X	X	X			X	X	X	X				

State	County	Name of Court	Alcohol		Cocaine		Heroin		Inhalants		Marijuana		Meth.		Poly-drug		Presc Med.	
			M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
WI	Dane	Dane Co. Drug Court Treatment Court Program	X	X	X	X	X	X			X	X					X	X
WY	Lincoln	Lincoln Co. Drug Court	X	X	X	X	X				X	X	X	X	X	X		X
WY	Sheridan	Sheridan Co. Circuit Court	X	X	X	X			X		X	X	X	X	X	X	X	X

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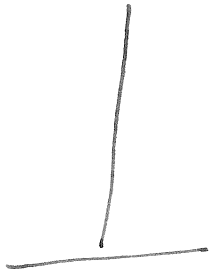

RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE

by Steven Belenko, Ph.D.

The National Center on
Addiction and Substance Abuse
at Columbia University

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EXECUTIVE SUMMARY

This is a critical review of 37 published and unpublished evaluations of drug courts (including seven juvenile drug courts, one DUI court, and one family drug court) produced between 1999 and April 2001. The conclusions drawn from this research are generally consistent with those of previous reviews published by the author in June 1998 and December 1999. Drug courts have achieved considerable local support and have provided intensive, long-term treatment services to offenders with long histories of drug use and criminal justice contacts, previous treatment failures, and high rates of health and social problems. Program completion rates are generally consistent with previous findings, with an average of 47% of participants graduating. Drug use and criminal activity are relatively reduced while participants are in the program.

Less clear are the long-term post-program impacts of drug courts on recidivism and other outcomes. In this critical review of drug court research, four of the six studies that examined one-year post-program recidivism found a reduction, but the size of the reduction varied across courts. None of the studies reported post-program drug use, employment, or other outcomes for all drug court participants, so these impacts remain largely unknown. Three studies used random assignment to drug court or control conditions and all

found a reduction in recidivism for the drug court participants; however, none of these studies distinguished between in-program and post-program rearrests, and sample sizes were small in two of the studies. Several studies that examined program costs found that average per-client drug court costs are lower than standard processing, primarily due to reduced incarceration. However, straight diversion may be less expensive and intrusive for low-risk offenders and achieve similar outcomes as drug courts.

This review suggests a continuing need for better precision in describing data sources, measures, and time frames for data collection. Data quality and information systems problems continue to affect the quality and utility of drug court evaluations. Despite the importance of looking inside the "black box" of drug court treatment, relatively few evaluations included data on program services, either because of lack of data or because service delivery was not included in the evaluation design. Findings from several evaluations suggest that drug court impacts may fluctuate over time, indicating the importance of multi-year or replication studies to gauge the long-term impacts of drug courts. Finally, research on juvenile and family drug courts is still in its very early stages, making conclusions about their impacts impossible. Qualitative analyses suggest that a number of juvenile courts have faced implementation or operational problems.

Several of the evaluations included detailed and useful descriptions of operational components, including the screening and referral process. A fuller understanding of the impacts of drug courts in the context of the larger criminal justice system requires more research on the targeting, referral, screening, and admission process. The use of experimental designs to test program impacts in several of the evaluations is another encouraging trend. The findings from

several evaluations that drug court clients have high rates of mental health problems suggest that programs need to consider inclusion of services for co-occurring disorders. Future research on drug courts needs to examine the client, operational, and treatment delivery characteristics that affect outcomes, so that drug courts can maximize their impacts and cost effectiveness, and the relative effectiveness of the various elements of the drug court model can be better understood.

Dr. Belenko is one of the nation's foremost researchers and writers on drug court programs and the impact of drug abuse on the criminal justice system. Dr. Belenko is a CASA Fellow at the National Center on Addiction and Substance Abuse at Columbia University, where he authored a major study on drug abuse and prison populations, *Behind Bars: Substance Abuse and America's Prison Population* (1998). Founded in 1992, the National Center on Addiction and Substance Abuse is a nationally recognized policy research center that conducts major research, policy and program demonstration initiatives in the substance abuse field.

ARTICLE SUMMARIES

CONSISTENT FINDINGS

[1] The conclusions of this review are generally consistent with those of 1998 and 1999, indicating that drug use and criminal activity are relatively reduced while participants are in the program.

CLIENT CHARACTERISTICS

[2] Drug courts continue to admit offenders with characteristics that are consistent with those of the overall drug-involved offender population.

RETENTION

[3] For those drug courts addressing retention and graduation rates, the data are generally consistent with previous estimates.

IN-PROGRAM RECIDIVISM

[4] Studies using comparison or matched samples show lower rearrest rates for participants than for the comparison group(s).

POST-PROGRAM RECIDIVISM

[5] Consistent with previous findings, a majority of the studies found lower recidivism rates for drug court participants.

COST ANALYSIS

[6] For those drug courts conducting cost analysis, estimates indicate that drug courts produce cost savings compared to traditional adjudication; a good cost analysis model is cited.

IMPROVING EVALUATION

[7] Areas for improving evaluation are cited, such as data sources and collection, specifying time periods, and distinguishing between in program and post program results.

MULTI-YEAR EVALUATION

[8] A one-shot evaluation may offer a distorted conclusion about the impact of a drug court program in just one time frame; periodic, multi-year evaluations are preferred.

RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE

by Steven Belenko, Ph.D.
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INTRODUCTION

As a mechanism for providing long-term court-supervised treatment to offenders with drug problems, drug courts continue to receive broad support and attention. As of May 2001, there were 483 adult, 158 juvenile, 38 family, and 9 combination adult/juvenile/family drug courts in operation, for a total of 688, with an additional 432 drug courts in the planning process (American University, 2001). Included among these are 31 operational Tribal drug courts, with another 49 in the planning process (American University, 2001). The Congress continues to support drug courts with $50 million in funding to the Drug Courts Program Office (DCPO). An estimated 220,000 adults and 9,000 juveniles have enrolled through December 2000, and 73,000 adults and 1,500 juveniles have graduated (American University, 2001).

In this context, drug courts have become a key court-based treatment intervention for drug-involved offenders. Beginning with the Dade County (Miami, FL) program in 1989 (Finn & Newlyn, 1993), treatment drug courts have established an important presence in America's criminal court system. In many jurisdictions, drug courts have become the preferred mechanism for linking drug- or alcohol-involved offenders to community-based treatment and related clinical interventions (Office of Justice Programs, 1998). Although

still serving a relatively small percentage of offenders with substance abuse problems,[1] drug courts have enjoyed considerable positive publicity, government and public encouragement, and local, state, and federal funding.

Despite their ongoing popularity and rapid spread, historically there has been a relative paucity of empirically sound and comprehensive research on drug court operations and impacts. Most evaluations have been relatively small-scale local process evaluations mandated for DCPO grantees, which include program and client descriptions, with some retention and outcome data. However, over the past two years drug courts have begun to attract considerable attention in the research community. There have been an increasing number of articles on drug court research published in peer-reviewed academic journals. These include both findings from evaluations of specific drug courts as well as policy, legal, or theoretical analyses of various aspects of drug courts. A special issue on drug courts was recently published by the *Journal of Drug Issues*, and another special drug court issue is being planned by the journal *Substance Use and Misuse*. In addition, Phase I evaluations of four of the well-established drug courts (Portland, OR; Las Vegas, NV; Escambia County (Pensacola), FL; Jackson County (Kansas City), MO), funded by the National Institute of Justice (NIJ), have been completed and findings are included in this report. Phase II evaluations of those courts are now underway.

Several drug court evaluations being funded by the National Institute on Drug Abuse (NIDA) are now underway. None of these studies are general evaluations of specific drug

[1] There were an estimated 1,250,000 arrests for drug possession in 1999, and 79% of arrestees either test positive for an illegal drug, had used illegal drugs recently, report a history of drug dependence or drug treatment, or are in need of treatment at the time of their arrest (Belenko, 2000).

courts, but are testing the efficacy of various components or new interventions in drug courts using experimental designs. Findings are not yet available.

Finally, the drug court field continues to encourage the development and improvement of process and outcome evaluations. In its recent solicitation for drug court implementation grants for Fiscal Year 2001, DCPO is requiring grantees to conduct both process and outcome evaluations. The National Drug Court Institute (NDCI) has conducted periodic evaluation workshops over the past two years in an effort to encourage drug court practitioner-researcher collaborations, to improve the quality and depth of drug court research, and to promote the dissemination of research findings.

[1] The conclusions drawn from the current review are generally consistent with those reached from previous reviews (Belenko, 1998; 1999). Drug courts have achieved considerable local support and have provided intensive, long-term treatment services to offenders with long histories of drug use and criminal justice contacts, previous treatment failures, and high rates of health and social problems. Program completion rates are generally consistent with previous findings. Drug use and criminal activity are relatively reduced while participants are in the program. Less clear are the long-term post-program impacts of drug courts on recidivism and other outcomes. Four of the six studies that examined one-year post-program recidivism found a reduction, but the size of the reduction varied across courts. None of the studies reviewed here reported post-program drug use, employment, or other outcomes for all drug court participants.

METHOD

This is the third in a series of reviews of published and unpublished evaluations of drug courts. The methods used to identify published and unpublished drug court evaluations were similar to those used in the author's previous reviews.[2] Evaluation reports produced between June 1999 (the cutoff date for the author's previous review) and April 2001 are included in the current review. Unpublished reports were obtained from NDCI and the American University Drug Court Clearinghouse and Technical Assistance Project, and some were sent directly to the author. In addition, several evaluations that were produced prior to June 1999 and not previously reviewed were identified and are included here. As in the past, it is possible that other evaluation reports have been issued that are not known to NDCI, the Drug Court Clearinghouse, or the author, and thus have not been included in either the current or previous reviews. In addition, online searches of several bibliographic databases were conducted to identify published drug court evaluations.[3] Evaluations of the Portland (OR), Las Vegas (NV), Jackson County (MO), and Escambia County (FL) drug courts prepared under funding from NIJ were completed this past year and are included.

For general characteristics of the operations of a larger number of drug court programs, findings from the most recent national surveys conducted in the fall of 2000 by the American University Drug Court Clearinghouse and Technical

[2] In the first two reviews (Belenko, 1998; 1999) 59 evaluations of 48 drug courts were reviewed.

[3] The databases included the National Criminal Justice Reference Service, Criminal Justice Periodical Index, PsycInfo, Sociological Abstracts, Social Science Abstracts, Applied Social Science Abstracts, ERIC, and Dissertation Abstracts.

Assistance Project were also incorporated (American University, 2001).

In all, 37 evaluation reports covering 36 different drug courts (including seven juvenile drug courts and one family drug court) were included for the current review.[4] Only evaluations conducted by outside evaluators have been included; internal evaluations, progress reports, or monitoring reports prepared by drug court or other court staff were excluded. Also excluded were research reports or articles that examined general legal, policy, or theoretical issues. Several studies included here are more recent evaluations of drug courts for which previous reports had been issued (Orange County, CA; Santa Barbara County, CA; Baltimore, MD; Cumberland County, ME). For several courts for which evaluations had been included in previous reviews, new evaluations by different researchers using different methodologies have been included (Escambia County, FL; Jefferson County, KY; Jackson County, MO; Portland, OR). Table 1 provides a list of the evaluations reviewed.

Largely reflecting DCPO evaluation requirements, as well as time and resource constraints, the evaluations reviewed were primarily process evaluations.[5] As noted in previous reviews, the evaluations varied in quality, comprehensiveness, use of comparison groups, and types of the measures used. Although findings from specific evaluations are cited for illustrative purposes, the purpose of this article is not to provide a detailed review of individual evaluations, but rather

[4] Because of the unique programmatic and evaluation issues involved, juvenile and family drug court findings are discussed separately below.

[5] Process evaluations focus on the analysis of program implementation, client characteristics, drug court operations and services, program compliance, program quality, and program completion. Some include limited outcome measures and cost analyses as well.

to synthesize the findings and identify common conclusions that can be drawn from the research. All of the evaluations included some basic process measures such as number of admissions, program retention, and client characteristics. Ten evaluations included drug court program or treatment service information, such as sanctions and rewards, counseling sessions, or other services. Nine included in-program drug test results, six included at least some cost analyses, and six analyzed post-program recidivism with a comparison group. Nearly half of the evaluations (N=18) included qualitative interviews with staff or clients. Such interviews often yielded useful suggestions for improving drug court operations or identifying strong and weak points of the drug court program. Because few of the evaluations used a formal survey or quantified the findings, and because they tended to be convenience samples rather than random samples of clients or staff, the findings should be considered descriptive and anecdotal. The interested reader is referred to these individual evaluations for summary findings and sample responses from the interviews.

Table 1
List of Drug Court Evaluations Reviewed, Current Review

Adult Drug Court Evaluations				
Jurisdiction	**Report Title**	**Author**	**Organization**	**Date of Report**
Alameda County, CA	A Final Evaluation Report: A Cross-Sectional Analysis of the Alameda County Consolidated Drug Court (ACDC) Program	D.Y. Ja, D. Taube, M. Gee, L. Stewart, B. Dee, and J. Yuen	Davis Y. Ja and Associates, Inc.	January 2001
Escambia County (Pensacola), FL	Impact Evaluations of Pensacola and Kansas City Drug Court Programs	Truitt, Rhodes, Seeherman, Carrigan, and Finn	Abt Associates	November 2000
Mendocino County, CA	An Evaluation of the Mendocino County Adult Drug Court: August 1996-October 1999.	R.A. Hicks, G.J. Hicks, J.M. Bautista	Scientific and Professional Consulting Services	November 1999
Orange County, CA	Success of Drug Court Participants: Central and South Justice Centers Superior Court of Orange County, California	E.P. Deschenes, K. Moreno, and C. Condon	California State University, Long Beach and Orange County Health Care Agency	April 2001

Jurisdiction	Report Title	Author	Organization	Date of Report
Santa Barbara County, CA	Santa Barbara County Substance Abuse Treatment Courts: Year 2000 Evaluation	M. Cosden, S. Peerson, and M. Orliss	University of California Santa Barbara	August 2000
Polk County, IA	Final Report on the Polk County Adult Drug Court	P. Stageberg, B. Wilson, and R.G. Moore	Statistical Analysis Center, Division of Criminal and Juvenile Justice Planning, Department of Human Rights	January 2001
First District, KY	First District Drug Court Process Evaluation	T.K. Logan, B. Lewis, K. Williams, and C. Leukefeld	Center on Drug and Alcohol Research, University of Kentucky	March 2000
Jefferson County, KY	Jefferson County Adult Drug Court Program Process Evaluation	T.K. Logan, K. Williams, and C. Leukefeld	Center on Drug and Alcohol Research, University of Kentucky	December 1999
Kenton County, KY	Kenton Drug Court Process Evaluation	T.K. Logan, K. Williams, C. Leukefeld and B. Lewis	Center on Drug and Alcohol Research, University of Kentucky	October 1999

Jurisdiction	Report Title	Author	Organization	Date of Report
Warren County, KY	Warren Drug Court Program Process Evaluation	T.K. Logan, K. Williams, and C. Leukefeld	Center on Drug and Alcohol Research, University of Kentucky	July 1999
Baltimore, MD	The Baltimore City Drug Treatment Court: One-Year Results from a Randomized Study	D. Gottfredson, M. Exum	Dept. of Criminology and Criminal Justice, The University of Maryland	April 2000
Cumberland County, ME	Project Exodus: Maine's First Treatment Drug Court	D. Anspach, A. Ferguson	Maine Center for Socio-Legal Research, University of Southern Maine	December 1999
Jackson County (Kansas City), MO	Impact Evaluations of Pensacola and Kansas City Drug Court Programs	Truitt, Rhodes, Seeherman, Carrigan, and Finn	Abt Associates	November 2000
Douglas County, NE	Phase II Douglas County Drug Court Evaluation: Final Report	T.J. Martin, C.C. Spohn, R.K. Piper, J. Robinson	Institute for Social and Economic Development, University of Nebraska	June 1999
Dona Ana County, NM	Drunk Drivers, DWI "Drug Court" Treatment, and Recidivism: Who Fails?	J.F. Breckenridge, L.T. Winfree, Jr., J.R. Maupin, D.,L. Clason	University of New Mexico	Justice Research and Policy

				(2000) 89-105
Jurisdiction	**Report Title**	**Author**	**Organization**	**Date of Report**
Las Vegas, NV	Do Drug Courts Work?: Getting Inside the Drug Court Black Box	J.S. Goldkamp, M.D. White, J.B. Robinson	Crime and Justice Research Institute	November 2000
Las Vegas, NV	Reintegrative Shaming and Recidivism Risks in Drug Court: Explanations for Some Unexpected Findings	T. Miethe, H. Lu, E. Reese	University of Las Vegas, Nevada	Crime and Delinquency (2000)
Lackawanna City, NY	Lackawana City Drug Court, Process Evaluation Report	J.G. Fox		July 2000
Niagara Falls/ Tonawanda, NY	Niagara Falls/Tonawanda Treatment Court Process Evaluation	H.M. Weiss	Health Management Group, Ltd.	January 2001
Rochester, NY	Rochester Drug Treatment Court Enhancement Project, Final Evaluation Report	Pacific Institute for Research and Evaluation	Pacific Institute for Research and Evaluation	September 2000
Syracuse, NY	Process Evaluation: Syracuse Community Treatment Court Final Report: Continuation Grant	E. Wolf and S. Adair	Center for Community Alternatives	November 2000
Butler County, OH	Butler County Court of Common Pleas, Court-Directed Addiction Treatment Program (CDAT): One Year Evaluation	B. Fulton, and E. Latessa	University of Cincinnati, Division of Criminal Justice	N.D.

Erie County, OH	The Erie County Drug Court: Outcome Evaluation Findings	S.J. Listwan, D.K. Shaffer, and E.J. Latessa	Center for Criminal Justice Research, University of Cincinnati	February 2001
Jurisdiction	**Report Title**	**Author**	**Organization**	**Date of Report**
Portland, OR	Do Drug Courts Work?: Getting Inside the Drug Court Black Box	J.S. Goldkamp, M.D. White, J.B. Robinson	Crime and Justice Research Institute	November 2000
Chester County, PA	An Evaluation of the Chester County (PA) Drug Court Program	M.P. Brewster	West Chester University	Journal of Drug Issues (2001) 31:1 177-206
Tarrant County, TX	The Effect of the Tarrant County Drug Court Project on Recidivism	A. Bavon	University of North Texas	Evaluation and Program Planning (2001) 24: 12-22
Salt Lake County, UT	Salt Lake County Drug Court Evaluation Report, July 1996 through September 1998	R.S. Harrison, B.V. Parsons, E.I. Byrnes, S. Sahami	Social Research Institute, University of Utah	September 1998
Roanoke, VA	Evaluation Report for the Drug Treatment Court Program, Twenty-Third Judicial Circuit of Virginia	D.J. Shoemaker	Department of Sociology, Virginia Polytechnic Institute and State	October 1999

			University	

Juvenile Drug Court Evaluations				
Jurisdiction	**Report Title**	**Author**	**Organization**	**Date of Report**
Los Angeles County, CA	Evaluation of the Los Angeles County Juvenile Drug Court Program	E.P. Deschenes, K.S.Moreno, V.M Emami, E. Thompson, and K. Manatt	California State University, Long Beach	April 2001
Orange County, FL	Evaluation of the Orange County Juvenile Substance Abuse Treatment Court Program	B.K. Applegate, D. Reuter, B.J. McCarthy, S. Santana	University of Central Florida, Department of Criminal Justice and Legal Studies	February 1999
Campbell County, KY	Campbell Juvenile Drug Court Program Process Evaluation	T.K. Logan, B. Lewis and C. Leukefeld	Center on Drug and Alcohol Research, University of Kentucky	June 2000
Missoula, MT	Missoula Youth Drug Court: Process Evaluation	B.K. Roche, MA Department of Psychology	The University of Montana	August 1999

Albuquerque, NM	Final Report: Process Evaluation of the Second Judicial District Juvenile Drug Court in Albuquerque, New Mexico	P. Guerin, R. Hyde, L. Carrier, N. Damon, L. Smith, and B. Ulibarie	Center for Applied Research and Analysis, Institute for Social Research, University of New Mexico	November 2000
Jurisdiction	**Report Title**	**Author**	**Organization**	**Date of Report**
Summit County, OH	Summit County Juvenile Court Drug Court Evaluation Report: July 1, 1999 – June 30, 2000	J.L. Dickie	The Institute for Health and Social Policy, University of Akron	2000
Beckham County, OK	Preliminary Analysis of the Beckham County Juvenile Drug Court 1999	P. O'Connell, D. Wright, B. Huntington, B. Clymer, C. Brown, T. Stiefmiller, W. Benedict	Oklahoma Criminal Justice Resource Center	March 1999

Family Drug Court Evaluations				
Jurisdiction	**Report Title**	**Author**	**Organization**	**Date of Report**
Suffolk County, NY	Evaluation of the Suffolk County Family Treatment Court	Child Welfare Training Program	SUNY Stony Brook School of Social Welfare	October 2000

N/A = not available; N.D.= no date.

FINDINGS

Client Characteristics

[2] Most of the evaluation reports presented at least some basic data on the characteristics of clients enrolled in the drug court. In general, the evaluated drug courts admit offenders who mirror the drug court population described in the national surveys conducted by the American University Drug Court Clearinghouse and Technical Assistance Project: drug court participants are predominantly male, have poor employment and educational achievements, fairly extensive criminal histories, and prior failed treatment. Such characteristics are consistent with those of the overall drug-involved offender population (Belenko & Peugh, 1999). According to the most recent American University survey of 237 responding adult drug courts (out of 438 operational adult drug courts; American University, 2001), an estimated 72% of drug court clients are male; 38% are African American, 42% white non-Hispanic, and 17% Hispanic; 49% were unemployed; 76% had prior substance abuse treatment; 74% had at least one prior felony conviction; and 56% had been previously incarcerated.

Findings from two drug court evaluations that considered relative risk levels of drug court clients (Orange County, CA; Douglas County, NE) suggest that many drug courts target offenders with midrange risk levels: higher risk than the low-level offenders typically given standard diversion, and lower risk than sentenced drug offenders.

As in previous evaluations (Belenko, 1998; 1999) drugs of choice vary widely across regions and courts. These differences probably reflect local drug use patterns as well as local law enforcement strategies. For example, in the Baltimore City Drug Court, 87% of clients reported using

heroin as their primary or secondary drug of choice, reflecting the high prevalence of heroin use in that city. In the Polk County (IA) drug court, methamphetamine was the drug of choice for white male clients (67%) and white females (81%). One third of the Santa Barbara (CA) clients reported methamphetamine as the drug of choice. Cocaine or crack were the most common primary drugs used by participants in Roanoke (VA) (67%), Syracuse (NY) (59%), and in Lackawanna County (NY) (53%). Drug courts do not always target users of "hard" drugs. In several adult drug courts a substantial proportion of clients reported that marijuana was the primary drug used: Chester County (PA) (47%), Lackawanna County (NY) (22%), and Syracuse (NY) (25%). A majority of participants in the Cumberland County (ME) drug court reported alcohol as their primary drug (58%).

As noted elsewhere, drug-involved offenders often have other serious physical and mental health problems that can complicate the recovery process (Belenko, 2001; Broner et al., 2001; Hammett et al., 2000; Marquart et al., 1997; Peters & Hills, 1993; Teplin, 2001). Several evaluations included data on such health issues, especially psychological problems. For example, 40% of Mendocino County (CA) and 20% of the Syracuse (NY) clients reported a need for mental health services at the time of admission to drug court. Based on the Addiction Severity Index (ASI), 57% of Salt Lake County (UT) clients had an indication of a psychological problem, and 46% needed treatment for this problem. Nearly one-third (30%) of Butler County (OH) clients had received past psychiatric care, as did about 40% of Santa Barbara (CA) and 48% of Salt Lake County (UT) participants. In contrast to these findings, only three percent of Erie County (OH) participants said that they had serious physical or mental health treatment needs.

Consistent with other studies of drug-involved offenders (Broner et al., 2001; El-Bassel et al., 2001; Peugh & Belenko, 1998), drug court clients have been reported to have a high prevalence of histories of physical and sexual abuse, and of suicidal ideation as well as suicide attempts. For example, among Salt Lake County (UT) participants, 35% had ever had thoughts of suicide, and 20% had attempted suicide; among clients of the Santa Barbara (CA) drug court, 13% of the North district clients and 19% of those in the South district had ever attempted suicide.

The evaluations of the Santa Barbara (CA) and Polk County (IA) drug courts collected data on prior physical and sexual abuse. In Santa Barbara, about 15% of the clients had ever been sexually abused and 31% physically abused. In Polk County, 38 of the women clients had ever been sexually abused, and 56% physically abused.

Finally, several evaluations provided data on medical problems. In Salt Lake County (UT), 35% of the clients reported a need for medical treatment at the time of drug court admission, and 30% had chronic medical problems. Twelve percent of clients in Jefferson County (KY) had a sexually transmitted disease at the time of intake. Given the high prevalence of chronic health problems among offenders (Hammett et al., 1999; Marquart et al., 1997), it is important for drug courts to assess clients for medical problems, and link them to appropriate health services.

Program Operations

Most drug court process and outcome evaluations have focused on descriptions of clients, program retention, relapse, and recidivism. However, a thorough understanding of the process by which offenders enter drug courts, and the type and quality of services that are delivered in the drug court model,

are important to further our knowledge of the unique aspects of drug courts that may impact on participant outcomes. More data on program services, sanctions, courtroom dynamics, and client supervision are needed to get inside the "black box" of the drug court model and learn how client, staff, and organizational factors interact to affect client and system outcomes (Belenko, 2001; Goldkamp et al., 2001; Marlowe & Kirby, 1999; Satel, 1998; Taxman, 1999).

Unfortunately, with the exception of urinalysis data (see below), very few of the evaluations reviewed for this article provided any quantitative data on program services, supervision, or sanctions. Only five studies (Butler County, OH; Cumberland County, ME; Erie County, OH; Polk County, IA; Las Vegas, NV; Portland, OR) provided any sanctions or incentives data. In the Butler County drug court (a post-conviction sentencing alternative model), participants received a mean of 2.4 sanctions. Among Cumberland County clients, 45% of the sanctions imposed during the evaluators' courtroom observations consisted of having to sit in the "dock," and 36% involved some jail time. In Erie County, 22% of the clients were sanctioned to increased "treatment intensity," 11% received a jail sanction, 11% house arrest, and 29% "other" (primarily increased AA/NA meeting requirements or writing an essay about their noncompliance). Finally, 97% of the Polk County clients received at least one sanction, although these findings are tentative because sanctions data were missing for many participants. Goldkamp et al. (2001) conducted multivariate analyses of the relationship between number and type of sanctions received and their impact on rearrest one year after drug court admission, and on graduation within two years. They found that in Portland the imposition of any jail sanction was associated with a higher likelihood of rearrest, and the imposition of any sanction was associated with a lower probability of graduation, controlling for other client and

program participation factors. In Las Vegas, both the imposition of a jail sanction and sanctions in general were associated with higher rearrest as well as lower graduation rates. Goldkamp et al. (2001) did not control for the temporal ordering of the sanctions and rearrest so those results should be interpreted with caution. Nonetheless, these findings suggest that drug court clients may "signal" higher risk during their time in drug treatment, so that additional supervision or services for clients who are sanctioned early in the program may help reduce later recidivism and dropout (Smith et al., 1989; Toborg et al., 1989).

Some data on treatment services were reported by Logan and her colleagues in their process evaluations of several Kentucky drug courts. The number of counseling sessions varied across jurisdictions. For example, the 29 clients studied in the rural First District (KY) drug court received 519 individual and 40 group counseling sessions. In contrast, the 28 clients of the Kenton County (KY) drug court received only 27 individual counseling but 88 group sessions. During the fourth quarter of 1998, the approximately 60 clients of the Warren County (KY) drug court received 203 individual, 102 group, and 25 family counseling sessions. Differences among these courts may reflect the availability of services, the time frame of the evaluation, or program requirements.

In Butler County (OH), 63% of the participants had some family involvement in treatment, 38% received financial management training, and 6% received mental health services. This report also contained a fairly detailed and useful description of the screening and referral process.

The Polk County (IA) evaluation, which also had a detailed and comprehensive description of the drug court screening and referral process, as well as the drug court's

operations, was the only evaluation reviewed that provided some data on client supervision. In this court, participants had an average of 47 contacts with their probation officer during their time in drug court, 58 contacts with the TASC counselor, 15 appearances before the judge, and 40 drug tests. This evaluation did not specify the nature of the probation officer or TASC contact (e.g. phone vs. face-to-face), or compare these contact rates to standard probation supervision.

Staff and participant attitudes and perceptions

In addition to quantitative data on clients, operations, and outcomes, qualitative data on the attitudes, experiences, and perceptions of drug court clients and staff are useful for understanding the way in which drug courts operate, the factors that may help or hinder client engagement in the drug court, and the challenges that staff face in identifying client needs and linking them to effective services. In addition, little is known about the drug court environment or the nature of the interactions among staff and clients that may affect drug court retention rates and program compliance. Individual interviews, focus groups, and courtroom observations can illuminate these processes and assist in the interpretation of quantitative outcome data.

Among the 37 evaluations reviewed, 18 conducted interviews with samples of clients and/or staff. However, because of small sample sizes or use of a nonrandom sample of respondents (usually limited to program graduates), it is difficult to draw definitive conclusions about client attitudes or perceptions. And, in general, studies that included interviews with drug court staff tend to report highly positive opinions about the drug court's impacts and effectiveness. In several reports, however, staff did note areas where the drug court might need improvement. Examples of staff suggestions culled from various evaluations include the need for tougher

sanctions, expanded services for children and families, improved interagency communication, and smoother interagency linkages. For the most part, the evaluations presented general narratives and selected quotes from respondents.

However, several evaluations, notably the several Kentucky drug court process evaluations and the Erie County (OH) study, included rating scales for clients to rank their perceptions of the importance or value of various program components. Nearly all the clients in Erie County (OH) agreed that the judge treated them with respect (96%), was fair (93%), and was concerned about them (86%). Three-quarters said that the court interactions with the judge helped them to stay off drugs, as did regular court appearances. Interestingly, 96% of the clients said that the drug court was "easier" than jail or prison, while only 48% thought that it was easier than standard probation. This finding runs counter to the common assumption by proponents of drug courts and other criminal justice-supervised treatment that, because of the intensity and long-term nature of these programs, offenders would perceive a jail term as an "easier" experience.

Program Outcomes

As treatment-based interventions, drug courts seek to maximize offenders' engagement in long-term services. Treatment research has consistently noted that longer time in treatment is associated with better outcomes (Carroll, 1997; Chou et al., 1998; Lang & Belenko, 2000; Simpson et al., 1997). Although there is some variation among drug courts, previous reviews of drug court research have noted that overall treatment retention is substantially better than in other community-based treatment programs for offenders (Belenko, 1998, 1999; U.S. GAO, 1997).

As criminal justice-based interventions, drug courts have as their key goals to reduce drug use and criminal behavior by engaging offenders in judicially supervised, structured treatment and other services. Although viewed as embracing a therapeutic jurisprudence model of justice, drug courts (with the exception of family drug courts) nonetheless exist within a criminal justice system whose primary focus is on adjudicating criminal cases and improving public safety. Accordingly, virtually all drug courts have as their primary goals to reduce recidivism and relapse to drug use. Many evaluations collect at least some rearrest data.

Retention and graduation

Among the studies examined for this review, none had sufficient data to enable the calculation of one-year post-admission retention rates. Often, drug court process evaluations do not adequately specify the post-admission observation period. In other cases, the program was relatively new and very few clients had an opportunity to be in the program for as long as one year. Often, a number of clients were still enrolled in the drug court at the time of the evaluation's data collection, and had been in the court for varying lengths of time. This made it impossible to estimate accurate one-year retention rates (Belenko, 1999).

[3] Eight evaluations, however, presented data on graduation rates. Overall, these were consistent with previous estimates (Belenko, 1998; U.S. GAO, 1997), averaging 47% across the eight courts, ranging from a low of 36% (Alameda County, CA) to a high of 60% (Roanoke, VA). In an effort to identify differences in the characteristics of graduates and nongraduates, several reports conducted descriptive comparisons. Several factors distinguished those who successfully completed the drug court, although these factors varied from study to study. In addition, without

simultaneously controlling for other client, program, or external factors, it is not possible to determine whether these characteristics directly relate to program completion. Male participants had higher graduation rates than females in Lackawanna County (NY), but females had higher rates in Portland (ME) and Polk County (IA). In Roanoke (VA) and Polk County (IA) whites had much higher graduation rates than nonwhites (77% vs. 38% in Roanoke, 50% vs. 17% in Polk County). In the Roanoke drug court, the evaluators speculated that this difference may have reflected that nonwhites had lower employment rates, which was associated with graduation. In Polk County (IA), the evaluators also found that clients whose primary drug was cocaine had much lower graduation rates than those who used methamphetamine, and drug type was strongly correlated with race. In Santa Barbara (CA), participants who were Latino, used heroin as their primary drug, or had a more serious criminal history had lower graduation rates.

The Polk County (IA) evaluation was able to compare graduation rates for different cohorts of clients admitted to the court in several different years. The evaluators found that graduation rates increased substantially after the court had been in operation for two years. In contrast, the program completion rate in Orange County (CA) decreased slightly over time: for the 1997 admission cohort 58% graduated (2.5% were still in the program at the close of data collection in February 2001), while 48% of 1998 admissions had graduated as of February 2001 (8.2% were still in the program). These findings suggest that evaluations focusing only on the initial phase of drug court implementation, as many evaluations do, may provide a misleading view of how a court may function once it has reached a more stable operational phase. Multiyear data are needed in order to draw a more accurate conclusion about a mature court's operations.

Multivariate analyses of factors affecting graduation were included in drug court evaluations of the Portland (OR) and Las Vegas (NV) drug courts by Goldkamp et al. (2001). Several variables were significantly related to graduation in the Portland (OR) drug court, including time in treatment, not receiving sanctions, and number of court appearances. Individual client factors were not statistically significant. In the Las Vegas (NV) drug court, not receiving any jail sanctions was significantly related to program graduation, in addition to the same factors found for the Portland court. Of course, all these factors themselves reflect compliance with drug court requirements and longevity in the program, which by definition lead to program graduation. Additional research is needed to identify client, organizational, staff, or treatment service delivery characteristics that increase the probability of drug court graduation (Belenko, 2001; Peters et al., 1999; Taxman, 1999).

Drug use in program

Nine of the 37 evaluations provided data on drug test results during drug court participation. Although most drug tests were negative, there was a wide range of positive rates across the courts. Differences in measures used, sample size, and time period used for data collection make it difficult to compare the findings. Relatively low drug use rates were found in three Kentucky drug courts (0.8% of all drug tests were positive in Warren County, 2% in Kenton County, and 4% in the First District), Butler County (OH) (3.7% of the tests), and Salt Lake County (UT) (9% of tests). Using the same measure, somewhat higher positive drug test rates were found in Chester County (PA) (17% of all tests administered). In the Syracuse (NY) drug court, an estimated 18% of clients had at least one positive drug screen, as did 35% of the clients in Butler County (OH) and 71% in Polk County (IA). The

latter study did not present data on the percentage of drug *tests* that were positive.

Recidivism during the program

A shortcoming of some drug court evaluations is a lack of specificity about data collection time frames, especially in terms of recidivism outcomes. Because a reduction in recidivism is a universal goal for adult and juvenile drug courts, it is important for researchers to distinguish recidivism that occurs while an offender is under drug court supervision from that occurring after program participation has ended. Evaluations that, for example, merely state that rearrests were identified for a period of one year after drug court admission do not allow a distinction between in-program and post-program rearrests. A number of participants will have left the drug court program during that one-year period, so their rearrests could have occurred during or after drug court participation. In this section, findings are included only from those evaluations in which it could clearly be determined that recidivism data were collected specifically while in the program. More generally, few evaluations presented data on recidivism during program participation (in several cases, anecdotal data were presented or the number of drug court cases was too small to draw any conclusions).

[4] Three of the studies reviewed included a comparison sample to assess the impact of drug courts on recidivism while in the program. The Chester County (PA) study (Brewster, 2001) included a comparison sample of matched offenders sentenced to probation prior to the drug court implementation. Drug court participants were less likely to be rearrested for any offense (5.4%) than the comparisons (21.5%). Because the time at risk was longer for the comparisons, Brewster (2001) calculated the rate of rearrest per year at risk, and again the drug court clients had a

significantly lower rate (0.1 arrest per year vs. 0.2[6]). Participants also served a lower average number of new jail days per year (6.6 vs. 13.6[7]). In Polk County (IA) 19% of the participants were reconvicted on a new offense during the program, compared to 38% of a comparison sample of similar offenders referred to the drug court but who did not enroll.

Compared to a matched sample of offenders sentenced to probation, clients admitted in 1997 and 1998 to the Orange County (CA) drug court had lower rearrest rates while in the program (17% vs. 35%), although the difference was not statistically significant. However, after controlling for other factors, participation in the drug court did significantly lower the odds of rearrest and increase the length of time to rearrest. In this study, Deschenes and her colleagues were able to analyze recidivism by risk level (low, medium, and high), as determined at admission. For low- or medium-risk offenders, in-program rearrest prevalence was slightly lower than the probation comparison sample (16% vs. 22%) but the difference was not statistically significant. However, for high-risk clients, drug court participation significantly reduced rearrest (19% vs. 38%). A high-risk score at intake was also a significant predictor of rearrest after controlling for other factors in multivariate analyses, and a significant predictor of program termination.

Three other evaluations measured in-program recidivism for all drug court participants: 37% of Syracuse (NY) drug court participants were rearrested during the program, as were 28% of clients of the Cumberland County (ME) drug court. In the Santa Barbara (CA) evaluation, the average number of arrests, convictions, and jail days served all

[6] $p < .01$.

[7] $p = .05$.

decreased significantly comparing the 12 month period before program entry to recidivism during 12 months in the drug court.

Post-program recidivism

[5] In this section, the results are summarized from the six evaluations that examined recidivism outcomes for all drug court clients after they graduated from or were discharged from the program, and that included a comparison group. As with previous studies, recidivism rates varied across jurisdictions, in part reflecting different follow-up periods, local law enforcement strategies, or different populations served by the drug court. Table 2 summarizes the recidivism findings, including the type and size of the comparison sample, the length of the follow-up period, the measure(s) used, and the recidivism rate. Consistent with previous findings, a majority of the studies found lower recidivism rates for drug court participants (4 of 6 studies). In two of the analyses the lower drug court recidivism rate was statistically significant (Jackson County, MO and Escambia County, FL). Two other studies that found much lower recidivism rates for drug court clients (Polk County, IA and Salt Lake County, UT) did not include tests for statistical significance. In one study of the Las Vegas (NV) drug court (Miethe et al., 2000), the drug court sample had a significantly higher recidivism rate, and in another (Tarrant County, TX) the rate was slightly lower for the drug court but was not statistically significant. Miethe et al. (2000) found that drug court participants had significantly higher rearrest rates than the comparison sample even after simultaneously controlling for other factors in multivariate analyses.

The Polk County (IA) evaluation used two comparison samples: one consisted of offenders who were referred to the drug court but never enrolled (rejects or refusals) and the second comparison sample were offenders deemed eligible for

the drug court during a pilot phase to assess drug court program needs prior to implementation. The follow-up period varied but averaged 416 days. Using reconviction as the recidivism measure, 37% of drug court participants were reconvicted after leaving the drug court, compared to 75% of the pilot group sample. Felony reconviction prevalence was 6% for the drug court and 25% for the pilot comparison.

In Salt Lake County (UT), drug court participants were compared to a small group (N=29) of offenders who were screened for the drug court but did not enroll. In the 12 months following drug court completion, participants had an average of 3.2 new bookings and 29.2 new jail days compared to 6.6 new bookings and 54 new jail days for the comparison sample. Unfortunately, because of the small comparison sample size and the fact that the follow-up period varied greatly for the sample subjects (from one day to more than one year) these findings should be considered preliminary.

Abt Associates' NIJ-funded evaluations of the Escambia County (FL) and Jackson County (MO) drug courts tracked rearrests for a two-year period following drug court participation. The comparison samples were matched groups of offenders adjudicated before the drug courts were implemented. Looking at felony rearrests only, participation in the Escambia County drug court decreased felony recidivism from an expected 40% to 12% within two years of leaving the drug court. There was no impact on misdemeanor arrests. In the Jackson County drug court recidivism for felonies was reduced from 50% to 35%, and for any type of rearrest from 65% to 45%.

The study of recidivism in the Tarrant County (TX) drug court found only a small and non-significant effect on rearrests and time to rearrest for 12 months post-program. Among drug court participants, 13% were rearrested within

one year of leaving the program compared with 17% of a comparison sample of offenders who were eligible for the drug court but opted out of participation. The author of this study speculated that the lack of impact may have reflected the fact that participants of this drug court were relatively low-level offenders (this is clear from their relatively low rearrest rates) who would tend to do fairly well even without a special intervention (Bavon, 2000).

Table 2

Summary of Post Program Recidivism Outcomes, Adult Drug Courts[a]

Drug Court	Author	Comparison Sample(s)	Follow-up Period	% Rearrested		Other Recidivism Measure	
				Drug Court	Comparison	Drug Court	Comparison
Escambia County, FL	Truitt et al.	Drug court participants (N=483) Comparison sample of pre–drug court offenders (N=252)	24 Months	12%[b] felony	40%		
Polk County, IA	Stageberg et al.	Drug court participants (N=124) Two comparison samples were used in this study: 1. Referred Group—offenders referred to the drug court who did not enter the program (N=188) 2. Pilot Group—offenders who were included in the "pilot group" identified to determine the need for a drug court in Polk County (N=124)	Averages: 416 days, drug court 450 days, referred group 655 days, pilot group	37%[c] total reconvict. rate	Referred: 39% Pilot: 75%	6% felony reconvict. rate	Referred: 22% Pilot: 25%
Jackson County, MO	Truitt et al.	Drug court participants (N=693) Comparison sample of drug felony offenders pre–drug court (N=1,416).	24 Months	45%[d]	65%	35% felony	50%

Drug Court	Author	Comparison Sample(s)	Follow-up Period	% Rearrested		Other Recidivism Measure	
				Drug Court	Comparison	Drug Court	Comparison
Las Vegas, NV	Miethe et al.	Treatment sample involved all 301 defendants who entered drug court in 1995 Comparison sample of equivalent size was randomly selected from the non-drug court cases processed in the general district courts in 1995	12 Months	26%[b] court appearance in 1997	16%		
Tarrant County, TX	Bavon	Drug court treatment group (N=157) Comparison sample consists of eligible offenders who "opted-out" (N=107)	12 Months	13%[c]	17%		
Salt Lake County, UT	Harrison et al.	Total treatment group (graduates + dropouts, N=158) Comparison sample consists of clients who were assessed with ASI but did not participate (N=29)	1 to 12 Months	39%[c] booked post treatment	73%	29 mean # post-drug court jail days	54

[a] Percentages rounded off to nearest whole number.
[b] $p < .05$.
[c] Statistical significance levels not presented.
[d] $p < .01$.
[e] Difference not statistically significant.

General recidivism

Three evaluations deserve separate discussion because they utilized the strongest research design (an experimental design with random assignment to the drug court) to test the impact of the court on recidivism. Such a design provides the most conclusive assessment of program impact because it can generally be assumed that the groups receiving the intervention and those processed as usual are highly equivalent. The design also assures the control of time-dependent factors such as local law enforcement and prosecution policies, the nature of the local drug problem, and organizational factors. Unfortunately, in these studies there was no distinction made between recidivism occurring during the program and that occurring post-program. Accordingly, the results are a more general measure of the impact of the drug court on recidivism during the period after admission into the program.

For the evaluation of the Baltimore City Drug Court by Gottfredson and her colleagues, 235 eligible clients were randomly assigned either to the drug court or to "treatment as usual" between February 1997 and August 1998. Recidivism from official records was tracked for 12 months from program entry and included both rearrests and reconvictions. The drug court sample had a significantly lower prevalence of both rearrest (48% vs. 64%) and average number of rearrests (0.9 vs. 1.3).[8] The percentage reconvicted on new charges was also slightly lower (31% vs. 35%) but the difference was not statistically significant. The authors of this study noted that the drug court impact may have been a conservative estimate because 10 of the 139 cases assigned to the drug court never enrolled in the program, but were still included in the experimental sample.

[8] $p < .05$.

In their evaluation of the Las Cruces (NM) DWI court, Breckenridge et al. (2000) randomly assigned convicted first-time DWI offenders assessed as alcoholic into the DWI court and a control group. This random assignment occurred over a nine-month period in 1997. Among the 79% of those who agreed to participate in the study, the experimental and control groups were then followed up for a range of 15-24 months after the initial arrest. Using reconviction as the recidivism measure, Breckenridge et al. (2000) found no impact on traffic offenses: 20% of the DWI court group and 17% of the controls were reconvicted for a traffic offense. However, participation in the DWI court did significantly lower the likelihood of reconviction for "alcohol-related or serious" offenses (15% vs. 22% of the controls). These mixed results, and the relatively low reconviction rates found overall, may have reflected the general use of enhanced sanctions in this county during the period of the study (Breckenridge et al., 2000). Moreover, sample sizes were small (N=39 DWI court clients, N=36 control group) so the findings need to be replicated with a larger sample.

Finally, the evaluation of the Summit County (OH) juvenile drug court included random assignment of eligible youth to the drug court or standard adjudication. The number of cases that had available rearrest data was small (27 experiment subjects and 13 controls) and the post-admission follow-up period was only six months, so the findings should be considered preliminary. The drug court group averaged one rearrest and the control group averaged 2.3. Among the experimentals, 11% had 3 or more new charges, compared with 46% of the controls.

Four other evaluations used a quasi-experimental design to calculate rearrests for a 12-month period after drug court admission without distinguishing between in-program and post-program recidivism. In the Erie County (OH) drug

court, 36% of drug court participants were rearrested after admission, in contrast to 69% of a comparison sample of rejects and refusals deemed eligible for the drug court and matched on race, gender, and substance abuse problem.[9] Multivariate analysis of the factors predicting rearrest found that the only statistically significant predictor of rearrest was participation in the drug court. Because of a small sample size, however (39 drug court clients and 48 comparisons), and variable follow-up period (approximately one to three years) these findings should be considered preliminary.

Goldkamp et al. (2001) also examined rearrests for several admissions cohorts for 12-month periods after drug court admission for the Portland (OR) and Las Vegas (NV) programs. For the Portland drug court there were two comparison samples tracked for 12 months after entering the court process.[10] For the Las Vegas study the comparison samples were randomly selected from among all felony drug cases that did not enter the drug court. Accordingly, these recidivism outcome measures include both in-program as well as post-program rearrests depending upon when a participant left the drug court. Presumably for a drug court graduate all the rearrests in this time frame would have occurred during program participation, while for drug court dropouts the rearrest could have occurred during or after the program depending upon when they dropped out.

Nonetheless, the Portland and Las Vegas recidivism analyses are useful because they provide a general measure of

[9] $p < .01$.

[10] One comparison sample included drug defendants who attended a public defender orientation but did not enter the drug court and the second sample were drug defendants who neither attended the public defender orientation nor entered the drug court.

short-term recidivism impacts, and because these evaluations collected data from several time periods. In Portland, rearrest prevalence was lower for drug court participants overall for the 1991-97 period (37% vs. 53% for one comparison sample and 49% for the other), and was lower for each of the admissions cohorts examined. However, in Las Vegas it was found that short-term recidivism impacts varied by admission cohort. For example, while rearrest prevalence was lower for drug court participants overall for the 1993-97 period (53% vs. 65% for comparisons, any rearrest), the drug court rearrest prevalence was actually higher for the drug court for the 1996 admissions cohort (73% vs. 65%) and about the same for the two groups for the 1997 cohort (56% and 59%). This important finding suggests that one-shot evaluations of a drug court, especially during its early phases of implementation, may give a distorted picture of program impacts. As Goldkamp et al. (2001) point out, time-dependent external and internal factors such as changes in the judge, treatment provider, or program structure, as well as changes in client characteristics over time, may have substantial impacts on a drug court's effectiveness.

The Douglas County (NE) evaluation used two comparison samples: the first included offenders placed in a diversion program and the second was a sample of offenders processed through traditional court adjudication. Both comparison samples were matched to the drug court sample on offense, gender, race, and age. Because of missing data, the evaluators were unable to match on criminal history, but controlled for this in multivariate analyses. Aside from the use of two matched comparison groups, another strength of this study was the use of multiple recidivism measures (e.g., rearrest, time to rearrest, reconviction, and average number of rearrests). Generally, it was found that drug court participants had lower post-program recidivism than did offenders in the traditional adjudication sample, and higher rates than those

placed in diversion. The observation period was 12 months after the sample arrest (i.e. roughly time of admission into the drug court): 42% of the drug court clients were rearrested for any offense, 61% of the traditional adjudication sample, and 29% of the diversion sample. Felony rearrest prevalence rates were 19%, 35%, and 10% respectively. The mean number of months to first rearrest was the same for the drug court and traditional adjudication groups (3.3 and 3.1 respectively), and highest for the diversion comparison sample (4.3). After controlling for prior criminal history and other factors in multivariate analyses, lower rearrest rates were still found for the drug court compared to traditional adjudication, and higher rearrest rates compared to diversion clients.

Other post-program outcomes

The measurement of post-program outcomes other than recidivism remains quite limited in the drug court evaluation literature. Several factors probably account for this. Few criminal justice or treatment data systems exist that track drug use, employment, or other social or health indicators. Collection of such data usually requires client interviews that are expensive and time-consuming to administer. Finally, many drug court evaluations are conducted within a relatively short time frame, making it impossible to collect extensive data aside from computerized criminal justice records.

Although several evaluations conducted small numbers of qualitative interviews with nonrandom samples of drug court graduates, none contained post-program data on health, employment, or other measures. One evaluation (Santa Barbara County, CA) included data on drug use and other problems 12 months after program admission, but the data were limited to those still in the program for that period. Using composite score and severity measures from the

Addiction Severity Index (ASI), it was found that compared to scores at intake, after 12 months in the drug court, drug and alcohol abuse severity significantly decreased as did medical, psychological, and family/social problems.

Cost Analyses

One important empirical question about drug courts is whether the costs of operating such programs are lower than the economic benefits or avoided costs that accrue because incarceration time is reduced, or because drug treatment reduces the likelihood of relapse and recidivism. Research on treatment in other criminal justice settings has concluded that investments in treatment generate net economic benefits relative to their costs (e.g., Belenko & Peugh, 1999; Gerstein et al., 1994; Rajkumar & French, 1996; Rydell et al., 1996). Several studies reviewed previously (Belenko, 1998; 1999) concluded that drug courts generate criminal justice savings or lead to avoided future costs. Two relatively comprehensive cost analyses of drug courts were conducted by Finigan (1999) and by Harrell et al. (1999), and both found net cost savings attributable to the drug court.

Among the current set of evaluations reviewed, five included drug court cost data. As in previous reviews, the methods used in each analysis were different, so it is not possible to synthesize the findings.

The Alameda County (CA) drug court was estimated to cost only $21.55 per case; this figure was calculated by dividing the total drug court budget by the number of clients admitted during 1998-99. This is clearly an underestimate of the actual costs of operating the drug court and providing services. Although not specified in the evaluation, it is likely that some staff costs as well as treatment services costs and the cost of jail sanctions were excluded. In contrast, the

Mendocino County (CA) drug court cost per case was calculated at $3,900; no information on the sources of these costs was provided in this evaluation. That cost was contrasted with estimated jail costs of $6,360 for similar offenders not processed through the drug court. In addition, the evaluation found that total jail costs for participants were $113,606 prior to entering the drug court, and $44,679 during drug court participation. However, it is problematic to compare these costs because the pre-drug court period was presumably much longer than the drug court participation period; an annualized jail cost measure would have been more meaningful.

[6] The evaluation of the Douglas County (NE) drug court included a fairly extensive analysis of the comparative costs of processing an offender through the drug court compared to simple diversion and traditional adjudication. Based on a random sample of the cases used for their recidivism analyses (see above), detailed criminal justice costs (including arrest, court hearings, sentencing, incarceration, and other court activities) and treatment costs were enumerated. The total criminal justice costs were $4,352 per case for the drug court (including treatment), $8,358 for traditional adjudication, and $808 for diversion (including treatment). The lower costs compared to traditional processing primarily were attributable to lower incarceration costs, and the higher costs relative to diversion were due to higher court and case management costs (by definition diversion cases have much fewer court appearances and little supervision) and higher jail costs. These cost analyses excluded criminal justice costs for processing new rearrest cases. It is recommended that the reader consult this report as a good model for the types of detailed components of drug court costs and analytical strategies that are useful in cost analyses.

Included in the evaluation of the Polk County (IA) drug court was a detailed comparative analysis of the correctional system and treatment costs for drug clients, offenders referred to drug court but not enrolled, and pre-drug court offenders who would have been eligible for the drug court. Adjusting the data to assure cross-sample comparability of time frame and case mix severity, the evaluators found that jail costs were lower for the drug court compared to the pre-drug court comparison ($7,237 per case vs. $9,757), as were prison costs ($13,334 vs. $27,632). Including drug court operational costs, drug court clients cost an average of $26,022 compared with $39,777 for the pre-drug court sample, or 35% lower. Not surprisingly, given the typical lack of treatment access for traditionally processed offenders, average treatment costs were much higher for drug court clients ($4,401 including clients who did not actually receive any treatment vs. $901). Adding the criminal justice and treatment costs together, drug court client costs were still 25% lower than traditional processing ($30,423 vs. $40,678).

In a revised and updated analysis of program costs, evaluators of the Cumberland County (ME) drug court examined program costs and projected benefits based on data for all drug court participants in their sample of 59 clients (35 graduates, 24 failures). For the participants, drug court costs were $319,012, jail sanctions costs were $51,559, probation costs were $74,160, and state and local incarceration costs for terminated clients were $427,349, for a total cost of $872,080 or $14,781 per drug court participant. The evaluators estimated the projected incarceration and probation sentence costs had the offenders not been in the drug court at $1,130,084 and $69,840 respectively, for a total cost of $1,199,924. Thus the total estimated economic benefits from this group of drug court clients were $327,844, a net annualized savings of $5,557 per client. Other unmeasured benefits may have accrued from tax revenues from graduated

clients' employment, and from the economic multiplier effect of employment earnings. On the other hand, their analysis may have excluded drug treatment and other service costs, which would have reduced the net economic benefits.

Juvenile Drug Court Evaluations

The first juvenile drug court (JDC) began operations in Key West, FL in October 1993 (American University, 2001). As of December 2000, there were 131 JDCs in 46 states and the District of Columbia, and an estimated 9,500 participants had been enrolled to date (American University, 2001). Juvenile drug courts tend to be small programs, which complicates the evaluation process; enrollment per court was 34 as of July 1999 (American University, 1999). As with adult offenders, JDCs serve a relatively small proportion of the potential target population.

According to the most recent American University survey, participants tend to be older youth: 57% were 16 or 17 years of age (American University, 2001). Eighty-three percent of JDC participants are male, 49% are Caucasian, 24% African American, and 23% Hispanic. Only 26% were living with both parents, and 7% of the participants had at least one child of their own. African Americans are underrepresented in JDCs: in the juvenile justice system as a whole, 39% of drug cases for which petitions were filed in 1997 were African American (Snyder et al., 1999). Nearly all JDC participants (83%) have had at least one prior criminal justice contact, including 34% with three or more, while approximately one-third have never been in a treatment program. The drugs of choice for participants are marijuana and alcohol. At the time of program entry, 86% of JDC participants were receiving some type of schooling: 47% were in a mainstream school, 31% in an alternative school, and 8% were in a GED or vocational training school. Not surprisingly, most participants

in the drug court had educational problems: 97% of JDC programs listed academic underachievement as a special need of their clients, 97% listed reading below grade level, 97% reported attention deficit disorder, and 80% reported other learning disabilities.

Seven evaluation reports for JDCs have been released since the 1999 review was written: Los Angeles County (CA), Orange County (FL), Campbell County (KY), Missoula (MT), Second Judicial District (Albuquerque) (NM), Summit County (OH), and Beckham County (OK). The Summit County evaluation is notable for their use of an experimental design to randomly assign youth to the drug court or standard adjudication. Because of the relative newness of JDCs, the lack of research on their operations, and the different operational and treatment challenges compared to adult drug courts, these evaluations are summarized separately in this section.

Consistent with the national survey results, marijuana is the drug of choice for most juvenile clients (for example, 94% of Orange County, FL clients; 80% of Summit County, OH; 100% of Beckham County, OK; 77% of the Second Judicial District (Albuquerque), NM). Almost three-fourths of Los Angeles County (CA) clients used marijuana daily prior to admission. Different patterns were found in Missoula (MT), where 56% were primary marijuana users, and 25% alcohol.

Juvenile drug courts differed in terms of the seriousness of their clients' histories. Participants in the Los Angeles County, Missoula, Albuquerque, and Summit County JDCs were relatively serious offenders. For example, 52% of the Summit County clients had two or more prior felonies, 64% had prior drug treatment, 94% had a prior school suspension, and 88% had been truant. Albuquerque clients averaged 6.5 prior arrests, and Missoula participants averaged

10.1 prior charges. In contrast, a substantial percentage of participants in the Beckham County and Orange County (FL) drug courts were first or second offenders.

Several JDC evaluations included health data that suggest a substantial need for other health-related services. For example, 10% of Orange County (FL) clients had a history of mental health problems. In Summit County, fully 43% of the clients were dually diagnosed, and 33% had ever been on medication for psychological problems. High rates of prior physical or sexual abuse may be responsible for or compound psychological problems for substance-involved youth: 39% of the Summit County clients in that study had been physically abused, and 14% had been sexually abused. Intergenerational cycles of substance abuse and criminality are evident. The most common reason for a juvenile being denied admission to the Missoula JDC was the presence of mental health problems. High rates of mental health problems have been noted in other research on juvenile offenders (Teplin, 2001).

Among the Orange County (FL) drug court clients, 39% had a relative who had been incarcerated and 47% had a relative with a substance abuse problem. Eighty-five percent of the Albuquerque clients had a history of alcohol abuse in their family. The Albuquerque evaluation was the only one to collect data on other risky health behaviors: 81% of the clients smoked cigarettes, and among the 77% who were sexually active, only 41% usually or always had protected sex.

Three of the evaluations reviewed included drug test data, with widely disparate results. More than one-third of the drug tests were positive in the Missoula (35% for marijuana) and Summit County studies (39% in the latter court), compared with only 4% of tests that were positive in Albuquerque.

The only studies to report retention data suggest that JDCs may have somewhat lower completion rates than adult drug courts. In Orange County (FL), 42% of the clients in a one-year admissions cohort successfully completed the program. Factors associated with successful completion included race (whites were more likely to complete), being in school, having a positive family attitude toward the program, and being a misdemeanor drug offender. Among those entering the drug court in its first year of operations, only 24% of the Los Angeles County participants had graduated by the end of the data collection period; 66% had been terminated and 10% were still active. Even if all the active clients eventually graduated, the completion rate would be only 34% (females had a higher completion rate than males, 38% vs. 21%).

Two evaluations collected some data on sanctions and rewards. Missoula youth averaged 10.2 sanctions and 6 rewards. The most frequent sanctions imposed were community service, followed by home arrest and detention. By far the most common incentive awarded was a week off from appearing in drug court, followed by store gift certificates. In Beckham County, the primary reason for imposing a sanction was a dirty urine (43% of the sanctions). Seventeen percent of the sanctions were due to a curfew violation, a similar percentage for school problems, and 15% of the sanctions were because of "poor attitude." The most common type of sanction imposed was time in an intensive intervention program (45% of the sanctions); 13% of the sanctions were community service, and 13% were electronic monitoring.

Only one evaluation included data on court or treatment service delivery. In Orange County (FL), graduates received an average of 46 treatment sessions over 196 days compared to 14 sessions over 77 days for dropouts.

Limited recidivism data are available from these JDC evaluations. Data from the Summit County experimental evaluation were presented above. In Orange County (FL), only 10% of the participants were rearrested during program participation. This evaluation also collected post-program recidivism data for those who had left the program (either through graduation or unsuccessful termination). Because no comparison group data were collected, and the follow-up time ranged from 20 to 434 days (average 181 days), these results should be considered preliminary. Overall, 15% of the clients were rearrested during post-program follow-up. Among Los Angeles County clients, 26% had a rearrest during the follow-up period after program admission, with two-thirds of the rearrests occurring during the program. Thus 16% were rearrested during program participation.

Finally, as noted in previous JDC evaluations, data and management information system limitations continue to limit the scope and utility of program evaluations. Several of the studies reviewed cited data problems as hampering the evaluation. In addition, the relatively small number of clients in most JDCs limits the ability to draw definitive conclusions about their impacts or operations for evaluations that collect data for only a one- or two-year period.

Family Drug Court Evaluation

In October 2000, researchers from the Child Welfare Training Program of the State University of New York (SUNY) at Stony Brook School of Social Welfare released a preliminary evaluation of the Suffolk County (NY) Family Treatment Court. This is the first external evaluation of a family treatment court.

Unfortunately, the evaluators encountered limitations on the availability and consistency of the data that hindered

the study. Although the program had adapted the management information system developed for the Brooklyn (NY) Treatment Court, there were substantial problems with missing or lost data. No structured system was in place for integrating or tracking client or case data over time, and information from seven different data sources had to be collected and integrated for the evaluation.

The evaluation included both a process and a limited outcome evaluation. The study focuses on 98 parents and their families entering the family treatment court (FTC) between January 1998 and December 1999. Of the 98 participants, all had been cited for neglect only (rather than abuse or a combination of both). At the end of the study period, 78 parents (80%) were still active at the end of the study period, 13 (13%) had successfully completed the program, 4 (4%) were terminated from the program for noncompliance, and 3 (3%) were terminated for other reasons. The mean time to graduation was 14 months.

According to the report, the purpose of the FTC is "to provide enhanced services to parents alleged to have neglected their children as a result of alcohol or other drug use, to ensure the safety and well being of children and to expedite permanency for children." The court seeks to improve screening and assessment, provide immediate access to treatment and use a system of rewards and sanctions to motivate parents to continue treatment and increase accountability and judicial supervision.

Most of the clients (91%) were female, and the mean age of the parent was 34. Terminated clients were slightly younger (average age 31). Fewer than a third of the participants were employed (28%) at intake and 36% had less than a high school education. Nearly half (44%) were receiving government assistance. Parents averaged 2.7

previous treatment episodes. The primary drug of abuse was cocaine or crack (56%), followed by alcohol (23%). Of the 221 children under the supervision of the FTC, 25% were under 2 years old, and the average age was 6.6 years.

The mean number of days between screening and intake at treatment was 40 days, while half entered treatment within 32 days. After screening and entrance to the program, the parent is referred to treatment and completes a full intake assessment. In conjunction with their treatment goals, a comprehensive case management plan is assembled with the parent. The parent is then required to attend treatment, submit to drug testing, and attend regular court hearings with the judge. Non-compliance with these activities results in sanctions. There were no data reported on use of rewards and sanctions. In the first three months of the program, clients had an average of 9.7 court hearings; this decreased to 7.5 hearings during their second 3 months, and 5.9 in the third 3-month period. Most of the parents attended outpatient treatment, but 50% had at least one residential treatment episode. The number of treatment visits averaged between 30 and 39 for each of the 3-month periods.

The evaluators concluded that the Suffolk County Family Treatment Court has been successful in facilitating collaboration among other agencies and service providers impacting families cited for neglect. Collaborators in the Suffolk County Family Treatment Court include the county attorney's office, the Legal Aid Society, the local Department of Social Services (local child welfare agency), the Department of Health, the local substance abuse treatment agency and providers, and court appointed special advocates. Based on interviews with members of the FTC team, members of the court team have similar conceptions of the goals and objectives of the model and their agreement among the partners of progress to date. However, team members

acknowledge different cultures, caseload differences, new responsibilities, and overall increased workload. Staff from different agencies differed greatly in whom they viewed as the FTC client (i.e. family vs. parent vs. child vs. Department of Social Services). Interestingly, in this model, the evaluators determined that neither the child protective service workers nor the team members themselves considered frontline child protective services workers as part of the team. In fact, FTC cases represented only 5-15% of the CPS worker caseloads, so FTC staff had to deal with a number of case workers who were not always very familiar with the FTC. Secondly, legal representatives, while active in some activities, were also not considered part of the team by all team members.

Preliminary outcomes suggest the FTC does lead to reunification of children with their families. For graduates (N=13), 75% of the children resided with their parent at the end of the program, up from 25% at intake; the percent of children in foster care decreased from 31% to 3% for graduates. However, these families did not show any significant changes in most of the factors in family risk assessment scales. Graduates did have significant decreases in domestic violence and overall case risk rating with an increase in acknowledgment of responsibility. For other clients, however, there was little change in child placement between intake and the end of the data collection period.

DISCUSSION

The number and quality of drug court evaluations continue to grow. The current set of evaluations is generally consistent with previous findings in several areas. These evaluations indicate a high degree of local satisfaction with the drug court models. Drug courts enroll older offenders who have fairly extensive criminal histories and numerous service needs. Program graduation rates averaged 47% in the eight

studies that reported such data. Drug use and recidivism rates (based on a limited number of studies) are relatively low while clients are in the program. The three studies that used random assignment to drug court or control conditions all found a reduction in recidivism for the drug court participants, although the outcomes in these studies mixed in-program and post-program rearrests. Further, one of these studies had a very small sample size and only looked at six-month outcomes (the Summit County, OH juvenile drug court), and one found an effect on non-traffic rearrests but not on new traffic offenses (Las Cruces, NM DWI Court).

Post-program recidivism rates are reduced in most studies that analyzed such data. Four of the six studies that included post-program recidivism data with a comparison sample found lower rates for drug courts, but the size of the effect varied across jurisdictions. However, longer follow-up and better precision in equalizing the length of follow-up between experimental and comparison groups are needed. Several studies that examined program costs found that per client drug court costs are lower than standard processing, primarily due to reduced incarceration. However, for low-risk offenders straight diversion may be less expensive and achieve similar outcomes. The existing body of drug court research indicates that these programs can engage many drug offenders in long-term treatment while minimizing public safety risk.

[7] There remains a need for better precision in describing data sources, measures, and time frames for data collection. Many evaluations were unclear about one or more of these aspects, making it difficult to assess the meaning of the results. It is particularly important to distinguish in-program from post-program outcomes, rather than just indicating a certain length of follow-up time post-admission. The distinction is important because it captures information in two different settings: client behavior during drug court, when

they are under close supervision and have many reporting and service requirements, and their behavior once they have left the drug court, whether through graduation or unsuccessful termination.

Data quality and information systems problems continue to affect drug court evaluations. A number of evaluators cited problems with extensive missing data, inconsistent data, data entry errors, or the need to merge information from a number of different agencies and data sources. In some cases, client or program data had to be coded manually from case files, because the existing management information system was inadequate. Relatively few evaluations included data on program services, either because of lack of data or because service delivery was not included in the evaluation design. Many researchers and drug court practitioners have noted the importance of looking inside the "black box" of drug court treatment and other services, in order to understand which elements of the drug court process affect client outcomes (e.g., Belenko, 2001; Goldkamp et al., 2001; Taxman, 1999).

[8] Another important issue in drug court evaluation was made evident from two of the studies. Recidivism impacts in the Orange County (CA) and Las Vegas (NV) drug courts varied by year of admission. One can therefore reach a distorted conclusion about the impact of a drug court program by just examining one time frame. Impact and effectiveness may fluctuate over time because of external or internal factors such as staff changes, changes in the treatment provider, alterations in drug court program design, or changes in client eligibility criteria. Accordingly, periodic, multi-year evaluations of drug courts are preferred.

Finally, many of the same issues of concern raised in the previous review (Belenko, 1999) continue to apply. Many

evaluations still focus only on program graduates rather than analyzing data for all participants. The calculation of graduation rates remains problematic in some evaluations, with clients still active in the program counted as successes no matter how long they have been in the drug court. Time periods for data collection need to be more carefully specified. Data on sanctions and incentives, as well as treatment and other services, are still fairly limited. Research on juvenile and family drug courts is still in its very early stages, making conclusions about their impacts impossible. Qualitatively, a number of juvenile courts have faced implementation or operational problems.

It should be acknowledged that most local drug court evaluations are conducted under several constraints: limited funding, a short time frame to conduct the study, data management system limitations, and small sample sizes. Nonetheless, several of the evaluations included detailed and useful descriptions of operational components, including the screening and referral process. A fuller understanding of the impacts of drug courts in the context of the larger criminal justice system requires more research on the targeting, referral, screening, and admission process. The use of experimental designs to test program impacts in several of the evaluations is an encouraging trend. The findings from several evaluations that drug court clients have high rates of mental health problems suggest that programs need to consider inclusion of services for co-occurring disorders.

Future research on drug courts needs to examine the client, operational, and treatment delivery characteristics that affect outcomes, so that drug courts can maximize their impacts and cost effectiveness, and the relative effectiveness of the various elements of the drug court model can be better understood.

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History

1. History of Drug Courts in Indiana

A. 1994-96.

While Drug Courts started nationally in 1989 in Florida and then expanded to California and other states in the early 90's, drug courts in Indiana started with the second wave of states incorporating the concept in 1994. Just as the national movement had its pioneering states, Indiana had pioneering judges in a handful of counties that went out on a limb to bring a new concept of jurisprudence to this conservative state.

In the 1994 -1996 timeframe five jurisdictions started the first generation of drug courts in Indiana and the worked together to form the Indiana Association of Drug Court Professionals (IADCP). The five initial drug courts and presiding judges in Indiana were:

- Hon. Barbara Brugnaux Vigo County Court, Terre Haute
- Hon. Kenneth Scheibenberger Allen Superior Court Fort Wayne
- Hon. Karen Freeman-Wilson Gary City Court Gary
- Hon. Roland Chamblee St. Joseph Superior Court South Bend
- Hon. James Humphrey, Dearborn Superior Court Lawrenceville

Each of these courts and judges has a storied history in their own right. Highlights during this time are:

- Judge Brugnaux emerges as a key leader of drug courts, helping establish IADCP;
- Judge Scheibenberger, tirelessly fights local opposition in one of Indiana's largest cities;
- Judge Karen Freeman Wilson establishes a drug court in a city with one of the highest crime rates in the nation;
- Judge Chamblee works at incorporating a drug laboratory as part of his program;
- Judge Humphrey establishes Indiana's first juvenile drug court.

Each of these courts received federal funding from the Drug Court Program Office of the U.S. Department of Justice (DOJ) to help get their programs started. State and local government funding were not available and these judges worked diligently to help raise the awareness of good that these courts could accomplish and the accompanying funding needs they require. The
Indiana General Assembly and local county councils were not moved to even discuss any government funding due to other competing priorities.

B. 1997-98 - More Drug Courts
Indiana Judicial Center (IJC) and CADPAC arrival.

In 1997 and 1998, Marion County, our largest county, started its drug court and five additional counties, Johnson, Monroe, Tippecanoe, Madison and Elkhart (Juvenile) began the planning process for establishment of drug courts.

Indiana's Division of Mental Health (DMH) provided technical (substance abuse) assistance to misdemeanor courts up until 1997. However due to budget priorities of the state executive branch the division's substance abuse office was reduced from approximately 29 people to 1 person. Thus the technical supervision and assistance courts received from DMH were mostly eliminated. In 1997, the DMH Director provided courts with "lifetime" operational certifications.

This action was unacceptable to Indiana Chief Justice Randall T. Shepard. He proposed to the Indiana General Assembly that the judicial branch be provided with the resources to continue education, training, certification and support of court alcohol and drug programs. The General Assembly concurred with the Chief Justice's plan and changed oversight of Indiana's misdemeanor court alcohol and drug program to the Indiana Judicial Center (IJC), which is the staff agency for the Judicial Conference of Indiana, the state's judicial branch of government. Additionally, the Judicial Conference of Indiana created a new committee of seven judges and 5 program directors to provide oversight of this program. The committee was called CADPAC which stands for Court Alcohol and Drug Program Advisory Committee.

In 1998 CADPAC and IJC hired Mr. W. F. Carey as its Administrator for IJC's Court Alcohol and Drug Program. In assessing the program in that first year, it was evident that drug courts were an entity that should be part of an overall court strategy for combating substance abuse. However, the program's mission did not include the felony drug courts and the program could only maintain collaboration with IADCP.

C. 1999 - 2000 Drug Courts drastically increase
Laying the Foundation for state oversight

During 1999 and 2000, ten additional jurisdictions started planning drug courts. They included five adult drug courts in Clark, Dearborn, Howard, Vanderburg, and East Chicago City and five juvenile drug courts in Marion, Lawrence, Gary City, Ripley

and Vigo.

During 1999 and 2000, IJC's Court Alcohol and Drug Program maintained coordination with Indiana Drug Courts and worked with them to help lay groundwork for education and training of current and prospective courts. Coordination with DCPO and American University, the information clearinghouse for Drug Courts was increased and resulted in development of additional drug courts and basic strategy for implementation of state oversight of drug courts.

Additionally, various drug court models were developed in integrating drug courts with court alcohol and drug programs. Some included drug courts and their staff as part of court alcohol and drug programs, others were independent, Madison County had a contract program and Vanderburgh county had a state Department of Correction (DOC) funded drug court. What they all had in common however was the need to address future funding and standardization of operational procedures. These problems were addressed to the Chief Justice, CADPAC and IJC.

The year 2000 closed with the realization that DCPO funding was no longer sufficient to cover all programs wishing to start drug courts and that state funding was going to be needed to help start and continue drug courts.

D. 2001 - A turning point

In early 2001 the Indiana Association of Drug Court Professionals held a regional drug court conference that had the Chief Justices of Indiana and Kentucky as welcoming and keynote speakers respectively. At the conference, Chief Justice Shepard talked about the need for state funding of drug courts in Indiana. This later led to his action to try to establish such funding.

In April 2001, the Chief Justice approved a CADPAC recommendation that IJC conduct a pilot program of state judicial oversight of Indiana drug courts. CADPAC formed an Ad-Hoc committee, under the leadership of Hon. Raymond Kirtley, to provide guidance to IJC. Five drugs courts were selected as pilot sites. These pilot courts included 2 old drug courts (Vigo & Allen), 2 new drug courts (Madison and Monroe), and 1 state DOC funded drug court (Vanderburgh). The goals of the pilot program included:

1. Design and development of a framework for IJC oversight of state drug courts
2. Develop recommendations for statutes, judicial rules, standards, policies and procedures necessary to accommodate IJC oversight of drug courts.
3. Conduct site visits of the 5 pilot drug courts and review their procedures
4. To prepare appropriate reports, recommendations and evaluation of this effort to CADPAC.

From June to December, 2001, with the monthly help of the Ad-

Hoc Committee, IJC developed judicial rules and proposed legislation for oversight. Two day site visits were conducted by a three person review team which evaluated each pilot court according to the 10-Key Components of DCPO, and state judicial rules developed for drug courts that included administration, program management, clinical case management, facilities, fiscal management, and personnel management. Federal and state confidentiality laws were included in each review.

In December 2001, IJC developed requests for two grants that would enable them to educate, train, evaluate, certify, and support Indiana drug courts. These grant requests were directed to:

1. Indiana Criminal Justice Institute for a two year grant to:

- fund a two person staff for 2 years at IJC that would educate, train, develop, recruit, and support Indiana drug courts
- provide for a ($205,000) outcomes evaluation by Indiana University and the Hudson Institute on the effectiveness of Indiana's established drug courts.

2. US DOJ for a $ 300,000 grant from the Drug Court Program Office for establishment of a statewide MIS program and funding for a IJC certification program of drug courts.

E. Fiscal Crisis for Indiana

In the January 2001 budget proposal for the Indiana Supreme Court for the budget biennium of 2002 and 2003, Chief Justice Randall T. Shepard, for the first time, placed a $ 200,000.00 line item for Indiana Drug Courts. During the General Assembly's budget finalization, this line item was denied without comment. The General Assembly passed a deficit budget but raises for legislators (and judges) were line-item vetoed by the Governor.

Indiana, like many states, was severely hurt by the recession of 2001. The recession combined with a deficit budget, which was predicated on unrealized income projections, caused the Governor to declare a Fiscal Emergency in the state in the summer of 2001. The small budget surplus was committed to pay bills, state spending was cut by 7%, state employees had their salaries frozen, and intended salary increases for state employees were cancelled.

Then the events of September 11, 2001 caused further damage to the state's fiscal woes, as the National Guard was called up to provide for unbudgeted security at Indiana's airports. On top of all this, the state had to create an entire new method of state revenue, as the state property tax, a major source of income, was declared unconstitutional. As the General Assembly met in early December 2001, the state was in fiscal disarray and state funding of drug courts was not seen as a likely possibility.

Thus 2001 ends with the hope that the willing commitment of IJC staff to develop state oversight, training, certification, and

funding of Indiana drug courts will be realized through the approval of their requested state and federal grants.

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U.S. Department of Justice
Office of Justice Programs
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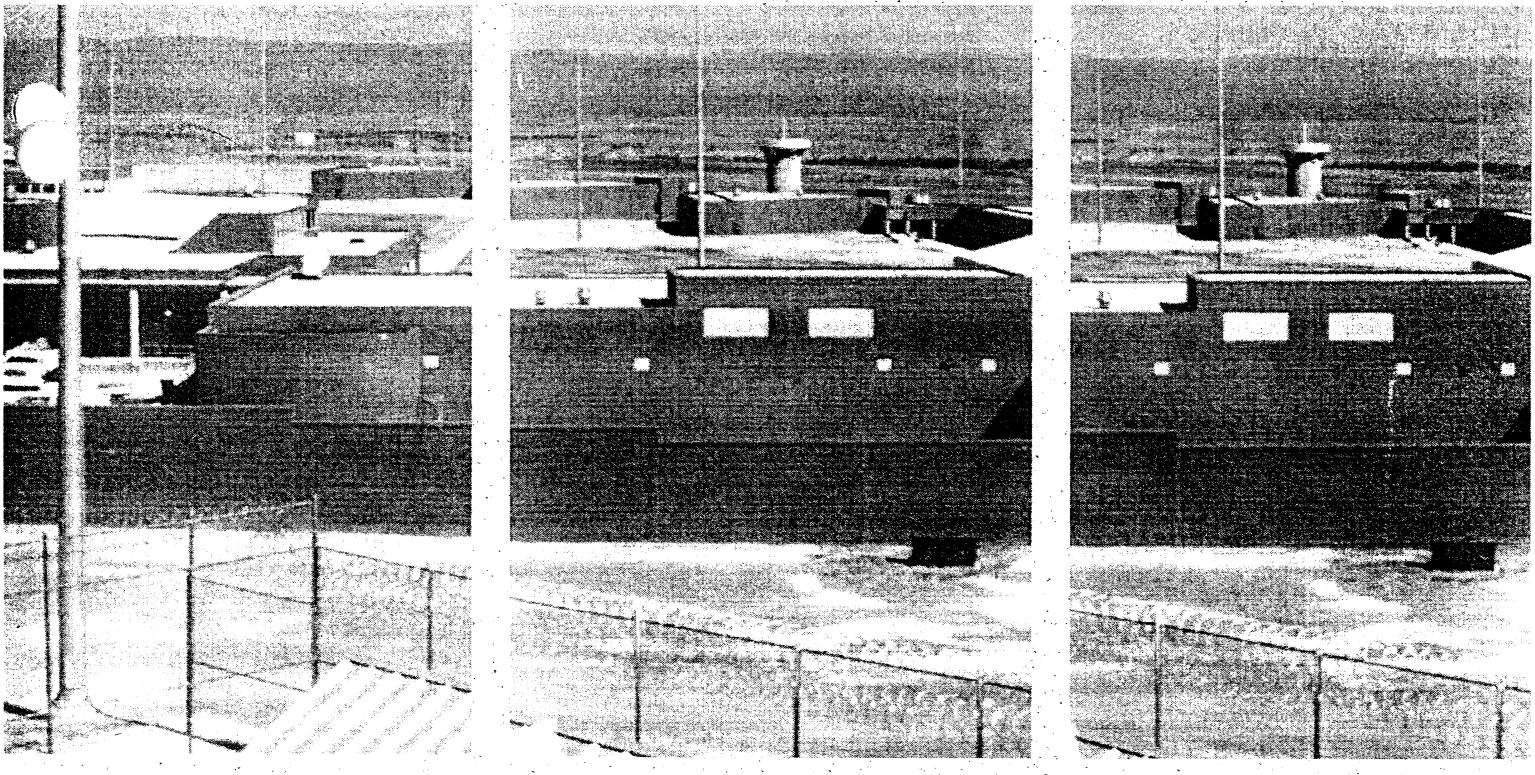
Monograph

EMERGING ISSUES ON PRIVATIZED PRISONS



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Emerging Issues on Privatized Prisons

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National Council on Crime and Delinquency

ebruary 2001

Monograph

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Foreword

One of the most daunting challenges confronting our criminal justice system today is the overcrowding of our nation's prisons. The past decade has witnessed a doubling of the number of adult offenders brought before our courts. According to one estimate, as we begin the new millennium, the nation's inmate population approaches the 2 million mark. Securing and humanely housing such a large population has placed an enormous burden on prison administrators as well as the federal, state, and local jurisdictions that must finance the institutional confinement of so many inmates.

In the 1980s, the public's frustration over a perceived failure of the penal system to rehabilitate offenders and a reluctance to provide more funding for correctional institutions, coupled with the increasing demand for more jail space, precipitated a crisis. One proposed solution that emerged was the privatizing of prisons and jails by contracting out, in part or in whole, their operations. In 1987, the number of inmates incarcerated in privately operated correctional facilities worldwide was 3,100; by 1998 the number had risen to 132,000. In the United States today there is a total of 158 private correctional facilities. Proponents of privatization have suggested that allowing the facilities to be operated by the private sector could result in cost reductions of 20 percent.

To explore the issues pertaining to the privatization of prisons, the Bureau of Justice Assistance funded a nationwide study that has resulted in this monograph, *Emerging Issues on Privatized Prisons*. The monograph examines the historical factors that gave rise to the higher incarceration rates, fueling the privatization movement, and the role played by the private sector in the prison system. It outlines the arguments, both in support of and opposition to, privatized prisons, reviews current literature on the subject, and examines issues that will have an impact on future privatizations. An appendix provides practical guidelines for policymakers who are considering privatizing a facility.

The study resulted in some interesting conclusions. For example, it was discovered that, rather than the projected 20-percent savings, the average saving from privatization was only about 1 percent, and most of that was achieved through lower labor costs. Nevertheless, there were indications that the mere prospect of privatization had a positive effect on prison administration, making it more responsive to reform. It is hoped that this monograph will prove enlightening to those involved with the issue of privatized prisons and promote a greater discussion about it.

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Executive Summary

The state of corrections has come under attack by many during the past decade. Many contend that the current state of affairs will not work in the 21st century. Some argue that the public sector is incapable of handling the complex and changing dynamics associated with corrections, and therefore more prisons need to be handed over to the private sector; others argue that private industry should not be a part of the public matter of penalizing offenders of crime. Although the private sector has had a long history of involvement in corrections, private prisons make up less than 5 percent of the current market. This study offers a review of the history of privatization, presents a review of relevant research on the issues involved, and compares some of the major findings from the *National Survey of State Prison Privatization, 1997,* conducted by the National Council on Crime and Delinquency (1998) and the *Census of State and Federal Correctional Facilities, 1995,* conducted by the Bureau of Justice Statistics (1997a), on the benefits and costs associated with private- and public-managed prison facilities.

Although private prisons tend to house mostly minimum-security inmates, the findings from this report suggest that private prisons operate much the same as public facilities. Private prisons offer only modest cost savings, which are basically a result of moderate reductions in staffing patterns, fringe benefits, and other labor-related costs. No evidence was found to show that the existence of private prisons will have a dramatic effect on how nonprivate prisons operate.

Current Trends in Privatization

- It is estimated that worldwide there are 184 privately operated correctional facilities, which hold 132,346 inmates.
- Within the United States, a total of 158 private correctional facilities are operating in 30 states, Puerto Rico, and the District of Columbia. Texas has the most facilities (43), followed by California (24), Florida (10), and Colorado (9). Most private correctional facilities tend to be concentrated in the Southern and Western United States.
- Another 26 private facilities operate in 3 other countries, with Australia (12) and the United Kingdom (10) topping the list.
- Total revenues allocated to private prisons and jails are estimated at $1 billion.

- Despite rapid growth in the number of private correctional facilities, they represent only a small share of the entire correctional facilities market. With jail and prison populations totaling approximately 1.7 million in the United States, the estimated 116,626-bed capacity of private correctional facilities makes up less than 7 percent of the U.S. market. Less than 5 percent (52,370 inmates) of the total 1.2 million U.S. prison population is housed in private facilities.

Prior Research Findings on Privatization

- Few studies have been completed regarding the impact that privatizing prisons has on costs, protection from harm, recidivism, and conditions of confinement.
- A major conclusion reached from the few studies completed is that privately operated prisons function as well as publicly operated prisons.
- With respect to operating costs, privately operated prisons can reduce expenditures in those markets in which public employee benefit rates are relatively high in comparison to national rates.
- Management problems that have occurred with privatized prisons can usually be linked to poorly drafted contracts, lack of oversight by contracting agencies, and transferring inmates with classification level requirements to private prisons that do not have the resources and capabilities to handle these inmates.
- Evidence shows that the presence of private prisons has encouraged public facilities to adopt similar cost-saving strategies in staff deployment and procurement policies.
- Evidence also shows that private entities can construct new facilities faster and cheaper than can be done by firms in the public sector.

National Survey Results

- Most privately operated prisons (not including jails or detention centers) are relatively new, with bed capacities of 800 or less, and designed for medium- and minimum-security custody inmates.

- Results from previous studies show that privately operated prisons function similarly to publicly operated prisons with respect to program and work participation by inmates and the distribution of staff by key functional areas. Three exceptions to these findings are in the areas of staffing levels, management information system (MIS) support, and critical incidents. Privately operated facilities have a significantly lower staffing level than publicly operated prisons and lack MIS support. They also report a significantly higher rate of assaults on staff and inmates.
- The differences mentioned above may be related to factors such as reporting standards or the fact that most correctional facilities experience management difficulties when newly opened. However, insufficient training and lack of qualified staff in key positions may also be valid reasons for these differences. Nonetheless, the assumption that privately operated prisons are safer or better managed than publicly operated facilities is not supported by the results presented in this report.

Future Trends

- The number of privatized prisons is likely to increase, but not at the pace exhibited during the past decade.
- The number of companies operating privatized prisons is likely to decrease as competition and the costs of doing business increase, thus forcing a consolidation of firms within the industry.
- It is unlikely that privatized prisons will develop a strong market in the high-security inmate population market due to the recent flurry of well-publicized disturbances. However, important inroads can be expected for the private sector within low-security medical, mental health, and geriatric inmate populations.
- Speculative prisons will face the greatest scrutiny and resistance by state and federal correctional agencies. These facilities are the most difficult to monitor and regulate.
- Unless there is a sharp reduction in major incidents at private prisons, litigation directed at facilities that are immune from the Prison Litigation Reform Act will likely increase.

Introduction

Prison overcrowding is one of the most burdensome problems plaguing our criminal justice system and a major catalyst for privatizing correctional facilities. Over the past decade the number of adult offenders under the jurisdiction and control of the United States justice system has doubled. Between 1980 and 1995, the probation, parole, and jail populations grew almost as rapidly as the prison population. In 1995, more than 5.4 million adults—approximately 1 out of every 46—were under some form of correctional supervision (Bureau of Justice Statistics, 1997a). The public has witnessed an increase in the nation's prison and jail populations from nearly 750,000 in 1985 to more than 1.7 million in 1997 (table 1). This rise in prison and jail populations and the corresponding need for additional bed space have been accompanied by similar increases in alternative forms of correctional supervision.

As the number of inmates in prisons and jails and on probation and parole increased, a corresponding surge in prison spending has occurred. According to a report issued by the U.S. General Accounting Office (1996a), prison operating costs grew steadily between fiscal years 1980 and 1994, due in part to the continuous growth in the inmate population. Total U.S. prison operating costs (federal and state) grew from about $3.1 billion in fiscal year 1980 to more than $17 billion in fiscal year 1994. This is an increase of nearly 550 percent based on constant or inflation-adjusted dollars (table 2).

The National Council on Crime and Delinquency (NCCD) has estimated that up to $15 billion will be needed to construct additional prisons to accommodate the anticipated growth in the inmate population by the year 2000, with an additional $21.9 billion needed to operate these prisons. This combined $37 billion does not include the additional billions of dollars required to service the debt associated with the loans necessary to pay for additional prison construction (Clark, 1998). Based on current trends, NCCD estimates that prison and jail populations will reach 2 million by the end of 2000.

Compounding the problems created by the growing demand for prison space and funding is the lack of public confidence in the quality of correctional services provided by federal, state, and municipal governments. Penal programs designed to rehabilitate offenders have not demonstrated a significant reduction in crime or recidivism and have thus lost credibility with the public and policymakers. In short, the belief that government is not equipped to meet the challenges of contemporary institutional confinement is spreading.

In the 1980s, private prisons and jails were seen as part of the solution to meet the increasing pressure for prison bed space at a time when taxpayers

Table 1 Number of Persons Held in State or Federal Prisons or Local Jails, 1985, 1990–1997*

Year	Total Inmates	Federal	State	Jail	Incarceration Rate†
1985	744,208	35,781	451,812	256,615	313
1990	1,148,702	58,838	684,544	405,320	458
1991	1,219,014	63,930	728,605	426,479	481
1992	1,295,150	72,071	778,495	444,584	505
1993	1,369,185	80,815	828,566	459,804	528
1994	1,476,621	85,500	904,647	486,474	564
1995	1,585,586	89,538	989,004	507,044	600
1996	1,646,020	95,088	1,032,440	518,492	618
1997	1,725,842	99,175	1,059,588	567,079	645
1990–1997 percentage increase	6.5	8.4	7.0	4.9	5.8

* Jail counts are for midyear (June 30). State and federal prisoner counts for 1990–1995 are for December 31. Counts for 1994–1997 exclude persons who were supervised outside a jail facility.
† Persons in custody per 100,000 residents on July 1 of each year.
Source: Bureau of Justice Statistics (1998).

were reluctant to pay for correctional services and were not supportive of divestiture of resources from other areas of state responsibilities and services (Travis et al., 1985). To confront escalating prison populations and costs, an increasing number of policymakers are now turning to the private sector for assistance.

Privatization is commonly defined as a contract process that shifts public functions, responsibilities, and capital assets, in whole or in part, from the public sector to the private sector. Privatization in correctional services can assume a number of institutional characteristics. For instance, the most common form of privatization in corrections is the contracting out (or outsourcing) of specific services that entails a competition among private bidders to perform governmental activities. Over the past two decades, the practice of state and local correctional agencies contracting with private entities for medical, mental health, educational, food services, maintenance, and administrative office security functions has risen sharply. Under these circumstances, the correctional agency remains the financier and continues to manage and maintain policy control over the type and quality of services provided.

Table 2 Prison Operating Costs, Fiscal Years 1980–1994

Fiscal Year	Federal	State	Total
1980	$ 319,274,000	$ 2,787,369,000	$ 3,106,643,000
1981	346,517,000	3,229,234,000	3,575,751,000
1982	368,000,000	3,794,178,000	4,161,178,000
1983	435,000,000	4,346,273,000	4,781,273,000
1984	529,245,000	5,066,666,000	5,595,911,000
1985	500,941,000	5,934,160,000	6,435,101,000
1986	555,097,000	6,619,534,000	7,174,631,000
1987	580,097,000	7,601,594,000	8,181,691,000
1988	878,502,000	8,586,498,000	9,465,000,000
1989	900,334,000	9,611,020,000	10,511,354,000
1990	1,148,678,000	11,194,236,000	12,342,914,000
1991	1,318,741,000	12,514,171,000	13,832,912,000
1992	1,585,498,000	13,290,202,000	14,875,700,000
1993	1,767,019,000	14,239,710,000	16,006,729,000
1994	1,918,067,000	15,776,174,000	17,694,241,000

Source: U.S. General Accounting Office (1996a).

A more radical approach is to have government transfer ownership of assets, commercial enterprises, and management responsibilities to the private sector. This approach, called an "asset sale," leaves the government with a limited or nonexistent role in the financial support, management, or oversight of the sold asset (U.S. General Accounting Office, 1997). This form of privatization was not adopted by governments in operating correctional facilities until the 1980s.

A dramatic increase in the use of private correctional facilities has occurred—initially in the United States and more recently in the United Kingdom, Australia, and South Africa.[1]

In 1987, the total number of inmates in privately operated prisons and jails worldwide was approximately 3,100. By December 31, 1998, that number had increased to more than 132,000 (table 3). Although 14 private correctional facility firms existed at that time, 2 companies (Corrections Corporation of America and Wackenhut Corrections Corporation) accounted

Table 3 Private Adult Correctional Firms, December 31, 1998

Management Firm	U.S. Capacity	Outside U.S. Capacity	Total Capacity	Percentage*
Alternative Programs, Inc.	340	0	340	0.3%
Avalon Correctional Services, Inc.	350	0	350	0.3
Bobby Ross Group	464	0	464	0.4
CiviGenics Inc.	3,563	0	3,563	2.7
Cornell Corrections, Inc.	5,794	0	5,794	4.4
Correctional Services Corporation	6,727	0	6,727	5.1
Correctional Systems, Inc.	272	0	272	0.2
Corrections Corporation of America	65,748	2,244	67,992	51.4
Group 4 Prison Services Ltd.	0	4,510	4,510	3.4
GRW Corporation	362	0	362	0.3
Management and Training Corporation	7,465	0	7,465	5.6
Maranatha Production Company	500	0	500	0.4
Securicor	0	800	800	0.6
Wackenhut Corrections Corporation	25,041	8,166	33,207	25.1
Total	116,626	15,720	132,346	100.0

* Discrepancy in total is due to rounding.
Source: Thomas (1998).

for more than three-fourths of the entire worldwide market (Thomas, 1998).

In the United States, a total of 158 private correctional facilities are operating in 30 states, Puerto Rico, and the District of Columbia (table 4). Texas has the most facilities (43), followed by California (24), Florida (10), and Colorado (9). Most private correctional facilities tend to be concentrated in the Southern and Western United States. Another 26 private facilities operate in 3 other countries, with Australia and the United Kingdom topping

Table 4 Geographic Distribution of Privately Operated Correctional Facilities, December 31, 1998

Jurisdiction	Number of Facilities	Percentage of Facilities*
Texas	43	23.4 %
California	24	13.0
Florida	10	5.4
Colorado	9	4.9
Oklahoma	8	4.3
New Mexico	7	3.8
Tennessee	6	3.3
Mississippi	6	3.3
Arizona	6	3.3
Georgia	5	2.7
Kentucky	4	2.2
Puerto Rico	4	2.2
Arkansas	2	1.1
North Carolina	2	1.1
Louisiana	2	1.1
Missouri	2	1.1
Ohio	2	1.1
Kansas	2	1.1
13 other states and D.C.	14	7.6
U.S. total	158	85.9
Non-U.S. total	26	14.1
Total	184	100.0

* Discrepancy in total is due to rounding.
Source: Thomas (1998).

the list (table 5). There are another 530 nonsecure, privately operated facilities, such as halfway houses, residential drug treatment, and other juvenile correctional facilities in the United States. Total revenues allocated to private prisons and jails in 1998 are estimated at $1 billion (McDonald et al., 1998).

Table 5 Geographic Distribution of Privately Operated Correctional Facilities Outside the United States, December 31, 1998

Country	Facilities	Capacity by Country	Percentage
South Africa	2	3,000	19.1%
U.K.	12	8,061	51.3
Australia	12	4,659	29.6
Total	26	15,720	100.0

Source: Thomas (1998).

Despite the rapid growth in the number of private correctional facilities, they represent only a small share of the entire correctional facilities market, at least within the United States. With jail and prison populations totaling approximately 1.7 million in the United States, the estimated 116,626-bed capacity of private correctional facilities makes up less than 7 percent of the U.S. market. The recently completed Abt Associates Inc. report (McDonald et al., 1998) found that less than 5 percent (or 52,370 inmates) of the total 1.2 million United States prisoner population was housed in private prisons.

In terms of prison facilities, the Abt study identified no more than 65 facilities that could house state prisoners, which is a small percentage of the more than 1,500 prisons in the United States. Furthermore, indications show that growth in privatization may be slowing. For example, Lanza-Kaduce and colleagues (1998) report that private facility bed capacity has not increased since January 1, 1998. Additionally, stock prices for most of the major firms have dropped substantially in the past year. There have also been a number of highly publicized management problems with several privately operated facilities.

This report gives attention to issues surrounding the current debate on privatization. The privatization of correctional operations and services has resurfaced as a controversial topic, yet its antecedents developed early in this country's history. Chapter 2 examines the factors, particularly demographic shifts, sentencing law changes, and the political backdrop that gave rise to increased incarceration rates since the early 1980s, leading to the recent privatization movement for incarceration. Another section of chapter 2 investigates the historical role of private-sector involvement in the provision of correctional services in the United States. This chapter also briefly outlines the various arguments in favor of and against privately operated prisons.

Chapter 3 reviews the current research literature on prison privatization, with particular attention given to recent federal, state, and local experiences with privatization. Chapter 4 outlines the methodology used by the NCCD to conduct a national survey of private prison facilities in late 1997 and reports the findings of this survey. Chapter 5 summarizes the major findings of the study and examines the most critical issues that will likely have an impact on privatization of the nation's prison systems.

Finally, the appendix contains practical guidelines for state and local policymakers to consider should they decide to privatize a facility. These guidelines were developed by the Oklahoma Department of Corrections, which has been very active in the privatization movement.

The History of and Key Debates Over Privatization

Privatization of Corrections: A Historical Overview

Private enterprise in the United States has an extensive history of involvement in the provision of correctional services. According to Feeler (1991), the involvement of the private sector in corrections stems, in part, from an Anglo-American political culture that is somewhat skeptical of governmental authority yet promotes private initiative. Feeler traces the private-sector involvement back to shortly after the first English colonists arrived in Virginia in 1607. The colonists were followed by a handful of convicted felons, who were transported by private entrepreneurs to America as a condition of pardon to be sold into servitude.[2]

The overseas transportation of these felons was organized by private entrepreneurs. Merchants transported convicts in exchange for the privilege of selling them as indentured servants (Ammon et al., 1992). Transporting convicts to America (and later many more to Australia following the American Revolution) was an innovation that radically transformed the administration of criminal justice. This innovation expanded the power of the state to impose sanctions without the need to increase its administrative structure. In other words, transportation of felons increased the state's penal capacity at a low cost to the government.

During the 18th century, the modern prison emerged in America as a viable alternative to servitude or the death penalty. Also during this time, the use of privately operated facilities became popular. In the colonies, criminal justice procedures were copied from English custom, which had a long history of private involvement in operating jails. Privately operated jails date back to medieval England (Pugh, 1968).

For a fixed fee states allowed private contractors to supervise prisoners inside prison walls (Ethridge and Marquart, 1993). Although appointed by the government, a head jailer was considered an independent operator of a profit-making enterprise functioning as a government contractor. Often, jailers employed prisoners (McCrie, 1993). In privately operated facilities, inmates were often engaged as laborers and craftsmen in private-sector activities. Early American jails may be characterized as exploitative. Cripe (1997: 378) describes the conditions:

> There was seldom any separation of types of prisoners—women and children were often confined with hardened criminals. Many jails were very crowded; most were unsanitary. Payments were extracted for special services, such as better meals or other privileges. Some money was given to the jailer (often the sheriff) for basic services. But it was widely accepted that jailers could charge additional money for virtually any type of special benefit.

By 1885, 13 states had contracts with private enterprises to lease out prison labor (McCrie, 1993: 24). One of the more interesting situations occurred in California at the San Quentin prison, which was the first facility constructed and operated by a private provider in the 1850s. Private entrepreneurs persuaded state officials that the facility could best be operated under a long-term lease arrangement with an entity that had experience in law enforcement. Even back then the debate centered on costs, with the argument made that a private-sector entity would be less expensive and less corrupt than the government. However, after a number of major scandals surfaced surrounding the mismanagement of the facility by the private provider, the state decided to turn the facility over to the control of state government. Eventually, the government turned out to be as ineffective and corrupt as the private provider (Lamott, 1961: 74, 78):

> As the year [1856] went on it became increasingly clear to more and more people that, regardless how much money it might save the taxpayers, a private contract was no way to run the state prison. The *Bulletin* was not alone when it demanded that, whatever it cost, a final end had to be put to the system of farming out the management of the state convicts. . . . After the final ejection of [Warden] McCauley, however, the prison fell into the hands of men who were primarily professional politicians rather than pirates. The distinction is a nice one, and the change was more a matter of style than of substance. The prison remained a rich piece of political spoils, but the looting was now carried on more in line with the ancient traditions of American state politics.

Even back then, private contractors were claiming that they could both manage prisons and employ convicts in labor, arguing that the practice would be both rehabilitative and financially rewarding.[3] Prison models of convict labor took various forms. At some, companies outside the prison provided raw materials that were refined in prison workshops and later sold by private companies. At others, prisons leased their inmates out to private farms or other businesses if they could not produce salable items within the prison. In a number of states, contractors paid the prison a fee or a percentage of the profits for the right to employ convicts. For example, in the 1860s the Texas legislature directed state correctional administrators to contract out inmate labor to the private sector. Even when prisons were not operated entirely by private entrepreneurs, inmates were used as a cheap source of labor. Prisoners often worked on farms, railroads, and mines, in addition to other public work programs.[4]

For most of the correctional history of the United States, prison labor was expected to generate a profit for the institution. If generating a profit was not feasible, it was incumbent upon the prisoner to pay the costs of incarceration and become self-supporting. The "managers" of early detention facilities charged their inmates for food and clothing, while providing substandard service. The income generated by inmate labor, however, was not sufficient to cover the high costs of operating correctional systems, despite persistent and intense efforts to make the system pay for itself (Feeler, 1991). Without independent oversight and monitoring, the convict labor system eventually succumbed to bribery and corruption.

Moreover, organized labor, manufacturers, and farmers strongly opposed the convict lease system. This broad constituency opposed what it considered was unfair competition and pressed for legislation restricting the use of convict labor and convict-produced goods. Public opposition was also mobilized by reformers and religious groups that protested the scandalous conditions found at many of the privately run facilities and in labor lease systems. State legislatures began investigating alleged incidents of mismanagement and cruelty within privatized institutions, resulting in modifications to the leasing system.[5]

An executive order signed by President Theodore Roosevelt in 1905 prohibited the use of convict labor on federal projects. In 1929 Congress passed the Hawes-Cooper Act permitting states to ban the importation of inmate products from other states (Ammon et al., 1992: 4–5). During the Great Depression, Congress and state legislatures also passed laws that further curtailed the use of inmates in private enterprise.

By the 1920s, the prevailing practice in American correctional agencies was to increase governmental involvement. The subsequent demise of the convict lease system eventually gave way to state-run institutions. The operations and administrative functions in correctional facilities were delegated to governmental agencies, authorized by statute, staffed by government employees, and funded solely by the government (Cripe, 1997: 380).

Beginning in the early 20th century and until more recently, the custom in American correctional agencies was to provide virtually all correctional services as governmental functions in institutions constructed and maintained at the government's expense.[6] In some program areas, rehabilitative services were provided by volunteer associations (religious and educational). Generally, however, private involvement in the provision of correctional services was diminished.

To manage escalating costs associated with supporting the many functions required to effectively run penal institutions, a trend gradually developed in the 1900s for the contracting out of prison services to both profit-making and not-for-profit firms. Prisons added services such as food preparation, vocational training, and inmate transportation to the list of provisions that were contracted out (which already included medical, dental, and mental

health services). By the mid-1970s, federal, state, and municipal governments were again willing to expand their association with the private sector, moving beyond the conventional contractual relationship that had become common in the early 20th century, and private enterprise began to play an influential and expanded role in the functioning of correctional facilities. According to Durham (1993: 33), the 1970s ushered in a new phase in the development of private corrections, beginning with juvenile correctional operations:

> In 1976 RCA Services, a private company, assumed control of the Weaversville Intensive Treatment Unit located in North Hampton, Pennsylvania. This facility was designed to handle male delinquents. Although the private sector had long been involved in providing a wide range of correctional services . . . this was the first modern institution for serious offenders to be completely operated in what has become an increasingly lengthy line of such institutions in the American correctional system.

The Weaversville Intensive Treatment Unit for Juvenile Delinquents is widely regarded as the first high-security institution that was entirely privately owned and operated under contract to the state. The second such institution did not open until 1982, when the state of Florida turned the operation of the Okeechobee School for Boys over to the Eckerd Foundation (Logan and Rausch, 1985: 307).

The trend toward privately operated juvenile correctional facilities has continued, with more than 40,000 youth now housed in privately operated juvenile facilities. It is noteworthy that these operations have not received nearly the level of scrutiny and criticism as have their adult counterparts. This may be due to the fact that some, but not all, are not-for-profit operations.

The U.S. Immigration and Naturalization Service (INS) was among the first governmental agencies to take advantage of the emerging market of private prison operators. At the end of 1984, INS had contracts with two private companies for the detention of illegal aliens; by the end of 1988, the number of private INS detention facilities had grown to seven, housing roughly 800 of the 2,700 aliens in INS custody (McDonald, 1994). Also during this period, the Corrections Corporation of America (CCA) was awarded a contract to manage the Hamilton County Jail in Chattanooga, Tennessee. This was followed by the first state-level contract award in 1985, when Kentucky contracted with the U.S. Corrections Corporation to manage a correction facility.

According to McDonald (1994), these developments initially provoked little controversy or even notice, most likely because private-sector involvement in correctional management was still limited in size and scope.[7] The importance of these early contracts has been noted by Thomas (1997b), a strong advocate of private prisons.

> The importance of these contract awards to the subsequent development of correctional privatization would be difficult to over-estimate and the fact that all remain still in force today with the same management firms is not inconsequential for those who would be willing to accept this fact as at least an oblique performance indicator. Each provided a real world opportunity to test the hypothesis that contracting could yield meaningful benefits to government. Each also provided a valuable model that subsequent units of government could examine and improve upon in such critical areas as procurement strategies, the formulation of sound contracts, and the creation of effective means of contract monitoring.
>
> Security adult institutions, once considered the near exclusive and inextricable preserve of government, emerged as a central issue debated among correctional agencies. Finally, in the last few years, governments have sought to contract out capital expenditure costs and operational services, including prison design, construction, and management (Yarden, 1994).

Thus, the pressure of increased incarceration rates, combined with rising correctional costs, has enabled privatization of penal facilities to reemerge as an acceptable political and correctional system operational concept. This reemergence, however, has stirred considerable debate over the viability of privately operated prison facilities. The current enthusiasm for privatization is fueled by the prospect of more innovative, cost-effective prison management, including the anticipated private-sector involvement in the financing of new prison construction. This enthusiasm is not shared by all. Much of the contention is reflected in the literature, especially with regard to the alleged advantages and disadvantages to private facility management.

The Debate

Many claims have been made by observers on the advantages and disadvantages of privatization. Cunningham (1999) has summarized the major reasons either to accept or reject the privatization concept (table 6). These reasons can be reduced to the overriding desire of many states and local governments to rapidly increase desperately needed prison bed capacity and to reduce prison operational costs. Others have raised the issue of whether private prisons can enhance the quality of care for inmates (including enhanced protection from harm for inmates and staff) and reduce litigation. Thus far, there has been little need on the part of private providers to argue that inmates incarcerated in privately operated prisons are more likely to be rehabilitated and less likely to recidivate, although such a claim was recently made in a Florida study (Thomas, 1998). These claims, which form the core of the debate on whether to privatize, are discussed in this section.

Table 6 Public Strategies for Private Prisons

Reasons To Privatize	Reasons Not To Privatize
1. Private operators can provide construction financing options that allow the government client to pay only for capacity as needed in lieu of encumbering long-term debt.	1. There are certain responsibilities that only the government should meet, such as public safety and environmental protection. To provide incarceration, the government has legal, political, and moral obligations. Major constitutional competition among both public and private issues revolves around the deprivation of liberty, discipline, and preserving the constitutional rights of inmates. Related issues include use of force, loss of time credit, and segregation.
2. Private companies offer modern state-of-the-art correctional facility designs that are efficient to operate and built based upon value engineering specifications.	2. Few private companies are available from which to choose.
3. Private operators typically design and construct a new correctional facility in half the time of a comparable government construction project.	3. Private operators may be inexperienced with key corrections issues.
4. Private vendors provide government clients with the convenience and accountability of one entity for all compliance issues.	4. Operator may become a monopoly through political ingratiation, favoritism, etc.
5. Private corrections management companies are able to mobilize rapidly and to specialize in unique facility missions.	5. Government may lose the capability to perform the function over time.
6. Private corrections management companies provide economic development opportunities by hiring locally and, to the extent possible, purchasing locally.	6. The profit motive will inhibit the proper performance of duties. Private prisons have financial incentives to cut corners.
7. Government can reduce or share its liability exposure by contracting with private corrections companies.	7. Procurement process is slow, inefficient, and open to risks.
8. The government can retain flexibility by limiting the contract duration and by specifying facility mission.	8. Creating a good, clear contract is a daunting task.
9. Adding other service providers injects competition among both public and private organizations.	9. Lack of enforcement remedies in contracts leaves only termination or lawsuits as recourse.

Source: Cunningham (1999).

Faster and Cheaper Bed Capacity

The dramatic increase in prison and jail populations and the associated need to construct prison and jail facilities quickly and cheaply have often been cited as a major impetus behind the move toward privatization. Contracting with the private sector allows prospective prisons to be financed, located, and constructed quicker and cheaper than government prisons. This flexibility is especially advantageous when a new facility is under consideration. Based on experience, governments take 5 to 6 years to build a facility, whereas some private companies claim they can do it in 2 to 3 years (or less).

For example, CCA built a 350-bed detention center in Houston, Texas, for INS. CCA completed the project in 5 1/2 months at a cost of $14,000 per bed. INS calculated construction to take 2 1/2 years at a cost of $26,000 per bed (Yarden, 1994: 328). In a comprehensive study of privatizing the District of Columbia's Department of Corrections, Clark (1998) estimated that rebuilding several prison facilities would take the public sector 5 to 6 years, whereas it would only take the private sector 3 to 4 years.

Based on these and other reports, it seems clear that the private sector can add prison bed capacity faster and cheaper than most public entities. Cripe (1997: 384) cited the numerous advantages advocates assert in support of private prison construction:

> Because private firms are not bound by governmental rules that tend to slow down prison construction, such as political pressures from unhappy neighbors, environmental hassles, and requirements of competed bidding and construction contracting, private firms have shown an ability to open new facilities more quickly. They claim they can also get the money to build new institutions more quickly from private investors or from lenders, while the government has to work more slowly, getting appropriations from the legislature or going through a bond issue process.[8]

On the other hand, Robbins (1997) points out that privatization allows prisons to be built without the approval of the public. For example, the construction costs of a privately operated facility can be lumped together in the state's prison operating budget whereas the state must seek voter approval on a construction bond for a publicly operated facility, as is usually the case.

Reduced Operational Costs

Representatives of private-sector firms assert that they can save taxpayers money by providing correctional services traditionally supplied by government at less cost. As already noted, private entrepreneurs can build facilities faster and cheaper than the government. However, the next claim is that they are also able to operate facilities more efficiently than the government. This can be achieved by reducing the costs of labor associated with

operational costs. Labor costs are controlled by reducing one or more of the following personnel cost factors: (1) number of staff, (2) wages, or (3) fringe benefits. The private sector alleges that these costs can be contained or that, for the same dollar, it can provide more or at least better services (Travis et al., 1985: 13).

This point of containing labor costs is the crux of the privatization movement. Prisons are extremely labor intensive, with approximately 65 to 70 percent of the costs of operating a prison going to staff salaries, fringe benefits, and overtime. Controlling these costs is more difficult to achieve with unionized government workers. Private firms typically use nonunion labor, allowing for the lowest benefit packages. Overall, private firms claim that they can save 10 to 20 percent in prison operations due largely to efficient handling of labor costs.

Another, less powerful argument in favor of private contracting is that the private sector has greater flexibility in the procurement process. It is argued that private-sector contractors are not bound by the cumbersome and rigid government procurement system. Consequently, private vendors can purchase goods and services quicker; maintain lower food, supplies, and equipment inventories; and negotiate better prices for these goods (Ammon et al., 1992: 10).

It is not uncontested that a private institution would be more cost effective. The incentive to contain costs is directly related to the type of contract structured (Travis, Latessa, and Vito, 1985: 14).

> A public utilities or "pentagon" model reimbursement where a contractor receives costs plus a profit percentage would not necessarily provide an incentive to contain costs of service. On the other hand, a client charge may result in cost-overruns or even bankruptcy should the initial estimate prove wrong.

One expense not normally included in the financial calculation of private firms is the cost to the government for monitoring contract performance. Constant monitoring of all aspects of internal performance is essential to a good contractual relationship, which may become expensive over time. If continual federal or state monitoring of private institutions is required for accountability purposes, the costs of monitoring ultimately raise the price of privatized services. The potential costs of increased prison litigation is also rarely discussed by private prison advocates.

As a policy matter, opponents to privatization also claim it is inappropriate to operate prisons based on a profit motive. In many instances, private prison operators are paid according to the number of inmates housed. Arguably, it is in the operator's financial interests to encourage lengthier sentences for inmates to keep bed spaces filled. If the private vendor enters into a contract based on a per-client charge, the profit margin and even the continued operation of the private facility depend upon total population

size. Firms driven by the profit motive could adversely influence prison population size by lobbying for longer sentences and stricter sentencing guidelines. Similarly, as private firms are in business to make a profit, high returns on their investments are important. Critics of prison privatization argue that firms will cut corners, from construction materials to hiring inexperienced personnel, forsaking security and quality of service in the process of making a profit.

Improved Quality of Service

In addition to the proposed cost savings and associated efficient services, one must also remember that the nation's prison and jail systems were facing widespread allegations about the lack of quality of care afforded to staff and inmates. Since the 1980s, most of the state prison systems as well as the major urban jails have been under far-reaching consent decrees regarding medical, mental health, education, overcrowding, and protection-from-harm issues. There have also been major prison disturbances in California, Illinois, New Mexico, and New York, to name a few, that have added to the public perception that public agencies have not been doing a good job in managing prisons.

However, one of the central concerns raised by critics of correctional privatization is that firms motivated by financial gain might make decisions that enhance profits at the expense of the rights and well-being of inmates (Durham, 1994). History shows that privately operated prison facilities were plagued by problems associated with the quest for higher earnings. The profit motive produced such abominable conditions and exploitation of the inmates that public agencies were forced to assume responsibility. The lack of contract supervision contributed, in part, to the squalid and inhumane living conditions in privately run prisons.

The current movement to reprivatize primary facility management assumes that modern entrepreneurs are somehow more benevolent and humanistic so that the exploitations of the past will not reoccur (Walker, 1994). Critics, however, contend that privately managed facilities will bring new opportunities for corruption. Given poorly paid, undereducated, and inadequately trained staff, opponents question the professionalism and commitment that privatized staff will bring to the job.

Proponents, on the other hand, suggest that present-day judicial activism provides oversight over private prison operations. The threat of inmate lawsuits and court-mandated consent decrees act as a deterrent to abusive behavior. Further arguments suggest that tolerance of abusive behavior by staff defeats the long-term interests of private contractors and can be avoided with careful monitoring mechanisms. Moreover, it is presumed that competition between firms will hold down costs and provide for superior service because contract renewals will depend on job performance. To date, the limited experience with privately managed prisons does not

allow a thorough evaluation of public and private prisons in terms of overall quality of inmate services.

Legal Issues

Disagreements surrounding cost and efficiency may eventually be resolved with more complete data. Better contract monitoring and judicial oversight should curtail instances of exploitation and abuse of the inmate population. However, the legal ramifications of privatization pose challenging questions not easily rectified. Three complex issues stimulate heated debate on correctional privatization:

- The propriety of private firms taking over state functions.
- Inmate rights and due process considerations.
- Liability and accountability for state actions.

A fundamental issue is public responsibility for the well-being of society. It is taken for granted that the apprehension and conviction of offenders are public responsibilities. Hence, the notion that convicted offenders should be the responsibility of private entrepreneurs motivated by profit seems contradictory (Walker, 1994: 582). The central question should be whether government has the authority to contract out what is now widely regarded as a public function. Commenting on the issue, Durham (1993: 43) states with some urgency that, "if the transfer of responsibility to penal institutions is not carefully executed, the consequences may be disastrous. Beyond inconvenience and unanticipated costs, both public safety and inmate well-being may be at stake."

The courts have clearly decided that private prisons can be assigned the same management responsibilities as those undertaken by state and local governments. This is not to say that state and local governments can wholly delegate their functions and duties to a private provider. Indeed, based on a number of recent infractions committed in private facilities, the courts will hold government responsible for actions taken by a private provider that violate an inmate's constitutional rights or that put the prison staff, inmates, or surrounding community in harm's way (Schosser, 1998; Clark, 1998).

What has not yet been resolved is whether privatization will undermine or enhance prisoners' rights as compared to publicly operated systems (Thomas, 1991). The U.S. Constitution protects individuals against the violation of due process (5th and 14th amendments) as well as the related issue of cruel and unusual punishment (8th amendment). Recent decades have witnessed a large volume of prison litigation concerning inmate rights and prison conditions that has resulted in most state correctional systems (or a facility within a state) operating under an imposed consent decree. The concern is whether private prisons can operate in such a manner that the exposure to litigation against government is reduced.

A number of U.S. Supreme Court cases have held that a person can only assert a denial of due process rights if that deprivation resulted from "state action" (Yarden, 1994: 331). The ultimate issue in determining whether an entity is subject to suit for violation of an individual's rights is whether the alleged infringement is attributable to an action by the state.

A person acts or purports to act under the "color of state law" when in the performance of official duties under any state, county, or municipal law, ordinance, or regulation (42 U.S.C. 1983) (Robbins, 1986). Federal civil rights law prohibits state officials or agencies from being named as defendants in civil suits while operating in their official capacities if a plaintiff seeks monetary damages. The question remains whether the actions of private corrections facilities regulated by the state can be considered transformed into state actions under "color of state law."

Thus far, the courts have decided that persons who provide services to inmates under contract are not immune from litigation for constitutional violations.[9] What is yet to be settled is the propriety of private firms running entire correctional facilities and the broad legal or constitutional questions that might apply (Cripe, 1997: 394).

The issues raised heretofore have practical implications in the day-to-day operations of a private correctional facility. Before entering into a contractual agreement with a private firm for the operation of a prison or jail, it would be necessary to identify whether the private company can be authorized to exercise force (including deadly force) to prevent escapes, to imprison citizens against their will, and to impose penalties on those who violate the regulations and rules of the institution. In the event that staff of private facilities are not allowed to enforce the rules and regulations of the institution, the likelihood of success of these corporations is obviously diminished. However, allowing a private prison to punish inmates who have violated institutional rules (which may differ from publicly operated facilities) without oversight by the state could be a denial of due process, especially if the punishment entails the loss of good time, which would serve to lengthen an inmate's period of imprisonment.

The other area of concern deals with actual prison conditions, such as access to medical care, mental health services, work, vocational and educational services, overcrowding, and protection from harm. Travis and colleagues (1985) pose a series of questions to be considered before full privatization of correctional facilities becomes commonplace. These issues include whether the contracting government agency would be liable for any illegal actions of the contractor; if conditions in the contracted penal facility are found to violate constitutional requirements, who would ultimately be responsible for their correction and held liable for damages; whether the contracting governmental agency could be rendered immune to the actions of the contractor, any negligence that results in the escape of prisoners, or the financial mismanagement of the facility; and whether the

contracting agency would be responsible for bailing out a bankrupt contractor. With no clear court precedent on whether private prisons will come under the state action doctrine, prisoners' rights may ultimately depend on the nature of the contractual agreement between the state and the private operator.

Recent Research Regarding Privatization

Background

The debate over whether private-sector involvement in corrections should be increased has generated an extensive body of literature, comprising for the most part essays and position papers that reflect the author's stance on the issue. Often the ideological and political predispositions of the researchers seem to have shaped the interpretation of the data. However, as stated by Thomas (1997a):

> [I]t is equally clear that a rapidly growing body of literature is accumulating within which one finds highly repetitive themes. The core theme is that properly conceptualized, properly managed, and properly monitored privatization initiatives can serve the public interest. . . . Sound performance presupposes competent and qualified people from both the public and the private sector coming together cooperatively to attack important public policy problems.

Much of the discourse on correctional privatization entails an introduction to the topic, a review of the circumstances that gave rise to the demand for increased private-sector involvement, followed by a discussion of the issues involved (see for example, Bowman et al., 1993). The discussion of issues is invariably cast in favor of or in opposition to privatization. As discussed in chapter 2, there are a number of reasons why advocates support the use of the private sector in the provision of institutional correctional services. Most are related to the potential cost savings and efficient service that the private sector can achieve over the public sector. On the other hand, the movement against privatizing prisons is gaining momentum by attacking such issues as the transfer of services from a public to private provider, the potential decline in the quality of inmate services, the propriety of private-sector operation of correctional facilities, and the legal liability surrounding privatization.

There are literally hundreds of documents related to privatization of correctional services, and a few dozen studies have attempted an empirically based comparison of public and private facilities. This chapter examines the results of some of the more well-known comparative institutional studies, rather than the numerous essays and position papers that comprise the bulk of the publications in the field.

Costs

As noted previously, one of the most often debated issues in privatization literature is whether private facilities are more cost-efficient than government-operated institutions. The first and foremost argument in favor of privatizing prisons is that private managers will be more effective and efficient than public managers of prison facilities. It is argued that unlike state and federal governments, private firms are free (to some extent) from politics, cumbersome bureaucracies, and costly union contracts. Private contractors are accountable to their investors and, therefore, are presumably more motivated to satisfy the terms of their financial obligations to return a profit, which, in turn, would lead to more cost-effective operations.

There is no consensus among academics and professionals in the field concerning the potential cost savings that privately managed operators can provide. Some researchers looking at privatization initiatives proclaim "a realistic expectation of cost savings as a result of contracting is probably in the range of 5 to 15 percent," whereas others declare that the evidence accumulated thus far is not yet persuasive (Thomas and Logan, 1993).

The National Institute of Corrections Study: Okeechobee, Florida

One of the first evaluation studies of costs was funded by the National Institute of Corrections (1985) to assess the transfer of a state-operated juvenile facility to private management by a private, not-for-profit organization. In August 1982, the Jack and Ruth Eckerd Foundation was awarded a contract to manage the Florida School for Boys at Okeechobee. The Arthur G. Dozier Training School for Boys in Marianna, Florida, was chosen as the comparison facility.

Essentially, two questions were posed by the National Institute of Corrections study:

1. Would Florida's Department of Health and Rehabilitative Services (which manages the juvenile training school system) realize substantial cost savings under the new management structure?
2. Would the Eckerd Foundation deliver a program that was equal to or exceeded that provided by the state?

Data pertaining to client characteristics, managerial and administrative functions, and staff morale were collected and compared. Bearing in mind that the Eckerd Foundation is a private, not-for-profit foundation that may not have cost-efficiency profit motives, the Okeechobee study concluded:

> Management data collected during the project indicated that a number of state-required procedures were streamlined by the Eckerd Foundation; e.g., a more expeditious operation was initiated in such areas as purchasing and personnel procedures. However, the transfer brought with it additional expenses which the state-operated facility met at a less costly level; e.g., insurance, overhead charges, etc. In response to the first question: on balance, the fiscal data seem to indicate that the Eckerd Foundation achieved no significant reduction in operational costs. (National Institute of Corrections, 1985: xiii).

The study also found that no fundamental program differences were found when comparing Eckerd Foundation and Dozier clients, although staff morale was significantly lower at the Eckerd Foundation. The study noted a number of improvements in the delivery of services at the Eckerd Foundation. It also concluded that after 2 years, the Eckerd Foundation did not exceed the overall services provided by the state at the Dozier Training School.

The National Institute of Justice Studies: Tennessee, Kentucky, and Massachusetts

Two earlier studies completed for the National Institute of Justice (NIJ) analyzed the issue of cost savings and reached varied conclusions. In the first study, research conducted by Logan and McGriff in 1989 estimated that by contracting out prison management to the Corrections Corporation of America, located in Hamilton County, Tennessee, saved at least 4 to 8 percent annually over a 3-year period on operating costs for the Hamilton County Penal Farm. Potential cost savings were estimated at 5 to 15 percent (Logan and McGriff, 1989). The Hamilton County study provided an illustrative analysis that can serve as a guide for calculating accurate cost comparisons.

The Hamilton County Penal Farm shifted from public to private management in 1984. The physical structure of the facility was in a state of deterioration that required extensive renovation by CCA. The private contractor's claim to lower operating costs while renovating the physical aspects of the facility, expanding inmate capacity, and improving the quality of correctional services was tested.

The Hamilton County auditor supplied the data for the study and also assessed the hidden costs.[10] Despite the hidden costs, which were estimated to be as high as 20 to 30 percent above direct agency costs, CCA was able to demonstrate an overall savings.

A second 1989 study reached a different set of conclusions. The Urban Institute compared a public adult minimum-security institution with a privately operated prison in Kentucky and compared two pairs of public and private facilities for violent youth in Massachusetts (Urban Institute, 1989). In Kentucky, the Marion Adjustment Center, which began operation in 1986 under private contract, was compared with the state-run Blackburn Correctional Complex. In Massachusetts, the Connelly Secure Treatment Unit (public) was matched with Boston Secure Treatment (private) and the Westboro Secure Treatment Program (public) was matched with the Delany School (private). The selection of private and public juvenile facilities in Massachusetts was based on similar offender characteristics and facility conditions. In each of the three sets of facilities, the Urban Institute found that the costs were similar.

The unit costs of the private Kentucky adult facility were approximately 10 percent higher than the publicly operated facility. The authors of the Urban Institute report suspect that this 10-percent difference is likely to have occurred because of (1) the inclusion of capital costs in the private organization price and (2) economies of scale achieved by the public facility, which had an inmate population that was approximately 50 percent larger than the private facility population. The program costs in Massachusetts were all within 1 percent of one another.

The study on juvenile facilities in Kentucky and Massachusetts also examined quality-of-confinement issues. Using survey information, physical observation, interviews, and agency records, the study appraised the quality of service based on a number of key dimensions, or performance indicators (confinement, internal security and control, participation of inmates in and the quality of programs aimed at social adjustment and rehabilitation, management issues, and health care). For most of these performance indicators, the privately operated facilities had a small advantage. Overall, both staff and inmates gave better ratings to the services and programs provided at the privately operated facilities. In addition, escape rates were lower, there were fewer inmate disturbances, and, in general, both staff and clients felt more comfortable at the privately operated facilities.

The Sellers Study

Sellers (1989) compared three privately operated detention and jail facilities with three publicly operated prison facilities to learn which type operates more efficiently.[11] Due to the limited number of private correctional facilities in operation at the time, well-known privately operated institutions were selected first before matching them with comparable public facilities.

The criteria used to select public facilities included similarity in size, location, structure, age, type, capacity, and average daily occupancy. Site visits consisted of structured interviews with executive and custodial personnel, as well as other key staff (such as chaplains and nurses). The structured interview questions focused on management's view of privatization, barriers

to privatization, program and service availability, program goals, and relevant cost elements.

Sellers concluded that the three private facilities operated at a lower cost per inmate than the three comparable public facilities ($46.75 per day in the private facilities versus $73.76 in the public facilities)[12] even though the private facilities had more programs available than their public counterparts. In two of the three private facilities, the overall prison conditions were notably better than the comparable public facilities. With such compelling information, Sellers concluded that public prison facilities do not operate with the same motives and incentives as private prison facilities. Sellers further argued that the public sector operates its facilities less efficiently than the private sector. His findings support the argument for government to seriously consider private prisons as an alternative to public operation of correctional services. However, Sellers' failure to control for key factors that directly affected costs, such as facility design and inmate characteristics, severely limits his pro-privatization conclusions.

Texas Sunset Advisory Commission Study

In 1987, the 70th Texas Legislature enacted legislation authorizing the Texas Department of Corrections to contract with private vendors to finance, construct, operate, maintain, and manage correctional facilities (Texas Sunset Advisory Commission, 1991). One legislative mandate was that the state could not enter into a private contract unless the contract provided a savings of 10 percent or more over an equivalent state-run program. The Texas legislation directed the Legislative Budget Board (LBB) to establish an estimate of the financial costs for a state-run facility that would be equivalent to those proposed by the private vendor. LBB developed costs based on a hypothetical prison facility that complied with the conditions set forth by the state senate bill, existing prison operation policies, and other relevant court requirements.

The Texas Sunset Advisory Commission report calculated the total cost to the state of operating four private prisons (contract costs plus indirect costs)[13] and compared this figure with the costs the Texas Department of Criminal Justice would incur if it took over operation of the four private units. The report concluded that at the end of fiscal year 1990, the price of operating the private prisons was close to 10 percent less than if the state were to operate equivalent facilities. In addition to operating at a cost savings, the private prisons contributed to state and local economies by paying an estimated $400,000 per prison in state and local sales taxes, franchise taxes, and payments in lieu of property taxes.

The results of this study have received some criticism. A U.S. General Accounting Office (GAO) report places little faith in these hypothetical comparisons, which do not allow for unanticipated changes in components such as staffing levels, rate of occupied bed space, or other factors that

could affect actual costs (U.S. General Accounting Office, 1996a). The GAO report also noted that any changes in any assumption, or set of assumptions, for the hypothetical institution could change the size, or even the direction, of the difference in comparative operational costs. The GAO report is discussed in greater detail later in this chapter.

California Community Correctional Facilities

Sechrest and Shichor (1993) attempted a different type of public/private evaluation. Their preliminary study examined two types of correctional facilities in California: a facility operated by a private, for-profit corporation (private proprietary) and two facilities operated by municipal governments for profit (public proprietary). Public proprietary facilities are a relatively new concept in corrections. In California, these types of facilities are generally located in small cities that do not have strong economic bases. These public proprietary community correctional facilities (CCFs) have the potential to generate income and employment opportunities.

The three facilities were chosen based on their progress in establishing programs for inmates (e.g., work, education, drug/alcohol counseling, family and individual counseling, vocational evaluation and training). The study demonstrated that private proprietary CCFs cost less when considering startup costs but appear to cost about the same as public proprietary facilities in the second year. Both types of CCFs cost about $16 less per inmate per day than the California Department of Corrections (CDC) prisons.

The results of the study, however, were inconclusive due to methodological problems. Costs could not be compared with any precision because of a lack of data on capital construction for CDC facilities. The inclusion of capital costs in proprietary facility estimates, in addition to the lack of uniformity in overhead cost figures, also made comparisons between public and private facilities difficult. Nevertheless, the study is instructive for its examination of the public proprietary concept and for highlighting the problems related to gathering incomparable data elements for analysis.

The U.S. General Accounting Office Review

One of the more comprehensive reviews of comparative studies was completed by the U.S. General Accounting Office (1996a). GAO reviewed five studies completed since 1991 on correctional facilities in California, New Mexico, Tennessee, Texas, and Washington. The preliminary results of the California and Texas studies in the GAO analysis are cited previously. Four of the five studies (with the exception of New Mexico) assessed the operational costs of private versus public facilities. In their assessment of the studies, GAO researchers concluded that the "studies reported little difference and/or mixed results in comparing private and public facilities" (U.S. Government Accounting Office, 1996a: 7). On the basis of this appraisal, GAO "could not conclude whether privatization saved money."

Three of the studies (California, Tennessee, and Washington) made comparisons of costs between reasonably matched private and public facilities. In Sechrest and Shichor's (1994) California study, the private facility's average annual cost per inmate was $15,578. This amount was higher than comparable costs for one of the government-run facilities but lower than the other government-run facility ($16,627). With respect to cost efficiency, the study was inconclusive. The Tennessee study found little difference in the average daily operational costs per inmate between the one private and two state-run prisons (Logan and McGriff, 1989). The daily operational costs were $35.39 for the private facility versus $34.90 and $35.45 for the two public facilities.

Thomas and Logan (1993) disagree with the GAO 1997 report. They level the following criticisms of the report:

- The authors of the GAO report knew that the statutes of several jurisdictions defined contracting as unlawful (such as with the Texas study).
- The authors of the GAO report disregarded the cost benefits that have justified more than a decade of federal-level contracting experience.
- The authors chose to ignore recent reports from Australia, Florida, Texas, and the United Kingdom concerning the cost benefits of privatization.
- The authors shielded the draft version of the report they were circulating around the country from prepublication comments by well-established experts in the area of privatizing prisons.

The Washington State Review of the Tennessee, Texas, and Louisiana Studies

Similar to the GAO review, the Washington State Legislative Budget Committee analyzed information from the Tennessee and Louisiana studies to help the state determine the feasibility and benefits of privatization (State of Washington, 1996). Operational costs for the three Tennessee facilities mentioned previously, as well as operational costs of three multicustody facilities in Louisiana (two private and one state-run), were reexamined. For Tennessee, the private facility's average daily operational cost per inmate ($33.61) was approximately 7 percent lower than comparable costs per inmate for the two public facilities studied ($35.82 and $35.28).

For Louisiana, the average inmate costs per day for the two private facilities studied were $23.75 and $23.74, and the comparable daily operational cost for the public facility was $23.55 per inmate.

Similar to the GAO review, the Washington state review also found very little difference in the costs of private and public facilities.

Only the Texas study, whose preliminary findings are previously cited, reported findings of substantially lower (14 to 15 percent) operational costs for private versus public correctional facilities. The results of the Texas study, however, raise skepticism because the results were based on estimates rather than actual costs.

The Arizona Study

Thomas (1997b) conducted a cost analysis of a minimum-security private prison in Arizona with several publicly operated minimum-security prisons. During fiscal year 1995–1996, the privately run Marana Community Correctional Treatment Facility, managed by Management and Training Corporation, housed both male and female inmates. Although it was not possible to find a similar state-run prison in the state with respect to architectural design and inmate population, Thomas aggregated the costs of all public/state-run minimum-security prisons in the state and compared the average of these costs with the costs of the Marana facility. He found that the Marana operating costs were 13 to 17 percent less than the average for the state-operated facilities. However, some of the public facilities had costs equal to or below those of the Marana unit. It is not clear whether the lower costs of the Marana facility were more a function of its facility/architectural design and inmate population attributes than a result of privatization.

Disclosed Corporate Financial Reports

In addition to examining these individual reports, it is possible to assess the earnings of the private correctional corporations, most of which are publicly traded. By far the most detailed and favorable information on finances has been provided by Corrections Corporation of America. For example, CCA (1997) reports that the average cost per day of incarceration was $30.51 per inmate. In fact, since the organization has been in existence, it has kept its per diem operating cost per inmate near the $30 to $32 level while its level of compensation has increased from $32.71 per inmate in 1987 to $42.72 in 1997. CCA was compensated by its clients per inmate in 1997 for $42.72. With 10.5 million billable man-days in 1997, the corporation had revenues of more than $460 million and a net profit of well over $400 million using the cost figures shown in table 7.

Despite this positive financial picture, there may be problems ahead. For example, CCA announced on October 10, 1998, that it would not be renewing four contracts in Texas because the terms of the proposed new contracts had become less profitable (*Wall Street Journal*, October 10, 1998). Furthermore, the average share value for all private corrections companies had declined sharply since April 1998. Wackenhut's stock had dropped by more than 25 percent from its high to its close in April 1998 due to lower than expected revenue growth rates.

Table 7 Financial Data for Corrections Corporation of America, 1987 and 1997

Financial Item	1987	1997
Revenues	$17,011,000	$462,249,000
Beds under contract	1,715	52,890
Compensated man-days	520,101	10,524,537
Available man-days	614,098	11,293,228
Percentage capacity	84.7	93.2%
Revenue per man-day	$32.17	$42.72
Cost per man-day	$28.18	$30.51
Stock price range	$3½ – 3¾	$45⅞ – $28½

Source: Corrections Corporation of America (1997).

Much of the disillusion with these stocks involves concern over the lack of future growth. Few announcements have been made of major new contracts; most of the "added capacity" has occurred when larger firms merged with smaller firms. For example, CCA bought U.S. Corrections Corporation and the facilities and contracts formally managed by the Bobby Ross Group. Correctional Services Corporation has announced it will merge with Youth Services International. All of these transactions suggest a consolidation of private-sector firms and, more significantly, little growth in overall bed capacity as the public sector becomes more wary about the benefits of privatization.

In summary, the cost benefits of privatization have not materialized to the extent promised by the private sector. Although there are examples of cost savings, there are other examples in which such benefits have not been realized. Moreover, it is probably too early to determine if the initial cost savings can be sustained over a long time period. It only takes one major disturbance for such costs to greatly accelerate.

Inmate Services, Quality of Confinement, and Public Safety

A central issue raised by critics of privatization is that firms motivated by financial gain might make decisions that enhance profits at the expense of the rights and well-being of inmates (Durham, 1993). Privatization opponents are concerned about possible deterioration in the quality of inmate

services. History shows that privately operated facilities are often plagued by problems associated with the quest for higher earnings. Proponents argue that abusive behavior and poor service would defeat the long-term interests of private contractors and can be avoided with careful monitoring and legislation to hold the contractor accountable.

Studies comparing the quality of inmate confinement are less common than studies comparing costs, although a number of studies attempt both. To date, the limited experience with privately managed prisons does not allow a thorough evaluation of inmate services provided by public and private prisons. However, the limited number of studies that systematically evaluate the performance of private and public facilities regarding the quality of confinement yield insight into methods of improving future research in this area.

The Silverdale Study

One of the first of its kind, the Silverdale Study (Brakel, 1988) surveyed inmates at the Silverdale Detention Center in Chattanooga, Tennessee. This facility has been under contract with CCA since fall 1984. The study used a series of interviews with prison inmates and staff and close observation of institutional conditions and procedures to provide documentary evidence of various aspects of prison life. A questionnaire was given to a sample of 20 inmates. The 16 questions on the questionnaire covered topics such as conditions of confinement, programs and services, due process procedures, and opportunities for inmate contact with outside community groups. For each primary question the inmates were also asked two subsidiary comparative questions. One question asked inmates to compare a specific area of CCA's private management with the county's management. The second question was included because relatively few inmate respondents had experienced living conditions at Silverdale under county management and therefore could not properly evaluate the difference between the two. Inmates were asked to compare the operation of the Silverdale facility with any other prison facility in which they had served time (typically the county jail in downtown Chattanooga).

The inmates rated the Silverdale facility under the management of CCA highly on most issues (e.g., physical improvements, upkeep and cleanliness, staff competence and fairness, work assignments, request and grievance procedures, counseling and religious services, visitation and telephone privileges, and outside contacts). In other areas there was an equal balance of positive and negative responses (e.g., safety, security, classification, medical care, food, education, and legal access). Recreation and release procedures received mostly negative ratings.

Brakel (1988) concluded that "the evidence is overwhelming that the private takeover of Silverdale has resulted in substantial improvements in the institution's physical conditions and upkeep, as well as several critical areas of inmate service and institutional procedure."

Thomas and Logan (1993), however, asserted that, although some may argue that Silverdale was a case of a poorly managed county operation that CCA could not fail to improve, prisoners with relevant experience favorably compared the private operation with a local jail or the state penitentiary. In this regard, the results of the study could not be considered conclusive.

The New Mexico Study

Logan (1991) compared the quality of confinement in a state-operated women's prison in 1988 with a privately operated version of the same prison in 1989 and a federal women's prison in New Mexico. Defined along eight dimensions, quality of confinement is measured using 333 indicators (131 of which were available also for the federal prison). The sample consisted of 132 inmates and 112 staff members at the state prison, 134 inmates and 76 staff members at the private facility, and 78 staff members at the federal institution. Results of all possible pairing comparisons between prisons were summarized (for each prison on each dimension) in a comparative score called the Prison Quality Index. The quantitative data were supplemented with qualitative information from survey comments and site visits.

Logan concluded that the private prison outperformed its state and federal counterparts on all dimensions except care (where the state scored slightly higher) and justice (where the federal prison matched the private).[14] Logan found that both the state and private prisons were good-quality institutions, using the federal prison as a standard of good quality. Although each prison had different strengths and weaknesses, on most dimensions the state had improved the quality of confinement for its female felons by contracting with a private operator.

The U.S. General Accounting Office Review

The U.S. General Accounting Office (1996a: 9) also examined measures of confinement quality. With regard to comparisons of quality, the report stated:

> Of the five studies reviewed, two (New Mexico and Tennessee) assessed the comparative quality of service between private and public institutions in great detail. Both studies used structured data-collection instruments to cover a variety of quality related topics, including safety and security, management, personnel, health care, discipline reports, escapes, and inmate programs and activities. The New Mexico study reported equivocal findings, and the Tennessee study reported no difference between the private and public institution.

On the basis of correctional staff surveys and reviews of institutional records, the New Mexico study reported that the private prison

"outperformed the public facility on most of the measured quality dimensions." On the other hand, inmate surveys showed the public facility outperforming the private facility on every dimension except inmate work and training program activities.

The Tennessee study of one private and two public facilities reported that "all three facilities were operated at essentially the same level of performance." The results were based upon an operational audit of the facilities by a team of inspectors.

Florida Correctional Privatization Commission Recidivism Study

A study conducted by the Florida Correctional Privatization Commission implemented a different approach to comparing public and private prisons (Lanza-Kaduce, et al., 1998). The study matched 198 inmates from both private and public prisons in several categories and compared their rates of recidivism. The study compared inmates in the areas of rearrest, technical violations of terms of release, resentencing on a new offense, and reincarceration. In virtually every category the private prison outperformed the public facility. The major findings of the study include:

- Ten percent of the private prison inmates were rearrested during the 12 months following release versus 19 percent of the public prison inmates.
- Six percent of the private releases were resentenced for a new offense versus 10 percent of the public inmates.
- Ten percent of private inmates were reincarcerated within 12 months compared with 14 percent of public inmates.
- Overall the indicators revealed that 17 percent of the private releases have an indication of recidivism versus 24 percent of public releases.

The only area in which public prisons outperformed private prisons was in technical violations. The study found that technical violations of the terms of release were lower for public releases than for private ones.

The study has come under criticism by researchers at the Florida Department of Corrections (FDOC). The study was criticized for its small sample size (396 total); equivalencies based on racial identity, age, and prior incarceration and offenses that did not provide true matches of inmates; and the fact that many of the inmates in private prisons also spent time in public prisons, thus tainting the comparison group. Other areas FDOC would have liked to see factored into the results were sentence length, time served, custody level, and true matches of prior records, all of which would influence recidivism.

Logan (1991), however, earlier suggested that, although such a study cannot definitively conclude that recidivism rates are lower at private prisons

because of the problems with the equivalency of matches, the results do show that private facilities had more of an incentive to develop antirecidivism programs because they could lose support from the legislature if they performed poorly.

Health Care

Although not comparative in nature, the issue of privatized health care for correctional institutions was the focal point of two additional studies—one conducted by the Joint Legislative Audit and Review Commission (JLARC) of the Virginia General Assembly and the other by KPMG Peat Marwick, a private management consulting firm. Both studies examined the potential benefits of a shift to private health providers in the District of Columbia. In both Virginia and Washington, D.C., the state of correctional health care was in crisis, due primarily to budgetary constraints. Not surprisingly, the two agencies reached different conclusions concerning the feasibility of privatized health care.

The Virginia study concluded that the Virginia Department of Correction's (VDOC's) experiment with privatization of inmate health-care delivery at the Greensville Correctional Center was a failure at the time the study was conducted (Joint Legislative Audit Review Commission, 1994). Among the problems cited were:

- Documentation of health-care services was poor, including medical records, sick-call logs, and tuberculosis testing documentation and followup.
- Physician coverage was uneven and medical segregation units at Greensville had problems obtaining adequate physician coverage.
- Respiratory isolation rooms and x-ray equipment problems were not addressed in a timely manner.
- The contractor at Greensville had not complied with the contract requirements for implementing quality improvement activities.
- Costs of the contract exceeded appropriated amounts by 50 percent in fiscal year 1992; communications on contract modifications were poor; and contract compliance issues remained unresolved during the contract period.

JLARC indicated that although VDOC had contracted with a vendor to provide services at Greensville, the department was still responsible for ensuring inmate access to adequate care, monitoring the provision of services at the facility, documenting services rendered, and ensuring adequate monitoring of contract costs.

The second private health-care study was conducted by management consultants KPMG Peat Marwick (1994) in response to deficiencies found in

the mental and medical care that the District of Columbia's Department of Corrections (DOC) provided at the District's jail and at the Lorton Correctional Facility. Four privatized health-care delivery options were analyzed using three criteria identified by the District as goals for privatization. The options by type of services covered were:

Option 1: Contractor covers medical outpatient, dental, medical inpatient, and mental health services.

Option 2: Contractor covers medical outpatient, dental, and medical inpatient services.

Option 3: Contractor covers medical outpatient and dental services.

Option 4: Contractor covers medical outpatient services.

The criteria used to analyze these options were:

1. Cost: Does the option reduce costs?
2. Incentives: Does the option avoid cost shifting to other health-care providers?
3. Accreditation and quality of care: Does the option ensure high-quality care and the best chance for accreditation at all DOC health-care facilities?

Each option carried with it the assumption that one contractor would provide services at all DOC facilities and the District would continue to cover any services that the contractor does not cover.

KPMG Peat Marwick (1994: v) recommended that a "comprehensive contract for all services—medical, mental, and dental—at all DOC facilities is the best privatization option for the District." Option 1 was considered the best alternative, for it met all three criteria mentioned above.

> Option 1 meets the costs, incentive, and accreditation criteria. Using the average cost for privatization, Option 1 reduces District costs by 7.3 percent annually (this excludes one-time severance costs). One bid shows savings that exceed 10 percent over the life of the contract. Option 1 avoids the costs shifting that occurs when one party is responsible for outpatient care and another is responsible for inpatient care. Finally, because Option 1 covers all services, including mental health, the District's chances for achieving accreditation for all facilities is greater.

KPMG's analysis of privatization alternatives failed to address the disadvantages and potential problems that may arise during the process of privatization because privatized health care was viewed as the best solution to the legal requirements mandated by District law. Yet, given the experiences in Virginia, adequate monitoring mechanisms must be in place to ensure that the advantages of privatized services are achieved.

Additional Literature

Additional sources on privatization are worth noting. These studies are primarily informative in nature but do not offer a comparative analysis of public versus private services on the issues relating to costs and quality of services.

An often cited seminal study in the field of privatization was conducted by Camp and Camp (1984). This study reviewed literature on private-sector involvement in corrections and gathered data from interviews with correctional administrators, researchers, and private vendors. Interviews with correctional administrators focused on the benefits and liabilities of privatization, as well as their concerns about monitoring, accountability, and control. The study also based its findings on information collected from various state adult and juvenile correctional systems in the District and in the federal prison system. Among the information gathered was which agencies do the most contracting (juvenile agencies), the variety of contracts reported, and how much is spent on contracted services.

GAO produced a study on lessons learned from privatization experiences of state governments in Georgia, Massachusetts, Michigan, New York, and Virginia, as well as the city of Indianapolis, Indiana (U.S. General Accounting Office, 1997). The study did not specifically address the topic of correctional privatization, although many guidelines were proposed for successful privatization in the field of corrections. On the basis of their review of the literature, interviews with privatization experts, and the combined practical experiences with privatization efforts in each jurisdiction, GAO made the following observations:

- Privatization requires a political champion. When introducing and sustaining privatization initiatives, political and administrative leaders should anticipate the need to develop and communicate a privatization philosophy and attempt to garner outside support.
- Once privatization has been introduced, a formal structure to ensure effective implementation must be designed. Such a structure can include a commission to identify privatization opportunities and set privatization policy, a staff office that can support agencies in their privatization efforts and oversee implementation, and a framework for making privatization decisions.
- Government agencies may need to enact resource changes to encourage or facilitate the use of privatization. These changes are necessary to signal to managers and employees that privatization efforts are resolute.
- Reliable and complete cost data on government activities are needed to ensure a sound competitive process and to assess overall performance. Reliable data can simplify the privatization decisions and make these decisions easier to implement and justify.

- Strategies are needed to manage workforce transitions. These include, but are not limited to, encouraging employee involvement in the privatization process, providing skills training for either competing against the private sector or monitoring contract performance, and creating a safety net for displaced employees.
- Monitoring and oversight that not only evaluate compliance with the terms of the privatization agreement but also evaluate compliance with the private firm's performance in delivering services are needed when the government's direct role in the delivery of the service is reduced through privatization. This is necessary to ensure that the government's interests are protected and that accountability of both government and the private party is maintained.

One other report should be noted, although it is not a traditional research report (Clark, 1998). This report takes a look at the troubled CCA facility in Youngstown, Ohio, referred to as the Northeast Ohio Correctional Center. This facility was constructed in 1996 as a "spec prison." Soon after it opened, it was largely filled with sentenced felons from the District's DOC. Under the terms of the contract between CCA and the District, all inmates transferred to the facility were to be classified no higher than medium security. However, according to the Clark report, maximum-custody inmates were transferred to the facility with the knowledge and approval of both the District and CCA. The Clark report listed the following major incidents that had occurred within the first 15 months of operation (Clark, 1998: 7):

- Six inmates escaped.
- Two homicides occurred, including one between known enemies in the high-security unit, involving breakdowns in a number of critical procedures.
- Seventeen inmates were stabbed and numerous other serious assaults against staff and inmates occurred.
- Homemade weapons were discovered.
- For long periods of time the facility was forced to operate under full or partial lockdown to prevent further incidents of unrest.

The U.S. District Court in the District on March 1, 1999, granted preliminary approval of a $1.6 million settlement on behalf of the District inmates who claimed that they were abused, denied adequate medical care, and not properly separated from other inmates. CCA has been ordered to pay $756,000 in legal fees toward this judgment. These costs do not include the costs incurred by CCA and the District to defend themselves in the lawsuit. Furthermore, families of the inmates who were killed or died at the correction center from other causes can sue CCA and the District separately. One family has already filed a multimillion-dollar lawsuit against the former District Director of Corrections, CCA, and the District for the

death of a family member. The Federal Bureau of Investigation has opened an investigation into allegations of abuse of inmates by CCA staff.

The Youngstown situation is a sobering illustration of how badly things can go in a contract. There have been other recent examples of private prisons having major operational difficulties. In a recent article in *The Atlantic Monthly*, Schosser notes a number of major scandals and examples of bad management in private prisons (Schosser, 1998). This is not to say that situations like those in Youngstown are typical of most private prisons. Indeed, the national survey results reported in chapter 4 suggest that the functions of private prisons are similar to those of public prisons. However, if the basic management structures are not in place, serious problems can quickly erupt that will have severe litigation, public safety, protection-from-harm, and cost consequences.

Summary

Only a few studies can be relied upon in a debate over cost efficiency of prisons. It is generally accepted that the best research conducted to date was the Tennessee study that showed no or very minimal differences with respect to costs. The remaining studies had serious methodological flaws that limit their ability to reach firm conclusions. In general, these flaws pertain to an inability to control for factors known to be associated with inmate conduct and costs in making comparisons between public and privately operated facilities. For example, facilities chosen for comparisons often had inmates that differed on key attributes such as inmate age and classification level—factors known to be associated with inmate conduct.

In some studies impact or outcome data used for analysis either were flawed or may have been contaminated by staff because they knew the results would be used to reach unflattering conclusions by the researchers studying the facility. Information on measures such as inmate assaults and even escapes can be easily manipulated by staff unless rigorous controls are applied to ensure inmate behavior is being measured in a standard and reliable manner.

Studies of public and private facilities must include comparable facility types, institutional capacity, and inmate demographics. In addition, the dimension of time must be considered. The studies thus far are essentially one-time studies that measure the attributes of private and public facilities at a given time. To date, no long-term studies have been conducted to determine whether privately operated facilities can sustain their cost savings or quality of confinement over an extended period of time, especially if staff salaries and fringe benefits increase as their service tenure lengthens.

As pointed out by Gaes and colleagues (1998), a coherent theory of why privately operated prisons would outperform public facilities has yet to

emerge. Instead, one could argue that the private sector has simply drawn upon the methods used by the public sector with respect to inmate management and staffing and only attempted to reduce the costs associated with that model. In effect, the private sector may be applying a more efficient model that is essentially mimicking the public sector. This is most obvious in facilities at which former public-sector managers have been recruited by the private sector to manage the private facilities. Should this approach be considered by policymakers, the future of privatization may be very limited as the public sector in turn copies the private sector's methods.

For these reasons it may be concluded that there are no data to support the contention that privately operated facilities offer cost savings over publicly managed facilities. Similarly, no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities. It is clear that private prisons can function as well as public-sector prisons for certain types of inmates (such as minimum security) and that they are aggressively pursuing a share of the multibillion-dollar prison and jail industrial complex.

The National Survey of State Prison Privatization

Background

A major conclusion one can draw from the research review is that limited information exists on the performance of most privately operated facilities. The National Council on Crime and Delinquency (1998) estimates that only 13 privately operated facilities have undergone contemporary evaluations of their performance in comparison to public facilities. This is less than 1 percent of all prisons now operating in the United States and about 20 percent of the private prisons. To secure a more comprehensive overview of all privately operated prisons, a national survey was funded by the Bureau of Justice Assistance (BJA), U.S. Department of Justice, to develop a more comprehensive review of the private prisons. The methodology and results of the survey are presented in this chapter.

Survey of Public and Private State Facilities

Methodology

In late 1997, private correctional management firms were asked to participate in the national survey of state prison privatization. The firms received copies of the survey instrument for distribution at their facilities.[15] The survey was based on a format used by the Bureau of Justice Statistics (BJS) in its *Census of State and Federal Correctional Facilities, 1995* (Bureau of Justice Statistics, 1997b).[16] By using the BJS survey, comparisons could be made directly between the public prison population for midyear 1995 and the private prison population as of December 31, 1997.

Information from privately operated state facilities was gathered during the first quarter of 1998. Survey respondents were asked to provide information from calendar year 1997 and, in many instances, details specifically for December 31, 1997. Ten private companies were identified as managing at least one operational state prison. Three of the ten firms chose not to participate in the survey.[17] These three firms operated five state facilities. The seven remaining management firms were identified as managing 76 state facilities either in operation or under construction. Of those 76 state prison facilities, 4 were not open during the timeframe covered by the survey instrument and 7 of the facilities did not return questionnaires before data collection and analysis began. Three international facilities were originally identified as juvenile confinement facilities in the data analysis,

bringing the final tally to 7 operators of 65 private prisons. The Corrections Corporation of America and Wackenhut Corrections Corporation manage 49 of the 65 private state facilities identified.

Inmate and Facility Characteristics

Table 8 summarizes inmate characteristics for the 65 private facilities included in the survey. A total of 46,120 inmates were housed in privately operated state prisons on December 31, 1997. More than 90 percent were male, a percentage comparable to the inmate population at federal and state public facilities at midyear 1995. As in public facilities, a total of more than 60 percent of all persons held in private state facilities were black or Hispanic.

Data provided in table 8 and table 9 also indicate that the private sector has yet to penetrate the market for housing maximum/close-custody prisoners. More than 93 percent of incarcerated inmates at private state prisons were medium- and medium/low-custody inmates (table 8). Only 2 facilities out of 65 were identified as maximum-security institutions, with 1 located outside of the United States (table 9).[18] Medium-security institutions accounted for the largest number of private state facilities sampled: 38 of 62 were medium security, and 25 were minimum or low-level security. Approximately three out of four facilities housed exclusively male inmates—not surprising given the composition of public prison populations. Seventeen percent of the private state facilities housed both sexes; 8 percent housed females only. Approximately 75 percent of the male inmate population was housed in exclusively male facilities; the other approximately 25 percent was housed in facilities for both sexes. The female private prison population was split evenly between females-only institutions (50.6 percent) and mixed housing (49.4 percent).

The two maximum-security facilities were large institutions, housing 1,000 inmates or more. Minimum-security facilities tend to be much smaller, with 72 percent housing fewer than 500 inmates. The average daily populations of medium-security prisons ranged from as low as 106 inmates to as high as 1,600. About 50 percent of all inmates in private facilities (22,674) were housed in medium-security institutions; 44.2 percent (20,379) were detained in minimum-security institutions. Only 4.6 percent of the inmates (2,111) were confined in maximum-security prisons and all were male.

Table 9 provides information about the age, average daily population, and function of private state facilities. The majority of institutions (83.1 percent) were confinement institutions that manage general adult populations. Substance abuse treatment and work release/prerelease were named in 21.5 percent of the cases as the primary facility function; persons returned to custody was a primary facility function in 18.5 percent of cases. Data on the ages of the facilities attest to the recent emergence of the private corrections industry; for example, nearly 90 percent of state facilities sampled were constructed within the last 10 years.

Table 8 Inmate Characteristics at Public Facilities at Midyear 1995 and Private Facilities as of December 31, 1997

Inmate Characteristics	Public Facilities*		Private Facilities	
	Number of Inmates	Percentage	Number of Inmates	Percentage
Number of inmates	1,023,572		46,120	
Gender				
Males	961,210	94.0%	42,215	91.5%
Females	62,362	6.0	3,905	8.5
Under age 18	5,309	0.5	180	0.4
Custody level				
Maximum/close/high	202,174	19.8	2,111	4.6
Medium	415,688	40.6	22,674	49.2
Minimum/low	366,277	35.8	20,379	44.2
Not classified	39,433	3.8	956	2.1
Racial or ethnic identity†				
White	363,918	35.5	14,620	31.7
Black	488,222	47.7	20,268	43.9
Hispanic	147,365	14.4	9,550	20.7
American Indian/Alaska Native	10,519	1.0	494	1.1
Asian/Pacific Islander	8,436	0.8	291	0.6
Not reported	5,112	0.5	897	1.9

* Data for midyear 1995 include federal and state correctional facilities.
† The number of inmates of Hispanic origin is underreported for public facilities. In 28 federal facilities, racial identity but not ethnic identity was reported for 21,563 inmates.
‡ Discrepancies in totals are due to rounding.
Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Table 9 Characteristics of Private Facilities by Level of Security as of December 31, 1997

Facility Characteristic	Total		Maximum		Medium		Minimum	
	N	%	N	%	N	%	N	%
All Facilities	62	100.0%	2	3.1%	38	58.5%	25	38.0%
Sex of Inmates Housed								
Males only	49	75.4	2	3.1	29	44.6	18	27.7
Females only	5	7.7	0	0	3	4.6	2	3.1
Both sexes	11	16.9	0	0	6	9.2	5	7.7
Function*								
General adult population	54	83.1	1	1.5	37	56.9	16	24.6
Boot camp	0	0	0	0	0	0	0	0
Reception/ diagnosis	5	7.7	0	0	3	4.6	2	3.1
Medical treatment/hospital	3	4.6	0	0	2	3.1	1	1.5
Alcohol/drug treatment	14	21.5	1	1.5	6	9.2	7	10.8
Youthful offenders	2	3.1	1	1.5	1	1.5	0	0
Work release/ prerelease	14	21.5	0	0	6	9.2	8	12.3
Returned to custody	12	18.5	0	0	6	9.2	7	10.8
Other	5	7.7	1	1.5	3	4.6	1	1.5
Age of Facility (in yrs)§								
< 10	58	89.2	2	3.1	36	55.4	20	30.8
10–19	0	0	0	0	0	0	0	0
20–49	5	7.7	0	0	1	1.5	4	6.2
50–99	1	1.5	0	0	0	0	1	1.5
≥ 100‡	1	1.5	0	0	0	0	1	1.5

Table 9 Characteristics of Private Facilities by Level of Security as of December 31, 1997 *(Cont.)*

Facility Characteristic	Total		Maximum		Medium		Minimum	
	N	%	N	%	N	%	N	%
Average daily pop. (number of inmates)								
< 500	28	43.1	0	0	10	15.4	18	27.7
500–999	27	41.5	0	0	22	33.8	5	7.7
1,000–2,499	10	15.4	2	3.1	6	9.2	2	3.1
≥ 2,500	0	0	0	0	0	0	0	0

* Figures may add to more than the total number of facilities because some facilities may have more than one function.
§ Refers to the number of years between the date of original construction and the survey year.
‡ The oldest privately operated facility is operated by CiviGenics, which originally opened as a hospital in 1896.
‡‡ Discrepancies in totals due to rounding.
Source: Bureau of Justice Statistics (1997b).

Programming

The 65 private state facilities surveyed produced an impressive record of programming activities (table 10). All of these facilities maintain some type of work, education, and counseling program for inmates. Facility support projects such as office work, food service, laundry, and building repair engaged inmates at all institutions surveyed. In addition, public works assignments were reported for 43 percent of the facilities. Nearly 22 percent of the private facilities reported other types of work programs, most notably work in education and community service. A number of facilities support private industry joint ventures or free world industry projects that have the potential to aid inmates in postrelease transition. About 64 percent of all inmates at private facilities participated in one or more work programs as of December 31, 1997, a similar percentage to those who participated in work programs in public institutions at midyear 1995.

More than 96 percent of the private facilities provide both secondary educational programs (including the general equivalency diploma) and basic adult education. A large percentage (81.5 percent) also provide some type of vocational training. Special educational programs for inmates with learning disabilities were available at 47.7 percent of the private facilities, and 43.1 percent offer college-level coursework. Overall, 38.3 percent of private facility inmates were participating in some form of educational programming on December 31, 1997. This finding indicates a higher private facility participation rate on December 31, 1997, than that at public facilities (23 percent) in midyear 1995 (table 10).

Drug and alcohol awareness programs were available at almost every private institution surveyed, as were life skills/community adjustment

Table 10 Types and Rates of Participation in Institutional Programs at Public Facilities at Midyear 1995 and at Private Facilities as of December 31, 1997*

Facility Characteristics	Public		Private	
	N	%	N	%
All Facilities	1,500	100.0%	65	100.0%
With Work Programs	1,404	93.6	65	100.0
Prison industries	560	37.3	8	12.3
Facility support services	1,348	89.9	65	100.0
Farming/agriculture	371	24.7	9	13.8
Public works assignments	781	52.1	28	43.1
Other work programs	149	9.9	14	21.5
With education programs	1,311	87.4	65	100.0
Basic adult education	1,118	74.5	63	96.9
Secondary education†	1,115	74.3	64	98.5
Special education	496	33.1	31	47.7
Vocational training	806	53.7	53	81.5
College courses	498	33.2	28	43.1
Study releases	161	10.7	5	7.7
With counseling programs	1,451	96.7	65	100.0
Drug counseling	1,327	88.5	64	98.5
Alcohol counseling	1,345	89.7	65	100.0
Psychological counseling	1,028	68.5	46	70.8
Employment counseling	897	59.8	53	81.5
Life skills, community adjustment counseling	999	66.6	64	98.5
Parenting	576	38.4	35	53.8
Other	296	19.7	13	20.0
Inmates participating in				
Work programs	662,807	64.8	29,668	64.3
Educational programs	234,966	23.0	17,685	38.3

* Inmate participation numbers are based on reporting from 95 percent or more of the facilities. Totals for public facilities include federal and state confinement institutions.
† Includes general equivalency diploma (GED).
Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

counseling. A high percentage of the private institutions also provide employment consultation (81.5 percent), psychological or psychiatric counseling (70.8 percent), and parenting and child-rearing skills (53.8 percent). Data from public facilities also reveal a high percentage of facilities that maintain a variety of counseling programs. Corresponding completion or attrition rates were not available; thus the participation figures can be misleading about the positive influence of such programs.

Staffing and Employment

Private facilities reported a total of 13,344 regular and nonpayroll support staff (table 11). The number of full-time, or regular, staff ranged from as low as 19 at the smallest institution to 532 at the largest. Correctional officers accounted for 63.2 percent of employees at private facilities in 1997; a similar percentage were employed as security staff at public correctional facilities. Professional treatment staff accounted for 12 percent of private correctional employees, followed by clerical (7.9 percent), educational (5.8 percent), and maintenance and food service (5.5 percent).

Private state prisons have higher proportions of minority employees compared with public prisons. Fifty-three percent of the staff at private facilities were white (table 11), whereas 31.7 percent (table 8) of the inmate population was white. At public facilities, the corresponding figures in 1995 were 71.3 percent (table 11) and 35.5 percent (table 8), respectively. The racial composition of staff to inmates was similar for blacks at both types of facilities. Blacks comprise 22.4 percent of the staff and 43.9 percent of inmates at private state prisons versus 20 percent of staff and 47.7 percent of inmates at public facilities.

Hispanics, on the other hand, comprise 14.4 percent of the inmate population at federal and state public facilities but only 6.3 percent of the correctional staff. Among the 65 private state facilities surveyed, Hispanics made up 20.7 percent of the inmate population and 18 percent of the staff. When the three facilities located in Puerto Rico were excluded from the analysis, the private facilities still had a larger percentage of Hispanic staff (13 percent staff and 17 percent inmate population) than those employed at public facilities.[19]

Table 12 displays, by private state facility, basic salary information and the number of employees hired, terminated, tested for drugs, and unionized. The average starting salary for correctional officers in 1997 was $17,514.[20] U.S. Corrections Corporation reported the lowest average starting salary at $14,824; Wackenhut Corrections Corporation had the highest at $18,785. The number of staff hired and terminated is largely driven by the number of facilities in operation and facility size—large and medium-sized institutions tend to have higher staff turnover rates. Only one private facility in the United States is unionized. In contrast, three of the four unionized facilities were international prisons operated by Wackenhut Corrections

Table 11 Persons Employed in Public State Facilities at Midyear 1995 and at Private State Facilities as of December 31, 1997

Personnel Characteristics	Public		Private	
	N	%	N	%
All facilities	247,320	100.0%	13,344	100.0%
Administrative	9,509	2.8	554	4.2
Correctional/security	220,892	65.4	8,427	63.2
Clerical support	27,383	8.1	1,060	7.9
Educational	11,020	3.3	774	5.8
Professional treatment	45,291	13.4	1,604	12.0
Maintenance and food service	23,605	7.0	735	5.5
Other	0	0	190	1.4
Racial or ethnic identity†				
White	232,382	71.3	6,954	53.0
Black	65,513	20.0	2,964	18.0
Hispanic	20,702	6.3	2,364	18.0
Native American/Other‡	6,576	2.0	131	1.0
Asian/Pacific Islander	NA	NA	60	0.5
Not reported	974	0.3	669	5.1

* A total of 241 employees were not designated by employment category at 20 of the facilities.
† Includes only payroll staff for public facilities. Private facilities data include nonpayroll staff when given by private operator: 21 private facilities included 200 nonpayroll staff in their racial breakdowns. Two private facilities with 669 payroll staff could not provide a racial breakdown of staff.
‡ Figures for public facilities include Alaska Natives, Asians, Native American, and Pacific Islanders.
Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Corporation and located in Australia and the United Kingdom. CiviGenics is the only operator that does not have an employee drug testing policy.

Inmate Violations and Deaths

Table 13 compares the number of major infractions at public and private institutions per 1,000 inmates, including staff assaults, riots, fires, and other disturbances. The table reveals a greater number of inmate-on-inmate assaults per 1,000 inmates at private prisons (35.1 percent) than at public facilities (25.4 percent). Assaults resulting in inmate deaths were

Table 12 Characteristics of Employment in Private Facilities, January 1–December 31, 1997

Contractor	Facilities	Co-Starting Salary	Staff Hired	Staff Terminated	Facilities That Test for Drugs	Employees Tested for Drugs	Unionized Facilities
Cornell Corrections	3	Min: $14,580 Max: $16,598 Avg: $15,537	58	33	1	125	0
Correctional Services Corporation	3	Min: $14,040 Max: $20,800 Avg: $17,333	224	132	3	150*	0
Corrections Corporation of America	27	Min: $13,200 Max: $24,600 Avg: $17,246	4,454†	1,327‡	24	3,029§	(U.S.) 1
CiviGenics	2	Min: $16,000 Max: $16,000 Avg: $16,000	9	0	0	0	0
Management Training Corporation	3	Min: $16,640 Max: $22,425 Avg: $18,665	111	89	3	223	0
U.S. Corrections Corporation	5	Min: $14,040 Max: $17,200 Avg: $14,824	271	257	4	342	0
Wackenhut Corrections Corporation	22	Min: $12,958 Max: $35,173 Avg: $18,785**	3,022	1,750	20	2,735††	(Aus.) 2 (U.K.) 1

* Based on 2 facilities reporting.
† Based on 25 facilities reporting.
‡ Based on 24 facilities reporting.
§ Based on 17 facilities reporting. Three facilities do not test, and 7 facilities were missing data.
**Based on 21 facilities reporting. One international facility reported data in British pounds.
†† Based on 19 facilities reporting. Two facilities do not test, and 1 facility was missing data.
Source: National Council on Crime and Delinquency (1998).

extremely rare at both types of institutions. Rates of assaults on staff, riots, fires, and other disturbances are comparable for private and public facilities. A total of 45 escapes occurred at 14 private facilities between January 1, 1997, and December 31, 1997. The rate of escapes per 1,000 inmates for the 62 private facilities is 1.06 percent. BJS's *Census of State and Federal Correctional Facilities, 1995* reported that the number of inmate deaths rose from 2.4 per 1,000 state inmates in 1990 to 2.7 in 1995. The death rate at privately operated prisons is considerably lower at 0.7 per 1,000 inmates for the same time period. However, as with all of these comparisons, they cannot be used to conclude that either a private or a public prison is superior to the other as this analysis cannot control for all factors that influence

Table 13 Major Incidents in Public Facilities (July 1, 1994–June 30, 1995) and in Private Facilities (January 1–December 31, 1997)*

Inmate Violation	Number of Violations		Number of Violations per 1,000 Inmates†	
	Public	Private	Public	Private
Assaults on inmates	25,948	1,617	25.4	35.1
Resulting inmate deaths	82	1	0.1	0.0
Assaults on staff	14,165	584	13.8	12.7
Resulting staff deaths	14	0	0.0	0.0
Riots‡	317	12	0.3	0.3
Fires	816	29	0.8	1.2
Other disturbances	1,808	56	1.8	1.2
Total	43,054	2,298	42.3	50.5
Inmate Deaths	**Number of Deaths**		**Number of Deaths per 1,000 Inmates†**	
	Public	**Private**	**Public**	**Private**
Homicides by other inmates	82	1	0.1	0.0
Suicides	169	1	0.2	0.0
AIDS	1,111	4	1.1	0.1
Natural causes	1,186	21	1.2	0.5
Other causes§	113	3	0.1	0.1
Total deaths	2,661	30	2.9	0.7

* Excludes tickets, official warnings, and other minor incidents.
† Based on average daily population.
‡ Includes only incidents that had five or more inmates participating, that required the intervention of additional or outside assistance, and that resulted in serious injury or significant property damage.
§ Other causes include accidents and other deaths.
Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

these performance measures. However, later in this chapter a reanalysis of private and public facilities is conducted controlling only for medium- and minimum-security facilities.

Disciplinary Resources

Data on disciplinary resources are limited due to the absence of automated data collection systems at the facilities. Only 23 facilities maintained an

automated data collection system to count the number of assaults, escapes, deaths, disturbances, staff turnover, inmate participation in programs, and so on. Twenty of those 23 facilities had performance monitoring capabilities. Two private management firms, CiviGenics and Management Training Corporation, operated minimum-security, specialty-function prisons that did not maintain disciplinary, protective custody, or administrative segregation units (table 14). Most Corrections Corporation of America facilities operate disciplinary and administrative segregation units, as do the majority of Wackenhut Corrections Corporation facilities. On December 31, 1997, 95 percent of the inmates consigned to disciplinary action units and 90 percent held in administrative segregation were housed in either a CCA or Wackenhut Corrections Corporation institution. A smaller number of facilities (20) operated a distinct protective custody unit. All inmates within protective custody were housed in a CCA or Wackenhut Corrections Corporation institution.

Lockdowns were not a primary means of discipline or control at the majority of privately operated institutions surveyed. The 65 facilities together reported 67 lockdowns for a total of 394.5 days between January 1 and December 31, 1997. However, the majority of the days in lockdown (282) occurred at only three medium-security facilities. One Corrections Corporation of America institution reported three facility lockdowns for 50 days each and two Wackenhut institutions reported nine facility lockdowns for a total of 232 days. The remaining facilities together averaged about 1.8 days in lockdowns over the course of the year.

Court Orders and Consent Decrees

As of December 31, 1997, five private facilities were under a state or federal court order or consent decree to limit the number of inmates they could house; one was a women's medium-security prison. Seven facilities were reported to be under court order or consent decree for the totality of conditions at their facilities,[21] with an additional two facilities under court order or consent decree for specific conditions (table 15).

Education was the most frequently cited specific consent decree condition, affecting seven private facilities, followed by medical facilities (6), administrative segregation (6), staffing policies (6), inmate classification (6), and grievance policies (6). At public state facilities, crowding was the most often cited condition (213), followed by medical facilities (139), library services (129), and staffing (118).

Table 14 Disciplinary Resources at Private Facilities, January 1–December 31, 1997

Contractor	Facilities	DAU	Inmates in DAU	PCU	Inmates in PCU	ASU	Inmates in ASU	Lockdowns Jan. 1, 1997–Dec. 31, 1997	Days Locked Down
Cornell Corrections	3	1	21	0	0	2	17	7	3
Correctional Services Corporation	0	3	2	13	1	0	2	21	7*
Corrections Corporation of America	27	25	374†	12	182‡	25	199§	23	102.5**
CiviGenics	2	0	0	0	0	0	0	0	0
Management Training Corporation	3	0	0	0	0	0	0	5	9
U.S. Corrections Corporation	5	2	4	0	0	3	20	0	0
Wackenhut Corrections Corporation	22	14	367††	7	614‡‡	15	306§§	25	280***
Total	65	44	779	20	796	47	563	67	394.5

Note: DAU=Disciplinary Action Unit; PCU=Protective Custody Unit; ASU=Administrative Segregation Unit.
* One facility reported 7 lockdowns, each of short duration.
† Based on 22 facilities reporting: 2 facilities do not have a disciplinary unit; 3 facilities have disciplinary units but did not provide the number of inmates.
‡ Based on 11 facilities reporting: 15 facilities do not have a protective custody unit; 1 facility has a protective unit but did not provide number of inmates.
§ Based on 22 facilities reporting: 2 facilities do not have an administrative segregation unit; 3 facilities have administrative segregation units but did not provide number of inmates.
**One facility reported 3 lockdowns for a total of 50 days.
†† Based on 12 facilities reporting: 8 facilities do not have a disciplinary action unit; 2 facilities had disciplinary action units but did not provide the number of inmates.
‡‡ Based on 6 facilities reporting: 1 facility is considered a protective custody prison and reports 438 protective custody inmates; 15 facilities do not have a protective custody unit; 1 has a protective custody unit but did not provide the number of inmates.
§§ Based on 14 facilities reporting: 7 do not have an administrative segregation unit; 1 facility has an administrative unit but did not provide the number of inmates.
*** One facility reported 6 lockdowns for a total of 154 days; another reported 3 lockdowns for a total of 78 days.
Source: National Council on Crime and Delinquency (1998).

Table 15 State Facilities Under Court Order or Consent Decree: Public Facilities at Midyear 1995 and Private Facilities on December 31, 1997*

Court Order Status of Facilities	Public		Private	
	N	%	N	%
Not under court order	1,054	76.7%	56	86.2%
Under court order for specific conditions	378	27.5	9	13.8
Overcrowding	213	15.5	5	7.7
Medical facilities	139	10.1	6	9.2
Administrative segregation	76	5.5	6	9.2
Staffing	118	8.6	6	9.2
Food service/nutrition	83	6.0	5	7.7
Education	96	7.0	7	10.8
Disciplinary policies	78	5.7	5	7.7
Recreation	100	7.3	5	7.7
Visiting/mail	88	6.4	4	6.2
Fire hazards	78	5.7	3	4.6
Counseling programs	69	5.0	4	6.2
Inmate classification	76	5.5	6	9.2
Library services	129	9.4	4	6.2
Grievance policies	74	5.4	6	9.2
Religion policies	74	5.4	5	7.7
Search policies	30	2.2	4	6.2
Other	88	6.4	5	7.7

* A total of 238 state public and private facilities were under court order or consent decree to limit population, for specific conditions, or for both reasons in 1995. These reasons are not mutually exclusive and therefore do not sum to 100 percent.
Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Reanalysis of Survey Data Controlling for Facility Security Level

The previous analysis suggests that private facilities do not differ substantially from publicly operated facilities, with three possible exceptions. First, the number of staff assigned to private facilities is approximately 15 percent lower than the number of staff assigned to public facilities (28 per 100 inmates in private facilities versus 32 per 100 inmates in public). Second, management information system (MIS) capabilities appear to be lacking in private facilities. Third, the rate of major incidents is higher at private facilities than at public facilities.

Recognizing that the 1995 public facility survey includes all types of facilities and that the private facilities are primarily medium- and minimum-security facilities, a better analysis would be to attempt to make direct comparisons between medium-security and minimum-security public facilities with the same type of private facilities.

Tables 16–20 reinforce the earlier analyses and show that it cannot be concluded that a private or a public prison is superior to the other. In these tables, responses from public and private facilities that identified themselves as maximum or higher custody levels have been eliminated. The results are similar to the original analysis with one major exception: in this comparison, the privately operated facilities have a much higher rate of inmate-on-inmate and inmate-on-staff assaults and other disturbances. These differences may be related to other factors such as reporting standards or the fact that correctional facilities often experience management difficulties when they are newly opened. The CCA Youngstown facility is a good example of such difficulties (Clark, 1998). However, insufficient training for and lack of qualified staff in key positions may also be a valid explanation for these differences. This would be consistent with the claims of critics of privatization who charge that private prisons are inadequately staffed by inexperienced and poorly trained correctional officers. Coupled with a lack of programs and work assignments, higher rates of misconduct from inmates predictably occur. Nevertheless, the notion that privately operated prisons are safer or better managed than public facilities is not supported by these results.

Table 16 Characteristics of Inmates at Public Medium- and Minimum-Security Facilities at Midyear 1995 and Private Medium- and Minimum-Security Facilities on December 31, 1997

	Public*		Private	
Inmate Characteristics	**N**	**%**	**N**	**%**
Number of inmates	654,891	100.0%	43,828	100.0%
Gender				
Males	607,547	92.8	39,933	91.1
Female	47,344	7.2	3,895	8.9
Custody level				
Maximum/close/high	0	0	1,225	2.8
Medium	463	39.1	21,942	50.1
Minimum/low	721	60.9	20,262	46.2
Not classified	0	0	399	0.9
Racial or ethnic identity†				
White	234,894	35.9	13,235	30.2
Black	300,339	45.9	19,454	44.4
Hispanic	106,062	16.2	9,504	21.7
American Indian/Alaska Native	6,871	1.0	494	1.1
Asian/Pacific Islander	6,532	1.0	254	0.6
Not reported	193	0	887	2.0

* Data for midyear 1995 include federal and state correctional facilities.
† The number of inmates of Hispanic origin is underreported for public facilities. In 28 federal facilities, racial identity but not ethnic identity was reported for 21,563 inmates.
Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Table 17 Characteristics of Public Medium- and Minimum-Security Facilities at Midyear 1995 and Private Medium- and Minimum-Security Facilities on December 31, 1997

	Public		Private	
Facility Characteristics	**N**	**%**	**N**	**%**
All facilities	1,184	100.0%	63*	100.0%
Function**				
General adult population	864	73.0	53	84.1
Boot camp	44	3.7	0	0
Reception/diagnosis	91	7.7	5	7.9
Medical treatment/hospital	111	9.4	3	4.8
Alcohol/drug treatment	194	16.4	13	20.6
Youthful offenders	30	2.5	1	1.6
Work release/prerelease	420	35.5	14	22.2
Returned to custody	83	7.0	13	20.6
Other†	208	17.6	4	6.3
Age of facility (in years)‡				
< 10	327	27.6	56	88.9
10–19	239	20.2	0	0
20–49	336	28.4	5	7.9
50–99	245	20.7	1	1.6
≥ 100§	28	2.4	1	1.6
Average daily population (number of inmates)				
< 500	778	65.7	28	44.4
500–999	200	16.9	27	42.9
1,000–2,499	180	15.2	8	12.7
≥ 2,500	26	2.2	0	0

* Two facilities failed to provide sufficient data for inclusion in this table.
** Figures may add to more than the total number of facilities because some facilities may have more than one function.
† Includes U.S. Marshals Service, pretrial/posttrial federal offenders, prearraignment, and community service.
‡ Refers to the number of years between the date of original construction and the survey year.
§ The oldest privately operated facility is operated by CiviGenics, which originally opened as a hospital in 1896.
Source: National Council on Crime and Delinquency (1998).

Table 18 Types and Rates of Participation in Institutional Programs at Public and Private Medium- and Minimum-Security Facilities

	Public*		Private	
Facility Characteristics	**N**	**%**	**N**	**%**
All facilities	1,184	100.0%	63**	100.0%
With work programs				
Prison industries	368	31.1	8	12.7
Facility support services	1,049	88.6	63	100.0
Farming/agriculture	267	22.6	9	14.3
Public works assignment	661	55.8	28	44.4
Other work programs	128	10.8	13	20.6
With education programs				
Basic adult education	839	70.9	61	96.8
Secondary education*	906	76.5	62	98.4
Special education	342	28.9	29	46.0
Vocational training	582	49.2	51	81.0
College courses	363	30.7	26	41.3
Study releases	150	12.7	5	7.9
With counseling programs				
Drug counseling	1,039	87.8	62	98.4
Alcohol counseling	1,053	88.9	63	100.0
Psychological counseling	746	63.0	44	69.8
Employment counseling	720	60.8	51	81.0
Life skills, community adjustment counseling	783	66.1	62	98.4
Parenting	462	39.0	33	52.4
Other programs	205	17.3	13	20.6
Inmates participating in				
Work programs	438,016	66.9	28,856	65.8
Educational programs	161,877	24.7	16,760	38.2

* Includes GED.
** Two facilities failed to provide sufficient data for inclusion in this table.
Source: Bureau of Justice Statistics (1997b).

Table 19 Characteristics of Persons Employed in Public Medium- and Minimum-Security Facilities at Midyear 1995 and Private Medium- and Minimum-Security Facilities on December 31, 1997

	Public		Private	
Characteristics	**N**	**%**	**N**	**%**
All facilities	206,126	100.0%	12,420	100.0%
All staff				
Administrative	6,015	2.9	530	4.3
Correctional/security	127,395	61.7	7,912	63.7
Clerical support	17,147	8.3	894	7.2
Educational	7,147	3.7	717	5.8
Professional treatment	27,042	13.0	1,514	12.2
Maintenance and food service	15,395	7.5	686	5.5
Other	5,985	2.9	167	1.3
Racial or ethnic identity				
White	137,831	66.9	6,315	50.8
Black	37,206	18.1	2,683	21.6
Hispanic	13,698	6.6	2,344	18.9
Native American/other	1,654	0.8	131	1.1
Asian/Pacific Islander	3,063	1.5	57	0.4
Not reported	12,674	6.2	890	7.2

Source: Bureau of Justice Statistics (1997b).

Table 20 Major Incidents in Public Medium- and Minimum-Security Facilities (July 1, 1994–June 30, 1995) and Private Medium- and Minimum-Security Facilities (January 1, 1997–December 31, 1997)*

	Number of Violations*		Number of Violations per 1,000 Inmates†	
Inmate Violations	**Public 1995**	**Private 1997**	**Public 1995**	**Private 1997**
Assaults on inmates	12,721	1,469	20.2	33.5
Resulting inmate deaths	29	1	0.6	0
Assaults on staff	5,182	537	8.2	12.2
Resulting staff deaths	12	0	0.3	0
Riots‡	172	12	3.7	0.3
Fires	444	29	0.7	0.7
Other disturbances	150	56	0.2	1.3
Total deaths	1,711	29	2.7	0.7
Homicides committed by other inmates	31	1	0.7	0
Suicides	65	1	0.1	0
AIDS	565	4	0.9	0.1
Natural causes	1,001	20	1.7	0.5
Other causes§	49	3	1.1	0.1

* Excludes tickets, official warnings, and other minor incidents.
† Based on average daily population.
‡ Includes only incidents that had five or more inmates participating, that required the intervention of additional or outside assistance, and that resulted in serious injury or significant property damage.
§ Other causes includes accidents, homicides, and other deaths.
Source: Bureau of Justice Statistics (1997b).

Summary

The Diminishing Returns on Privatization

This report supports the basic premise that private facilities appear to perform at the same level of efficiency as public facilities. Although they tend to house a higher proportion of minimum-custody inmates in relatively new facilities, private facilities tend to have the same staffing patterns; provide the same levels of work, education, and counseling programs for inmates; and have the same rates of serious inmate misconduct as public facilities. The few credible impact studies show more similarities and fewer differences between the two methods of operation.

What seems to have evolved in the United States is a privatization model that essentially mimics the public model but achieves modest cost savings, at least initially, by making modest reductions in staffing patterns, fringe benefits, and other labor-related costs. There is no evidence showing that private prisons will have a dramatic impact on how prisons operate. The promises of 20-percent savings in operational costs have simply not materialized. Even if they had, the limited market share of less than 5 percent for private prisons would have had a limited impact on prison budgets. For example, assume that 10 percent of a state's prison system becomes privatized and that each private prison produced a 10-percent savings in operational costs. Even at this level, the overall impact on a state prison budget would be only 1 percent (10 percent of 10 percent=1 percent). This amount of savings will not revolutionize modern correctional practices.

Today it appears that achieving even a 10-percent market share will prove to be increasingly difficult for several reasons. The growing number of well-publicized stories of poor performance in private prisons is growing (e.g., Colorado, Louisiana, Oregon, South Carolina, and Texas). The problems associated with the CCA-operated Northeast Ohio Correction Center in Youngstown, Ohio, have dramatized how badly a privatized prison can be operated. In this facility, 17 inmates were stabbed, 2 were murdered, and 6 escaped in the first 15 months of operation. Operational flaws were linked to inexperienced staff, inadequate training, and a willingness on the part of prison authorities to accept inmates who should not have been transferred to the facility (Clark, 1998). If nothing else, the private sector has shown that it is as equally capable of mismanaging prisons as the public sector.

These problems suggest that the sales division of the private sector may well be outperforming the production division. It may well be that the difficulties private prisons are experiencing may increase simply because they, like prisons in the public sector, are finding it increasingly difficult to recruit competent staff.

The Future of Privatization

Despite these criticisms, privatization still provides a vital function within the correctional system. Although the private sector has been unable to keep its promise of greatly improving prison operations, its mere presence has had a significant impact on traditional prison operations. Gaes and colleagues (1998) acknowledge that privatization has forced the public sector to reexamine how it conducts business. Certainly in those markets where correctional officer salaries and fringe benefits have been excessive, privatization has fostered a reexamination of those costs, which has led to cost savings. In this sense, privatization has served as a catalyst for change by demonstrating other means for doing the business of corrections. As limited as they are, however, these cost-saving innovations should not be the only items on the privatization agenda.

It would be extremely interesting and productive for the private sector, in partnership with the public sector, to become the vehicle for testing far more substantive changes in correctional policy in a number of areas—not just prisons and jails. For example, an extremely promising strategy would be for the private sector to test the long-term effects of state-of-the-art correctional programming in reducing recidivism in the areas of education, vocational training, and various forms of counseling, both in prison and after release. One could also test the effects of reducing prison terms and other correctional policies using the flexibility of the private sector. Finally, new management techniques, staff training, and facility designs could be tested by the private sector under controlled conditions. All such innovations should be directed at reducing the current ineffective correctional practices rather than producing a system that is less expensive but as ineffective as the public-sector system.

Notes

1. The term "correctional facilities" refers to jails and detention centers that do not house state or federal prisoners.

2. During the North American phase of transportation, some 50,000 convicts were shipped across the Atlantic and sold as agricultural laborers.

3. The modern "penitentiary," based on the ideas of Jeremy Bentham, 18th-century English philosopher, was first established in Philadelphia and New York in the United States. It became the prototype of prison reform efforts in the late 18th and early 19th centuries. Solitary confinement for personal reflection, combined with hard labor, became the cornerstones of this new approach.

4. Ethridge and Marquart (1993) identify other forms of private inmate labor such as the piece-rate system and public account system. Under the piece-rate system, inmates worked inside prison walls under the supervision of state employees. In the public account system, prisoners worked under state supervision and produced goods for state institutions. However, the convict lease system was considered the most profitable and the most brutal and corrupt of all inmate labor systems.

5. McCrie (1993) refers to the case of the privatized prison in Huntsville, Texas, which was the subject of a legislative investigation into prison conditions. The investigation resulted in modifications to the leasing system in which the state maintained control of the penitentiary and convicts but continued contracting arrangements with private interests beginning in 1883.

6. Health-care services were the exceptions. Smaller jails and prisons could not economically provide the full range of specialized care by competing for staff in the health-care market. These services were usually contracted out to local hospitals.

7. In addition to juvenile and INS detention centers, since the late 1960s private firms have established sites with various low-security facilities and in the "less visible" regions of the adult and juvenile penal systems, such as community treatment centers and halfway houses (McDonald, 1994: 30).

8. For instance, privately operated facilities for juveniles tend to be small and residential with flexible programming catering to individual needs (McCrie, 1992).

9. The leading case on this is *West* v. *Atkins*, 108 S. Ct. 2250 (1988). The case addresses whether private persons under contract with the state can be sued under § 1983 or whether only public employees can be sued under this federal law. By deciding that such persons can be held liable and are acting under the "color of the law" when performing services, the court expanded the number and categories of individuals who may be sued under § 1983. In 1997 the U.S. Supreme Court held that private prison guards employed by a private firm are not entitled to qualified immunity from suit by prisoners charging a § 1983 violation (*Richardson* v. *McKnight*).

10. The hidden costs of a public correctional facility typically include external administrative overhead, legal services, court-ordered judgments, property insurance, staff training, and other items not usually part of the direct budget.

11. The three private correctional facilities were: (1) RCA Services' Weaversville Intensive Treatment Unit, Pennsylvania; (2) CCA's Silverdale Detention Center, New Jersey; and (3) Buckingham Security Limited's Butler County Prison, New Jersey. The three public prisons were: (1) Pennsylvania Department of Welfare's North Central Secure Treatment Unit; (2) New Jersey's Warren County Correctional Center; and (3) New Jersey's Salem County Prison.

12. Weighted 3-year averages were calculated by dividing each facility's 3-year average cost by the number of services available, then multiplying the cost-per-service figure for a particular facility by the number of services available at the facility with the largest number of services.

13. After the LBB report was released, the Texas Department of Criminal Justice negotiated contracts with CCA and Wackenhut Corrections Corporation to operate two prerelease facilities each. At the time of the Sunset report, the four private units had been in operation for over a year and actual cost data were available.

14. Care was defined as services of medical personnel: doctors, dentists, psychologists, and dietitians as they perform treatment consistent with a basic, minimum level of service. Justice referred to adherence to the rules by staff inside the prison—sanctions were to be clear, specified in advance, and applied consistently with due process.

15. Each firm was asked to categorize the type of facility in operation (e.g., state prison, jail, juvenile, detention, or community). This, combined with information from secondary sources such as Thomas (1997b) and Camp and Camp (1997), allowed NCCD researchers to distinguish state prisons from other types of facilities.

16. For comparative purposes, data from the BJS 1995 census are presented together with NCCD's 1997 figures.

17. One operator did not participate because of pending litigation. The other two did not respond to requests for information.

18. Both maximum-security institutions are operated by Wackenhut Corrections Corporation. A number of other institutions, however, house maximum-custody inmates but identify themselves at lower security levels.

19. Data from the three privately operated state facilities in Puerto Rico were adjusted to eliminate potential bias. The three prisons consisted of 877 Hispanic staff and 2,267 Hispanic inmates. The results again indicate a higher staff-to-inmate ratio for Hispanics in private state prisons.

20. Based on 62 facilities reporting.

21. Four of the five facilities that reported being under court order or consent decree for overcrowding are also under order for other specified conditions.

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Guidelines for Contracting for a Private Prison

Public Strategies for Private Prisons*

Types of Privatization

Option 1: State owns *existing* prison and hires private contractor to operate the publicly owned facility (often used for halfway houses and proposed for the District of Columbia).

Option 2: State owns *existing* prison and sells facility to private vendor. Private vendor enters into contract with state to house inmates in the now privately owned and operated facility (CCA contract with the District of Columbia's Correctional Treatment Facility).

Option 3: State constructs *new* prison according to its specifications and then hires private contractor to operate the publicly owned facility (Ohio and Michigan Departments of Corrections).

Option 4: State funds construction of *new* prison and owns the facility. State awards contract to private vendor to build and operate the facility according to the vendor's specifications (often used for Texas Department of Criminal Justice State Prisons).

Option 5: State funds construction for *all* facilities. State builds and operates a portion of the facilities funded. Local government selects private vendor to build and operate outstanding portion of facilities funded (Texas state jails).

Option 6: Private contractor constructs *new* prison and enters into contract with state in which facility is located to house the state's inmates in the privately owned and operated facility.

*This Appendix was prepared by Dennis Cunningham, Private Prisons Administrator, Oklahoma Department of Corrections. It is based on a presentation by James Austin, Research Professor, Department of Sociology, The George Washington University, presented at the National Conference of Privatization, March 1998.

Option 7: Private contractor constructs *new* prison and enters into contracts with states other than the one in which the facility is located to house inmates in the privately owned and operated facility (CCA's Northeast Ohio Correctional Facility in Youngstown, Ohio).

Option 8: Local municipality funds construction of facility through the development of a not-for-profit corporation, which, after receiving state approval, sells tax-exempt bonds to fund the construction and equipping of a facility to house inmates from other jurisdictions (Texas).

Option 9: Consortium of counties owns or has private facility and operates to house inmates from those counties (Tuscaloosa County, Alabama).

Option 10: State contracts with a private vendor to build and operate a prison in another jurisdiction (proposed in Oregon).

Key Points

The National Institute of Justice (1987) report entitled *Issues in Contracting for the Private Operations of Prisons and Jails* provides an excellent early overview of facility privatization issues. Much has been learned about private corrections in the United States in the years since that report. In this section, key points of the NIJ report are updated to include recommendations and additional key points based on present-day practices and experiences.

Public Policy Considerations

1. Before contracting with a private service provider, a state should undertake a systematic, detailed analysis to determine if, and under what conditions, contracting is likely to be feasible for the correctional agency. This should include an examination of statutory authority, current state prison costs, crowding, performance standards, legal issues, availability of vendors, ways to reduce the likelihood and consequences of contractor defaults, and the attitudes of political stakeholders.
2. A public policy on privatization should be developed that provides guidance on key issues such as contract length, types of private services to be requested, private facility purchase options, performance standards, and reassurances to public employees.
3. If a government's goal in contracting is to obtain new beds quickly at a lower construction cost, the private sector offers an attractive option. However, if the government seeks a more economical operation, the evidence available to date suggests that private contracting does not necessarily save a significant amount of money.

4. The government should have a long-range plan that specifies how privatization fits into the agency's plans and to what degree privatization will be pursued, such as what percentage of agency facilities or services will be offered to private contractors.
5. Public employees should be given the opportunity to participate in the competitive process and to win a contract if it can be proved that the public offer is the most suitable and the most appropriate choice.
6. A key issue that must be addressed by the public sector is What is success and how do we determine if we are successful in the delivery of correctional services? The current public trend of determinate sentencing policies bears close watching to ensure that privatization does not lead to harsher sentencing policies, increased recidivism, and further increasing of the scale of imprisonment.

Protection of the State and the Inmates

1. Careful attention must be devoted to ensure that each contract provides adequate protection of inmates' rights and also protects the state from liability claims.
2. Speculative prisons, proposed by economic development proponents, jeopardize the government's debt-incurring ability because, if a speculative prison built with public trust bonds fails, the government ultimately becomes responsible for repayment of the debt.
3. Private prison contractors will not be able to escape liability under Section 1983 of the Civil Rights Act, and the contracting government entity will be unable to protect itself from lawsuits resulting from the wrongful acts of the selected operator (*Richardson* v. *McKnight*). The government can reduce, but not eliminate, its vulnerability to privatization-related lawsuits by specifying in law, and subsequently in the contract, that the government be indemnified against any damage award and for the cost of litigation.
4. The government may consider requiring that a significant performance bond be posted or a trust fund established to indemnify it in the event of a contractor's financial or other problems. The agency will need to determine whether the cost of the additional protection is necessary.

The Process of Privatization

1. When contracting, the use a competitive bidding process is highly recommended. This will help to avoid accusations of favoritism or impropriety. To improve the competitive climate the agency can:

- ❑ Develop and maintain a list of potential bidders.
- ❑ Provide public policy and rules for procurement of private facilities and services.
- ❑ Permit both private nonprofit and for-profit organizations to bid.
- ❑ Assist with the financing of the design and construction.
- ❑ Provide an ample window of opportunity for development of responses to the agency's request for proposal (RFP). The RFP is sent to potential bidders to solicit an offer.

2. The agency must identify all the cost components of the public operations and the oversight functions so that they can be adequately addressed in negotiations and during the agency's budget planning process.
3. The agency may mandate additional certification or credentials in critical areas such as: firearms, chemical agents, self-defense, emergency response apparatus/weaponry, health care, and transportation.
4. FBI felony background investigations of vendor employees and contractors must be required. Personnel standards and training should be comparable to the agency's standards or American Correctional Association (ACA) standards—whichever are higher.
5. Information about the proposal evaluation process should be included in the RFP. Evaluation criteria include, but are not limited to:
   - ❑ Vendor's experience and past success in similar undertakings.
   - ❑ Design and construction details.
   - ❑ Timetable and availability.
   - ❑ Staff qualifications.
   - ❑ Qualitative review of operational plan details and program proposals.
   - ❑ Vendor's financial condition and references.
   - ❑ Cost proposal.
6. The agency must specify and agree to a method for resolving any contractual differences that may emerge before the service commencement date.

Contract Provisions

1. RFPs and subsequent contracts should specifically state: (a) the responsibilities of each party and (b) what levels of performance are expected to ensure compliance with performance standard policies,

procedures, and practices. The use of nationally recognized standards like those from ACA and the National Commission on Correctional Health Care (NCCHC) is recommended.

2. Governments can control contract costs by stipulating that per diems may not rise above the urban consumer price index.
3. Contracts should include specific staffing pattern information, inmate activity plans, treatment plans, and detailed operational plans. For example, staffing levels are determined by calculating the minimum personnel required for three shifts, the number of days per week for each person, and a relief factor or ratio. In addition, mandatory posts or pull posts (which are not always needed, such as visiting room officers), support positions, and outside subcontractors should also be specified in contracts.
4. RFPs and contracts should also identify sanctions or penalties that will apply for inadequate performance. Liquidated damages may be tied to failure to meet ACA mandatory standards and NCCHC standards, failure to staff adequately, inmate idleness, failure to meet court orders, improper use of force, or failure to meet any other performance standard as defined in the contract.
5. A variable cost structure that is fair for all parties should be built into the contract so that no misunderstanding will arise regarding cost for vacant beds and/or additional inmates beyond the specified ceiling.
6. The payment structure should be based on a pricing system such as single fixed price, fixed unit-price award, or cost plus. A per diem for actual inmate days is often preferred by states, as it addresses only beds used. There should be a provision to contract for additional services required by the state, court order, or other reason. Performance incentives may be desirable to include in the payment section.
7. Prison contracts should be rebid on a relatively short basis, such as every 3 to 5 years. State laws may mandate a maximum contract length.
8. Governments should include provisions in the contracts requiring that the contractor provide advance notification of issues that may result in a major impact on the facility, such as the end of a union contract period, major worker grievances that could force a work stoppage or slowdown, change of ownership or in rating of the facility, loss of insurance coverage, and defaults by subcontractors.
9. The contractor should rely on community resources for operating the facility whenever possible by, for instance, hiring local people and buying supplies and services locally.

Facility Concerns

1. Contracting for new or reoccupied facilities may entail fewer problems (e.g., personnel problems) than turning over an existing facility to a private firm. An important exception may be the case of trying to convert a jail into a prison. The experiences of several states (especially Texas) clearly demonstrated the problems with trying to manage long-term state prison incarcerates in former county jail lockups, often with poorly trained personnel.
2. Governments contracting to replace existing facilities should take steps to resolve personnel problems, including:
   - ❑ Requiring contractor to give employment preference to displaced staff.
   - ❑ Providing transfer, retraining, and outplacement services to employees not choosing to work for the contractor.
   - ❑ Carefully calculating and making provisions for disposition of benefits (e.g., retirement benefits and vacation and sick leave accrual).
3. Governments establishing any contract facility should develop a public relations plan, because good public relations are crucial for community education. The government should fully inform community leaders and should also keep correctional employees fully informed of contract deliberations. The media should be made aware of the contracting initiative at an early stage.

Selection of Inmates

1. The RFP and contract should explicitly describe the type and level of offender and the main construction and security features the agency deems necessary to confine the prisoners appropriately. The contract should be based on the state's inmate classification policy and its operational definitions of the privileges and level of supervision required by the custody level of the inmate population. This will include a section on special populations such as inmates with AIDS, the mentally ill, inmates under protective custody, and pregnant inmates.
2. The state should contractually require the vendor to accept all prisoners in certain categories (e.g., medium security) for the duration of the contract period up to the agreed maximum number of inmates to be incarcerated at any given time. The state should also mandate classification parity among public and private facility inmate populations. This will protect the state against "cherry picking," or the selection of only the best inmates by the private operator.

3. Selection of inmates for placement in a contract facility, and decisions about their movement, is the government's responsibility as described in the contract. Criteria should be mutually agreed upon to avoid misunderstandings. The contract should include the provision that the state makes the decisions about inmate reassignment, reclassification, and transfer to and from the facility. Public officials should make the decisions, based on vendor input, whether to award sentence credit and whether to release an inmate.
4. Minimum and maximum inmate population levels should be stated in the contract to facilitate planning and cost estimates.
5. States contracting for large institutions should specify in the RFP and the contract that the selected private vendor should use unit management—a system of smaller population subunits within a facility.

Level of Authority

1. Government officials must ensure that disciplinary hearings conducted by the contractor follow legally required practices when discipline problems occur. A private firm should adopt the policies and procedures used by the agency. Major disciplinary actions should be formally approved by the contract monitor.
2. Private companies should closely adhere to the same type of procedures used by the government agency. Where necessary, contractor discretionary actions involving inmate rights and discipline should be made in the form of a recommendation to the agency or official for approval.
3. In the event of an escape attempt, private prison employees should use reasonable and appropriate apprehension measures according to state law. Generally, once an inmate has left the facility's property, law enforcement officials should become responsible for the ultimate capture and return of the escapee.
4. Private operators should be required to obtain an agreement with local law enforcement or other government entities to provide assistance in the event of an emergency. Private operators are responsible for the associated costs of such an emergency response.

Contract Monitoring

1. The state should assign a full-time contract monitor to work onsite at the private facility.
2. The state should plan for this critical task and implement an effective system for continuous contract monitoring. Planning

occurs prior to the issuance of an RFP and is written in the contract. This should include:

- ❑ Regular timely reports showing tabulations, analyses of performance standards, and the results of inspections.
- ❑ Regular onsite inspections using a detailed checklist based on the contract performance standards, rating categories, and guidelines on how to complete the inspection.
- ❑ Periodic documented fire, safety, health, medical, and sanitation inspections.
- ❑ Participation in disciplinary hearings concerning major rule infractions, approval of inmate classification actions, and sentence and time credit issues.
- ❑ Provision for regular interviews with inmates to obtain feedback on such performance standards as treatment of prisoners; amount of internal security; drug use; and helpfulness and adequacy of educational, work, treatment, and recreational programs.
- ❑ Annual indepth, onsite inspections by a team of experts, covering the various procedures used and the results of periodic reports on the facility's quality of services based on performance standards.
- ❑ Provision for prompt review by government officials of the written inspections, identification of a corrective action plan with due dates, and followup to determine compliance.
- ❑ Provision for relating information from the monitoring process for consideration during contract renewals.

3. The same monitoring procedures should be applied to publicly operated and contractor-operator facilities. Governments can then use the information as a basis for comparisons and making future privatization decisions.

Contract Evaluation

1. The government and the private operator should cooperate on systematic, comprehensive evaluations of the cost and operational effectiveness of the contract. The government should require that a comprehensive evaluation be made of the degree of success of the contract within a few years of the contract award. If possible, the contracted facility should be compared with publicly operated facilities.
2. Agreement on the success of prison privatization is important. Although the most discussed comparison usually involves cost of services, other variables may have greater bearing on the overall degree of success of the privatization efforts. Quality-of-service analyses and studies of recidivism and public safety could become critical review

components. One researcher's classification of important dimensions of prison services and quality of confinement was defined by Logan (1991) as:

Security: With respect to inmates, staff, and community.

Activity: Assurance that inmates are not idle; promote rehabilitation.

Safety: Environmental hazards, sanitation, freedom from disease.

Justice: Rule of law inside prison; fairness.

Order: Enforcement of inmate compliance; assurance of orderly running of the institution.

Care: Medical, dental, psychological.

Conditions: Crowding, health risk.

Management: Staff capability, efficiency.

Summary

Success in privatizing prisons is highly dependent on the care taken in developing a public policy that includes a long-range plan, a management procurement process, identification of all of the state's costs, an RFP, a contract that includes performance standards, guidelines for choosing a contractor, details on executing the contract, and standards for monitoring the contract.

Sample Contract Performance Standards

1. **Health and Safety:** The facility is in compliance with all local, state, and federal fire and health codes. The facility retains on file completed inspection forms from these authorities that are available for review.
2. **ACA Accreditation:** Owner/operator will become a candidate for ACA accreditation within 9 months of the initial contract and achieve accreditation within 36 months of the services commencement date.
3. **Emergency Procedures:** The facility has in place procedures to follow in the case of an emergency and has provided a copy of such procedures to the department.
4. **Sanitation and Hygiene:** The facility provides equipment and supplies to ensure the maintenance of a clean and healthy

environment. Hygiene items are provided to inmates for their personal use through the commissary or through indigent services as necessary.

5. **Health Services:** Medical, mental health, and dental services provided are comparable to those of the department in compliance with contractual obligations and ACA standards.
6. **Food Services:** Food services provided for inmates include a master menu schedule, special diets meeting medical or religious requirements, and three meals served daily at regular times during each 24-hour period with no more than 14 hours between the evening and morning meals.
7. **Property:** The property matrix of the Department of Corrections (DOC) is utilized. The facility will provide for the secure storage of inmate property. If the property is lost or damaged while under the care of the facility, inmates can use the facility's grievance process to seek reimbursement for the lost or damaged property.
8. **Inmate Services:** Laundry services are available to inmates and the facility provides a commissary for inmates comparable in goods and prices to DOC facilities. Inmates are allowed correspondence and mail delivery services in accordance with policy; telecommunication costs for inmates are comparable to those in DOC-operated facilities; and visiting policies and practices enable inmates to maintain ties with families.
9. **Grievance Procedures:** Inmates are afforded access to a reasonable, impartial, and nondiscriminatory procedure, which includes a final level of appeal to the state. The facility is responsible for responding to grievances on matters occurring during the inmates' incarceration in the facility except during sentence administration and classification to a higher or lower security facility.
10. **Disciplinary Procedures:** The facility follows DOC's disciplinary policy, or one comparable with disciplinary action and reasonable sanctions proportionate in relation to the violation. The facility provides complete, accurate, and detailed reports to the contract monitor within 7 working days of the finalized disciplinary action.
11. **Inmate Activity:** A minimum of 80 percent of eligible inmates are productively occupied outside their cells for at least 6 hours per day or 30 hours a week in work, educational, vocational, or rehabilitative programs. Inmate labor may be used for facility operations and maintenance but not for the personal benefit of any employee.
12. **Inmate Programs:** The facility offers at least basic literacy education, adult basic education, and general educational development; substance abuse programs with cognitive approaches and self-help programs; opportunities for vocational program participation; and other programs as specified in the contract.

13. **Security and Control:** The facility provides security and control in accordance with accepted operating standards. Security measures are reviewed on a monthly basis to include tool and key control, internal and external security, search and seizure practices, and emergency procedures.
14. **Use of Force:** The facility follows DOC's use-of-force policy, reports all incidents according to policy, and provides written reports in a timely manner as followup through the contract monitor.
15. **Access to Courts:** Inmates are afforded access to the courts through the use of legal materials or a person trained in law or a combination of both. The law library, where applicable, contains the required legal materials.
16. **Case Management:** Inmates receive orientation services and meet with their case managers within the first 10 days to be assigned an earned credit level and are reviewed every 120 days for adjustment of the level of earned credit. Case managers have regular contact with inmates and handle requests for staff and grievances when possible.
17. **Inmate Records and Reports:** The facility maintains records on individual inmates. A case manager maintains individual files documenting each inmate's program goals, employment, earned credit, disciplinary records, programmatic involvement, and other significant information. Inmate records and time calculations are monitored/audited by a sentence administration unit.
18. **Racial Balance:** Racial balance is maintained in accordance with DOC policy in housing, programs, and job assignments.
19. **Urinalysis Testing:** Five percent of the inmates are randomly tested for drug use monthly.

Resources for Appendix

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Sources for Further Information

For more information on privatized prisons, contact:

Oklahoma Office of the Attorney General, Oklahoma Public Legal Research System
World Wide Web: www.oklegal.onenet.net/statutes.basic.html

Oklahoma Department of Corrections
3400 Martin Luther King Avenue
Oklahoma City, OK 73111
405–962–6080

American Law Sources
World Wide Web: www.lawsource.com

For more information on correctional services and issues, contact:

Bureau of Justice Assistance
810 Seventh Street NW.
Washington, DC 20531
202–514–6278
World Wide Web: www.ojp.usdoj.gov/BJA

Bureau of Justice Assistance Clearinghouse
P.O. Box 6000
Rockville, MD 20849–6000
1–800–688–4252
World Wide Web: www.ncjrs.org

Clearinghouse staff are available Monday through Friday, 8:30 a.m. to 7 p.m. eastern time. Ask to be placed on the BJA mailing list.

U.S. Department of Justice Response Center
1–800–421–6770 or 202–307–1480

Response Center staff are available Monday through Friday, 9 a.m. to 5 p.m. eastern time.

Bureau of Justice Assistance Information

General Information

Callers may contact the U.S. Department of Justice Response Center for general information or specific needs, such as assistance in submitting grant applications and information on training. To contact the Response Center, call 1–800–421–6770 or write to 1100 Vermont Avenue NW., Washington, DC 20005.

Indepth Information

For more indepth information about BJA, its programs, and its funding opportunities, requesters can call the BJA Clearinghouse. The BJA Clearinghouse, a component of the National Criminal Justice Reference Service (NCJRS), shares BJA program information with state and local agencies and community groups across the country. Information specialists are available to provide reference and referral services, publication distribution, participation and support for conferences, and other networking and outreach activities. The Clearinghouse can be reached by:

- **Mail**
  P.O. Box 6000
  Rockville, MD 20849–6000
- **Visit**
  2277 Research Boulevard
  Rockville, MD 20850
- **Telephone**
  1–800–688–4252
  Monday through Friday
  8:30 a.m. to 7 p.m.
  eastern time
- **Fax**
  301–519–5212
- **Fax on Demand**
  1–800–688–4252
- **BJA Home Page**
  www.ojp.usdoj.gov/BJA
- **NCJRS World Wide Web**
  www.ncjrs.org
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26

Survey of Private Prison Rates by State

Oklahoma Senate Fiscal Staff
October 24, 2001

The purpose of this survey is to compare rates paid by various states for private, medium-secure prison beds for males. Prison officials in the 18 states that contract for such beds were surveyed by telephone between September 6 and October 9, 2001. They were asked to provide the latest available data and/or observations about a number of details on their agency's private prison contracts.

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Note on Limitations:
Each state's contracts are unique, and rates are only one of many factors to consider when making a comparison. This survey attempts to adjust rates only for quantifiable differences (specified contract monitoring costs, tiered rate structures, contract supplements for extra services, and cost-of-living indexes). Quality of services are beyond the scope of this comparison. Most states' contracts are vague on quality concerns, generally requiring vendors to provide services in the same manner as a state prison. Also, there are wide variations among each state's diligence at enforcing contract provisions. Though states may pay similar rates, one should also consider how much bang each demands for its buck.

For further information, contact, K.C. Moon, Senior Fiscal Analyst, 405-521-5696

Private Prison Per-diem Rates Paid by State
for Medium-Security, General Population Male Prison Beds

(Source: Senate Fiscal Staff Telephone Survey, 9/6/01-10/5/01)

Contracting State	Owner	Operator	Location	Facility/ Contract Capacity*	Beds Filled*	% Filled	Base Rate *	Effective Rate*	Rate* Adjusted for Debt Service	Rate* Adjusted by Cost of Living Index
Oklahoma										
1. Davis CF	CCA	CCA	OK	960	941	98.0%	42.97	43.37		46.94
2. Diamondback CF	CCA	CCA	OK	1200	1122	93.5%	42.00	42.00		45.45
3. Cimarron CF	CCA	CCA	OK	960	877	91.4%	43.59	43.99		47.61
4. Great Plains CF	Hinton Dev. Auth.	Cornell	OK	812	784	96.6%	43.95	43.95		47.56
5. Lawton CF	Wackenhut	Wackenhut	OK	1872	1755	93.8%	39.84	40.82		44.18
Alaska										
1. Central Arizona DC	CCA	CCA	AZ	1850	800	43.2%	57.22	55.26		55.26
Colorado										
1. Bent Co. CF	CCA	CCA	CO	724	525	72.5%	54.66	53.78		53.78
2. Crowley Co. CF	Dominion	Dominion	CO	1185	557	47.0%	54.66	53.78		53.78
3. Huerfano CF	CCA	CCA	CO	778	622	79.9%	54.66	53.78		53.78
4. Kit Carson CF	CCA	CCA	CO	820	410	50.0%	54.66	53.78		53.78
Florida										
1. Bay Correctional Inst.	State of Florida	CCA	FL	750	733	97.7%	53.00	49.46	56.54	59.70
2. Moorehaven Corr. Inst.	State of Florida	Wackenhut	FL	750	724	96.5%	54.35	47.74	54.82	57.89
Georgia										
1. D. Ray James Prison	Cornell	Cornell	GA	1550	1545	99.7%	39.76	42.06		45.82
2. Coffee CF	CCA	CCA	GA	1500	1492	99.5%	46.24	46.12		50.24
3. Wheeler CF	CCA	CCA	GA	1500	1500	100.0%	46.24	46.12		50.24
Hawaii										
1. Diamondback CF	CCA	CCA	OK	2160	609	28.2%	50.00	46.99		50.85
2. Florence CC	CCA	CCA	AZ	1600	609	38.1%	50.00	46.99		46.99
Indiana										
1. Otter Creek CC	CCA	CCA	KY	656	600	91.5%	45.00	45.00		48.97
2. Marion Co. Jail II	CCA	CCA	IN	858	400	46.6%	49.90	49.90		51.76
Kentucky										
1. Lee Adjustment Ctr	CCA	CCA	KY	756	600	79.4%	39.26	39.26		42.72
Louisiana										
1. Winn CF	State of Louisiana	CCA	LA	1538	1538	100.0%	27.91	27.91	35.27	37.92
2. Allen CF	State of Louisiana	Wackenhut	LA	1538	1538	100.0%	27.91	27.91	35.27	37.92

Contracting State	Owner	Operator	Location	Facility/ Contract Capacity*	Beds Filled*	% Filled	Base Rate *	Effective Rate*	Rate* Adjusted for Debt Service	Rate* Adjusted by Cost of Living Index
Mississippi										
1. Delta CF	Local Authority	CCA	MS	1000	837	83.7%	28.29	28.15	37.93	41.87
2. Marshall County CF	Local Authority	Wackenhut	MS	1000	870	87.0%	28.28	28.14	37.92	41.85
New Mexico										
1. Lee Co. CF	Wackenhut	Wackenhut	NM	1200	1147	95.6%	51.30	51.30		52.67
2. Guadelupe	Wackenhut	Wackenhut	NM	600	588	98.0%	53.00	53.00		54.41
North Dakota										
1. Prairie CF	CCA	CCA	MN	300	30	10.0%	50.00	50.00		52.91
Ohio										
1. Lake Erie Corr. Inst.	State	Mgt. & Trair	OH	1382	1368	99.0%	39.94	39.94	46.42	47.32
Tennessee										
1. South Central CF	State	CCA	TN	1696	1657	97.7%	36.67	35.63	41.55	44.72
2. Hardeman Co. CF	County	CCA	TN	2016	1996	99.0%	40.78	33.61	40.42	43.51
Texas										
1. B.M. Moore CF	County	Mgt. & Training Corp.		500	500	100.0%	35.30	35.30	40.30	44.24
2. Bridgeport CF	County	Wackenhut		520	514	98.8%	33.97	33.97	38.97	42.78
3. Cleveland CF	County	Wackenhut		520	518	99.6%	35.30	35.30	40.30	44.24
4. Diboll CC	County	Mgt. & Training Corp.		518	517	99.8%	36.72	36.72	41.72	45.80
5. Kyle CF	County	Wackenhut		520	517	99.4%	33.39	41.39	46.39	50.92
6. Sanders Estes CC	County	CCA		1000	991	99.1%	30.48	30.48	35.48	38.95
Virginia										
1. Lawrenceville CC	State of Virginia	CCA	VA	1578	1576	99.9%	32.97	33.10	40.60	42.47
Wisconsin										
1. Prairie CF	CCA	CCA	MN	1338	1000	74.7%	44.00	44.00		46.56
2. North Fork CF	CCA	CCA	OK	1486	1486	100.0%	44.00	44.00		47.62
3. Whiteville CF	CCA	CCA	TN	1536	1323	86.1%	44.00	44.00		47.36
4. West Tenn. Det. Fac.	CCA	CCA	TN	600	379	63.2%	44.00	44.00		47.36
Wyoming										
1. Crowley Co. CF	Dominion	Dominion	CO	525	386	73.5%	50.25	49.80		49.80

DEFINITIONS:

* Facility / Contract Capacity:
  Contract capacity is listed for state contracts that specify a capacity (whether utilization is guaranteed or not). Facility capacity is listed for contracts that do not mention capacity.

* Beds Filled:
  Indicates beds used by contracting state as of September 2001 survey date. Excludes beds filled at the facility by other jurisdications.

* Base Rate:
  For contracts with addendums for ancillary services (treatment, education, medical), this reflects the base rate.
  For tiered contracts, this reflects the rate paid for the first tier of inmates.

* Effective Rate:
  For states with tiered rate structure (in which the per-diem varies based on inmate counts), the effective rate is the blended rate based on beds currently filled.

  For contracts that pay extra for special services provided to inmates in programs such as therapeutic communities, the effective rate cited assumes the number of inmates in those programs is at contract capacity.

  Colorado - the effective rate subtracts 88 cents/day that DOC requires private prisons to pay to DOC for contract administration costs.

  Wyoming - the effective rate subtracts 44 cents/day that Colorado DOC requires private prisons to pay to DOC for regulatory costs.

  Virginia - the rate adds $1.85 paid to vendor for correctional education programs.

  Florida - the rate subtracts amounts that the vendor must pass-through to other entities: in-lieu property tax grants, contract monitoring fee, and contribution to maintenance trust fund.

  Mississippi - the rate subtracts $0.14/day for cost of contracts monitor paid by vendors.

* Rate Adjusted for Debt Service:
  This column adjusts rates paid by states whose private prisons are publicly owned, and thus the contracts are for operational costs only. For these states, this column adds amounts attributable to capital costs, which facilitates comparison with Oklahoma, where all private prisons are owned by either the vendor or a local bonding authority. This adjustment is made for comparing operating costs only; it does NOT account for the value of depreciation or residual ownership, which are key differences between public ownership and private ownership.

  Lousiana's capital per-diem is modified for comparison purposes. That state financed its prison-building project by selling bonds that mature in 10 years. All other states/localities used bond issues with 20-year terms. Thus, for this project, Louisiana's annual bond obligation was re-calculated for a 20-year pay-off.

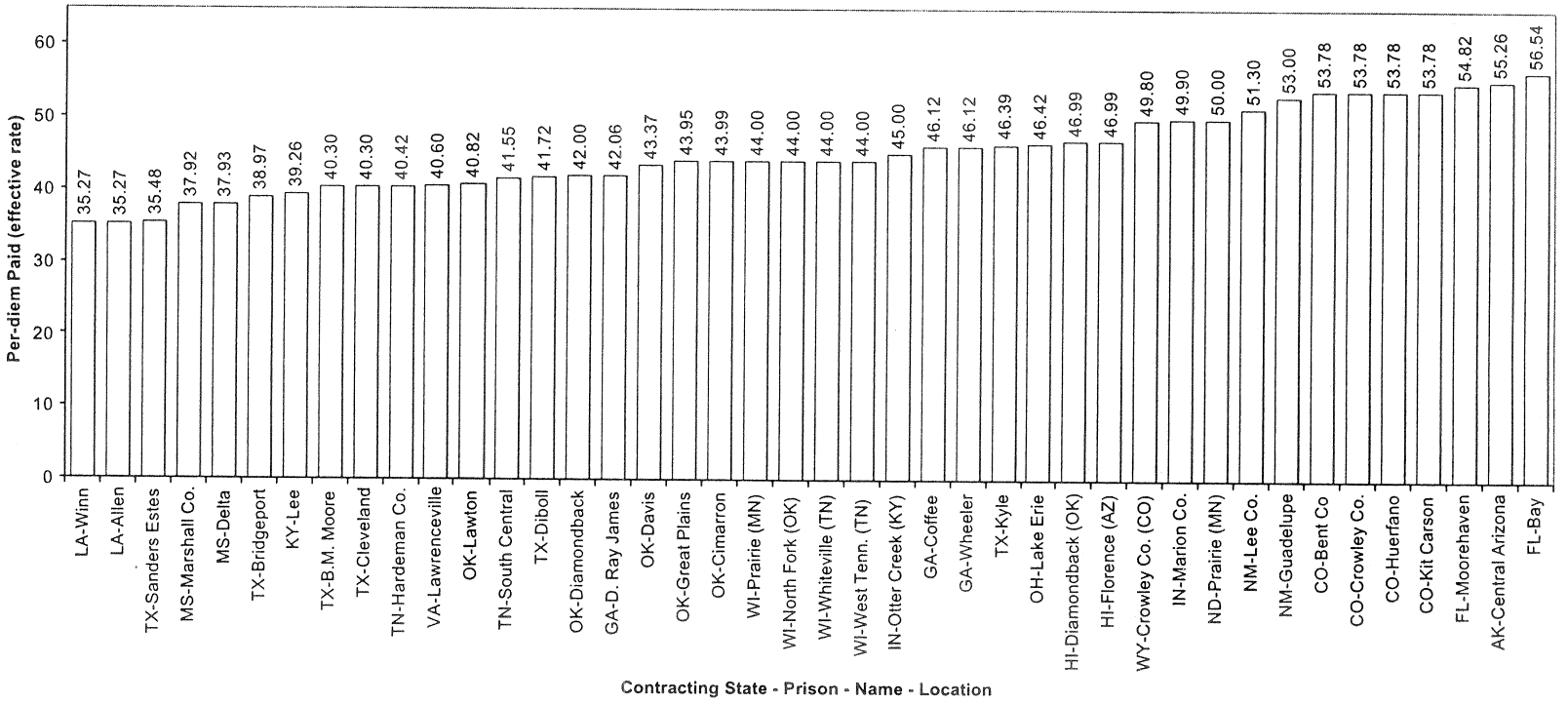
DEFINITIONS (continued):

* Rate Adjusted for Cost-of-Living Index:
An adjustment is made that reflects differences in costs of doing business in each state. Each prison's effective rate (or rate adjusted for debt service) is divided by a cost-of living index that relates to the national average. Lower cost states have indexes below 100 and higher cost states are indexed above 100. For example, with a COL index of 92.4, Oklahoma businesses purchases goods and services at prices that are 92.4% of the national average. Thus, its prison rates are divided by .924 to reflect how its rates compare to the average state's.

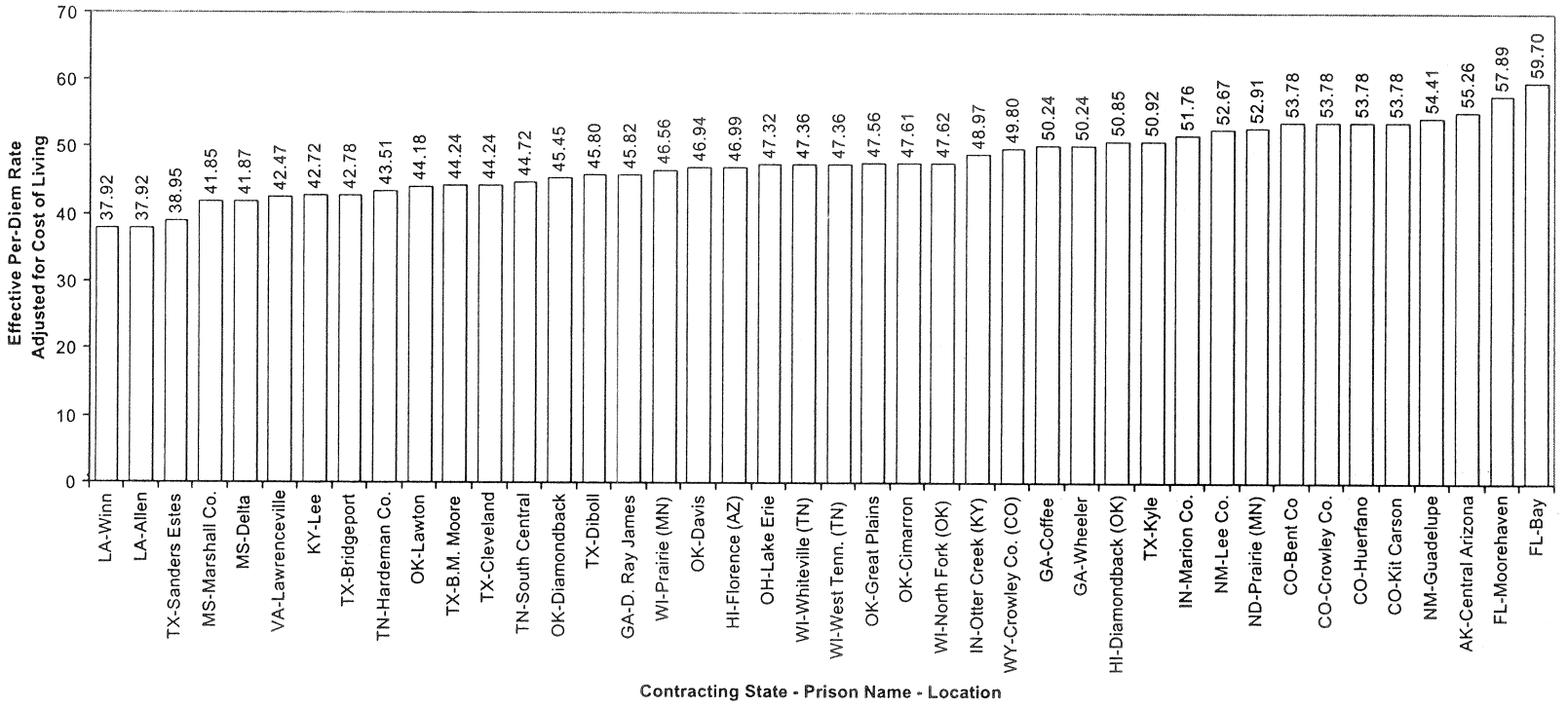
Most cost-of-living indexes were developed for comparing large cities, where costs are relatively high. Most private prisons are located in low-cost rural areas. This survey uses an index by the Kennedy School of Government (Harvard University), which is widely used to compare statewide differences. This survey uses the index of the state where the prison is located, not the contracting state.

State	Index
Alaska	112.7
Arizona	100
Colorado	100.0
Florida	94.7
Georgia	91.8
Hawaii	123.1
Indiana	96.4
Kentucky	91.9
Louisiana	93.0
Minnesota	94.5
Mississippi	90.6
New Mexico	97.4
North Carolina	92.2
North Dakota	93.0
Ohio	98.1
Oklahoma	92.4
Tennessee	92.9
Texas	91.1
Virginia	95.6
Wisconsin	95.2
Wyoming	95.8

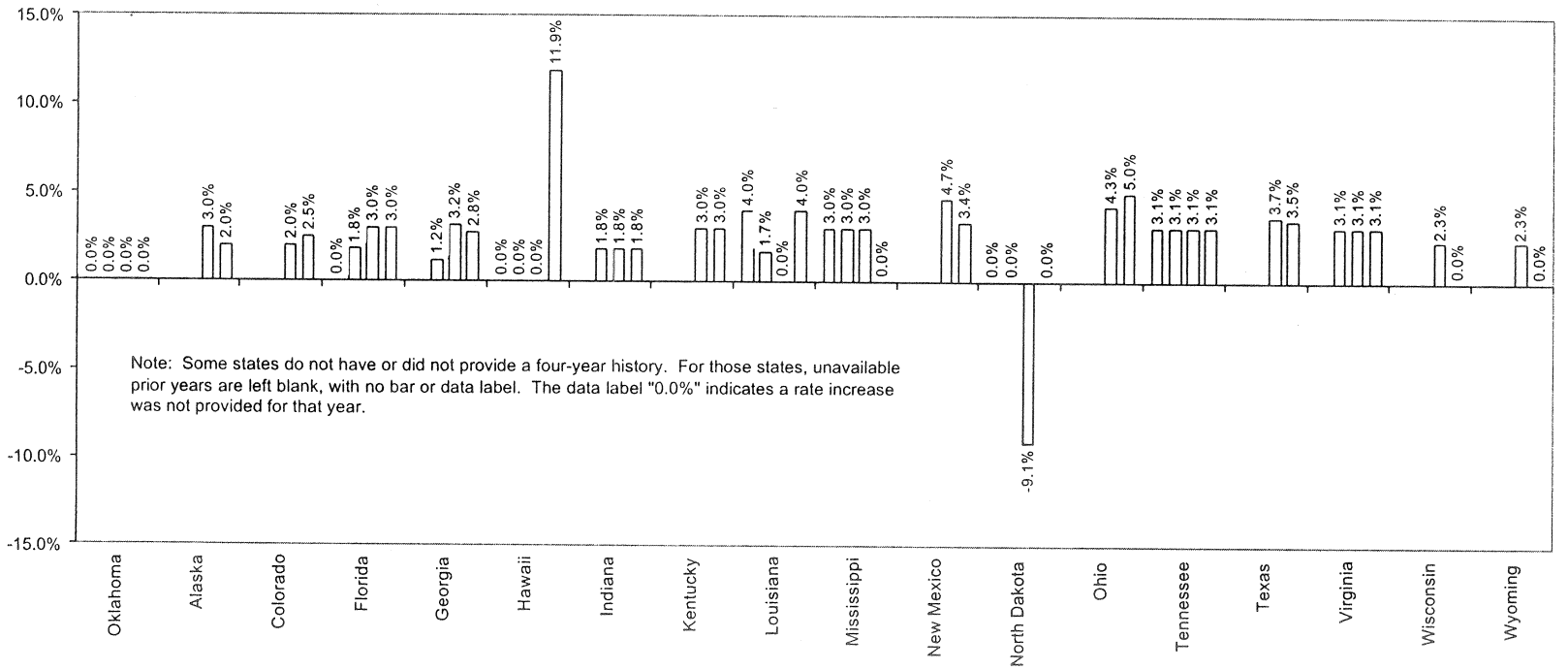
Effective Rates Paid to Private Prisons for Medium-Secure Male Beds



Cost-of-Living Adjusted Rates Paid to Private Prisons for Medium-Security Male Beds



History of Rate Increases to Private Prisons by State, FY'99 to FY'02



State by State Survey

Details on each state's responses follow. Included are narratives on how rate increases are granted in each state.

"Other Issues" lists important comments on how private contracts are structured in each state. These details often help explain rate differences among states. Listed for each state are contract details that are different from the most common contract provisions.

Common Contract Provisions

Transport:

The state and vendors share transportation responsibilities. States often go beyond their contractual obligation by providing transport services in excess of the contractual requirement, especially if the vendor facility is near or en route to a state prison.

Programs:

The state requires the vendor to provide the same quality and quantity of rehabilitation, education and work programs as are available in a public medium-security prison. Though some states require a certain number of slots (and a few pay more for each slot through a contract amendment), most program participation provisions are vague ("80% of all inmates must be participating in some type of program").

Medical:

The average state prison system spends $7.34/inmate/day on medical services, according to national surveys. Thus, medical provisions of each state contract can account for 12-21% of per-diems paid to vendors. More than any other area, medical provisions are key to comparing per-diem rates.

Cost-sharing is the most common arrangment, used to some degree in 16 of 18 states. Under typical cost-sharing contracts, vendors are expected to pay, within the per-diem rate, for all health care services delivered at the prison, which entails routine health maintenance and screening. Once a health problem demands specialty care, it is most common for states to begin assuming responsibility. Thus the highest-cost facet of inmate health care -- those procedures and tests beyond the scope of a prison infirmary -- is often excluded from the per-diem rates.

Proportionality of sharing varies among states surveyed:

* Only 1 state (Ohio) requires vendors to pay 100% of all inmate health care costs.
* Only 1 state (New Mexico) does not require the vendor to pay any health care costs within the prison's per-diem. The state pays a separate vendor to provide all medical services at all prisons, public and private.
* Six states pay all costs of medical needs requiring off-site care. The costs are paid either through reimbursement or provision of care, and often include transportation and security costs.
* Ten states have a cost-sharing arrangement for off-site care, usually structured as a time threshold (e.g. 72 hours) or cost threshold (e.g. $7,000) above which the state will pay all additional costs. Two of the ten cost-sharing states set the threshold high enough (Georgia @ $25,000 and Wisconsin @ $60,000) that vendors assume great risk.

However, 17 of the 18 states surveyed reported inmate assignments are not random from the standpoint of health-care needs. Usually, vendors are sent only the healthiest inmates; highest-cost inmates are kept in the state system, where one prison is often designated as a special-needs facility.

Alaska

Rate Increases:

Contracts provide for annual increase of 2% or CPI adjustment, whichever is lower. Increases have always been provided and, if not funded by the Legislature, internalized by DOC.

Cost of Medium Secure State-run Prison Bed:

$ 110.73 All security levels.

Other Issues:

State pays 100% of transportation costs.

State pays 100% of specialty and tertiary medical costs, including transport.

Rate History:

Year	Tier 1	2	3	4	Effective Rate	% Increase
2000	54.96	53.46	52.96	52.46	52.96	
2001	56.08	54.55	54.04	53.53	54.55	3.0%
2002	57.22	55.66	55.14	54.62	55.66	2.0%

Colorado

Rate Increases

Each contract renewed annually. Legislature annually determines a general, inflation-based rate increase that applies to all providers of state services, not just prisons. Recent rate increases approved were 4.6% for FY'01 and 3.1% for FY'02.

Cost of Medium Secure State-run Prison Bed:

$ 64.88 Includes allocation of centrally funded administration and medical services.

Other Issues:

Colorado DOC charges each prison vendor $0.88/inmate/day for each Colorado inmate it holds and $0.44/day for each out-of-state inmate held, which is used to pay costs of regulating private prisons. For comparison purposes, these amounts have been subtracted from per-diems of private prisons located in Colorado.

Rate History

Year	Crawley Co.	Bent Co.	Huerfano	Kit Carson	% Change
2000	52.28	52.28	52.28	52.28	
2001	53.33	53.33	53.33	53.33	2.0%
2002	54.66	54.66	54.66	54.66	2.5%

Florida

Rate Increases:

Contracts allow for 3% annual rate increase, if funded by the legislature. In three of the past five years the legislature provided appropriations to fund a full rate increase.
For FY'02, the base rate increase was 3%.
For FY'01, the base rate increase was 3%.
For FY'00, the base rate increase was 1.8%.
For FY'99, the base rate was not increased (although a contract re-structuring resulted in Bay CF receiving 6.7% more revenue).
For FY'98, the base rate increase was 3%.

Contracts have always guaranteed 90% of contract beds would be utilized.

Cost of Medium Secure State-run Prison Bed:

$ 45.98 Source: FY'98 report by OPPAGA.
$ 51.15 Rate adjusted since FY'98 by contract increases.

Other Issues:

State law requires private prison operations to be at least 7% less than state-run institutions, and the legislative publications state the savings targets are not being met.

The contracting entity in Florida is the Corrections Privatization Commission, created in the early 1990s after the Florida Department of Corrections had refused to privatize prisons. The commission negotiates contracts. Some legislators in recent years have proposed abolishing the commission because of allegations that it benefits vendors' interests more than the public's.

The state uses a tiered rate structure (differing per-diems based on number of inmates), which complicates year-to-year comparison. The rates quoted assume 100% occupancy, although occupancy currently stands at 94%.

Rate History

Rate	Bay	Moorehav.	% Increase
1997	45.77	44.73	
1998	47.19	46.12	3.0%
1999	47.19	46.12	0.0%
2000	48.05	46.96	1.8%
2001	49.54	48.41	3.0%
2002	51.07	49.91	3.0%

Georgia

Rate Increases:

All contracts mandate an annual increase up to the CPI or 4%, whichever is lower. Each year the base per-diem rates have been increased, although changes in contract structure (i.e., initiation of volume discounts) sometimes resulted in lower per-diems paid. For both prisons, base rate increases were 1.1% for FY'00, 3.2% for FY'01, and 2.8% for FY'02. The legislature has always funded the added cost. Denial of the rate increase would invalidate the contract and require re-bidding.

Cost of Medium Secure State-run Prison Bed:

$ 43.43 Medium
$ 49.82 Systemwide
$ 52.25 Systemwide w/ amortization of capital costs

Other Issues:

Georgia's contracts are extraordinary in that they require the vendors to pay for 100% of medical services up to $25,000 per incident. Most states offer a more generous cost-sharing arrangement or reimburse all of vendors' out-of-pocket expenses.

Each vendor is required to pay Georgia DOC for costs of the 1.0 FTE contract monitoring staff assigned to the facility, and provide office equipment, supplies and phones. That amounts to an average of $0.12/day for staff costs; value of other contributions has not been determined.

There are two vacant private prisons in Georgia, built on speculation, which Georgia DOC does not contract with:
1.) McRae CF, CCA, 1500 males beds, hopes to get federal contract in October.
2.) Stewart Co. CF, CCA, 1500 beds, 75% complete, construction halted pending demand for bedspace.

The state's three contracts (one with Cornell and two with CCA) have a tiered rate structure based on numbers of inmates housed. The CCA contracts, like most other states' tiered contracts, pay a lower rate for higher inmate counts, reflecting the cheaper marginal cost due to economies of scale. Under the contract, all inmates are billed at the same rate; the one rate changes depending on total inmate count. The Cornell contract pays an increased rate for higher numbers of inmates. This odd rate structure -- a volume penalty -- is thought to be the result of the winning vendor under-bidding on the original contract for lower bed counts. Under the contract, separate rates apply to differing triads of inmates. For example, in FY'02, the first 1000 inmates are billed at a rate of $39.76 and the last 550 are billed at a rate of $46.57.

Rate Increase History

Year	James	Coffee & Wheeler
2000	1.1%	1.2%
2001	3.2%	3.2%
2002	2.8%	2.8%

Hawaii

Rate Increases:

The initial contract, which covered three-year period from FY'98-FY'01, did not provide for a rate increase, and none was granted. New contract, adopted for FY'02, provided a rate increase of 11.9%, for which the legislature provided funding of $4 million.

In addition to the higher rate, the new contract provides for an annual per-diem increase equal to the CPI or 2-3%, whichever is less.

Cost of Medium Secure State-run Prison Bed:

$ 90.00

Other Issues:

Hawaii also contracts for medium-secure housing for 63 women inmates at Central Oklahoma CF, which was granted a rate increase of 5.9% for FY'02.

Vendors are required to pay 100% of the first $30,000 of each inmate's medical costs, and 50% of costs above that amount. Hawaii expects to re-negotiate the medical provisions at the request of the vendors.

DOC pays for air transport between reception center and vendors and back, chartering a 50-inmate flight every 3-4 months on average using a private transport company. Vendors pay all ground transportation costs.

DOC selects only longer-term inmates to save transport costs.

Rate History:

Year	Rate Increase
1999	0.0%
2000	0.0%
2001	0.0%
2002	11.9%

Indiana

Rate Increases:

Indiana has one contract with a specific CCA prison (Marion Co. II) and one contract with CCA as a corporation. Under the latter contract, it has moved inmates to CCA insitutions in various states

The Marion Co. II contract has, since its inception in February 1998, required an annual rate increase of 3.5% or the Gross National Product deflator, whichever is less. Over the past two years, the rate increase has been 3.5%.

The CCA Corporate contract is silent on rate increases, and none have been granted. The inmates are currently housed at Otter Creek CF in Kentucky, having been transferred to this facility in January 1999 from the Diamondback CF in Watonga, Okla., which made room for Oklahoma DOC inmates.

Cost of Medium Secure State-run Prison Bed:

$ 49.00 State system overall.

Other Issues:

Rate History:

FY	Marion Co.	% Change Marion Co.	Otter Creek	% Change Otter Creek	Average % Change
1999	45.00				
2000	46.58	3.5%	45.00		1.8%
2001	48.21	3.5%	45.00	0.0%	1.8%
2002	49.90	3.5%	45.00	0.0%	1.8%

Kentucky

Rate Increases:

Contract allows for an annual rate increased equaling the CPI adjustment, but rates are increased only if the legislature provides funding. The General Assembly approved a 3% annual rate increase for both contracted prisons for FY'01 and for FY'02, when state revenues were healthy. The legislature did not fund rate increases in previous years, so DOC did not grant them. However, DOC did internalize the cost of converting the Lee contract from minimum to medium in 1999.

Cost of Medium Secure State-run Prison Bed:

$ 47.49

Other Issues:

Statutes require any private prison bed to cost 10% less than a public prison bed, so the implied rate cap would be $42.74.

Contracts require DOC to pay for using at least 80% of the contracted capacity.

Lee had been a minimum-secure facility until May 1999, when the facilty was acquired from U.S. Corrections Corp. by CCA.

County jails are leasing thousands of beds to the state at a rate of $27.51.

A 900-bed medium security state facility is expected to open in 2003, but projections of 3% annual growth in population indicate the new prison will not reduce reliance on private prisons.

Rate History:

Fiscal Year	Rate	% Change
2000	38.12	
2001	39.26	3.0%
2002	40.44	3.0%

Louisiana

Rate Increases:

Contracts allow for an annual rate increase of up to 4% each year, if the legislature provides funding. Rate increases have been granted in all years except 1999 and 2000*, most recently 4% in 2001. When contracts were renewed in 2000, the state guaranteed vendors a 95% occupancy rate; the state will pay a per-diem for 95% of the beds, whether filled or not.

* Allen's per-diem rate had lagged Winn's by $0.90 or 3.4% in 1999, but per-diems were equalized in 2000. Thus the Allen facility received a 3.4% rate increase in 2000.

Cost of Medium Secure State-run Prison Bed:

$ 39.00

Other Issues:

Contracts were initiated in 1990 and 1991. Built by the state along with an identical state-run prison, the private prisons are state-owned. The project was considered an ideal method of comparing costs at state vs. private prisons.

The state also contracts with 7,000 local jail beds for $22/day.

Rate History:

Year	Winn	Allen	Average
1997	4.0%	4.0%	4.0%
1998	4.0%	4.0%	4.0%
1999	4.0%	4.0%	4.0%
2000	0.0%	3.4%	1.7%
2001	0.0%	0.0%	0.0%
2002	4.0%	4.0%	4.0%

Mississippi

Rate Increases:

Since initiation in FY'97, the contracts required a 3% annual per-diem increase during the five-year term of the agreement. The legislature always provided funding for the increase with the exception of FY'02, when budget constraints precluded the rate increase. New contracts with vendors, adopted August 2001, do not provide for an automatic annual rate increase.

State law requires a 10% savings on private beds, so the implied per-diem cap would be $34.78.

Cost of Medium Secure State-run Prison Bed:

$ 38.65 FY'01. The rate decreased from $42.00 in FY'00 due to deliberate effort to more fully utilize state beds. State-prison vacancy rate increased from <90% in FY'00 to 96+% in FY'01.

Other Issues:

Denied a per-diem increase for the first time in FY'02, vendors sought guarantees that the state would keep 90% of private beds full during the year. The legislature deferred to a legislative audit team, which determined that vendors' "break-even" point ranged from 83.7%-87%. The utilization guarantee was set concurrent with those percentages.

The prisons were built and are owned by the state. Debt service is $12.5 million annually for three prisons, which calculates to an estimated the per-diem of $9.78 in FY'01. If the prisons were filled to capacity, the per-diem would be $7.61.

Contracts require vendor to pay $45,000 salary and benefits cost of state-employed contract monitor. Thus the effective rate has been decreased $0.14/day from the base rate.

Mississippi DOC also contracts with three other private prisons that are not providing exclusively male, medium-secure beds.

Vendor is required to provide all inmate transport, and the state rarely provides transportation assistance. Most states' contracts call for sharing transport duties, and states provide more service than legally obligated.

Rate History:

Fiscal Year	Delta	Marshall	% Increase
1997	25.04	25.04	
1998	25.82	25.81	3.0%
1999	26.62	26.61	3.0%
2000	27.44	27.43	3.0%
2001	28.29	28.28	3.0%
2002	28.29	28.28	0.0%

New Mexico

Rate Increases:

Contract allows annual rate increases equal to 80% of the CPI not to exceed 5%. The legislature has generally provided funding to DOC for the rate increases, but on several occaisions DOC had to internalize the cost. Final approval of the rate increases is granted by a legislative body, the Corrections Oversight Committee.

Guadalupe:
Initial rate of $49.88 was adopted January 1, 2000. Increase of $2.49 or 5% was effective January 1, 2001. Increase of $0.63 or 1.2% was granted July 1, 2001.

Lee County:
Three-tiered rate gives different per-diem for various inmates. For the first 1,080 inmates, rate began at $46.36 on July 1, 1999. Increase of $2.32 or 5% was granted July 1, 2000, bringing the rate to $48.68. Increase of $2.62 or 5.5% was granted July 1, 2001, bringing the rate to $51.30. For additional inmate counts, the following per-diems are paid: $48.25 for 1081-1140; $14.50 for 1141-1200. Vendor has requested the Oversight Committee eliminate the tiered contract, allowing compensation of $51.30 for all inmates.

Cost of Medium Secure State-run Prison Bed:

$ 78.02 (single celling is used by consent decree; private vendors are allowed to use double-celling)

Other Issues:

Private prison rates exclude all medical services. Medical services to all New Mexico inmates -- both in public and private facilities -- is provided by a separate contract with CMS, which is paid $6.98/inmate/day.

Rate History:

Year	Guadalupe Rate	Lee Co. Rate	Guadalupe % Change	Lee Co. % Change	Average % Change
2000	49.88	46.56			
2001	52.37	48.61	5.0%	4.4%	4.7%
2002	53.00	51.30	1.2%	5.5%	3.4%

North Dakota

History of Rate Increases:

Contract is renewed annually, so it is silent on rate increases. A rate increase is not granted unless the legislature provides funding. Contract was initiated in 1997 at a rate of $55.00. The vendor requested an increase to $60.00 for 1999, but the legislature did not fund it. In 2000, after the Minnesota DOC pulled its inmates out of Prairie CF, the rate was decreased to $50.00, where it remains. The FY'02 contract requires the state to pay for 25 beds minimum, whether or not that amount is filled.

Cost of Medium Secure State-run Prison Bed:

$ 55.62

Other Issues:

North Dakota uses only about 30 beds of 300 available and Prairie CF. The state makes an 11% profit by renting private beds: the federal government houses many of its inmates in ND state prisons and pays a rate of $55.62, which is $5.62 or 11% more than the amount ND pays for a replacement bed at Prairie CF.

Rate History:

Fiscal Year	Rate	% Change
1998	55.00	
1999	55.00	0.0%
2000	55.00	0.0%
2001	50.00	-9.1%
2002	50.00	0.0%

Ohio

Rate Increases:

Contract covers biennium. It requires that after one year, a rate adjustment equal to the CPI will be granted. The Ohio Department of Rehabilitation and Corrections (DRC) provides the per-diem increase whether or not it is fully funded by legislative appropriations. The last rate increase was 4.3% in January 2000.

State law requires a 5% cost savings on private beds. Implied cap is $43.67.

Cost of Medium Secure State-run Prison Bed:

$ 45.97

Other Issues:

Ohio contracts with another private prison, which serves minimum-secure inmates with intensive substance abuse treatment, operated by the same vendor.

Vendor pays 100% of medical costs. Inmates are randomly assigned, without regard to inmate health needs.

Rate History:

Fiscal Year	Rate	% Change
2000	36.31	
2001	37.94	4.3%
2002	39.94	5.0%

Oklahoma

Rate Increases:

CPI-based rate adjustments are provided in the contracts, but only if funded by legislative appropriations. The legislature has not appropriated funds for rate increases.

Cost of Medium Secure State-run Prison Bed:

$ 43.42 FY'02 budget for Dick Connor CC; included allocated costs for medical and administration.

Other Issues:

The state pays 100% of the cost of outside medical costs for three of the prisons (vendors are allowed to use University Hospital system). At two other prisons, vendor is obligated to share costs.

Three of the prisons' contracts allow additional per-diem (40 to 98 cents/day) to operate Therapeutic Community programs for some of their inmates.

Rate Increase History

Year	% change
1999	0.0%
2000	0.0%
2001	0.0%
2002	0.0%

Tennessee

Rate Increases:

Contract with Hardeman Co. provides for annual per-diem increase equal to average CPI adjustment.
Contract with South Central provides to 3.25% annual rate increase.
Rate increases are contingent on the legislature providing funding, which has always been forthcoming.

New for FY'02 is a requirement that private beds save 5% over public beds. The implied rate cap is $34.29.

Cost of Medium Secure State-run Prison Bed:

$ 36.09

Other Issues:

Rate History:

Fiscal Year	SC	SC % Increase	Hardeman	Hard. % Increase	AVG % Increase
1997	30.20		28.86		
1998	31.22	3.25%	29.75	3.00%	3.1%
1999	32.27	3.25%	30.67	3.00%	3.1%
2000	33.35	3.25%	31.62	3.00%	3.1%
2001	34.47	3.25%	32.60	3.00%	3.1%
2002	35.63	3.25%	33.61	3.00%	3.1%

Texas

Rate Increases:

Contracts call for annual increases of 2-3% annually for each vendor, which are routinely granted. The Legislature has never failed to provide appropriations for rate increases since private contracts were initiated in 1989.

Cost of Medium Secure State-run Prison Bed:

$ 35.00 Average; range is $33-$37.

Other Issues:

The Texas contracts in this survey are for provision of minimum-security beds. They are included because they closely resemble Oklahoma medium-security private prisons in terms of inmates housed, operational procedures and architecture.

Vendors provide all transportation costs.

Texas also contracts with six state jails housing 7,000 short-term inmates in dormitory environments. Those contracts are not included in this survey.

Rate History:

Year	Moore	Bridgeport	Cleveland	Diboll	Kyle	Sanders	Average Rate	Avg. % Change
2000	33.32	30.04	33.92	34.75	29.90	29.30	31.87	
2001	34.32	31.99	34.60	35.79	31.63	29.89	33.04	3.7%
2002	35.30	33.97	35.30	36.72	33.39	30.48	34.19	3.5%

Virginia

Rate Increases:

Contract provides for a 3% annual increase, subject to legislative appropriations of funds. Legislature has fully funded the rate increases since the contract was initiated in 1998. Contract guarantees utilization of 95% of beds.

Cost of Medium Secure State-run Prison Bed:

$ 64.00

Other Issues:

A separate Department of Correctional Education also pays vendor a per-diem for providing academic and vocational classes. The rate is paid on all 1500+ inmates, although the vendor is required to provide the services to 672 inmates at a time (45% of population). Rate paid is $1.85/inmate/day, and it has increased about 3% each year.

Virginia rents 1,500 beds even though it has 3,200 excess state beds at new state prisons completed in 1999. The excess beds are more valuable as an enterprise operation of the department of corrections. The federal government pays Virginia DOC to house 1,200 District of Columbia inmates and other jurisdictions pay the state to house 2,000 inmates. The state makes a profit of 48% to 58% by renting private beds: the other jurisdictions pay $60-$64 to house inmates in Virginia state prisons, rates that are $19 to $23 more than the amount Virginia pays for a replacement bed at Lawrenceville CC.

Rate History

Year	Base	Effective	Effective % Change
1998	35.20	28.52	
1999	31.08	29.40	3.1%
2000	32.01	30.31	3.1%
2001	32.97	31.25	3.1%

Wisconsin

History of Rate Increases:

3-year contract is with CCA corporation, not each facility, and encompasses housing up to 4,347 inmates at any CCA institution (four are currently used). Contract provides for an increased, specific rate for each future year, but only if the legislature provides funding. The Legislature approved the 2.33% rate increase for FY'01 at a cost of $1.6 million, but deleted fund the scheduled 3% increase for FY'02.

Cost of Medium Secure State-run Prison Bed:

$ 52.40

Other Issues:

Dominion built 1,300-bed Stanley Prison on speculation a few years ago. Wisconsin DOC is planning to buy the prison outright and operate as a state facility beginning in spring of 2002, DOC will begin transferring inmates currently in CCA facilities to the Stanley Prison. Also, a 500-bed state prison in Nekoosa is under construction and should be taking inmates in 2003 or 2004.

Under the CCA contract, the vendor is required to provide all transportation services, which is contract through CCA subsidiary TransCor.

Rate History:

Fiscal Year	Rate	% Change
2000	43.00	
2001	44.00	2.3%
2002	44.00	0.0%

Wyoming

Rate Increases:

Contracts are subject to annual renewal, so rate increases are not mentioned in the contracts. Rates are negotiated by DOC and vendor and signed into law, then the legislature is asked to provide funding. Rate was last increased by $1.13 or 2.3% in FY'01, and the legislature appropriated the necessary funds. Dominion did not request an increase for FY'02, probably because a 78% volume increase guaranteed additional revenues.

Cost of Medium Secure State-run Prison Bed:

$ 54.88 Includes all security levels, not just medium.

Other Issues:

Colorado DOC bills Dominion $0.44/inmate/day for each out-of-state (Wyoming) inmate it holds, to pay Colorado's cost of monitoring the prison.

State pays all costs of medical specialty care and tertiary care of inmates.

A 640-bed state prison expansion is expected to be available soon, but DOC does not predict it will reduce reliance on contract beds. DOC is considering entering into a contract for 50 more beds at a CCA facility in Colorado, which would serve as out-of-state protective custody beds (some Wyoming inmates are seeking to return to Wyoming prisons by getting protective status).

Wyoming also rents 72 max-security beds from the state of Virginia for $64/day.

Rate History:

Fiscal Year	Rate	% Change
2000	49.12	
2001	50.25	2.3%
2002	50.25	0.0%

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United States General Accounting Office
August 16, 1996

Report to the Subcommitteeon Crime, Committee on the Judiciary, House of Representatives

PRIVATE AND **PUBLIC PRISONS** - STUDIES COMPARING OPERATIONAL COSTS AND/OR QUALITY OF SERVICE

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-261797

August 16, 1996

The Honorable Bill McCollum
Chairman
The Honorable Charles E. Schumer
Ranking Minority Member
Subcommittee on Crime

Committee on the Judiciary
House of Representatives

Since 1991, when we issued our earlier report on Private prisons, [FN1] various jurisdictions and levels of government have made or planned greater use of this alternative to publicly run correctional facilities. At the federal level, Plans for privatization of correctional facilities have changed in recent years. For example the administration's fiscal year 1996 budget proposal reflected a commitment to increase the use of privatized correctional facilities in the federal Bureau of Prisons (BOP). Specifically, under the BOP privatization initiative presented in the budget request, the bureau proposed to contract with private firms, where most appropriate, to operate the majority of all future federal pretrial detention facilities as well as the majority of all future federal minimum- and low-security correctional facilities. The Department of Justice's fiscal year 1997 budget justification projected the activation of two privatized facilities in that year. However, in June 1996, the Justice Department reversed its plans for using private contractors to operate the facilities identified in the 1996 and 1997 budget proposals. In explaining its decision to staff these facilities With BOP employees, the Justice Department noted that it was "unable contractually to reduce the risk of a strike or walk out" of correctional officers employed by private firms. [FN2]

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Proponents of privatization assert that the experiences of several states demonstrate that private contractors can operate Prisons at less cost than the government, without reducing the levels or quality of service. In contrast, other observers say there is little or no valid evidence that privatization of corrections is a cost-effective alternative to publicly run facilities.

FN1 Private Prisons: Cost Savings and BOP's Statutory Authority Need to Be Resolved (GAO/GGD-91-21, Feb. 7, 1991).

FN2 Letter, dated June 5, 1996, from the Assistant Attorney General for Administration, Department of Justice, to various congressional committee and subcommittee chairmen and ranking minority members.

To help frame the continuing deliberations of the Justice Department's privatization plans, we self-initiated this review to (1) identify studies (completed since 1991) comparing the operational costs and/or the quality of service [FN3] of private and public correctional facilities; (2) determine, based on these studies, what, could be concluded regarding the operational costs and/or quality of service of comparable private and public facilities; (3) assess whether the reported results are generalizable to correctional systems in other jurisdictions; and (4) identify lessons learned to help guide future comparative studies of private and public correctional facilities. Our work basically was a form of evaluation synthesis whereby we assessed existing studies, particularly with respect to the strength of evidence supporting the reported findings. Appendix I presents further details about our objectives, scope, and methodology. [FN4] We are addressing this report to you because of your Subcommittee's interest in prison issues, as exemplified by the hearings you held on June 8, 1995.

We conducted our work from June 1995 to June 1996 in accordance with generally accepted government auditing standards. We received oral comments on a draft of this report from BOP and written comments from the Department of Justice's Office of Justice Programs; the National Council on Crime and Delinquency; and a Northeastern University (Boston, MA) professor of criminal justice, who is a nationally recognized authority on corrections administration. These comments and our evaluation of them are discussed at the end of this letter.

FN3 As discussed in appendix I, we did not attempt to generically define "quality of service." Rather, we accepted the definition and/or evaluation criteria used in each applicable study that we reviewed. Some studies, for instance used variety of quality measures or outcomes, such as safety and incident data and the extent of treatment programs for inmates.

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FN4 Although not addressed in this report, the privatization of corrections has, at times, raised various other issues besides cost and quality of service issues. For example, there has been some debate over the issue of whether administration of justice (which includes the operation of prisons) is an inherently governmental function not appropriately delegable to the private sector.

Results in Brief

On the basis of literature searches and discussions with correctional officials and criminals justice researchers, we identified five studies completed since 1991 that, compare private and public correctional facilities in relation to operational costs and/or quality of service. Three states sponsored comparative studies of correctional facilities in their states-Texas, California, and Tennessee. The National Institute of Justice, the Bureau of Prisons, and the National Institute of Corrections funded a comparative study that focused mainly on facilities in New Mexico. Washington state studied facilities in Tennessee, Louisiana, and Washington state. The Correctional facilities that were the focus of these studies varied in terms of geographic location and the types of inmates housed. There was also variation in the methodologies and measurements employed by the researchers.

Three of the studies we reviewed (California, Tennessee, and Washington) made comparisons of costs between reasonably matched private and public facilities that were operating within each state that was studied. Of the four private/public comparisons reported in these three studies, two showed no significant differences in operational costs, one showed a 7-percent difference in favor of the private facility, and the other reported the private facility to be more costly than one public facility but less costly than another public facility. One additional study (Texas) reported a 14- to 15-percent savings from privatization; however, the analysis for the Texas study was problematic because the comparison was based on hypothetical public facilities, not existing ones. We could not conclude from these studies that privatization of correctional facilities will not save money. However, these studies do not offer substantial evidence that savings have occurred.

Two studies (New Mexico and Tennessee) assessed a wide variety of factors in their reviews of comparative quality of private and public facilities. These factors, among others, included measures of safety, personnel qualifications, physical conditions of the facilities, health care, and inmate activities. One of these two studies (Tennessee) reported no difference between private and public facilities. The other study (New Mexico) reported a higher quality score for one private facility compared with two public facilities. However, on the inmate survey portion of the assessment, one public facility had higher scores in all of the areas that were assessed, except one. One additional study (Washington), using a less detailed approach to assessing comparative quality, found no differences

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between private and public facilities.

These studies offer little generalizable guidance for other jurisdictions about what to expect regarding comparative operational costs and quality of service if they were to move toward privatizing correctional facilities. First, several of the studies focused on specialized inmate populations, such as those in prerelease situations, that limited their generalizability to a wider inmate population. Second, methodological weaknesses in some of the comparisons-such as using hypothetical facilities or nonrandom survey samples-make some findings questionable, even for the study setting. Third, a variety of differences in other states and regions could result in experiences far different from those of the states that were studied. For example, cost of living and a state's correctional philosophy could affect the comparative costs and quality of private and public facilities from state to state. Finally, the age or maturity of the private system could affect the relationship between private and public facilities in terms of costs and quality.

From a methodological standpoint, the five studies provide some lessons learned for future comparisons of private and public correctional facilities. The importance of focusing on both operational costs and quality of service, comparing institutions (both private and public) that are actually in operation, and using multiple measures of quality are attributes that worked well in selected studies.

Background

A generally accepted evaluation criterion is that any comparative study of **private** and **public prisons** should be based upon the selection and analysis of similar facilities. For example, the **private** and **public prisons** selected for comparison should be as similar as possible regarding design and capacity, security level, and types of inmates. Otherwise, any comparative analysis of operational costs or quality of service could be skewed. On a per-inmate basis, for instance, higher security prisons can be expected to have higher operating costs than lower security prisons because the former type of facilities generally have higher staff-to-inmate ratios.

Even if similar **private** and **public prisons** are available for study, a comparison of operational costs can still present difficulties in ensuring that all costs, direct and indirect, are consistently and fully quantified. Possible difficulties can arise due, in part, to differences in budgeting and accounting practices between and even within the private and public sectors. Determining the appropriate allocation of corporate headquarters overhead and government agency overhead, for instance, can be particularly difficult.

Comparing the quality of service at **private** and **public prisons** also presents challenges and in fact, can be more difficult than

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comparing costs. The concept of "quality" is neither easily defined nor measured. For example, although the American Correctional Association (ACA) sets accreditation standards for prisons, accredited facilities can vary widely in terms of overall quality. According to ACA officials, such variances occur because ACA accreditation means that a facility has met minimum standards.

Generally, however, assessments of quality can take several approaches. For example, one is a compliance approach, that is, assessing whether or to what extent the prisons being compared are in compliance with applicable ACA standards and/or other relevant policy and procedural guidelines and/or court orders and consent decrees. Another approach is to assess performance measures. [FN5] For example, measures of safety could include assault statistics. Safety inspection results, and accidental injury reports.

The difficulties of comparatively assessing **private** and **public prisons**-regarding operational costs and/or quality of service-are further complicated if the prisons Care not located in the same state. Each state and its correctional system have characteristics and conditions that must be recognized in conducting interstate analyses. For example, economic conditions and cost-of-living factors can vary by state and by regions of the nation. Similarly, each state's correctional system may be somewhat unique regarding the extent, of overcrowding, the history of court intervention, the emphasis given to ACA accreditation, and the presence or influence of various other factors. As an illustration, with respect to the five studies we reviewed, appendix III presents state-specific details regarding some relevant factors that could affect interstate comparisons of prison costs and/or quality of service.

Five Comparative Studies Completed Since 1991

On the basis of extensive literature searches and inquiries with knowledgeable corrections officials and criminal justice researchers (see app. I), we identified five studies completed since 1991 that compared **private** and **public prisons** in reference to operational costs and/or quality of service. The following is a brief overview of each study: [FN6]

* Texas study (1991): Conducted by the Texas Sunset Advisory Commission, this study compared (1) the actual costs of operating four privately managed prerelease minimum-security facilities for male prisoners and (2) the estimated costs of operating similar but hypothetical public facilities in Texas. The study did not empirically assess quality of service.

FN5 Charles H. Logan, 'Criminal Justice Performance Measures for Prisons,' Performance Measures for the Criminal Justice System, U.S. Department of Justice, Oct. 1993.

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FN6 As presented, each study is introduced with a short title showing the sponsoring state and/or the state wherein the compared facilities are located. Also, the studies are listed in chronological order by the date of completion or publication indicated in parentheses. Appendix II provides a more detailed overview of these five studies.

* New Mexico study (1991): Funded by the National Institute of Justice, the Bureau of Prisons, and the National Institute of Corrections, this study compared the quality of service at three multicustody facilities (minimum- to maximum-security levels) for women, i.e., a private prison and a state-run prison in New Mexico and a federal prison in West Virginia. The study did not include a detailed analysis of operational costs.

* California study (1994): Conducted by California State University with funding from the California Department of Corrections, this study focused on three community correctional facilities for males. All three facilities were operated (under contracts with the state) as for-profit alternatives to state-operated prisons. One facility (medium-security) was operated by a private corporation, the second (high-security) by a local police department, and the third (low- to medium-security) by a city administration. The study compared operational and construction costs and quality of service. More specifically, regarding costs, the study compared the three facilities (1) with one another and (2) with other state correctional facilities. Both operational and construction costs were included in the comparison of the three facilities with one another. The statewide comparison did not include construction costs for the California Department of Corrections facilities. Regarding quality of service, the study compared the three facilities with two state facilities.

* Tennessee study (1995): Conducted in two parts, one for operational costs and one for quality of service, by the Tennessee state legislature, this study compared three of Tennessee's multicustody (minimum- to maximum-security) prisons for male inmates. One prison was privately managed, and the other two were state-run prisons.

* Washington study (1996): At the time of this study, the state of Washington had no privately run prisons but was considering the feasibility of such. Therefore, the study, conducted by the Washington State Legislative Budget, Committee, analyzed pertinent information available in other states. Regarding operational costs, for, example, the study looked at the three Tennessee facilities (mentioned above) as well as three multicustody male prisons in Louisiana (two private and one public). [FN7] Regarding quality of service, the study compared the three Tennessee facilities, three Louisiana facilities, and two Washington facilities.

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FN7 As discussed in appendix II, the Washington study also included some interstate comparisons of operational and construction costs.

In summary, the California, Tennessee, and Washington studies assessed operational costs and quality of service. [FN8] The Texas study analyzed operational costs only, and the New Mexico study analyzed quality of service only.

FN8 The authors of the California study noted, however, that their findings regarding quality of service were based upon a small, nonrandom sample of inmates.

Drawing Conclusions From the Five Studies

While the five studies varied in terms of methodological rigor, they do, to differing degrees, offer some indication of comparative operational costs and/or quality of service in the specific settings they assessed. However, regarding operational costs, because the studies reported little difference and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money. Similarly, regarding quality of service, of the two studies that made the most detailed comparative assessments, one study (New Mexico) reported equivocal findings, and the other study (Tennessee) reported no difference between the compared private and public facilities.

Comparisons of Operational Costs Indicated Little Difference And/or Mixed Results

Four of the five studies (Texas, California, Tennessee, and Washington) assessed operational costs of private and public correctional facilities. In three of the studies (California, Tennessee, and Washington), comparisons of private and public facilities indicated little or some differences in operational costs. Only the Texas study reported finding substantially lower (14- to 15-percent) operational costs for private versus public correctional facilities.

Using fiscal year 1990 data, the Texas study reported average daily operational costs of $36.76 per inmate for the private facilities, compared with estimates of $42.70 to $43.13 for the public facilities. However, the results of the Texas study are not fully based on actual experience. Rather, the study compared existing private facilities (prerelease institutions) to hypothetical public facilities. This type of hypothetical comparison does not allow for consideration of any unanticipated changes in components such as staffing levels, other expenses, rate of occupied bed space, or many other factors that could affect actual costs. Changes in any single assumption, or set of assumptions, for the hypothetical institutions

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could change the size or even the direction of the differences in the comparative operational costs. [FN9]

Based upon our experience in designing and assessing evaluation methodologies, we found the Tennessee study (of the studies we reviewed) to have the most sound and detailed comparison of operational costs of private and public correctional facilities. The study compared three mixed-population (minimum- to maximum-security) institutions (one private and two public). All three facilities were located in Tennessee, and all three had relatively comparable inmate populations, in terms of numbers and most demographics, except race. Also, direct and indirect costs were considered in the analysis, and representatives from both the private and the public facilities agreed on the cost components and relevant adjustments prior to data collection. The analysis showed very little difference in average inmate costs per day among the three facilities-$35.39 for the private facility and $34.90 and $35.45, respectively, for the two public facilities.

The Washington study, which made intrastate comparisons of correctional facilities (minimum- and maximum-security populations) in Tennessee and Louisiana, also found very little difference in the operational costs of private and public facilities. For Tennessee, the private facilities' average daily operational costs per inmate ($33.61) were lower (about 7 percent) than the comparable costs for the two public facilities studied ($35.82 and $35.28, respectively). It should be noted that the Tennessee facilities, which were analyzed and reported on in the 1996 Washington state study, were the same facilities that are discussed in the 1995 Tennessee study cited above. For Louisiana, the average inmate costs per day for the two private facilities studied were $23.75 and $23.34, respectively, and the comparable daily operational costs for the public facility studied were $23.55 per inmate. [FN10]

FN9 Moreover, in response to competition from the **private** sector, **public prisons** could, over time, become more cost efficient. As discussed later this was one of the conclusions of the Washington study.

FN10 As presented in the study, the costs for the Tennessee and Louisiana facilities were calculated after an adjustment to equalize prison inmate population numbers. The adjustment was needed because, among other things, comparisons of per-capita costs should be based upon equivalent levels of capacity. Otherwise, a facility operating at less than full capacity, for example, generally will show higher per-capita costs than a facility operating above its rated capacity.

The 1994 California study compared three for-profit community correctional facilities located in that state-one by a private firm

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and two run by local governments. The study found that the private facility's average annual costs per inmate ($15,578) were higher than comparable costs for one of the government-run facilities ($13,195) but were lower than such costs for the other government-run facility ($16,627). The lower cost government-run facility had a disproportionate share of drug offenders, which could have affected overall costs. Further, the authors of the study noted that the results of this study must be viewed with some additional caution because of inconsistencies in the underlying or supporting cost figures obtained from different sources within the state.

Comparisons of Quality Are Unclear

Although comparative costs are very important, they are not the only factors considered by policymakers in deciding the direction or extent of corrections privatization. A principal concern is whether private contractors can operate at lower costs to the taxpayers, while providing the same or even a better level of service as the public sector, particularly with respect to safety and security issues.

Of the studies we reviewed, two (New Mexico and Tennessee) assessed the comparative quality of service between private and public institutions in much greater detail than the other studies. Both studies used structured data-collection instruments to cover a variety of quality-related topics, including safety and security, management, personnel, health care, discipline reports, escapes, and inmate programs and activities. The New Mexico study reported equivocal findings, and the Tennessee study reported no difference in quality between the compared private and public institutions.

The findings in the New Mexico study are difficult to interpret. On the basis of surveys of correctional staff and reviews of institutional records, the study reported that the private prison "outperformed" the public facilities on most of the measured quality dimensions. However, the author noted that the results from one of the data-collection instruments - the inmate surveys - showed an opposite result, with one of the public facilities "outperforming" the private facility on every dimension except inmate activities (e.g., work and training programs).

The Tennessee study, in assessing the quality of service at one private and two public prisons, reported that "all three facilities were operated at essentially the same level of performance." This conclusion was largely based on the results of an operational audit conducted at each of he facilities by an inspection team. Composed of private and public sector members, the team used a structured survey instrument to conduct a detailed review of records, observe operations and practices, and conduct interviews.

The Texas study did not empirically assess the quality of service at the private correctional facilities. Rather, the study noted that all four of the privately operated prerelease facilities were in

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general compliance with 11 of the 16 mandates of court rulings applicable to Texas prisons. Also, the study noted that two of the four private facilities had received ACA accreditation, and the other two were still involved in the accreditation process. ACA officials told us, however, that ACA accreditation means that a facility has met minimum standards and that accredited facilities can vary widely in terms of overall quality. To reiterate, because it was based on hypothetical public facilities, the Texas study made no attempt to comparatively assess the quality of service across private and public facilities in Texas.

The California study, in assessing quality of service, used inmate and staff surveys to compare the three community correctional facilities with two state prisons. However, the results could not be generalized to the inmate or staff populations of the respective facilities because small, nonrandom samples were used.

The California study also attempted to compare the three community correctional facilities with the state's other correctional institutions with respect to recidivism rates. The study reported that, of the three community correctional facilities, one of the publicly managed facilities was 'most impressive' in performance based on recidivism rates. Sufficient data were not available to adequately complete the analysis comparing the inmates released from the community correctional facilities with inmates released from other correctional institutions in the state.

The Washington study assessed the quality of service at the three facilities (one private and two public) in Tennessee, three facilities (two private and one public) in Louisiana, and two facilities (both public) in Washington. While not as detailed as the New Mexico and the Tennessee studies, the Washington study concluded that the **private** and **public prisons** studied within the respective states (Tennessee and Louisiana) were generally similar in quality of service. However, the study noted that Washington's two state-run facilities had more counselors per inmate than the other states' facilities.

Generalizability of the Studies' Results

The few studies that have compared the operational costs and/or the quality of service of **private** and **public prisons** provide little information that is widely applicable to various correctional settings. For example, while these studies compared private and public facilities that generally were similar (in terms of capacities, inmate demographics, etc.), the selected facilities were not necessarily typical or representative of prisons in either the state studied or Other jurisdictions. Also, a variety of factors that relate to a given location Or correctional system May render the experience of one jurisdiction with private prisons very different from that of another. Further, the passage of time could alter the relationship between private and public correctional facilities in

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terms Of costs and quality. For these reasons, among others, the few studies that we reviewed do not permit drawing generalizable conclusions about the comparative operational costs and/or quality of service of **Private** and **public prisons**.

Jurisdictions, such as states, vary On several dimensions that could have an impact on the comparative costs Of **Private** versus **public prisons** and, in turn, affect the generalizability of a given study's results. First, other states' correctional Philosophies could differ from that of the states studied. Some state correctional Philosophies are more punitive in nature (as reflected, for example, by higher incarceration rates), whereas other states are less punitive and more inclined toward treatment. [FN11] California, for example, which is one of the states discussed in the five studies we reviewed, generally has had incarceration rates above the national average. Also, the Washington study noted that the adjusted estimated per-bed costs for a state-run facility in Washington ($60,400) were almost double Florida's costs ($33,900) due, in Part, to state differences in operating and programming approaches.

FN11 The rate of incarceration is the number of sentenced prisoners (per 100,000 resident population) in correctional facilities. Since the mid-1980s, according to Bureau of Justice Statistics data, the southern and western regions of the nation have had higher incarceration rates than the northeastern and midwestern regions.

Second, jurisdictions also vary in relation to a variety of economic factors that could affect the relationship between Private and public prison costs. Differences in the costs Of living could affect both private and public prison costs, but in some jurisdictions, one more than the other. For example, a labor shortage could result in higher operational costs for **private** and **Public prisons**.

Third, in some jurisdictions, the inmate Population to be incarcerated in private facilities may be different from those inmate populations in the five studies. Three of the five studies focused on inmate populations that were not representative of the broader prison population-prerelease prisoners (Texas study), female prisoners (New Mexico), and those housed in community correctional facilities (California). Only two studies (Tennessee and Washington) focused on costs in relation to facilities housing a more mainstream prisoner population.

Finally, regarding both operational costs and quality of service, the comparative performance of private versus public correctional facilities is not likely to be static. Changes over time could alter the comparative performance. For example, the first year of a new prison-either private or public-could reflect expenses for training inexperienced staff as well as hiring replacements for those unsuited

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to the work. Inexperienced staff could also have a negative effect on some measures of quality. Also, in the initial years of managing a prison, a private firm may choose to bill for its services at rates below costs to obtain or extend a contract. As time goes by, however, to remain a viable business entity, the contractor's cost-recovery practices would have to change. Similarly, over time, public prisons could become more cost efficient in response to competition from the private sector. For instance, this conclusion was reached by the Washington study, which was commissioned to help the state determine the potential benefits of privatization.

Lessons Learned for Future Comparative Studies

The results of studies comparing **private** and **public prisons** obviously are of interest to any jurisdiction whose policymakers are deciding whether or to what extent corrections should be privatized. Ideally, to be most useful, such studies should be based upon representative samples of prisons, with sufficient statistical controls in place to measure and account for any differences. However, because the number of private correctional facilities is still relatively small (see app. IV)--and, given the fact that each stand-alone facility (whether private or public) may have some unique characteristics-conducting a truly optimal comparative evaluation may be impractical.

Nonetheless, the five studies completed since 1991 offer several lessons learned to guide future studies, even if such studies focus on comparing only one private facility and one public facility. In reviewing the relative strengths and weaknesses of each study to formulate lessons learned, we largely relied on our extensive experience in designing and assessing evaluation methodologies-that is, our experience with generally accepted methodological standards and practices. Specifically, on the basis of our review of the five studies, we identified the following lessons learned:

* In considering the extent to which corrections should be privatized, a key question is whether private contractors can operate at lower costs to taxpayers, while providing at least the same level of service as the public sector, particularly with respect to security and safety issues. Thus, it is important that any study focus on both operational costs and quality of service. Two of the studies we reviewed (Texas and New Mexico) did not have this dual focus.

* The best approach for evaluating operational costs is to study existing comparable facilities, not hypothetical facilities. One of the studies we reviewed (Texas) used hypothetical similar public facilities.

* Generally, there is more than one way to objectively measure or compare prison security, safety, order, and various other dimensions that constitute quality of service. In this regard, it is important to use multiple indicators or data Sources to provide cross-

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checks. The New Mexico study, for example, illustrates that divergent results can be reached by using one data source (e.g., inmate surveys) versus another source (e.g., staff surveys).

* Comparative findings with respect to operational costs and/or quality of service in any given year may not hold true for other years. Similarly, because trends are not self-perpetuating, even findings based on multiyear comparisons must be carefully considered. Nonetheless, all other factors being equal, comparative evaluations based upon several years' data potentially have more value than evaluations based upon 1 or 2 years of data Nearly all five of the studies we reviewed were based upon 1 or 2 years of data.

These lessons learned could be particularly applicable to BOP if, in the future, it resumes its plans for contracting with private companies to operate selected federal correctional facilities. [FN12] For instance, according to April 1995 congressional testimony by the BOP Director, BOP'S privatization initiative, if implemented, would provide an opportunity to undertake some thorough comparative evaluations:

"I know that the Attorney General and ... [the Office of Management and Budget] are very interested in working carefully with us in the Bureau of Prisons to track, on these new contracts, very carefully, what the cost impact study is, because there are a lot of hidden costs in privatization ... [T]here has never been, we don't believe, a real good cost analysis to determine, apples to apples, what is the cost of a traditional prison system and private contracting. The private contractors claim they can do it at great savings, and so we are very interested in monitoring the ones that we have projected for the next few years and determining . . . how well the taxpayers are being served on either side." [FN13]

FN12 For example, the Justice Department's budget justification for fiscal year 1997 projected the activation of two privatized facilities in that year-a detention facility (677 beds) in Seattle, WA, and a multicustody (minimum- and low-security) facility (2,048 beds) in Elkton, OH. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1997: Hearings before a subcomm. of the House Comm. on Appropriations, 104th Cong., 2d Sess. 1655 (1996). However, in June 1996, the administration announced that plans to privatize these facilities were being suspended.

FN13 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for Fiscal Year 1996: Hearings on H.R. 2076 before a Subcomm. of the Senate Comm. on Appropriations, 104th Cong., 1st Sess. 303, 308 (1995).

The BOP Director noted that by contracting out the management of selected facilities incarcerating general inmate populations, BOP was

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moving to the "next level of privatization," which would provide a good basis for comparative evaluations focusing on "like or similiar institutions.' In this regard, the lessons learned from previous comparative studies should be useful to BOP if the federal privatization initiative is revisited.

Comments and Our Evaluation

We obtained oral comments on a draft of this report from BOP and written comments from the Department of Justice's Office of Justice Programs; the National Council on Crime and Delinquency; and a Northeastern University (Boston, MA) professor of criminal justice, who is a nationally recognized authority on corrections administration.

BOP commented that the report was accurate, well done, and useful.

The Office of the Assistant Attorney General, Office of Justice Programs, concurred with the report and noted that additional study of the privatization of correctional facilities is needed. The National Institute of Justice, a component agency of the Office of Justice Programs, commented that the report appeared 'to be as comprehensive as the available data permits," Also, the Institute commented that the report's discussion of the strengths and weaknesses of the five studies "is excellent."

In commenting on the draft, the Executive Vice President, National Council on Crime and Delinquency, said that the report is accurate in concluding that few studies have been completed to date and that these studies have methodological problems that limit understanding the actual cost-benefits of privatization. He noted, however, that our report could place more emphasis on the Tennessee study, which is the most rigorous study to date. Although we concur with the reviewer's assessment of the study, our objective was to provide similar information for each of the studies reviewed. Further, he noted that the report could add more emphasis to evaluating the claims of private providers that they can construct new facilities faster and cheaper than public entities. Since the studies reviewed did not assess these claims, this issue was beyond the scope of our work.

The Northeastern University reviewer [FN14] commented that (1) our evaluation synthesis was an important contribution to the corrections field, (2) the report's conclusion that the five studies offer little generalizable guidance for other jurisdictions regarding the comparative cost and quality of service of private and public correctional facilities was "right on point," and (3) our cautions concerning interstate comparisons were "well-founded."

FN14 Dr. Edith Elisabeth Flynn, College of Criminal Justice, Northeastern

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University, Boston, Massachusetts.

However, the reviewer underscored the need also to focus privatization research On crime reduction and various Philosophical questions underpinning the Privatization debate. These issues were beyond the scope of our work. In addition, the reviewer suggested that it would be valuable to the corrections field if the report included a short, concise statement describing the critical dependent and independent variables that should be considered in comparative analyses of private and public corrections facilities. Because of variations in available data and possible measurement adjustments required in specific research situations, we are hesitant to prescribe what variables should be studied. The studies reviewed, however, suggest possible variables. Furthermore, citing the difficulties researchers have in accessing data from private firms, the reviewer proposed that the report contain a recommendation that would facilitate researchers' access to proprietary information needed for evaluation of Private corrections In the case of federal corrections-related contracts, we would likely have access to data, but we have considerably less jurisdiction at the state level.

We are Providing copies of this report to the Chairman and Ranking Minority Member of the House Judiciary Committee, the Attorney General; the Director, BOP; and other interested parties. Copies Will also be made available to others upon request.

The major contributors to this report are listed in appendix V. Please contact me on (202) 512-8777 if you or your staff have any questions.

Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

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Abbreviations

ACA American Correctional Association
BOP Federal Bureau of Prisons

Appendix I

Objectives, Scope and Methodology

In initiating this review, our specific objectives were to answer the following key questions:

* What studies, completed since 1991, have compared the operational costs and/or the quality of service of **private** and **public prisons**?

* From these studies, what can be concluded with respect to the operational costs and/or the quality of service of comparable private and public facilities?

* Are the results of these studies generalizable to correctional systems in other jurisdictions?
* From these studies, what are the "lessons learned' to help guide future comparative studies of **private** and **public prisons**?

Identification of Comparative Studies

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To identify relevant studies, we requested and obtained literature searches from the National Criminal Justice Reference Service and the National Institute of Corrections. Also, within the Department of Justice, we contacted knowledgeable officials of the component agencies responsible for managing federal correctional facilities-the Federal Bureau of Prisons (BOP), U.S. Marshals Service, and Immigration and Naturalization Service.

Similarly, to query knowledgeable state agency officials, we first contacted the Director of the Private Corrections Project at the University of Florida's Center for Studies in Criminology and Law to obtain information about the number of privatized facilities in each state (see app. IV). [FN1] Then, for each applicable state, we contacted officials at the state's corrections department and/or corrections research agency and inquired about any completed, ongoing, or planned studies comparing **private** and **public prisons**. Further, we contacted the National Council on Crime and Delinquency and various nationally recognized researchers in academia.

Assessment of Studies

We assessed each of the five relevant studies that we identified. Our work in assessing the conclusions or results of each study and the generalizability of same--as well as identifying any lessons learned-can be characterized as a form of evaluation synthesis. By definition, an evaluation synthesis is a systematic procedure for organizing findings from several disparate evaluation studies. That is, the procedure addresses key questions or issues by assessing existing studies or evaluations, rather than by conducting primary data collection.

FN1 Established in 1988 to conduct policy-relevant research on corrections privatization, the Private Corrections Project publishes (semiannually) the Private Adult Correctional Facility Census.

In reviewing the studies, we focused on the findings and conclusions of each study and evaluated these in relation to the methodology used bye the respective study. [FN2] As an initial and fundamental inquiry, for instance, we focused on the similarity of the private and public facilities being compared in each study. That is, we wanted to determine (1) if the facilities were reasonably well matched in relation to design and capacity, security level, inmate demographics, and other relevant institutional characteristics and (2) whether the facilities were actually in operation and, if so, for what length of time prior to the comparative evaluation.

FN2 Two of our staff-senior analysts with specialized training and years of experience in designing and assessing evaluation methodologies-independently

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reviewed each of the five studies.

In reviewing each applicable study's comparative evaluation of operational costs, we focused on whether (1) both direct and indirect costs components were considered for the private and public facilities, (2) actual data versus estimates were used, and (3) consistent cost components were used. We did not independently verify any of the cost data presented in the studies.

In reviewing each applicable study's comparative evaluation of quality of service, we focused on whether the private and public facilities were consistently evaluated in the respective study. That is, in reference to both the private and the public facilities compared in a given study, we were interested in whether the same or similar methodology and data sources were used to evaluate quality of service; rather, we accepted the definition and/or evaluation criteria used in each applicable study. Also, we did not independently verify the reported quality measures or outcomes, such as safety and incident data and the extent of rehabilitation and treatment programs for inmates.

We reviewed the relative strengths and weaknesses of each study to formulate lessons learned for future comparative studies. In doing so, we largely relied on our extensive experience in designing and assessing evaluation methodologies-that is, our experience with generally accepted methodology standards and practices.

Private Sector Contacts

Initially, in September 1995, to obtain a practical understanding of privatization issues, we visited two privately operated facilities housing federal inmates. These facilities, which held deportable aliens, are located in west Texas and were operated by private firms under the general authority of intergovernmental agreements entered into by Bop and the respective city governments of Big Spring and Eden. We toured the facilities and interviewed managers and staff of the private firms. Also, we interviewed the on-site federal monitors.

Further, to obtain additional overview information on privatization issues, we interviewed a senior executive (the Director for Strategic Planning) of one of the nation's largest private corrections firms. This official was a former director Of BOP.

Appendix II

Description of Studies Comparing **Private** and **Public Prisons**

We identified five studies completed since 1991 that compare private and public correctional facilities in relation to operational

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costs and/or quality of service. Table II.1 briefly describes each of these studies. Following the table, separate sections respectively provide more details about each study.
[Table II.1, "Citation, Evaluation Parameters, and Reported
been deleted from text.]

Texas Study (1991)

Conducted by the Texas Sunset Advisory Commission, this study involved a comparative assessment of operational costs; an empirical assessment of quality of service was not conducted. The actual costs of operating four privately managed prerelease minimum-security facilities (500 beds each) for male prisoners were compared with the estimated costs of operating similar but "hypothetical" public facilities in the state of Texas. Two of the four prerelease facilities were managed by Corrections Corporation of America, and the other two were managed by Wackenhut Corrections Corporation.

The study considered direct and indirect costs to compute operational costs for private and public sector management of the prerelease facilities. Direct costs included items such as salaries and fringe benefits, food, medical services, utilities, and supplies. Also, the study recognized that another direct cost would be the expense of having state corrections agency staff on-site to monitor the contractor's performance. Indirect costs included salaries and expenses for corrections department executive personnel, an annual auditing of facilities, and "other administration items" attributable to the private or state facilities. Construction costs were excluded because the state built the private facilities. Also, the study did not include depreciation expenses and capital outlays, but debt service for construction was included.

The study concluded that the state achieved savings from the privatized facilities. Based on requirements specified in state statute, the state estimated the costs of operating similar state-run prerelease facilities. Specifically, because similar state-run facilities did not exist, the state estimated the costs of operating hypothetical state-run prerelease facilities. Contract provisions stipulated that contractors would receive at least 10 percent less than the estimated costs for the state to operate each facility. [FN1] Therefore, in a sense, 10-percent "savings" to the state was guaranteed. Cost data for fiscal year 1990 were analyzed. The state estimated that the privatized facilities achieved 14- to 15-percent cost savings (taking into consideration tax revenues paid to state and local authorities) [FN2] compared with hypothetically equivalent state-run facilities. The average daily operational costs per inmate for the private facilities were $36.76. Because of staffing and construction differences between the contractors, separate costs were estimated for the hypothetical state operation of a facility for each contractor. The estimated average daily operational costs per inmate for the hypothetical state-run facilities were $42.70 for one contractor and $43.13 for the other. However, because the state did

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not operate any prerelease facilities nor did any of its existing facilities have prerelease components, the cost estimates for the state-run facilities were not based on actual state experience. The method assumed no unanticipated changes in components such as salary and other expenses. Thus, an error in one or more assumption could have resulted in different cost estimates, changing the size or even the direction of estimated differences in private versus public management costs.

FN1 Texas state statutory provisions authorize the Texas Department of Corrections to contract with private vendors and county commissioners to finance, construct, operate, maintain, or manage secure correctional facilities. The provisions establish guidelines by which the state can enter into a contract for such services. Among other things, the provisions specify that a contract proposal must provide the state with a savings of at least 10 percent below the costs of similar state-operated facilities.

FN2 According to the Texas study, the private prisons have paid an estimated $400,000 per prison in state and local sales taxes and payments in lieu of property taxes. The study noted that because the state owned the prisons, property taxes were not assessed. Rather, the private contractor paid the local taking authorities an annual amount, which generally approximated the taxes that would have been owed if the property were privately owned.

An empirical assessment of the quality of service was not conducted due to the absence of comparable state facilities. However, the study noted that two of the four private facilities had received ACA accreditation, and the other two were still involved in the accreditation process. Additionally, the study noted that all four facilities were in general compliance with 11 of the 16 mandates of court rulings applicable to Texas prisons.

New Mexico Study (1991)

Funded by the Department of Justice's National Institute of Justice, Bureau of Prisons, and National Institute of Corrections, this study, of the five we reviewed, made the most systematic effort to address quality of service. However, a detailed cost analysis was not included. The study compared three multicustody (minimum- to maximum-security) women's facilities-a privately run facility and a state-run facility in New Mexico and a federal facility in West Virginia-across eight dimensions of quality. [FN3] Data analyzed for the private facility covered June 1989 through November 1989, data for the state facility covered June 1988 through November 1988, and data for the federal facility covered December 1987 through May 1988.

FN3 The New Mexico study used a "confinement model" of imprisonment to develop

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quality assessment criteria. The model defined eight distinct dimensions or performance measures on which to evaluate the quality of a correctional facility. According to the study, these dimensions are based on the premise that confinement 'carries with it an obligation to meet the basic needs of prisoners at a reasonable standard of decency," including standards to evaluate health care, safety, sanitation, and nutrition, as well as constitutional standards to ensure due process and fairness. Examples of those dimensions are (1) security (e.g., facility design and security procedures); (2) safety (e.g., personal injury and harm); (3) order (e.g., discipline and control standards); (4) care (e.g., health care and counseling); (5) activity (e.g., work and training programs); (6) justice (e.g., discipline and grievance procedures); (7) conditions (e.g., food services); and (8) management (e.g., staff turno

The study recognized, at least indirectly, that differences among the facilities regarding age, architecture, and inmate programs made comparisons somewhat difficult to interpret. For example, the private facility was new, the state facility was 4 years old, and the federal facility was about 60 years old. The respective inmate populations were 170 (private), 143 (state), and 814 (federal). The inmates at the New Mexico facilities were nearly similar with respect to characteristics of age, race, and offense type. However, they differed from the federal inmates in race and offense type. The study indicated that one of the factors enhancing the comparability of the two New Mexico institutions was that both were applying for accreditation by the American Correctional Association (ACA). However, ACA officials told us that ACA accreditation means that only minimum standards are met, and since there can be wide variations among facilities in exceeding minimum standards, accreditation should not be used to assume that two or more facilities are comparable.

In assessing and comparing the quality of service at the three facilities, the study derived multiple indicators for each of eight quality dimensions. Data sources for all three facilities included various institutional records, [FN4] such as incident and disciplinary reports as well as work and education records. Also, staff surveys were conducted at all three facilities, and inmate surveys were conducted at the private and the state facilities. In total, the study made 595 (comparisons among the institutions using 333 indicators. All of the indicators were available for the private and state prisons, while 131 indicators were available for the federal prisons. Thus, the study made three-way comparisons for 131 of the 333 indicators and two-way comparisons (private/state) for 202 of the indicators.

FN4 The study noted that fewer official records were collected for the federal prison.

The study concluded, generally, that "the private prison

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'outperformed' the state and federal prisons, often by quite substantial margins, across nearly all dimensions.' It noted, however, that results varied by data source. For example, contrary to other sources used in the study, inmate survey data showed that the state facility "outperformed' the private facility in every dimension except "activity' (e.g., work and training programs).

While the study did not include a detailed analysis of operational costs, it suggested that the better performance of the private facility was accomplished at lower cost. However, the study offered little evidence to support this assertion. For instance, the full report consisted of 291 pages, with only 2 pages devoted to costs. Without providing any detailed analysis, the report noted that the average daily operational costs per inmate for the private facility were $69.75 in fiscal year 1989-1990, the average daily costs of housing an inmate in federal facilities (nationwide) were $39.67 in 1988, the average daily costs for New Mexico state facilities (statewide) were $68.00 in 1988, and the average daily costs for the particular state facility studied were $80.00 in fiscal years 1988-1989. Although no detailed cost analysis was attempted, the study appeared to base the perception of lower costs of private facilities on the fact that "financial analysts in the New Mexico Corrections Department believed that the [private] contract was saving the state money."

California Study (1994)

Conducted by California State University, this study was neither supportive nor critical of private facilities. To assess costs and quality of service, the study compared three for-profit community correctional facilities for males-one privately managed (medium-security) and two publicly managed by local governments (one low-to medium-security and one high-security). [FN5] Specifically, the study compared the three facilities with one another and with other state correctional facilities. Both operational and construction costs were included in the comparison of the three facilities with one another. The statewide comparison did not include construction costs for the California Department of Corrections facilities. Also, the study attempted to compare the quality of service of the three facilities with two other California Department of Corrections facilities.

The three community correctional facilities were generally comparable. For instance, the inmates were nearly similar with respect to characteristics of age, race, and offender status. However, one of the public facilities had a greater percentage of drug offenders [FN6] and Anglo- and African-American inmates and a smaller percentage of Hispanics. The private facility housed 400 inmates, compared with about 420 and about 450 housed at the public facilities. For the period studied, the number of admissions was 1,498 for the private facility versus 392 and 1,073, respectively, for the two public facilities. The two public facilities were relatively new (operational by mid-1991), while the study referred to the private

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facility as "older."

FN5 Correctional facilities that are operated for-profit by a private corporation under contract with the California Department of Corrections are referred to as 'private proprietary facilities." Correctional facilities that are operated for-profit by local government agencies under contract with the California Department of Corrections are referred to as 'public proprietary facilities.'

FN6 This public community correctional facility housed narcotics offenders who were sentenced under a "civil addict program' and subsequently violated parole.

Using fiscal year 1991-1992 data, construction and operational cost comparisons of the private and the two public facilities revealed some differences. For example, the study found that the private facility's average annual costs per inmate ($15,578) were higher than comparable costs for one of the government-run facilities ($13,195) but were lower than such costs for the other government-run facility ($16,627). Construction and operational costs, including overhead and capitalization costs, were calculated for the three facilities. Costs were based on contracts negotiated with the facilities and included capitalization, lease, renovation, program development, and liability insurance. Costs that were not included in the calculations were Parole Division overhead costs (for community correctional facilities), state monitoring, medical costs allocated to the California Department of Corrections, inmate clothing, inmate pay, miscellaneous contracts, interest payments, and possible tax breaks. Also, there were inexplicable inconsistencies in the cost data obtained from two agencies within the California Department of Corrections. These inconsistencies may have affected the reliability of the cost estimates.

Attempts to compare the costs of the three community correctional facilities and other state correctional facilities were not fully successful. The cost calculations for the other state facilities used different components than did the calculations for the community correctional facilities. The latter costs included construction costs; however, the data for the other state facilities did not. Therefore, these cost calculations were not directly comparable. Further, given the unique characteristics of community correctional facilities, the usefulness of comparing these facilities to all other correctional facilities in California-many of which are likely to be very different from the community-based facilities-is questionable.

To assess quality of service, inmate and staff surveys were conducted at the three community correctional facilities and at two state prisons. However, due to small, nonrandom samples, the results could not be generalized to the inmate or staff populations at any of

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the facilities.

The California study also attempted to compare the three community correctional facilities and the state's other correctional institutions in reference to recidivism rates. The study reported that, of the three community correctional facilities, one of the publicly managed facilities was 'most impressive" in performance based on recidivism rates. Sufficient data were not available to adequately complete the analysis comparing the inmates released from the community correctional facilities to inmates released from other correctional institutions in the state.

In summary, the California study's methodological limitations prohibit drawing any overall conclusions about quality of service. The study acknowledged that any future comparative studies in California should "incorporate more inclusive and better-selected survey samples."

Tennessee Study (1995)

The Tennessee state legislature conducted a two-part study. One part was a cost assessment, and the other was an assessment of quality. Overall, this effort was the most systematic attempt of all the studies we reviewed to assess both the costs and quality of service. Three multicustody (minimum- to maximum-security) prisons in Tennessee were compared-one privately managed prison (Corrections Corporation of America) and two state-run prisons.

The facilities were generally comparable. All three were new (e.g., operational by mid-1992), and all had been accredited by ACA also had met other applicable professional standards. The inmates were similar on all demographic characteristics mentioned, except race. No information was provided on capacity level, but the institutions housed approximately the same numbers of inmates-private (961) and state (929 and 1,029). [FN7] The study did not report any information regarding the inmate-to-staff ratios for the facilities.

Similar criteria were used to compare the operational costs of the facilities. The cost components and relevant adjustments-for direct and indirect costs-were agreed to by all parties (private and public) prior to data collection. Direct costs included salaries and fringe benefits, food, professional services, equipment, maintenance, travel, utilities, and supplies. Also, there was a cost provision for state employees to monitor the private prison. Costs for medical and mental health services were excluded. Indirect costs included salaries and expenses for corrections department administration and overhead, and interest on working capital.

FN7 These data reflect the second year of operation.

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Using data that covered July 1993 through June 1994, the study concluded that the costs of operating the private and both state facilities were virtually identical. Specifically, the comparison showed that the average daily operational costs per inmate for the private prison were $35.39, versus $34.90 and $35.45, respectively, for the two public prisons.

The quality of service assessment consisted of three components- an audit (given a weight of 60 percent), a security and safety index (a weight of 25 percent), and a program and activity index (a weight of 15 percent). The study period for the quality of service assessment was March 1991 through September 1994.

An operational audit was conducted at each of the facilities by an inspection team, consisting of selected staff from the Tennessee Department of Corrections and the Corrections Corporation of America. The staff had varying degrees of expertise in major functional areas, such as administration, safety and physical plant, health services, treatment, and security. The team used a structured survey instrument to conduct a detailed review of records, observe operations and practices, and conduct interviews. By using the survey instrument, the team attempted to assess compliance with the various programs and practices within each of the functional areas. Examples of those programs and practices were administration (e.g., fiscal management and affirmative action); safety and physical plant (e.g., fire and occupational safety and sanitation); health services (e.g., dental care and pharmacy services); treatment (e.g., inmate orientation and social programs); and security (e.g., firearms and armory control).

The security and safety index considered many factors, including disciplinary reports, use-of-force incidents, assaults, deaths, injuries, and escapes. These reports were counted over a 15-month period (from July 1993 through September 1994) for each facility.

The program and activity index measured the percentage of inmates who were eligible for a work or program assignment but remained inactive and unassigned. The data used in this review were derived from monthly reports that measured actual numbers of prisoners assigned to the particular program or activity and the percent unassigned.

The results of the quality of service assessment stated that "all three facilities were operated at essentially the same level of performance.' No differences were found among the facilities on the security and safety index or on the program and activity index. All estimated variation across the facilities was due to differences in audit scores. The overall performance scores were 98.49 for the private facility and 97.17 and 98.34, respectively, for the two Public facilities.

Washington Study (1996)

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When the Washington State Legislative Budget Committee conducted this study, the state had no Privately run prisons but was considering the feasibility of such. Therefore, using pertinent information available in other states, this study made several intrastate and interstate Comparisons of correctional facilities. For example, the study compared the operational costs of the three Tennessee facilities (mentioned above) as well as three multicustody male facilities in Louisiana. Of the three facilities in Louisiana, two were privately operated (Corrections Corporation of America and Wackenhut, respectively), and the other was state operated. All three Louisiana facilities were in full operation by the beginning of 1991.

Each of the Tennessee prisons had a rated capacity for 1,336 inmates, and each of the Louisiana prisons had a rated capacity for 1,474 inmates. The average daily inmate Population at each of the Tennessee prisons was slightly over 1,300, compared with a range of over 1,300 to more than 1,400 at the Louisiana prisons. Also, within each state, there was little difference among the prisons' inmates with respect to demographics such as education, age, offense types, and sentence lengths.

Several cost comparisons were made between the Private and public facilities. First, the operational costs of the one private and the two public prisons in Tennessee (actual data for July 1993 through June 1994) were compared, as were the operational costs of the two private prisons and the one public prison in Louisiana (estimated data for July 1995 through June 1996). The unadjusted operational costs of the three Tennessee facilities were similar. However, after adjustments to equalize the numbers Of inmates, the private facility's average daily operational costs per inmate ($33.61) were slightly lower than the comparable costs for the two public facilities ($35.82 and $35.28, respectively). For the Louisiana facilities, the average daily operational costs per inmate for the two private prisons were $23.75 and $23.34, respectively, versus $23.55 for the public facility.

The Washington study also compared the operational costs of one Washington state prison with the operational costs of one Tennessee state prison and the operational costs of one Louisiana state prison. The three facilities were similar on some characteristics; however, adjustments were made to the costs and number of beds of the Tennessee and Louisiana facilities to further equalize the comparison. The study showed that the average daily operational costs per inmate for the Washington facility ($44.52) were higher than the costs for the Tennessee ($37.07) and the Louisiana ($24.04) facilities.

The comparison of the Washington facility with the Tennessee and the Louisiana facilities was problematic. While the facilities were similar in capacity, there were differences in inmate demographics, such as race and offense type. Other factors- (e.g., cost-of-living differences) served to complicate further the interstate comparisons. In any event, these interstate cost comparisons involved state-run facilities only and did not consider any private facilities.

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Further, the Washington study looked at construction costs by comparing the estimated costs for Washington state to construct a planned multicustody public prison for males with a private company that was constructing a similar facility in Florida. [FN8] In making the interstate comparison, the study noted that it focused on the "major elements contributing to capital costs," which included amounts and types of facility space, actual construction costs, and ancillary construction costs such as design and administration. [FN9]

Although the Washington study noted that the facilities were comparable in terms of size and inmate mix (e.g., "large multicustody"), it made cost and space programming adjustments to the facilities to further equalize the comparison. For instance, land and site-related costs, taxes, and unique local costs were excluded from the comparison. For the Florida facility, the study made upward cost adjustments to account for differences between the two facilities in labor and material costs, the later completion (about 2 years of construction inflation) of the Washington facility, and state oversight of the construction. For the Washington facility, the study made downward cost adjustments to account for differences between the two facilities, such as budget reductions of 20 percent, and space reductions of 18 percent to account for differences in inmate security levels and other space allocations. In addition, the study made downward cost and space adjustments to reflect the Florida facility's lower mix of close custody beds.

FN8 When completed, the Florida facility is to be operated by Wackenhut.

FN9 The private prisons in Tennessee and Louisiana could not be used for capital costs comparisons because the prisons were state built rather than privately built.

The study indicated that there were other differences in the space programming between the two facilities, for which no adjustments were made. For example, the Washington facility assumed single cells for "Close Housing and Administrative Segregation," while the Florida facility assumed double cells for those beds. Also, the Washington facility's minimum-security beds had relatively high per-bed space allocations, reflecting the incorporation of service and program space in the housing calculation. The space allocations for the Florida facility, however, reflected medium-security beds with centralized program and service space.

The study showed that the adjusted estimated per-bed cost for the Washington state facility ($60,400 per bed) was approximately double the estimated cost for the Florida facility ($33,900 per bed). The cost difference was explained largely as due to different operating and programming approaches or philosophies between the two states.

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The Washington study concluded that privatization per se would not result in cost savings to the slate. Rather, the report noted that savings could be accomplished through privatization or through changes in the state's operational policies and practices. For example, savings directly related to privatization would be due primarily to a private company's flexibility to operate outside state rules and procedures, collective bargaining agreements, and the state's employee compensation system.

Finally, the Washington study comparatively assessed the quality of service at the selected **private** and **public prisons** in Tennessee and Louisiana and two multicustody male facilities in Washington. While this portion of the study was not as detailed or as comprehensive as the portion involving costs, the quality assessment included visiting the prisons and reviewing institutional records for several topics, such as escapes, major disturbances, and inmate infractions. The study concluded that the **private** and **public prisons** studied within the respective states (Tennessee and Louisiana) generally were similar in quality of service. However, the study noted that Washington's two state-run facilities had more counselors per inmate than the facilities in the other states.

Appendix III

Factors That Could Affect Interstate Comparisons of Prison Costs And/or Quality of Service

Several factors could affect interstate comparisons of prison costs and/or quality of service. In addition to cost-of-living and other economic differences among the nation's geographic regions and states, these factors include the (1) extent of prison overcrowding, (2) history of court interventions, (3) status Of ACA accreditation of facilities, (4) rate of incarceration (as an indicator of the punitiveness of the corrections system), and (5) rights of correctional employees to organize and bargain collectively.

Regarding the studies that we reviewed, the sponsoring states-Texas, New Mexico, California, Tennessee, and Washington-are located in the southern or western regions of the United States, the areas where most privatized facilities are located (see app. IV). Regional differences, such as cost of living, may affect comparisons with other states or regions. For example, the Washington state study adjusted Tennessee's operational costs upward by 20 percent to account for regional cost-of-living differences between the two states.

By definition, prison overcrowding [FN1] occurs when the number of inmates actually incarcerated exceeds the rated capacity [FN2] of the correctional facility. As table III.1 shows, the extent of overcrowding (if any) varied among the five states studied-at the time of initial privatization of selected correctional facilities within the respective state. [FN3] For example, on January 1, 1991, California's prisons held 94,050 inmates, which was 41,352 inmates (or 78.5

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percent) above the total rated capacity (52,698). In comparison, at that time, the average state correctional system was operating at 12.6 percent above rated capacity.

Texas was not reporting overcrowding on January 1, 1989. However, most states, including Texas and the other states studied, have been involved, at some point, in litigation challenging various conditions of confinement, such as overcrowding, in their prisons. The following general descriptions are examples of prison litigation that have occurred in the states studied:

FN1 Overcrowding, in and of itself, is not a violation of the Eighth Amendment's prohibition of cruel and unusual punishment unless specific effects flowing from that condition form the basis for a violation. See Hoptowit v. Ray, 683 F.2d 1237, 1249 (9th Cir. 1982).

FN2 The term "rated capacity" refers to the maximum number of beds or inmates assigned by a rating official to institutions within the Jurisdiction.

FN3 At the time of its study, the state of Washington had no privatized prisons. Thus, for the purposes of table III.1, we present data for Louisiana rather than for Washington. The Washington study included a comparative evaluation of three multicustody prisons (two private and one state-run) in Louisiana, as discussed in appendix II.

* In Texas, the Ruiz v. Estelle [FN4] line of decisions includes a 1980 ruling, which found that various conditions (such as overcrowding and inadequate sanitation, recreational facilities, and health care) within the Texas Department of Corrections violated the U.S. Constitution. Thus, the court appointed special masters and monitors to supervise the implementation of and compliance with its decree.

* In New Mexico, the Duran v. Apodaca [FN5] line of cases includes a 1980 consent decree that contained mandatory and prohibitive injunctions relating to conditions and practices at the state's penitentiary. Among other subjects, the consent decree addressed living conditions, medical and mental health care, and inmate discipline.

* In California, various court decisions in the 1980s addressed segregation procedures, double-celling, and other conditions of confinement at several prisons located in northern areas of the state.

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* In Tennessee, the 1982 Grubbs v. Bradley [FN6] decision found that certain practices and conditions of confinement at the state's adult penal institutions were unconstitutional.
* In Louisiana, in the 1977 Williams v. Edwards [FN7] decision, the court held that conditions at the state penitentiary at Angola violated the U.S. Constitution and certain state laws.

Another factor that could be considered in making interstate comparisons of correctional facilities is the extent Of ACA accreditation. Obtaining ACA accreditation signifies that a facility has met minimum standards. ACA officials told us that, at the time of the respective state's initial privatization efforts, Texas and Louisiana had no ACA-accredited facilities; but New Mexico, California, and Tennessee had "some" accredited facilities. For these latter three states, the ACA officials were unable to specifically quantify the number of accredited facilities that existed when the respective state began its privatization efforts. However, the officials were able to tell us that, as of 1989, the state-run women's facility in New Mexico was not accredited by ACA.

FN4 503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part and vacated in part, 679 F.2d 11 15, amended in part, 688 F.2d 266 (8th Cir. 1982), cert,. denied, 460 U.S. 1042 (1983).

FN5 C.A. No. 77-721-C (D.N.M. July 14, 1980).

FN6 662 F. Supp. 1052 (M.D. Tenn. 1982).

FN7 547 F.2d 1206 (5th Cir. 1977).

The degree of punitiveness of a corrections system, as reflected, for example, by the system's incarceration rate, [FN8] may affect operating and programming approaches, and therefore, expectations of service. States with higher incarceration rates tend to be found in the west and south, although there is Variation within regions. On December 31, 1988, Texas and New Mexico had incarceration rates of 240 and 180, respectively, while the national average rate for state institutions was 227. On December 31, 1990, the incarceration rates in California (311) and Louisiana (427) were higher than the national average rate for state institutions (227); Tennessee's incarceration rate, however, was lower (207). Furthermore, the Washington study found differences in programming (e.g., education and work programs) when comparing Washington with Tennessee and Louisiana.

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Both opponents and proponents of privatization have suggested that active correctional employees' unions can affect whether a state decides to privatize corrections; for example, union agreements with the state may be a disincentive to privatization. According to the results of an April 1994 ACA survey of state adult correctional departments, the public employees of such organizations in the five states studied shown in table III.1 had the right to organize. However, the percentage of such correctional employees represented by unions in two of the states was 20 percent or below and one state did not provide data; in three states, the correctional employees could not bargain collectively; and in none of the states did the correctional employees have the right to strike.

[Table III.1, "Factors That Could Affect Comparisons With States Studied," has been deleted from text.]

Appendix IV

Use of Private Corrections in States

As table IV. 1 shows, as of March 1996, a total of 47 private correctional facilities (secure facilities for adults) were being operated or being planned for operations by private companies in various states. These 47 private correctional facilities are located in 12 states. However, the most use (actual or planned) of privatized correctional facilities is in 3 states-Texas, with 21 facilities; Florida, with 7 facilities; and California, with 5 facilities.

[Table IV.1, "Private Adult Secure Correctional Facilities Operating or Planned, as of March 1996," has been deleted from text.]

Appendix V

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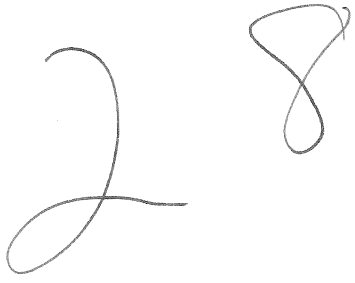

Abt Associates Inc.

Private Prisons in the United States

An Assessment of Current Practice

July 16, 1998

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Foreword

In the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. No.105-33 § 11201(c)(3)(A)), Congress mandated that the Attorney General "conduct a study of correctional privatization, including a review of relevant research and related legal issues, and comparative analysis of the cost effectiveness and feasibility of private sector and Federal, State, and local governmental operation of prisons and corrections programs at all security levels...." In response to this, the National Institute of Corrections issued a cooperative agreement (#98K38GIG5) to Abt Associates Inc. to conduct the study.

We are grateful to Kathleen Hawk Sawyer, Director of the Federal Bureau of Prisons, who facilitated our work by asking state correctional directors to take the time to respond to our survey. We are also grateful for the support of the National Institute of Corrections, and especially to Larry Solomon, Deputy Director, who facilitated the cooperative agreement, and to Brenda Maynor, the project monitor for the Institute.

This project relied heavily upon many officials who responded to our survey requesting information about contracting practices. These include the directors of correctional systems in 48 states, in Puerto Rico, the District of Columbia, and the Virgin Islands; the administrators in these agencies who manage 91 different contracts; and the monitors of these contracts. All devoted a substantial amount of time to providing us much detailed information about these contracts, their procurement and monitoring practices, their past experience with privatization, and their future plans. We were also assisted by a number of people who responded to early drafts of the questionnaire, including staff from the Bureau of Prisons; Dale Parent and Brad Snyder, colleagues at Abt Associates; and James Austin and Darlene Grant, of the National Council on Crime and Delinquency.

The National Council on Crime and Delinquency provided us information from a survey its staff conducted of privately operated facilities; we thank James Austin, Darlene Grant, and Owen Tulloch for their assistance. Preliminary data were also obtained from the 1995 census of state and federal correctional facilities, conducted by the Bureau of Justice Statistics (BJS) and the Bureau of Census. Allen Beck at BJS facilitated this, as did the Inter-University Consortium for Political and Social Research.

Tom Rolfs, retired Director, Division of Institutions in the State of Washington's Department of Corrections, devoted a substantial amount of time interviewing by telephone a number of persons in several states who responded to our survey. We are grateful to both Mr. Rolfs and to those he interviewed, as our understanding of contracting at state government levels was enlarged by them. A number of private correctional firms also responded to inquiries from us and provided us a substantial amount of information about their operations.

Malcolm Russell-Einhorn's review of the legal issues associated with privatization benefitted from the help and guidance of several individuals. These included Richard Crane, formerly Chief Legal Counsel for the Louisiana Department of Corrections and later Vice President and General Counsel for the Corrections Corporation of America. Mr. Crane provided his reactions and suggestions at several stages in the work, including reviewing drafts of this document (included here in appendix 3).

Others who provided valuable assistance included William Collins, editor of the *Correctional Law Reporter*, Harold Sklar of the Federal Bureau of Investigation's Criminal Justice Information Division, and Michael McManus of the Texas Department of Criminal Justice. Mr. Russell-Einhorn is especially grateful to four law student interns who helped with the legal research: Valerie Simons and Charles Everage of Georgetown University Law Center, Russell Drazin of George Washington Law School, and Steve Mercer of Washington College of Law, American University.

Four others made an especially valuable contribution to this study. Julianne Nelson, Ph.D., of NW Partners, undertook an assessment of the best and most recent cost analyses of private and public correctional facilities. Her report, included here as appendix 1, was supported by a separate cooperative agreement from the National Institute of Corrections. We have relied heavily upon her work in chapter 3. A similar review of studies comparing the performance of private and public facilities was undertaken in connection with this report by Gerald Gaes, Ph.D., Scott Camp, Ph.D. and William Saylor, all of the Federal Bureau of Prisons' Office of Research and Evaluation. This review, included here as appendix 2, provides such a detailed assessment of the most significant studies in the field that we have not attempted to do more than summarize their findings in the main body of this report.

Special thanks are owed to the staff at Abt Associates, who have worked extremely hard on this project. This includes, most significantly, Joan Gilbert and Ruthel Watson, as well as Susan Anderson, and Patricia Harmon. Carl Patten's reading of several sections was also valuable.

Douglas C. McDonald, Ph.D.

Summary

This report examines the current state of practice, law, and research with respect to privately operated prisons in the United States, at all levels of security. The body of current law relevant to privately operated prisons is reviewed, including federal and state statutes, regulations, and case law. Current knowledge regarding the cost and cost-effectiveness of privately operated prisons is assessed by means of reviews and evaluations of existing research on cost and quality of performance.

The report's focus is limited principally to contracting by state and federal governments for the private management and operation of facilities that are analogous to secure state or federal prisons. Although the private imprisonment industry also provides secure detention for defendants awaiting trial, for illegal immigrants, for prisoners transitioning back into their community, and for juveniles, such facilities are not examined here. Contracting for these latter facilities was excluded from this study for several reasons. First, state and federal correctional agencies are responsible for sending most of the prisoners held in privately operated facilities—about 80 percent of all privately held prisoners at year-end 1997. Second, most of the studies comparing cost and performance of privately and publicly operated facilities examine state prisons or their private equivalents, rather than local jails and privately operated detention facilities. To survey more than 3,000 local governments to identify their practices of contracting for privately operated detention would have required more time and resources than were available for this study.

By 1997, the numbers of adults in privately operated secure facilities of all sorts—prisons, jails, and illegal immigrant detention centers—reached about 64,000, which constituted less than three percent of the entire United States population of confined adults. The number of facilities had grown to approximately 140, and the industry's revenues probably approached $1 billion.

Information about the subset of the industry that encompasses state and federal contracting for secure imprisonment was obtained from a variety of sources, including a survey of contracting practices conducted by Abt Associates Inc. of prison administrators in all state and federal governments, in the District of Columbia, Puerto Rico, and the Virgin Islands. All but two jurisdictions provided information. This survey determined that 28 of these jurisdictions had 91 active contracts at year-end 1997 with 84 different privately operated facilities. These facilities reportedly held 37,651 prisoners at that time. The surveyed jurisdictions also reported having an additional 14,719 prisoners in still other privately operated facilities. Many of these prisoners had been transferred to another jurisdiction under the authority of an intergovernmental agreement, and the receiving government had placed them in a privately operated facility with which it had a contract. Others were held in non-secure facilities with which the governments contracted.

Ten correctional agencies were responsible for placing the vast majority of prisoners in privately operated facilities. These were, in descending order, the Federal Bureau of Prisons, the States of Texas, Florida, Oklahoma, Louisiana, Tennessee, California, Mississippi, and Colorado, and the District of Columbia. The most commonly reported reason for contracting with private management was not to reduce costs but to alleviate overcrowding in the public system and to acquire needed beds quickly. It is not surprising, therefore, that most (sixty percent) of the privately operated facilities are privately owned. In most places, contracting for imprisonment services was not taken at the initiative

of the correctional agency, but was instead mandated by either the legislature or the chief executive of the jurisdiction, typically the governor.

Does Contracting for Prison Operations Save Money?

Even though the quest for financial savings was not given by prison administrators as their primary reason for contracting, it is no doubt a common hope among policymakers that governments will save money by doing so. Some proponents argue that evidence exists of substantial savings as a result of privatization. Indeed, one asserts that a typical American jurisdiction can obtain economies in the range of 10 to 20 percent. Our analysis of the existing data does not support such an optimistic view.

Comparing public and private prisons' costs is complicated for a variety of reasons. Comparable public facilities may not exist in the same jurisdiction. Private facilities may differ substantially from other government facilities in their functions (e.g., the private facility in Arizona houses men and women, or some in Texas that are used for drug abuse treatment services or for pre-release populations placed in halfway houses by other jurisdictions). Or they may differ in their age, design, or the security needs of inmates housed, all of which affect the cost of staffing them. Cost comparisons are also difficult because public and private accounting systems were designed for different purposes; that is, public systems were not designed principally for cost accounting. Spending to support imprisonment is often borne and reported by agencies other than the correctional department, and computation of these costs is often difficult for lack of data. The annual costs of "using up" the physical assets are not counted in the public sector, as capital expenditures are generally valued only in the year that they are made, rather than being spread across the life of the assets. Nor is the cost to the taxpayer of contracting readily apparent from tallies of payments to contractors. Governments incur expenses for contract procurement, administration, and monitoring; for medical costs above amounts capped by contracts; and for sentence computation, transportation, and other activities performed by governments. Cost comparisons often fail to account for such expenditures.

Of the approximately 140 secure confinement facilities currently in existence, or the 84 that held active contracts with state or federal agencies at the end of 1997, only a handful have been studied to learn if contracting is less costly to the taxpayer. Fewer still have employed reasonably strong research designs and reported the data in sufficient detail to permit an assessment of the validity of the findings. The results are mixed and subject to different interpretations.

Some studies report finding that contracting saved the taxpayers money; others report small differences, if any. Some of these apparent differences may not reflect actual savings but may instead be accounting artifacts, especially those associated with lower estimated costs of government overhead activities. That is, signing lower overhead costs to privately operated facilities may not result in actual savings because these costs are quite fixed. Savings will accrue to taxpayers only if (a) overhead activities are cut back as a result of contracting (an unlikely event where only a few facilities are contracted in a larger public system), or (b) if planned increases in overhead costs are averted as a result of contracting. It is unclear in the studies reviewed if purported savings associated with reduced use of government overhead functions actually resulted in less spending.

Legal Issues Relevant to Contracting for Imprisonment

Whereas the legality of governments delegating correctional authority to private firms was much debated in the 1980s, it now appears that objections to prison privatization on constitutional delegation grounds have little force. Unless a government has absolutely no persuasive statutory authority for entering into private prison contracts, courts will be reluctant to invalidate contacts on delegation grounds. Only delegated rulemaking and adjudication functions that directly purport to exercise a government power are deemed to require special constitutional due process safeguards and to be subject to heightened judicial scrutiny. No clear case law has been developed to define with precision how general due process standards will be applied to private prisons. These issues have been handled in some states through legislation, and through contracts in others.

With respect to liability, private prisons are generally treated as "state actors" for purposes of civil rights suits, so that all relevant constitutional requirements apply with equal force to private as well as public facilities. Private prison employees do not have the advantage of "qualified immunity" shields, nor are they protected by other governmental immunities that limit monetary damages available to inmates suing over prison conditions. Governments cannot shield themselves entirely from liability by means of contracting, but they can lessen their exposure by doing so. In the vast majority of suits brought by prisoners, alleging individual rather than systemic group harms, governments will generally not be deemed to have knowledge of the specific acts and injuries, and will not be held responsible. Public correctional authority's litigation costs can be kept as low as possible by requiring that a private contractor indemnify them and have relevant public entities named as an insured on the contractor's comprehensive general liability insurance policy.

While the right to strike exists in privately operated prisons, the risk of such disruptions can be minimized by private firms seeking to have employees agree, individually or collectively, to no-strike pledges. Moreover, contractors can also insist on notification requirements that allow them to make arrangements for assumption of certain essential responsibilities in the event of a labor action.

The possibility of bankruptcy has excited much concern regarding private imprisonment, but this has not yet been a problem in the industry. The few exceptions involved some small firms that speculated by building facilities in the absence of contracts with an agency. Public correctional agencies should nonetheless seek to protect themselves against the untoward consequences of bankruptcy by means of proper monitoring and careful contracting.

Regarding the use of force, including deadly force: the major legal issue is whether the use of force is properly mandated by the relevant laws of the jurisdiction. Without proper enabling legislation or contractual provisions authorizing the use of force by designated private prison officials, it is possible that such persons and their firms could face civil and criminal liability.

Sending prisoners from one jurisdiction to privately operated prisons in another poses some special legal questions. Several jurisdictions rely not on contracts but instead on intermediary governments to place prisoners in private facilities. Several jurisdictions also lease bed space directly from private contractors in foreign jurisdictions, sometimes in prisons that are built and operated on a speculative basis. These interjurisdictional arrangements have raised questions about the sufficiency of legal authority and regulation. For example, receiving facilities may lack legal authority to allow them to

respond to a variety of critical situations, including escapes and other prison emergencies. Legislation may be needed to govern these practices.

The success or failure of a private prison arrangement may depend upon the skill with which contracts are designed and negotiated. Public authorities must give close attention to the purposes served by contracting and the degree of specificity that they seek to build into the agreement.

Implications for Federal Prisons

Bureau of Prisons officials assert that the private sector's experience in operating higher security prisons or managing inmate populations with higher security needs is too limited to warrant the privatization of such facilities in the federal system. (Correctional authorities distinguish between the physical security of prisons and and the security needs of inmates.) To be sure, maximum security facilities and prisoners remain almost entirely in the government-operated sector: only four percent (1,661) of prisoners in privately operated facilities were classified as maximum security, whereas 20 percent (or 200,000) of all prisoners in government facilities were so classified.

The private sector's experience with what the Federal Bureau of Prisons terms medium security prisoners is more ambiguous, however. Surveyed correctional agencies reported that half of their prisoners housed in private facilities under contract at year-end 1997 were classified as medium security. But procedures for classifying prisoners according to their security needs vary from one jurisdiction to the next. It is not clear that a prisoner classified as medium security in one will be classified the same in all others. For example, a comparison of prisoners classified by Louisiana and the Federal Bureau of Prisons suggests that the private sector's experience in at least this one state may not be comparable to the federal government's practices at the medium security level.

Eighty percent of all prisoners in two privately operated facilities and in a third government operated facility in Louisiana were classified by the state as being medium security; the remaining prisoners were split evenly between maximum and minimum security. A random sample of prisoners from these three facilities was picked and they were classified according to federal procedures, which uses a four- rather than a three-tiered classification system: high, medium, low, and minimum security. Approximately 33 percent of these prisoners would have been classified as medium-security in federal prisons; 29 percent and 28 percent would have been classified as "low" and "minimum" security, respectively. The proportion of high security prisoners was the same as classified by Louisiana (10 percent). This distribution of prisoners so classified is not characteristic of medium-security prisons in the federal prison system. Rather, it is closer to that found in low-security prisons. Lacking similar data from other states, it is not possible to determine how the security needs of inmates housed in other privately operated facilities correspond to those prisoners held in federal facilities.

1. Introduction

This report examines the current state of practice, law, and research with respect to privately operated prisons in the United States, at all levels of security. The body of current law relevant to privately operated prisons is reviewed, including federal and state statutes, regulations, and case law. Current knowledge regarding the cost and cost-effectiveness of privately operated prisons is assessed by means of reviews and evaluations of existing research on cost or performance.

The focus of this report is limited principally to contracting by state and federal correctional agencies for the private management and operation of facilities that are analogous to *secure* state or federal prisons. Although several private firms operate correctional or pretrial detention facilities under contracts with local governments that are functionally equivalent to local jails, this report does not attempt to identify or study them. Nor does it attempt to study the practice of contracting for detention centers designed to hold illegal immigrants pending deportation, for juvenile detention or correctional facilities, or for privately operated non-secure institutions, such as halfway houses or work-release facilities, in the adult or juvenile system. Reference is made to such facilities in the historical overview of privatization in chapter two, but no sustained attention is given to them elsewhere. Also beyond the study's purview are contracts for services narrower than management and operation of the entire facility, such as contracts for health care or food services.

Several sources of information were relied upon for this report.

Survey of state and federal correctional agencies. To obtain the information needed to describe the breadth and variety of current practice, a mailed survey was conducted by Abt Associates, Inc., in February—March, 1998, of all correctional agencies in state governments, the federal government (the Bureau of Prisons), the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The questionnaire sought information about a wide range of issues. The response rate was high: all questionnaires were returned with the exception of those from two states. The findings of this survey are reported below.

Survey of private facility operators. A complementary survey was conducted by the National Council on Crime and Delinquency (NCCD) during early 1998. This survey was sent by mail to the firms that manage privately operated facilities in the United States; information was returned for approximately half of those facilities in existence at the time of the survey. NCCD provided Abt Associates with the applicable findings of the survey for this report.

Surveys by other private and federal agencies. Information about privately operated facilities was also obtained from the Center for Studies in Criminology and Law at the University of Florida. Professor Charles Thomas and his associates in Florida publish an annual census of private prisons and jails in the United States and abroad.[1]

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1 The most recent is Charles Thomas, Diane Bollinger, and John Badalamenti, *Private Adult Correctional Facilities Census, Tenth Edition* (Gainesville, FL: Center for Studies in Criminology and Law, University of Florida, 1997). Preliminary results from the 1998 survey (which provides data for 1997) were obtained from the center's website (http://web.crim.ufl.ed/pcp).

Research studies. During the past decade, a number of analysts have studied certain privately operated facilities, comparing their cost and/or performance to certain publicly operated ones. These studies, and their findings, are reviewed and assessed.

Review of contracts, requests for proposals, and other documents. In addition to information from the surveys, documents pertaining to specific contracting arrangements in a selected number of governments were examined. These include, variously, the requests for proposals that specify the scope and nature of the privatization project, the resulting contracts, formal requirements for monitoring contractors' performance, audit and monitoring reports, and the like.

Interviews. A variety of interviews were conducted with officials in state governments to clarify information reported to Abt Associates in the mail survey described above.

Review of relevant law. The body of law relevant to private prisons was reviewed, including federal and state statutes and regulations, as well as case law. In addition, a wide range of pertinent legal articles was consulted.

The Structure of This Report

A brief overview of the private corrections industry in the United States is provided in chapter two. This includes: a short history of the industry's development and the reasons for it; the industry's growth; the prevalence of privately operated facilities, their size, types of prisoners held, scope of services provided, and various other characteristics; and a discussion of the prospects for future growth in the industry.

It also examines the various arrangements by which private correctional services are obtained by governments. This includes, among other arrangements: contracting with private firms to design, build, and operate privately owned facilities; contracting with private firms to manage and operate government-owned facilities; "renting" beds in privately operated and/or owned facilities on a per diem or similar basis; and using intergovernmental agency agreements to transfer prisoners to other jurisdictions, wherein they are then placed in private facilities. Chapter two also discusses the legal authorization for these various relationships, some common differences in contractual structures, payment provisions, and monitoring activities, and other topics.

State correctional administrators sometimes chose not to report non-contractual arrangements for housing prisoners in private facilities, because they were not the contracting party. (Such situations occur when a state sends prisoners to another government correctional agency, using the vehicle of the intergovernmental agency agreement, and the receiving state then places the prisoners in a contracted facility.) Although the survey attempted to identify such arrangements, we did not generally obtain much information about them.[2] The surveyed agencies did provide us with the numbers of prisoners held in privately operated facilities under such agreements, however.

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2 Correctional agencies were not reluctant to provide these data. Rather, the Abt Associates survey failed to request specific information about them, as our questionnaire asked about contractual relationships.

Consequently, the analysis that follows is generally limited to facilities that operated under contract with state or federal governments.

What is known about the costs and savings associated with privately operated prisons is examined in chapter three. A number of studies are reviewed and their findings discussed. The data in a selected number of studies are reanalyzed for the purpose of clarifying the differences in expenditures for privately and publicly operated correctional facilities.

How the performance of privately operated facilities is measured and assessed by contracting agencies is examined in chapter four. Contracts vary in the extent to which they require performance achievement. The Abt Associates survey collected information about whether and how contracts attempt to bolster performance. Few contracts have been evaluated for cost and/or performance achievement. However, there is some research literature regarding measured performance of private and public prisons. The methods and findings of eight such studies are discussed.

The principal legal issues associated with privatization are reviewed in chapter five. It addresses both the legality of delegating the incarceration management function to private entities and the impact that this delegation has on the liability exposure of both private prison contractors and public correctional authorities.

2. An Overview of the Private Imprisonment Industry, Past and Present

This chapter offers a thumbnail portrait of correctional privatization. Its focus is generally on the practice of contracting with state and federal correctional agencies to hold prisoners, mostly convicted, who would otherwise be in government operated prisons. It begins with a brief history of the industry since the mid-1960s and a discussion of why private prisons emerged. It then describes several different constellations of public/private involvement in owning and operating prisons, state-to-state variation in experience with privately operated prisons, reasons why some state or federal agencies have chosen to contract or not to contract, where privately operated facilities are located, their size, their experience with housing higher-security prisoners and with operating programs for prisoners. Finally, correctional agencies' plans regarding growth and future privatization are discussed.

A Short History of Correctional Privatization

The phenomenon of private prisons and jails came into the public eye in the mid-1980s, when the fledgling Corrections Corporation of America (CCA) offered to take over the entire State of Tennessee's troubled prison system, with a 99-year lease from the state, for which it would pay $250 million dollars. CCA would, in return, house the state's convicted prisoners for a negotiated per diem payment. Moreover, it would guarantee that the prisons would meet the standards set by a federal judge, who had earlier found the state's correctional system to be in violation of the U.S. Constitution because of the conditions of confinement in its prisons. The state refused, but the offer ignited widespread press attention and public debate.

Despite the apparent novelty of the idea, privately operated correctional facilities were not new in this country.[3] Private imprisonment had been common in earlier centuries in both England and the United States. By the beginning of this century, however, governments nearly everywhere had assumed responsibility for imprisonment and most other criminal justice functions.[4] By mid-century, the notion that governments were responsible for the administration of justice, and especially imprisonment, had become so well entrenched that many argued that imprisonment is an "intrinsic" or "core" function of government.[5] But even though state responsibility for imprisonment was well

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3 A longer discussion of this history can be found in Douglas McDonald, "Private Penal Institutions," in Michael Tonry (ed.), *Crime and Justice: A Review of Research* (Chicago, IL: University of Chicago Press, 1992); "Introduction," in Douglas McDonald (ed.), *Private Prisons and the Public Interest* (New Brunswick, NJ: Rutgers University Press, 1990); and Aric Press, "The Good, the Bad, and the Ugly: Private Prisons in the 1980s," in McDonald (ed.), *Private Prisons*, pp.19-41.

4 W.S Holdsworth, *A History of English Law*, Vol. 4, 3rd ed., (London: Cambridge University Press, 1922-24), p. 397; A. Crew, *London Prisons of Today and Yesterday* (London: I. Nicholson & Watson, 1933), p. 50; Blake McKelvey, *American Prisons: A History of Good Intentions* (Montclair, NJ: Patterson Smith, 1977), p. 197-216.

5 American Bar Association, *Report to the House of Delegates* (Chicago, IL: American Bar Association, February 13, 1989), p. 3; John J. DiIulio, Jr., "The Duty to Govern: A Critical Perspective on the Private Management of Prisons and Jails," in McDonald (ed.), *Private Prisons*, p. 172-177; Ira P. Robbins, *The Legal Dimensions of Private Incarceration* (Washington, DC: American Bar Association, 1988), p. 44.

established, contracting continued for a variety of services associated with imprisonment, including facility management and operation, albeit confined to various niches of the juvenile and adult correctional systems. Private, mostly not-for-profit charities and organizations had played a long and distinguished role in operating facilities for juvenile offenders. Indeed, the private Society for the Reformation of Juvenile Delinquents established the first house of refuge in New York City in 1825. By the mid-nineteenth century, private cottages had been established in several states.[6] During the 1960s, the number of privately operated juvenile facilities began to grow rapidly. By the time a national census of juvenile correctional facilities in the United States was conducted in 1989, the number of privately operated facilities had grown to 2,167, compared to 1,100 public ones.[7] The private facilities were very different from the public ones, however. Most were small community-based group homes or halfway houses, whereas most of the government facilities were training schools and detention centers.

In the adult correctional system, private firms had long been contracting with federal and state governments to provide a variety of specific services to correctional facilities, such as food services, maintenance, education, vocational training, health care, prison industries programs, and counseling.[8] Such contracting received little attention because it did not seem to pose fundamental questions about the state's authority to incarcerate prisoners. Nor were questions raised when the Bureau of Prisons began in the late 1960s to contract with private firms to operate community treatment centers, halfway houses to which federal prisoners were transferred prior to being released or paroled.[9] These were outside the mainstream of secure prisons.

The private sector began to approach that mainstream in 1979 when the U.S. Immigration and Naturalization Service (INS) began contracting with private firms to detain illegal immigrants pending hearings or deportation, some of whom had finished terms in state or federal prisons, in secure confinement facilities. These contracts provided the seedbed for the contemporary private imprisonment industry in the United States, as several of the now-significant players in the industry started with them. This includes the Corrections Corporation of America (CCA), a Tennessee-based firm that incorporated in 1983 and opened its first detention center in Houston, Texas, the following year. Wackenhut, Inc., a long-established private security firm, entered the private imprisonment business when it won a contract to build a detention facility outside Denver, Colorado, for the INS. Similarly, the Correctional Services Corporation (formerly ESMOR) won a contract in 1989 to operate a immigrant detention facility in Seattle, Washington.

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6 Philip B. Taft, Jr., "The Fiscal Crisis in Private Corrections," (Part I), *Corrections Magazine* VIII, no. 6 (December 1982):27-32.

7 *Biannual Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities* (Washington, DC: U.S. Bureau of the Census, 1989 census).

8 Camille G. Camp and George M. Camp, *Private Sector Involvement in Prison Services and Operations* (South Salem, NY: Criminal Justice Institute, 1984).

9 Matthew J. Bronick, *The Federal Bureau of Prisons' Experience with Privatization* (Washington, DC: Federal Bureau of Prisons, March 1989).

These developments drew little attention, but this changed in 1985 and 1986 when governments began to contract with private firms to operate secure facilities that functioned as county jails and state prisons. In 1985, CCA contracted with Bay County, Florida, to operate its jail and with Santa Fe County, New Mexico in 1986, to operate its jail. In January 1986, U.S. Corrections Corporation opened a 350-bed prison in St. Mary's, Kentucky to hold sentenced prisoners for the state. At approximately the same time, a small privately operated facility was opened in rural Cowansville, Pennsylvania, and the District of Columbia government arranged to transfer 55 inmates from the District's overcrowded jails to it. Their arrival created an uproar. Local residents came together and patrolled the streets with shotguns, fearing escapes. A prison reform group in Philadelphia learned of this and successfully petitioned the state legislature to declare a moratorium on privately operated prisons in that state.[10]

These events set off a nationwide debate about the legality, propriety, and desirability of private imprisonment. Congress held hearings in 1986; the National Institute of Justice convened a conference; and many criminal justice professional associations took a stand. The latter included the American Federation of State, County, and Municipal Workers (opposed), the National Sheriff's Association (opposed), the American Correctional Association (cautious support), and the American Bar Association (which asked for a moratorium pending further study).[11] The American Bar Association (ABA) study concluded that delegating operating authority to private entities posed "grave constitutional and policy problems."[12] This debate did not stop correctional privatization in its infancy, however. By the end of 1989, there were 44 secure private facilities in this country, housing about 15,000 prisoners.[13] By the close of 1997, the total number of privately operated secure facilities for adult prisoners in the United States had grown to 142, and the number of prisoners held in them to 64,086, according to the most recent estimates developed by Charles Thomas and his associates.[14]

Comparisons between conditions prevailing in 1986 and 1996 give some measure of the rapid growth experienced in this industry. (1996 is the most recent year for which a consistent data series is available, developed by Professor Charles Thomas).[15] The number of beds in privately operated facilities in operation or under construction in the U.S. increased at an average annual rate of 45

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10 Joint State Government Commission, *Report of the Private Prison Task Force* (Harrisburg, PA: General Assembly of the Commonwealth of Pennsylvania, March 1982).

11 U.S. House of Representatives, *Privatization of Corrections: Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee of the Judiciary, House of Representatives, Ninety-ninth Congress, First and Second Sessions on Privatization of corrections, November 13, 1985, and March 18, 1986.* (Washington, DC: U.S. Government Printing Office, 1986).; John Peterson, *Corrections and the Private Sector: A National Forum* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1988), Conference Proceedings.

12 American Bar Association, *Report to the House of Delegates* (Chicago, IL: American Bar Association, February 13, 1989).

13 Douglas McDonald, "Private Penal Institutions," in Michael Tonry (ed.), *Crime and Justice: A Review of Research* (Chicago, IL: University of Chicago Press, 1992).

14 Charles Thomas, Private Corrections Project (Gainesville, FL: Center for Studies in Criminology and Law, University of Florida, June 29, 1998) http://web.crim.ufl.ed/pcp/.

15 Thomas, Bolinger, and Badalamenti, *Private Adult Correctional Facility Census*, Tenth Edition (Gainesville, FL: Center for Studies in Criminology and Law, University of Florida, 1997). These annual census of privately operated facilities use similar rules for including facilities in each. Generally, they include only "secure" facilities.

percent. Few of these beds were empty: the occupancy rate of all private adult facilities averaged 96 percent during 1996. In 1987, there were about 3,000 prisoners in such facilities. By 1996, the number had soared to more than 85,000. During 1996 alone, the number of prisoners increased 30 percent.[16]

As a result of these trends, growth in the private correctional industry's revenues has been explosive: from about $650 million in 1996 to about $1 billion in 1997.[17] Wall Street and individual investors have been impressed with these growth statistics and with the apparently bright prospects for future growth (private facilities have less than 3 percent of the "market share" of prisoners held in state and federal prisons and in local jails in the United States).[18] Stock prices of the four publicly traded firms consequently have been bid up very high, providing these companies with substantial amounts of cash to finance further expansion.

Why the Private Prisons Industry Emerged

The contemporary private imprisonment industry owes its emergence to several dynamics, other than the obvious fact that entrepreneurs saw business opportunities and seized them. One was the desire of many government correctional agencies to expand their capacity quickly. For example, the INS, faced with the need for more beds to house illegal aliens, turned to private firms to design, build, and operate detention facilities. This could be done quickly, using funds budgeted for detention operations, rather than waiting months or years for a capital appropriation to be requested and approved.

For cities and counties, contracting for private imprisonment resolved certain problems peculiar to local governments. In Bay County, Florida, for example, the county commissioners were displeased with the pace at which the independently elected sheriff was making improvements to the local jail, which had been found by the state to be in violation of established standards. The commissioners turned to the Corrections Corporation of America, which promised to make the necessary improvements quickly and to get the state off the county's back within a matter of months. In Santa Fe, New Mexico, the county had built a larger jail than it needed, resulting in a higher per prisoner expenditure than anticipated. County officials decided that it would be more economically advantageous to contract with a private firm to operate the facility and to pay only for the space used, leaving the rest of the facility to be used for housing prisoners in other "markets": for example, prisoners from other counties that lacked sufficient bed space or federal prisoners being transported by the U.S. Marshals Service.

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16 C.W. Thomas, *Private Adult Correctional Facility Census* (1997).

17 1996 data from Nzong Xiong, "Private Prisons: A Question of Savings," *The New York Times*, July 13,1997; 1997 data from Alex M. Singal and Raymond F. Reed, *An Overview of the Private Corrections Industry: Industry Analysis*, (Baltimore, Md: Legg Mason Wood Walker, Inc., July 16, 1997), p. 12. Singal and Reed estimate the "revenue power" of the industry to have been about $1 billion in mid-1997; we have not attempted to determine the actual revenues received by year-end.

18 On June 30, 1997, a total of 1.2 million persons were held in state and federal correctional facilities, and 570,000 in local jails. As discussed below, the private industry's share of the state and federal market is slightly larger, about 4.2 percent.

Different dynamics created business opportunities for the private sector in state governments. Beginning in 1973, the nation's state and federal prison population began growing rapidly, and by 1986, it had almost tripled, growing more than fifteen times faster than the general population. To accommodate the increase from 1985 to 1986 alone—about 43,000 additional prisoners—seven new medium-sized (500-bed) prisons were needed each month.[19] Governments did not build facilities quickly enough to handle this flood of prisoners, and severe overcrowding became the norm. By 1986, all but seven states were operating their prisons in excess of 95 percent capacity; 38 were either full or above capacity; and seven states exceeded capacity by more than 50 percent. The federal prison system was also operating at somewhere between 27 and 59 percent above capacity. Throughout the nation, prisoners were sleeping in hallways, day rooms, gymnasiums, sometimes even in bathrooms, or were doubled up in small cells.

Overcrowding exacerbated another serious problem: a large proportion of the nation's penal facilities were outmoded and even obsolete by contemporary standards. A government survey conducted in 1983 found that half of all state and federal prisons in operation at the time were more than 35 years old and a substantial number more than a hundred.[20] Only about one-fifth of all state and federal prisons had been accredited by the Commission on Accreditation for Corrections. The confluence of these dynamics resulted in a spate of lawsuits challenging the constitutionality of the conditions under which prisoners were being confined. By mid-1988, 39 states, the District of Columbia, Puerto Rico, and the Virgin Islands were operating prisons and jails under court orders to remedy unconstitutional conditions. Several states were even forced to release prisoners ahead of time to bring occupancy levels down to mandated levels.

Correctional administrators found themselves in a difficult position, unable to stanch the flow of prisoners and constrained in the ability to build more prisons quickly. Following the passing of Proposition 13 in California in 1978, expenditure controls or revenue restrictions were placed on many state and local governments. Federal aid to state and local governments had also been shrinking since 1980. By 1986, the general revenue sharing program was dead, leaving many local governments without any federal assistance. Many state governments were reaching their debt ceilings and were unable to issue more bonds to finance prison construction. Even though voters were supporting legislation to send more criminal offenders to prison and for longer times, they often voted down prison construction debt proposals.

Turning to the private sector to provide new prison beds was an attractive solution to many governments facing debt restrictions. If a private firm financed, constructed, and operated a new prison, payments to the firm by governments for housing the state's prisoners could be charged against operations budgets, rather than capital budgets, thereby avoiding any need for increasing debt. Some jurisdictions relied on a variant of this arrangement: private corporations were brought into being, operating on behalf of a government, which would issue bonds to finance the construction of a new prison that would then be leased to the state. Lease payments could be paid using government

19 McDonald (ed.), *Private Prisons*, p. 4.

20 Bureau of Justice Statistics, *Prisoners in State and Federal Institutions on December 31, 1983* (Washington, DC: Department of Justice, 1986), Table 16.

operating funds, and the state's corrections department could operate the facility as if the state owned it outright.[21]

To this day, the market for private imprisonment is largely confined to the provision of *new* beds in state and federal prisons, rather than takeovers of existing government operated facilities. Although privatization came onto the public stage with the Corrections Corporation of America's bid to take over Tennessee's prisons in 1985, such a transfer of assets has occurred only once. Effective January 30, 1997, CCA acquired a twenty-year lease on the District of Columbia's Correctional Treatment Facility for which it pays $233,000 a month. CCA also has a twenty-year contract to operate the facility.

The growth and development of the private imprisonment industry received important support from broader political and ideological developments in the mid-1980s. On both sides of the Atlantic, in the United States and in Great Britain, conservative governments held sway and launched concerted attacks on the institutional structures and ideology of the welfare state. "Privatization" initiatives gained influential proponents, although the opportunities in this country were fewer, largely because governments here hold fewer assets that can be privatized and because a wide variety of services funded by governments had long been delivered by private contractors. Despite this, the public landscape in the United States was combed in search of targets for privatization or contracting, and prisons were identified by some as promising opportunities for expanding private sector involvement.[22]

For a variety of reasons, the belief emerged that contracting for services, including correctional services, was superior to direct government provision.[23] Private firms were said to be more efficient as they are not mired in the "red tape" that encumbers public agencies, especially in procurement and labor relations. Private managers can hire and fire without the constraints of civil services and restrictions on creating budget lines for new employees; labor can be disciplined and reassigned with far greater ease in the private sector, especially if labor is not unionized.

Another purported advantage of the private sector was its greater efficiency in the face of competition. According to this line of argument, public agencies have monopolies on services, and few incentives exist to discover and implement ways of improving efficiency. Shielded from the demands of the marketplace, public managers may not strive for greater productivity but for maintaining their positions by avoiding risks. Government positions and agency budgets, once established, are difficult

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21 Jan Chaiken and Stephen Mennemeyer, *Lease-Purchase Financing of Prison and Jail Construction* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1987).

22 President's Commission on Privatization, *Privatization: Toward More Effective Government*, (Washington, DC: President's Commission on Privatization, 1988).

23 The arguments in support of this belief are offered in, for example: E.S. Savas, *Privatizing the Public Sector: How to Shrink Government* (Chatham, NJ: Chatham House Publishers, 1982); Stuart Butler, *Privatizing Federal Spending: A Strategy to Eliminate the Deficit* (New York, NY: Universe Books, 1986); James K. Stewart, "Costly Prisons: Should the Public Monopoly Be Ended?" in Patrick B. McGuidan and Jon S. Pascale (eds.) *Crime and Punishment in Modern America* (Washington, DC: The Institute for Government and Politics of the Free Congress Research and Education Foundation, 1986), pp. 365-388; President's Commission on Privatization, *Privatization: Toward More Effective Government* (Washington, DC: President's Commission on Privatization, 1988).

Other apparent sources of savings in some states reflect lower spending for prisoner health care and, perhaps, in other aspects of facility operations, including lower salaries for line staff in some jurisdictions. In some states, payments to contractors may be offset somewhat by accounting deductions or adjustments for contractors' tax payments to governments.

Our conclusion regarding costs and savings is that the few existing studies and other available data do not provide strong evidence of any general pattern. Some states may be willing to pay high prices for private imprisonment if they need the beds to solve short-term deficiencies. In other states, expenditures for contracting may indeed be lower than for direct public provision. However, the bottom line with respect to costs and savings is difficult to discern given the data and the assumptions made by the analysts. Drawing conclusions about the inherent superiority of one or the other mode of provision, based on a few studies, is premature.

Do Privately Operated Facilities Provide Better Services?

Interest in better imprisonment services was infrequently given as a reason for contracting, but the issue of whether governments or private firms seek lower costs by sacrificing service quality is a major concern, especially in an environment where public safety and staff and inmate lives are at risk, and where lawsuits are common. Unfortunately, assessing the quality of imprisonment services is controversial, in part because the various objectives government and the larger society establish for prisons do not always suggest unambiguous measures. At a minimum, we expect prisons to meet the standards established by the courts.

Most contracts require that privately operated facilities conform to the law, rules, and regulations that prevail in the public correctional agency of that jurisdiction. Performance objectives are thereby framed in procedural terms, rather than outcomes to be achieved by means of imprisonment. Contract monitoring is highly variable from one jurisdiction to another, with about half of the contracts involving daily on-site monitoring by government officials.

Few studies have been conducted to compare the relative performance of privately and publicly operated prisons. Most are affected by a variety of methodological problems that severely limit the conclusions that one can draw from them. These include insufficiently comparable public facilities and insufficient attention to the possibility that observed differences resulted from dissimilar populations of prisoners or dissimilar facility designs. Given these shortcomings and the paucity of systematic comparisons, one cannot conclude whether the performance of privately managed prisons is different from or similar to that of publicly operated ones.

With respect to public safety and inmate programming, the available data do not support definite conclusions. Programs for inmates are especially important in prisons because they prepare offenders to become reintegrated into society upon their release. Well designed and implemented programs increase the likelihood that prisoners will become law-abiding citizens. The available surveys of either privately or publicly operated facilities do not provide the information needed to compare the quality of such programs or the extent of prisoners' engagement with them.

to reduce because constituencies are created inside and outside government that press legislatures for continued funding. In contrast, competition in the private marketplace, and the risk of losing money or going out of business, supposedly stimulates the search for increased efficiency.

Critics of privatization have challenged these beliefs, however. For example, Donahue argues that there is little room for technological innovation in prisons because of their labor intensive nature.[24] Others argue that the high priority given to maximizing profits creates incentives to minimize costs, which may lead to reductions in service quality.[25] Critics also point to examples of flagrant overcharging by contractors to state and local governments for shoddy goods and poor services.[26] Some opponents of privatization in corrections point to the dismal experience with the convict leasing arrangements that pervaded the South during the Civil War decades. The conditions of those privately operated facilities were generally appalling, and the death rates in them were considerably higher than in public prisons.[27]

State and Federal Experience with Private Prisons

There were a total of 142 privately operated secure facilities at the end of 1997, according to Professor Charles Thomas' census. The focus of this report is on a subset of these: privately operated *prisons*, rather than jails or detention centers. That is, we examine the experience of privately operated secure confinement facilities that are most equivalent to secure confinement facilities in state or federal prison systems and which contract with the correctional agencies in the surveyed jurisdictions to provide prison space. In contrast with jails, prisons are designed to hold inmates for longer terms and have a variety of programs for the inmates. We exclude from our purview: all privately operated facilities that function as jails; detention centers for illegal immigrants or others; facilities operating under contract with the U.S. Marshals Service, the U.S. Immigration and Naturalization Service, or local governments; all privately operated non-secure facilities; and all juvenile facilities.

To identify the subset of privately operated facilities that most closely correspond to state or federal prisons, we mailed questionnaires to the heads of all correctional agencies in all states, the Federal Bureau of Prisons, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. (Hereafter, these governmental entities are referred to as "jurisdictions.") This questionnaire had two sections. The first inquired about the agencies' practices and plans regarding privatization. The second section was designed to obtain information about each contract, its administration, and monitoring. Of the 55 surveyed government agencies, [28] all but two responded to the survey.

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24 John D. Donahue, *The Privatization Decision* (New York, NY: Basic Books, 1990).

25 American Bar Association, *Report to the House of Delegates*, unpublished document (Chicago: American Bar Association), p. 4.

26 American Federal, State, County, and Municipal Employees (AFSME) AFL-CIO, *Passing the Bucks: The Contracting Out of Public Services.* (American Federation of State, County and Municipal Employees, AFL-CIO, 1984).

27 George Cable, "The Convict Lease System," in *The Silent South* (Montclair, NJ: Patterson Smith, 1969).

28 Two agencies contract for private prisons in Florida: the state Department of Corrections and the Florida Privatization Commission. Both responded to the survey.

Twenty-three states reported having contracts with private firms on December 31, 1997, to house prisoners, as did the District of Columbia, the Federal Bureau of Prisons, and the Commonwealth of Puerto Rico. In addition, two other states reported placing prisoners in private facilities located in other states through an agreement between two public agencies (hereafter, an "intergovernmental agency agreement" or "IGA"). These were reported by the two respondents as equivalent to contracts, and we have included them in our analysis. (In the discussion that follows, we call all reported agreements "contracts," even if this is not technically accurate in the case of these two jurisdictions.) These 28 jurisdictions reported having a total of 91 active contracts on that date, with 84 different private facilities. (The number of contracts exceeded the number of private facilities because some facilities contracted with more than one political jurisdiction.) These 84 facilities held a total of 37,651 prisoners at year-end 1997.

In addition, surveyed agencies reported having active contracts on the same day with 529 community-based facilities, such as work-release or educational-release facilities or half-way houses. For the purposes of our survey, "community-based facilities" were defined as they are in the periodic Bureau of Justice Statistics census of state and federal prisoners. That is, a community-based facility is one in which 50 percent or more of the inmates are regularly permitted to depart unaccompanied for work or study release or for other rehabilitation programming.

In addition to the 84 privately operated secure facilities that received prisoners *under contract* directly from correctional agencies in the surveyed jurisdictions, others held these jurisdictions' prisoners via a more circuitous route. That is, some state or federal correctional agencies sent prisoners to a local government agency using an intergovernmental agency agreement. These local governments in turn contracted with private companies to house the prisoners. By requesting information about only those facilities with which correctional agencies in the surveyed jurisdictions *contracted*, private facilities receiving prisoners through the intermediary of a local government were not reported in our survey.[29] The numbers of *prisoners* in these facilities can be estimated from the information provided in the survey, however. All surveyed jurisdictions reported a total of 52,370 prisoners housed in privately operated facilities on December 31, 1997, 14,719 more than they accounted for in the 91 contracts they identified as being active on that date. We assume that those prisoners housed in privately operated facilities through intergovernmental agency agreements were included in this number. We cannot assume that all of these nearly 15,000 prisoners were held in secure facilities, however. Because of some ambiguity in the wording of the question posed to correctional administrators, some respondents may also have counted among these 14,719 inmates those held in non-secure community-based private facilities.

In summary, the 53 responding agencies reported that privately operated facilities held a total of 52,370 prisoners on December 31, 1997.[30] This included all prisoners under the correctional authority

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29 The two exceptions to this were the two states that reported such IGA agreements as though they were contracts; their responses are included in this report.

30 This number differs dramatically from that reported by the Bureau of Justice Statistics in its *1995 Census of State and Federal Correctional Facilities* (Washington, DC: U.S. Government Printing Office, 1997). This census identified 29 privately operated secure confinement facilities, holding 12,534 inmates. This discrepancy does not reflect simply a two-year difference in data collection points. Rather, it is a result of different inclusion rules in the Abt Associates and the Bureau of Justice Statistics censuses. The former asked correctional officials to report on *all* facilities under contract to hold their prisoners, whereas the BJS census asked

of these surveyed jurisdictions who were held in privately operated secure facilities (whether by direct contracts or through intermediary local governments), and some in non-secure facilities. This figure represents 4.3 percent of the nation's 1.2 million prisoners held by state and federal correctional agencies.

Table 2.1 and Figure 2.1 report how each responding state's prisoners were housed—in government or privately operated facilities, in-state or out-of-state. Most of these (36,441) were held in facilities located within the political boundaries of the state. (This does not include the 9,951 federal prisoners held in private facilities.) A small number (5,978) were held in facilities located in other states. These included, most notably 1,725 prisoners from the District of Columbia held outside the district; 1,008 prisoners from Colorado held principally in Minnesota facilities; and 933 prisoners from Oklahoma held in Texas facilities. Most of these prisoners "exported" by state or federal correction agencies to other jurisdictions were being held in Texas, where private firms have established contractual relationships with local county governments.

At the close of 1997, ten correctional agencies were responsible for the vast majority (41,965) of the 52,370 privately held prisoners. The Federal Bureau of Prisons reported having 9,951 prisoners, or 10 percent of its total population of 98,631 sentenced prisoners in privately operated facilities. Texas had the second largest number of prisoners in private facilities—7,223, or 5 percent of its state prisoners.[31] Other high-use states include: Oklahoma (4,588), Florida (3,877), Louisiana (3,581), Tennessee (2,958), California (2,948), Colorado (2,390), Mississippi (2,522), and the District of Columbia (1,927).

Although the Federal Bureau of Prisons, Florida, and Texas report having jurisdiction of the most prisoners held in privately operated prisons, other states rely on private facilities to house larger proportions of their state prison populations. Oklahoma, for example, housed 23 percent of its state prisoners in such facilities on December 31, 1997, the highest percentage of any state or federal correctional agency in the nation. The District of Columbia followed, with 22 percent of its 8,590 prisoners in privately operated facilities. Other heavy users included Colorado, with 21 percent of its state prisoner population in private facilities, Tennessee (20 percent), Louisiana (19 percent), and Mississippi (16 percent).

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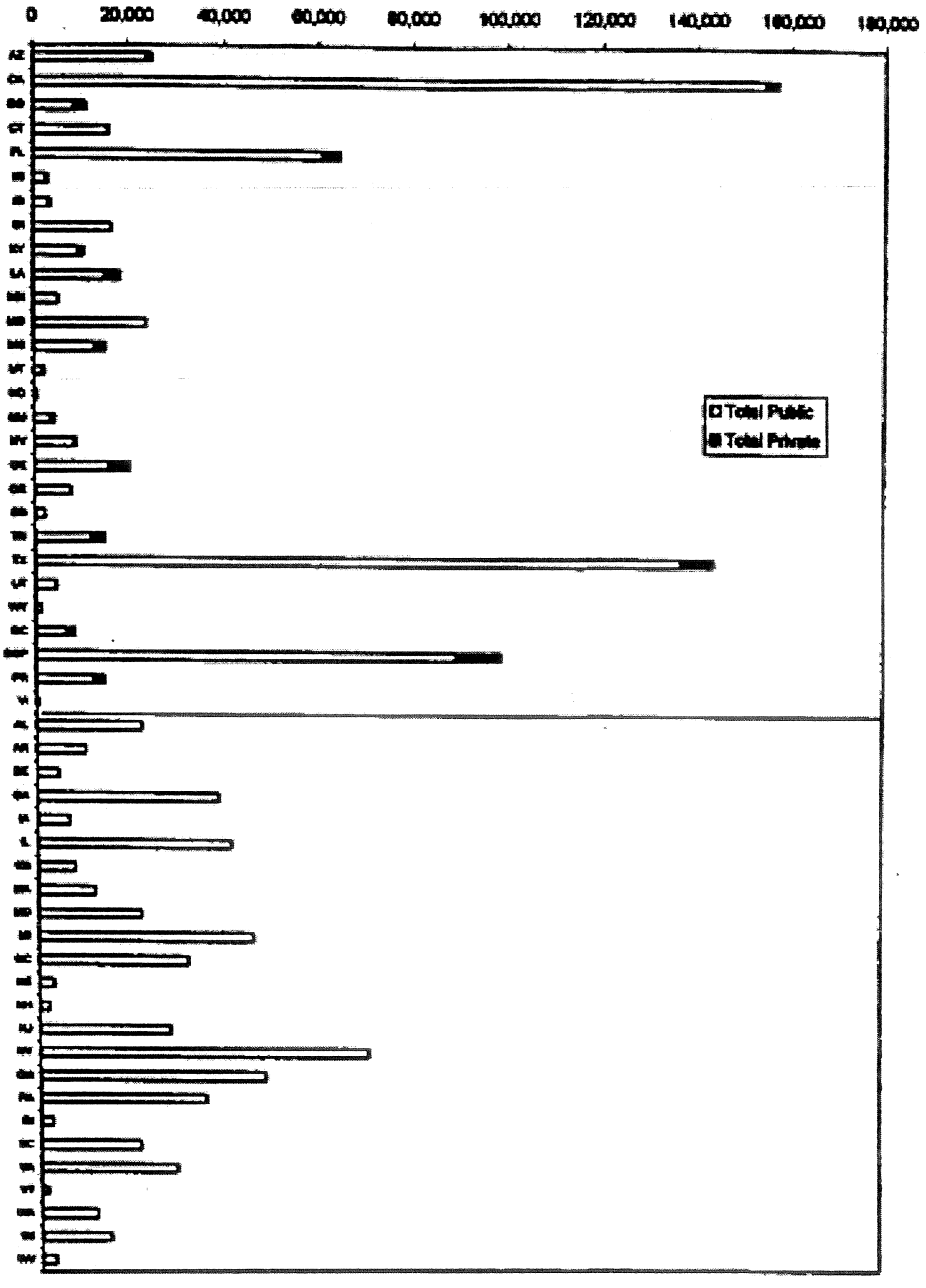
correctional officials to exclude private facilities in which fewer than 50 percent of the prisoners were from state or federal agencies. Correctional officials may have been unable to make that determination effectively, especially because many facilities accept prisoners from a number of different federal or state agencies and no single agency may know the total state/federal share.

31 The State of Texas contracted with private firms to house other prisoners as well but in facilities that functioned as local jails.

Figure 2.1
Number of State or Federal Prisoners in Government and Privately Operated Facilities on December 31, 1997, By State



Source: Abt Associates survey of state and federal correctional administrators

Notes:
1. Alaska and Maine are not described in the figure; no survey response was received from these jurisdictions.
2. Jurisdictions above the line report using private facilities to house prisoners; those below the line do not.

Table 2.1

The Housing of State and Federal Prisoners, December 31, 1997

	In-State Facilities	Out-of-State Facilities	Total
Prisoners in Government Facilities	1,162,357 (95.2%)	5,840 (.5%)	1,168,197 (95.7%)
Prisoners in Private Facilities	46,392 (3.8%)	5,978 (.5%)	52,370 (4.3%)
Total	**1,208,749 (99%)**	**11,818 (1%)**	**1,220,567 (100%)**

Notes:
1. "Private facilities" include all those privately operated, regardless of facility's ownership.
2. "In-state" facilities are located in the geographic boundaries of the relevant governmental unit, "out-of-state" facilities are not.
3. Excludes prisoners in privately operated facilities that function as jails in Texas, even though they are under contract with the State of Texas.
4. Prisoners in out-of-state government facilities for the Federal Bureau of Prisons includes prisoners in a correctional facility operated by any other governmental agency at state or local levels.
5. For this table, some responding agencies included prisoners housed in community-based facilities (such as halfway houses, home confinement, etc.) in the reported figures, especially those describing private facilities. These facilities and prisoners are not included elsewhere in this report. However, we were unable to disaggregate them from the figures reported here.

Source: Computed from data supplied to Abt Associates Inc. in its survey of state and federal correctional administrators.

Contracting for Secure Confinement

The survey indicated that certain jurisdictions have far greater experience in contracting with private firms for secure beds than others (see table 2.2). The Texas Department of Criminal Justice reported having 14 active contracts on December 31, 1997 for secure imprisonment services (excluding contracts with six privately operated jails). The State of Florida, either through the Department of Corrections or the Florida Privatization Commission, reported five active contracts on that day; Oklahoma reported seven; California reported ten.

Table 2.2

Number of Active Contracts for Secure Confinement on December 31, 1997, by Contracting Jurisdiction

Arkansas	2	Nevada	1
Arizona	3	New Mexico	3
California	10	North Carolina	2
Colorado	5	North Dakota	1
Florida	5	Oklahoma	9
Georgia	2	Oregon	1
Hawaii	3	Tennessee	4
Idaho	3	Texas	14
Indiana	2	Utah	1
Kentucky	3	Virginia	1
Louisiana	2	Wyoming	1
Minnesota	1	Federal Bureau of Prisons	2
Mississippi	3	District of Columbia	2
Montana	2	Puerto Rico	3
		Total Contracts	91

Source: Abt Associates Inc. survey of state and federal correctional administrators.

Reasons for Contracting or Not Contracting

Responding agencies that reported having contracts for secure facilities on the last day of 1997 were asked to rank their reasons for turning to private firms. The most commonly cited reason was to reduce overcrowding in their public prison system; fourteen of the 28 agency directors listed this as their state's primary objective. All but five surveyed correctional departments that were contracting with private firms were operating their prisons in excess of 100 percent of reported capacity.[32] Being overcrowded was not a distinguishing characteristic of those jurisdictions that chose to contract with private firms, however. Most other states also reported operating prison systems that were filled beyond the design capacity of their prisons. The most commonly cited second reason was the need to acquire new bed space quickly—suggesting that the private sector was able to create the needed space faster than the public agency. The most commonly cited third reason was to gain "operational flexibility" (see table 2.3).

32 This was computed by comparing actual prisoner population on December 31, 1997, with the reported "design" capacity in existence on that same day.

Table 2.3

Reported Objectives, by Rank, for Contracting with Private Correctional Firms

	Rank					Number (and Percent) of States Citing this Objective
	1st	2nd	3rd	4th	5th-8th	
Reducing overcrowding	14	2	3	3	2	24 (86%)
Speed of acquiring additional beds	2	9	4	1	4	21 (75%)
Gaining operational flexibility	1	0	8	2	5	17 (61%)
Operational cost savings	8	3	1	3	1	16 (57%)
Construction cost savings	0	6	3	4	3	16 (57%)
Improving caliber of services	1	0	0	1	9	12 (43%)
Reducing legal liability exposure	0	0	1	2	7	11 (39%)
Other	3	2	0	0	1	6 (21%)

Note: One state listed several objectives without ranking them. Its responses are counted in the column on the right summing the responses, but not in the columns indicating rank. The sum total reported here does not, therefore, always equal the total of the ranked objectives.

Source: Abt Associates survey of state and federal correctional administrators.

Among those *not* citing the need to reduce overcrowding as the principal reason for contracting, the most common reason for contracting was the desire to save money by virtue of reducing operating costs (8 of the 28 states). Two states reported that their primary objective was to acquire bed space quickly: two others sought to gain operational flexibility, and two others sought to improve the "caliber of services."

Table 2.3 also indicates the frequency with which various reasons were reported, regardless of their rank order. These responses from correctional administrators indicate that the driving force behind contracting for privately operated prisons is the desire to reduce crowding, to acquire additional beds speedily, or to gain operational flexibility. Less frequently mentioned concerns were interests in reducing the operating costs of imprisonment or saving money in construction. Reasons given least often were improving the service quality in the prisons, and reducing exposure to legal liability.

Interestingly, contracting in most of the jurisdictions surveyed did not result from the correctional agencies' initiative. Of the 28 jurisdictions that were contracting with private firms in the closing days of 1997, 11 reported that the initiatives were mandated by the legislature, five by the governor, and three resulted from a court order or consent decree. Only seven reported taking the initiative to contract for private prisons.[33]

33 This probably oversimplifies the dynamics by which privatization programs were initiated.

The Abt Associates survey asked the 25 jurisdictions that reported not having contracts with private imprisonment firms on December 31, 1997 their reasons for not doing so; seventeen provided reasons. Four reported not having contracts because their prison systems either already had sufficient space or because planned construction was expected to be sufficient to handle the demand. Three others cited legal prohibitions that prevented them from contracting; four reported that contracting was not under consideration because of concerns about labor relations or because of labor opposition; two reported that the issue of contracting was under study or that a decision was pending; two were not convinced that cost savings would result; one reported that no funding was available for such contracting; and one reported having concerns about accountability and the quality of private management.

Characteristics of Privately Operated Prisons

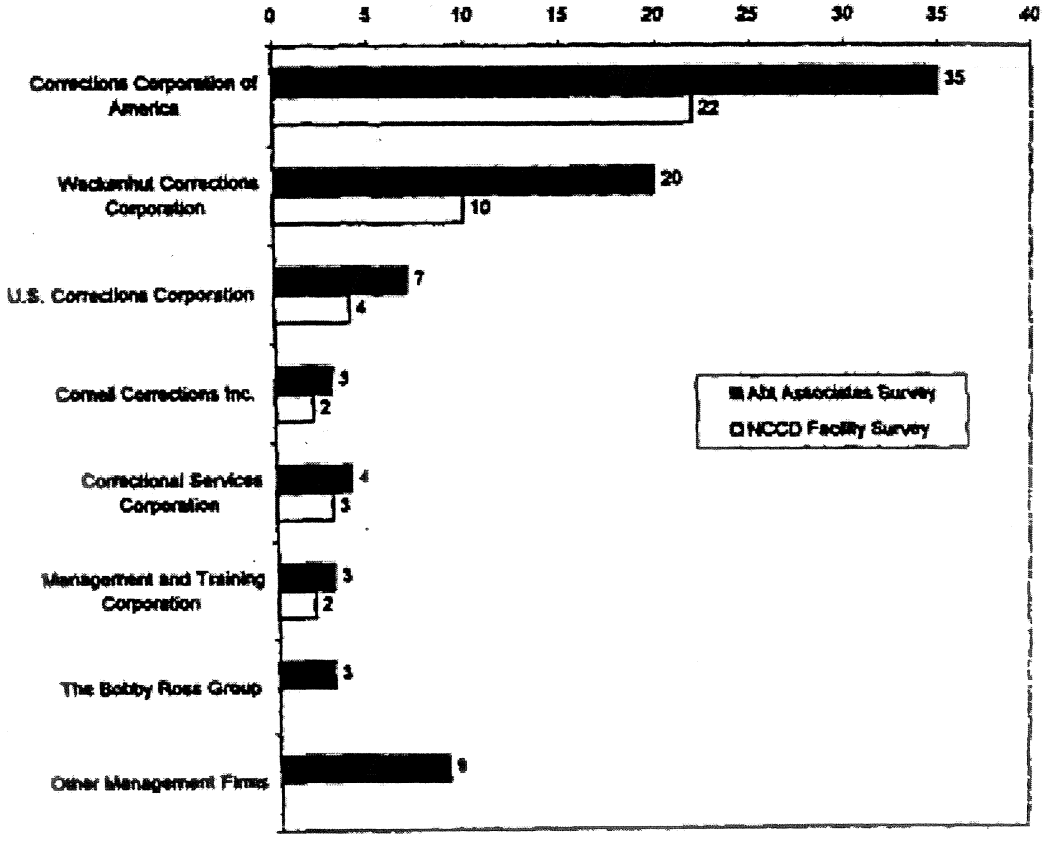
This section describes, in summary fashion, those privately operated prisons that were reported to be contracting with state and federal correctional agencies at the end of 1997. This includes information about their geographical location, ownership, size, type (e.g., general confinement, parole violator confinement), reported levels of physical security, and numbers and proportions of prisoners classified according to the risk they pose.

Unfortunately, we lack uniform information about all privately operated facilities. The Abt Associates survey of state and federal correctional agencies was designed primarily to obtain information about the *correctional agencies'* contracting practices for privately operated imprisonment. Much less information was obtained for their partners in these contractual relationships—the private firms and their facilities. For this latter information, we have obtained data from the National Council on Crime and Delinquency (NCCD), which undertook to survey private correctional firms in early 1998, and data from the Bureau of Justice Statistics' 1995 census.

Reliance on these two different sources of information about private facilities at year-end 1997 creates some difficulties because the Abt Associates and NCCD surveys obtained information for different subsets of facilities. The NCCD survey collected information from six private corrections management firms that reported information about only 43 of the facilities identified in the Abt Associates survey. Figure 2.2 compares the numbers of facilities counted in both the Abt Associates survey of government administrators and the NCCD survey of facility administrators, classified according to the management firms that operated them.

For reasons not determined, information was not obtained in the NCCD survey for 41 others that Abt Associates identified as having active contracts with state and federal agencies on the same date. Information is missing in the NCCD survey for facilities operated by some of the smaller firms, but also for several facilities operated by CCA and Wackenhut—the two industry leaders. *Because of this selective reporting and incomplete data collection, the data collected by NCCD cannot be considered representative of the entire set of privately operated facilities.* Readers must keep this limitation in mind when considering these data characterizing privately operated facilities in the following pages. These characterizations can only be considered tentative, at best.

Figure 2.2
Comparing Numbers of Privately Operated Facilities Reported in NCCD Survey and Abt Associates Survey of State and Federal Correctional Agencies, by Management Firm



Sources: Abt Associates survey of state and federal correctional administrators; NCCD survey of private facility administrators.

Table 2.4

Management Firms who Operate Facilities Reported in NCCD Survey and Abt Associates Survey

Corrections Corporation of America
Wackenhut Corrections Corporation
U.S. Corrections Corporation
Cornell Corrections Inc.
Correctional Services Corporation
Management and Training Corporation
The Bobby Ross Group
Civigenics Incorporated/Fenton Securities
Alternative Programs, Inc.
Capital Corrections Resources, Inc.
GRW Corporation
CCA Prison Realty Trust
Marantha Production Company, LLC
Louisiana Corrections Services
Turning Point of Central California

Sources: Abt Associates survey of state and federal correctional administrators; NCCD survey of private facility administrators.

Industry Concentration

Two firms—CCA and Wackenhut—dominate the market, holding 61 of all 91 reported contracts with state and federal agencies that were active on December 31, 1997. CCA had 41 active contracts with state or federal correctional agencies, Wackenhut 20. (This reflects the dominance of these two in contracting with all governments generally, not just state and federal.) The third-ranking firm, U.S. Corrections Corporation, lagged behind the two leaders with seven contracts.

Long dominated by a few big players, the industry appears to be experiencing still further consolidation, as well as some diversification. Smaller firms are being acquired by larger ones, and some are developing new capacities—such as drug treatment services—to augment their "core" capabilities. Firms that have been focusing on the adult corrections market are also moving into juvenile corrections.

Where Private Prisons are Located

Most of the privately operated prisons holding state or federal prisoners in this country are located in the West and in the South (see table 2.5). Texas is home to the most such facilities by far—23, not including six privately managed jails under contract with the state and some others not reported because state or federal government agencies relied on intergovernmental agency agreements to place prisoners in them. California is the state next most populated with such facilities, having 11 within its

boundaries. Three other states have five each (Arizona, Tennessee, and Florida). In the remaining 15 states, the District of Columbia, and in Puerto Rico, three or fewer facilities hold state or federal prisoners.

Table 2.5

Number of Private Facilities Contracted by State and Federal Correctional Agencies, by State of Location

Arkansas	2	Mississippi	3
Arizona	5	North Carolina	2
California	11	New Mexico	2
Colorado	4	Nevada	1
District of Columbia	1	Ohio	1
Florida	5	Oklahoma	3
Georgia	3	Puerto Rico	3
Indiana	1	Tennessee	5
Kentucky	3	Texas	23
Louisiana	3	Utah	1
Minnesota	1	Virginia	1
		Total Facilities	**84**

Source: Abt Associates survey of state and federal correctional administrators.

Facility Ownership

Of the 84 facilities that contract with state or federal correctional agencies to house their prisoners, 34 are owned by governments (see table 2.6). Fifty others are owned by the management firms that operate the facilities or by other private entities. Several of these latter facilities are only nominally private, as they have been created by governments to own the facility on behalf of the government.[34]

34 For example, the Industrial Development Authority of Brunswick County owns Lawrenceville Correctional Center on behalf of Brunswick County.

Table 2.6
Number of Privately Operated Facilities, by Ownership

Private Owners	Facilities
Corrections Corporation of America (CCA)	16
Wackenhut Corrections Corporation	5
United States Corrections Corporation	6
Cornell Corrections, Inc. (CCI)	4
Corrections Services Corporation (CSC)	3
Management and Training Corporation	2
Civigenics Incorporated/Fenton Securities	1
Marantha Production Company, LLC	1
Dove Development Corporation	1
Industrial Development Authority of Brunswick Co.	1
Delta Correctional Authority	1
Appelton Prison Corporation	1
Louisiana Corrections Facility Corporation	2
Louisiana Corrections Services	1
Mooreland Corporation	1
CCA Prison Realty Trust	1
Turning Point of Central California	1
Wilkinson County Industrial Development Authority	1
Hardeman County Correctional Facility Corporation	1
Subtotal Private Owners	**50**
Government Owners	
Arkansas	2
Bear County, TX	1
Crystal City, TX	1
Brown field, TX	1
Mansfield, TX	1
Odessa, OK	1
Davidson County, TN	1
Florida	4
Frio County, TX	1
Hamilton County, TX	1
Karnes County, TX	1
Limestone County, TX	1
Mississippi	1
Marion County, IN	1
Newton County, TX	1
Puerto Rico	3
Teller County, CO	1
Tennessee	1
Texas Department of Criminal Justice	8
Utah	1
Federal Bureau of Prisons	1
Subtotal Government Owners	**34**

Table 2.6
Number of Privately Operated Facilities, by Ownership

Total	**84**

Note: Includes only facilities holding prisoners under contracts with state or federal correctional agencies on December 31, 1997; excludes privately operated state jails contracting with State of Texas.

Source: Abt Associates Inc. survey of state correctional administrators

Facility Size

Privately operated facilities that held state or federal prisoners under contract at the end of 1997 were approximately the same size, on average, as all government operated prisons in this country. Table 2.7 shows the average "rated capacity" for facilities that had active contracts with state or federal governments on this date, as reported both by the facility administrators in the NCCD survey and by correctional agencies administrators in the Abt Associates survey, and as well as the average for all government operated prisons in the nation on June 30, 1995.[35] (The rated capacity of a correctional facility is assigned by a rating official and is meant to reflect the available space to house prisoners and the ability to staff and operate the facility.)

Table 2.7

Comparing Capacities of Privately Operated and Government Operated Prisons in the United States

	Privately Operated		Government Operated
	NCCD Survey	Abt Associates	
Rated capacity			
Average	834	716	797
Range	224 – 2,192	45 – 2,048	20 – 6,381
Average daily population	643	NA	811

Sources: NCCD survey of private facility administrators, Abt Associates survey of state and federal correctional administrators, 1995, Bureau of Justice Statistics census of state and federal correctional facilities.

Although the average capacity of the privately operated facilities was similar to those in the public sector, the average daily populations differed from that reported by all government operated confinement facilities on June 30, 1995. This suggests that privately operated facilities were less crowded than government operated ones, but this is largely an artifact of the way questions were asked in the survey. Respondents were asked for facility capacity at year-end, but average daily

35 1995 capacity figures computed from data provided by the Bureau of Justice Statistics, *1995 Census of State and Federal Correctional Facilities* (1997).

population throughout the year. Facilities that expanded their capacity late in the year only appear to be underutilized, whereas they actually used their available capacity heavily. Most facilities operated at high occupancy rates throughout the year.

In most cases (60 percent of all contracts reported in the Abt Associates survey), contractors are allowed to determine whether single- or multiple-bed housing arrangements are used. Among the 36 contracts that specified occupancy arrangements, most allowed double bunking and dormitory housing. Only three required single cells; two others did specify single cells for particular offenders. One state specified (in 6 of its contracts) that its inmates may not be housed with another state's inmates nor with any federal prisoners unless a detailed plan for such housing is submitted and approved in advance by the contract monitor.

The Functions of Private Prisons

General adult confinement is the usual function of state and federal prisons, whether privately or publicly operated. According to the NCCD survey of privately operated facilities, 91 percent of those that responded provided general confinement services of adult prisoners (Table 2.8). Eighty-seven percent of all secure government operated facilities in operation in June 1995 were so characterized. However, it appears the range of functions served by privately operated prisons is somewhat different than that found in state and federal prisons operated by governments throughout the nation.

Somewhat larger proportions of privately operated prisons served as drug and alcohol treatment units (26 percent of the privates, compared to 16 percent of government operated prisons), and as facilities for parole violators returned to custody (16 percent compared to 7 percent).[36] In contrast, proportionately fewer private prisons contracting with state and federal correctional agencies provide "reception center" functions of diagnosing and classifying newly admitted prisoners, or confinement of special inmate populations (such as those needing mental health services, those sentenced to death, or geriatric patients).

Although this study did not address the question explicitly, it appears that governments may be utilizing private corrections firms to fulfill particular needs in their correctional systems. Indeed, 'gaining operational flexibility' was the most common third-ranked objective of correctional administrators choosing to contract with private correctional firms. It appears that correctional systems may be achieving this flexibility by writing contracts that specify a particular inmate profile for each facility. Thus, the type of prisoner housed in the contracted facility is restricted. Twenty-nine (29) surveyed contracts provide for the contractor's right to refuse custody of individual prisoners. When asked, contract administrators explained that the return of prisoners was usually based on a decision that the prisoner did not meet the facility's profile, either because of custody classification or medical needs.

Prisoner assignments designed to select appropriate prisoners for a facility's profile in turn affect the typical profile of the public facilities in the system. Some state administrators and public facility superintendents reported a higher concentration of badly behaved, unhealthy, or otherwise difficult

36 Facilities can serve more than a single function; the sum of facilities providing each of the discrete functions therefore exceeds the total number of private and government facilities in operation on the date of the survey or census.

prisoners housed in the public facilities. For example, few private operators are being called upon to provide facilities capable of hospital confinement. In fact, administrators for 63 contracts reported that their contracts limited the contractor's medical liability. The limit is set either by an annual dollar amount ($500 -$10,000) or by specifying a length of hospital stay (48 hours - 5 days) beyond which the agency takes over both medical and security responsibilities. (Some correctional agencies reported paying for all offsite medical care.) This differentiation of privately and publicly operated facilities may make sense from an administrative point of view, but it creates an obstacle to comparing their performance.

Table 2.8

Comparing Functions Served by Privately Operated and Government Operated Facilities

	Number of Private Facilities (n=43)	Number of Public Facilities (n= 1167)
General adult population confinement	39 (91%)	1015 (87%)
Alcohol/ Drug treatment confinement	11 (26%)	186 (16%)
Primarily for persons returned to custody (e.g., parole violations	7 (16%)	83 (7%)
Reception/ diagnosis/ classification	4 (9%)	155 (13%)
Work release/ prerelease	4 (9%)	137 (12%)
Medical treatment/ hospitalization confinement	2 (5%)	176 (15%)
Youthful offenders	2 (5%)	39 (3%)
Boot Camp	0	53 (4%)
Other	3 (7%)	246 (21%)

Figures sum to more than the total number of facilities because facilities may serve more than one function.

Source: NCCD survey of private corrections firms (1998), and Bureau of Justice Statistics, *1995 Census of State and Federal Correctional Facilities* (1997).

The Private Sector's Experience with Medium and High-Security Prisoners

As discussed above, the private sector got its start outside of the correctional mainstream, in community-based or less secure facilities. In recent years, however, increasing numbers of facilities are designated as offering higher levels of security. This section examines the experience of the private sector in managing criminals who pose high security risks. It also explores the relevance of this experience with respect to managing federal prisoners.

Prisons differ according to their *physical security*. Minimum security institutions often lack secure perimeters. Medium security prisons have secure perimeters—often two fences with a bank of razor wire between them or, in older facilities, high concrete walls ringed with razor wire and fences. Maximum security prisons typically have secure perimeters and guard towers, in which armed officers are posted. There are many variations in these general configurations, and classification of the

physical security also depends on the architecture of the housing units and the procedures that are followed inside the prison.

Some private facilities have the physical characteristics to meet ACA standards for medium and higher security facility ratings. Among those surveyed by NCCD in early 1998, and which were identified as contracting with state and federal correctional agencies, two-thirds (69 percent) reported their facilities as offering medium or maximum physical security (Table 2.9). The one privately operated maximum security prison (South Bay Correctional Facility in Florida, operated by Wackenhut) held 866 maximum security prisoners at year-end 1997.[37] It appears, then, that only one of the 295 maximum/close/high security prisons in the United States in 1995 was operated by the private sector.[38]

Table 2.9

Physical Security of Privately Operated Confinement Facilities

	Number	Proportion
Maximum/Close/High	1	2%
Medium	29	67%
Minimum	13	30%
Total	**43**	**100%**

Source: NCCD survey of privately operated facilities.

Operating medium and high security prisons is not the same as managing medium and high security *prisoners*, however. Almost all correctional agencies classify prisoners according to the risk that they pose to staff, to other inmates and to the public. One common convention is to use a three-tiered classification: minimum-security, medium-security, and maximum-security (sometimes called 'high-security' or 'close supervision'). Many jurisdictions use procedures employing objective criteria rather than subjective assessments to classify prisoners.

The Abt Associates survey of correctional agencies asked respondents to report the numbers of prisoners in each of the privately operated facilities under contract with that agency, by the prisoners' security classifications. Fifty percent of all prisoners held in privately operated prisons under contract with these governments on December 31, 1997 were classified as medium-security; 4 percent were maximum-security, and 45 percent were minimum/low security (Table 2.10). This compares with 39

37 Charles Thomas has also reported in his annual census that this facility is the only privately operated maximum security prison. in the nation

38 The Bureau of Justice Statistics' *1995 Census of State and Federal Correctional Facilities* reported identifying this number in existence on June 30, 1995. The number of government-operated high-security facilities has grown slightly since then.

percent medium-security prisoners housed in all state and federal prisons on June 30, 1995, 20 percent maximum-security prisoners, and 33 percent minimum security.

Table 2.10

Classification of Prisoners' Custody Levels in Confinement Facilities

	Privately-Operated (1997)	All State and Federal (1995)
Maximum/Close/High	1,661 (4%)	201,996 (20%)
Medium	18,823 (50%)	404,256 (39%)
Minimum	16,993 (45%)	337,779 (33%)
Not Classified	174 (0.4%)	39,302 (4%)
Total	**37,651**	**992,333**

Notes: The Abt Associates Inc. survey counted prisoners in custody in privately operated state and federal correctional agencies on December 31, 1997.
The BJS census counted prisoners in custody on June 30, 1995 and includes unsentenced prisoners. Numbers do not sum to total shown here; data computed from that reported as shown in BJS *Census*. The BJS census includes all prisoners in custody in confinement facilities (i.e., not community-based) in state and federal correctional agencies. These include a small number of privately-managed facilities.

Sources: Abt Associates Inc. survey of state and federal correctional administrators; and Bureau of Justice Statistics, *1995 Census of State and Federal Correctional Facilities* (1997), Table 13.

To further characterize private facilities' experience with more dangerous prisoners, surveyed correctional administrators were also asked if they send violent offenders to the privately operated facilities with which they contract. Administrators replied that this was done in 63 of the 91 total contracts that were active on December 31, 1997. They did not report the number or security classification of the violent offenders actually placed in private facilities.

The private sector's experience with higher risk prisoners is not fully described in Table 2.10, however, for several reasons. First, classification procedures vary from one jurisdiction to another, and a prisoner classified as 'medium security' in one may be classified as minimum in another. (Indeed, some respondents to the Abt Associates survey had difficulty conforming to our requested categories of minimum, medium, and high security.) Second, prisoner classifications are not static. Rather, each prisoner's security rating may change throughout his institutional career, depending upon his behavior, among other things. That is, prisoners may be classified as medium security, for example, but may be housed in lower security facilities by virtue of their sustained good behavior. Indeed, it is not uncommon for maximum security prisoners to be placed in lower security institutions and then subsequently be reclassified to medium security (or they may simply keep their initial designation). Prisoners classified as medium-security, therefore, may include persons who pose substantial risk as well as those seen as posing relatively little risk. Some respondents reported that the private facilities were used to house "better" inmates, although others reported that the most troublesome prisoners were transferred to private facilities. It is difficult to know, therefore, whether the medium-security prisoners held in private facilities were equivalent, as a whole, to the populations of medium-security prisoners in the same jurisdiction's government facilities.

Comparing Security Classifications in Louisiana and the Bureau of Prisons

The congruence between different jurisdictions' classification procedures was explored in a comparison of the Federal Bureau of Prison's procedures with those used in Louisiana. State correctional administrators reported, in the Abt Associates survey, that 80 percent of all prisoners in three medium security facilities in Louisiana (the privately operated Allen and Winn Correctional Centers and the government-operated facility, Avoyelles Correctional Center) were classified as medium security. Ten percent were maximum-security prisoners, and another ten percent were classified as minimum-security. (These were the prisoners' current classifications, reflecting their institutional behavior, rather than their classifications at time of entry to the prisons system.)

To determine how these prisoners would be classified in the Federal Bureau of Prisons, BOP staff classified, using the bureau's procedures, a random sample of prisoners from these institutions Unlike the State of Louisiana, the bureau's classification procedures produce a four-tiered rating: high, medium, low, and minimum-security. Bureau staff determined that 10 percent of the Louisiana prisoners would be classified in the federal system as high security, 33 percent as medium security, 29 percent as low security, and 28 percent as minimum security. Table 2.11 compares the numbers of prisoners in each security level, as classified by the State of Louisiana and the facilities, and the estimated proportions of prisoners at each level according to the Bureau of Prisons' standards. (These latter estimates are shown in ranges, because bureau staff estimated the classification of all prisoners by means of a small random sample. This small sample indicates a projected proportion for the entire population within a specified range of error.[39]) Although both the facility and the State of Louisiana's correctional department had classified the majority of these prisoners as medium-security, it appears that about half of the Louisiana prisoners would not be considered medium security in a bureau facility. Rather, they would be classified as minimum or low security.[40]

39 Ranges were defined as being within a 95 percent confidence level.

40 These comparisons may be distorted somewhat by the fact that the distribution of security levels reported by Louisiana referred to prisoners' current classification, whereas the bureau staff computed a classification that would have been made at the time of the prisoners' admission to the prisons. Bureau staff did not classify prisoners' institutional behavior.

Table 2.11

Classification of Prisoners' Security Levels in Two Privately Operated Facilities and One State Prison, According to Louisiana Standards and to Federal Bureau of Prisons Standards

Prisoner Classification	Louisiana	Bureau of Prisons
Maximum/Close/High	10%	10% ± 4.9
Medium	80%	33% ± 7.7
Low	----	29% ± 7.4
Minimum	10%	28% ± 7.3

Notes: Louisiana reported the *current classification* of all prisoners. The Bureau of Prisons used *initial classification* sources to classify a sample (n=153) of prisoners from the same facilities. The range reported for the Bureau's classification categories reflects a 95% confidence interval.

Sources: Louisiana Department of Public Safety and Corrections; and Bureau of Prisons classification team.

This distribution of prisoners is not characteristic of medium-security prisons in the Federal Bureau of Prisons. In all medium-security federal prisons, 63 percent of the prisoners are classified at admission as medium custody (Table 2.12). These facilities hold very few minimum and low security prisoners (18 percent). The security classification profile in the Louisiana prisons more closely resembles the profile of BOP inmates in low physical security institutions (with 21 percent medium-security inmates, 41 percent low-security, and 36 percent minimum-security). Thus, from the Bureau of Prisons perspective, private sector experience, in Louisiana, at least, has been closer to what the Bureau calls low security facilities than medium or high security ones. How Louisiana's experience corresponds with others states' experience with 'medium' security prisoners was not determined.

Table 2.12

Distribution of Prisoners, by Their Security Classifications, in Federal Bureau of Prisons Facilities

	Physical Security Level			
Prisoner Classification	minimum	low	medium	high
Maximum/Close/High	.3%	2%	19%	66%
Medium	8%	21%	63%	27%
Low	22%	41%	13%	4%
Minimum	70%	36%	5%	3%

Source: Bureau of Prisons KI/SSS data for initial classification of prisoners in all BOP prisons of each type.

Table 2.13

Comparison of Louisiana Medium Security Profile to Bureau of Prisons Profiles

Prisoner Classification	Louisiana Facilities	Bureau of Prisons Facilities	
		low	medium
Maximum/Close/High	10.2% ± 4.9	2%	19%
Medium	33.1% ± 7.7	21%	63%
Low	28.7% ± 7.4	41%	13%
Minimum	28.0% ± 7.3	36%	5%

Notes: Louisiana reported the *current classification* of all prisoners in 3 medium security facilities (2 private, 1 public).
The Bureau of Prisons used *initial classification* sources to classify a sample (153) of prisoners from the same facilities. The range reported for the Bureau's classification categories reflects a 95% confidence interval.

Sources: Bureau of Prisons classification team and Bureau's KI/SSS data.

In summary: the private sector has very limited experience in managing high security prisoners. Only one maximum-security facility was being operated by a private company. Some other facilities, even though classified as medium-security, held a number of high risk offenders. For example, one medium-security prison—the Prairie Correctional Facility, operated by CCA, held 586 maximum security prisoners. Twelve other privately operated medium-security facilities were reported holding an average of 47 maximum security inmates. The private sector's experience with managing medium-security prisoners is much more substantial. Given the variability from state to state in classification procedures, however, it is difficult to determine how many of these prisoners so classified in one state would be similarly classified in another.

Inmate Programming

An important aspect of prison management is the extent and quality of programs designed to prepare inmates for their release and their lawful reintegration into society. Unfortunately, the national surveys of programming in prisons, whether public or private, do not reveal much. Both the NCCD survey of private facilities, and the Bureau of Justice Statistics census which was used as a model, simply ask whether programs were available and the proportions of prisoners enrolled. No measure is used to assess quality, or even intensity of program involvement. Moreover, the NCCD survey was returned by only half of the private facilities in existence at the end of 1997. The representativeness of the survey's findings is therefore unknown and we do not report them here.

Expected Demand for Prison Space and Plans for Contracting with Privately Operated Facilities

Many jurisdictions project substantial increases in the demand for prisons beds. Several states plan to rely upon privately operated prisons to meet at least some of this demand. If these private prison beds are indeed contracted at the scale currently planned, it will result in significant growth for the private prison industry.

The Abt Associates survey asked each correctional agency administrator to report the increase in numbers of prisoners expected by the end of five years (i.e., by December 31, 2002), or by the end of their forecasting horizon, whichever is sooner. Most (83 percent) reported projects for this five-year period. Others reported projected increases within shorter planning horizons. For all responding agencies, the total projected increase during this five-year period was expected to be 356,771, or 29 percent more prisoners than were in custody on December 31, 1997. Adjusting for the different planning periods reported by agencies, this amounts to an increase of nearly 71,000 prisoners each year.[41]

Anticipating these increases in demands, the responding agencies reported having definite plans to expand the overall capacity of their systems by 240,967 beds (Table 2.14). Most of this planned increase (85 percent of all beds)will be made in government operated facilities; agencies plan to contract for the remaining 15 percent, or 36,752 beds.[42]

Correctional agencies differ widely in their plans regarding private prison beds. Twenty-six reported planning not to procure beds in privately operated prisons (Table 2.14). Twenty-one others did have definite plans to do so. California's Department of Corrections plans the largest procurement of beds in privately operated facilities: 15,000 by the year 2000. This represents 45 percent of all additional beds to be acquired or built by the department during this period. Five other states plan to rely heavily upon the private sector to meet the expected demand for prison beds. Four plan to rely entirely, or nearly so, on private facilities for additional beds: New Mexico (1,800 new beds), Mississippi (500), Connecticut (500), Idaho (96 percent of planned expansion, or 1,250), and Oklahoma (87 percent of planned expansion, or 4,000 beds). Like California, Utah and Wisconsin plan to rely on the private sector for about 40-45 percent of their capacity expansion needs.

Interestingly, those agencies that are currently contracting for the largest numbers of beds reportedly plan little further utilization of privately operated prisons. Texas plans to rely entirely upon expanded or new government operated facilities; Arizona has plans to contract for 1,000 more beds (which represents only 18 percent of its planned expansion); Florida's Department of Corrections reports no plans for such contracting, and the Florida Privatization Commission reports not having any definite plans regarding further privatization.

It is difficult to estimate how many state and federal prisoners will be held in privately operated facilities at the end of this five-year period. However, if one assumes that the state and federal agencies that now rely upon private facilities to house approximately 55,500 prisoners continue to do so at this level, and that the planned expansion of nearly 37,000 beds does not replace the existing stock of privately held prisoners, the total number of private beds for state and federal prisoners would be nearly 93,000 by the end of 2002, or 40 percent more than were held at year-end 1997. This may be an overestimate. The responding correctional administrators may have counted these recompetitions or re-procurements of existing contracts in their answers to the Abt Associates survey.

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41 This number may be an overestimate, as the two Florida agencies may have reported each other's plans.

42 It is possible that agencies' plans for relying upon privately operated facilities are even more ambitious. The survey asked about *definite* plans for *contracting* with the private sector. Agencies that plan to rely upon intergovernmental agency agreements to transfer prisoners ultimately to privately operated prisons may not have included these prisoners in their counts.

Table 2.14 (continued)

Table 2.14

Planned Increases in Capacities of Government and Privately Operated Facilities (as of December 31, 1997), by State

	Total Number of Planned Beds	By Year	Government Facilities		Private Facilities	
			Additional Beds	Percent of New Beds	Additional Beds	Percent of New Beds
Alaska	--	--	--	--	--	--
Alabama	1,300	1999	1,300	100	0	0
Arkansas	683	2001	683	100	0	0
Arizona	5,610	2002	4,610	82	1,000	18
California	33,593	2000	18,593	55	15,000	45
Colorado	4,078	1999	2,478	61	1,600	39
Connecticut	500	n/a	0	0	500	100
Delaware	1,800	2000	1,500	83	300	17
Florida DOC	22,078	2002	22,078	100	0	0
Florida CPC*	27,025	2002	27,025	100	don't know	0
Georgia	4,764	2000	3,264	69	1,500	31
Hawaii	2,980	--	2,980	100	0	0
Iowa	1,550	2002	1,550	100	0	0
Idaho	1,302	2005	52	4	1,250	96
Illinois	8,170	2001	8,170	100	0	0
Indiana	4,548	2002	4,448	98	100	2
Kansas	309	1999	309	100	0	0
Kentucky	2,409	2002	2,409	100	0	0
Louisiana	3,742	2002	3,026	81	716	19
Maine	--	--	--	--	--	--
Massachusetts	1,024	1998	1,024	100	0	0
Maryland	896	2003	896	100	0	0
Michigan	7,052	2000	6,572	93	480	7
Minnesota	742	2002	692	93	50	7
Missouri	9,111	2002	9,111	100	0	0
Mississippi	500	2002	0	0	500	100
Montana	1,418	2002	918	65	500	35
North Carolina	4,104	2003	3,048	74	1,056	26
North Dakota	380	2001	380	100	0	0
Nebraska	1,336	2001	1,336	100	0	0
New Hampshire	700	2001	700	100	0	0
New Jersey	1,625	1999	1,625	100	0	0
New Mexico	1,800	--	0	0	1,800	100

	Total Number of Planned Beds	By Year	Government Facilities		Private Facilities	
			Additional Beds	Percent of New Beds	Additional Beds	Percent of New Beds
Nevada	3,350	2002	3,350	100	don't know	0
New York	3,300	1999	3,300	100	0	0
Ohio	6,837	2002	4,837	71	2,000	29
Oklahoma	4,600	1998	600	13	4,000	87
Oregon	1,739	1999	1,739	100	0	0
Pennsylvania	4,321	2002	4,321	100	0	0
Rhode Island	--	--	--	--	0	--
South Carolina	3,804	2002	3,804	100	0	0
South Dakota	624	2002	624	100	0	0
Tennessee	1,922	2001	1,922	100	N/A	0
Texas	4,200	1999	4,200	100	--	0
Utah	1,856	2003	1,056	57	800	43
Virginia	6,504	2002	6,504	100	0	0
Vermont	466	2004	466	100	0	0
Washington	5,460	2006	5,460	100	0	0
Wisconsin	3,600	2003	2,100	58	1,500	42
West Virginia	5,140	2005	5,140	100	0	0
Wyoming	500	2000	400	80	100	20
Federal BOP*	23,553	2003	21,553	92	2,000	8
District of Columbia	0	N/A	0	--	--	--
Puerto Rico	2,000	2002	2,000	100	0	0
Virgin Islands	62	1998	62	100	--	0
Totals	240,967		204,215	84.7%	36,752	15.3%

Note: Projected Federal BOP number does not include provision of section 11201(c)(1)(B) of the National Capital Revitalization and Self-Government Improvement Act of 1997. Florida's Correctional Privatization commission may be double-counting beds to be added by the Department of Corrections.

Source: Abt Associates survey of state and federal correctional administrators

3. Does Contracting for Prison Operations Save Money?

Even though cost containment is not the most frequently reported reason for contracting with private firms to operate prisons (as discussed in chapter 2), it is no doubt a common hope among policymakers that governments will indeed save money by doing so. Whether contracting for prison operations actually saves the taxpayers' money remains an open question, however. Professor Charles Thomas of the University of Florida, commenting on the last decade's experience with privatization, states that a:

> reasonable assessment of the available cost analyses lends at least qualified support to the claims of privatization proponents that meaningful costs savings can be achieved by contracting out. To be sure, there is little one can find in this body of evidence that would support an expectation of massive cost savings. All other things being equal, for example, a typical American jurisdiction could anticipate economies in the rough range of 10 to 20 percent would be realized by privatization—perhaps at the low end of the range for initiatives focusing on the privatization of existing facilities and at the high end of the range for new design-finance-construct-manage projects. It would be quite misleading to describe cost savings of this magnitude as trivial. [43]

This is consistent with one assessment of the United Kingdom's experience. Studies by Coopers & Lybrand and Her Majesty's Prison Service found that the operating costs of four privately operated prisons in the U.K. were between 9 and 30 percent lower than comparable publicly managed prisons.[44] Others draw more cautious conclusions from the research literature. The U.S. General Accounting Office, reviewing the five studies deemed to have the strongest designs and methods among those published between 1991 and mid-1996, concluded that "because the studies reported little cost difference and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money."[45] Julianne Nelson's assessment of several recent studies, in appendix 1, generally concurs with the GAO's.

At first glance, this controversy may seem surprising. It is reasonable to expect that one could easily answer the question by comparing expenditures for imprisoning offenders in a public correctional agency to the payments to private firms. Unfortunately, such comparisons are usually not so straightforward and, indeed, are often misleading for three principal reasons. First, the facilities may differ in ways that confound comparison of costs. Second, differences between public and private sector accounting procedures make the very identification of comparable costs difficult. Although

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43 Charles W. Thomas, *Comparing the Cost and Performance of Public and Private Prisons in Arizona* (Unpublished report to the Arizona Department of Corrections, August 21, 1997), pp. 50-51.

44 Jo Woodbridge, *Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons*, Prison Service Research Report No. 3 (UK: HM Prison Service, Home Office, Offenders and Corrections Unit, Research and Statistics Directorate, December 1997).

45 U.S. General Accounting Office, *Private and Public Prisons—Studies Comparing Operational Costs and/or Quality of Service*, (Washington, DC: Report to the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, August 1996), p. 7.

several studies comparing public and private correctional costs have sought to overcome these and other difficulties, not all have succeeded fully. Analysis of the studies' methods and assumptions, and reanalysis of their findings, suggests in some instances that the purported cost advantages, if any, of privately operated facilities may be less dramatic than reported.

Privately and Publicly Operated Facilities May Not Be Sufficiently Comparable

Determining whether and how privatization saves the government money is difficult in many jurisdictions because no publicly managed prisons exist that are similar enough to warrant direct comparison with the private facilities. In New Mexico, for example, the one women's prison in the state's correctional department is operated by a contractor. Finding a comparable publicly operated facility in the state is impossible, as women's prisons are operated quite differently than facilities for men and generally cost more. In Arizona, the one facility for men and women is contractor-operated, and no comparable prison exists in the Department of Corrections. Similar problems of comparability exist for other privately managed facilities that have specialized missions, such as substance abuse treatment programming or return-to-custody facilities for parole violators.

Nor is comparability assured if one compares non-specialized facilities having a common security classification—two medium-security prisons for men, for example. The cost of imprisonment generally varies according to the *mix* of different types of prisoners held by the facility. In general, health care costs vary according to prisoners' ages, and staffing costs vary according to the security levels of the inmates. Medium-security prisons generally house a mix of differently classified inmates, including some maximum-security ones and some classified as minimum-security, as discussed in chapter 2. Publicly managed prisons may differ from privately managed ones in the distribution of older and younger, healthy and unhealthy prisoners, as well as in the distribution of high, medium, and low-risk prisoners.

The cost of prisons is also a function of their size, as larger facilities benefit from economies of scale up to a certain point.[46] How full—or overcrowded—they are also affects their cost. Other things being equal, more heavily utilized prisons, and even more overcrowded ones, are less costly on a per-prisoner basis because staffing levels in prisons are relatively fixed. Privately operated prisons are probably less likely to be overcrowded than public ones, and thus, finding similarly utilized public prisons in the same jurisdiction may be difficult.[47]

Another source of non-comparability stems from facility design. When states turn to private firms for facility construction and operations contracts, these firms have the opportunity to build the most labor-efficient buildings possible. Comparing the cost of operating these facilities to older and less

46 In their 1984 study, Schmidt and Witte analyzed facilities in the Federal Bureau of Prisons and concluded the "prisons are cheapest to run when they are quite large but not behemoth." Peter Schmidt and Ann D. Witte, *An Economic Analysis of Crime and Justice* (Orlando, FL: Academic Press, Inc., 1984), p. 355.

47 At a minimum, one would have to adjust cost estimates to account for such differences if utilization levels were dissimilar.

efficiently designed public prisons may lead to misleading conclusions about the reasons for an apparent cost advantage attributed to privatization.

Finally, public and privately operated prisons may differ in the levels and quality of services provided. In general, one would expect costs to be higher for more extensive and higher-quality programs and services. The most telling comparison, therefore, would be between the cost of delivering an equivalent service of equivalent quality by both a public and a privately managed facility. Measuring the quality of imprisonment services is not a straightforward task, as chapter four discusses.

Inconsistent Accounting Procedures

The accounting procedures followed by public and private organizations differ, which makes comparison of costs incurred by the two types of organizations difficult. Accounting methods developed for private firms are designed to value all inputs used for producing goods and services; a large proportion of costs incurred are thereby captured. In contrast, public accounting systems were designed not to identify costs but to control the allocation of appropriated public funds through agencies and to detect misuse of taxpayers' money.[48] Three characteristics of public accounting procedures make cost identification especially difficult in government: the deficient treatment of capital expenses, the focus on the agency rather than the service delivered, and methods for allocating overhead costs.

Different Treatment of Capital Spending

Private firms have adopted accounting conventions to spread expenditures for capital assets (e.g., buildings, land, equipment) throughout the period of the assets' useful life, so that the year-to-year cost of a service includes some portion of the physical assets that are "consumed" in the production of that service. Public accounting systems make no such attempt. In the public sector, capital expenses are counted only in the year that they are made. Because no attempt is made to spread these costs across subsequent years, it is impossible to determine how much it actually costs to deliver a service without conducting an inventory and appraisal of existing capital assets. The commonly cited costs of imprisonment by public agencies are, therefore, often lower than they would be if physical assets were capitalized. In years where large capital construction projects are undertaken, however, the operating costs will be *overestimated* as a result of "expensing" these costs fully in that same year rather than spreading them across the useful life of the asset.
Among those facilities identified by the Abt Associates survey of correctional administrators as being under contract with state or federal correctional agencies on December 31, 1997, 59 percent were owned by the contracting firms. Because the fees charged by these firms for their services are generally designed to recover capital investments in these facilities, the appropriate comparison is the cost of ongoing operations in a similar public institution plus some annualized portion of the capital investments by governments in this institution. Because the latter costs are, for all practical purposes, uncounted, comparing the relative cost of private owner-operated facilities to public facilities is subject to considerable uncertainty.

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48 Herman B. Leonard, *Checks Unbalanced: The Quiet Side of Public Spending* (New York, NY: Basic Books, 1986); Douglas C. McDonald, *The Cost of Corrections: In Search of the Bottom Line* (Washington, DC: National Institute of Corrections, 1989).

Dispersed Costs

The practice of assuming that the cost of public imprisonment is equivalent to the correction department's expenditures often obscures the true cost to government for another reason as well. In many jurisdictions, several costs of operating prisons and jails are borne not by the correctional agency but by a number of different agencies or different government accounts. For example:

- employee benefits may be paid out of separate overhead government accounts rather than the correctional department's account;
- some medical care of inmates may be charged to the government's health care agencies or may be subsidized variously by state hospitals, mental health departments, and the like;
- utilities may be charged to the department of public works;
- legal work in support of prisons may be borne by the attorney general or equivalent;
- the true cost of insurance may be overlooked, as governments generally self-insure by paying for unpredictable costs when they are incurred, rather than spreading these costs over all years;
- the true cost of supplies and equipment may be understated if they are purchased and stored by a separate agency (such as the federal General Services Administration); and
- payments for contracted services (such as food or health care) may be made by central or regional offices rather than by the facilities.

To identify all such dispersed costs of correctional operations, special studies are needed, rather than simple reliance on measures of costs based on the correctional agency's budget or reported expenditures. Overlooking expenditures by other agencies or accounts may undercount actual costs by as much as 30-40 percent. One study of New York State's prisons estimated that only 77 percent of the direct cost of imprisonment in the state's prisons were covered by the department's budget. The remainder was paid by general government accounts or by other agencies.[49]

A parallel problem exists with respect to identifying all costs to government for contracting. Private firms may not always bear all the costs of imprisonment, even when they own the buildings and all the assets. Some services might be performed by the public correctional agency, and the cost of those services should be counted along with the contractors' costs. For example, surveyed government officials who were charged with managing contracts with privately operated facilities reported that the following types of activities were sometimes necessary to support private facilities but were paid by government:

- contract monitoring and oversight;
- inspection and licensing;
- personnel training;

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49 Douglas C. McDonald, *The Price of Punishment: Public Spending for Corrections in New York.* (Boulder, CO: Westview Press, 1980), p. 16.

- medical and/or dental care (contracts often limit the contractor's liability for such care, placing the risk for high-cost and catastrophic care on the government);
- inmate transportation;
- inmate case management;
- background checks for visitors and volunteers;
- reviews for pardon and/or parole boards;
- correctional industries programming;
- disciplinary and grievance appeals processes;
- accounting and banking of inmate funds;
- payment of inmate wages; and
- response teams for emergencies.

As with public correctional departments, agreements with private facilities must be scrutinized to determine if these or similar costs are paid not by the facility itself but by the government agency with which it contracts. All such costs, or estimates thereof, need to be included as costs to government of contracting.

Assigning Overhead Costs

Some "overhead" expenditures incurred by various agencies of government in support of prisons and prison administration must be assigned to both government operated and privately operated facilities in a jurisdiction. The methods by which these costs are allocated affect the calculation of operating costs of each facility and, consequently, the estimation of difference in public and private facility costs. As Julianne Nelson writes in her paper (in appendix 1, at note 11), most analysts addressing the question of public and private imprisonment costs have estimated the costs assigned to facilities according to the *use* made of central office services by either public or private facility managers. She argues that this tends to overstate the relative cost of public facilities. This is because the cost of governmental overhead activities are quite fixed. That is, the marginal cost associated with increasing a prison system by one or two more facilities is quite small, regardless of whether the additional facilities are operated by government or a private firm. The appropriate method for allocating the cost of these fixed overhead costs is to assign identical amounts to all facilities in the jurisdiction, whether public or private. The only conditions in which privatization would lower overhead costs in government would be (a) where the expansion of overhead activities were averted by relying upon privatization or (b) where contracting for privately operated prisons resulted in cutting back government overhead operations, which is not likely to occur.

Studies Comparing Privately and Publicly Operated Correctional Facilities

A number of research studies have been reported since the early 1980s that aimed to compare the cost of privately operated facilities with publicly operated ones. Most have been focused on facilities for adult prisoners, although some have examined juvenile facilities. Only those pertaining to adult facilities are examined here. Moreover, attention is restricted to those few studies that have employed

reasonably rigorous research designs, and which report their methods and data in sufficient detail to assess the strength of their findings.[50]

State Prisons in Tennessee

In 1991, the State of Tennessee contracted with the Corrections Corporation of America (CCA) to operate the South Central Correctional Center (SCCC), a 961-bed, multi-custody (minimum-to-maximum-security) facility. As required by state law, the Tennessee Fiscal Review Committee (FRC) undertook to "compare the full costs of the contractor with the state's full costs of operating similar facilities." [51] Two publicly operated prisons were selected for comparison: Northwest Correctional Center (NWCC) and Northeast Correctional Center (NECC).

The FRC study is a model cost comparison. It allocated "line item" cost data for each prison to specific management functions (administration, security, etc.). Adjustments were made to operating costs (also reported by management function), which included netting out commissary revenues against commissary expenses, allowing for changes in food services inventories and non-comparable programs, eliminating depreciation expenses as a public facility expense (because there were corresponding sets of expenses in the private facility), and adding monitoring costs to the expenses reported for the private facility. After such adjustments, the FRC found that the daily operating cost during FY 1994, *exclusive of any costs allocated to central office*, averaged $31.95 in the two public facilities, compared to $33.78 in the CCA facility. By this measure, the private facility was 5.7 percent more costly than the two public facilities, on average. (Both public facilities were less costly: $30.91 at NECC and $33.06 at NWCC.) When adjustments were made for differences in the size of the facilities to equalize the comparison (more specifically, in the average numbers of prisoners under custody in each one), the cost difference diminished to one percent. Adding in an allocated share of the Department of Corrections's central office costs to the three facilities changed the estimates slightly. The CCA facility was then found to be one percent *less costly*, on average, than the public facilities.

The FRC report did not directly address the question of whether or not privatization actually saves money for the taxpayers of Tennessee. This question was addressed by the Washington State Legislative Budget Committee (LBC) as it tackled its own version of the prison privatization

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50 The studies not reviewed here include the following: A. Brown et al., *Private Sector Operation of Correctional Institution: A Study of the Jack and Ruth Eckert Youth Development Center, Okeechobee, Florida* (Washington, DC: National Institute of Corrections, 1985); John D. Donahue, *The Privatization Decision* (New York, NY: Basic Books, 1990), Chapter 8; Keon S. Chi, "Private Contractor Work Release Centers: The Illinois Experience," in *Innovations* (Lexington, KY: Council of State Governments, 1982).; Joint State Government Commission, *Report of the Private Prison Task Force* (Harrisburg, PA: General Assembly of the Commonwealth of Pennsylvania, 1987).; Douglas C. McDonald, "The Costs of Public and Private Correctional Facilities," in McDonald (ed.) *Private Prisons and the Public Interest* (New Brunswick, NJ: Rutgers University Press, 1990).; Douglas C. McDonald, "The Costs of Public and Private Correctional Facilities," in McDonald (ed.) *Private Prisons and the Public Interest* (New Brunswick, NJ: Rutgers University Press, 1990); Charles H. Logan and Bill W. McGriff, "Comparing Costs of Public and Private Prisons: A Case Study," *NIJ Reports* (No. 216, 1989), pp. 2-8.; and Dale K. Sechrest and David Shichor, *Final Report: Exploratory Study of California's Community Corrections Facilities* (San Bernardino: California State University, 1994).

51 State of Tennessee Legislative Fiscal Review Committee, *Cost Comparison of Correctional Centers (* Nashville, TN, 1995), p. 1; for a detailed analysis of this study, see Julianne Nelson's paper, in appendix 1 of this report.

question.[52] The LBC conducted further analyses of the Tennessee data but followed a slightly different tack. Instead of analyzing the *cost incurred by* CCA of operating SCCC, the LBC started with the *revenues received by* CCA and adjusted these data for differences between public and private management responsibilities. The FRC had excluded medical expenses for CCA from its analysis because it lacked sufficient data. It was necessary to estimate these costs in order to compute CCA's operating surplus and to compare private per diem rates with those derived for the state-run facilities NWCC and NECC. The LBC concluded that the estimated total daily cost to the taxpayers of the privately operated CCA facility was $37.65, as compared to $40.16 at NECC and $40.19 at NWCC.

Julianne Nelson undertook further analysis of the Tennessee data, reported in both the FRC and the LBC studies, to discern differences in how costs were allocated in the CCA facility compared to the two public facilities. (This study was commissioned by the National Institute of Corrections in conjunction with the Abt Associates study and is included in appendix 1.) She found that:

- Non-medical operating costs per inmate day were virtually identical in the public and private prisons studied.

- At the CCA facility, more was spent on administration and less on security, relative to the public facilities, including corporate overhead and monitoring by state officials.

- Contracting for SCCC may have saved money for Tennessee's taxpayers by averting expenditures for state government overhead activities. That is, the observed state-level overhead expenses were lower than what they would have been had SCCC been publicly managed.

- Labor costs were lower at the private facility: $16.89 per prisoner/day at the CCA facility, as opposed to $19.63 at NECC and $20.96 at NWCC. Security staff costs were also lower: $9.96 per prisoner/day at the CCA facility, versus $12.57 at NECC and $14.55 at NWCC.

- Employee benefits were also lower at the CCA facility. The average employee benefit rates were 28 and 29 percent at the two public facilities, and 22 percent at the CCA facility. Wide variation existed among CCA staff: administrative employees enjoyed a benefit rate of almost 80 percent, while others received benefits at the rate of 13-14 percent of salary.

She summarized that the pattern of expenditures indicates that "the bulk of reported cost savings at the privately managed prison studied in Tennessee can be attributed to differences in per-inmate medical expenditures and allocated state overhead costs. (Labor cost savings were offset by the increased administrative cost...)."

What remains unclear, however, is whether the apparently lower overhead costs are merely accounting artifacts rather than reductions in expenditures. It is unlikely that overhead activities were

52 Washington Legislative Budget Committee, *The Tennessee Experience: The 1995 Report of the Fiscal Review Committee* (Seattle, WA, 1996), appendix 3. In particular, LBC analysts both estimated the medical expenses incurred by CCA on behalf of prisoners at SCCC and obtained an unofficial report of these expenses directly from CCA. The LBC analysts also collected data on the fees paid by Tennessee to CCA for operating SCCC. This information was collected after the FRC report was published.

actually cut back, or that significant increases in expenditures for overhead were averted by contracting for a single facilities. The actual difference in expenditures was therefore small, if any.

Adult Prisons in Louisiana

The State of Louisiana contracted with two different private correctional firms—the Corrections Corporation of America and Wackenhut Corrections Corporation—to operate two prisons for men. The former firm contracted to operate the Winn Correctional Center, the latter the Allen Correctional Center; both opened in 1990. In 1996, William Archambeault and Donald Deis, professors at Louisiana State University, reported the findings of their study which compared the cost and performance of these two facilities with a third, the Avoyelles Correctional Center, operated by the Louisiana Department of Public Safety and Corrections.[53]

The basic question addressed by Archambeault and Deis was how the full cost per inmate-day in a publicly managed prison (i.e., Avoyelles Correctional Center) compared with the full per diem cost of housing an inmate in either of two privately managed facilities. Their choice of comparison institutions was appropriate. All three institutions were built by the state and shared a common design. The capacities of all three were identical—1,474 beds. They are located in the same section of rural Louisiana and draw from the same general labor pool. All three house maximum, medium, and minimum security prisoners in approximately the same proportions. Moreover, the private facilities appear to be well-integrated into the ongoing operations of the state's public correctional agency. They adopted the same rules and procedures that govern the state's prisons, and the upper management of these two privately operated prisons participate in agency-wide management functions. A number of the potentially confounding factors are thereby held constant, permitting a comparison of institutions that vary only in their being managed and operated by either the state correctional agency or by private firms.

Archambeault and Deis compared expenditure data for all three prisons for five fiscal years, 1992 through 1996. As they were interested in assessing the total cost and savings to the taxpayers, they based their analysis upon the state's fees paid to the management firms and sought to identify all costs incurred to support either the privately operated or the government operated facilities, including all costs incurred by other agencies or other government accounts. They also sought to estimate a variety of costs not accounted for on an annualized basis, such as self-insurance. Numerous other adjustments were made, such as for costs associated with prison industry programs and services provided by local vocational/technical schools. After such adjustments, Archambeault and Deis concluded that the taxpayers of Louisiana saved an average of 12.75 percent for both private facilities combined, throughout the five years studied, relative to what taxpayers spent for the Avoyelles facility during the same period. The average five-year savings were greater for the Allen facility operated by Wackenhut: 13.80 percent, as opposed to 11.69 percent at the CCA facility in Winnfield.

At approximately the same time as Archambeault and Deis were conducting their study, the State of Washington's Legislative Budget Committee examined expenditure data for the same three facilities

53 William G. Archambeault and Donald R. Deis, Jr., *Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers* (Baton Rouge, LA: School of Social Work, Louisiana State University, 1996).

and drew different conclusions about the savings.[54] The LBC's report was released before Archambeault and Deis released theirs. Comparing the two reveals that they took different approaches to estimating some costs or made different assumptions. In the end, the LBC concluded that the state could expect to break even on its two contracts during FY 1996 when all facilities were operating at full capacity. Whereas the CCA facility was costing about one percent more than the state facility during that year, according to the LBC's analysts, the Wackenhut facility was saving the state an equivalent amount. (The LBC suggested that costs of the three private and public facilities had recently converged and that the private facilities had been costing the state approximately four percent less during FY 1994.)

Julianne Nelson reviewed both the Archambeault and Deis study and the LBC report and identified a number of difficulties in the former. (See appendix 1) She concluded that the savings associated with private operation in the Winn and Allen facilities are more in the range estimated by the LBC analysts. That is, during fiscal year 1996, the savings were more likely to be below 5 percent than above 12 percent. Savings to the taxpayers could be greater, she argues, if contracting out operations of facilities results in cutbacks in state-level overhead expenses.

Adult Prisons in Florida

The controversy over the appropriate measure of operating costs in Florida prisons shows how hard it is to get all sides to agree on whether or not privatization saves money. Current state law helps identify the participants in this debate. Chapter 89-526 of the Florida state statutes, enacted in 1989, first authorized the state Department of Corrections (DOC) to enter into contracts with private prison management companies. The subsequent Chapter 93-406, adopted in 1994, created the Correctional Privatization Commission (CPC), to expedite prison privatization; it is housed in the state Department of Management Services and operates independently of the Department of Corrections. Chapter 957.05 qualifies the authority of the CPC, requiring it to demonstrate—before any contract is signed—that private prison management will result in *at least* a 7 percent savings (relative to the cost of allowing the state Department of Corrections (DOC) to run the prison). Chapter 957.07 also empowers the state Auditor General to decide whether or not this condition has been satisfied before any contract with a vendor has been signed.

In the summer of 1995, two prisons opened under contract with the Correctional Privatization Commission. One, the Bay Correctional Facility, is operated by CCA; the second, the Moore Haven Correctional Facility, is operated by Wackenhut Corrections Corporation. Both are 750-bed prisons that were designed for medium-security inmates, although the department has been assigning a large percentage of minimum-security prisoners to them (about half, during FY 1997).[55]

To provide for ongoing independent oversight, Florida state law requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) [56] to review the performance of all management

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54 State of Washington Legislative Budget Committee. *Department of Corrections Privatization Feasibility Study, Report 96-2* (Olympia, WA, 1996).

55 Florida OPPAGA, *Review of Bay Correctional Facility and Moore Haven Correctional Facility*, Report No. 97-68 (Florida OPPAGA, April 1998).

56 Although the OPPAGA is a unit of the Office of the Auditor General, it reports directly to the state legislature.

companies that operate private prison facilities in Florida (this may include both vendors under contract to the CPC and those under contract to the DOC). A separate oversight board, the Florida Corrections Commission, was established in 1994 and is "charged with reviewing the effectiveness and efficiency of [Florida's] correctional efforts, recommending policies, and evaluating the implementation of approved policies."[57]

Not surprisingly, these different parties do not always favor the same measure of privatization benefits. In its *Annual Report* for the fiscal year 1996-97, the DOC argued that *all three* privately managed adult prison facilities were *more expensive* than similar publicly run facilities would have been.[58] Using a somewhat different approach, the OPPAGA reached a similar conclusion. Nevertheless, the OPPAGA report included responses from the Correctional Privatization Commission, the Corrections Corporation of America, and Wackenhut proposing alternative methodologies—ones that led to conclusions directly opposed to those reported by the DOC and the OPPAGA.

The Department of Corrections' estimates are somewhat biased against the privately managed firms. The per diem rate for the men's public prison is derived as the *average* of nine other facilities; all but one of these public facilities is substantially larger than any of the private facilities being analyzed. [59] Given the economies of scale in prison operation, this approach understates the public sector cost of running a prison comparable in size to Bay or Moore Haven.

Nevertheless, the OPPAGA reached a similar conclusion from a more appropriate starting place. It compared two private men's facilities (Bay and Moore Haven) with a single comparably-sized public facility, the Lawtey Correctional Institution. In its analysis, the OPPAGA started with the management fee due to CCA and Wackenhut (for running Bay and Moore Haven, respectively); it then deducted monitoring costs paid by the management companies, property taxes *not* paid, and medical insurance co-payments collected from prisoners and retained by the prison operators. For the Lawtey facility, the OPPAGA used the annual cost of operations, health services, and education programs reported for this facility by the Department of Corrections in its *Annual Report*. All three cost estimates were then adjusted for differences in scale economies, the scope of management responsibilities and the quality of services provided.

The OPPAGA estimated that Moore Haven was more expensive to operate than its public sector equivalent; it also argued that the Bay facility was only 0.2 percent cheaper. Neither private facility achieved the 7 percent cost savings required by law.

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57 Commissioners are appointed by the Governor and with the approval of the state Senate. The Commission's mission statement appears on its web site, located at http://www.dos.state.fl.us/fgils/agencies/fcc/.

58 These estimates are reproduced and analyzed in Florida Department of Corrections, *Privatization in the Florida Department of Corrections* (1998). Available at web site (time stamped April 28) www.dc.state.fl.us/administrative/reports/privatize/index.html.

59 Apart from the one public facility with an ADP of 733, the remaining public prisons housed between 1214 and 1719 inmates on average. In contrast, the observed average daily populations for the privately operated Bay and Moore Haven facilities were 708 and 706 respectively. If these two prisons were assumed to operate at 95 percent of capacity, they would house approximately 713 inmates on average. Each of these private facilities has a contract maximum of 750 beds.

In response to this finding, CCA proposed some adjustments that substantially change the interpretation of the data: they argue that private management at Bay and Moore Haven *saved* taxpayers, respectively, 8.3 and 6.0 percent of state costs. This difference arises primarily from three simple changes: an increase in the CCA's credit for taxes paid to the state, an increase in CCA's credit for the "Inmate Welfare Trust Fund Net Revenue;" [60] and a decrease in the state's adjustment for "medical costs for higher medical grade inmates at Lawtey." [61] The OPPAGA itself rejected these three CCA amendments, observing that CCA sought to claim credit for more tax revenue than was properly attributable to its Bay facility, [62] that it retained custody over Inmate Welfare Trust Fund balances, [63] and that Lawtey inmates had considerably more medical needs than those at the Bay facility.

This debate is further complicated by an adjustment that the OPPAGA could have made but ultimately rejected. As in Louisiana, the state retirement system was not fully funded by past payroll deductions. To eliminate this shortfall, a surcharge of 5.78 percent was included in the the payroll costs reported for Lawtey. The OPPAGA justified counting this surcharge, stating that "it is still a cost to the taxpayers. Privates do not pay this and thus should be able to reduce costs in comparison to state by at least 5.78% of payroll."[64]

This accounting decision biases the comparison against the public facilities, however. The unfunded liability was incurred in the past; the surcharge was imposed to collect the funds needed to cover that liability. To compare the *current* costs of operating public and private facilities, the surcharge should not be counted. In other words, payroll costs at the Lawtey facility should be 5.78 percent lower than what is reported by OPPAGA. Omitting this surcharge brings the cost of the public and private facilities yet closer together, although the end result does not change the basic conclusion: there is no strong evidence indicating that contracting for these facilities rather than direct government operations saved taxpayers' money in Florida.

Adult Prisons in Texas

In 1987, the Texas State Legislature enacted a law authorizing the Texas Department of Corrections to contract with private vendors and county commissioners to finance, construct, operate, maintain or manage correctional facilities. In June of that year, a request for proposals was issued offering the opportunity to operate four 500-bed prisons, to be structured as pre-release centers, with programming designed to reintegrate prisoners back into society upon their release. Such programming would

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60 This trust fund is an account containing the revenue (in excess of expenses) from the prison commissary, vending concessions and inmate telephone service.

61 A fourth small adjustment by CCA remains unexplained: the "unadjusted" per diem reported by CCA for Lawtey exceeds that found in the OPPAGA report by $.36, OPPAGA, p. 38.

62 According to the OPPAGA report (p. 59), CCA sought to claim credit for taxes paid on income from other facilities.

63 According to the OPPAGA report (p. 13), this trust account is established in the name of the private contractor operating the prison. However, current law requires the contractor to obtain the approval of the CPC commissioner before using these funds for anything other than the purchase of items for resale. In contrast, state profits from the prison commissary and inmate phone usage are used to offset prison operating costs.

64 OPPAGA, p. 36.

include educational and vocational programs as well as counseling and treatment for drug and alcohol abuse, domestic difficulties, and other problem areas. Contracts were ultimately awarded to the Corrections Corporation of America (CCA) for two facilities, and to the Wackenhut Corrections Corporation for two other 500-bed facilities.[65] The two facilities operated by CCA were located in Cleveland and at Venus, Texas. The two operated by Wackenhut were in Bridgeport, and Kyle, Texas. These facilities began receiving prisoners during the summer of 1989.

The law specified that the state could not contract with a private vendor without an assurance that services would cost at least 10% less than the state would have to spend for an equivalent facility. The task of determining if the private firms were delivering the service at least 10% below the state's cost was given to the Sunset Advisory Commission. The challenge was to find comparison institutions operated by the state. The statute specified that the commission should analyze the cost and quality of services in the private prisons as compared to the cost and quality of any similar state services. However, as the commission noted in its 1991 report, "The development of a cost estimate was complicated by the fact that the TDCJ did not, and still does not, operate a comparable facility."[66]

The commission therefore requested that the Texas Department of Criminal Justice develop two cost estimates: (1) the total cost to the state of contracting for the operation of the privately operated prisons, and (2) the total cost to the state if TDCJ operated the facilities directly. The estimate of the former cost included actual contract costs plus a number of other direct and overhead costs borne by the state in support of this contract. The second estimate included all direct and indirect costs that would be associated with direct government operation of the CCA facilities and, separately, the Wackenhut facilities. The commission concluded, from a comparison of the actual costs and the estimated costs, that contracting saved the state 14-15 percent—more than the required 10 percent. However, some of the savings to the state was in the form of payments by each of the firms to local governments that approximated the taxes that the firms would have paid if the property were privately owned. Because the state owned the facilities, with the firms contracted to operate them, it makes little sense to require the firms to be liable for any such taxes. Moreover, the cost to the state of the capital asset is the same, regardless of whether the facilities are managed by the private firms or the TDCJ. Not counting these payments in lieu of taxes, private operation appears to cost the state 8.8 or 9.7 percent less than direct TDCJ operation, depending upon the facility—or slightly less than the savings required by statute. The payments in lieu of taxes appear to be simply a fee paid by the private firms to governments so that the net cost of contracting to Texas exceeds the 10 percent threshold.

An examination of the commission's report indicates that the principal sources of savings associated with contracting, apart from this payment, were lower operating costs and a lower overhead expenditure by the state. Operating costs were $1.53 to $1.96 lower on a daily per prisoner basis, state overhead costs were $1.36 less for the private facilities. The precise reason for the lower operating costs cannot be identified because the report provides only aggregate-level expenditure data.

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65 The RFP initially requested that contractors construct the prisons as well as operate them, but the state subsequently decided that it was less expensive for the state to construct the facilities and to own them. Consequently, the contract was written as an operations contract only.

66 The State of Texas, Sunset Advisory Commission, Recommendations to the Governor of Texas and Members of the 72nd Legislature: Final Report (March 1991).

In short: the evidence from Texas suggests that the private firms are delivering a service that would cost the government approximately 9-10 percent more if the state's corrections department operated the facilities directly. This assumes that the estimates of the department's costs of direct operation are accurate, of course. Lacking more information about how these costs were estimated, it is not possible to evaluate them.

Arizona's Prison for Men and Women

In 1993, the Arizona Department of Corrections awarded a contract to the Management and Training Corporation to design, construct, operate, and own a 450-bed minimum security state prison for men and women. This prison, the Marana Community Correctional Treatment Facility, was evaluated by Charles Thomas to assess how the facility's cost and performance compared with other comparable institutions in Arizona.[67] Unfortunately, no equivalent facility operated by the Department of Correction existed in the state. The Marana Facility is the only one in the state that houses both men and women. Other things being equal, that fact alone would affect any cost comparison significantly because women prisoners are generally more costly to house than men. Thomas acknowledged a variety of differences between the Marana facility and others. For example, many of the publicly operated prisons used for comparison housed prisoners in tents, which no doubt affected the level of per inmate expenditure in these facilities. Moreover, the Marana Facility, by design and legislative wish, provides a higher level of programming—both in the types of programs and the level of inmate involvement in them—than other Arizona facilities generally. Thomas's solution to this was to compare costs at Marana to the average costs of all 15 minimum-security prisons operated directly by the state's Department of Corrections.

During fiscal year 1996, the operating costs of the Marana Facility, including adjustments for payments by the management for *ad valorem* property taxes, were $13,140 per prisoner per year, or $35.90 per day. This compared to an average operating cost for the 15 state-operated minimum security prisons that year of $15,766 per prisoner per year, or $43.08 per day, a difference of almost 17 percent.

However, the Marana Facility was not the least expensive of the minimum security prisons operating during FY 1996. Three publicly operated facilities were less costly (before crediting the private facility for payment of property tax). Indeed, seven of the fifteen publicly operated facilities were within five percent of the cost of the Marana Facility. Even after adjusting for payment of property taxes by the management firm, Marana still remained more expensive to operate than two of the public facilities. In light of this, Thomas concluded "Given the limitations of the available data and the heterogeneity of the facilities, it would be speculative to conclude that a precise cost savings had been achieved."[68]

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67 C.W. Thomas, *Comparing the Cost and Performance of Public and Private Prisons in Arizona* (Gainesville, FL: Center for Studies in Criminology and Law, University of Florida, 1997).

68 C.W. Thomas, *Comparing the Cost and Performance of Public and Private Prisons in Arizona* (1997), p. 93.

Summary

Perhaps the main finding of this review is that only a very small percentage of those facilities operated by private firms have been evaluated systematically to determine how much more or less the relevant government would spend in the absence of contracting for operations. Ninety-one contracts existed on December 31, 1997 with privately operated secure confinement facilities that held prisoners on that day, and some undetermined number of facilities also held prisoners sent to them through non-contractual means (that is, via an intergovernmental agency agreement). The number of contracts that have been issued during the past decade is much higher. But only a handful have been subjected to close scrutiny with respect to their costs, relative to the cost of directly government provision. Moreover, some of these studies examined contracts that were negotiated in the early days of this industry. It is difficult to have much confidence in conclusions about the relative costs of public versus private provision when we have systematic cost comparisons of such a small and dated subset.

In Florida and Arizona no strong evidence of significant savings exists. In Louisiana, Tennessee, and Texas, the studies find that contracting did reduce costs to government. Some of the savings reportedly associated with contracting are seen to flow from lower spending by state governments for "overhead" administrative functions. These savings may only be apparent, an artifact of how government expenditures are allocated to all correctional facilities in the state. Governments will not actually realize these savings unless they actually reduce overhead spending in conjunction with contracting, rather than merely shifting the allocated share of an unchanged expenditure to the government-operated facilities.

Generally unstudied in these few evaluations is the potential for either governments or private firms to control specific types of costs, such as spending for prisoner health care. Expenditures for prisoner health care has been rising at a much faster rate than for other non-medical correctional activities, in part because prisons are subject to the same inflationary pressures experienced in the broader health care marketplace. However, prisons have generally lagged behind other sectors in developing procedures for managing these costs. Private firms that operate prisons are certain to implement "managed care" strategies to contain costs, all of which could also be adopted by public correctional agencies.[69]

69 See Douglas C. McDonald, *Managing Health Care and Costs* (Washington, DC: National Institute of Justice, 1995).

4. How Well Do Privately Operated Prisons Perform?

If the principal objective of contracting out the management and operations of prisons is, as surveyed correctional administrators most often reported, to expand capacity in order to alleviate overcrowding, then privatization no doubt achieves that purpose. But advocates of privatization often proclaim other goals. For example, the President's Commission on Privatization, established by President Reagan, described contracting—and broader private participation in government generally—as a means not only of increasing the efficiency but also the effectiveness of public administration. Thus: "Contracting the administration of jails and prisons at the federal, state and local levels could lead to improved, more efficient operation." [70] More recently, the National Performance Review has also supported privatization as one means of improving effectiveness as well as efficiency. Is there any evidence that contracting has, indeed, improved prison operations or, more broadly, the performance of prisons? Or, does it appear that the increased attention to cost containment has resulted in *reduced* service quality?

Some read the studies to date as providing favorable support for privatization on this question. Charles Thomas and his associates write that studies of private prison operations in Florida, Louisiana, and the United Kingdom "demonstrate that these cost savings are often matched with performance improvements (e.g., fewer disturbances, fewer escapes, increased prisoner involvement in work programs, and more programs aimed at reducing recidivism)." [71] Others are more cautious. Analysts at the U.S. Government Accounting Office (GAO) reviewed what they thought were the strongest studies and concluded that they "offer little generalizable guidance for other jurisdictions about what to expect regarding comparative operational costs and quality of service if they were to move toward privatizing correctional facilities."[72]

This chapter discusses different approaches to defining and monitoring performance, both with respect to government services generally and to prisons specifically. The current practice of monitoring and evaluating the performance of privately operated prisons is described, reporting results of the Abt Associates survey of correctional administrators. Finally, it reviews and assesses several studies that have sought to evaluate the relative performance of privately and government operated facilities.

What Does "Performance" Mean With Respect to Prisons, Public or Private?

Much of current thinking about performance in government has been framed, at least at the federal level, by the Government Performance and Results Act of 1993 (GPRA), the Clinger-Cohen Act of

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70 President's Commission on Privatization, *Privatization: Toward More Effective Government* (Washington, DC: President's Commission on Privatization, 1988), p. xviii.

71 Thomas, Bolinger, and Badalamenti, *Private Census*, 1997, p. vi.

72 General Accounting Office, *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality f Service* (Washington, DC: U.S. General Accounting Office, 1996), p. 3.

1996, the revised handbook to the Office of Management and Budget Circular A-76, and the Clinton Administration's major management reform initiative—the National Performance Review (NPR). All have stimulated greater attention to improving government performance. More importantly, GPRA aims to improve the operations of federal government programs by changing management emphasis from *inputs* and *processes,* to *performance* and *results*. It mandates that each federal agency develop a strategic plan describing the agency's goals, objectives, and operations. Each agency is, in turn, to derive from its strategic plan an annual performance plan for each of its program activities, defining program-level goals, operations, and performance indicators.

The Senate Report accompanying GPRA emphasizes that measures of program performance should, to the extent possible, concentrate on *outcomes*, rather than *outputs*. Outcomes refer to "the actual results, effects, or impact of a program activity compared to its intended purpose," whereas outputs refer to actual levels of activity or effort that are realized. The report provides an example of the distinction: eligible clients completing a job training program are outputs, but an increase in their rate of long-term employment is an outcome. "While recognizing that outcome measurement is often difficult, and is infeasible for some program activities," notes the report, "the Committee views outcome measures as the most important and desirable measures, because they gauge the ultimate success of government activities."

But how does one gauge the success of prison operations? What are the outcomes of prisons intended to be, whether publicly or privately operated? Reaching agreement on those questions has been difficult.

Throughout the two-hundred-year history of prisons in America, penal administrators, theorists, reformers, and lawmakers generally have sought to advance different goals through imprisonment, or, at least, to give certain ones more salience than others. Establishment of the nation's first penitentiary, in Pennsylvania, was animated in great measure by a desire to civilize punishment (depriving persons of newly-valued liberty rather than more "barbaric" corporeal punishments and executions), to save souls, and to teach self-discipline. Later reformers, and then penal administrators, embraced prisoner rehabilitation, which could be accomplished more by the application of scientific principles. "Penitentiaries" became "reformatories" and later "correctional institutions."

Conceiving of imprisonment's purpose as rehabilitation or reformation of criminal offenders suggests an obvious outcomes-based performance measure: offenders' criminality following release from prison. But recidivism rates of prisoners have been depressingly high, and advocates of imprisonment have generally turned away from justifying their existence and assessing their performance according to such measures. Many have embraced, in recent years, a more minimalist conception of the purposes of imprisonment: the containment, or "incapacitation," of criminals. If nothing else, prisons do remove prisoners from civil society and prevent their committing crimes outside the walls.

Simple incapacitation cannot be the only purpose, however. Rather, containment must also be constitutional. Faced with claims of appalling conditions in prisons, the federal courts began in the early 1970s to intervene in prison administration. Entire state prison systems were found to be in violation of the Eighth Amendment's prohibition of "cruel and unusual punishment," and nearly all states were forced to spend large amounts of money to institute the required improvements.

In response to the perceived absence of national standards, correctional professional associations began to promulgate such standards for prison administration. Most prominent are those established by the American Correctional Association (ACA), first in the mid 1970s. Since then, the ACA has published standards for many different types of correctional facilities, including detention centers, boot camps, juvenile facilities, and adult confinements. The ACA also established an auditing system to accredit facilities.[73] Other standards for health care services were established by the National Commission for Correctional Health Care. Both sets of standards primarily prescribe procedures. The great majority are written in this form: "The facility shall have written policies and procedures on . . . ." They emphasize the important benefits of procedural regularity and effective administrative control, which flow from written procedures, and the careful documentation of practices and events.

For the most part, the prevailing professional standards prescribe neither the goals that ought to be achieved nor the indicators that would let officials know if they are making progress toward those goals over time. Two facilities could conform equally to an ACA standard by having a written policy on a particular issue, yet they could have diametrically opposite practices and outcomes on that issue. For example, both could have a written policy on the use of isolation, each of which covers topics like when isolation may be used, how long inmates can be isolated, and how reviews should be conducted to extend periods of isolation. One facility, however, might use isolation rarely, if at all, while the other could use it prodigiously.

The effect of these various trends has generally been to conceive of prison performance quite narrowly as conformance to law, state rules and regulations, and professional standards.[74] That is, performance tends to be measured according to procedural compliance, or *outputs*, in the language of the above-mentioned U.S. Senate report. The dominant focus is not on *outcomes*, other than achieving compliance or accreditation—which, arguably, is not a true outcomes-oriented measure of institutional performance. However, procedural compliance is what most state correctional agencies contract with private facilities to do.

What States Ask Contractors to Do

In general, state and federal governments demand in their contracts that privately operated facilities perform like their public sector counterparts. Statements of work in the contracts generally specify that compliance will be required with the same procedural rules, regulations, and standards that are in force in the public facilities. Although the Abt Associates survey did not explicitly ask if compliance with departments of corrections' rules and regulations was required of contractors, monitors for eleven contracts volunteered that such compliance was indeed specified as a performance objective in the contract. An examination of a selected number of contracts also found this to be true. Correctional administrators also reported that 57 of the contracts in force at the end of 1997 required that facilities achieve ACA accreditation within a specified time. In addition, administrators reported that 61 contracts explicitly required compliance with conditions established in consent decrees or other court-mandated standards.

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73 ACA accreditation requires a facility to meet all mandatory standards during a three-day inspection by an ACA audit team. The facility receives a score based on the proportion of optional standards the facility meets. To maintain accreditation, the facility must pass inspection every three years.

74 There are some exceptions to this, as discussed below.

There is no doubt that inclusion of such procedural requirements in contracts is necessary. As discussed in chapter five, governments may remain liable for the performance of contractors. Compliance with national standards and laws provides governments a measure of protection against lawsuits. However, examples of contracts that go beyond these to specify other performance outcomes are rare.

Monitoring Contractors' Compliance

Governments' practices of monitoring privately operated facilities vary widely. All contracts receive some oversight from the contracting agency. This ranges from minimal attention from a centrally located contract administrator to a combination of a contract administrator and one or more on-site monitors. Of the 28 state and federal government agencies surveyed by Abt Associates that reported having active contracts with privately operated facilities on December 31, 1997, twenty reported using monitors in addition to contract administrators. Several states required a strong background and knowledge of a government agency or corrections as prerequisites for monitoring correctional contracts. Others required experience as an internal auditor or investigator. Most governments required at least some level of formal training (up to 40 hours annually) in areas such as auditing, establishing performance standards and measures, ethics, and reporting disputes and conflicts. Contract monitors surveyed by Abt Associates often reported receiving more training than was required. One reportedly received more than 120 hours of training as a contract monitor. However, only 12 states reported providing training specifically geared towards the monitoring of privately operated correctional facilities.

The amount of time and labor spent on monitoring privately operated facilities also varied widely: from full-time monitors who spend a substantial proportion of their time on-site to virtually no monitoring at all. Of the 91 contracts for which we have information, 46 (52 percent) reported having monitors on-site on a daily basis (see table 4.1). These monitors generally worked full-time on these assignments, although some had responsibilities for more than one contract. A smaller number of contracts (16) had part-time monitors, who averaged about one day a week, visiting the facilities on a monthly basis. Ten contracts had monitors who devoted about the same level of attention to the contract, but visited only quarterly.

Table 4.1

Contract Monitoring Practices, by Frequency of Visits to Facility

	Daily Visits	Weekly Visits	Monthly Visits	Quarterly Visits	No On-site Monitoring
Number of monitors	35	3	7	6	2
Number of contracts	46	5	16	10	3
Average hours per month spent on site, per contract	145	57.6	19	6.7	0
Average hours per visit, per contract	7.25	14.4	19	20	0
Total monitoring time (% FTE), per contract	84%	43.3%	18.6%	23.1%	0%

Note: Assumes a 40 hour work week. Nine contracts are not included in this table. Monitors of these contracts reported other arrangements for site visits, including visiting on an "as needed" basis or on an annual or semi-annual basis.

Source: Abt Associates survey of state and federal correctional administrators.

Monitoring Performance as Outcomes

An alternative to conceiving of prisons' performance as procedurally based is to frame goals as *outcomes* and to identify and measure indicators that assess the facility's progress toward accomplishing these goals. This conforms to how many correctional administrators see their job. Even though legislators, governors, correctional theorists, and other parties may differ in how they define the mission of the prison, correctional administrators in public and private facilities generally agree with one another on both the general and specific goals of their assignment. Prisons should be operated to maximize public safety, either by keeping prisoners behind walls or maintaining strong controls over those who are released for short periods of work or education or for short furloughs and the like. Prisons should also be safe internally, for both prisoners and staff alike. Prisoners should be occupied rather than idle. Health care should be sufficient, more or less equivalent to the standards prevailing in the free community (if only because the courts have so required). Each of these objectives could be translated into specific outcomes that are amenable to measurement. Public safety could be measured by numbers of escapes, for example, or institutional safety by numbers of assaults by prisoners on other prisoners or on staff.

Professor Charles Logan attempted to formalize such an approach in his definition of what he calls a "confinement model" of corrections and associated performance indicators.[75] This model does not assume the success of prisons is determined by their effects on criminality in the larger society. Rather, goals are limited to aspects that prison officials have the ability and resources to affect. Thus, the mission of corrections is to "keep prisoners in, keep them safe, keep them in line, keep them healthy, and keep them busy—and to do it with fairness, without undue suffering, and as efficiently as possible." The goals associated with this mission statement are security ("keep them in"), safety ("keep them safe"), order ("keep them in line"), care ("keep them healthy"), activity ("keep them busy"), justice ("do it fairly"), conditions ("without undue suffering"), and management ("as efficiently as possible"). These goals are then given operational objectives and detailed performance measures, some of which rely on objective data (e.g., escape rates), some on subjective data (e.g., inmates' perception of their risk of being assaulted). Logan has used this approach, and his model, to compare the performance of a privately managed facility in New Mexico to a federal facility.[76] (See below for a discussion of these studies.)

Even though most contracts for private operations of facilities do not incorporate outcomes-oriented performance objectives in a *systematic* way, monitors do report measuring such indicators in many instances. Monitors for 71 contracts reported in the Abt Associates survey that they track variously specified incidents occurring in the privately operated facilities. Sixty-nine reported monitoring inmate misconduct, 68 monitor escapes, 73 monitor inmate programming, and 49 staff turnover. How these measures were used to assess the contractors' performance was not reported in the surveys. It does not appear that thresholds were contractually established to define acceptable or unacceptable ranges.

Nor do most contracts tie performance on such indicators to financial rewards. One exception is the Federal Bureau of Prisons' contract with Wackenhut for the operation of the Taft Correctional Institution in California, which contains provisions for an award-fee incentive worth up to 5 percent of paid invoices. The contract also has provisions for reducing payment for poor performance. The other exception is a contract between the District of Columbia and the Corrections Corporation of America for the operation of the Correctional Treatment Facility, which permits financial rewards for meeting targets based on performance indicators.

In summary: even though most correctional administrators could agree upon a number of outcomes that could be used to assess their success, in addition to compliance with various procedural rules and regulations and recognized standards, most contracts have not taken such an approach. Rather, good performance is seen as complying with the terms of the contract—the rules, regulations, and standards included explicitly in the statement of work or by reference.

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75 Charles Logan, "Criminal Justice Performance Measures for Prison," in John J. DiIulio et al., *Performance Measures for the Criminal Justice System* (Washington, DC: Bureau of Justice Statistics, 1993), pp. 19-59).

76 Charles H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 1991.

How Well Do Privately Operated Facilities Perform Relative to Government Operated Ones?

The Abt Associates survey of state administrators asked contract monitors to assess the performance of each of the facilities that were operated under contract with their agencies. More specifically, the monitors of these contracts were asked, "In your professional opinion, does the quality of service provided in this facility fall below, equal, or exceed (a) that of the contract requirements? (b) the quality of service in other reasonably comparable facilities in your system operated directly by public correctional authorities?" Most (68 of the 80 responses) reported that the contractors' performance met the contractual requirements; only three exceeded requirements; ten were seen as failing to meet requirements. Similarly, most (58) were assessed to be the equals in terms of performance to similar facilities operated by the government correctional agency; ten were thought to exceed the performance of these government facilities; and twelve were deemed inferior. Thus, about three-quarters of those facilities under contract with state or federal agencies in the closing days of 1997 were assessed as delivering performance equivalent to that found in comparable government operated facilities in the same jurisdictions.

Another indicator of contractor performance is whether contracts are terminated or whether contractors are found to be in violation of the terms of contract. The Abt Associates survey of state and federal correctional administrators asked for information about contract terminations and contract violations. However, these inquiries focused on contracts that were active as of December 31, 1997. Terminations occurring before this date were reported summarily, with little characterizing information. Based on the data reported in the survey, it is not possible to determine whether contracts terminated before this date were terminated as a result of contract violations. Of the sixteen terminations reported, nine agencies reported that their sole reason for terminating their contracts was reduced need for beds. In probably only five instances, terminations occurred as a result of vendor violations.

- North Carolina terminated its contract with the Limestone County Detention Center in Texas citing operational problems and a reduced need for contractor capacity.
- Oklahoma also terminated its contract with Limestone County Detention Center in Texas for use of excessive force, idleness, and lack of attention to need. Reduced need for beds also contributed to the decision to terminate this contract.
- Colorado terminated its contract with Bowie County Correctional Facility in Texas citing "conditions."
- Utah terminated its contract with Frio County Detention Center and Crystal City Detention in Texas citing several escapes with legal inability to prosecute.[77]
- Montana terminated its contract with Dickens County Correctional Facility in Texas citing unsuitability of facility for long term inmate housing.

In each of these cases, the agency and the contracting facility were located in different states. These facilities were typically engaged to house prisoners in what amounts to a temporary "bed renting" arrangement to alleviate crowding in the state's prisons.

77 See chapter 5 for further discussion on prosecutorial jurisdiction and statutory authorization.

Eight agencies reported issuing violations to eleven facilities. For example, the Federal Bureau of Prisons reported several escapes occurring at Eloy Detention Center, which is operated under contract. Other agencies reported four other security-related violations. Oklahoma reported violations of inmate rights which included excessive use of force, disciplinary measures, idleness, and lack of attention to need.[78] Other common violations involved case management and medical issues.

That some private facilities have been found in violation of their contracts reveals little, if anything, about their relative performance vis-a-vis their public counterparts. Sub-par performance exists in publicly operated prisons, but no equivalent mechanism exists for finding the facilities in violation of written agreements (other than court orders or consent decrees). Superintendents of public facilities do not contract with their superiors to deliver institutional performance specified in legally binding terms. Moreover, many public facilities fail to achieve American Correctional Association accreditation, and federal courts have found the performance of many public prisons deficient.

Systematic Research to Evaluate Performance of Privately Operated Prisons

Eight research studies have been conducted and reported during the past decade of privately operated secure confinement facilities in the United States. All but one were described in chapter three, as each sought to evaluate both cost and performance of private and public facilities.

Perhaps the most striking aspect of this research literature is that it is so sparse and that so few government agencies have chosen to evaluate the performance of their contractors formally. Even though there exist over a hundred privately operated secure confinement facilities, there have been very few systematic attempts to compare their performance to that of public facilities. Most government agencies have been satisfied with monitoring compliance with the terms of the contracts. An examination of the available literature indicates that only a few states have sought formal evaluations of a contractor facility's performance. In a small number of other states, researchers have received grants to conduct research and have gotten agreements from private and public facilities to be studied.

The authors of these studies measured institutional performance using a variety of different indicators. These included outcomes-oriented measures such as post-release recidivism, numbers of escapes, uses of force, disciplinary problems, and major disturbances. Some studies also measured the extent to which prisoners were engaged in productive activities, including educational programming. Some assessed compliance with standards; some conducted audits, especially of security procedures. Others surveyed staff and inmates to learn their subjective assessments of the facilities. For an assessment of these studies, see the paper by Gerald Gaes, Scott Camp, and William Saylor, in appendix 2.

Some of the researchers argued that their findings indicated superior performance in the private facility studied. Charles Thomas, for example, concluded that the performance of the privately

78 Oklahoma was the only state to report violations which caused termination. Strict adherence to our questionnaire, as noted, would not permit such a report.

operated Marana Community Correctional Facility in Arizona was comparable and in some respect superior to the average performance of all other 15 state-operated minimum-security facilities.[79] However, as discussed in chapter three, this facility was a specialized one for which no comparable government-run facility existed. Comparing its performance to an average of all other minimum-security prisons obscures the fact that it did better than some and worse than other public facilities. The more reasonable conclusion to draw from the data is that the Marana facility appears to have delivered a level of service within the same range found in the other fifteen facilities.

In his ten-year old study of New Mexico's only facility for women, Logan reported finding superior performance under private management, compared to the direct government management of the same facility one year earlier and compared to the performance of a federal prison in West Virginia.[80] Although a large number of dimensions were measured, using both objective data and subjective assessments of staff, the small size of the sample limits the generalizability of the findings. Moreover, the claim of superiority relies mostly upon the subjective data obtained from staff surveys, which were possibly biased in favor of private management, if only because contractors were invited into New Mexico to remedy an unsatisfactory system for housing women offenders.

Only a few studies had the advantage of comparing similar public and private facilities in the same jurisdiction. The State of Tennessee compared three facilities, two publicly operated and one privately operated, and concluded that all three were operating at essentially the same level of performance.[81] In Louisiana, William Archambeault and Donald Deis compared two privately operated facilities with one government facility that was similar in design and mission. Performance was measured by a number of different indicators. On some measures, the authors interpreted the data as evidence of the private facilities' superiority; on others, the reverse was thought to be the case. In general, however, they concluded that the two private facilities outperformed the public one used as a comparison. We read the study and the data differently. We see no compelling evidence of the private facilities' superiority with respect to performance.

In their review of several studies comparing public and private prisons' performance, Gaes, Camp and Saylor reach the same general conclusion that GAO reported: that all of the existing evaluations are flawed in fundamental ways, and there is little information that is widely applicable to various correctional settings (see appendix 2). Accordingly, they believe that it is not possible to make any general statements about the ability of private contractors to ensure quality correctional services in comparison to public prison management.

The authors argue that the existing evaluations fail to coherently examine factors other than management differences that might influence correctional outcomes. That is, the existing evaluations assume that any observed differences in performance of public and private prisons can be attributed to management practices, when these differences may be caused by a variety of other factors that often

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79 Thomas, *Comparing Cost and Performance*, 1997.

80 Logan, *Well Kept*, 1992.

81 State of Tennessee Select Oversight Committee on Corrections, *Comparative Evaluation*, 1995, p. 68.

are not under the direct control of management. Such factors include dissimilarities in the prisoner populations and the architecture of the facilities.

Gaes, Camp and Saylor note also that none of the existing evaluations tried to determine the extent to which management practices, ideas, and personnel were shared among public and private sectors. Little research attention has been given to the impacts that contracting may have had upon the public prison systems that have relied upon contracting for private imprisonment. Moreover, few researchers have attempted to document innovations developed by private contractors to improve services and/or reduce costs.

Summary

In general, it appears that state and federal governments are getting what they ask for in privately operated prisons, with some notable exceptions. Where contractors are sought to operate facilities owned by the contracting agencies, the contract procurement and monitoring procedures appear to be designed to obtain a facility that is a close equivalent to the public facility, differing mainly in the legal status of the operator (i.e., private rather than government). Rules and regulations to be followed are consistent with, if not identical to, those promulgated in the public corrections agency. Governments monitor contractors to ensure that they comply with standards, rules and regulations, and court orders, if for no other reason than to reduce their exposure to lawsuits. Great variability exists in the time and attention government monitors spend on their tasks, with some devoting virtually no time at all and others spending all of their time at a single facility. Where monitoring is so limited, it is unlikely that contracting agencies are able to provide more than a cursory assessment of the contractor's performance.

When state governments house prisoners in out-of-state facilities, they are looking more for beds on a temporary basis than for another facility that will be integrated into the states' public correctional agency. Although these contractual relationships were not studied closely, it is likely that the threshold for acceptable performance differs from that applied to management contracts in state-owned or perhaps privately-owned, in-state facilities. How well these out-of-state facilities are integrated into the public correctional agency is an issue, and expectations may be lower. Whether or not private prisons have gone beyond contract compliance and actually perform better on other measures of outcome is not well documented.

Only a few of the more than a hundred privately operated facilities in existence have been studied, and these studies do not offer compelling evidence of superiority.

5. Legal Issues Relevant to Private Prisons

The legal issues surrounding the privatization of prisons have elicited considerable interest and concern from public correctional officials and the general public since private prisons became a reality in the mid- to late 1980s. Over the past decade, however, the thrust of this interest and concern has changed as practical experience and legal precedent have answered some questions and raised others. A host of subsidiary legal and contractual matters continue to receive attention and provoke discussion. These range from questions about the use of force by private prison guards to highly-publicized problems resulting from certain states' lack of legislation governing out-of-state prisoners in private prisons.

With these and other legal matters increasingly well illuminated, it becomes possible to discern how relatively few legal topics turn on public-private distinctions. To a considerable extent, the legal requirements applicable to public correctional agencies—most notably the constitutional standards governing incarceration—are the same for their private counterparts. Meanwhile, only a handful of the legal issues peculiar to private correctional facilities have elicited legislative treatment. For the most part, the contracting process has become the real focus of legal innovation. In the coming decade, more of the resulting contractual arrangements will be carefully scrutinized and modified by public correctional officials and the courts.

This chapter briefly focuses on the major legal issues that have emerged in prison privatization over the past decade. The broad conclusions contained herein are treated at greater length in appendix 3.

The Legality of Delegating Correctional Services

While the legality of governments delegating the incarceration function to private entities generated considerable controversy in the 1980s,[82] it would now appear that objections to prison privatization *per se* on constitutional delegation grounds have relatively little potency. To begin with, the federal constitutional delegation doctrine, grounded in separation-of-powers principles, is rarely invoked and has little direct application to private delegations.[83] Unless a government has absolutely no persuasive statutory authority for entering into private prison contracts, courts will be extremely reluctant to invalidate privatization arrangements strictly on delegation grounds. More generally, privatization is usually viewed merely as a delegation of certain *administrative* functions related to incarceration. Accordingly, only delegated rulemaking and adjudication functions that directly purport to exercise a government power are deemed to require special constitutional due process safeguards and to be subject to heightened judicial scrutiny.[84]

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82 *See, e.g., Field*, Note, *Making Prisons Private: An Improper Delegation of a Government Power,* 15 Hofstra L. Rev. 649 (1987); I. Robbins, The Legal Dimensions of Private Incarceration 396-413 (1988).

83 The Supreme Court has not invalidated a private delegation since the New Deal-era case of *Carter v. Carter Coal,* 298 U.S. 238 (1936).

84 *See generally* Lawrence, *Private Exercise of Governmental Power,* 61 Ind. L.J. 647, 650-653.

These constitutional due process mandates—often subsumed under a broader "delegation" heading—appear to require that certain types of rulemaking and adjudication be kept in public correctional agency hands.[85] As a practical matter, these mandates have generally meant that private delegations are permissible where the private entity's role is subordinated to adequate public oversight and/or approval.[86] In this context, a due process or delegation challenge might be sustained if, for example, private correctional authorities had the final say in functions like writing rules on release or making disciplinary decisions.

The courts have yet to determine whether a private contractors' *potentially* strong interest (it need not actually be shown to exist) in maximizing their inmate populations[87] would disqualify them from making rules or decisions directly affecting inmates' liberty interests, including rules and decisions involving sentencing, parole, release dates, furloughs, discipline, and other matters affecting "good time" credits.[88] Still, numerous states have enacted legislation directed at retaining ultimate release-related decision-making and rulemaking in the public sector.[89] Other states have sought to retain such powers by contracts. In most cases, these statutory or contractual provisions have mandated that initial decisions or recommendations, even where formulated by private contractors, must be subject to final approval or ratification by public authorities.

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85 The Due Process Clause has given use to an influential line of Supreme Court cases invalidating the delegation of discretionary rulemaking or adjudication powers to financially interested—or potentially interested—parties. In the rulemaking context, *see, e.g., Eubank v. City of Richmond,* 226 U.S. 137 (1912) (striking down local ordinance authorizing majority of landowners to impose set-back requirements on neighbors); *Carter v. Carter Coal Co., supra.* In the adjudication context, *see, e.g., Sniadach v. Family Finance Corp. of Bay View,* 395 U.S. 337 (1969) (invalidating law authorizing private parties to garnish employee wages before employees can respond to garnishment in court); *Gibson v. Berryhill,* 411 U.S. 564, 579 (1973) (striking down state optometry board's adjudication of conduct by corporate salaried optometrists where board was composed of individual optometrists with financial interest in reducing corporate competition). Note that these standards are applicable to the federal and state governments alike, since the constitutional restrictions on private delegations apply to the fifty states through the Fourteenth Amendment. *See* Liebman, *Delegation to Private Parties in American Constitutional Law,* 50 Ind. L. J. 650, 652-54 (1975).

86 *See, e.g., Currin v. Wallace,* 306 U.S. 1, 15-16 (1939) (creation of market controls by producers judged constitutionally acceptable based on government-imposed requirement that 2/3 of producers waive antitrust restrictions); *Sunshine Anthracite Coal Co. v. Adkins,* 310 U.S. 381, 399 (1940) (industry officials allowed to propose non-binding minimum prices where officials functioned "subordinately" to a public commission); *Fuentes v. Shevin,* 407 U.S. 67, 80-83 (1972) (state-sanctioned prejudgment repossession of property by private companies permissible only if property owners have opportunity to resist seizure before a judge).

87 In some cases, the nature of the contract between the responsible agency and the private provider eliminates any financial interest on the part of the provider to maximize the inmate population—for example where the contract sets a fee that is independent of the number of inmates housed.

88 The most persuasive guidance, albeit in a property rights, rather than liberty interest, context, are the so-called "Todd Standards" first articulated in the case of *Todd & Co. v. SEC,* 557 F.2d 1008 (3d Cir. 1973). Under *Todd,* three factors were presented that enabled rulemaking and adjudicatory functions by private securities associations to accord with due process. First, the private entity's rules had to be approved by a governmental authority before becoming effective. Second, all private decisions regarding rule violations and penalties had to be subject to governmental review. Finally, all such private adjudications had to be governed by a *de novo* standard of review giving no particular deference to the earlier decision. While the third factor has not been accorded much attention, many states have interpreted the first two factors to require that rulemaking for private prisons and adjudications by private prison contractors be subject to final government review and approval. *See, e.g.,* the state statutes mentioned in fn. 7 below.

89 Taking just a few examples of the many statutory restrictions of this nature, *see, e.g.,* Va. Code Ann. § 53.1-265 (barring private contractors from developing and implementing procedures for calculating inmate release and parole eligibility dates); Ariz. Rev. Stat. Ann. § 1609.01 (prohibiting contractors from taking any disciplinary action against an inmate); Colo. Rev. Stat. Ann. § 17-1-203 (preventing private contractors from making conclusive recommendations about parole of particular inmates); Fla. Stat. Ann. § 957.06 (preventing private prison contractors from granting, denying or revoking inmates' good-time credits).

Liability for Private Prison Conditions

Of central importance to governments contemplating correctional privatization is the question of how privatization affects liability for the conditions in private prisons. For some time, relatively extravagant claims were made by both advocates and opponents of privatization that the advent of private prisons would insulate governments from liability exposure.[90] Claims were also made that privatization would substantially shield private contractors from inmate civil rights suits alleging constitutional harms.[91] The following questions hung heavily over the debate: Can prisoners' rights— including those established under the Constitution—be adequately protected in a private correctional context? Does the delegation of day-to-day responsibility for facility management to a private contractor yield lower potential liability exposure for government correctional authorities? And does correctional privatization result in a lower litigation price tag for the government?

The answer appears to be a qualified "yes" to the first and second questions and a "maybe" to the third. As to the matter of safeguarding inmate rights, it is generally accepted that private prisons will be treated as "state actors" for purposes of civil rights suits,[92] so that all relevant constitutional requirements will apply with equal force to private as well as public correctional facilities. Moreover, private prison employees will not be covered by the "qualified immunity" that shields from liability public correctional authorities who reasonably believe that their discretionary actions are lawful.[93] Finally, private prisons and officials will not be protected by other governmental immunities that may otherwise limit the monetary damages available to inmates suing over prison conditions.[94]

As for liability exposure, a government's exposure will generally be lower if a private contractor is running a private facility. A contractor will be the primary defendant in inmate litigation, and government authorities generally will not have direct responsibility for the actions of contractor employees. In the vast majority of inmate cases—including most prisoner civil rights litigation where individual, rather than systemic, group harms are at issue—governments will not be deemed to have specific knowledge of, and therefore bear responsibility for, the specific acts and injuries alleged.[95]

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90 *See, e.g.,* Wash. Post, March 23, 1986, at F6, col. 2 (describing how some politicians believed that government could escape liability through use of private prisons); M. Walzer, "Hold the Justice," New Republic, April 1985, at 12 (privatization may result in an "escape from the enforcement of constitutional norms").

91 *See, e.g.,* Sullivan, *Privatization of Corrections: A Threat to Prisoners' Rights, in* G. Bowman, et al., eds., Privatizing Correctional Institutions 139 (1994).

92 *See West v. Atkins,* 487 U.S. 42 (1988). *See also, e.g., Street v. Corrections Corp. of America,* 102 F. 2d 810, 814 (6th Cir. 1996); *Payne v. Monroe County,* 779 F. Supp. 1330, 1335 (M.D. Fla. 1991).

93 *Richardson v. McKnight,* 117 S. Ct. 2100 (1997).

94 The Eleventh Amendment and state sovereign immunity statutes may prevent inmates from suing federal or state correctional agencies and supervisory officials in their official capacities. In these cases, plaintiffs may be limited to suits for monetary damages against officials in their personal capacity.

95 Under "Section 1983" civil rights litigation—which represents the overwhelming majority of inmate claims—a firm and its supervisory employees must be shown to have been directly involved in an alleged violation, have known about the violation or its likelihood of occurring, and been "deliberately indifferent" toward the risk, or have generated or validated a policy or custom that led to the violation. *See, e.g., Street v. Corrections Corp. of America, supra* at 818. *See also generally Monell v. Dep't of Social Services,* 436 U.S. 658, 694 (1978). Since public correctional authorities will have entrusted day-to-day management of prisons to private contractors, they will be less likely to have notice or knowledge of specific harms alleged to have caused injury to individual inmates.

While reliance on a private contractor will not prevent government authorities from being named in lawsuits or being exposed to liability for widespread or obvious problems relating to facility conditions, private contracting will greatly lessen the liability of government supervisory officials for most inmate claims alleging individual harm. These claims represent the most common type of prisoner lawsuit and assume a significant proportion of a correctional agency's litigation budget.

Government litigation costs at a particular facility may or may not be lower with prison management in the hands of a private contractor. A great deal depends on the nature of the facilities involved, the profile of the inmate population, and the risk management approaches taken by particular public versus private authorities. The latter approaches can themselves vary greatly according to the overall management plan, quality of staff, and claims handling procedures employed by those administering a specific prison facility or system. While it may be contended that private authorities can exercise greater flexibility than their public sector counterparts in given situations, this assertion cannot be readily substantiated.[96] Thus, even though a prudent government correctional agency will insist as a matter of course that a contractor indemnify and hold it harmless against all acts and omissions of the contractor arising under a management contract—and even though such an agency will similarly insist that it be named as an insured on any private comprehensive general liability insurance policy covering particular prison facilities—there is no way to tell for sure whether its litigation expenditures under privatization will be lower.[97]

While some degree of liability exposure will still attach to governments that have privatized certain prison facilities, such exposure can be further reduced through the sensible use of monitoring personnel. Having on-site monitoring provides a mechanism by which government supervisory officials can take remedial steps upon learning of certain problems, thereby limiting the potential for a negligence lawsuit.[98]

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96 Some privatization proponents have asserted that private firms may prove more responsive to inmates and the general public in remedying problems that result in prison litigation. They content that a private contractor can more more expeditiously to correct a problem or settle a lawsuit when political pressures are absent, fewer approvals are needed, and funding is more readily accessible. Also, a private firm's concern with market reputation and profitability is alleged to create incentives for flexibility and holding costs down. There remains no solid evidence or study to support these contentions, however plausible they may be.

97 Clear answers to this question are likely to be exceedingly difficult to obtain. To begin with, public entities do not carry third party liability insurance, so direct cost comparisons are impossible. Also, public correctional authorities and contractors alike would find it very hard to isolate with any precision all of their relevant litigation costs (staffing costs, particularly in the public sector, are hard to attribute exclusively to litigation-related functions), and may be reluctant to disclose their damage awards paid out. Ascertaining what portion of the contractor's per diem is attributable to litigation defense would probably be quite speculative. Finally, it would be extremely difficult to control for potentially wide differences in prison populations, facility conditions, and the past history of litigation at one or more facilities. Still, one could surmise that public authorities have a number of factors that could aid them in keeping certain litigation defense costs relatively low. These include the judicious use of salaried government attorneys to handle virtually all prison litigation, possibly less expensive claims handling, and the lack of a profit mark-up. Private contractors, by contrast, might feature relatively more expensive claims handling and legal assistance (e.g., though contract attorneys billing at market rates), as well as that portion of their fee allocated to such work.

98 Government correctional authorities may be liable for their own negligence in oversight even though management of a correctional facility has been turned over to an independent contractor. *See Logue v. United States,* 412 U.S. 521, 532-33 (1973). A monitor can prevent such negligence from occurring. Moreover, in Section 1983 cases, a monitor can keep supervisory officials accurately informed about situations that, if left unattended to, could give rise to charges of "deliberate indifference."

Employment and Labor Relations Issues

Employment and labor relations questions pose a number of important issues to government correctional authorities as well as private contractors, including concerns about private employees' right to strike. As a preliminary matter, it is important for a government correctional agency to ensure that a private prison management company is indeed treated as an independent contractor, with its own responsibility for compliance with all legal requirements imposed on private industry, including the Fair Labor Standards Act and relevant federal and state nondiscrimination laws.[99] It is also important for government officials to ensure that they have adequate statutory authorization to privatize corrections from the standpoint of civil service laws.[100]

Private contractors will be subject to the National Labor Relations Act (NLRA), rather than labor legislation governing public employees. At an entirely new facility, this will mean that a contractor will not be permitted to interfere with any concerted activity taken by its employees. At an existing facility, however, it is extremely unlikely that a contractor will have to bargain with an existing union or adopt an existing union contract. Under the NLRA, an incumbent public employees' union will not be able to represent prison guards in a private employment setting.[101] Only a special guards union—such as the United Plant Guard Workers of America—can represent prison guards under the NLRA. Even in the extremely rare case where guards at a public facility are already represented by such a union, a private contractor would not be bound by the substantive provisions of the existing labor contract unless the contractor were to indicate affirmatively that it would hire most of the named correctional officers at a facility or would explicitly consent to the terms of the existing contract.

While the right to strike clearly exists at private prisons, the potential for work interruptions also exists in the public sector, i.e., work slowdowns and "blue flu" outbreaks. Still, the potential for more serious disruption of prison operations can be blunted in two important ways. First, a private contractor can seek to have employees agree, individually or collectively, to a no-strike pledge.[102] Contractors can also seek notification requirements that allow contractors to make arrangements for assumption of certain correctional responsibilities in the event of a work interruption.

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99 If a management company were not an independent contractor, it could be deemed a "joint employer" with the government, which would prevent the contractor from having unfettered discretion over a range of personnel issues. This might emerge most critically where a government, as joint employer, was deemed to retain civil service control over employees, thereby negating the purported benefits of personnel flexibility that are supposed to attend privatization.

100 For example, in Washington and Colorado, courts have ruled that those states' civil service laws bar privatization. *See Colo. Ass'n of Public Employees v. Dep't of Highways,* 809 P.2d 988, 995 (Colo. 1991)(*en banc*); *Wash. Fed'n of State Employees v. Spokane Community College,* 585 P. 2d 474, 476 (Wash. 1978)(*en banc*).

101 Under the NLRA, "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership. . . . employees other than guards." NLRA § 9(b)(3), 29 U.S.C. §159(b)(3).

102 Unions often agree to the inclusion of such clauses in labor contracts in return for a management agreement to seek peaceful settlement of contract disputes through an agreed-upon grievance procedure. The U.S. Bureau of Prisons contract for its privatized Taft, California facility provides that any collective bargaining agreement entered into during the period of the contract "should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout or other interruption of normal operations." Taft Contract at 14.

Inmate Labor Questions

The Thirteenth Amendment to the U.S. Constitution excepts convicted prisoners from its bar against "involuntary servitude."[103] Courts, accordingly, acknowledge this "convict labor exception" and uphold laws mandating prison labor while finding no prisoner right to remuneration for prison work.[104] Against this backdrop, there is little reason to believe that private prisons, merely based on their for-profit nature, would create a persuasive basis for a Thirteenth Amendment objection.

In fact, federal and state regulatory schemes governing prison industry labor are designed to prevent exploitative situations from developing. In the federal system, a government corporation known as Federal Prison Industries ("Unicor") manages all prison industry labor (roughly 20% of all federal inmates) and cannot sell its products and services in regular interstate commerce. Moreover, because they do not work voluntarily, prisoners working for Unicor are not "employees" under the Fair Labor Standards Act.[105] In the case of state prisons, the federal government has largely preempted state legislation by generally restricting the flow of prison products and services in interstate commerce.[106] While the Prison Industry Enhancement (PIE) Act of 1994 does allow prison-made goods from 50 pilot industry programs in various states to be sold in interstate commerce, prisons employing inmates in these programs must pay them prevailing or minimum wages and provide them with workers' compensation coverage.[107] Questions remain as to whether private prisons will be authorized to operate prison industry programs pursuant to the PIE Act.

The biggest worry about inmate labor does not relate to such prison industries, but to increasing use of inmate labor to perform ordinary prison maintenance or service work. There is understandable concern that inmate labor may increasingly be used by for-profit contractors to handle more aspects of prison operation—including tasks traditionally performed by government employees. One way to draw boundaries in such situations is to use the same inmate staffing plans for private prisons that are used in public facilities. This creates a level playing field and allows for reasonable cost comparisons. Public correctional authorities should also attempt to ensure that, wherever possible, prison labor staffing innovations are accompanied by commensurate reductions in the per diem rates charged to the government by private contractors.

Other Important Legal Issues

A number of other legal issues have important implications for correctional privatization. These include public access to private prison records; private contractor access to criminal history records;

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103 Only pretrial detainees are protected from involuntary labor. *See, e.g., Channer v. Hall*, 112 F.3d 214 (5th Cir. 1997).

104 *See, e.g., Berry v. Bunnell*, 39 F.3d 1056 (9th Cir. 1994).

105 *See, e.g., Vanskike v. Peters*. 974 F. 2d 806, 810 (7th Cir. 1992), *cert. denied*, 507 U.S. 928 (1993); *Nicastro v. Reno, 882 F. Supp. 1128 (D.D.C. 1995), aff'd*, 84 F.3d 1446 (D.C. Cir. 1996).

106 *See* the Sumners-Ashurst Act, 18 U.S.C. § 1761.

107 18 U.S.C. § 1761(c).

the impact of bankruptcy laws on possible private contractor insolvency; private contractor use of force; and environmental law responsibilities. These topics merit brief discussion in turn.

Access to Private Prison Records

The shift toward private prisons has prompted concern that the public may be cut off from access to information necessary for proper accountability. A few key principles have emerged from the federal FOIA framework; state analogues, though too numerous and various to catalogue here, are likely to follow the same pattern. First, records relating to privatized facilities that are generated by public correctional authorities will be subject to public disclosure. Second, only private contractor records obtained *and held* by public agencies will be similarly available for public review.[108] Even then, however, exemptions for confidential "financial or commercial information" may limit disclosure, particularly if public authorities determine that disclosure might cause substantial competitive harm to a contractor.[109] Such is often the case with private prison proposals in competitive bidding processes. While the systematic collection of private contractor documents by public authorities might ensure adequate public access, other, less burdensome solutions include contractual requirements that simply require contractor compliance with FOIA.[110]

Private Contractor Access to Criminal History Records

To perform its prison management duties properly, private correctional contractors need access to criminal history records for two purposes: (1) to classify inmates properly and take other steps for the proper safety and care of prisoners; and (2) to screen potential private correctional employees. Of necessity, both of these needs affect the privacy rights and expectations of inmates and private citizens seeking employment in the field of law enforcement and corrections. As it turns out, there exist two related, but distinct, legal regimes at the federal level that safeguard these privacy rights and that would be accessible to private contractors.

The federal mechanisms established to permit transfer of selected federal criminal history records information (CHRI) to private firms represent a compromise between full disclosure and redacted or edited data which could hamper contractors' ability to perform their contractual obligations.[111] For prisoner data, private contractors may rely on the Federal Bureau of Investigation's National Crime Information Center (NCIC), which is able to link local, state, and federal criminal justice agencies for the purpose of exchanging CHRI. Public correctional authorities must first obtain such information

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108 *See Dep't of Justice v. Tax Analysts,* 429 U.S. 136 (1989).

109 *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Commission,* 975 F.2d 871, 878 (D.C. Cir. 1992)(*en banc*), *cert. denied,* 507 U.S. 984 (1993).

110 In the future, another solution might be special legislation that mandates such a result for all privatized facilities. *See* N. Casarez, *Furthering the Accountability Principle in Privatized Federal Corrections: The Need for Access to Private Prison Records,* 28 U. Mich. J. L. Reform 249, 301 (1995).

111 At the state level, the policies are governed by state law, which reflects varied approaches too numerous to summarize within the scope of this report. Most of the mechanisms at the state level parallel and intersect with those employed by federal authorities.

and then summarize or characterize it for use by private firms.[112] Access thus far has not appeared to be a problem.

A separate federal regulatory regime, which embraces employment screening, governs the use of CHRI for purposes unrelated to the "administration of criminal justice." CHRI can only be used for screening and licensing purposes pursuant to state and local statutes or regulations that are certified by the FBI's Criminal Justice Information Division, Access Integrity Unit, and that are administered by designated state and local agencies. Here too, contractor access has not appeared to pose a problem. It is worth noting, however, that the Federal Bureau of Prisons has decided to conduct criminal background and records checks itself in the case of the Taft facility. This would obviously maintain consistent screening procedures.

Bankruptcy

Few topics surrounding privatization seem to generate as much concern as bankruptcy, yet generally speaking, such concern seems exaggerated. Bankruptcies involving private prisons have been virtually nonexistent over the decade-and-a half of privatization and have been confined to those firms concentrating on the building of private prisons on a speculative basis. More important, public correctional authorities should be able to protect themselves against the untoward consequences of a potential contractor bankruptcy through proper monitoring and contracting.

A properly monitored contract should provide public authorities with some warning that financial problems exist. Annual financial investigations provide a baseline, while interim signals, such as complaints by certain vendors about missed payments, provide additional guidance that may militate in favor of prompt contract termination and the selection of another contractor (or resumption of public control). Public correctional agencies can also protect themselves by insisting in the contract that a contractor purchase business interruption insurance that names the relevant public agency as an insured.

Careful contracting and the competitive nature of the private prison industry are the best safeguards against serious problems developing from a bankruptcy. A general "termination for convenience" clause with a ninety-day phase-out or transition period can keep the public authorities outside the bankruptcy process (removing a facility from the bankruptcy process' automatic stay and control by a bankruptcy trustee) [113] and permit the public authority time to resume management of a facility or find another private operator. Moreover, a 90-day transition period also provides a government facing an impending private contractor bankruptcy with a significant financial resource with which to engineer a successful transition and cover most expected or unexpected damages. Due to the lag time in contractor invoicing—usually 30 days, followed by another 30 to 60 days for payments to be due—public authorities can withhold payment and use these sums for purposes of covering current operations and securing a new contractor.

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112 *See generally* 20 C.F.R. §§ 20.21(b)(3), (c)(3).

113 The pre-petition termination of the contract can be ensured by a contractual requirement that notice of a filing of bankruptcy be given to the contractor several days or weeks in advance. *See* Ruben, *Legislative and Judicial Confusion Concerning Executory Contracts in Bankruptcy,* 89 Dickinson L. Rev. 1029, 1058-59 (1995).

Use of Force

Legal questions about the use of force often revolve around subtle matters of proper statutory authorization. The major issue for private prisons is whether the use of force generally, or specific variants thereof, including the use of deadly force, is properly mandated by the relevant law of the jurisdiction. Without proper enabling legislation or contractual provisions authorizing the use of force by designated private prison officials, it is possible that such personnel and the private firm could face criminal and civil liability.

The applicable legal standards for the use of force vary tremendously from place to place. Some laws may adequately treat the use of force generally, but insufficiently address the use of deadly force in a variety of situations. Other states, for example, recognize a common law right of any citizen to use deadly force in certain circumstances, including the apprehension of one previously arrested for a felony.[114] For states that have adopted the Model Penal Code, which permits correctional officers to use deadly force under certain conditions, private correctional firms may be so authorized if their employees are brought statutorily within the definition of "correctional officers." [115] A still different approach is taken by some states like Louisiana, which, in its correctional privatization statute, specifically authorizes private firms to use force and further prescribes standards and procedures for licensing private correctional employees to use weapons.[116]

Even if a contractual solution is adopted on a case-by-case basis—delegating certain use of force and weapons use powers to private correctional management firms—care must be taken to explore all of the nuances involved in various scenarios, including escapes and actions taken outside of a correctional facility. American Correctional Association (ACA) standards address many dimensions of the use of force in generic ways,[117] but specific policies and procedures are necessary to comply with state statutes and case law that have evolved under the Eighth Amendment. So-called rent-a-cop statutes delegating certain use of force powers to private security companies may not be sufficient to cover many of the circumstances encountered by private contractor guards. Also, correctional officials must be sensitive to interjurisdictional issues about the use of force, particularly in the case of escapes where use of certain types of force may not be authorized beyond a facility's perimeter. All of this requires government correctional officials and their legal staffs to think through very carefully all of the possible scenarios requiring different kinds of force and to ensure that there is proper authorization for their use.

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114 This is ostensibly the case, for example, in Michigan. *See,* e.g., *People v. Whitty,* 96 Mich. App. 403, 292 N.W. 2d 214 (1980).

115 *See* Model Penal Code §§ 3.04-3.07, *cited in* Wooley, *Prisons for Profit: Policy Considerations for Government Officials,* 90 Dickinson L. Rev. 307, 323 (1985).

116 *See* La. Rev. Stat. Ann. § 39:1800.4(D)(5), (6). Note, for example, that the State of Ohio similarly requires a private correctional officer working at a correctional facility housing out-of-state prisoners in Ohio to carry and use firearms only if the officer is certified as having satisfactorily completed an approved training program designed to qualify persons for positions as special policemen, security guards or persons otherwise privately employed in a police capacity. Ohio Rev. Code § 9.07(E).

117 *See, e.g.,* ACA Standard 2-4206, for example, which simply requires a written policy and procedures to restrict the use of force as a last resort in cases of justifiable self-defense, protection of others, protection of property, and prevention of escapes. Elaboration is left to prison officials.

Environmental Law Concerns

Environmental concerns unique to a privatized correctional facility are few. The only major questions concern responsibility for environmental impact statement (EIS) preparation in the case of new prison construction and proper allocation of the risk of hazardous waste cleanup liability.

The former issue will usually be the responsibility of the public correctional agency. Although a project proponent could be public or private, the government agency most involved with the project is the party responsible for the preparation of an EIS.[118] The latter issue revolves around the way in which public correctional agencies and private contractors choose to allocate their risk through carefully drawn indemnification agreements. Due to the transfer of land and property rights that may occur between governments and private contractors in a particular construction, sale, or lease arrangement, hazardous waste liability presents real concerns. Experience has shown that contracting parties need to articulate indemnification arrangements expressly to minimize the risk of non-indemnification.[119]

Regulating Interjurisdictional Private Prison Contracting

Prison privatization, as commonly conceived, involves a government correctional agency contracting out correctional management work to a private contractor that operates within the agency's political jurisdiction and is subject to statutes and regulations promulgated by that jurisdiction. Correctional privatization can, however, involve other arrangements between public and private correctional entities that span multiple jurisdictions. These arrangements can encompass the transfer of prisoners to private contractors in distant localities and the interplay of several jurisdictions' laws that affect such a transfer. Two basic patterns characterize this phenomenon of interjurisdictional contracting. The first involves indirect arrangements where public correctional authorities send inmates to another jurisdiction via an intergovernmental agreement or contract, and the receiving jurisdiction in turn subcontracts to a private contractor to run the facility where the inmates are housed. The second arrangement involves the leasing of bed space directly from a private contractor in a foreign jurisdiction. Many of these prisons are built and operated on a speculative basis.

Both of these interjurisdictional arrangements have generated considerable controversy and legal problems. Correctional specialists have criticized the fact that the receiving facility may not have the legal authorities to allow it to cope with a variety of critical situations, including inmate escapes and

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118 *See Seattle Audobon Society v. Lyons,* 871 F. Supp. 1291, 1318 (W.D. Wash. 1994) ("Agencies may not delegate the responsibility of preparing an EIS to private parties...."). This is the standard enunciated with respect to the federal National Environmental Policy Act (NEPA). State environmental protection acts (SEPAs) may have different requirements. *See, e.g.,* G. McGregor, Environmental Law and Enforcement 10 (1994). Moreover, some SEPAs require different EIS preparations depending on whether a project is deemed public or private in nature. *See, e.g.,* Wash. Rev. Code § 43.21C.030. In most cases, however, a private prison should be deemed a public project based on its governmental function. *Cf. Weyerhauser v. Pierce County,* 873 P.2d 498, 504-07 (1994) *(en banc)* (holding that a private contractor's construction and operation of a landfill is a public project because the handling and disposal of waste is a governmental function).

119 *See* Hill, *Contractual Indemnification for Environmental Liabilities,* 21 Colo. Law. 943, 944 (1992).

prison emergencies. The law in most cases has lagged behind these correctional realities.[120] A good example is the case of two Oregon prisoners who escaped a few years ago from a private prison in Texas and yet were unable to be charged with a crime, since Texas law at the time did not recognize escape from a private prison as a felony.[121] More recently, a lack of legal oversight mechanisms was highlighted in the case of the privately-operated Northeast Ohio Correctional Center (NOCC) in Youngstown, Ohio, which accepted out-of-state prisoners from the District of Columbia. The NOCC experienced two fatal prison stabbings within a year of its opening, allegedly due in part to the acceptance of out-of-jurisdiction inmates without an adequate classification system and without standards requiring sufficient criminal history information about the prisoners.[122]

In response, many states have recently crafted detailed legislative solutions. Two notable examples are Ohio (in direct response to the NOCC difficulties) and Texas.[123] These new statutes attempt to give state correctional agencies greater authority to prescribe minimal operating standards for such facilities and to eliminate gaps and inconsistencies that have emerged in the legal treatment of private facilities housing in-state versus out-of-state inmates. They address in particular the need for private prisons with out-of-state inmates to be inspected by state authorities, maintain proper staffing, coordinate closely with local law enforcement officials, reimburse them for the costs associated with prison escapes and disturbances, and reject foreign prisoners if necessary for a variety of reasons, including patterns of institutional violence in their correctional record. More such legislation can be expected in coming years.

Legal Dimensions of Contracting

Today, the success or failure of a private prison arrangement may critically depend on the skill with which contracts are negotiated. Public authorities must give close attention to the purposes served by contracting and the degree of specificity which they seek to build into the agreement. In the absence of an adequate statutory or regulatory framework, a contract may have to import from the outside and treat in detail a number of issues that would otherwise govern various aspects of prison operation. Correctional authorities should also be sensitive to the need to create, wherever possible, a level playing field between public and private prisons to promote fairness, increase competition, and allow for meaningful cost comparisons.[124] Requests for Proposals (RFPs) can be structured in such a way as to elicit many kinds of contractor information and plans which public officials can scrutinize and evaluate in putting together a tight and effective contract.

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120 *See* Associated Press, Private Prisons Shackle Texas with Confusion: State Laws Haven't Caught Up with New Phenomenon, Chicago Tribune, Nov. 7, 1996 at 34.

121 *See* Prison Brake: Texas Needs More Scrutiny of Private Prisons, Houston Chronicle, Sept. 3, 1996 at 18A.

122 *See* Washington Post, February 23, 1998 at B1.

123 Ohio House Bill 293, effective March 17, 1998; Texas Senate Bill 367, May 7, 1997.

124 A good example of this is ensuring that private contractors do not make money from things like inmate phone service, commissary sales, and the like. Income from these, if it exists, should be reflected in lower per diem rates or should be paid into the general fund.

Contracts themselves can ensure better performance and cost effectiveness through well-drafted provisions, the inclusion of objective standards, relatively short contract periods (e.g., 3-4 years) and renewal opportunities, and broad termination clauses and penalty provisions. Contracts can even specify cost savings requirements, which can be phrased in terms of a provider delivering correctional services at significantly less cost or with significantly better services at the same or less cost than that which public correctional authorities would need to pay if they did the job themselves. [125] Drafters must be careful, however, not to inadvertently bestow third-party contract beneficiary rights on inmates or the public.[126]

Public correctional authorities should also be wary of excessive use of alternative dispute resolution provisions in a contract—particularly those relating to arbitration—to handle disputes with contractors. Although arbitration is appropriate for handling issues surrounding payment and possibly certain issues regarding the satisfaction of certain technical standards (including certain American Correctional Association standards), its use in other contexts can deprive public officials of the effective contractual and legal tools they need to ensure prompt contractor compliance. In cases where mandatory ACA standards are at issue, or where resort to injunctive relief may be necessary (which covers a good deal of contractual content), maintaining a public agency's flexibility to seek immediate recourse in the courts is essential.

125 The State of Tennessee actually mandates by law that private prison management contracts be at least 5% less expensive than the likely full cost of the state providing correctional services itself. *See* Tenn. Code Ann. § 41-24-1-4(c)(1)(E).

126 Prisoners do not automatically possess such rights. A contract must intend to grant them legally enforceable rights to sue under the contract, which can occur through conscious adoption of contractual language or through a court reading such an intent into a contract and its surrounding circumstances. There is some precedent for courts reading an implicit intent to bestow third-party beneficiary status on prison inmates, so drafters must explicitly disavow such an intent if they do not wish to create such rights in prisoners. *See, e.g., Owens v. Haas,* 601 F.2d 1242 (2d Cir.), *cert. denied,* 444 U.S. 980 (1979) (court finds intent to bestow third-party beneficiary status on federal inmate housed in county jail based on U.S. Bureau of Prisons statutory policy to safeguard federal prisoners while in the care of county governments).

Appendix 1

Comparing Public and Private Prison Costs

by

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How much money do taxpayers save when a prison is privatized? What are the sources of these savings? These questions have received increasing attention from elected officials, civil servants, academics and policy analysts as more and more prisons are transferred to private management. Today, roughly 5 percent of adult jail and prison inmates in the United States are housed in privately-run facilities.[1] This proportion is likely to increase as states come to rely more heavily on private companies to supervise expanding prison populations. For example, the Governor of Tennessee announced his support early in 1998 for proposed legislation that would "privatize the management of up to 70 percent of the state's prison system."[2] Some analysts predict that the private sector's share of the prison "market" will more than double in the next five years.[3]

This privatization movement has stirred considerable controversy, on both philosophical and financial grounds.[4] Among those invoking financial data, supporters of prison privatization cite potential cost savings as high as 50 percent; others claim that the evidence to date in support of these claims is ambiguous at best.[5] The strength of these claims ultimately depends on the extent to which they can be replicated in carefully-designed studies that compare cost reports for a number of years from similar privately- and publicly-managed facilities. Although studies published to date do not yet attain this level of rigor, it is still possible to draw several conclusions and to formulate a number of hypotheses that merit further testing.

1 Preliminary Findings and a Basis for Comparison

Not surprisingly, reported costs per inmate-day are highly sensitive to

i. the assumptions made about public sector overhead and indirect costs; and
ii. the definition of variable costs used to adjust for differences in inmate populations across facilities in a particular jurisdiction.

Some of the more extravagant claims made on behalf of prison privatization can be traced to inappropriate handling of these issues. This chapter reviews the evidence from a number of recent privatization studies, with particular attention paid to data reported for Tennessee, Louisiana and Florida. ***These three reports seem to indicate that the cost savings attributable to privatization have been (and will continue to be) far less than 10 percent of state spending on comparable facilities.***

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1 Johnston (1998), p. 35. Once CCA merges with the REIT that it created in July 1997 (i.e., CCA Prison Realty Trust), then slightly more than 2.5 percent of all U. S. adult inmates will be housed in facilities managed by a single company.

2 Sundquist (1998), Wade (1998). Death-row inmates would remain in a state-operated facility. Although the sponsors of the bill later decided that they lacked the support needed to gain passage this year, they will "probably" try again in 1999. Locker (1998), Humphrey (1998).

3 Bates (1998).

4 See Murrell (1997) for a statement of the arguments against privatization and Logan (undated) for a refutation of the most common objections.

5 The US-GAO (1996) report concluded that existing evidence was inconclusive. This report has been strongly criticized by those generally favorable toward privatization initiatives. See, for example, Logan (1996) and Thomas (1996). See Florida Corrections Commission (1996) and Zupan (1996) for more extensive annotated bibliographies.

Reports for California, Arizona, Texas, and the United Kingdom paint a far rosier picture of the gains to be realized from privatization, but the aggregate nature of the data published in these reports makes it difficult to evaluate these claims. Nevertheless, in every study that itemized expenditures and adjustments, much of the reported difference between public and private sector cost estimates can be traced to differences in the allocated burden of state-level overhead costs. If this is reported difference is to reflect actual cost savings, then privatization must induce cutbacks in state spending on central office operations before taxpayers realize this benefit.[6]

The review of two public and one private facility undertaken by the Tennessee Fiscal Review Committee (1995, hereafter cited as the FRC report) stands out as the most detailed of the studies now available. To a considerable extent, this report could serve as a model for future privatization studies. Supplemented with data gathered for the same three facilities by the Washington State Legislative Budget Committee, the Tennessee privatization experience suggests some systematic differences between privately- and publicly-managed prisons. In particular, audited prison cost data for the fiscal year ending June 30, 1994 indicate that

i. non-medical operating costs per inmate-day were virtually identical in the public and private facilities studied in Tennessee;
ii. non-medical operating costs were allocated differently in public and private facilities studied in Tennessee: more was spent on corporate overhead and administration (including monitoring by state officials) in the private facility (and correspondingly less was spent on security);
iii. the level of spending on prison employees differed substantially between the public and private facilities studied in Tennessee: the amount spent on wages and salaries per inmate-day was higher in the publicly-managed prison;
iv. the *nature* of labor costs also differed between the public and private facilities studied in Tennessee: benefits paid to administrative staff at privately-managed prisons averaged almost 80% of salary; benefits paid to other employees at these facilities averaged 14%; in contrast, the ratio of benefits to salary paid to staff at public facilities ranged from just under 22% to almost 32%;
v. the bulk of reported cost savings at the privately-managed prison studied in Tennessee can be attributed to differences in per-inmate medical expenditures and allocated state overhead costs. (Labor cost savings were offset by the increased administrative cost cited above.)

These findings have yet to be confirmed for other years and other jurisdictions. (They were, in fact, not directly stated in the FRC report itself; they were merely implied in the data.) These findings do, nevertheless, indicate a number of hypotheses that merit further study. In particular, the supplemented FRC report suggests that

i. privatization changes the way taxpayer dollars are spent on prison inmates: less is spent on employees having direct daily contact with prisoners; more is spent on prison-level

6 These "cutbacks" in overhead cost are defined relative to the central office expenses that would have been incurred had the prisons *not* been privatized. The *only* justification for assigning different overhead rates to private and public facilities is that the central office expenses are smaller in a system with one or more private prisons.

administration, monitoring activities by state officials, corporate overhead and corporate profits;

ii. the lower labor cost found in private sector firms does not alone produce significant savings from privatization; it is offset by increased administrative expenses (including monitoring); significant cost savings do occur when private sector managers cut spending on prisoner health care and induce the state to scale back its own administrative overhead.

How could these hypotheses be tested rigorously? An analyst undertaking such a project would start by selecting roughly comparable public and private prisons and then collecting several years' worth of data on the cost to the state of each facility.[7] Ideally, these costs would be recorded as line item amounts (wages, salaries, supplies, etc.) allocated to functional areas (administration, security, food service, etc.)[8] Next, the amounts budgeted for publicly-managed prisons and the amounts paid by the state to private prison management companies would be adjusted to ensure the direct comparability of estimated per-inmate costs. In particular, the analyst would need to identify the costs that depend directly on the number and/or type of inmates and would need to adjust estimated operating costs for any differences found in inmate populations.[9] Allowances would also have to be made for differences in public and private sector operating responsibilities and in the quality of services received by inmates.[10] Other adjustments to on-site operating cost include the amount spent by the state when monitoring the privately-run facility, the taxes paid to the state by the private management company and allowances for services provided by state employees not working for the local department of corrections.

A final adjustment for state "overhead" cost often proves the most logically complex (and hence the most controversial). In principle, the state overhead allocated to a privately-run prison should be less than that imputed to a publicly-managed one *only if* the amount spent by the state department of corrections on central office activity *shrinks* as more prisons come under private management. If the budget for the state department of corrections central office does not change with the extent of privatization, then per diem overhead allocations should be identical in publicly- and privately-managed facilities.[11]

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7 The task of selecting fully comparable prisons is difficult, if not impossible. Differences in the age, health, gender, and security risk of inmates would imply differences in the reported cost per inmate-day even among equally efficient prison facilities. The same may be said for differences in the size of the inmate population and regional differences in the cost of labor and materials. One could use regression analysis to "correct" for these differences if there were a large enough number of roughly comparable prisons in a given system. In the absence of such data, the only available alternative is to adjust on a case-by-case basis. Not surprisingly, this approach leaves room for considerable disagreement over the appropriate scale of the adjustment factors.

8 This program/performance budgeting approach has become an essential element of the campaign to "reinvent" government.

9 These costs would typically include food service, health care, security staff, and other "variable costs". The amount spent per inmate on these items would, of course, depend on the health, gender, and security risk of the inmate population.

10 For example, in some jurisdictions the state would be responsible for installing and maintaining certain equipment at privately-run facilities. These costs would have to be either (a) added to the amounts paid directly by the state to the private management company or (b) subtracted from the amount budgeted for the state facility before private sector per diem rates are computed.

11 This "incremental" (or marginal) approach to overhead allocation is not generally the one followed in the literature on the cost of corrections. Instead, analysts have generally sought to estimate the *use* of central office services by private and public prison managers. This approach tends to overstate the relative cost of public prisons to the extent that central office expenses are truly

This idealized "model" study provides a standard against which existing research can be measured. The remainder of this chapter provides an in-depth analysis of the methodology used in two recent studies of prison privatization in Tennessee and Louisiana. It also provides briefer discussions of privatization studies for prisons in Florida, California, Arizona, Texas and the United Kingdom.

2 The Tennessee Experience: The 1995 Report of the Fiscal Review Committee (supplemented with data from the Washington State Legislative Budget Committee)

As required by state law, the Tennessee Fiscal Review Committee (FRC) undertook to "compare the full costs of the contractor [authorized to operate a prison to house Tennessee inmates] with the state's full costs of operating similar facilities."[12] Three prisons were selected: Northwest Correctional Center (NWCC), Northeast Correctional Center (NECC), and South Central Correctional Center (SCCC). The first two are operated by the state; the last is operated by Corrections Corporation of America.

This study is unique in its attention to detail: it follows the procedure described in the previous section for the "ideal" study, allocating "line item" cost data for each prison to specific management functions (administration, security, etc.). There are, nevertheless, several limitations to the FRC report. It covers a single year, it excludes medical expenses incurred by the private contractor, and it does not directly address the question of whether or not privatization actually saves money for the taxpayers of Tennessee. The first of these limitations is not surprising: the FRC report was intended to serve as a template for future cost studies. Happily, the second and third issues were addressed with considerable success by the Washington State Legislative Budget Committee (LBC) as it tackled its own version of the prison privatization question.[13]

Operating Cost Estimates:

By combining the data found in the FRC report with that available from the Washington State LBC, it is possible to compare the pattern of spending at public and private facilities and to gain some insight into the profitability of the latter.[14] For the sake of completeness (and to illustrate the nature of adjustments needed to ensure the comparability of data), Tables 1-3 reproduce the cost data found in FRC report (Appendices A, B, C and the CCA Statement of Department Expenditures). Adjustments

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fixed. In the tables that accompany this chapter, we use the overhead allocations as reported by the jurisdictions in question and discuss the extent to which these reported allocations reflect an incremental approach.

12 Fiscal Review Committee (1995), p. 1.

13 Washington Legislative Budget Committee (1996), Appendix 3. In particular, LBC analysts both estimated the medical expenses incurred by CCA on behalf of prisoners at SCCC and obtained an unofficial report of these expenses directly from CCA. The LBC analysts also collected data on the fees paid by Tennessee to CCA for operating SCCC. Bob Thomas of the LBC graciously provided spreadsheets containing the supplemental information (as promised in the LBC report itself). This information was collected after the FRC report was published.

14 It is also possible -- as suggested by Logan (1996) -- to reconcile the apparent differences between the conclusions found in the Tennessee and Washington studies.

to operating costs (reported by management function) include: netting out commissary revenues against commissary expenses, allowing for changes in food services inventories and non-comparable programs, eliminating depreciation expenses as a public facility expense (because there is no corresponding set of expenses in the private facility) and adding monitoring costs to the expenses reported for the private facility. These three tables indicate how sensitive the reported cost per inmate is to the scale of operations at a particular facility. Although the privately-managed SCCC appears to have the highest per diem operating cost ($33.78 as opposed to $33.06 at NWCC and $30.91 at NECC), it also has the smallest number of prisoners (1053 as opposed to 1070 and 1149 at NWCC and NECC respectively). Adjustments for scale and for amounts actually paid to the private management company lead to somewhat different conclusions.

Table 4 reflects a different approach to the task of comparing public and private facilities. Instead of analyzing the *cost incurred by* CCA of operating SCCC, this approach starts with the *revenues received by* CCA and adjusts this data for differences between public and private management responsibilities.[15] Unfortunately, the FRC did not report medical expenses for CCA; it is therefore necessary to estimate these costs in order to (a) compute CCAs operating surplus and (b) compare private per diem rates with those derived for the state-run facilities NWCC and NECC.

The first half of Table 4 reports the operating surplus earned by CCA using two different estimates of medical costs: these are deducted — along with "official" reports of non-medical operating costs — from the revenues received by CCA to derive the benefit (before taxes) that the company realizes from operating the prison facility.[16] It is clear from these estimates that operations at SCCC make a significant contribution to corporate overhead.[17]

The second half of Table 4 provides two estimates of the *cost to the State of Tennessee* of the privately-operated facility. To estimate this cost, revenue received by CCA was reduced by estimated medical expenses and augmented by the relevant adjustments for state expenses contained in the FRC report. These expense estimates were further reduced by an estimate of the tax revenue received by the state from CCA operations.[18]

Per Diem Estimates Reconciled:

Table 5 illustrates the impact of these various approaches on per diem rate estimates — and hence on the estimated cost savings to be realized from privatization. Once cost reports are adjusted

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15 This is the approach followed by the Washington State Legislative Budget Committee as it reviewed the research available at the time. It is also the approach used in most other privatization studies.

16 The first surplus estimate assumes that CCA medical expenses are equal (on a percentage basis) to the average of the amount spent at state-run facilities. (This is the basis for the per diem rates found in the LBC report.) The second surplus estimate uses an unofficial report of CCA medical expenses (a fax from D. Massengale at CCA to Bob Thomas at LBC).

17 It is not clear from these data whether or not CCA is earning a profit over and above the facility's allocated share of corporate overhead of $970,417. Using one estimate of medical expenses, CCAs operating surplus (i.e., facility revenue net of facility expenses) is below the share of corporate overhead allocated to SCCC. Under an alternative estimate of medical expenses, the reverse holds true.

18 The LBC supplemental data contained tax revenue estimates.

for differences in the average daily population of inmates (ADP)[19], we find the surprising result that the non-medical per diem operating cost of the privately-managed SCCC is virtually identical to the cost of the two public facilities.[20] This conclusion obtains whether (a) one starts with individual line item costs and aggregates to find total cost or (b) one starts directly with management fees received by the private prison operator. It is also independent of the way in which one handles estimates for taxes paid by CCA to the State of Tennessee.[21] It follows that the savings to be realized from the privatization of SCCC must arise elsewhere.

When official state overhead allocations and medical expense estimates are included in the estimated cost of operating the three facilities, the picture changes yet again: the estimated *total* cost per inmate day at the privately-run SCCC is as low as $37.65, while the estimated total cost of the public facilities ranges from $40.16 (at NECC) to $40.19 (at NWCC). (See Table 5.) In other words, the differences among these estimated per diem rates can be attributed to a lower overhead allocation for SCCC (a $.78 difference); a credit for taxes paid by SCCC (a $.83 difference); and lower medical costs ($3.07 at SCCC as compared with $4.37 at NWCC and $4.89 at NECC).

These tables indicate that (for at least the fiscal year ending June 30, 1994) privatizing SCCC saved money for Tennessee taxpayers, if at all, by reducing spending on prisoner health care, by inducing "cuts" in the central office (or state overhead) expenses of the Tennessee Department of Corrections, and generating tax revenues for other parts of the state government[22] Other savings from restructuring employee compensation appear to be offset by the increased cost of monitoring by state employees. Obviously, this estimate of cost savings understates (overstates) the benefit of privatization to the extent that savings in DOC state-level overhead expenses amount to more (less) than $.78 (i.e., $2.38-$1.60) per prisoner.[23] It also understates (overstates) the benefit of privatization to the extent that health care is qualitatively better (worse) in the private facility.

Spending Patterns Compared:

There are more insights to be gleaned by returning briefly to the *operating cost* data reported in the FRC study. Even though public and private operating costs appear to be roughly comparable,

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19 These adjustments reflect the assumption that not all operating costs vary directly with the number of inmates. A sufficient, but not necessary, justification for this assumption would be "economies of scale" in prison operations.

20 Slight differences in the "equalized" operating cost estimates reported by the FRC and the LBC can be attributed to differences in the way that size adjustments were handled in the two reports. The Washington State study allocated FRC adjustments (for non-comparable programs, supervision of industrial work crews, etc.) to specific line items and recomputed variable cost estimates accordingly.

21 It is not clear from the FRC report whether or not the cost data given for SCCC include taxes paid by CCA. The per diem rates given in Table 5 reflect the assumption that these data *do* include taxes paid (since the report was supposed to indicate the *full* cost to CCA of its operations).

22 Here "cuts" refers to the differences between observed state-level overhead expenses and the overhead expense that the state would have incurred had SCCC been publicly managed.

23 The per diem rates reported in Table 5 use the LBC estimates for overhead allocations. The LBC allocations for the publicly-run prisons are lower than those found in the FRC report, as the LBC analysts sought to estimate an *average* annual cost for major maintenance at all three facilities. The FRC report uses *observed* major maintenance expenses for SCCC, an approach that -- for the year in question -- appears to understate the expected annual cost of maintenance.

Tables 6-8 provide evidence of some systematic differences between public and private prisons. From Table 6, it appears that CCA is spending considerably more per prisoner on administration and less on security. This result obtains even when monitoring costs are excluded from the per diem estimates. Table 7 provides evidence of the substantially lower labor costs at the private facility: $16.89 per prisoner/day at SCCC as opposed to $19.63 at NECC and $20.96 at NWCC. Much of this savings comes from the smaller amount spent on security staff: $9.96 per prisoner at SCCC as opposed to $12.57 at NECC and $14.55 at NWCC.[24] The average employee benefit rates (i.e., the ratio of fringe benefits to salary) found in Table 8 indicate that the *nature* of employee compensation also differs between the public and private facilities in Tennessee. CCA administrative employees enjoyed a benefit rate of almost 80 percent, while the rates received by other CCA employees ranged from just under 13 percent to just over 14 percent. The average rate for CCA employees was 21.84 percent. In contrast, there was much less variance in benefit rates across functional areas in the two public facilities: the rates ranged from a low of just under 22 percent to almost 32 percent. The average benefit rate was 29.19 percent at NECC and 28.38 percent at NWCC.

These differences in the structure of employee compensation at public and private prisons have been strongly criticized. Bates (1998) cites testimony given before the Tennessee state legislature indicating that SCCC has an employee turnover rate that is more than double the one found at Tennessee public facilities. According to Bates (ibid.), many staff members who continue to work at SCCC blame this high turnover on low wages and poor treatment by supervisors. The long-run consequences remain to be seen. Nevertheless, Bates (ibid.) notes that members of the state legislature who oppose privatization are quite ready to blame last year's higher reported incidence of violence and drug usage among inmates on the inexperience of the SCCC staff.

In conclusion, the FRC report provides a detailed look at the structure of prison costs and suggests a number of hypotheses whose testing must await the availability of additional data.

3 The Louisiana Experience: Archambeault and Deis (1996)

The basic question addressed by William Archambeault and Donald Deis (A&D 1996) was quite similar to the one underlying the Tennessee FRC report: "How does the full cost per inmate-day in a publicly-managed prison (i.e., Avoyelles Correctional Center) compare with the full per diem cost of housing an inmate in either of two privately managed facilities (i.e., Wackenhut's Allen and CCA's Winn Correctional Centers)?" On one level, A&D appear to adhere more closely to the model for the "ideal" study proposed in section 1 of this chapter: they use data from five years (instead of just the single year found in the FRC report); and they use management fees paid to private prison operators to address directly the question of taxpayer savings. They find that the publicly-managed prisons are 12 to 14 percent more expensive to operate than the privately-managed alternatives. (A&D, p. 439) Nevertheless, the aggregate nature of the data presented and a variety of analytical quirks call into question the strength of this conclusion.

24 These per prisoner data were derived from the "observed cost" information found in the FRC report. As a result, they do not reflect adjustments for the scale of operations or the LBC allocation of general adjustments to specific line item categories (like salaries, wages, materials, etc.)

A review of the methodology used by Archambeault and Deis helps identify the range of difficulties that arise when using data that cover a span of years. Table 9 reproduces the data used in the A&D study, along with the adjustments made in the interests of comparability. An analyst wishing to use this data must make a number of assumptions about its consistency, accuracy, and appropriateness, as well as choose a basis for making intertemporal comparisons. These assumptions will, in part, determine the insights to be gleaned from regression results. Consider each of these issues in turn.

Consistency and Accuracy:

Archambeault and Deis' discussion of the annual state budget allocation for Avoyelles (see the top of Table 9 in this report) provides an example of a classic data consistency problem. They observe (pp. 428-9) that this facility generally tends to be "under budget" and that the warden therefore ends up returning unused funds to the state at the end of each fiscal year. Unfortunately, final data were not available for FY 1995-96 when Archambeault and Deis finalized their report. As a result, they used the full annual allocation for Avoyelles thereby (probably) overstating public sector costs . Table 10 illustrates an alternative approach: the gross appropriation for FY 1995-96 is reduced by same *proportion* (1.7 percent) as the gross appropriation for FY 1994-95.

Louisiana budget data collected by the Washington State Legislative Budget Committee also illustrate the difficulty of obtaining accurate estimates. The Washington State LBC estimates for insurance costs at Allen and Winn are respectively $83,732 and $83,061; the data reported by Archambeault and Deis are $66,534 and $66,001, a difference of almost 26 percent.[25]

The aggregate nature of the Avoyelles budget reported by A&D makes it difficult to evaluate the scope of the costs covered. However, the data reported by Washington State researchers suggest that some relevant costs may have been omitted. The WA-LBC cost estimates for FY 1995-96 include allowances for a state-funded "record system analyst" at both Allen and Winn (at a cost of $26,255 and $29,193 respectively). Table 10 reflects this adjustment.

Appropriateness:

The fact that data are reported precisely does not guarantee that they provide relevant information. The discussion of vocational education costs found in A&D illustrates this point. The cost concept of interest is the full burden borne by the state for each prison. It is therefore appropriate that A&D add grant money awarded by the state to Allen (for its vocational education programs) to the other costs reported for this institution. It is also appropriate that A&D augment the cost reported for Avoyelles by the value of services obtained from the local technical school. Ideally, this adjustment would reflect the *opportunity cost* to the state of the time and materials used. In other words, the operating cost reported for Avoyelles should be adjusted upwards only to the extent that

25 Bob Thomas graciously provided us with the spreadsheets used to generate the tables found in the WA-LBC (1996) analysis of Louisiana prison costs. Oddly enough, the ratio of the A&D insurance cost estimate to the corresponding LBC estimate is identical out to five decimal places. This suggests that the DOC Risk Management Division inadvertently used a different algorithm when deriving the two sets of cost estimates from previously reported data. This may be due to the fact that A&D reported the cost of "fire and property" insurance, whereas the LBC reported the cost of "property and boiler" insurance. One would suppose that the appropriate figure would cover the cost of fire, property *and* boiler insurance.

other divisions of state government spent money to acquire these goods and services. Time and materials donated by volunteers have no opportunity cost to the state and hence would not be reportable as a prison operating cost.

A similar problem arises when adjustments are made for the "prison industries" operated at the Allen and Winn facilities. Before computing private sector per diem rates, Archambeault and Deis deducted the costs incurred by CCA and Wackenhut when inmates are assigned to work in prison industries. They reasoned that since the state received the profits from these ventures it should also bear the costs. This is not the relevant frame of reference: the adjustment should reflect the net benefit to the state of these activities. The adjustment should also be made in a way that renders the private sector data comparable with those reported for the publicly-operated facility. Ideally, an estimate of the *value* of services rendered should be subtracted from the cost of each of the three prisons. However, since no value is assigned to the work done by inmates at Avoyelles, the same procedure should be followed for Allen and Winn. The cost to CCA and Wackenhut of running their respective prison industries simply becomes one of the services they provide under the terms of their contracts. This is the approach followed in Table 10: the benefits imputed to prison industries (and originally subtracted from the state's cost of operating Allen and Winn) are added back before per diem rates are computed.

The perennial problem of allocating overhead costs provides yet another version of this opportunity cost problem. In principle, the share of state overhead cost allocated to privately-managed facilities should be lower than that allocated to public facilities (all other things being equal) *only if* the fact of privatization reduces the amount spent on the "central office" of the state department of corrections.[26] In all other cases, the overhead amounts allocated on the same basis to all institutions, no matter who manages them. It is unlikely that overhead cost allocations based on the methodology found in OMB Circular A-27 follow this rule. In Table 10, "indirect cost allocations" used by Archambeault and Deis are subtracted from the other costs reported for each facility so that per diem operating costs of *facilities* (excluding state corrections overhead) can be computed.[27]

Intertemporal Comparisons:

The Archambeault and Deis study illustrates a number of problems that arise when comparing data reported at different points in time. These include (i) adjustments for inflation, (ii) the treatment of "pre-paid" costs, and (iii) the treatment of accrued liabilities. Consider each of these issues in turn.

The data reported for a given fiscal year should reflect consistent assumptions about prevailing prices. Archambeault and Deis failed to allow for this when they constructed the time series used to adjust private sector costs for the effects of prison industries and the taxes paid by CCA and Wackenhut. As discussed in the previous section, the credit for prison industries should be deleted altogether. A further problem with these adjustments is the fact that they are all expressed in prices

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26 Again, the relevant point of comparison is the amount that would have been spent on state overhead if all prisons had remained under state supervision. Bob Thomas (of the Washington State LBC) also makes this point in a letter dated March 7, 1997 and addressed to William Archambeault.

27 Analysts at the Washington State LBC also followed this approach.

appropriate to the fiscal year FY95-96. Although Archambeault and Deis say that the prison industries adjustments reflect a 4 percent rate of inflation, the cost savings actually reported for Allen and Winn do not do so.[28] It also appears from the text of A&D (1996) that no adjustment for inflation was even contemplated when past observations for tax benefits to the state were constructed. As a consequence, past estimates for these state benefits are likely to be too high — and past estimates for per diem rates at privately-managed prisons are likely to be too low.

The treatment of ACA accreditation costs is curious for several reasons. Since the ACA is chartered as a non-profit organization (not as a government agency), it is not clear why Archambeault and Deis treat the accreditation fees paid to the ACA by CCA and Wackenhut as a benefit to the state government.[29] Even if it were appropriate to reduce the estimated cost to the state by the amount of these accreditation fees, the full amount should not be allocated to a single year: the accreditation is good for three years. It would be more appropriate to treat these fees as prepaid expenses, i.e., an asset to be consumed over time.

The treatment of insurance costs poses a somewhat different intertemporal "smoothing" problem. The cost of risk management insurance at Avoyelles appears to reflect the actual number of claims made in a given year, since the costs reported do not correspond to differences inmate populations.[30] A more realistic approach would be to compute the *expected* (or average) annual cost of such claims and use this as the basis for computing annual per diem rates.

The treatment of accrued pension and compensated leave liabilities poses yet another intertemporal smoothing problem. Archambeault and Deis (1996, p. 434) chastise the authors of the Washington State LBC study for deducting from the Avoyelles budget a contribution of $410,000 used to help amortize the unfunded pension liability accrued for employees working at the facility prior to 1988. Archambeault and Deis claim that privatizing Louisiana prisons has the potential to reduce this accrued liability. In response, Bob Thomas (1997) cites the Legislative Actuary for the State of Louisiana as his authority for assuming that this liability would be invariant to the extent of privatization. The revised operating cost estimate in Table 10 follows the approach found in the LBC study.

Archambeault and Deis augment the cost budgeted for Avoyelles by the amount of unused sick and annual leave accrued by current employees.[31] It would be more appropriate to base this adjustment on the *expected* (or average) annual leave accumulation — this would more accurately reflect the average annual cost of operating a state facility.

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28 See Table 9. The reported year-to-year differences in cost savings are directly proportional to annual changes in the prison population.

29 The ACA web site indicates that publicly-managed prisons are not exempt from inspection fees.

30 Specifically, the reported cost of insurance fell by 40 percent between FY 93-94 and FY 94-96 even though the number of prisoners housed at Avoyelles rose slightly. There is also no cost reported whatsoever for risk management insurance at Avoyelles in FY 95-96.

31 These accrued leave hours represent a future liability to the state, as departing employees may be compensated for up to 300 hours of annual. Hours in excess of this limit are used to compute retirement benefits.

Interpreting Regression Results:

These data problems combine to make it difficult to interpret the regression results found in Table XI-8 of Archambeault and Deis (1996, p. 449). The simplest specification (Model A) reflects the assumption that per-inmate variable costs are independent of the size of the facility and tests to see whether or not the fixed cost of operating a prison is significantly different in the private sector.[32] This is a reasonable starting point, but the regression coefficients should not be computed until the data are adjusted for inflation.[33] Since this adjustment was not made, the coefficient reported for "average inmates per day" does *not* provide an estimate of the impact on total cost of an increase in the average daily population. Nor does the coefficient for the public/private dummy variable indicate the impact of privatization.

The specification of Model B has the same "inflation problem" as Model A, with a further wrinkle. Archambeault and Deis assume that the number of "Vo-Ed Slots Filled" helps explain the total cost of operating a prison facility. When they find that the coefficient for this variable is negative and statistically significant, they conclude that "lower operating costs are associated with increases in the use of vocational education" (p. 439) and that "placing inmates in vocational education programs is a less costly strategy than alternative work assignments" (p. 440).

Unfortunately the reported coefficients do not support this conclusion. Ignoring (for the moment) the inflation adjustment problems mentioned above, the negative coefficient for inmates placed in vo-ed may simply reflect economies of scale in prison operation. To see why, note that the "average number of inmates per day" will generally be positively correlated with the number of inmates placed in vocational education in a given facility.[34] Note also the specification of Model A is not quite right: over at least part of the relevant range of inmate populations, the marginal cost of an additional inmate is likely to be falling as the inmate population grows.[35] It is quite likely that the "prediction errors" of the simplistic Model A are correlated in some way with the differences between the growth rates in inmate population and vo-ed placement. This correlation implies nothing about the relative cost effectiveness of vocational education, prison industries or roadside trash pickup. It is merely the result of the "linearity" restriction imposed by the specification of Model A.[36]

Model C presents another version of this specification problem: in this model, the privatization dummy is replaced by the number of security staff positions at each facility. The inflation and

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32 I.e., the cost of operating a prison is assumed to take the form $C(x) = F_i + vx$, where the index *i* is either "private" or "public."

33 In other words, the data should be adjusted for inflation so that all observations reflect the same assumptions about prevailing prices. For example, if FY95-96 were chosen as the "base year" and if the relevant rate of inflation were assumed to be 4 percent per annum, then observations for FY91-92 would be increased by the factor $(1.04)^4$, observations for FY92-93 would be increased by the factor $(1.04)^3$, etc.

34 The larger the inmate population, the more inmates there are to place.

35 In other words, the prison "technology" exhibits economies of scale.

36 An alternative specification would have been to use the *proportion* of inmates placed in vocational programs as an explanatory variable. Nevertheless, this would still only establish a correlation between prison costs and vo-ed.; it would not prove that vocational education actually caused cost savings.

correlation problems described above again make it difficult to interpret these coefficients.[37] The approach used in the Tennessee FRC report provides a much more useful method of uncovering the sources of cost savings.

The Net Effect:

It is clear from Table 10 that the cumulative impact of these additional adjustments may drastically reduce the estimated cost savings from privatization: for the fiscal year 1995-96, it appears that the actual savings in *operating* costs is more likely to be below 5 percent than above 12 percent. However, as in the Tennessee case, the *total* cost savings from privatization will increase if it induces cutbacks in state-level overhead.

4 The Florida Experience: (i) The Florida Department of Corrections ; (ii) The Florida Correctional Privatization Commission; and (iii) The Florida Office of Program, Policy Analysis and Government Accountability

The controversy over the appropriate measure of operating costs in Florida prisons provides yet another indication of just how hard it is to get all sides to agree on whether or not privatization saves money. Current state law helps identify the participants in this debate. Chapter 89-526 of the Florida state statutes, enacted in 1989, first authorized the state Department of Corrections (DOC) to enter into contracts with private prison management companies. The subsequent Chapter 93-406, adopted in 1994, created the Correctional Privatization Commission (CPC), to expedite prison privatization; it is housed in the state Department of Management Services and operates independently of the Department of Corrections. Chapter 957.05 qualifies the authority of the CPC, requiring it to demonstrate — before any contract is signed — that private prison management will result in *at least* a 7 percent savings (relative to the cost of allowing the state Department of Corrections (DOC) to run the prison).[38] Chapter 957.07 also empowers the state Auditor General to decide whether or not this condition has been satisfied before any contract with a vendor has been signed.

To provide for on-going independent oversight, Florida state law requires the Office of Program Policy Analysis and Government Accountability (OPPAGA)[39] to review the performance of all management companies that operate private prison facilities in Florida (this may include both vendors under contract to the CPC and those under contract to the DOC). A separate oversight board, the Florida Corrections Commission, was established in 1994 and is "charged with reviewing the

37 For example, if we continue to the regression interpret coefficient as a measure of fixed cost, then the results reported for Model C indicate that the annual fixed cost for operating a prison is -$5,000,000.

38 The CPC is state housed in the state Department of Management Services; it operates independently of the Department of Corrections.

39 Although the OPPAGA is a unit of the Office of the Auditor General, it reports directly to the state legislature.

effectiveness and efficiency of [Florida's] correctional efforts, recommending policies, and evaluating the implementation of approved policies."[40]

Not surprisingly, these distinct entities do not always favor the same measure of privatization benefits. In its *Annual Report* for the fiscal year 1996-97, the DOC argued that *all three* privately-managed adult prison facilities were *more expensive* than similar publicly-run facilities would have been.[41] Using a somewhat different approach, the OPPAGA (1998) reached a similar conclusion. Nevertheless, the OPPAGA report included responses from the Correctional Privatization Commission, the Corrections Corporation of America, and Wackenhut proposing alternative methodologies — ones that led to conclusions directly opposed to those reported by the DOC and the OPPAGA.

Tables 11-13 (reproduced from the DOC and OPPAGA reports) help sort out this difference of opinion. The Department of Corrections estimates, found in Table 11, are somewhat suspect: the per diem rate for the men's public prison is derived as the *average* of nine other facilities; all but one of these public facilities is substantially larger than any of the private facilities being analyzed.[42] Given the economies of scale in prison operation, this approach understates the public sector cost of running a prison comparable in size to Bay or Moore Haven.

Nevertheless, Table 12 shows how the OPPAGA (1998) reached a similar conclusion with from a more appropriate starting place: it compares two private men's facilities (Bay and Moore Haven) with a single comparably-sized public facility. In its analysis, the OPPAGA started with the management fee due to CCA and Wackenhut (for running Bay and Moore Haven respectively); it then deducted monitoring costs paid by the management companies, property taxes *not* paid, and medical insurance co-payments collected from prisoners and retained by the prison operators. For the publicly-managed Lawtey prison, the OPPAGA used the annual cost of operations, health services, and education programs reported for this facility by the Department of Corrections in its *Annual Report*. All three cost estimates were then adjusted for differences in scale economies, the scope of management responsibilities and the quality of services provided.

The OPPAGA inferred from its calculations that Moore Haven was more expensive to operate than its public sector equivalent; it also argued that the Bay facility was only 0.2 percent cheaper. The OPPAGA nevertheless rated the performance of both CCA (at Bay) and Wackenhut (at Moore Haven) as "satisfactory," while noting in passing that neither private facility achieved the 7 percent cost savings required by law.

Table 13 reproduces the response by CCA to this finding. The adjustments proposed by this management company substantially change the interpretation of the data: they indicate that the private

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40 Commissioners are appointed by the Governor and with the approval of the state Senate. The Commission's mission statement appears on its web site, located at http://www.dos.state.fl.us/fgils/agencies/fcc/ .

41 These estimates are reproduced and analyzed in Florida Department of Corrections (1998).

42 Apart from the one public facility with an ADP of 733, the remaining public prisons housed between 1214 and 1719 inmates on average. In contrast, the observed average daily populations for the privately-operated Bay and Moore Haven facilities were 708 and 706 respectively. If these two prisons were assumed to operate at 95 percent of capacity, they would house approximately 713 inmates on average. Each of these private facilities has a contract maximum of 750 beds.

management at Bay and Moore Haven *saved* taxpayers respectively 8.3 and 6.0 percent of state cost of running the facility. This difference arises primarily from three simple changes: an increase in the CCA's credit for taxes paid to the state, an increase in CCA's credit for the "Inmate Welfare Trust Fund Net Revenue"[43]; and a decrease in the state's adjustment for "medical costs for higher medical grade inmates at Lawtey" (OPPAGA (1998), p. 38).[44] The OPPAGA itself rejected these three CCA amendments, observing (i) that CCA sought to claim credit for more tax revenue than was properly attributable to its Bay facility,[45] (ii) that it retained custody over Inmate Welfare Trust Fund balances,[46] and (iii) that Lawtey inmates had considerably more medical needs than those at the Bay facility.

This debate is further complicated by an adjustment that the OPPAGA could have made but ultimately rejected. As in Louisiana, the state retirement system was not fully funded by past payroll deductions. To eliminate this shortfall, a surcharge of 5.78 percent was included in the the payroll costs reported for Lawtey. The OPPAGA justified leaving this surcharge in place by stating that

> it is still a cost to the taxpayers. Privates do not pay this and thus should be able to reduce costs in comparison to state by at least 5.78% of payroll. (OPPAGA, p. 36).

This reasoning is not generally consistent with the basic question at issue, to wit, "How much money will privatization save for Florida taxpayers?" If the unfunded portion of pension liabilities was incurred *in the past*, then prison privatization does not help *taxpayers* avoid its consequences. Any decease in DOC contributions toward this *existing* liability would necessarily be offset by increases elsewhere in the Florida state budget.

Although there are many differences of opinion over particular line items, the OPPAGA report tends to support the hypotheses suggested by the Tennessee data. The public and private facilities reviewed appear to have quite similar non-medical operating costs; the potential cost savings can be traced to medical expenses and to overhead allocation policies. If this conclusion is confirmed over time, it then follows that prison privatization in Florida saves money through cutbacks in spending on prisoner health care and state-level DOC staff.

5 Experience with Privatization Elsewhere

The cost comparisons reported by other states are generally less elaborate than those found in the three cases reviewed thus far; they also tend to predict higher cost savings from privatization. For

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43 This trust fund is an account containing the revenue (in excess of expenses) from the prison commissary, vending concessions and inmate telephone service.

44 A fourth small adjustment by CCA remains unexplained: the "unadjusted" per diem reported by CCA for Lawtey exceeds that found in the OPPAGA report by $.36.

45 According to the OPPAGA report (p. 59), CCA sought to claim credit for taxes paid on income from other facilities.

46 According to the OPPAGA report (p. 13), this trust account is established in the name of the private contractor operating the prison. However, current law requires the contractor to obtain the approval of the CPC commissioner before using these funds for anything other than the purchase of items for resale. In contrast, state profits from the prison commissary and inmate phone usage are used to offset prison operating costs.

example, Sechrest and Shichor (1994) report savings on the order of 25 percent from the privatization of community correctional facilities in California, and Thomas (1997, p. 93) concludes that "operating cost savings [in Arizona] quite probably falls in the range of 13-17 percent." Unfortunately, these studies essentially report only aggregate costs, making it impossible to evaluate or interpret their findings.

Two other analyses of privatization — one for Texas and one for the U.K. — have at least one theme in common: much of the difference in estimates of public and private sector costs per prisoner can be traced directly to differences in state overhead allocations.

The Texas Case:

A Texas law passed in 1987 authorized prison privatization only if the state can demonstrate that it would lead to "a savings of not less than 10 percent over an equivalent state-run program." (Texas Sunset Commission (1991, p. 7). In its review of the state's prison system, the Texas Sunset Commission compared public and private sector costs to "construct and operate a 500-man pre-release center, and found that "taking into account the tax revenues paid to local governments organized by the state, the private prisons were operating at 14 percent below the state." (*Ibid.*)

Despite the aggregate nature of the reported data, it is clear that the rule for allocating state overhead allocation contributes substantially to this cost difference. Table 14 reproduces the cost analysis found in Exhibit C of the Sunset Commission report. Once again, day-to-day operating operations account for a relatively small part of the difference between public and private sector costs. The combined contract payment and monitoring cost at a hypothetical facility designed by CCA is reported as $29.71 per inmate day; the cost at a comparable facility designed by Wackenhut is reported as $29.54. The estimated state cost per inmate day of operating these same facilities is estimated to be $31.24 and $31.50 respectively. The remainder of the 14 percent cost savings lies in the presumed tax benefit to the state from privatization ($2.19 per inmate day) and the estimated decrease in administrative costs at the Texas Department of Criminal Justice (a difference of $1.36 per inmate day).

The U. K. Experience:

Woodbridge (1997, p. 29) predicts "an operational cost saving of 8 to 15% in 1996-97" from prison privatization. Table 15 provides the aggregate data used in the U.K. study, and reports per diem rates for adjusted operating costs. Two things are immediately obvious: (i) the average cost per inmate day is much higher than in the studies from the United States; and (ii) the difference in cost between the public and private sector prisons is much larger than in the United States. Without more detailed cost data it is difficult to identify the reason for this difference. Nevertheless, it is clear that the allocation of central office costs contributes substantially to the reported differences between in public and private sector per diem estimates.

6 Recommendations for Further Study

This survey of recent cost studies does not resolve the question of whether privately-managed prisons are cheaper than publicly-managed ones. The evidence is mixed, with the more detailed studies indicating the smallest cost savings from privatization.

Nevertheless, it is possible to draw some preliminary conclusions. There do appear to be some consistent differences between the public and private facilities, particularly if the Tennessee experience can be applied to other jurisdictions. It appears likely that in privately-managed facilities, the wage bill for non-administrative staff will be lower and prison-level administrative expenses will be higher; that health care costs will be lower and that the *imputed* cost of state overhead will be lower.

These generalizations suggest a number of questions for further study. These include:

1. Do the higher administrative costs found in the privately-managed prisons offset the savings from different staffing patterns and compensation packages?
2. How can health care costs be cut without sacrificing quality?
3. Do the differences in *reported* public and private overhead rates reflect the overhead costs actually *avoided* through privatization?

A yet broader question lurks in the background of this debate: "Is privatization *necessary* for cost savings, or does the mere *threat* of privatization suffice?" In other words, will the risk of being "reinvented" induce an appropriate set of changes in public sector practices? This question is familiar from other public sector contexts. Experiments with "market testing" in Indianapolis indicate that public employees can successfully compete against private firms and win city contracts. For the last two decades, the rationale for deregulating telephones, airlines, trucking, and electric utilities has also depended, in part, upon this sort of threat from *potential* (not actual) competitors.

It remains to be seen whether or not these market analogies — and their policy implications — readily translate to the corrections context. Nevertheless, these analogies do suggest an alternative the question of when and how privatization saves money. A more appropriate form of this question is likely to be "Does *competition* make it possible to provide an appropriate level of service at a lower price?"

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Appendix 2

The Performance of Privately Operated Prisons: A Review of Research

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There are good and bad public sector prisons, just as there are good and bad private sector prisons. As Thomas and others have noted (Casile 1994; Thomas 1997a), whether improvements in quality can be expected depends upon how well or poorly public-sector institutions are run by the respective government agencies. In a public system with good management, good labor relations, and adequate funding, the potential for improving quality by contracting prisons to private contractors is less than where these conditions do not exist in the public sector.

Despite the paucity of evidence, those who argue for the private operation of prisons do so based on one or two premises. They claim privatization introduces competition into an otherwise public monopoly and this enhances services throughout the system while lowering the overall costs. Secondly, they claim that private prisons can deliver the same or better services at a lower cost than the public sector because "the marketplace" compels efficiency, ingenuity, and innovation.

Moore (1998) has published a recent review of the privatization research. He argues that private companies save money through "new management approaches, new monitoring techniques, and administrative efficiencies (p. 15)." Since labor is about two-thirds of correctional operating budgets, labor cost savings, according to Moore, have been achieved through efficient facility design, reduction in administrative personnel, minimization of overtime, and greater freedom to manage personnel. Moore offers little evidence of these innovations and does not indicate how such savings translate into affective inmate supervision and management. He cites the Archambeault and Deis study (which we review in great detail), claiming the private sector can reduce significant incidents, such as prison disturbances, relative to the public sector prisons. We found that evidence to be misleading, and, in some cases, quite inaccurate. Moore makes the assumption that "... incidents lead to lawsuits, which increase personnel costs." He argues that market pressures and the competition for contracts result in better direct services to inmates. This is typical of the argument-without-proof that is often found in this literature. Anecdote is combined with "glittering generalities" to produce a conclusion having little or no foundation. Rather than critically evaluating each study on its own merits, Moore's review of the prison quality literature merely cites those conclusions reached by the individual authors.

In this paper, we take a more systematic and critical approach to reviewing the research literature on privatization. We examine the relative performance of publicly and privately operated prisons. However, we also look beyond that comparison to see if there is evidence that privatization has an effect on the entire public prison system and whether there is evidence that privately operated prisons introduce ingenuity and innovation into the management of correctional institutions.

We critically analyze the literature that has accumulated which compares the quality of publicly and privately managed prisons focusing on studies done in the United States. There have also been evaluations conducted on prisons in the United Kingdom and Australia. Since we are unfamiliar with the way these systems function, and we are unsure of the applicability of these studies to privately operated prisons in the United States, we have excluded those studies from our analysis.

We review evaluations done in Massachusetts, Kentucky, California, Tennessee, Arizona, Louisiana, New Mexico, Florida, as well as the Washington State review of the literature. We systematically analyze these evaluations in terms of the methodology employed, in particular, whether the evaluations compared institutions on the basis of performance measures and/or an audit/compliance approach. We examine the evaluations with respect to how well they meet other methodological criteria. These criteria were also identified by the Government Accounting Office (1996: 13) and

include whether equivalent facilities (and inmates) were compared; whether multiple indicators or data sources were utilized for cross-validation; and whether the assessments were based on one-shot or multi-year comparisons. Finally, we review the reports to assess the types of innovations (if any) employed in the private (or public) sector that are intended to produce improvements in the quality of services provided to inmates.

Although we are very critical of most of the studies that have been conducted, in our conclusion of this paper, we try to build upon these criticisms and propose an optimal design for assessing performance among institutions. This design can be used to evaluate aggregate measures of institution performance regardless of whether one is interested in the private/public comparison or in an understanding of those aspects of institution operations that produce positive or negative outcomes.

Massachusetts and Kentucky

The Urban Institute undertook a study between 1987 and 1988 to fill the void of empirical findings available to aid states and local governments in making choices about private corrections (Urban Institute 1989). While prison population growth and associated costs had led some to advocate the privatization of corrections, opponents of privatization questioned the propriety, legality, and constitutionality of private prisons. Advocates had argued that competition and less red tape would enable private contractors to achieve lower costs and faster procurement of facilities and equipment than was possible for government agencies.

Nevertheless, at the time of this study, there had been little empirical data used to test the assumption that the cost and quality of private sector correctional facilities were superior to that of public sector facilities. The Institute's objective in this study was to assess and identify any differences in cost, service quality, and effectiveness between publicly and privately run facilities and to identify reasons for any differences that were found. Legal, propriety, and philosophical issues of private corrections were intentionally not addressed by the study.

The study compared three pairs of facilities, one pair of minimum security adult facilities in Kentucky and two pairs of facilities which housed violent juveniles in Massachusetts. Each pair consisted of one private and one public facility.

Common methodological procedures were employed during the collection of data in both states. The procedures included:

1. Extraction of data from agency records reflecting the number of escapes or attempted escapes, returns to prison after release, results of facility inspections, and cost data.
2. Surveys of inmates and staff at each institution using a modified version of the Prison Social Climate Survey (PSCS) questionnaire designed by the Office of Research and Evaluation of the Federal Bureau of Prisons (Saylor 1984).
3. Interviews with operations and oversight personnel at each facility.
4. A physical inspection of each facility by Urban Institute project staff using a visual inspection rating form designed for the inspections.

The data collection took place between January 1987 and September 1988. It appears that considerable effort was made to select pairs of facilities that were similar in mission and in the types of inmates they housed. The authors acknowledge some major differences in the physical characteristics of the facilities. For example, the Kentucky facilities housed minimum security adults while the Massachusetts facilities housed violent juveniles. The public sector adult facility housed more inmates than did the private sector adult facility (the public facility had an average daily population of 353 while the private facility had an average daily population of 206). And, the juvenile facilities all housed small numbers of inmates. Three of the facilities had 15-bed capacities and one of the facilities had a 16-bed capacity. Presumably each facility was operating at capacity throughout the duration of the study.

Some concern was expressed about the comparability of the inmate populations in the matched facilities, particularly the adult facilities in Kentucky. However, after an examination of the inmate characteristics in each pair of facilities, the evaluation team believed the comparison populations were reasonably equivalent. It appears to us, however, that the initial concerns expressed by the researchers were well founded. The differences appear greatest in the adult population, with the public sector facility housing the more difficult population. Conversely, the private sector facilities appear to have the more difficult juvenile population, with a larger segment of more serious criminal offenders.

In the adult population, the public sector facility had 14 percent more violent offenders. The private facility had 11 percent more new offenders while the public facility had 10 percent more returnees with new offenses. The public facility inmates had a median number of years to serve that was 3 years greater than the inmates in the private facility, with 38 percent of the public inmates serving more than 10 years as compared to 22 percent of the private facility inmates serving sentences of more than 10 years. Additionally, the median age of the public sector inmates was 5 years greater than the median age of the inmates in the private sector facility, with 15 percent of the public facility inmates over the age of 45 compared to 2 percent of the inmates in the private sector facility.

For the juvenile population, the primary differences were in race and offense. The public facilities were composed of 50 percent black and 27 percent white inmates, while the private facilities were composed of 30 percent black and 48 percent white inmates. While 52 percent of the juveniles in the public facilities were committed for offenses against the person, 79 percent of the juvenile population in the private facilities had committed an offense against the person. Furthermore, public facility populations were composed of inmates who committed more property (27 percent) and miscellaneous offenses (18 percent) than their private facility counterparts (12 percent property and 6 percent miscellaneous offenses).

Although the study employed common data collection methods in both states, the analysis and reporting were produced independently for each state. Consequently, there was considerable loss of comparability in the application and interpretation of the measures and in the construction of the tables that were used to summarize the findings. It seems that this lack of integration defeats any benefit that might have derived from a common methodology. Admittedly, the differences in the nature of the facilities and their populations might have diminished the comparability anyway, particularly given the univariate nature of their analysis.

The report describes the sampling method employed for obtaining the adult inmate observations. The warden initiated the process by drawing several numbers from a hat. These numbers were used to

select inmates from a list based on whether the 2 or 3 numbers drawn by the warden appeared in the last digit of the inmates DOC identification number. A stronger sampling design for the Kentucky inmates would have increased the comparability between the sample and the population. The remainder of the staff and inmate observations from both states were intended to be a census of the population.

The authors used a chi-square test of statistical significance throughout the report, although it is only relevant to the tables of figures for the Kentucky inmates where a sample was drawn. The inferential test was inappropriate for the remaining data since these were population characteristics of staff and inmates at the facilities. Their use of the chi-square statistic as a measure of importance is inappropriate both because (except for the adult sample) the study is an analysis of the populations and also because it confuses statistical significance and substantive significance. The evaluators attribute substantive significance to differences in group means simply because the chi-square was statistically significant, while the metric and substance of the measure suggest that there is little importance in the observed difference.

The principal findings of the study were that the quality of services and programs were superior at the privately run facilities. The method for determining superior performance in the provision of services was based on counting the number of measures (from each of the four types of data: agency records, inmate and staff survey questionnaires, interviews with facility officials, and visual inspection ratings) on which each private or public facility exceeded, or performed better, than its comparison facility. Based on this method, the private facilities uniformly had a larger number of positive evaluations on the set of measures. Many of the differences that favored the private facilities were obtained from the staff questionnaire data. Ironically, the authors admit that juveniles in both the public and private facilities had virtually indistinguishable responses to questionnaire items about service delivery .

The greatest deficiency of the study was its reliance on univariate analyses. The statistical analysis consisted of univariate group mean comparisons. This method of statistical analysis created comparability problems in spite of the researchers' efforts to select comparable pairs of facilities. The reality is that without an experimental design, it is virtually impossible to obtain two facilities that are similar enough to provide meaningful comparisons without statistically adjusting for potentially confounding aspects of each facility. A multivariate analysis would have been more appropriate.

There were no coherent or systematic models specifying desirable performance outcomes and structural or operational processes that would be expected to accelerate or inhibit those levels of performance. The absence of theories or models to guide the analysis resulted in a much more voluminous and unwieldy report. Performance models would have allowed the evaluators to test for institutional differences in a more systematic, precise manner, explicitly acknowledge preexisting differences, and adjust the expected outcomes accordingly. The methods employed resulted in arbitrary decisions and attributions about degrees of comparability and levels of performance, and in general obfuscated the meaning of any public and private sector differences in the measurement set.

Statistical models of the sort proposed by Saylor (1996) and Camp et. al. (1997; 1998) could have minimized the need for presumptions about comparability and would have made the determination of performance differences, and the interpretation of those differences, straight- forward. Such performance models would specify certain outcome measures and the process measures that are believed to influence or control those selected outcome measures. The complexity of these models

would necessarily be limited by the small number of observations available. However, with thoughtful preparation, meaningful models that fell within the limits of the number of staff and inmate observations could have been identified. This same criticism can be applied to virtually every study we reviewed. Rather than repeat that criticism throughout the report, we highlight the problem here and in our summary of this research literature.

The study methods did meet the subsequent GAO (1996) criteria for evaluating the quality of service delivery in correctional facilities; however, there were still quite a few deficiencies as we have noted. There is no discussion of the types of innovations employed to achieve better quality of services and programs.

California Evaluation

In adult corrections, California entered into contracting out for prison services around 1991 by allowing cities, counties, and private companies to operate Community Corrections Facilities (CCFs). Originally, these facilities were intended to house only inmates who had been returned to custody for parole violations. But given the crowding pressures in the state of California, the decision was soon made to allow new admissions into the facilities. Originally, there were 12 of these facilities, but by the time of the Sechrest and Shichor study (1994), the number had declined to 11.

Sechrest and Shichor (1994) conducted an exploratory study of 3 of the 11 facilities. Two of the facilities were run by public entities, one by the police department of a small community in the San Joaquin valley and the other directly by the city administration of a small city in the Mojave Desert. The privately operated facility was run by Management and Training Corporation (MTC) of Utah. It is important to note that none of the comparison facilities were actually operated by the California Department of Corrections (CDC).

Two types of data were collected for the quality comparisons. First, surveys were administered to staff and inmates at each of the three study facilities as well as staff and inmates at two CDC facilities: the California Institution for Men at Chino and the California Rehabilitation Center at Norco. Additionally, interviews were conducted with the wardens at the three study facilities. The survey data and on-site visits were used to assess conditions of confinement. The second source of data came from official inmate data as provided by the Offender Information Services Branch of the CDC. In addition to providing background information about the types of inmates at the respective institutions, the official records also allowed the inmates to be tracked for recidivism (parole violation for a new offense, technical violation of a condition of parole, or no violation).

The survey instruments used were taken from the surveys used in the study of private facilities in Massachusetts and Kentucky undertaken by the Urban Institute (1989). Unfortunately, because of study constraints, the surveys were administered to a fairly small number of inmates, and these inmates were not chosen randomly. As such, it is not clear what confidence can be placed on the results from the inmate surveys. The survey of staff suffered from the same problems, although the number of surveys is even smaller (68 total surveys from all 5 facilities). Since the results cannot be generalized to the staff and inmate populations from which they were drawn, we see no reason to review the results. We simply do not know what they mean.

There are also methodological problems in terms of using the data on recidivism. We concur with the summarization of the California study drawn by the General Accounting Office (1991: 31):

> ... Sufficient data were not available to adequately complete the analysis comparing the inmates released from the community correctional facilities to inmates released from other correctional institutions in the state.

In summary, the California study's methodological limitations prohibit drawing any overall conclusions about quality of service.

Tennessee Evaluation

The Tennessee prison system, like prison systems in many jurisdictions, came under intense capacity pressures in the 1980s that resulted in litigation (Grubbs v. the State of Tennessee, 1985). As a result, the state legislature approved a substantial building program that started in 1985 and resulted in the building of six prisons along similar architectural lines as well as a special needs facility. In 1991, the state adopted legislation enabling the contracting out of correctional services to private contractors. A decision was made to turn over one multi-custody facility to a private contractor (Corrections Corporation of America as it turned out) to see what could be learned about best practice. The enabling legislation required a research component to assess quality and cost (Tennessee Select Oversight Committee on Corrections 1995). As stated:

> TCA 41-24-105 (d) The contract may be renewed only if the contractor is providing at least the same quality of services as the state at a lower cost, or if the contractor is providing services superior in quality to those provided by the state at essentially the same cost.

As a result, a bi-partisan committee from both houses of the General Assembly, the Select Oversight Committee on Corrections (SOCC), brought together staff from the Tennessee Department of Correction (TDOC) with executives from CCA to formulate a methodology for conducting the quality and performance assessment. With the assistance of the Vanderbilt Institute of Public Policy Services, formal meetings between TDOC and CCA produced a comparative methodology that was admittedly not an academic research project, but it fulfilled the requirements of the legislation. Importantly, both the public and private sectors agreed to the essence of the comparative methodology. Essentially, the process entailed that an audit/compliance check would provide the basic methodology for comparing the South Central Correctional Center (SCCC) operated by Corrections Corporation of America (CCA) with the two state-operated facilities, the Northeast Correctional Center (NECC) and the Northwest Correctional Center (NWCC). The three facilities chosen for comparison were all based on the same general architectural design as discussed above. SOCC wanted to insure a "level playing field" for all three facilities, consequently, in addition to similar physical design, all facilities came on line at approximately the same time. By mid-1992, all three facilities were operational.

There were six elements in the comparative methodology used, although only three of the elements actually received weight in computing the final aggregate score.[47] The audit portion counted for 60 percent of the total score. A list of 200 elements was compiled. Joint teams comprising staff from both TDOC and CCA conducted the audits. Ratings of compliance in the areas of Administration, Safety and Conditions, Health Services, Mental Health, Treatment, and Security were compiled as well as an overall rating of compliance. Two inspections were held at each of the three facilities. In general, the results showed comparable levels of performance at each of the institutions. On the first inspection, the overall compliance rates for the two public-operated facilities (NECC and NWCC) were respectively 90.67 percent and 90.08 percent. For the SCCC facility operated by CCA, the overall compliance rate was 84.53 percent. Both of the public institutions scored slightly better than the private facility, although the differences are modest. On the second inspection, the three facilities were virtually identical with 95.28 percent and 97.23 percent compliance at NECC and NWCC, respectively, and 97.48 percent compliance at SCCC.

A security and safety index was the second element that received weight, and accounted for 25 percent of the final aggregate score. The parties agreed not to assign an objective score on this dimension, even though the factors considered included disciplinary reports, use of force, assaults (both inmate-on-inmate and inmate-on-staff), deaths, injuries, escapes, and a residual category for other security and safety concerns. SOCC felt that scoring this area relied too heavily upon professional judgment. The working assumption used in the evaluation was that all institutions were in full compliance with safety and security standards, and the review would only note deficiencies in safety and security practices.

As might be expected, even though the evaluation reports on differences in the factors of safety and security, the conclusion is pretty mild. "Each of the institutions met the security and safety requirements of the two annual inspections and an ACA audit. Their respective scores were exceptionally high and almost identical. The administrative choices of how and when to use force, how to dispose of disciplinary charges, or how many disciplinary tickets to write is really the prerogative of management. However, in reviewing the entire period, in our judgment there was very little difference in security and safety among the three facilities" (Tennessee Select Oversight Committee on Corrections 1995: 56).

The final element that received weight (15 percent) was an index of programs and activities. Generally, this was a review of the numbers of inmates in education programs and work status. The indicator that received the most attention in the report was inmates in job waiting status. Because of a lack of an operational industry program at SCCC (operated by CCA) and NWCC by the second year

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47 The elements not used were the nature of inmates, professional standards, and a survey of staff and inmates. As noted in the report, there is a need to make level-playing field comparisons, and as such, a need to control for the nature of inmates. However, this was not done, and the report showed that there was substantial variation in inmate characteristics at the three facilities. For example, 47.5 percent of the inmates at SCCC (operated by CCA) were black, as compared to 22.6 percent at NECC and 78.2 percent at NWCC. While these percentages may reflect the racial backgrounds of the regions of Tennessee where the prisons are located, the prisons themselves are hardly comparable on this item. Similar differences were noted for custody classification of inmates.

The professional standards, those set by the American Correctional Association (ACA), State Fire Marshal reports, State Education Department, and local and state health and sanitation standards, were considered minimum standards. However, the audit items created as discussed above closely mirror items of concern in CCA accreditation inspections.

The surveys were intended only to provide subjective measures of satisfaction from staff and inmates and to provide insights into operational issues.

of operation, these two institutions had higher percentages of inmates in job waiting status. At the time of the review, SCCC was not in compliance with the policy that inmates job structures comprise 6 hours. CCA responded, though, that they changed their practice to be in compliance.

In determining a final weighted rating score to compare the institutions, the scores on security and safety as well as program and activity were meaningless as all three institutions received the maximum number of points on these scores. The only scores that differed among the three institutions were for the percentage of compliance captured in the second audit. The scores for the first audit (where CCA scored lower than the two public facilities) were not used. Since the CCA facility had a slightly higher compliance rate (97.48 percent as compared to 97.23 at NWCC and 95.28 at NECC), it came out slightly higher on the final weighted score (finals scores: SCCC, 98.49; NWCC, 98.34; NECC, 97.17). But as SOCC (1995: 68) noted, "In reviewing the ratings we considered the range of difference of up to 3 percent among the three facilities as essentially comparable. Therefore, our conclusion was that all three facilities were operated at essentially the same level of performance." Despite this conclusion, the New York Times ran an article at the time the Tennessee evaluation was released that concluded that there was strong evidence that CCA ran a better facility than the two public comparisons in terms of quality and cost (Butterfield 1995).

The Tennessee evaluation is often cited as one of the more sound methodological attempts at comparing private and public prisons. For one, it compares institutions that were of a similar architectural design, were opened at about the same time, and were designed to house inmates of similar custody levels. Nonetheless, there are some serious shortcomings to the Tennessee evaluation.

First, the review is based solely on operational audits of the three facilities. This means that no performance measures were used in actually comparing the prisons, even though some attempt was made to gather performance data related to inmate misconduct, programs provided to inmates (primarily education), and the like. Generally, the position taken was that on the measures that could be developed as performance indicators (measures of safety, security, and program activity), there were no differences among the institutions. All institutions were comparable and received the maximum number of points in these areas. However, even a cursory examination of the actual tables presented on misconduct, education, and the like makes this conclusion suspect.

Second, it is not clear that the facilities provide an apples to apples and oranges to oranges comparison. Even though all three facilities were multi-custody, they housed quite different types of inmates in terms of the socio-demographic characteristics reported, age and race, criminal history, and custody classification. Of course, these differences did not have as much impact upon the Tennessee evaluation as they would have if factors other than operational compliance had been used to calculate the final weighted scores of performance.

Third, the evaluation is a one-shot comparison even though data were collected over two years. For whatever reason, the compliance data from the first audit at each institution is reported but not used in determining the final comparative scores.

Fourth, only a single source of data, the compliance audit, was used to construct the final scores for the three institutions. As mentioned previously, this flows post hoc from the decision to award all three institutions the maximum number of points on safety and security as well as programs and activities. It is not that multiple data sources were not compiled, it is that they were ineffectively used (if used at all) in drawing the final comparisons between the private prison and the two public prisons.

Fifth, there was no attempt to document how the private sector had employed innovations in maintaining or improving quality while at the same time holding down or maintaining costs. There is not even any reference as to how the respective institutions were staffed. While not stated directly in the report, it even appears that private sector innovation was deliberately thwarted by making the private sector provider, CCA, abide by TDOC policy in running SCCC. In other words, it appears that Tennessee took the position that SCCC was simply another TDOC facility, to be run by TDOC policy, and that CCA would simply be given the opportunity to see if they could out-TDOC the TDOC. If this were the case, then obviously this limits the knowledge that can be gleaned about the benefits of privatization. Additionally, the design of the facility was set by the state, and the private contractor (CCA) did not have the opportunity to incorporate potential design efficiencies into the facility. Presumably, though, design considerations would impact more upon cost than quality.

Finally, there is no mention in the evaluation about the consequences of privatization for the TDOC and how TDOC operations may have changed.

Washington State Review

As part of a wider inquiry into the privatization of government services, the Legislative Budget Committee (LBC) of the state of Washington was asked to submit a report by January of 1996 on the feasibility of privatizing Washington State Department of Corrections facilities. Part of the feasibility study included an examination of quality issues.

The researchers did not collect original data for their assessment of the impact upon quality created by contracting for correctional services. Instead, they reviewed studies conducted by Logan (1991) and the Tennessee Select Oversight Committee (1995). Both of these studies are reviewed at length elsewhere in this report.

The LBC also performed cost analyses of public and private prisons in Tennessee and Louisiana. They collected published data for conducting this component along with additional data from the respective state agencies and private contractors. The LBC researchers also went onsite to observe operations. While we are not concerned with the cost analyses here, they did make some qualitative observations about operations in Tennessee and Louisiana. It is these observations that are of interest here.

Review of Quality

The LBC researchers concluded that the Logan (1991) and Tennessee (Tennessee Select Oversight Committee on Corrections 1995) studies demonstrated no significant differences in quality between the publicly and privately operated prisons. They actually do not provide any information about how they reached this conclusion. This is surprising since their conclusion is at odds with Logan's claim that the private contractor provided better quality than the state and federal prisons in his study.

Qualitative Observations of Operations in Louisiana and Tennessee

The LBC researchers examined several questions to address the issue of whether similarities exist between the inmate populations and behaviors both within and between states. The LBC sought to examine whether the experiences with privatization in Louisiana and Tennessee could be generalized to the state of Washington, and this led to the inter-state comparisons. For our purposes, the within state comparisons are of more interest as they address how the private and public prisons compared in Louisiana and Tennessee.

The LBC researchers concluded that inmates in the public and private prisons within each state behaved about the same. They based this conclusion in part upon an examination of the number of escapes, the major infraction rate, the minor infraction rate, and the percentage of inmates in school. In part, though, it appears that the conclusion was based upon subjective evaluations. The LBC researchers note that "(t)here were comments made to us in both Louisiana and Tennessee about a belief of under reporting of infractions and incidents at the private prisons, but headquarters administrators said they thought all of the prisons were safe and secure" (Thomas, Gookin, Keating, Whitener, Williams, Crane, and Broom 1996: A4-4). In fact, in Louisiana, both the major and minor infraction rates were higher at the state-operated prison, although little emphasis is given to this fact.

Other areas briefly covered in the Washington study are demographic and criminal history characteristics of inmates, classification policies, inmate idleness, and program opportunities. Most of the relevant comparisons for these factors were between states. However, the LBC researchers did note that the private prison in Louisiana run by CCA had a lower percentage of inmates enrolled in education as a result of CCA losing federal grant monies upon which they were dependent. Otherwise, the public and private prisons were seen as fairly comparable. As the LBC researchers note: "The prisons we visited appeared clean and orderly. ... Staff were professional both in appearance and performance. There did not appear to be major differences in operations." (Thomas et al. 1996: A4-9)

There are several shortcomings to the LBC report with regards to quality assessment. First, the LBC review depends upon reviewing performance data (such as escapes, infractions, etc.), but it is not clear how the individual data elements were pulled together to reach a general conclusion. Likewise, even though there is recognition that reported incidents depend upon the nature of inmates and reporting procedures, there was no attempt to adjust rates for these factors.

Second, as discussed in the reviews of the studies by the Tennessee Select Oversight Committee (1995) in Tennessee and Archambeault and Deis (1996) in Louisiana, the evaluations do seem to provide more apples-to-apples comparisons than are generally found in other evaluations. However, unanswered questions remain about how much the institutional averages for inmate behavior are influenced by race differences (e.g., Tennessee) or classification differences (e.g., Louisiana).

Third, the analysis does not address the time dimension. Generally, even though they review data from two separate states, the data are for a single point in time. This does not allow for an assessment of how quality in the public and private sectors may vary over time.

Fourth, there was no systematic attempt to obtain information on sources of innovation available to private sector operators to improve *quality*. This was not the case for private-sector costs. The LBC does attempt to disaggregate sources of cost savings for private-sector operators into savings from using different staffing patterns, savings from providing different employee benefits, and savings from

salaries. In general, they claim that the private-sector operators use staff in more than one area, and they have more flexibility in using staff. In addition to providing little detail about these claims, the LBC researchers do not go on to discuss how these changes affected quality in the respective prisons.

Finally, there is only limited information on the impact of privatization on public-sector operations in Tennessee and Louisiana, and most of those insights pertain to costs. In noting that the cost savings in Louisiana have become smaller over time, the LBC offered this possibility (but no direct evidence):

> One explanation for the convergence of costs over time may be the effect of competition. This is an argument made by the private companies that was also mentioned by some state correctional officials. Lean budget years may also have made a difference. For some years the inflationary increases built into the private contracts has been greater than the increases in the corrections budget. So while the per diem cost for the private prisons has inflated, it has not inflated for the public facility (Thomas et al. 1996: 12).

It is worth emphasizing that the Washington State study is a presentation and analysis of data that can also be found elsewhere (Archambeault and Deis 1996; Tennessee Select Oversight Committee on Corrections 1995). While the results of the LBC study generally mirror those of the Tennessee Select Oversight Committee about the experiences with privatization in Tennessee, the LBC conclusions about the experiences in Louisiana conflict with the data analysis presented by Archambeault and Deis (1996).

Arizona Evaluation

The Utah-based firm Management and Training Corporation (MTC) won a contract from the state of Arizona in 1993 to operate a 450-bed minimum security, mixed gender institution. The institution is now known as the Marana Community Correctional Treatment Facility. MTC began receiving inmates in October 1994. Generally speaking, the contract stipulates that MTC run the Marana facility in a manner similar to that in which the state would have operated the prison. MTC must abide by all applicable policy stipulating how Arizona state prisons are run (Nink 1998). By law, the contract with MTC could not be renewed unless there was evidence of either 1) cost savings and comparable quality or 2) comparable costs and superior quality. Dr. Charles Thomas was selected to conduct the corresponding evaluation.

Thomas was faced at the outset with a number of serious methodological problems. First, the Marana facility is a dual gender facility, but there are no dual gender facilities operated by the state of Arizona to serve as a point of comparison. Twenty-two percent of the inmates incarcerated at Maranna are female. Second, the prisoner population profile is different from those of the publicly operated minimum security prisons in Arizona. In particular, Marana houses a much higher percentage of DWI inmates (24.8 percent) than is true of all other Arizona facilities (with the exception of Papago, 98.9 percent, which is almost exclusively a DWI center). Also, the Arizona Department of Corrections contractually agreed not to send to Marana prisoners who "have serious or chronic medical problems, serious psychiatric problems, or are deemed unlikely to benefit from the substance abuse program" (Thomas 1997a: 73). Third, the classification of the inmate population "tilts" toward being less serious at Marana than at the other Arizona facilities (Thomas 1997a: 106). In particular, all of the inmates at Marana are public risk 1 or 2 inmates (with 1 being the lowest risk), as they are, for the most part, at the other Arizona prisons. However, whereas the other Arizona prisons have inmates

with internal risks greater than 2 (i.e, inmates who require more supervision), Marana has practically no inmates with an internal risk factor greater than 2 (Thomas 1997a: Appendix A, Table 3: A9). This is important as higher risk classification scores are generally predictive of misconduct. In other words, 14.11 percent of public risk level 1 or 2 inmates at publicly operated Arizona prisons have an internal risk greater than 2. Only 0.24 percent of the inmates at Marana have a similar classification. Fourth, the contract with MTC calls for providing a "heavier" load of programming to Marana inmates than is the case in publicly-operated minimums. And, finally, the physical design of Marana is unlike that of other Arizona facilities, primarily because it is newer.

Within these constraints, Thomas decided to compare cost and quality performance measures at Marana against the average for all minimum security institutions under public operations. Arguably, Thomas did not have many good options, but it is not clear that the choice he made is completely satisfactory. Very different types of institutions make up the full contingent of minimum security facilities in Arizona. We reserve this discussion for later. As Thomas notes in his chapter on comparing quality, "Any or all differences could be caused by nothing more or less than the fundamental dissimilarities between the Marana Community Correctional Facility and the fifteen state-operated facilities" (Thomas 1997a: 108).

Even recognizing the serious limitations to the study, Thomas drew 13 conclusions from his study, 7 of which pertain directly to the issues associated with quality as determined in the Arizona evaluation. We largely ignore Thomas' review of existing literature on quality comparisons as the relevant studies that Thomas reviewed are also reviewed as part of this report. We also exclude his conclusions about cost. Thomas' seven conclusions about quality of operations in Arizona are worth reporting in full, however. They provide the basis for our examination of the methodological issues raised in the Thomas study. The conclusions appear in full in both the Executive Summary and body of the report (Thomas 1997a: ii-iv, 157-159):

> Conclusion #4: There is a high risk that operating cost and performance comparisons of the Marana Community Correctional Treatment Facility could yield misleading results because there is no state-operated prison in Arizona that houses inmates similar to Marana or runs similar programs.
>
> Conclusion #7: The performance comparison on the dimension of protecting the public safety interest as measured by the frequency of escapes, major disturbances, and injuries caused to visitors revealed that the record for the Marana Community Correctional Treatment Facility was superior to that of the state-operated Level Two (minimum) prisons.
>
> Conclusion #8: The performance comparison on the dimension of protecting staff and prisoners from the risk of personal injury or death caused by homicide, battery, assault, and arson revealed that the record of the Marana Community Correctional Treatment Facility was superior to that of the state-operated Level Two prisons.
>
> Conclusion #9: The performance comparison on the dimension of educational, treatment, and work programs resulted in a best professional judgment that the dissimilarities between the programs offered at the Marana Community Correctional Treatment Facility and those found at the state-operated Level Two prisons were so great that no fair comparative conclusions could or should be reached.

Conclusion #10: The performance on the dimension of compliance with professional standards as measured by routine Department performance audits, litigation initiated by either prisoners or staff members, inmate grievances, and compliance with in-service training requirements for staff members revealed that the overall record of the Marana Community Correctional Treatment Facility was superior to that of the state-operated Level Two prisons.

Conclusion #11: A balanced consideration of the entire set of individual performance indicators revealed that the overall performance record of the Marana Community Correctional Treatment Facility was superior to that of the state-operated Level Two prisons.

Conclusion #13: Notwithstanding the conclusion that, when compared with all state-operated Level Two prisons, the quality of performance at Marana was superior to that of the state-operated prisons, it was found that one or more individual state-operated prisons had performance records that were equivalent or superior to that of Marana.

Thomas justified drawing these conclusions by pointing to the necessity to have the information for policy purposes (Thomas 1997a: 103). Also, he claimed that the limitations cause the findings only to have "fuzzy" rather than "crisp" edges (Thomas 1997a: 104).

Nonetheless, Thomas recognized the risk associated with the comparisons he makes and that while Marana fared the best in his comparisons against the average for Level Two prisons in Arizona, some individual prisons had better performance measures than Marana. To Thomas' credit, he did report the performance measures individually for the 15 publicly-operated prisons.

Of the conclusions about quality listed above, Conclusions 7, 8, and 10 are based on direct examination of data presented by Thomas. As such, we review each of these conclusions in more detail. Thomas' other conclusions regarding quality are more subjective or global, and we do not discuss them specifically, although these quality conclusions (Conclusions 4, 9, 11, and 13) are reviewed in general.

Conclusion 7, the conclusion about public safety, is based on comparing rates of major incidences, escapes, and injuries to visitors. Thomas concluded that Marana's performance was "superior." However, as Thomas noted, none of the facilities (including Marana) had a single major disturbance, only 4 escapes occurred at the 15 state facilities (3 from Papago where the DWI cases are incarcerated) while there were none at Marana, and no injuries to visitors were reported at any minimum security prison (including Marana). None of these findings are surprising given that the facilities house minimum security inmates. What is surprising is that Thomas concluded, even with the cautionary remark in the *body* of the report that "readers must refrain from making more of this difference than is fair and reasonable" (Thomas 1997a: 111), that Marana was *superior* to the state facilities because 2 of the 15 state-run facilities had escapes.

It seems that reasonable commentators could conclude that Marana was exactly equivalent to 13 of the 15 state-operated facilities on the dimension of public safety, and that Marana -- and the 13 publicly-operated prisons -- were marginally better than two of the publicly operated facilities. The term marginal seems appropriate because there was a difference on only one of the three indicators, and the frequencies for the one indicator were not unusual. While escapes are rare, they do nonetheless occur (from private as well as public prisons).

Similar problems exist for Conclusion 8 about protecting staff and inmates. Thomas again gave ample warning about the tenuous nature of his conclusion, nonetheless concluding that Marana was superior. The rates of the types of serious misconduct considered by Thomas are very low at any minimum security prison. In essence, most of the forms of misconduct (like inmate-on-inmate assault), occurred only a few times -- if at all -- and at a limited number of institutions. Thus, comparisons of Marana to 15 other facilities is fraught with difficulties, especially when one considers that 22 percent of the inmates at Marana were female, a group with low rates of the types of misconduct considered.

In addition to Marana, three publicly operated facilities had perfect records on offenses related to protecting staff and inmates from serious injury. Two of the three publicly operated facilities (Globe and Maricopa) housed male inmates.

Thomas reported the rates of all Type A offenses (serious) charged and found guilty at each of the 16 prisons in his study. (He also reported comparable information for the less serious Type B and Type C offenses, but we ignore these for our purposes, since less serious offenses typically involve a great deal of discretion and, therefore, are often unreliable indicators of the "true" underlying pattern of misconduct). What is interesting about the Type A offenses is that they occur often enough to provide some confidence in the respective rates, although collapsing all serious offenses together means information is lost about what types of offenses are being reported at the respective institutions.

The rate at which Type A offenses are charged at Marana (0.33) compared very favorably to the rate (0.55) for the average of the 13 publicly operated facilities listed in Table 6 (Thomas 1997a: Appendix A, page 12). Nonetheless, in addition to the two female minimum-security institutions, two other male institutions (Globe and Piacho) had lower or comparable rates of Type A offenses (0.20 and 0.33 respectively). When we factor in that 22 percent of Marana inmates are female and females commit almost no Type A offenses (the rates for charging inmates at the female prisons in Arizona were 0.04 and 0.00), the rate of 0.33 at Marana is not as impressive.

Assuming that the 22 percent of the females at Marana were charged with Type A offenses at the rate of 0.04 (the highest rate noted in an Arizona female, minimum-security prison), then males at Marana were charged for Type A offenses at the rate of 0.41. At this adjusted rate, we see that Globe and Piacho compared favorably to Marana, as did San Pedro where the rate was 0.37. This still means that Marana was doing well, with a lower rate than 8 of the male, publicly operated minimum-security facilities. Nevertheless, Marana was higher than 3 of the publicly operated males facilities, and it was obviously higher than the rate at the two publicly operated female facilities. At best, Marana is comparable to the best public facilities, but it is hard to argue that Marana is superior if we trust the data on Type A offenses.

Regarding Conclusion 10, the factors considered included the comprehensive annual quality audits conducted by Arizona DOC (including an audit of Marana), litigation filed against the prison, inmate

grievances, and compliance with staff training requirements. Marana was the only minimum security institution that did not receive an overall rating of excellent on the audit. Thomas implied, however, that the internal audits may have been stacked against Marana. Regarding litigation, there were only 14 lawsuits initiated by prisoners. This involved inmates at 8 of the 15 publicly operated facilities and none at Marana. There were two lawsuits initiated by staff, both at publicly operated prisons. For the rate of inmate grievances, the rate at Marana (0.26 per 100 inmates) was second only to Papago where the rate was 0.20. On the dimension of training, there was no difference between the publicly operated prisons and the Marana facility operated by MTC.

Despite the mix of evidence on performance -- including the fact that Marana did not score as highly as some state-run facilities, that some kinds of infrequently occurring events transpired at some of the fifteen state facilities but not at Marana (e.g., litigation), and the problematic audit review -- Thomas nonetheless concluded that, on balance, a superior ranking "must" be assigned to Marana.

Thomas was faced with a host of methodological problems, some of which may have been insurmountable. Nonetheless, an evaluation was mandated before the contract could be renewed, and as Thomas correctly noted, the conditions of policy reviews seldom meet the pristine conditions of laboratory research. In this context, let us review then how this research effort fulfills the conditions of sound comparative research.

First, the review seemed to use both performance and audit data, relying most heavily upon performance data. The audit data came from the normal audit cycle of the Arizona Department of Corrections. As such, the audit data are suspect as Thomas implied in his analysis. Unlike the audits performed as part of the Tennessee evaluation (Thomas 1997a: 73), where the protocols were developed by both public and private officials, and where audit teams were comprised of members from both the public and private sectors, the Arizona auditors were all Arizona Department of Corrections employees conducting a standard Department of Corrections audit. At the very least, this creates the appearance that bias may have been built into the audit of Marana. In our opinion, Thomas was correct to not emphasize the audit results in his analysis. However, we are not so sanguine about his uses of the performance data, as noted in the review above.
Second, it is abundantly clear that this evaluation does not provide an apples-to-apples comparison. Thomas himself was aware of this fact, as was the Arizona Department of Corrections when they contracted for the evaluation. It seems there was no comparable facility to Marana in the entire Arizona prison system. Still, this does not justify the strategy Thomas followed of comparing the Marana facility to the average of the other publicly operated facilities. If an average had been used, it should have been an average of facilities that most closely resembled Marana. Using Thomas' approach, the comparisons are not that informative. More informative are the comparisons made in the body of the text of Marana to individual state facilities, but these comparisons do not provide the basis for the findings presented in his 13 conclusions. For the most part, the 13 conclusions presented by Thomas are based upon comparisons of Marana to the averages for the 15 publicly operated facilities with the exception that Thomas does point to the facility-by-facility comparisons as conditioning the other conclusions (see Conclusions 4 and 13).

Third, the study suffers from being a one-point-in-time comparison. A problem not noted above, but which may be relevant, is the timing of the study. Generally, the Marana facility was in an activation phase for most of the course of the study, which probably had some influence upon the types of

behaviors observed there. Whether patterns noted for this time period will hold as the facility matures is unknown.

Fourth, there was no attempt to document how MTC employed innovations to facilitate changes in quality (or cost for that matter). In part, this inattention may have resulted from the model of privatization followed in Arizona. Basically, the State of Arizona has taken the position that a private contractor should be given the opportunity to demonstrate it can out perform the state in running an Arizona prison according to Arizona Department of Corrections policy. Some states take the position that a private contractor should be given a great deal of flexibility and freedom in developing its own foundation of policy and procedures, while holding the contractor to some minimum standards such as those developed by ACA. While their approach may make some things easier for the Arizona Department of Corrections (conducting audits for one thing), it certainly provides little room for the private contractor to innovate. This means that differences in quality must arise from better performance by the private contractor's line staff and management.

Fifth, there was no attempt to assess whether the operation of the Marana facility by MTC has brought about system changes to the Arizona Department of Corrections.

Louisiana Evaluation

The State of Louisiana has funded an evaluation of its prison privatization efforts. Archambeault and Deis (1996) have produced a report comparing 3 institutions which have the same architectural design, accommodate approximately the same number of inmates, were built and activated at approximately the same time, are located in rural areas of the state, and house inmates of comparable security levels. Allen Correctional Center is operated by Wackenhut Corrections Corporation (WCC). Avoyelles Correctional Center is operated by the Louisiana Department of Public Safety and Corrections, and Winn Correctional Center is operated by the Corrections Corporation of America (CCA).

The primary purpose of the Archambeault and Deis evaluation was to compare the two privately operated and one publicly operated facilities on measures of cost and performance. The performance data used in this report came primarily from official records normally reported to the Secretary of Public Safety and Corrections by all adult correctional institutions within the state. The researchers made one field visit to each of the three sites. Based on the site visits and supporting documentation, Archambeault and Deis characterized the management philosophies existing at the time of the study. They rated the Wackenhut operated facility as most authoritarian, the publicly operated facility as intermediate, and the CCA operated facility as the least authoritarian of the three. At the time of the study, WCC employed 335 staff, the public facility 384 staff, and the CCA facility 340 staff. The CCA facility employed more women and minorities than the other 2 prisons, while the public facility employed predominantly white and male staff.

According to Archambeault and Deis, the Louisiana Department of Public Safety and Corrections Secretary, Richard Stalder, standardized the policies and procedures of the three prisons in 1992 and instituted a common reporting procedure that was used by the evaluators as their primary source of data. In a letter to Archambeault, written by Robert C. Thomas, the Principal Management Auditor/Supervisor for the State of Washington's Joint Legislative Audit and Review Committee,

Thomas expressed his concerns about the validity of the reporting mechanism (Thomas 1997b). In his letter, Thomas raised the possibility that "...different incentives can be at work in the private facilities than in the public facilities (p. 3)." Although we agree with this criticism, without further information, it is difficult to sort out the relationship between reporting incentives and the actual behavior underlying these reports. While private prisons may have an incentive to under report unfavorable incidents to bolster the impression that they are performing well, there is a counterbalancing incentive for private prisons to report all significant incidents as failure to report could provide grounds for contract termination. On the other hand, a public facility may want to over report incidents as an argument to receive more resources, unless the public facility is in "competition" with private sector providers of prison services.

Because it is difficult to disentangle accurate reporting from this subtle incentive structure, we assume for the present purposes that the reporting mechanism is a true reflection of underlying conduct. Nonetheless, we prefer that reporting mechanisms occur more as a by-product of institution operations than as an additional requirement. As an example of what we mean, consider two separate reporting mechanisms used by the Bureau of Prisons for representing serious inmate misconduct. One mechanism is similar to the one adopted by Louisiana. On a daily basis, institutions report any serious incident (e.g., fire, serious assault, disturbance) to both the Regional and Central Offices. There is a certain amount of discretion in what people choose to report. The second mechanism of reporting these incidents occurs as a by-product of the normal adjudication process that occurs in the Bureau of Prisons institutions. A serious assault will typically result in an administrative action culminating in an adjudication of the misconduct by a disciplinary hearing officer (assuming that the assailant is known). Whether or not there is a sustained finding (conviction), all of the procedures and actions will be recorded in an automated database of disciplinary hearings. The Bureau is able to cull aggregated information on disciplinary actions for any and all of its institutions from this individual level database. We have data demonstrating that this latter mechanism has much less reporting discretion than the former.

To establish comparability of the three institutions, Archambeault and Deis assessed information on the physical plant, its history of expansions, State-imposed policies and standards, comparability of ACA standards, and the number and ethnicity of inmates during the evaluation period. While acknowledging that a limitation of their study was that they lacked information on the characteristics of the inmate populations, the evaluators minimized this limitation by stating that an "ideal evaluation design" would include such data. We would characterize information on the characteristics of the inmate population as fundamental in a comparison of institution performance measures. Almost every institution performance measure used by Archambeault and Deis was a summary or aggregate indicator of individual performance data. Since it is well known that inmate behavior whether prosocial or antinormative is strongly correlated to criminal history, demographics (age, race, ethnicity), and other social and actuarial predictors, these background data are a sine qua non of valid institution performance comparisons. What may appear to be differences in institution performance may be nothing more than differences in the background characteristics of inmates housed in the different institutions that predispose them toward more or less favorable behavior.

Over 200 measures were collected and analyzed by Archambeault and Deis. These measures covered issues about safety, risk, effectiveness, performance, and cost. The data covered several years (fiscal years 1992 through part of fiscal year 1995) and represented monthly occurrences of the phenomenon. Typically, the researchers would compute an average of the monthly data and use that average as the

performance indicator. In some cases, the researchers compared averages for different periods of time when they thought changes in reporting or other artifactual problems might influence the data. Unfortunately, the researchers did not capitalize on the trend data to evaluate performance over time.

The performance measures included data on escapes, assaults on staff and inmates, assault outcomes (i.e., whether they involved serious injury), sex offenses, aggravated sex offenses, institutional disturbances, deaths due to violence, suicide, or illness, disciplinary actions, gunshots, grievances, drug tests, communicable diseases, inmate education and vocational training participation, GED's earned, basic literacy, college participation, and various indicia of medical care. Staffing data included use of sick and maternity leave, resignations, and grievances. Each performance measure was analyzed separately; however, scales of these measures were also constructed and analyzed.

As an example of how Archambeault and Deis evaluated the three institutions, consider the first performance measure—escapes from the institution. Over the study period, the public institution reported no escapes, the CCA-operated facility reported 5 escapes and the WCC-operated facility reported 3 escapes. Archambeault and Deis submitted the month-to- month data to an analysis of variance and contrasted the three average escape rates using a Scheffe post hoc comparison technique. Using these methods, there was no statistical difference among the average of the monthly escapes over the study period. The F- and Scheffe tests used by these researchers were probably inappropriate techniques to compare such rarely occurring events and since they were measuring population differences, not samples, the use of any statistical test to compare the averages may have been inappropriate. Even more important is the interpretation of the absolute differences in the number of escapes for the 3 institutions. Protecting the public is one of the most significant missions of a prison system and clearly the public institution was doing a much better job than either of the two private institutions. The researchers do acknowledge the public institution's superiority but also claimed that "each of the three prisons are fully meeting the obligation of protecting the public (p. 121)." From our point of view the two private prisons were deficient in this obligation.

In chapters V through X of their report, Archambeault and Deis analyzed the remainder of nearly 200 performance measures. This was clearly an ambitious assessment of the comparative quality of the three institutions. On some of the more important dimensions, data were also collected and reported on the four other adult correctional institutions in Louisiana: Hunt, Dixon, Angola, and Wade. Comparisons involving all 7 institutions were made primarily on serious misconduct such as escapes, serious assaults on staff, inmate on inmate sex offenses, other serious inmate offenses, and institutional disturbances. While the three primary comparison sites had almost identical inmate population counts over the period of this study, the other four institutions used in some of their comparisons had widely discrepant population counts. It appears to us that Archambeault and Deis reported these performance measures without accounting for the large differences in the average monthly inmate populations of the other four comparison institutions. Angola had an average monthly inmate population almost 4 times as high as the 3 comparison institutions. Another institution, Wade, had an average monthly population almost 20 percent lower than the 3 comparison sites. The comparison of raw averages is meaningless given the huge disparity in the monthly inmate population counts.

Since these serious misconduct measures were important indicators and the raw data were available, we re-computed the performance measures by taking the data reported in Archambeault and Deis and dividing the average monthly counts by the average monthly inmate population then multiplying the

result by 1,000. This results in a performance measure that is an average monthly rate per 1,000 inmates. A completely different picture emerges when you compare the raw counts, i.e., the average number of incidents versus the rates adjusted by the average monthly population. Table 1 represents the monthly counts, Table 2 the rates. Whereas Archambeault and Deis reported that the risk of assaults by inmates on staff resulting in serious injury is marginally higher at the public facility than the two privately operated facilities, Table 2 indicates that at least one other public facility had an equally low rate of such assaults. The data in Tables 1 and 2 represent information on staff and inmate safety. We are not confident that a statistical test is warranted, thus, for each performance indicator, we have color coded the best rate in blue, the second best rate in green, and the worst rate in red. It is clear that when the data are represented as counts, Dixon (public), and perhaps Allen (WCC) and Avoyelles (public), were the best performing institutions on these performance indicators. Angola (public) was the worst by far. Looking at Table 2, using the more appropriate rates, Dixon (public) was still the best, Hunt (public) perhaps the second best, and Angola (public) -- while still the worst -- did not look nearly as bad. It is not clear why the penitentiary at Angola should be included in any of these analyses, since by reputation, this facility houses the most hardened prisoners in the Louisiana system. Data on the background characteristics of these inmates would go a long way toward answering these issues of comparability.

We have also included other counts and rates in Tables 1 and 2, for which there is no information reported by Archambeault and Deis on the other public institutions, as well as information on total disciplinary actions and gunshots. We did not color code disciplinary actions and gunshots because, unlike Archambeault and Deis, we are not convinced that lower rates indicate better performance. Archambeault and Deis cite Clear and Cole (1997) who argue that high levels of disciplinary infractions indicate staff and inmates are intolerant of each other. We can think of other scenarios in which high levels of misconduct can be interpreted as a sign that management is strict about enforcing rules but fair in the disciplinary process. Alternatively, low levels of misconduct may indicate a lax environment, and tolerance of nuisance behaviors that invite more serious misconduct. Misconduct data can be very misleading unless we are knowledgeable of the institutional context. Looking at Table 2, we can see that Angola, which had the worst record with respect to serious incidents, had the lowest overall misconduct rate in that time period. Dixon, which had the best record with respect to serious incidents, had a total disciplinary rate intermediate to the lowest and highest rates among the 7 institutions. If misconduct were related to serious incidents, we would expect institutions with the highest misconduct rate to have the highest serious incident rate. The data argue against any conclusion that low rates of misconduct indicate better performance.

The urinalysis "hit" rate was another important indicator of institution safety and security although Archambeault and Deis treat the indicator as a measure of health risk. The rate at which inmates are randomly detected using drugs is an indication of the extent to which an institution is able to control the importation and use of drugs. These data were only available on the 3 comparison institutions. The data showed that the public institution was much more likely to use urinalysis to test for drugs and that the random tests revealed that the public institution had far fewer inmates testing positive for drug use than either of the privately operated facilities. Overall, these data seem to indicate that each institution had certain safety and security deficiencies and each had certain strengths; however, the best performing institution was a publicly operated one during the period of this study while the worst was the notorious penitentiary at Angola. All of these conclusions should be tempered by the fact we have no basis for determining whether these differences resulted from institution management or

merely from housing inmates with different propensities toward violence and other serious misconduct.

Other data were collected by Archambeault and Deis to indicate health risk. Information on communicable diseases, including HIV infection and tuberculosis, were analyzed. Archambeault and Deis used information on the incidence and prevalence of HIV and tuberculosis. They used various indicators of HIV and AIDS which depended on the level of seriousness of the infection and the year in which the data were recorded. For example, they separately assessed group I, group II, group III, group IV-A, group IV-B, group IV-C, group IV-D, group IV-E, and the number of inmates receiving AZT for fiscal years 1992-1993. In fiscal years 1993-1994, they categorized the infection into separate subgroups that depended on the T-cell count and whether the cases were characterized as category A, B, or C and levels 1,2, or 3. Similar measures were compiled on tuberculosis cases. The researchers also created a composite health risk of these measures and included the drug testing measures. This resulted in an index composed of 60 indicators.

They found that the WCC-operated facility had the highest medical risk score, the CCA-operated facility the second highest, and the public facility the lowest. We question the validity of this composite health risk predictor. Unless they could measure the quality of care delivered by the different institutions, it is difficult to credit or fault an institution for its level of health problems. Health problems can be related to the demographic characteristics of the inmate population and totally unrelated to the health care delivery system at the institution. The drug assessment did indicate the public institution had the lowest drug utilization rate and the highest use of random and total number of drug tests and the lowest percentage of inmates testing positive among the random tests. This is evidence that the public institution was actively combating drug use at least partly through the use of testing.

In Chapter IX of their report, Archambeault and Deis assess the work environment of correctional personnel. Their first set of indicators examines the relationship between the number of positions allocated and the actual number of staff working on a daily basis. They found that the public institution had more positions allocated to custody but a lower proportion of those positions were used on a daily basis. In their comments, Archmbeault and Deis provide the explanation for this discrepancy. When the public facility opened, many of the personnel transferred from other state institutions. Employees with more tenure accrue more leave and therefore, more staff were needed to cover the same shifts. Archambeault and Deis did not have sufficient data to investigate this possibility.

Chapter X of their report examined the use of administrative remedy procedures by the inmates, indicators of education and vocational opportunities, inmates' medical duty status, and the number of inmates evaluated and transferred to pre-release programs and community correctional centers. The WCC-operated facility had the highest monthly total of administrative remedy complaints. The public and CCA-operated facilities were almost identical in those rates. The public facility was the least likely to accept a complaint.

The CCA-operated facility had the most complaints regarding medical care and quality of life. The WCC-operated facility had the most complaints regarding property, legal issues, rules, threats, communication, records, finances, institution programs, discipline, and classification. The public facility had the most complaints about discrimination and protection.

Data on program enrollment and completions in education and vocational training programs indicated that the CCA-operated facility was doing a better job in providing educational and vocational training to inmates than either the public or the WCC-operated facility. However, the authors noted that the public institution involved more inmates and volunteers in the education process, had more inmates enrolled who completed the basic literacy program, and had more inmates enrolled in college courses. Archambeault and Deis concluded that the CCA-operated facility was far more effective in its education performance than the WCC-operated facility or the public facility. This conclusion was partly based on efficiency ratings in which the CCA-operated facility had higher rates of completions on some indicators.

Finally, Archambeault and Deis collected data on the duty statuses for inmates and whether the institutions screened inmates for transfer and community rehabilitation and work centers. The CCA-operated facility had the most occurrences of screening and highest ratio of transfers to the community centers. The CCA-operated facility also had the highest ratio and most inmates on some form of limited duty status. In the absence of any additional contextual information, it is almost impossible to make any sense of the limited duty status data.

Archambeault and Deis concluded that the two private prisons outperformed the public institution on most of the performance measures, including critical incidents, safer working environment for staff, a safer environment for inmates, judicious use of disciplinary actions, more efficient use of security personnel, higher inmate program participation, and higher use of inmate transfer to community settings. The public institution was credited with outperforming the private institution on measures of escape, aggravated sex offenses, substance abuse, the breadth of education and vocational training in the number of inmates served, and the breadth of treatment, recreation, social services, and habilitative services to inmates.

As we have already noted, a re-analysis of the safety and security data using the information on all of the Louisiana institutions shows that the public facilities were the best and the worst. However, this conclusion and any other conclusion should be strongly tempered since Archambeault and Deis were unable to collect information on characteristics of the inmate population that could have been used to control for potential inmate population differences among the institutions. We suspect that the penitentiary at Angola probably houses the most hardened and violent prisoners incarcerated by the State and that there are structural reasons (both architectural and sociological) that make it a difficult prison to manage.

In Thomas' (1997b) letter (mentioned earlier), he was also critical of Archambeault and Deis' conclusion on the role of privatization for other jurisdictions, although as far as we can tell, that conclusion was misstated in the Thomas letter. Thomas wrote that Archambeault and Deis claimed, "Private prisons have a definite place in any state's total prison system (p. 3 of the Thomas letter)." The closest comment we can find in the Archambeault and Deis report is the statement "Privately operated prisons have a definite place in the planning of any state's total prison system (p. 573)." Thomas argued that the conclusion was unwarranted by the study and that a private alternative may not be in the best interests of the state. In fact, the Archambeault and Deis conclusion was more guarded and those authors went on to state that privatization of prison beds should be limited to ensure that the incentive to compete is not lost.

The intent of the Archambeault and Deis evaluation was strictly to compare the public versus the private operation of the facilities. If there is an innovation to be found, it might be the staffing patterns used by Corrections Corporation of America. The public facility used predominantly white (81.5 percent) males (76 percent). The CCA-operated prison used many more female staff (42 percent) and many more minority staff (50.3 percent). The WCC-operated facility was somewhere in between, using mostly white male staff (63 percent). Since staffing is one of the most important components of correctional service, the use of more women and minorities might be considered an innovation if it could be shown to be related to the successful management of the institution. If Archambeault and Deis did point to an innovation it would have been the management philosophy of the CCA-operated facility. They considered CCA's approach to be the least authoritative, involving staff in the organizational decision making and giving "employees a vested interest in the overall success of the prison organization (p. 66)."

It was difficult to conclude how or whether the Louisiana public correctional system had changed in any way in response to the privatization of its two facilities. The Secretary of Public Safety and Corrections did introduce a reporting system to monitor all of the institutions; however, this system might have been implemented in the absence of privatization.

New Mexico Evaluation

The discussion of the New Mexico evaluation is taken primarily from the report by Harer, Karacki, and Gaes (1995).

Charles Logan has published, "Well kept: Comparing quality of confinement in private and public prisons," as both a National Institute of Justice monograph and a condensed version in the *Journal of Criminal Law and Criminology* (Vol. 83, pp 577-613, 1992). Logan's comparison of private and public institutions is based on contrasting the operations of two women's prison in New Mexico and a Federal institution. Women prisoners in New Mexico were originally housed in a state facility which operated primarily as a diagnostic and orientation facility for men. To meet the needs of the female inmates, a private facility was built and operated by the Corrections Corporation of America (CCA) under contract to the state. Logan later collected a limited amount of data from a Federal women's facility to do a comparison of all three kinds of operations.

In both his monograph and paper, Logan first outlined a theoretical model, the Confinement model, which he used to form the basis for comparisons among the three institutions. He then proceeded to develop institution performance indicators (IPI's) which represented the various dimensions of his Confinement model. Logan's Confinement model is succinctly represented in his own words:

> The mission of a prison is to keep prisoners--to keep them in, keep them safe, keep them in line, keep them healthy, and keep them busy--and to do it with fairness, without undue suffering and as efficiently as possible. (Logan 1992: 580)

Thus, the dimensions which Logan used to compare institutions were security, safety, order, care, activity, justice, conditions, and management. We have little quarrel with Logan's conceptual framework, although we believe there are critical goals not adequately addressed by this model. In

Logan's approach to corrections, inmate programs are merely activities to "keep them busy." But, as the mission statements of most modern correctional systems imply, rather than merely "to keep them busy," prison programs are intended to provide inmates with a positive influence in their lives, afford them the opportunity to improve their skills, and provide a socializing agent so that they come to accept the moral and legal norms of society.

One of the fundamental problems with Logan's study is that with only three institutions to compare, he was limited in the kinds of analyses that could reasonably be used. Furthermore, he was really comparing the management of essentially the same New Mexico female inmate population over time by two different management groups (public versus private) housed in two different facilities. Almost as an afterthought, he contrasted this before/after longitudinal assessment to a population composed of imprisoned federal women. The appendices to Logan's NIJ monograph also include reports, written by two consultants, which described the state and private institutions and the events culminating in the transfer of female inmates from the New Mexico State prison to the privately run institution.

Logan used a large number of performance indicators which were quantitatively combined; however, the large number of measures used does not compensate for the very small sample under analysis.

Other problems with this study, however, arise from the ways in which Logan analyzed and interpreted the institution performance indicators that he used to compare the operations of the three facilities.

The Probable Bias in Institution Performance Indicators Based on Staff Perceptions

Almost all of the differences which favor the private facility over the two public facilities in the Logan study were based on staff perceptions as measured by the Prison Social Climate Survey (Saylor 1984) administered to staff at the three institutions. There are many reasons why staff surveys could have biased the results in favor of the private facility.

Clearly, staff at the private facility would be keenly aware that the success of their employment could depend, in part, on the responses they provided to the researcher. This most obvious, and potentially fatal flaw of the research, was discussed only superficially and then dismissed in the Logan report.

A second biasing influence was the fact that many of the staff selected for the private facility had worked in the public facility previously. It is likely that they would want to justify their decision to leave the state government to work in the private facility by favorably responding to the survey questions.

A third biasing influence in the measurement of these perceptions was the fact that the private facility was brand new, with many new staff as well as some experienced former state corrections staff. The facility built by the private corrections company was considered to be very well designed and staff were excited by working in this new environment. Yet, one wonders how their attitudes would have changed over time as the challenge of working in a new and exciting environment gives way to the daily routine of operating a correctional facility. We were so curious about the possible change in attitudes of staff over time that we asked the Corrections Department of New Mexico if we could re-administer the Prison Social Climate Survey at the private facility two years after the private operation began. However, management at the private facility would not allow this.

Another important biasing influence on staff perceptions was the low response rate among state and Federal employees. The private facility response rate was 72 percent while the two public facility response rates were less than 50 percent. Data from the Federal facility were collected in the very first year the Prison Social Climate Surveys were administered for the entire Bureau of Prisons. In subsequent administrations, the Bureau of Prisons has achieved no lower than a 72 percent response rate and as high as an 88 percent response rate from 1989 through 1994. Low response rates could be construed as indicating that only staff who had negative perceptions of the institutions were motivated to complete the Social Climate survey at the two public institutions.

The last important biasing influence in Logan's comparison across the three institutions and, perhaps the most damaging, is that Logan did not have a full complement of measures for each institution for computing an overall index of "quality." In particular, approximately 30 percent of the measures that were used in the comparison were missing for the Federal facility.

To exemplify this problem, suppose we are asked to rank order three employees on their overall performance based upon 10 performance indicators. For two employees, data are available on all ten measures; however, for the third employee, we only have information on 7 measures. Knowing this, should we still try to rank order all three employees on the overall performance index? Obviously not, yet this is exactly what Logan proceeded to do.

Interpreting Institution Performance Indicators

Another problem with the Logan study was what we believe to be the often questionable way in which Logan interpreted the institution performance indicators (IPI's). In all, Logan used 333 IPI's, most of which were based on staff perceptions measured by the Prison Social Climate Survey. For each of the 333 IPI's, Logan assigned a ++, +, =,-, or -- value to indicate whether an institution was much better, better, equal, or worse, or much worse than the comparison institution(s). It is noteworthy that a set of indicators and measures of correctional effectiveness derived from the professional judgment of multiple correctional experts and practitioners was available to Logan, namely the American Correctional Association's (ACA) standards. Logan chose to ignore the ACA measurement scheme, preferring his own instead. Logan himself admitted that "Interpreting each measurement item was often difficult." He also pointed out that many items could quite legitimately be interpreted and scored in many different ways. Yet despite his initial cautious remarks, he proceeded to make specific judgments, a priori, about whether a measurement item was positive or negative without consulting correctional experts. We found some of his judgments somewhat naive. A few examples should demonstrate this. We will focus here on only the relatively objective measures he culled from institution records for the institution security dimension.

In his section on security, Logan examined a number of objective indicators related to inmate contraband, drug use, misconduct, staffing patterns, and furloughs. Other than his inclusion of furloughs, we think these are valid issues related to institution security. Unfortunately, the way these measures were interpreted by Logan makes little or no sense from any sound correctional management point of view.

Logan compared the state and privately run prisons by looking at the rate shakedowns (i.e., contraband searches) were occurring and the proportion of shakedowns in which contraband was found. He gave the state facility credit for performing shakedowns more often; however, he gave the privately run facility more credit for finding contraband a lower proportion of time. This latter

judgment makes little sense. It may very well be that the state officials were doing a better job of finding contraband, were less tolerant of contraband, or both. These explanations would have led to an opposite conclusion from Logan's. Whereas Logan saw merit in finding less contraband, it is also reasonable to assume that finding more contraband is a reflection of thorough and well-trained security staff..

A second example involved the privately run facility, as well as the state and federal facility. Logan found that among inmates suspected of using drugs, fewer tested positive for opiates in the Federal facility than in either the state or privately run institution. Yet, Logan gave the Federal institution a demerit for conducting fewer tests among inmates suspected of drug use, while giving the privately run institution the highest rating for conducting the most urinalysis tests. The important issue here is whether inmates were using drugs in the institution. Conducting more tests might be construed as wasting money. How could the Federal institution be given credit for having the lowest opiate usage rate and simultaneously be judged inadequate in its drug testing policy while achieving a better result?

Another objective dimension reported by Logan was the rate at which inmates committed significant misconduct incidents during the 6-month period of the study. This is an example where Logan used his judgment, rather than conduct a statistical test. He found that the privately run prison which had a 0 rate of significant incidents was judged better than the federal prison which had a rate of .01 significant incidents in a 6-month period. These rates were not statistically different from each other, yet in Logan's judgment, the privately run facility performed better on this measurement item. Since there is so much reporting discretion in these kinds of incidents, we are not sure it is a fair assessment to conclude that the privately operated facility had out-performed the publicly operated facility when the rates for both facilities were so low.

In his analysis of institution security, Logan evaluated furlough rates as well. He claimed that furloughs indicated the extent to which prison administrators exposed the community to dangerous criminals. He reasoned that the higher the exposure (i.e., more furloughs), the lower the rating for the institution. Many correctional administrators look favorably at furloughs as a way of easing an inmate's transition back into society. Most correctional systems use furloughs on a very limited basis for inmates that are already close to their release date and who are thoroughly screened to minimize the risk to a community. A study conducted by Harer (1994) demonstrated that prison furloughs are one of the best predictors of an inmate's post-release success, when controlling for other risk predictors. Inmates who receive furloughs for the purpose of establishing community ties before release are less likely to be re-arrested or have their supervision revoked for the first three years after their release.

The final objective measure Logan used in the security section of his paper was the custody staffing levels of the different institutions. The Federal prison received 2 demerits (--), compared to the state and privately run institutions. The private, state, and Federal prisons had inmate-to-staff ratios of 3.1, 2.3, and 8.1 to one, respectively. How is it that the Federal institution, which had the lowest urinalysis rate, and an extremely low incident rate, could be judged unfavorably because it used fewer custody staff, by far, than the other two institutions, yet still managed to operate a safe and humane environment? A related problem with this interpretation is Logan's failure to understand the management context. The Bureau of Prisons considers all of its staff to be correctional officers first. Thus, teachers and vocational training instructors have both responsibilities as instructors and custodial staff. Under this model, if safety and security is still maintained, why would you debit an institution? The real issue here is whether a performance indicator is an outcome or a process measure. In the case of security, the primary outcomes are those that measure whether inmates and

staff are at risk to be assaulted or harmed. Other measures, such as staff to inmate ratios, shakedowns, and even furloughs are process measures that should be regarded as related to outcomes, but not as outcomes themselves.

The bottom line on the comparison between the private and the Federal facilities was that on objective dimensions, the Federal facility seemed to perform better. Since we regard the perceptual measures as likely biased, comparisons based on these measures strike us as highly questionable.

Although Logan has done a remarkable job conceptualizing the dimensions of confinement, we strongly believe that his lack of institutional experience limited his ability to compare the correctional institutions on specific performance indicators, especially since he relied on his own judgment about those performance indicators. His lack of a fundamental understanding about how prisons operate and how they are managed limits the usefulness of "Well Kept."

Putting the Public-Private Comparison in Perspective

In considering the history that led to the transfer of all female inmates from WNMAC, which served as the publicly-operated facility in this analysis, to a new CCA facility, which stood as the privately-operated facility, our impression is that we would have been surprised had the new facility not been an perceived as an improvement over the past by those staff who were surveyed for the purpose of this study.

First of all, as DiIulio commented in an appended section of the report, before the CCA facility opened, "New Mexico's women prisoners could be described as correctional 'orphans' who were housed in 'a make-shift' wing of Western New Mexico Correctional Facility, a large high-security institution for males." He further added that, "Before that, the women prisoners experienced frequent moves between different facilities, none of which was equipped to meet the needs of female inmates." DiIulio's comments seem to indicate that the conditions of confinement for the female offenders were not particularly favorable.

Moreover, when it is considered that the State correctional system was under court order to improve conditions (WNMAC in June 1988 was found to be in non-compliance in over one-third (35.7 percent) of the 42 compliance provisions audited), it certainly appears that problems existed in the operation of WNMAC. Our sense is that while State of New Mexico prison authorities attempted to provide for the female offender population at WNMAC, there were serious limits as to how successful this effort could be. This is suggested in the comments of Charles W. Thomas, a correctional consultant, who, in his assessment of WNMAC in October 1988, was very positive about institutional staff but was highly critical about institutional design features and the security problems these design flaws created. Indeed, our assumption is that the contract with CCA to operate a new female facility was intended, in part at least, to overcome problems which existed at WNMAC.

The point is that WNMAC was not just any State-operated facility for female offenders, but was instead a facility with major inadequacies, and CCA, far from being just another privately-operated female facility, was intended to replace WNMAC and presumably in the process to overcome the inadequacies of WNMAC. Under these circumstances, could CCA be anything but better?

Other Methodological Problems

In this last section, we list other methodological problems with the Logan study.

- Logan gave equal weight to each of his quality dimensions and sub-dimensions. Thus, a rating on security was considered just as important as a rating on activity. Most correctional experts consider security and safety to be the primary objectives of sound prison practices and would not rate all dimensions equivalently.

- Logan gave equal weight to each of his empirical measures, for example, the serious assault rate had no more weight as an index of "OVERALL" prison quality than how often inmates used the recreational facilities.

- He made no attempt to show if, and by how much, the subjective measures predicted, or were associated with, the objective measures.

- He ignored the magnitude of differences in item scores between institutions, forcing quantitative (interval scale) differences between institutions into a tripartite (+, -, and =) scale, while often making conceptually questionable decisions about whether high or low on the item score means "+". He then combined and re-quantified the tripartite difference measures using a conceptual method of scoring similar to ice hockey. We question the adequacy of this measurement process. A quantitative method could have been used.

- Although he purported to be looking only at three all-female institutions, Logan, without acknowledging it, introduced survey response bias by including responses by staff at the New Mexico State prison who worked with male inmates when making comparisons of staff Climate survey responses across institutions.

- Inmate survey data showed that the public New Mexico State facility outperformed the private facility in every dimension except "activity" (GAO report p. 28). This was contrary to the results based on staff perceptions. Why was there this discrepancy between inmate and staff perceptions? Are we to discount inmate perceptions based upon some underlying vested interest? Or perhaps the greater vested interest lies with the staff who had a financial stake in the success of the evaluation.

Although we find Logan's conceptualization of a theoretical framework from which to compare institutions appealing, for the reasons given above his attempt to evaluate the relative merits of public and private facilities falls far short of a rigorous or conclusive analysis. There was no indication in the report whether the State of New Mexico had changed its policy or procedures in response to the privatization of its female population. Furthermore, there is no indication in the report that there had been any innovation on the part of CCA in its management of the women prisoners.

Florida Evaluation

A recent study by Lanza-Kaduce and Parker (1998) compared the recidivism rates of inmates released from prisons operated by the Florida Department of Corrections to those inmates released from a

prison operated by the Corrections Corporation of America and a prison operated by Wackenhut Corrections Corporation. The at-risk release period for the offenders was 12 months and recidivism was defined either as a rearrest, a new offense, a new commitment, a technical violation, or a summary measure based on the first four indicators. Inmates from public facilities were matched with inmates from private facilities on the basis of classification (minimum, medium), offense category, race, prior incarcerations (0, 1, 2, or more), and age (25 or less, age 26 to 30, age 31 to 35, age 36 to 40, and age 41 or older). Of 300 releases from private prisons, only 196 matched pairs could be found. In fact, the researchers had to relax their categories to find even 196 matched pairs. The researchers also identified whether an inmate had participated in educational, vocational, substance abuse, behavioral education, or pre-release training. A seriousness of recidivism score was constructed based on the nature of the recidivism. The score ranged from 0 to 5. Zero indicated no recidivism, 1 indicated a technical violation, 2, a misdemeanor, 3, a drug or weapon possession offense, 4, a property offense, and 5, a violent or personal offense.

Lanza-Kaduce and Parker (1998) reported the following results: (1) private releasees had a lower recidivism percentage on every one of the 5 indicators except technical violations. The overall measure indicated a recidivism percentage of 17 percent for the inmates released from private prisons and 24 percent for inmates released from the public institutions. For the overall measure, this translated into a recidivism rate of 172 per 1,000 released inmates for the private institutions and 237 for the public facilities. The recidivism scale measuring seriousness indicated that public sector releasees were more likely to commit drug/weapon possession offenses, property offenses, and violent offenses. The mean level of seriousness on this 0 to 5 point scale was 3.43 for the public sector releasees and 2.32 for the private sector releasees.

Lanza-Kaduce and Parker (1998) also reported on the relative recidivism rates among releasees from the privately-operated facilities who successfully completed one or more of the programs previously listed against those who failed, dropped out, refused to participate, or were removed. Among the successful completers, 15 percent recidivated, while 40 percent of the noncompleters recidivated. We find this final result fraught with issues regarding selection bias. One can draw no conclusions about program effectiveness when you compare dropouts with those who complete a program. Under these circumstances, it is impossible to disentangle program effects from the inmate's underlying motivation to succeed (Pelissier, Rhodes, Gaes, Camp, O'Neil, Wallace, and Saylor 1998).

A critical assessment of this study has been written by the Florida Department of Corrections, Bureau of Research and Data Analysis (1998). The analysts writing this report noted four significant problems with the Lanza-Kaduce and Parker study. The first problem focuses on the putative equivalency of the private and matched public inmate releasees. The Bureau of Research and Data Analysis (BRDA) paper notes that while Lanza-Kaduce and Parker selected inmates who were minimum or medium custody, this is not the same as using the level of custody which was apparently higher, on average, for the inmates released from the public facility. Furthermore, publicly released inmates were more likely to have longer sentences, another indicator of the seriousness of the instant offense. Publicly imprisoned inmates served, on average, a much longer time than the privately held prisoners and inmates released from a public facility were more likely to have a term of supervision. This latter difference is quite important. As the BRDA researchers point out, the differences in supervision indicate that the inmates released from public institutions were more serious offenders, who were more closely monitored, thus magnifying re-arrest or other recidivism measures. This makes

the use of technical violations inappropriate. If an offender is not under supervision, he or she cannot be technically violated.

The BRDA researchers also found that offenders in the private sample had, on average, a less serious previous record. This was based on the number of prior incarcerations. Finally, the BRDA researchers were critical of the broad age categories used by Lanza-Kaduce and Parker. As the BRDA group noted, age is the most significant determinant of recidivism and either an exact match should have been used or a multivariate analysis controlling for age and some of these other variables should have been conducted.

A second, even more serious problem in the Lanza-Kaduce and Parker analysis is that 35 percent of the inmates included in the private sample had also spent a significant amount of time in a public facility. It would be impossible to disentangle the effect of the private "dose" from the public "dose." This might suggest a research design in which one compared exclusively private, exclusively public, and mixed public-private incarceration. But even this might be meaningless unless we can have assurances that the decision to select or place inmates into these facilities is not somehow entangled with their propensity to recidivate -- the problem of selection bias at a broader level.

As a third criticism, the BRDA researchers also criticized Lanza-Kaduce and Parker for using relatively small sample sizes. However, we would argue, if all of the other problems of this study could be addressed, the sample size was probably sufficient. A fourth, and more serious error, was the way in which Lanza-Kaduce and Parker procedurally measured recidivism. According to the BRDA group which had the original data, Lanza-Kaduce and Parker evaluated the recidivism of inmates released from private facilities in the period June 1, 1996, to September 30, 1996. The period for the inmates released from public facilities was January 1, 1996, to September 30, 1996. As we noted before, recidivism was assessed from the day of release until 12 months had been reached. Because there is a lag between the occurrence of a recidivism event and the recording of that event into the automated records, the recidivism differences reported by Lanza-Kaduce and Parker may be an artifact of the recording process. The recidivism data were gathered in November 1997, thus the publicly released inmates had, at most, a 23-month release period, while the privately released inmates had, at most, an 18-month release period. Depending on how long the lag is between the event and the recording of the event, this discrepancy between public and private release periods could seriously bias the results in favor of the private facility.

While this particular study of the relative differences in recidivism among privately and publicly incarcerated inmates had serious errors, we are skeptical that any such study can circumvent the problems associated with matching inmates and precluding selection bias. Aside from these methodological problems, what are the theoretical implications of such a contrast? On what theoretical basis would we expect privately and publicly operated prisons to be different in ways that would affect recidivism? If the issues revolve around programming, then it is certainly possible to evaluate inmate programs recognizing the same methodological problems with matching and selection bias. However, the public sector can also develop and deliver programs. In fact, many programs delivered in public prisons are the result of a contractual arrangement with a private provider. Finally, even if we could develop a satisfactory design to compare the recidivism rates of publicly and privately operated prisons, we would want to know what it is about the nature of operations at either the public or private facility that reduces criminality. Knowing this, we would export that knowledge to all of our prisons.

Summary of Existing Studies

For the most part, those who have evaluated private corrections in comparison to public corrections have concluded that the private correctional facilities performed as well or better than the public institutions. However, in our assessment of these evaluations, we find that most of these studies are fundamentally flawed, and we generally agree with the 1996 GAO report that there is "little information that is widely applicable to various correctional settings (p. 11)." We think this conclusion is still warranted despite the two recent evaluations conducted in Louisiana (Archambeault and Deis 1996) and Arizona (Thomas 1997a), and the recidivism study conducted by Lanza-Kaduce and Parker (1998).

In our opinion, the strongest of the existing studies are the Tennessee evaluation and the Washington State review. The Tennessee evaluation found that Corrections Corporation of America was running a prison on par with the two new facilities operated by the Tennessee Department of Corrections. The review conducted by Washington State noted that while it would be hard to generalize the findings to Washington (and, by implication, other states), it does appear that the experiences with privatization in Tennessee, Louisiana, and Florida have been positive. Even in these studies, though, there are serious shortcomings in the analyses (Thomas et al., 1996).

The most significant problem with all of these studies is that they fail to develop a coherent model of institution performance in terms of cost and quality of operations. Such a model would include the structure of the relationship between process and outcome measures. The model would also make explicit those factors that must be controlled to make institutional comparisons meaningful (Camp, Saylor and Harer 1997; Camp, Saylor and Wright 1998; Office of Research and Evaluation 1998; Saylor 1996). In this review, we have criticized researchers either for not using statistical adjustments or for incorrectly using univariate statistics. In most cases, it seems to us that researchers are inappropriately using univariate statistics to infer population differences when, in fact, they are using population data. We also were critical of Logan for not using statistics to assess the degree to which the private and public institutions were different. We think descriptive statistics could help in clarifying the strength of the differences between institutions, but this must be done in conjunction with a model that allows us to understand the relationship between outcome and process variables while simultaneously controlling for the important substantive differences among the institutions.

In Table 3, we summarize some of the other characteristics and failures of these studies. Most of the studies do not use a variety of different measurement approaches; fail to study equivalent inmate populations or have insufficient information on the comparability of the offenders; use inappropriate or no statistics; and, use a single point in time, rather than a longitudinal assessment. Most also fail to explain the nature of private innovation, the impact of privatization on the entire system, or how innovation affects performance in terms of cost and quality of operations.

Practically all of the evaluation research literature that has been produced on privatization has been designed to compare the relative performance of the public or private operation of a prison. The issue has been framed as a competition and the scorecard has been based on cost and quality. Although this will continue to be an important issue in the future, there are other fundamental ways of framing the research questions. A second, yet complementary approach, is to ask the following two questions: How does privatization change the provision of correctional services, especially in terms of changing

operations in public sector prisons, even in public systems that are generally considered to be well run and accountable to the public interest? How does public sector management of prisons influence the operations of privately managed prisons within its jurisdiction? The ways in which these systemic changes take place depend on the approach to privatization each jurisdiction takes.

Since the majority of experience in managing inmates comes from the public sector, the private sector must begin from that knowledge base. Indeed, there has been a great deal of public sector innovation in corrections, some of it borrowed from private sector operations in other industries. Unit management, objective classification of inmates, strategic planning, and the concept of direct supervision all preceded the introduction of private sector management. There is no evidence to contradict the assertion that basic management philosophy, technology, and correctional expertise have been transferred to the private sector from the public sector. Often, there is a direct transfer of personnel and policies. The question, then, is how does the private sector add value to prison operations. One can even take a broad view of this issue and consider the increased flexibility of a system that might use privatization to alleviate crowding or handle special needs populations.

The usual response is that market pressures force the private sector into a more efficient use of resources. In particular, the market supposedly creates incentive for efficiencies in two general areas. First, labor is more efficiently utilized in the private sector. This is important because labor costs typically account for 65-70 percent of the operational costs of a prison. Second, there are efficiencies realized from more flexible purchasing practices.

However, despite the claims about cost savings and increased value, in reality there have been no empirical studies documenting innovations in the private sector in the use of labor or the purchasing of goods and services. What is needed are case studies that document the innovations developed by the private sector that produce added value in the use of labor or in purchasing practices (Camp 1998). We also need to document how the labor use and purchasing practices of public sector prisons change as a result of the dynamic interplay between public and private sectors.

It appears to us that the private sector's approach to corrections has been to build upon correctional practices that already exist in well-run public prisons. The private sector does not appear to argue that they run prisons in a dramatically different way based on different philosophies of managing inmates. However, there has been little attention given to documenting the private sector approach to innovation or to the impact of competition from the private sector on the practices of the public sector.

A corollary to these systemic questions is the issue of whether the private sector is delivering too little or the public sector is delivering too much. Does the private sector save on costs by providing fewer essential services to inmates than the public sector? If so, what are the short- and long-term consequences of this lack of services? Is there a possibility that public sector prisons provide "too much" quality to inmates? That is, do they provide services to inmates that are not as readily available to some law-abiding members of society (usually indigent citizens)? While most correctional administrators (public and private) agree that U.S. prisons should meet American Correctional Association (ACA) accreditation standards at a minimum, there is probably much less agreement as to how far above the bar set by ACA standards those prisons should operate to perform effectively. How much education is excessive? Is a community standard the appropriate standard for medical care? Should we provide inmates with job training when other poor, law-abiding civilians may have less access to such training? Privatization brings these paradoxical public policy issues into sharper focus.

Quite similar to these arguments is Harding's (1997) contention that the next generation of privatization research should look for evidence of system-wide changes. Some evidence of such changes can be found in Vagg's (1994) description of the introduction of privatization into the English penal system. Vagg, who reserves judgment on the merits of privatization, notes that the introduction of the first private remand[48] prison in England—The Wolds, which opened in 1992—may have improved accountability for how inmates are treated in public sector prisons as well. As he notes (Vagg 1994: 307), "... private prisons have the potential to offer improved prison regimes; and ironically, in England, they were a key factor in persuading the administration that standards were necessary, if only for the purpose of monitoring contractual compliance ..." According to Vagg, the English government had been reluctant to establish prison standards such as ACA standards which are used in the U.S. With the need to oversee the Wolds contract, performance indicators were specified that the contractor, Group 4 Remand Services, Ltd., had to meet. Standards were established for security; health, safety, and hygiene; reception, registration, and discharge; regime activities (such as the grievance procedure); inmate services; and other prison functions. The standards went so far as to specify the amount of time that prisoners should spend out of cell, a key point as there was public concern about unsentenced inmates being locked in their cells for extended periods in older remand centers under public control (see James, Bottomley, Liebling, and Clare 1997). This explication of a system change introduced by adding privately operated beds is not typical in the evaluation literature on privatization. Similar efforts must be undertaken in the United States.

There are well over 100 adult correctional institutions currently being operated by private corrections companies. Yet we have analyses on only a handful. Even if these studies were rigorous and methodologically sound, the private institutions captured in these analyses may, or may not, represent the performance of the industry as a whole.

In the next section of this critique, we propose a model designed to address many of the problems we have noted throughout this paper.

Outline of How the Taft Evaluation Meets the Criteria of a Sound Evaluation

The proposed evaluation of the experiences of the Federal Bureau of Prisons with the private Federal prison operated by Wackenhut Corrections Corporation in Taft, California addresses many of the criticisms of existing evaluations of privatization. A complete discussion of the proposed evaluation can be found elsewhere (Office of Research and Evaluation, 1998). The discussion proceeds by addressing each of the areas covered in the summary table of existing quality evaluations.

System Impact: The system impact of the private operation of the Taft prison upon other operations in the Federal Bureau of Prisons is addressed by the modeling approach that will be used in the evaluation. At about the same time that the Taft prison was built, three other low security institutions were built by the Federal Bureau of Prisons in Yazoo City, Mississippi, Elkton, Ohio, and Forrest City, Arkansas. These three institutions are the institutions against which Taft will be compared. Taft and two of the comparison institutions also have minimum-security camps as part of the facility. In

48 A remand prison in the United Kingdom functions the same as a jail in the United States criminal justice system.

this discussion, though, we focus primarily upon the main facilities that house the low-security inmates.

In order to ensure that the institutions are compared on measures that are adjusted for features that are unrelated to institutional performance, it is necessary to develop models of the outcome measures that follow the procedures suggested by Saylor (1996) and Camp and colleagues (Camp, Saylor and Harer 1997; Camp, Saylor and Wright 1998). In essence, this means that both Taft and the three BOP comparison institutions will be evaluated against the performance of all of the other low security institutions in the BOP. As such, it will be possible to see how outcome measures at the Taft institution, the three comparison institutions, and the other low security BOP institutions change over the 5 years of the evaluation. This should provide information about how BOP operations change in response to the experience of having a private-sector institution as part of the BOP.

Innovation: As has been noted previously, innovation is touted as one of the reasons that private-sector companies can operate prisons more efficiently than the public sector without sacrificing the quality of services provided to inmates and the public. However, descriptions of how private-sector operators actually "do" corrections differently are usually missing (Camp 1998). To capture this component in the Taft evaluation, a full-time, on-site researcher has been placed at Taft. It is the role of this researcher to document the more qualitative aspects of how Wackenhut operates differently than the BOP. In addition, by examining organizational charts and work patterns, a close examination of the use of staff by Wackenhut and the BOP is planned.

Measures: The evaluation of Taft will use many different sources of information. There will be an audit/compliance component. All of the institutions, Taft as well as the BOP comparison institutions, are subject to ACA accreditation during the study period. In addition, there are plans to make use of periodic reviews conducted by the BOP. The Office of Research and Evaluation also plans to gather information through the annual survey of staff. Taft will participate in the staff survey, the Prison Social Climate Survey, as do all other BOP correctional facilities. A corresponding inmate survey of the social climate will also be administered at Taft and the comparison institutions. The inmate survey of the social climate is conducted on an "as needed" basis unlike the staff survey which has been conducted every year since 1988. Official records will comprise an integral part of the evaluation data. For example, Wackenhut uses the same disciplinary process as the Federal Bureau of Prisons and enters the disciplinary data into the same centralized database used by all BOP correctional facilities. Finally, numerous and periodic site visits to Taft and the comparison institutions are already, and will continue to be, part of the data collection effort for the evaluation.

Points in Time: As has been mentioned, the time frame for the evaluation is a 5 year time period. Therefore, the study is less likely to be influenced by atypical performance by any of the institutions over a relatively short period of time.

Equivalent Facilities: The Taft facility, as well as the three formal comparison institutions, were all built on an almost identical architectural plan at about the same time. While the wardens at all four facilities have been free to enhance the physical plant, there have not been any major renovations such as the construction of new buildings or the relocation of security fences at any of the four study facilities.

Equivalent Inmates: All of the study institutions house low-security inmates as defined by the Federal Bureau of Prisons classification system. None of the institutions have units for special needs inmates, such as units for those with severe medical or psychological problems or residential drug-treatment

programs. Each of the institutions receives inmates as proscribed by BOP policy. There is no attempt to send specific types of inmates to any of the institutions. Nonetheless, assignment of inmates to the institutions is not random. For example, Taft is located near Los Angeles. Taft receives a large number of Hispanic inmates because of the BOP policy of locating inmates near their point of release when this does not conflict with other BOP management concerns. Any discrepancy between the institutions in the characteristics of the inmates, though, will be addressed in statistical models used to generate the comparison measures.

Model Approach: Statistical models will be utilized that are appropriate for the different types of data collected as part of the Taft evaluation. For example, Saylor (1996) has demonstrated how residuals from regression models can be utilized to assess whether institutions are performing better, worse, or the same as expected on measures of inmate per capita cost and staff perceptions of crowding. Camp and colleagues (Camp, Saylor and Harer 1997; Camp, Saylor and Wright 1998) have demonstrated how hierarchical linear models can be used to assess institution influences on measures obtained from staff surveys, such as organizational commitment or evaluations of institutional operations. While the details of the models employed in the respective studies are beyond the scope of this discussion, the use of the measures derived is quite straight-forward. With all of the models used in the analyses, the end result is the ability to evaluate how institutions perform relative to other institutions, *after* controlling for factors that are known to be unrelated to management performance. As an example, consider evaluations of institutional operations. Experienced and inexperienced staff at the same institution differ in the evaluations that they provide of institutional operations. If we compare two institutions for "typical" staff perceptions of institutional operations, we would certainly want to control for any differences in the institutions in the proportions of experienced and inexperienced staff providing the evaluations.

Statistical Approach: Most of the statistics employed in the Taft evaluation will be used to statistically adjust comparison measures. For the most part, the emphasis is not upon making inferences to some population of prisons. For the most part, we are dealing with the population of low-security, Federal prisons. There will be some use of inferential statistics when the data come from samples of staff or inmates at the respective institutions.

Type of Facility: All of the institutions in the Taft evaluation house only adult offenders.

Security Level: All of the institutions are designed to house low-security inmates. For the most part, that is the type of inmate that is housed at the facilities.

Gender of Inmates: All of the inmates are male.

Concluding Remarks

Most evaluations of the respective strengths and weaknesses of public and private prisons have not relied upon strong theory to guide the evaluations. In the Taft evaluation, the theory of what constitutes a "good" prison as outlined by academics such as Charles Logan (Logan 1990) is supplemented with the collective practical knowledge of practitioners in the Federal Bureau of Prisons. Management at the Bureau have developed a performance measurement system called the Executive Staff Management Indicators (ESMI) module. ESMI is organized around six goals. Within

each goal, vital functions that support the achievement of those goals are outlined. The organization of these performance measures is based upon the collective wisdom and years of corrections experience reflected in the current and past compositions of the executive management staff at the BOP.

This theoretical approach guides the choice of measures to evaluate the performance of Taft and the three comparison BOP institutions. The data used in the evaluation will come from multiple sources. Therefore it will be possible in some instances to test for consistency in conclusions suggested by reliance upon different sources of information. The data itself will be adjusted by statistical models to control for differences between the institutions that are not related to performance. This information, in turn, will be supplemented with an examination of organizational innovations in correctional practices at Taft.

The proposed evaluation of Taft avoids some of the more obvious problems that have plagued existing evaluations of privatized prisons. The proposed evaluation does not, however, circumvent all problems. For example, the evaluation is still for only one jurisdiction, the U.S. Federal Government, for one private company, Wackenhut, and for only low- and minimum-security inmates. Likewise, all of the inmates are male. The study does, we think, point the way for collecting systematic evidence about the types of changes privatization produces in the operations of public systems, how private firms innovate in providing services to inmates, and whether public and private firms can provide comparable services to inmates given the constraints faced by the Federal Bureau of Prisons. To date, we have not generally found that this type of information is readily available in existing evaluations.

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Table 1. Average Monthly Counts							
	Institution Operated By: Wackenhut Corrections Corporation (WCC), Corrections Corporation of America (CCA), State of Louisiana (Public)						
	WCC	Public	CCA	Public	Public	Public	Public
Institution	Allen	Avoyelles	Winn	Hunt	Dixon	Angola	Wade
Mean Inmate Population	1206.9	1227.2	1214.9	1775.5	1367.4	4741.8	1021.9
Performance Measure							
escapes	3	0	5	5	4		1
assaults on staff with injury	1.78	1.06	2.26	1.64	1.31		1.33
assaults on staff/serious injury	0.0455	0.1389	0	0	0.139	0.278	
assaults on staff/non-serious injury	1.73	0.917	2.261	1.639	1.167		1.278
Cat. I,II,III incidents	28	38.5	30	55.8	26.4		22.3
aggravated sex offenses	11.1	4.3	8.5	6.1	2		3.9
aggravated cat I sex offenses	2.023	2.028	1.217	2.861	1.056		1.611
aggravated class II sex offenses	9.114	2.222	7.283	3.251	0.9444		2.778
institutional disturbances	0.9555	4.5	4.457	17.556	3.444		1.694
major inst. disturbances	0.114	0.194	0.0455	0.0278	0		0.0833
minor inst disturbances	0.841	4.306	4.413	17.556	1.444		1.694
assaults/inmate on inmate	13.455	26.278	17.421	28.083	18.417		14.083
assaults/serious injuries	0.136	1.056	0.304	0.1389	0.3043		0.111
assaults/non-serious injuries	13.318	25.222	13.978	27.944	18.028		13.318
assaults/weapon	2.523		2.652	0.0833	0.1111	0.0556	0.0556
assaults/no weapon	10.932	22.417	11.63	19.778	16.417		11.778
assaults/weapon and serious injury	0.068	0.528	0.261				
assaults/weapon and no serious injury	2.455	3.333	2.391				
assaults/no weapon/serious injury	0.068	0.528	0.043				
assaults/no weapon/no serious injury	10.864	21.889	11.587				
total disciplinary actions	374.1	859.8	459.6	567.1	687.2	1009	1779
schedule A disciplinary actions	42.3	282.3	153.9	103.4	102.2	258.9	396.7
schedule B disciplinary actions	325.9	515.4	291.7	399.1	558.9	697.8	1274.1
monthly gunshots	0.25	2.25	0.152	0.9722	2.5833	7.222	1

Table 2. Average Monthly Rates / 1,000							
	Institution Operated By: Wackenhut Corrections Corporation (WCC), Corrections Corporation of America (CCA), State of Louisiana (Public)						
	WCC	Public	CCA	Public	Public	Public	Public

Institution	Allen	Avoyelles	Winn	Hunt	Dixon	Angola	Wade
Mean Inmate Population	1206.9	1227.2	1214.9	1775.5	1367.4	4741.8	1021.9
Performance Measure							
escapes	2.4857	0		2.8161	2.9253	1.2653	0.9786
assaults on staff with injury	1.4749	0.8638	1.8602	0.9237	0.958		1.3015
assaults on staff/serious injury	0.0377	0.1132	0	0	0.1017	0.0586	
assaults on staff/non-serious injury	1.4334	0.7472	1.8611	0.9231	0.8534		1.2506
Cat. I,II,III incidents	23.2	31.372	24.693	31.428	19.307		21.822
aggravated sex offenses		3.5039	6.9965	2.4357	1.4626	5.8838	3.8164
aggravated cat I sex offenses		1.6525	1.0017	1.6114	0.7723	1.5231	1.5765
aggravated class II sex offenses		1.8706	5.9947	1.831	0.6907	4.3585	2.7185
institutional disturbances	0.7917	3.6669	3.6686		1.1956	5.6295	1.6577
major inst. disturbances	0.0945	0.1581	0.0375	0.0157	0		0.0815
minor inst disturbances	0.6968	3.5088	3.6324		1.1056	5.2077	1.6577
assaults/inmate on inmate	11.148		14.339	15.817	13.469	14.294	13.781
assaults/serious injuries	0.1127		0.2502	0.0782	0.2225	0.1172	0.1086
assaults/non-serious injuries	11.035		14.595	15.739	13.184	14.176	13.033
assaults/weapon	2.0905		2.1829	0.0469	0.0812	0.0117	0.0544
assaults/no weapon	9.0579		9.5728	11.139	12.006	8.1486	11.526
assaults/weapon and serious injury	0.0563	0.4302	0.2148	0	0	0	0
assaults/weapon and no serious injury	2.0341	2.7159	1.9681	0	0	0	0
assaults/no weapon/serious injury	0.0563	0.4302	0.0354	0	0	0	0
assaults/no weapon/no serious injury	9.0016	17.837	9.5374	0	0	0	0
total disciplinary actions	309.97	700.62	378.3	319.4	502.56	212.79	1740.9
schedule A disciplinary actions	35.048	230.04	126.68	58.237	74.74	54.6	388.2
schedule B disciplinary actions	270.03	419.98	240.1	224.78	408.73	147.16	1246.8
monthly gunshots	0.2071	1.8334	0.1251	0.5476	1.8892	1.5231	0.9786

Appendix 3

Legal Issues Relevant to Private Prisons

by

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Appendix 3

Legal Issues Relevant to Private Prisons

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1. Introduction

The legal issues affecting private prisons have attracted nearly as much attention as the moral, cost, and performance-related issues surrounding the correctional privatization movement. From questions about the constitutionality of delegating the incarceration function in the first place, to the legality of private prison guards going on strike, the legal dimensions of correctional privatization have often elicited great concern from public correctional officials and the general public. Specific concerns have, however, changed over time, as practical experience and legal precedent have provided answers to many previously unresolved questions. For example, a fundamental issue that arose in the mid-1980s along with the birth of the private prison industry was whether private prisons would be considered "state actors" amenable to inmate civil rights suits and subject to all of the constitutional standards applicable to public prisons. Over the past several years, courts have affirmatively answered that question. Likewise, the Supreme Court last year ruled on another significant matter, deciding that private prison guards may not share public correctional officers' qualified immunity from suit in federal civil rights actions.[1]

While a host of subsidiary legal and contractual matters continue to receive attention and provoke discussion, governments are becoming more active in passing legislation, issuing regulations, and insisting on contractual provisions that limit contractor discretion in important areas of public policy. Public correctional authorities and their lawyers are becoming more sophisticated about the pitfalls of private prison contracting and how governments can protect themselves from both a cost and performance standpoint. One highly-publicized example of this phenomenon involves states passing legislation to address the growing number of private prisons that accept prisoners from outside the state.

Few attempts have been made to address the entire breadth of legal issues surrounding private prisons in a relatively succinct form.[2] This appendix makes such an attempt, employing a straightforward presentation that should be useful to correctional specialists and laypersons alike. It relies on a variety of sources for its information, including private prison contracts and requests for proposals (RFPs), law review and other journal articles, federal and state statutory and case law, survey information gleaned from federal and state officials summarized in other parts of this report, and interviews with public and private correctional authorities and specialists.

This appendix traces the legal system's accommodation of prison privatization as the latter has evolved over the past 15 years. The report begins with the broadest constitutional questions, raised at the outset of the privatization debate, and concludes with a discussion of the latest efforts of state legislatures to gain greater control over the incarceration of out-of-state inmates in private prisons within their borders. Only legal issues that significantly turn on private entities as prison operators are examined.

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1 *Richardson v. McKnight,* 117 S. Ct. 2100 (1997).

2 One such early effort, which was quite detailed, nevertheless failed to treat some issues in depth, e.g. public access to private prison records. Moreover, this study is now a decade old and has been superseded in many subjects by recent legal developments. *See* I. Robbins, The Legal Dimensions of Private Incarceration 396-413 (1988).

The focus of the report is on practical issues of a kind most likely to confront public and private corrections officials. It also focuses on contracts for the management of private prisons, rather than on contracts for the design and construction and management of future correctional facilities: except for detailed public finance issues that vary from jurisdiction to jurisdiction, there are few issues of any significance peculiar to private prison design construction. Finally, the report addresses both publicly- and privately-owned facilities managed by private contractors, although there is a slightly greater emphasis on publicly-owned prisons. Where relevant, legal distinctions that turn on ownership are noted (e.g., in the case of potential contractor bankruptcies).

This report does not make any recommendations *per se*, but occasionally notes where certain statutory or contractual mechanisms have yielded positive and negative results. The major issues are arranged by section.

2. The Legality of Delegating Correctional Services to Private Contractors Generally

When the whole enterprise of correctional privatization has been challenged, the legal basis for such an action has often been couched in terms of constitutional 'delegation' issues. At the heart of these constitutional considerations is the worry that political accountability and disinterested decision making may be lost when administration and operation of places of incarceration are turned over to the private sector -- something that, prior to the mid-1980's, had not been encountered. Critics have also raised particular concerns about private correctional contractors' financial interests leading them to minimize releases and maximize sentences to keep their facilities filled. These core concerns have seemed to reinforce doubts about the overall propriety of delegating the state's power to incarcerate to private, for-profit corporations.

Despite these worries, no serious delegation challenge has been mounted against a statute or contract allowing the private sector to incarcerate inmates. Although delegation concerns were prominently raised in the 1980s as a potential roadblock to correctional privatization,[3] few observers today believe that, with certain safeguards in place, a government may not legally contract out its power to incarcerate.[4] There now appears to be broad agreement that delegation concerns, if any, do not hinge on the overall policy choice of entrusting the day-to-day management of prisons to private parties, but rather on the details of how such transfers of responsibility are structured (including the rules by which such prisons are intended to operate), and who has ultimate authority for a number of decisions affecting inmate rights and welfare.

As discussed below, the often diffuse "delegation" concerns expressed about prison privatization tend to subsume or confuse several discrete legal issues, including the federal constitutional "delegation doctrine," state constitutional delegation standards, the due process requirements of the U.S. Constitution (made applicable to states and local governments through the Fourteenth Amendment), and specific questions about statutory enabling authorization that may vary from jurisdiction to jurisdiction. It is apparent, however, that while modern challenges to correctional privatization may be couched in terms of "delegation," the analytical basis for these challenges will usually turn on due process concerns. A due process analysis is particularly sensitive to the need to have state correctional officials retain responsibility for promulgating many kinds of prison rules and making final decisions on release-related matters such as sentencing, parole, discipline, 'good time' awards, work assignments, and possibly classification. A second type of delegation challenge is often based on inadequate privatization enabling legislation.

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3 *See, e.g.,* Field, Note, *Making Prisons Private: An Improper Delegation of a Government Power,* 15 Hofstra L. Rev. 649 (1987); Robbins, The Legal Dimensions of Private Incarceration, *supra* note 2 at 396-413.

4 Perhaps acknowledging the contemporary importance of privatization generally, as well as the history of private prisons in this country, no one appears to have convincingly argued that the running of prisons, as opposed to the decisional control over the incarceration of inmates in the first place (a police power), is so much a 'core' governmental function that it may *never,* even with proper safeguards, be delegated to private parties as a *legal* (as opposed to moral or ethical) matter. While at least one article has made that argument, it tends to ignore the details of delegation jurisprudence and the degree to which government oversight and accountability can be built into a prison privatization arrangement. *See Making Prisons Private: An Improper Delegation of a Government Power, supra* note 3.

A. The Current Limits of Federal and State Delegation Principles

Delegation principles at the federal and state level safeguard against the transfer of government powers to public and private bodies without proper constraints. However, reflecting political reality as much as legal doctrine, courts today are unlikely to invalidate an entire prison privatization arrangement on delegation grounds.[5] The reason is twofold. First, in the modern era, courts have given political leaders wide discretion in determining how to implement policy decisions, including reliance on the private sector.[6] The tendency is to view most of the functions transferred to private agencies (as well as subordinate public agencies) as largely or purely *administrative* in nature. Only delegated rule making and adjudication functions -- which directly purport to exercise a government power -- are usually deemed to require special judicial scrutiny.[7]

Second, the delegation doctrine at the federal level has effectively become moribund over the last half-century,[8] a telling reflection of the rise of the administrative state. Delegations to administrative agencies have been so liberally construed that private delegations have tended to be viewed in the same light despite their significantly different factual and ethical attributes. Reflecting this trend, the Supreme Court has sometimes enunciated the principle of nondelegation, but has almost without exception sustained the constitutionality of challenged delegations. As discussed below, rather than invalidating private delegations outright, the Court has used the due process provisions of the Fifth and Fourteenth Amendments of the Constitution to protect the fundamental interests of those affected by a delegation. At the state level, courts have breathed more life into state constitutions concerning delegation questions, but their analysis has generally tended to recapitulate the due process concerns identified by federal courts.

The weakness of the federal delegation doctrine is starkly indicated by the fact that in the area of *private delegations*, as opposed to delegations of power to executive branch agencies, the Supreme Court has not invalidated a delegation since the New Deal-era case of *Carter v. Carter Coal Co.*[9] Since that time, the Court has only haphazardly addressed the delegation doctrine, and even then, only in public delegation contexts where property, rather than liberty, interests were at stake.[10] Insofar as these cases collectively have any indirect application to the privatization context, they simply stand for the proposition that delegations of legislative and policy-making power must be narrowly

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5 Possible exceptions may include privatization arrangements where due process is violated or where little or no statutory authority for the delegation exists. *See* pp. 5-6 *infra.*

6 *See e.g. Berman v. Parker,* 348 U.S. 26, 33-34 (1954) (upholding reliance on private companies to implement federal urban redevelopment policy).

7 *See generally* Lawrence, *Private Exercise of Governmental Power,* 61 Ind. L.J. 647, 650-653.

8 *See generally, e.g.,* K. Davis, Administrative Law Treatise § 3. *See also* Robbins, *The Impact of the Delegation Doctrine on Prison Privatization,* 35 U.C.L.A. L. Rev 911, 917-920, 926 (1988).

9 298 U.S. 238 (1936). The Court struck down a federal statute allowing a majority of miners and producers to agree on wages and hours that would be binding on minority members of the industry.

10 *See, e.g., Industrial Union Dep't v. American Petroleum Institute (the Benzene Case),* 448 U.S. 607 (1980); *Immigration and Naturalization Service v. Chadha,* 462 U.S. 919 (1983). The Court did once, in 1958, allude to the fact that it would apply a stricter standard for cases involving liberty interests, *see Kent v. Dulles,* 357 U.S. 116, but this principle, has never received further elaboration.

construed and have a clear, unambiguous statutory basis.[11] In particular, these cases favor standards ensuring that elected officials make important policy choices, private officials have a sufficiently clear "intelligible principle" to channel their delegated discretion, and "ascertainable standards" exist by which reviewing courts can evaluate such discretion.[12]

Under *a post-Carter* delegation analysis, a legitimate delegation challenge might be sustained if a new prison privatization arrangement were undertaken with no statutory authorization, or pursuant to a statutory or contractual scheme that left broad areas of sensitive decision-making implicating due process requirements -- for example, disciplinary proceedings or the formulation of release-related rules -- to private correctional officials' discretion. This is generally how various states have applied their own delegation doctrines: courts have struck down statutes granting rulemaking and adjudication authority to private parties where the state did not retain ultimate authority to accept, reject, or modify administrative rules and review adjudicative determinations.[13]

As a matter of practical and political reality, courts may be wary of invalidating on delegation grounds fully operational privatization contracts, even if they lack what would otherwise be viewed as proper statutory authorization.[14] Moreover, contract provisions agreed to by governments and private contractors may obviate otherwise defective statutes, depriving potential litigants of an actual harm or controversy. Still, in the case of new or planned operations, delegation-type challenges based on deficient legislation might emerge that require statutory remediation.[15]

Both for reasons of litigation prevention and sound public policy, few would argue against the long-term wisdom of adopting some kind of meaningful and comprehensive statutory authorization. Adopting some minimal statutory scheme strengthens the public legitimacy of privatization and can ensure that there is some set of minimal standards below which contractual arrangements may not fall.

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11 The underlying purpose of delegation principles derives from the separation of powers notions, which protects the polity from uncontrolled discretionary power. The weakness of the delegation principles' relevance to private delegations is underscored by the fact that insofar as the purpose of the separation-of-powers requirement underlying the delegation doctrine is to protect individual liberty by dispersing power, then private delegations "actually promote that very goal, because power is spread still further [beyond state bodies]. One need not carry the argument that far, however, to see that the separation-of -powers principle is a weak foundation for limiting private delegations." Lawrence, *Private Exercise of Governmental Power, supra* note 7 at 665-66 (1986).

12 *See, e.g., Industrial Union Dep't, supra* note 10 at 686. The meaning of "intelligible principle" has varied somewhat from case to case but generally implies a well articulated rationale as to why a delegation is warranted in the first place. *See, e.g., J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928).

13 *See* Robbins, *The Impact of the Delegation Doctrine on Prison Privatization, supra* note 8 at 930-950, for a comprehensive discussion of state law approaches to the delegation doctrine. For example, in one leading case, a court invalidated the Oregon Public Service Commission's attempt to adopt, without discussion, safety code revisions (including future revisions) proposed by private committees of interested parties. *Hillman v. Northern Wasco County Peoples' Utility District,* 213 Ore. 264, 323 P.2d 664 (1958), *overruled on other grounds, Maulding v. Clackamas County,* 278 Ore. 359, 563 P.2d 731 (1977).

14 This would be especially true in the case of a newly-constructed private facility where millions of dollars of public funds had already been invested in the project.

15 Although even in that case, the speculative or premature nature of some legal challenges may result in dismissal. *See, e.g., Ohio Patrolmen's Benevolent Ass'n. v. Repke,* 1995 Ohio App.; LEXIS 5876 (1995) (nondelegation issue deemed premature, not ripe for review).

To date, however, some 20 states have not expressly authorized private prisons,[16] and of those, five have gone ahead with some form of private contracting for imprisonment.[17] The federal government, though possibly without a broad authorization to privatize,[18] has nevertheless secured congressional authorization to pursue two privatization arrangements.[19] The tendency among many jurisdictions moving ahead with correctional privatization has been to rely on contractual safeguards to address the due process problems potentially raised by an inadequate statutory framework.

In sum, while sound, detailed enabling legislation may help to create a firmer basis for private correctional accountability, only in certain situations is a statutory deficiency likely to give rise to a delegation challenge that jeopardizes an entire privatization enterprise.[20] Challenges to

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16 The 20 states are Alabama, California, Delaware, Hawaii, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Dakota, Rhode Island, South Dakota, South Carolina, Vermont, Washington, and Wisconsin. The state of Illinois actually expressly *prohibits* private prisons.

17 Kansas, Hawaii, Idaho, Minnesota, and Missouri. Kansas has required its inmates to be placed in private in-state facilities, while the other states have sent some of their prisoners to out-of-state private prisons.

18 The general legislative basis for the Federal Bureau of Prisons entering into contracts for the incarceration of prisoners in the private sector has not been entirely clear. The BOP has, since 1983, maintained that it has the authority to make contracts for the secure confinement of adult prisoners in the private sector. At least one scholarly commentator, as well as the General Accounting Office, have argued that BOP lacks such authority. *See* Robbins, The Legal Dimensions of Private Incarceration, *supra* note 2 at 396-413; U.S. General Accounting Office, *Private Prisons: Cost Savings and BOP's Statutory Authority Need to be Resolved,* GAO Report No. GAO/GGD-91-21 (Feb. 1991) at 45-50. After several years of intensive debate, the momentum to create a more explicit basis for overall federal prison privatization has appeared to die down, and BOP has pushed ahead with new privatization plans specific statutory authority being employed. *See* fn. 19, *infra.*

BOP maintains that 18 U.S.C. § 3621(b) provides the Bureau with independent authority to contract with the private sector for secure adult prison facilities. The section states:

(b) PLACE OF IMPRISONMENT.-- The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, *whether maintained by the Federal Government or otherwise. . . .*

(emphasis supplied). Because several other provisions in Title 18 specify the kinds of arrangements that BOP may make to obtain prison facilities, and allow the use of only one category of nonfederal facilities -- those operated by state and local governments and furnished to the federal government by way of contract -- some observers charge that the general language in § 3621(b) cannot extend to *private* facilities. The clear inference, they maintain, is that Congress failed to provide for any arrangements such as private incarceration that are not expressly authorized. *See* 2A Sutherland on Statutory Construction § 47.23 (4th ed. 1984) (designation of specific provisions for executing certain functions implies exclusion of other, more general provision). Thus, 18 U.S.C. § 4002 provides that the Attorney General may contract with state and local governments for "the imprisonment, subsistence, care, and proper employment" of prisoners for up to three years, and 18 U.S.C. § 4003 authorizes the Attorney General to build new prison facilities if such state or local governments are unwilling or unable to enter into such contracts or if suitable facilities are not available at a reasonable cost. There are no provisions addressing places of prisoner confinement in the private sector. By contrast, other statutes involving the confinement of persons have explicitly authorized the use of private sector facilities for such confinement. *See, e.g.,* 18 U.S.C. § 4013 (authorizing the U.S. Marshals Service to contract with private facilities for the housing of federal pretrial detainees); 18 U.S.C. §§ 5040 (permitting the housing of juvenile offenders in private facilities).

19 The BOP's privately-managed facility in Taft, California was authorized in a 1996 appropriations bill (Conference Report 104-863 to Public Law 104-208, Sept. 28, 1996), while the privatization dimension of the federal takeover of the District of Columbia's Lorton, Virginia facility was provided for in the National Capital Revitalization and Self-Government Act of 1997 (Pub. L. No. 105-33 §§ 11201(c)(1).

20 Certainly, without a proper legislative mandate defining with some specificity what can and cannot be undertaken in the way of private sector operation of government correctional facilities, the allocation of public and private responsibilities may become confused and public trust eroded. This has been manifested most clearly in the case of states that have sought to gain more control over the housing of out-of-state inmates within the state, *see, e.g.,* the recently-passed Ohio House Bill 293, effective March 17,

privatization based on a lack of proper statutory authorization should be relatively rare because most prison privatization arrangements feature *some* type of statutory authorization sufficient to reflect a general policy choice in favor of correctional privatization. A more potent regulatory challenge involves litigation seeking to invalidate a particular kind of private contractor authority or conduct, based on due process concerns, as discussed below.[21] Most private prisons operate according to statutes and/or contracts that retain some critical oversight, rulemaking and decision making in the hands of government correctional authorities.

B. Addressing Possible Due Process Concerns in Correctional Privatization

The most serious constitutional challenges to contracting out the management of prisons may arise when private contractors are deemed to have excessive power over prison rulemaking and decisions affecting inmates' basic liberties. These situations indicate issues of possible financial bias and unchanneled discretion in prison management that raise potential due process concerns. While these concerns can give rise to specific civil rights challenges by inmates and their legal representatives, such due process objections may also serve as the basis for courts to invalidate certain arrangements on "delegation" grounds. As with statutory authorization deficiencies, however, it may only be certain aspects of the overall privatization scheme that are so invalidated.

1. Basic Due Process Principles Governing Delegation Scenarios

The Due Process Clause has given rise to an influential line of Supreme Court cases invalidating the delegation of discretionary rulemaking or adjudication powers to financially interested parties.[22] It has also generated support for the idea that private delegations are permissible where the private entity's role is subordinated to adequate public involvement, oversight, and/or approval.[23] These standards are applicable to the federal and state governments alike, since the Due Process Clause has the effect of making constitutional restrictions on private delegations applicable to

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1998, discussed *infra* in section 7.B.

21 As discussed above, due process considerations and the delegation doctrine share a concern about the exercise of arbitrary, unaccountable government power. Indeed, private delegation cases tend to rely on a due process analysis, due to fuzziness of the delegation doctrine, its origins in separation-of-powers jurisprudence and its general disuse. Due process analysis has in fact guided most of the key federal court decisions invalidating private party delegations, including *Carter v. Carter Coal Co.* But these decisions have unfortunately blurred the separate and distinct nondelegation and due process issues and standards. *See* Abramson, *A Fifth Branch of Government: The Private Regulators and Their Constitutionality,* 16 Hastings Const. L. Q. 165, 204 (1989).

22 In the rulemaking context, *see, e.g., Eubank v. City of Richmond,* 226 U.S. 137 (1912) (striking down local ordinance authorizing majority of landowners to impose set-back requirements on neighbors); *Carter v. Carter Coal Co., supra.* In the adjudication context, *see, e.g., Sniadach v. Family Finance Corp. of Bay View,* 395 U.S. 337 (1969) (invalidating law authorizing private parties to garnish employee wages before employees can respond to garnishment in court); *Gibson v. Berryhill,* 411 U.S. 564, 579 (1973) (striking down state optometry board's adjudication of conduct by corporate salaried optometrists where board was composed of individual optometrists with a financial interest in reducing corporate competition).

23 *See, e.g., Currin v. Wallace,* 306 U.S. 1, 15-16 (1939) (creation of market controls by producers judged constitutionally acceptable based on government-imposed requirement that 2/3 of producers waive antitrust restrictions); *Sunshine Anthracite Coal Co. v. Adkins,* 310 U.S. 381, 399 (1940) (industry officials allowed to propose non-binding minimum prices where officials functioned "subordinately" to a public commission); *Fuentes v. Shevin,* 407 U.S. 67, 80-83 (1972)(state-sanctioned prejudgment repossession of property by private companies permissible only if property owners have opportunity to resist seizure before a judge).

the fifty states through the Fourteenth Amendment.[24] In general, it would appear that the more *administrative* the role of private companies -- that is, the more they are responsible for carrying out predetermined policy choices by government officials -- the more likely it is that significant privatization schemes will pass constitutional muster.

While explicit direction from the Supreme Court about due process standards in the private delegation context is lacking, the best guidance by way of analogy may come from federal appeals courts that have ruled on regulatory and adjudicatory standards for securities markets adopted by private securities associations pursuant to the federal Maloney Act. The so-called "Todd Standards," first articulated in the case of *Todd & Co. v. SEC,*[25] set forth three factors that enabled the regulatory scheme at issue to accord with due process. First, the private entity's rules had to be approved by a governmental authority before becoming effective. Second, all private decisions regarding rule violations and penalties had to be subject to governmental review. Finally, all such private adjudications had to be governed by a *de novo* standard of review, whereby government officials would draw their own factual and legal conclusions about the violation and penalty in each case.[26]

The Todd Standards are by no means dispositive of the application of due process to private prisons. Indeed, the *Todd* case dealt with property rights, not the liberty interests that are at stake in the case of private prisons. Yet perhaps for that very reason -- the more serious liberty interests at issue in the latter case -- the Todd Standards would seem to suggest by analogy certain baseline requirements for private prisons.

Accordingly, these standards suggest that private prisons should not have uncontrolled power to make adjudicatory or rulemaking decisions that would disfavor inmates' individual liberties. In particular, as discussed in greater detail below, private contractors presumed financial interests should disqualify them from having the power to make sensitive release-related decisions, including those involving sentencing, parole, release dates, furloughs, discipline and other matters affecting 'good time' credits, and specific work assignments and work credits. These types of decisions generally overlap with the release-related rights that were recently deemed by the Supreme Court in *Sandin v. Connor* to define the general contours of due process within prisons.[27]

Meanwhile, the presumed lack of private contractors' financial disinterestedness should also disqualify private contractors from making *rules* that govern any of these subjects. The reasons are obvious: because private contractors have a *potentially* strong (it need not actually be strong) interest in maximizing their inmate populations, they may have an incentive to write release-related rules and make release-related decisions that affect good time calculations and ultimately disfavor prisoners. In some cases, this potential bias can be avoided by having a contract specify a contractor fee that is

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24 *See* Liebman, *Delegation to Private Parties in American Constitutional Law,* 50 Ind. L. J. 650, 652-54 (1975).

25 557 F.2d 1008 (3d Cir. 1973).

26 *Id.* at 1012.

27 In *Sandin,* 515 U.S. 472 (1995), the Supreme Court moved to scale back the scope of prison due process protections arising directly under the U.S. Constitution to those situations which impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Despite this significant, albeit hazy constriction of due process protections within prison confines, the *Sandin* ruling leaves in place any protections that would ultimately affect the timing of a prisoner's release.

independent of the number of inmates housed at a facility.[28] As the key due process cases have shown, private rulemaking and adjudication must avoid even the appearance of bias.[29]

While the "Todd Standards" have never been passed on by the Supreme Court, they provide general guidance to correctional officials attempting to place limits on private prison rulemaking and decision making, particularly since prisons affect liberty interests rather than the mere property interests at issue in the *Todd* case. Translating *Todd* in a relatively straightforward manner to a correctional context suggests the following principles: (1) rules authored by private prison contractors should be reviewed and approved by government authorities before going into effect; and (2) all private contractor decisions relating in any way to matters affecting release should be subject to governmental review and approval.[30]

2. Specific Ways of Addressing Due Process Concerns in Correctional Privatization

Even with the substantial expansion of private corrections over the past decade, most states and the federal government have yet to craft specific, detailed standards that address each of the principles embodied in the Todd Standards.[31] To be sure, *contractual* provisions addressing due process concerns can obviate most, if not all potential deficient legislation. In fact, most jurisdictions have appeared to be content to allow contracting parties to build due process protections into their privatization agreements rather than adopt specific legislation on the subject. Most commentators however, believe that a statutory basis for fundamental due process protections is advisable to obviate due process concerns.[32] Legislatively enacted due process standards may highlight a bright line public policy choice and ensure that constitutional principles are not sacrificed at the margins by contracting parties.

Few reported decisions exist that purport to apply any kind of due process analysis to general matters of private prison decision making. In Tennessee, appeals courts have twice upheld a section

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28 This is the approach taken in the BOP's contract for the Taft, California medium-security prison.

29 *See In re Murchison,* 349 U.S. 133, 136 (1955) ("our system of law has always endeavored to prevent even the probability of unfairness").

30 Part of the third *Todd* standard, requiring a *de novo* review, would not appear to be easily translated into a private prison context. First, it would be incredibly burdensome to the system. Second, it is not clear what such a review would look like, since the Supreme Court only requires that "some evidence" support a disciplinary decision. *See* fn. 42, *infra.* However a major question arises: if the government's review is not truly *de novo*, must its review be mandatory and automatic (so that a decision is not deemed to have been rendered until the public correctional authority acts) or can the government's review simply be satisfied by allowing an inmate to appeal as of right the private contractor's decision? *Todd* suggests that the *de novo* review requirement is the equivalent of an independent decision being entered by a public agency; thus, if there is no *de novo* review, due process would seem to require that a first-instance decision *in all cases* be formally approved or rendered by a public official. This is what many states require in the case of disciplinary hearings. *See* text at fns 38-40, *infra.*

31 Neither the federal government nor eleven different states with prison privatization statutes attempt to place any type of statutory due process limits on private exercise of government-mandated correctional authority. The states are Alaska, Georgia, Kentucky, Montana, Nevada, New Hampshire, New Mexico, Oklahoma, Oregon, Pennsylvania, and Utah. For a comprehensive survey of federal and state regulation of private prisons relative to due process concerns, *see* Ratliff, *The Due Process Failure of America's Prison Privatization Statutes,* 21 Seton Hall Legis. J. 371 (1997).

32 *See, e.g.,* R. Crane, *Wanted: A Model Law to Regulate Privatization,* Correctional Law Reporter 83 (April/May 1998); Ratliff, *The Due Process Failure of America's Prison Privatization Statutes, supra* note 31 at 398-409.

of the relevant state code governing disciplinary proceedings by a "private management company" and stated, albeit without any real analysis, that the statute comports with due process. For example, in one of the cases, *Davis v. Rose,*[33] the Tennessee Court of Appeals validated that part of the state code and associated Department of Corrections disciplinary procedures that allow a private contractor panel to recommend disciplinary action subject to review and final approval by a designated Department of Corrections employee.[34] In the absence of detailed kind of court guidance, government corrections officials must use their good judgment and general due process case law to determine where to draw statutory and contractual boundaries around private contractor rulemaking and decision making. A brief survey of some of this experience with such line-drawing follows.

a. Rulemaking Generally

Consistent with due process jurisprudence, some states have barred private prison contractors from unilaterally developing or adopting rules affecting disciplinary proceedings or pertaining to other liberty interests.[35] A handful of states have also sought to prohibit private operators from formulating rules or procedures for calculating inmate release and parole eligibility dates or developing and implementing procedures for calculating and awarding sentence (good time) credits.[36] Some observers have suggested that the best way to deal with rulemaking problems is to require explicitly that private contractors adopt pertinent rules and procedures employed by the contracting agency.[37] While notions of fairness might at first blush suggest a presumption that all or virtually all private prison rules should parallel those for public correctional institutions, and be approved by government authorities, such guidance might be ill-advised. According to many privatization advocates, having a boilerplate transfer of government rules would remove room for flexibility and innovation in many areas of prison operation.

b. Disciplinary Decisions

Governments have generally interpreted due process to require that limits be placed on correctional contractors' ability to render final disciplinary decisions. Such decisions can affect both good-time credits (and hence, release dates) and in-prison privileges. While only three states have explicitly prohibited contractors from taking any disciplinary action against an inmate,[38] several states have mandated that any preliminary decisions that are taken by contractors be reviewed and approved

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33 1997 WL 83671 (Tenn. App.. 1997).

34 *See also, e.g., Jackson v. CCA,* 1997 WL 337021 (Tenn. App.. 1997) (same result).

35 *See* Fla. Stat. Ann. § 957.06; N.C. Gen. Stat. § 148-37; Va. Code Ann. § 53.1-265; Colo. Rev. Stat. Ann. § 17-1-203; Wyo. Stat. § 7-22-112.

36 *See, e.g.,* Va. Code Ann. § 53.1-265 (barring private contractors from [developing and implementing procedures for calculating inmate release and parole eligibility dates"); Tenn. Code Ann. § 41-24-110 (prohibiting private contractor adoption of rules for calculating inmate release or parole eligibility dates, as well as calculation and award of sentence credits).

37 *See, e.g.,* The Council of State Governments (CSG) and the Urban Institute, Issues in Contracting for the Private Operation of Prisons and Jails (hereinafter "CSG Report") 70 (1987).

38 *See* Ariz. Rev. Stat. Ann. § 41-1609.01; Tenn. Code Ann. § 41-24-110; Va. Code Ann. § 53.1-265. Two states have a different formulation to the effect that private contractors may take short-term or emergency disciplinary action subject to final review by public corrections authorities. *See* Fla. Stat. Ann.§ 957.06; Colo. Rev. Stat. Ann. § 17-1-203.

by public correctional officers.[39] At least a few others have done so contractually.[40] Notably, the BOP's contract for its Taft, California facility does not have such a requirement.[41] Some commentators have also gone so far as to argue that due process requires a public official to participate in disciplinary hearings, at least those involving major rule infractions.[42] Still, no court has ruled that this is required by due process, nor do the Todd Standards (albeit in a property rights context) seem to suggest this is necessary. There is little guidance as to the type of review to be undertaken by public correctional representatives. In the meantime, the most cautious approach would direct a private contractor to make factual findings and a preliminary determination thereon according to the Supreme Court's "some evidence" standard,[43] but not treat that decision as final until the matter is ruled on, or approved by, a public official.[44]

c. Parole Decisions

Because most -- but not all -- private prison contractors are paid according to the number of inmates kept in their custody, such contractors may be seen to have a financial interest in parole decisions. This creates a potential - even if not actual - incentive to supply parole boards with biased or misleading information.[45] Because of this possibility of bias, due process arguably requires that

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39 Ariz. Rev. Stat. Ann. § 41-1609-01,-Colo. Rev. Stat. Ann. § 17-1-203; Fla. Stat. Ann. § 957, 06; La. Rev. Stat. Ann. § 15:1177; Tenn. Code Ann. §§ 301-265; Wyo. Stat. Ann. § 7-22-112.

40 *See* Contract Between Corrections Corp. of America and the Commonwealth of Virginia Department of Corrections, July 11, 1996 (hereinafter "CCA-Va. Contract") at § 4.21, p. 20.

41 *See* Taft, California Low and Medium Security Correctional Facilities Contract Between U.S. Bureau of Prisons and Wackenhut Corporation, § C.1, Part II.J ("Discipline"). The BOP's contract simply provides for contractor decisionmaking in the first instance, with an appeal as of right by the inmate through ordinary grievance channels. It is an open question whether due process requires a first-instance decision to be automatically reviewed and approved by a public official.

42 That was the position taken by the Council of State Governments (CSG) and the Urban Institute in a jointly authored report issued in 1987. See CSG Report, *supra* note 37 at 10 (1987). *Cf.* C. Ring, Contracting For the Operation of Private Prisons: Pros and Cons 21 (1987) (suggesting disciplinary panels could be made up of public and private personnel). This is also the position adopted in the contract between the Virginia DOC and CCA. *See* CCA-Va. Contract at § 4.21, p. 20. Note that Ira Robbins, author of an early study for the American Bar Association of prison privatization, took a more radical position that all disciplinary hearings should be conducted by public corrections officials. Robbins' view, shared by some, is that simple reliance on public involvement at the review stage may in practice turn out to be a rubber stamp on decisions that are effectively made at the hearing stage by private contractors tinged with a financial interest in the outcomes. Vested with considerable discretion, private prison contractors are seen as even less predisposed than their public counterparts to permit the calling of certain witnesses. *See* I. Robbins, The Legal Dimension of Private Incarceration, *supra* note 2 at 319. According to this view, the dominance of the private contractor in making preliminary disciplinary hearing decisions is seen as subverting the mandate of *Wolff v. McDonnell*. *See* Note, *Inmates' Rights and the Privatization of Prisons*, 86 Columbia L. Rev. 1475, 1187 (1986) (suggesting that private officials should be excluded from disciplinary committees).

43 In *Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445 (1985), the Supreme Court enunciated a standard that permitted revocation of an inmate's good time credits upon a showing of "some evidence" in the record - a lower standard of proof than a "preponderance of proof" standard.

44 In the end the practical realities of efficient administration and deference to be paid to factual determinations by on-site private contractor personnel make it unlikely that a court would insist on a *de novo* standard of review to ensure compliance with due process -- even though that is arguably what the application of the "Todd Standards" might require in a liberty interest context. If, however, an equivalent degree of independent public authority decisionmaking is required by *Todd* in the prison setting, then it would seem necessary for public authorities at least to approve or ratify every first-instance disciplinary decision made by private contractor personnel.

45 That this is a largely a possible, rather than actual problem is partly indicated by the fact that most inmates are allowed to review their files for inaccuracies.

private companies not be given a prominent role in the parole process, including the ability to make overall parole recommendations. Several states have endeavored legislatively to prevent private contractors from being able to play this pivotal 'yes or no' recommending role in the parole process.[46] Wyoming, for example, provides that prison contractors may not "recommend that the parole board either deny or grant parole, provided the contractor may submit written reports that have been prepared in the ordinary course of business unless otherwise requested by the parole board."[47] These state efforts represent a safeguard for a corrections agency to ensure that decisions about release itself do not in any way appear tainted. A more relaxed standard might be used, however, if, as in the case of the BOP's existing private facility, the private contractor's fee is not tied to the size of the inmate population.

d. Other Direct or Indirect Release-Related Decisions

Public authorities may also need to retain responsibility for decisions concerning the calculation of good time credits and release dates, as well as work assignments, furlough decisions or security classification determinations that might directly or indirectly bear on the foregoing.[48] All of these decisions may accelerate or delay an inmate's release date or eligibility for parole, directly affecting his fundamental liberty interests. Even if actual financial bias is not present, constitutional considerations suggest that even the appearance of self interest should be banished. For example, the possibility that private prison administrators could manipulate prisoners' work assignments to affect their release credits necessitates public decision making. To this end, only a handful of states have enacted statutory restrictions, or insisted on contractual solutions to the same effect.[49]

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46 *See* Colo. Rev. Stat. Ann. § 17-1-203; Fla. Stat. Ann. § 957.06; Miss. Code Ann. § 47-5-1225; Ohio Rev. Code Ann. § 9.06; W. Va. Code § 25-5-14; Wyo. Stat. Ann. § 7-22-112.

47 Wyo. Stat. Ann. § 7-22-112.

48 Although it is unclear how infrequently this might happen, a particular security classification, for example, might determine not only the specific security conditions of incarceration, but indirectly -- though for example, special work assignments that attach to a particular classification -- the maximum good-time credits a prisoner might receive. In the case of furloughs, a private prison operator might be swayed to restrict furlough opportunities to cut down on the loss of per diem revenues associated with an inmate being absent from the prison. Although in most cases, furloughed prisoners remain part of a private contractor's designated population.

49 For example, only eleven states appear to prevent private prison operators from granting, denying or revoking inmates' good-time credits. *See* Ariz. Rev. Stat. Ann. § 41-1609.01; Ark. Code Ann. § 12-50-108; Fla. Stat. Ann. § 957.06; La. Rev. Stat. Ann. § 39:1800.5; Miss. Code Ann. § 47-5-1225; Ohio Rev. Code Ann. § 9.06; Tenn. Code Ann. § 41-24-110; Tex. Rev. Civ. Stat. Ann. Art. 495.004; Va. Code Ann. § 53.1-265; W. Va. Code § 25-5-14; Wyo. Stat. § 7-22-112. Some state DOC's like Virginia's, contractually insist that release computations be done by public officials. *See* e.g., CCA-Va. Contract at § 4.24, p. 22.

With the exception of Texas and the addition of Colorado (at Colo. Rev. Stat. Ann. § 17-1-203), the above eleven states also bar private operators from determining the kind of work that inmates may perform *or* determining the credits that working inmates may receive thereby. Although they do not specifically address the impact of classification on release, seven state statutes appear to prohibit private prison operators from making classification determinations. *See* Ariz. Rev. Stat. Ann. § 41-1609.01; Fla. Stat. Ann. § 957.06; Miss. Code Ann. § 47-5-1225; Ohio Rev. Code Ann. § 9.06; Tenn. Code Ann. § 41-24-110; Va. Code Ann. § 53.1-265; Wyo. Stat. Ann. § 7-22-112.

Finally, it appears that nine states have prohibited contractors from deciding the type of work or work credits that individual inmates may receive. *See* Ariz. Rev. Stat. Ann. § 1609.61; Ark. Code Ann. §§ 12-50-108; Colo. Rev. Stat. Ann. § 17-1-203; La. Rev. Stat. Ann. § 39:1800.5; Miss. Code Ann. §47-5-1225; Ohio Rev. Code Ann. § 9.06; Tenn. Code Ann. § 41-24-110; Va. Code Ann. §§ 53.1-265; W. Va. Code § 25-5-14.

3. Liability for Private Prison Conditions

Of central importance to governments contemplating correctional privatization is the question of how privatization affects liability for the operations of, and conditions in, private prisons. Matters of liability exposure have a critical bearing on accountability and cost: can prisoners' rights be vindicated in a private correctional context, and if so, is there a lesser liability exposure for the government where a private contractor is the principal defendant? For some time, relatively extravagant claims were made by both advocates and opponents of privatization that the advent of private prisons would insulate governments from liability exposure.[50] Claims were also made that privatization would substantially shield private contractors from the most potent and costly form of inmate litigation -- civil rights suits involving alleged constitutional rights violations.[51]

These assertions may have confused some government correctional officials and troubled civil rights and prisoner's advocacy groups, but the impact of privatization on public and private correctional authorities appears to be less dramatic, and potentially more beneficial, than initially thought. As discussed in greater detail below, privatization will not result in any diminution of litigation exposure for private contractors. They will be treated as "state actors" to whom federal constitutional standards apply with equal force. At the same time, due to the nature of most inmate civil rights litigation, governments involved in contracting out correctional management will generally find a slight reduction in exposure to liability.

This section addresses first, the impact that privatization can have on private contractors' and contracting governments' liability exposure, and second, the impact that a broad indemnification arrangement and a contractor's comprehensive general liability insurance policy -- naming the government as an insured -- can have on keeping the relative litigation costs of privatization low. While the second topic is ultimately more salient, its impact cannot be fully appreciated without a review of how privatization affects the calculus of liability between private and public defendants and how it specifically reduces government liability exposure. There follows a review of the importance of monitoring by government, and how effective monitoring can ensure that public correctional authorities avoid acts and omissions of their own that might give rise to liability.

A. The Impact of Privatization on Liability Exposure

One cannot understand the impact of privatization on governments' and private contractors' liability exposure without appreciating the central place that so-called "Section 1983" cases -- federal civil rights claims alleging constitutional violations -- occupy in correctional litigation. The mechanics of Section 1983 affect the liability of governments and contractors in different ways.

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50 *See, e.g.*, Wash. Post, March 23, 1986, at F6, col. 2 (describing how some politicians believed that government could escape liability through use of private prisons); M. Walzer, "Hold the Justice," New Republic, April 1985, at 12 (privatization may result in an "escape from the enforcement of constitutional norms").

51 *See, e.g.*, Sullivan, *Privatization of Corrections: A Threat to Prisoners' Rights, in* G. Bowman, et al., eds., Privatizing Correctional Institutions 139 (1994).

1. Inmates' Overwhelming Reliance on Section 1983 Cases to Redress Grievances

Prisoners litigating suits involving allegations of deficient prison conditions or individual harm suffered at the hands of prison authorities can bring a variety of legal claims to court, but only Section 1983 cases offer an effective means of addressing *constitutional* grievances and obtaining significant monetary damages. The reasons are clear: under Section 1983 litigation, inmates can seek to remedy violations of their constitutional rights by private contractors as well as by state or local government authorities who have contracted out prison management. Analogous actions against federal correctional officials may be brought under so-called *Bivens* actions.[52] Inmates can also obtain not only actual, or compensatory damages (reimbursing them for direct harms),[53] but also nominal damages (if a constitutional deprivation causes no actual injury),[54] punitive damages (monetary awards solely for the purpose of setting an example in especially egregious cases),[55] and declaratory and injunctive relief.[56] They may also sue state or local officials in their individual capacities.[57] Equally important, prisoners prevailing as plaintiffs in Section 1983 actions can win attorneys' fees, which provide a significant incentive for inmates bringing lawsuits.[58] Finally, Section 1983 cases are heard in federal courts, which are perceived as being more fair and impartial than state courts.

By contrast, state court actions alleging negligence or intentional conduct on the part of private contractors and state officials usually face numerous kinds of limitations on the types of relief

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52 "Section 1983" refers to the provision's codification in Volume 42 of the United States Code, Section 1983, or as it is most commonly abbreviated, 42 U.S.C. § 1983. Section 1983 actions are designed to offer redress to individuals who have suffered a deprivation "under color of state law" of "rights, privileges, or immunities secured by the Constitution and laws of the United States." Although there exists no comparable statute for suits against federal officials, the Supreme Court recognized in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* 403 U.S. 388 (1971), that similar actions can be brought for violations allegedly committed under federal auspices.

53 Compensatory damages can include those for emotional or mental distress, although the 1996 Prison Litigation Reform Act limits such recovery to cases where mental or emotional injuries accompany a physical injury.

54 *See Carey v. Piphus*, 435 U.S. 247 (1978).

55 *See Smith v. Wade,* 461 U.S. 30 (1983). Punitive damages can be awarded as long as the defendant acted with "reckless or callous indifference to the federally protected rights of others." *Id.* at 56. Most lower courts have also held that a plaintiff who recovers only nominal damages in a § 1983 suit can still be awarded punitive damages. *See, e.g., Brewer v. Chauvin,* 938 F.2d 860, 864 (8th Cir. 1991) (*en banc*).

56 *See City of Los Angeles v. Lyons,* 461 U.S. 95 (1983). A declaratory judgment usually entails a finding that a governmental statute or regulation is unconstitutional. If a court provides the plaintiff with some type of injunctive relief, the court goes even further -- directing a defendant to refrain from taking certain unconstitutional actions in the future or requiring the defendant to take certain steps to avoid future violations of the Constitution. Compensatory and punitive damages, as well as injunctive relief, are also available to plaintiffs in *Bivens* actions.

57 *Bivens* suits can also be maintained against federal officials in their individual capacities.

58 Fees are authorized under 42 U.S.C. § 1988, although no fees are available for plaintiffs proceeding under federal Bivens actions. To be considered a 'prevailing party' under § 1988, a plaintiff need not win the central claim asserted, but can rather succeed on "any significant issue in litigation which achieves] some of the benefit the parties sought in bringing suit." *Texas State Teachers Association v. Garland Independent School District,* 489 U.S. 782, 791, 792 (1989). Although the Prison Litigation Reform Act has placed a cap on attorneys' hourly rates in prisoner suits, *see* 18 U.S.C. § 3006A(d), as well as the total fees recovered as a proportion of the relief obtained, *see* 42 U.S.C. § 1997e(d)(1)(B)(i), the availability of any fees at all still makes Section 1983 an attractive vehicle for prisoner's rights litigation.

that can be obtained,[59] especially where the common law or state legislatures may have immunized states and/or state officials from suit for actions arising from official conduct.[60] Moreover, governments generally cannot be sued for the negligent acts of their independent contractors,[61] and most federal and state tort claims acts bar claims that involve "discretionary functions," which could include both the contracting out of the correctional function[62] and the placement of an individual inmate in a privatized facility.[63] Only tort suits involving allegations of negligent oversight or monitoring of a private prison are likely to succeed under a state or federal tort claims act, as the case may be.[64]

Three major questions under Section 1983 and *Bivens* litigation that arose in the mid-1980's in the wake of the first significant correctional privatizations were (1) could private prison contractors be sued as defendants acting "under color of state law?" (or federal law, in the case of *Bivens* suits); (2) if private prisons were indeed "state actors" amenable to suit under Section 1983 and *Bivens,* would private prison contractor officials be able to share the "qualified immunity" defense that public officials "acting under color of state law" enjoyed? and (3) if private prison contractors were deemed "state actors" amenable to suit under Section 1983, what kind of liability, if any, would still attach to *public* correctional officials who might still have various kinds of continuing responsibilities toward private facilities? These questions assumed great significance as policy makers sought to ascertain the true costs and benefits of privatization, and as the public sought to learn whether private prisons would permit governments to avoid their constitutional responsibilities toward inmates.

2. Are Private Prison Contractors Amenable to Suit under Section 1983?

The Supreme Court appeared to answer the "state action" question in 1988 in the case of *West v. Atkins.*[65] In *West,* the Court concluded that a private physician who worked in a state prison several days each week could constitute a defendant under Section 1983. The Court dismissed the notion that the private doctor was not covered by Section 1983 simply because he was a not a state employee and worked part-time in the prison. What mattered, according to the Court, was the "function within the state system" that the doctor played within the prison: he had agreed to assume the government's responsibility, delegated specifically to him, to furnish medical care required by the Eighth

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59 Ordinary tort actions may be severely circumscribed by state tort claims acts, and usually provide only for the award of compensatory damages. Except in the possible case of medical malpractice cases, such damages are in any event usually exceedingly modest, given the status of prisoners and the fact that most of their needs are furnished by the prison.

60 *See, e.g.,* Utah Code Ann. § 63-30-10(j) (explicitly excepting prisoners' suits from waiver of sovereign immunity).

61 *See* Restatement (2d), Torts, § 409. This principle is statutorily codified in the Federal Tort Claims Act at 28 U.S.C. § 2671.

62 *See, e.g., Gotha v. United States,* 115 F.3d 176, 179-80 (3d Cir. 1997)(discussing situations where major government decisions "susceptible to policy analysis" constitute "discretionary functions" immune from suit under the Federal Tort Claims Act, 28 U.S.C. § 2680(a). As such, the 'discretionary function' exemption would appear to bar any negligence suit based on a theory of "negligent selection" of a private contractor. Everyday oversight over a private contractor via a prison monitor may conceivably still expose a corrections agency to negligence liability, but this will undoubtedly arise in the context of a larger Section 1983 suit.

63 *See, e.g., Bailor v. Salvation Army,* 51 F.3d 678 (7th Cir. 1995)(pre-release placement of inmate in half-way house deemed discretionary function immune from suit).

64 *See* discussion on Section 3.B.2, *infra.*

65 487 U.S. 42 (1988).

Amendment to the Constitution. His specific function in the unique prison setting was to discharge the state's medical care responsibilities which he "possessed by virtue of state law and [which were] made possible only because [he was] clothed with the authority of state law."[66]

There should be no reason to doubt the application of *West v. Atkins* to private contractors running entire prison facilities, either on legal or policy grounds. The special, all-encompassing role that private contractors play in the day-to-day management of privatized facilities -- their "function within the state system"[67] -- together with the understanding that contractors have assumed responsibility for protecting inmates' constitutional rights, make it highly unlikely that a private prison management company could escape Section 1983 liability. This would seem to be the case even if the reasoning in another Supreme Court state action case were applied.[68] At least one federal circuit court has explicitly endorsed the application of *West v. Atkins* to private correctional management.[69]

It is important to note that, at present, notwithstanding the *West v. Atkins* holding, it is an untested proposition in many areas of the country whether *Bivens* actions may be brought against federal prison contractors as "state actors." Only four judicial circuits have unambiguously recognized private contractors as appropriate *Bivens* action defendants, while most of the circuits have

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66 *Id.* at 55.

67 *Id.* This reference to the doctor's function in the state system may or may not signal reliance on a line of Supreme Court cases finding state action where the activity at issue has been a "public function" -- defined by the Court to be "traditionally exclusively reserved to the state." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974). Because prisons cannot, strictly speaking, be said to have been "traditionally exclusively reserved" to the state due to the 19th century legacy of private prisons -- something the Supreme Court itself acknowledged in the recent case of *Richardson v. McKnight*, 117 S. Ct. 2100, 2104 (1997) -- there is still some debate as to whether the "public function" test is applicable to Section 1983 cases in the new correctional privatization environment.

68 One of the most interesting questions regarding private prisons and 'state action' is why the Supreme Court, in the recent decision of *Richardson v. McKnight,* 117 S. Ct. 2100 (1997) -- a case that involved a private prison run by Corrections Corporation of America -- instructed the trial court on remand to analyze the state action question under the holding not of *West,* but of *Lugar v. Edmonson Oil Co.*, 457 U.S. 922 (1982). The best explanation is that *Lugar* actually enunciated a test to determine state action, while *West* was less clear about its governing principles. The real question, however, is whether by referring to *Lugar,* the Court was signaling a reaffirmation of the increasingly restrictive approach to state action that it began to develop in the 1980's. But the result in the private prison context is in fact likely to be the same regardless of which decision is relied on. The two-part test in *Lugar* requires first, that a constitutional deprivation "must be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible"; and second, that "the party charged with the deprivation must be a person who may fairly be said to be a state actor." The definition of state actor in the second part of the test includes a person jointly acting with state officials, or who "has obtained significant aid from state officials," or "*whose conduct is otherwise chargeable to the State." Id.* at 937 (emphasis supplied). Thus, although the *Lugar* decision itself revolved around a finding of joint activity by public and private parties, the last phrase of the two-pronged test would appear to be expansive enough to attribute liability to almost any kind of private prison company assuming all or virtually all management functions at a facility.

69 *See Skelton v. Pri-Cor, Inc.*, 963 F.2d 100, 102 (6th Cir. 1991) *cert. denied,* 503 U.S. 989 (1992*), quoting Plain v. Flicker*, 645 F. Supp. 898, 907 (D.N.J. 1986)("[I]f a state contracted with a private corporation to run its prisons it would no doubt subject the private prison employees to § 1983 suits under the public function doctrine"). *See also Street v. Corrections Corp. of America,* 102 F.3d 810, 814 (6th Cir. 1996) (private operation of prison is a public function). At least one district court has reasoned similarly. See *Payne v. Monroe County*, 779 F. Supp. 1330, 1335 (S.D. Fla. 1991)(Wackenhut Corp., operator of county jail, deemed state actor performing public function).

not ruled on the issue. One circuit has refused to allow *Bivens* suits against private parties.[70] Lower courts confronted with private contractor defendants in *Bivens* actions generally continue to find ways to avoid ruling on the issue.[71] Still, it is hard to see how these remaining judicial circuits will be able to resist the logic of *West* in the Section 1983 context if and when an analogous *Bivens* case appears before them.[72] Interestingly, the current Bureau of Prisons facility in Taft, California falls within the 9th Circuit, which has in fact recognized private contractors as appropriate *Bivens* defendants.

3. Do Private Prison Officials Have a 'Qualified Immunity' Under Section 1983?

Even with increasing general agreement that private prison contractors and employees are "state actors" subject to Section 1983 liability, it remained uncertain until recently whether such employees could raise the defense of "qualified immunity" that is extended to public officials defending against monetary claims in such litigation.[73] Such immunity shields from liability officials exercising discretionary functions if, in light of the clearly established law existing at the time, they could reasonably believe that their conduct was lawful. The immunity is therefore helpful in protecting officials from liability in situations where the applicable law is in flux and they must operate with resolve and confidence in volatile environments. Proponents of extending qualified immunity to private prison officials argued that officials acting "under color of state law" in managing a prison should have same defenses available to public employees. This would allegedly create an "even playing field" allowing fair competition between public and private entities.[74]

Last year, in *Richardson v. McKnight,*[75] the Supreme Court rejected such an approach, ruling that private prison guards cannot raise a qualified immunity defense to a Section 1983 action. The Supreme Court's reasoning relied on both history and public policy. The Court found that the "mere performance of a governmental function" by a private defendant could not, alone, entitle that defendant to claim qualified immunity.[76] The purpose of qualified immunity is to prevent public

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70 The four circuits that have found *Bivens* actions to be appropriate against private defendants are the D.C., 5th, 6th, and 9th Circuits. *See, e.g., Reuber v. U.S.*, 750 F.2d 1039, 1053-57 (D.C. Cir. 1984); *Dobyns v. E-Systems, Inc.*, 667 F.2d 1219 (5th Cir. 1982); *Yiamouyiannis v. Chemical Abstracts Service,* 521 F.2d 1392 (6th Cir. 1975); *Schowengerdt v. General Dynamics Corp.*, 823 F.2d 1328, 1337-38 (9th Cir. 1987). The one circuit that has found to the contrary is the First. *Fletcher v. Rhode Island Hosp. Trust National Bank*, 496 F.2d 927, 932 n. 8 (1st Cir.), *cert. denied,* 419 U.S. 1001 (1974). Other circuits have either not dealt with the issue or have purposely left it untreated. *See DeVargas v. Mason & Hanger-Silas Mason Co.*, 844 F.2d 714, 720 n.5 (cataloguing status of private party amenability to suit by circuit).

71 *See, e.g., Smith v. United States*, 896 F. Supp. 1183 (M.D. Fla. 1995) (court merely assumes private half-way house is proper defendant under *Bivens* action against half-way house and U.S. Bureau of Prisons; *McChan v. CCA*, 1997 WL 104110 (D. Kan. 1997)(same assumption in case involving privately-managed federal detention center); *Gleave v. Graham*, 954 F. Supp. 599, 604 (W.D.N.Y. 1997)(court does not rule on issue, where private half-way house is the principal defendant).

72 Indeed, the Supreme Court has noted how liability standards in *Bivens* cases generally track those in Section 1983 litigation. *See Siegert v. Gilley*, 500 U.S. 226 (1991).

73 The qualified immunity defense applies only to actions against officials for monetary relief.

74 *See, e.g.,* Thomas, *Resolving the Problem of Qualified Immunity for Private Defendants in Section 1983 and Bivens Damage Suits,* 53 La. L. Rev. 449, 454 (1992).

75 117 S. Ct. 2100 (1997).

76 The Court noted that "[h]istory does not reveal a 'firmly rooted' tradition of immunity applicable to private employed prison guards," *id.* at 2104, and further observed that "[c]orrectional functions have never been exclusively public" in the U.S. by virtue of the history of private jails and prisons in the 18th and 19th centuries. *Id.*

officials, who have civil service protection and less strict oversight, from exhibiting "unwarranted timidity" in the face of liability. The Court noted, however, that private companies and their employees have other incentives, generated by state monitoring and the marketplace, to spur them to perform their duties zealously. Moreover, such contractors can obtain relatively inexpensive liability insurance for their employees that will further minimize any disincentives for good performance. [77] The Court concluded that its decision to deny qualified immunity should apply to any situation where "a private firm, systematically organized to assume a major lengthy administrative task...with limited direct supervision by the government, undertakes that task for profit and potentially in competition with other firms."[78]

Despite the narrow decision in *McKnight* and an agitated dissent by the minority justices, the ruling is likely to apply to virtually all private contractors managing prisons, even where competitive market pressures may be relatively weak.[79] The bigger question is whether the case's significance to current private prison operations is more modest than it initially appeared. To begin with, qualified immunity by its terms is generally most helpful to public officials when the legal standards governing their work are unclear and a reasonable official might believe that his conduct was lawful. In the case of prison litigation, however, constitutional law standards that might have seemed confused or unsettled in the 1970s and 1980s have now reached a degree of clarity and relative stability that render the qualified immunity defense far less valuable than in earlier years. Moreover, in monetary terms, the impact of *McKnight* on private prison contractors has been negligible, since the additional insurance necessary to cover individual prison officials' liability is only marginally higher than that necessary to cover the corporate liability of the firms themselves.[80] Finally, the *McKnight* decision left open the possibility that a potentially equally meaningful "good faith" defense to liability -- rather than an absolute defense to suit -- still might be asserted by private prison officials who genuinely believed their actions were in accord with prevailing law.[81] In the end, the slight increase in private contractors' exposure to liability appears not to have had any discernible impact on those firms' costs.[82]

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77 *See id.* at 2106-07. The Court argued that if private companies or their employees flag in their duties, they may be replaced in the competitive procurement process or through the action of market and reputation forces.

78 *Id.* at 2107. The *McKnight* decision would also appear to put to rest the notion that a private contractor could avail itself, in federal actions against states and their high-ranking officials, of the defense of absolute "sovereign immunity" that would also shield it from Section 1983 liability. Although the Supreme Court did not address this issue explicitly, its reasoning extends to both types of immunity for private prison contractors and their employees.

79 While the minority opinion, written by Justice Scalia, emphasized that the private prison industry is dominated by a few major players and often driven by political lobbying and decision making, it does not necessarily follow that the basic profit motive, and its incentives for private guards to perform effectively, are weak. There are still significant contract and market pressures at work. *See, e.g.,* Thomas & Logan, *The Development, Present Status, and Future Potential of Correctional Privatization in America, in* G. Bowman, et al., eds., Privatizing Correctional Institutions 233 (1993) (noting that profitability and share value are usually tied to meeting government contractual expectations and enhancing firm's public reputation).

80 Not only did private prison contractors not assume that their officials were protected by qualified immunity prior to *McKnight,* but their insurance policies before and after *McKnight* typically indemnify private prison officials for all liability relating to their prison work.

81 117 S. Ct. at 2108.

82 In this regard, it also does not seem persuasive to suppose, as did the *McKnight* minority, that private contractors will "down-play discipline" and otherwise exhibit timidity in their work so as to reduce the cost of § 1983 litigation. Anecdotal evidence suggests that private firms are not deterred from entering or profiting in the market . *See generally* Note, *Qualified Immunity -- Privatized*

4. Private Contractor and Governmental Liability Exposure in Section 1983 Litigation

With private prison contractors deemed "state actors" amenable to suit under Section 1983, and with contractor personnel not immune from suit, it becomes possible to analyze the general contours of how liability would be distributed among contractors and government correctional authorities in a privatized correctional environment, and whether, and to what degree, privatization helps or harms governments and prisoners involved in inmate litigation. The most important factor, from a cost standpoint, is simply the availability to contractors and governments of a contractor's comprehensive general liability insurance policy. Still, even from the standpoint of exposure to suit, it is clear that the interposition of a private contractor handling the day-to-day management of a correctional facility will tend to reduce significantly the exposure of governments and senior public correctional authorities, particularly in cases involving isolated or individual incidents. It should not, meanwhile, affect adversely the ability of prisoners to obtain relief for legitimate constitutional complaints. To understand these effects, it is useful to examine the respective Section 1983 liabilities of private contractors and government entities (i.e., local governments, states, federal government).

a. Private Correctional Firm Liability

As a private entity functioning as a "state actor," a private correctional contractor would be amenable to suit under Section 1983 or *Bivens,* and subject to both monetary damages and injunctive relief if it were found to have violated one or more inmates' constitutional rights. Hence, a private contractor would be subject to the same liability standards established by the Supreme Court for public actors, including those relating to causation and state of mind.[83] Since, however, there is no so-called *respondeat superior* liability for *any* employers under Section 1983 -- meaning, no automatic liability of an employer for the actions of its employees[84] -- a firm and its supervisory employees must be shown to have been directly involved in the alleged violation, have known about the violation or its likelihood of occurring and been "deliberately indifferent toward the risk, or have generated or validated a policy or custom that led to the violation.[85]

As in the case of public employers, in practice this means that while inmate cases may succeed against private correctional officers, it may be much more difficult to reach supervisory personnel. Such higher-level personnel may be insulated from liability in cases involving isolated

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Government Functions, 111 Harvard L. Rev. 390, 398-400 (1997) (private firms appeared undeterred by lack of immunity in aggressively operating prisons). Also, since litigation costs are merely possible future costs, firms will usually prefer to reap savings through immediate staffing and training efficiencies rather than through presumed litigation savings. *See id.* at 400 n. 75.

83 In the case of an Eighth Amendment claim alleging safety problems stemming from other inmates, for example, a plaintiff would need to show that the private correctional officials' actions or omissions had a causal connection to the injuries alleged, and that the officials displayed "deliberate indifference to a substantial risk of serious harm." *Farmer v. Brennan,* 511 U.S. 825, 828 (1994).

84 *See Monell v. Department of Soc. Serv.*, 436 U.S. 658, 694 (1978). Although *Monell* involved a municipal corporation, all federal circuit courts have agreed that there is no *respondeat superior* liability for private corporations as well. *See Street v. Corrections Corp. of Am., supra* 102 F.3d at, 818.

85 *See, e.g., Street v. Corrections Corp. of Am., supra* (private prison contractor and warden not proper defendants for alleged Eighth Amendment violation by prison guard; no showing of custom or policy); *Nelson v. Pennsylvania,* 1997 WL 793060, at 3 (E.D. Pa. 1997)(allegations against private prison warden and assistant warden dismissed due to lack of participation in or knowledge of and acquiescence in activity alleged to have caused constitutional deprivation).

incidents and lower level personnel (e.g., guards or medical staff),[86] depending on their particular level of knowledge or lack of forewarning of specific problems or risks. Even in cases where a failure to train correctional officers is at issue, the failure to train must be accompanied by officials' "deliberate indifference" to the risk that deficient training will result in constitutional violations.[87] Mere negligence -- on the part of line employees or their supervisors -- does not give rise to a Section 1983 claim.[88]

On the basis of *comparative* recovery of damages, it can be said that privatization may bring certain benefits to inmates bringing meritorious Section 1983 suits. First, in the case of state and federal corrections (although not local government corrections), due to the Eleventh Amendment and/or statutes on sovereign immunity, state and federal correctional employees are not amenable to suits for monetary damages except in their personal capacity.[89] This means that only damages against their individual assets may be obtained, thereby significantly limiting the amount of money that can be obtained in such cases.[90] By contrast, damages obtained against private correctional employees can be paid out of the employing firm's assets, which could be quite large. Moreover, federal, state and local governments may have statutory limits on damage awards or be exempted from certain types of damages, [91] while private contractors are not similarly restricted.

b. Government Correctional Authority Liability

Contracting for prison management services also means lower overall liability exposure for governments. This lower liability profile results directly from the Section 1983 causation and state of mind standards discussed immediately above: insofar as public corrections authorities will have entrusted day-to-day management of prisons to private contractors, they will be less likely to have advance notice or knowledge of specific harms alleged to have caused injury to individual inmates. While reliance on a private contractor will obviously not insulate government authorities from being named in lawsuits[92] or being exposed to liability for widespread or obvious problems with prison conditions, it will greatly lessen the liability of government supervisory officials for most inmate claims alleging individual harm. These claims represent the most common type of inmate lawsuit, and assume a significant proportion of a corrections authority's litigation budget.

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86 Thus, for example, in an Eighth Amendment inmate freedom from harm case, if supervisory officials were to be held liable, an inmate would have to show not only that front-line guards were "deliberately indifferent" to a strong likelihood that the inmate's safety was in danger, but that the supervisory officials had similar knowledge of a risk and recklessly and consciously disregarded it. *See, e.g., Payne v. Monroe County, supra* at 1334 (claims against private jail management firm dismissed; no showing of deliberate indifference on part of firm).

87 *See City of Canton v. Harris,* 489 U.S. 378 (1989).

88 *See Daniels v. Williams,* 474 U.S. 327 (1986); *Davidson v. Cannon,* 474 U.S. 344 (1986).

89 Also by virtue of sovereign immunity, states themselves are not amenable to suit. *See, e.g., Will v. Michigan Dept. of State Police,* 491 U.S. 58 (1989).

90 Although the government cannot be tapped directly for damages, it can, by statute and based on discretion, choose to indemnify government employees sued in their personal capacities. States, are, however, liable for attorneys' fees under 42 U.S.C. § 1988 in cases for injunctive relief where state officials were sued in their official capacity and lost.

91 In addition, the Supreme Court has held that punitive damages are not obtainable against municipal governments. *See City of Newport v. Fact Concerts, Inc.,* 453 U.S. 247 (1981).

92 As one commentator has noted, "[T]he government cannot hide behind its private operator. An inmate can sue either party." M. Gold, *The Privatization of Prisons,* 28 The Urban Lawyer 359, 380 (1996).

Governments will still be subject to injunctive relief if they permit obviously unconstitutional conditions to arise in private prisons.[93] Municipalities and county governments, unprotected by sovereign or qualified immunity, will also face monetary damages, including punitive damages in such situations where a "policy or custom" bearing on the alleged harm is deemed to exist.[94] But municipalities, together with state and federal officials, will face monetary liability in cases of individual harm only if, based on Section 1983 state of mind requirements, they authorize improper conduct by a private contractor, or have knowledge of that conduct and consciously fail to take steps to correct it. In most cases involving these kinds of allegations, courts will dismiss claims against upper level officials, who are deemed entitled to rely on the judgment and professionalism of private contractors reacting to the day-to-day challenges of prison management.[95]

B. The Role of Indemnification, Insurance and Monitoring in Reducing Liability and Litigation Costs

This section addresses the importance to public correctional authorities of (a) being covered by a broad indemnification agreement covering the contractor's acts and omissions, and (b) being named as an insured on a private contractor's comprehensive general liability insurance policy. These important advantages are discussed in greater detail below. This section also reemphasizes how Section 1983 will not impose liability on government officials unless they not only know about a problem but are *deliberately indifferent* toward it. Prudent monitoring of private facilities by the government has the clear benefit of alerting public officials to serious and systemic problems in a facility that, if responsibly dealt with, will not generate damaging litigation -- not to mention public relations problems -- in the first place. Perhaps equally important from a liability and cost standpoint, an effective monitor can prevent public authorities from committing their own acts and omissions that are *not* generally covered by the contractor's insurance policy.

1. Indemnification and Insurance

It goes without saying that any expectations about privatization's purported litigation cost advantages would prove completely illusory without government insistence on an effective

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93 See, e.g., *Nelson v. Prison Health Serv., Inc.*, 1997 WL 821531 (M.D. Fla.1997) (county could be found liable for deficient medical care at private jail based on repeated receipt of monitoring reports identifying problems).

94 Sometimes, courts have viewed municipal government liability broadly as non-delegable where contracting decisions are viewed as constituting a "policy or custom." *See, e.g., Ancata v. Prison Health Services,* 769 F.2d 700, 705-06 nn. 9 & 11 (11th Cir. 1985) (county liable together with private prison health provider for inadequate medical care furnished to inmates); *Blumel v. Mylander,* 954 F. Supp. 1547, 1556 (M.D. Fla. 1997) (county liable with private contractor CCA for Fourth Amendment violation where county policy entrusted CCA with policy making authority on subject at issue). Custom has been interpreted broadly to include a "widespread practice, that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law." *St. Louis v. Praprotnik,* 485 U.S. 112, 127 (1988), *quoting Adickes v. S.H. Kress and Co.,* 398 U.S. 144, 167-68 (1970). If a custom is shown to be so longstanding and widespread that it is considered to have been "authorized by the policy-making officials because they must have known about it but failed to stop it," liability may attach under § 1983. *See Payne v. Monroe County, supra* at 1334 (section 1983 prison suit against county and private contractor dismissed where no showing that inmate safety problem was known or should have been known).

95 *Cf., e.g., Calvert v. Hun,* 798 F. Supp. 1226, 1232-33 (N.D. W.Va. 1992) (Eighth Amendment claims against state prison officials dismissed where no showing that such officials actively or tacitly approved provision of allegedly incompetent medical care to individual inmate by private health provider).

indemnification and insurance scheme. By demanding full indemnification and compensation of the government for all acts and omissions of the private contractor that may give rise to liability surrounding the operation of a private facility, public corrections authorities can ensure that there is no litigation cost increase attending privatization. Being named as an insured on a private contractor's comprehensive general liability policy can provide governments with the security they need in order to turn over complete operation of a prison and to focus their attention on specific matters of facility oversight and proper contractor performance.

To ensure that they deliver their full benefit, indemnification clauses typically indemnify, defend, and hold harmless the government and all of its employees, agents, and officers from any claims or losses -- including all damages, costs, fines, and/or settlements -- stemming from the contractor's acts or omissions in connection with performance of a privatization contract.[96] They are also typically written in such a way as to apply to all subcontractors, agents, or any other persons supplying services or supplies in connection with the contract. Beyond these basics, a contract may explicitly provide for indemnification for specific harms, including prison escapes, failure to comply with federal, state, or local legislation (particularly labor laws), and unsanctioned use of information or data collected or used in the course of performance of the contract (e.g., research or personal data implicating privacy, copyright, or trade secret concerns).[97] It may also address government requirements that the government be a signatory to any settlement or explicitly approve any settlement in excess of insurance limits.

Insurance provisions in a contract constitute a logical extension of the indemnification clauses. A contracting government agency will usually be named as an insured on any and all insurance policies written for the private contractor managing one or more prison facilities.[98] By being named explicitly as a direct insured party -- rather than as merely a beneficiary -- a government can strengthen its indemnification provisions vis-a-vis the contractor and its rights against the insurer. Among the most important of those rights is the right to advance notice of any nonpayment or cancellation of the policy by the contractor. Without these direct rights -- contained in the insurance policy or in the contract with the private contractor[99] -- the government's protection may be illusory. The contracting agency may also insist that it be given advance notice of, and opportunity to approve, a new certificate of insurance that replaces an expiring policy.[100]

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96 It is important that the indemnification extend to performance of the *contract* in all of its dimensions (including by implication all manner of omissions), rather than simply the operation of the facility in question, which might otherwise narrow the coverage of the hold harmless benefit.

97 See generally, e.g., Contract Between Commonwealth of Kentucky and U.S. Corrections Corporation for the Operation of Three Minimum Security Facilities, December 9, 1993 (hereinafter "Kentucky Contract"), at 33.

98 There appears to be unanimous agreement that third-party insurance obtained by the contractor is the safest and most cost-effective means that governments have of being properly insured. *See* Robbins, The Legal Dimensions of Private Incarceration, *supra* at 854, n. 644 (discussing problems with contractors self-insuring).

99 *See, e.g.,* Kentucky Contract at 34; CCA-Va. Contract at § 7.4, p. 38.

100 *See, e.g.,* State of California Department of Corrections Standard Contract, Attachment B (General Terms and Conditions), ¶ 19 at 6, furnished as Attachment 1 to RFP for Expansion and Operation of Medium Security Community Correctional Facility, October 13, 1995.

In developing specific provisions for insurance coverage, governments generally seek to cover all possible liabilities arising from the operation of the privatized facility, including both personal injury claims and Section 1983 litigation. Liability areas include those for personal injury, professional (malpractice) liability (including medical malpractice), contract liability, property damage, worker's compensation liability, theft and fraud, and automobile liability (to protect against damages stemming from transport of inmates). Insurance policies are also generally sought that explicitly provide for the payment of *litigation defense costs.*[101] Depending on risk calculations specific to individual facilities, governments will also seek to prescribe insurance amounts that insurance policies should contain.[102] In addition to liability insurance, contracts may also provide that contractors furnish performance bonds as a means of ensuring proper performance of the contracted-for services, although the usefulness of this tool is limited.[103]

Government indemnification and coverage under a contractor's third-party liability policy go hand-in-hand with the practical reality that public officials have turned over day-to-day prison management to private firms that must, as a matter of ordinary accountability and proper market pricing, bear the direct costs of damages they may cause in executing their responsibilities. Attentive governments will closely monitor both the quality of insurance initially obtained by the contractor, as well as changes in coverage and premiums that may have an impact on the overall savings derived from the management contract. While market pressures and profitability concerns should, over time, be expected to result in lower premiums for contractors that perform responsibly, governments can still be expected to monitor contractor performance closely to make sure that there is no offsetting tendency to cut back on staffing, training, and other inputs affecting the bottom line.

It should be noted that government litigation costs at a particular facility may or may not be lower with prison management in the hands of a private contractor. A great deal depends on the nature of the facilities involved, the profile of the inmate population, and the risk management approaches taken by particular public versus private authorities. The latter approaches can themselves vary greatly according to the overall management plan, quality of staff, and claims handling procedures employed by those administering a specific prison facility or system. While it may be contended that private authorities can exercise greater flexibility than their public sector counterparts in given situations, this assertion cannot be readily substantiated.[104] Thus, even though a prudent

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101 *See, e.g.,* CAA-Va. Contract at § 7.3, p. 38.

102 For example, Virginia has required a contractor managing a medium security facility to carry comprehensive general liability insurance in an amount no less than $2 million per occurrence and $5 million in the aggregate. *See* CCA-Va. Contract, *supra* at § 7.3, p. 37. Kentucky requires commercial general liability insurance to be carried by a contractor for a minimum security facility in the amount of $2 million per person and $3 million per occurrence. *See* Kentucky Contract, supra at 35. Most specialists seem to think that $5 million per occurrence is a completely adequate amount for a medium security prison with 500-1000 beds. For medical malpractice insurance, the U.S. Bureau of Prisons prescribed an amount of $1 million per medical speciality per occurrence. See RFP for Minimum Security Prison, Taft, California, Nov. 27, 1996 (hereinafter "Taft RFP"), at 72.

103 Although performance bonds have been viewed by some as useful where the contracting agency wishes to protect itself from events such as contractor bankruptcy, default, strikes, or a takeover by or merger into, a new firm, many believe they are unnecessary since they usually require replacement of a private contractor by a vendor of the insurer's choosing, and because it is usually easier and cheaper for public authorities to resume control.

104 Some privatization proponents have asserted that private firms may prove more responsive to inmates and the general public in remedying problems that result in prison litigation. They content that a private contractor can more expeditiously to correct a problem or settle a lawsuit when political pressures are absent, fewer approvals are needed, and funding is more readily accessible. Also, a private firm's concern with market reputation and profitability is alleged to create incentives for flexibility and holding costs down. There remains no solid evidence or study to support these contentions, however plausible they may be.

government correctional agency will insist as a matter of course that a contractor indemnify and hold it harmless against all acts and omissions of the contractor arising under a management contract -- and even though such an agency will similarly insist that it be named as an insured on any private comprehensive general liability insurance policy covering particular prison facilities -- there is no way to tell for sure whether its litigation expenditures under privatization will be lower.[105]

2. Monitoring to Safeguard Against Liability Resulting from Government Duties

Indemnification and insurance covering the acts and omissions of the private contractor will not necessarily shield public correctional authorities for failing to exercise that degree of oversight deemed appropriate to particular contract circumstances. As the Supreme Court acknowledged in the case of *Logue v. United States,*[106] government correctional authorities may be liable for their own negligence even though management of a correctional facility has been given over to an independent contractor.[107] To safeguard against the continuing possibility of liability for their own conduct, as well as to ensure proper contractor performance and compliance with contract terms, most governments have statutorily[108] or contractually provided for public corrections monitors to oversee private prison operations. Monitors may be individuals who fulfill roles significantly different from those performed by auditors, inspectors, and performance evaluators whose interventions are less frequent and less concerned with day-to-day operations. Without such frequent oversight, it is possible that a government could be found negligent -- according to an evolving standard of reasonableness in the corrections community -- for negligent or deficient monitoring.[109]

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105 Clear answers to this question are likely to be exceedingly difficult to obtain. To begin with, public entities do not carry third party liability insurance, so direct cost comparisons are impossible. Also, public correctional authorities and contractors alike would find it very hard to isolate with any precision all of their relevant litigation costs (staffing costs, particularly in the public sector, are hard to attribute exclusively to litigation-related functions), and may be reluctant to disclose their damage awards paid out. Ascertaining what portion of the contractor's per diem is attributable to litigation defense would probably be quite speculative. Finally, it would be extremely difficult to control for potentially wide differences in prison populations, facility conditions, and the past history of litigation at one or more facilities. Still, one could surmise that public authorities have a number of factors that could aid them in keeping certain litigation defense costs relatively low. These include the judicious use of salaried government attorneys to handle virtually all prison litigation, possibly less expensive claims handling, and the lack of a profit mark-up. Private contractors, by contrast, might feature relatively more expensive claims handling and legal assistance (e.g., though contract attorneys billing at market rates), as well as that portion of their fee allocated to such work.

106 412 U.S. 521 (1973).

107 *See id.* at 532-33. In *Logue,* the Court acknowledged that a U.S. Marshal could be found negligent for his own acts of negligence in failing to take certain precautions in placing a federal inmate in a county jail under an intergovernmental agreement pursuant to 18 U.S.C. § 4002. While indemnification and insurance covering a private contractor will help with litigation stemming from prison condition problems, it will not obviate government officials liability for negligent selection or oversight of a contractor. As discussed above, Section 1983 litigation has in recent years confirmed this same fact in the context of private prison contractors specifically, *see* § 3.A, *supra.*

108 *See, e.g.,* Fla. Stat. Ann. § 957.04(1)(g) (requiring full-time monitor with unlimited access to private facility); Ky. Rev. Stat. Ann. § 197.510(29) (requiring frequent monitoring); N.M. Stat Ann. § 33-1-17(D)(7) (requiring monitoring of compliance).

109 See CSG Report, *supra* note 37, at 533. Lack of monitoring or grossly deficient monitoring could also figure as a major grounds for voiding a contract on grounds of excessive delegation.

In some jurisdictions, and pursuant to certain contracts, monitors are full-time Department of Corrections employees who work at private facilities,[110] while in other cases, monitors may only visit intermittently.[111] In still other cases, a monitor may be an independent contractor who visits a facility only several days per month.[112] RFPs or contracts may require a private prison operator to set aside space for a government monitor and to assume all costs associated with the monitor's work other than his or her salary.[113] The monitor's mandate in many cases may be a broad and active one, in which ongoing guidance is provided to the private contractor.[114] A wide-ranging, ongoing document review -- including paperwork on population, classification, discipline, grievances, serious incidents, and programming[115] -- can complement direct observation. In many cases, the level of oversight received by a private contractor may ultimately exceed that received by publicly-operated prisons.[116]

A review of alternative approaches to monitoring and the many deficiencies that may attend many of these approaches,[117] lies beyond the scope of this review. For present purposes, it is important simply to recapitulate the legal implications of using -- or not using -- a monitor. The problems of government negligence liability resulting from deficient monitoring or a failure to monitor at all have already been addressed.[118] If a monitor is employed, however, public corrections authorities should make every effort to take the monitor's role -- and the information he or she relays to the public agency -- seriously. Otherwise, public correctional officials may find themselves exposed to "deliberate indifference" allegations in a Section 1983 action for failing to respond appropriately to information provided by the monitor.

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110 *See, e.g.,* Florida, where this is statutorily required.

111 *See, e.g.,* North Carolina Department of Corrections RFP for Two 500-Cell Medium Security Institutions, Dec. 19, 1995 (hereinafter N. Carolina RFP), at 19.

112 This arrangement exists in the case of the contract between the District of Columbia and the Northeast Corrections Center in Youngstown, Ohio, operated by Corrections Corp. of America. Although this arrangement was apparently selected in light of concerns that the D.C. Government could not perform the job properly, it is far from an ideal situation, given that the monitor resides out of state and only visits the facility a few days per month. This may or may not be viewed as a modest, though important, contributing factor in the D.C. Government's failure to respond appropriately to repeated problems of inmate violence at the prison.

113 *See, e.g.,* N. Carolina RFP at 19.

114 For example, the contract monitor for the U.S. Bureau of Prisons' Taft, California, minimum security facility is empowered to provide "technical direction" to "all work performed" under the contract, which can include "[d]irections to the contractor which re-direct the contract effort, shift work emphasis between areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual scope of work." Taft RFP, *supra* note 102, at 56.

115 *See* Keating, *Public Over Private: Monitoring the Performance of Privately Operated Prisons and Jails, in* D. McDonald, ed., Private Prisons In the Public Interest 130, 145 (1990). Many private prison contracts require full access to prison facilities and private contractor books and records, without notice. *See, e.g.,* CCA-Va. Contract at § 4.38, p. 27.

116 *See* Calabrese, *Low Cost, High Quality, Good Fit: Why Not Privatization, in* G. Bowman, et al., eds, Privatizing Correctional Institutions, *supra* at 184-85.

117 Among the most thorny issues are monitors being co-opted by contractors, *see, e.g.,* D. Shichor, Punishment for Profit 121-22 (1993); confusion and blurring of the chain of command that occurs when prison administrators must answer to government officials, *id.* at 120; and governments having insufficient funds to undertake effective, regular monitoring. *See, e.g.,* J. Prager, *Contracting Out: Theory and Policy,* 25 N.Y.U. J. Int'l L. & Pol. 73, 1099-1100 n. 71 (1992). Indeed, the high cost of monitoring may offset many of the financial advantages of contracting out.

118 *See* Section 3.A.1,*supra.*

Note that other problems can develop with independent contractors or monitors: a public correctional agency can be unnecessarily exposed to additional liability if an independent monitor does not agree to indemnify the agency for any and all acts and omissions and if he or she fails to carry adequate professional liability and comprehensive general liability insurance naming the agency as an insured.[119] In sum, monitoring acts as a double-edged sword: it can create as well as forestall liability depending on how intelligently it is structured and conducted.

119 The problems of liability and conflict of interest are graphically illustrated by Wisconsin's having several years ago appointed an independent prison monitor to oversee a private facility in Texas that housed Wisconsin inmates. The monitor's salary was shared by Wisconsin and the private contractor, making the monitors allegiances and responsibilities unnecessarily confused.

4. Employment and Labor Relations Issues

Some of the most important legal questions surrounding prison privatization relate to employment and labor relations. Specifically, can prison employees engage in collective bargaining under the National Labor Relations Act? Can they go on strike? Unionized employees in public correctional facilities have traditionally worried about governments contracting out jobs to private contractors who may not be required to recognize or negotiate with their collective bargaining representatives. For their part, private correctional management companies have sometimes resisted taking over a once-publicly run facility if in doing so they may be deemed a 'successor employer' bound to the terms of an existing labor contract. These and other questions bearing centrally on labor relations will be examined in this section, along with a discussion of how public and private correctional authorities can practically address prison employees' right to strike. First, however, the section discusses the impact of privatization on existing civil service arrangements, as well as the significance of private prison companies remaining independent contractors rather than "joint employers" with public correctional authorities.

A. Potential Civil Service Impediments

State courts differ about whether civil service regimes -- constitutional or statutory schemes designed to eliminate political spoils systems and increase governmental efficiency through the creation of a merit-based employment system -- can prevent or facilitate the privatization of government services.[120] Several state courts have held that civil service laws in fact neither bar nor impede privatization.[121] These courts have concluded that privatization is not contrary to the purpose of their civil service laws: privatization is deemed a cost savings measure -- not a reintroduction of the political spoils system.[122] However, at least two prominent state court decisions have held that state civil service laws bar privatization.[123] Both courts found that the states lacked statutory or regulatory authorization to contract with private service providers and held that privatization is inconsistent with the purpose of the civil service laws (i.e., to provide full civil service protections to everyone performing a traditional state function).[124]

Other state courts have not found civil service laws to bar privatization, but have held that such laws impose significant restrictions on contracting out state-provided services, and impede

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120 *See* Nancy Buonanno Grennan, Note, *A Legal Roadmap to Privatizing Government Services in Washington State*, 72 Wash. L. Rev. 153, 157-59 (1997).

121 *See Moore v. Department of Transp. and Pub. Facilities*, 875 P.2d 765, 771 (Alaska 1994); *In re Local 195, Int'l Fed'n of Prof'l and Technical Employees*, 443 A.2d 187, 193 (N.J. 1982); *Conn. State Employees Assn. v. Board of Trustees of the Univ. of Conn.*, 345 A.2d 36, 40 (Conn. 1974); *Kiger v. Nixon*, 1996 WL 512031, at *7 (Tenn. Ct. 1996); *Mich. State Employees Assn. v. Civil Serv. Comm'n*, 367 N.W.2d 850, 852 (Mich. Ct. App. 1985) *(per curiam)*.

122 *See id.*

123 *See Colo. Assn. of Pub. Employees v. Dept. of Highways*, 809 P.2d 988, 995 (Colo. 1991) *(en banc)*; *Wash. Fed'n of State Employees v. Spokane Community College*, 585 P.2d 474, 476 (Wash. 1978) *(en banc)*.

124 *See id.*

privatization.[125] For example, courts have held that a state can privatize a traditional government function if a public entity controls the private contractor, or the privatization is not a subterfuge to evade civil service laws or an arbitrary or capricious reorganization.[126] Ultimately, whether civil service laws impede or bar privatization seems to depend not on specific constitutional or statutory language but rather on a court's policy choice between purported cost savings and civil service protections for everyone performing a traditional government service. In any case private contractors will need, in practical terms, to devise attractive inducements to persuade civil servants to move over to the private sector.[127]

B. The Significance of Private Correctional Firms' Independent Contractor Status

Once initial impediments to contracting out correctional services have been addressed, it remains to analyze a private contractor's responsibilities relative to employment and labor relations obligations. The contractor's status as an independent contractor bears significantly on such questions.

As an independent contractor, a prison management company would retain full authority and responsibility for establishing, maintaining, and/or modifying the wages, hours, and working conditions of its employees, including a presumptive right to select and hire its own complement of employees. A different result would obtain if public correctional authorities retained significant control over basic employee relations. In that case, the corrections firm and public authorities would be considered "joint employers" with important ramifications for employment and labor relations obligations. In brief, as a joint employer, a firm does not have unfettered discretion over a wide range of personnel issues. Many observers of privatization believe that many of the benefits of privatization may be lost if government retains significant control over a private firm's personnel issues.

From the standpoint of employment law, a private corrections firm with independent contractor status would have to comply with all legal standards that apply to private industry, including the Fair Labor Standards Act (FLSA),[128] the Service Contract Act if applicable (providing for the payment of prevailing wages by government contractors with service contracts with the federal government or the District of Columbia),[129] and a host of other applicable employment laws, including

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125 *See State ex rel. Sigall v. Aetna Cleaning Contractors, Inc.*, 345 N.E.2d 61, 65 (Ohio 1976) *(per curiam)*; *University of Nev. v. State Employees Assn., Inc.*, 520 P.2d 602, 606-07 (Nev. 1974); *Ball v. Board of Trustees of State Colleges*, 248 A.2d 650, 654 (Md. 1968); *Crowin v. Farrell*, 100 N.E.2d 135, 139 (N.Y. 1951).

126 *See id.*

127 These could include special retirement buyouts and other incentive packages. In some cases, contractors have offered special annuity plans for senior public officials nearing retirement, while ensuring that other employees can, at a minimum, roll over their retirement benefits to the maximum extent possible.

128 29 U.S.C. §§ 201-219. The FLSA requires employers to pay their employees a minimum hourly wage and overtime compensation at the rate of one and one-half times their regular hourly wage for work in excess of 40 hours per work week.

129 41 U.S.C. §§ 351-358. The Act requires contractors to pay their employees wages and benefits that either meet or exceed the levels that are "prevailing .... in the locality" as determined by the Secretary of Labor, or that are determined by a collective bargaining agreement. 41 U.S.C. §§ 351(a)(1), (2).

laws on discrimination and possible affirmative action requirements. The contractor would also be responsible for meeting any additional personnel or employment requirements that the contracting agency may have included in an RFP. These could embrace a number of fundamental standards promulgated by the American Correctional Association. In general, however, these ACA Standards for Adult Correctional Facilities (hereinafter "ACA standards") tend to be generic, requiring the contractor to have policies regarding various personnel issues, but not addressing their content.[130] It is likely that a privatizing public corrections agency would seek to develop tailored contractual requirements for personnel issues at a particular facility, including specific guidelines to ensure that the contractor does not achieve cost savings through unreasonable personnel practices.

Genuine independent contractor status also has important implications for a private corrections management firm's labor relations obligations. So long as a firm is not a "joint employer," it will qualify as an "employer" subject to the National Labor Relations Act (NLRA) and therefore as an entity with whom employees can potentially collectively bargain and hold the right to strike.[131] Indeed, since the landmark decision of the National Labor Relations Board (NLRB) in *Management Training Corp. and Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 222*,[132] -- a decision explicitly supportive of flexibility in privatization scenarios -- virtually any government contractor can so qualify as an "employer," even if a contracting government agency retains some control over wages, benefits and other essential personnel matters.[133] The determination is essentially up to the contracting parties. As such, the private contractor's employees will presumptively not be considered "public employees" subject to special public labor regulatory authorities and potentially barred from striking under federal or state law.[134] Rather, they will

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130 American Correctional Association Standards for Adult Correctional Institutions (3d ed. 1993 & 1998 Supp.) ACA standards require such basic policies as confidential personnel records, annual performance reviews, appropriate ethics rules, and a personnel policy manual covering all major aspects of personnel organization, qualifications, hiring, training, evaluation, promotion, termination, and dispute resolution. *See* ACA Standards 2-4054-4078. Only wages are addressed in terms of substance: "Compensation and benefit levels for all institution personnel are comparable to similar occupational groups in the state or region." ACA Standard 2-4064.

131 The NLRA has no jurisdiction over public entities. 29 U.S.C. § 182.

132 317 N.L.R.B. 1355 (1995)

133 Until this case, the NLRB had long held, pursuant to the case of *Res-Care, Inc.*, 280 NLRB 670 (1986), that a firm would not be subject to the NLRA if an "exempt entity" -- like a public agency -- had significant control over, and final approval of, wages and benefits. With *Management Training Corp.*, the NLRB decided that the prior test was unduly restrictive of possible privatization arrangements, and it would allow private contractors and their employees to determine for themselves whether collective bargaining could address any number of terms and conditions of employment, including wages. It specifically noted that government approval of wage packages left considerable room for private employer flexibility, including possible scenarios where a private employer might absorb certain costs itself without passing them on to the government. This more flexible, open standard has since been repeatedly upheld. *See, e.g., Teledyne Econ. Dev. v. NLRB,* 108 F.3d 56 (4th Cir. 1997); *Pikeville United Methodist Hospital of Kentucky, Inc. v. United Steel Workers of America,* 109 F.3d 1146 (6th Cir. 1997); *Landscape & Property Management, Inc. and Service Employees Int'l Union,* 324 NLRB No. 44 (1997).

134 Unlike private employees, public employees do not ordinarily have a right to strike. Federal employees are completely barred from striking under 5 U.S.C. § 7311, and are subject to criminal penalties for violation of the statute. *See* 18 U.S.C. § 1918. Also, federal employees may only join "labor organizations" that are defined to expressly exclude organizations that participate in strikes against a government agency. 5 U.S.C. § 7103. State employees, meanwhile, are usually subject to the same kinds of provisions, although as many as eleven states have now created specific exceptions to the general rule that allow certain classes of public employees to strike. *See* J. Fisher, *Reinventing a Livelihood: How United States Labor Laws, Labor-Management Cooperation initiatives, and Privatization Influence Public Sector Labor Markets,* 34 Harv. J. Legis. 557 (1997). Still, virtually all states have retained clear

constitute private employees who are subject to the broad exclusive jurisdiction of the NLRA and able to exercise the full panoply of rights under the Act. The major implications of NLRA coverage, including employees' right to strike, are discussed below.

C. Effects of Privatizing an Existing Unionized Facility

If a private prison contractor assumes control of an entirely new facility, it will be subject to the NLRA and will not be permitted to interfere with any concerted activities taken by its employees. Even if a private firm takes over an existing public facility, however, it is unlikely that the employer will have to collectively bargain with an existing union or be bound by an existing collective bargaining agreement.

Under the NLRA, if a private firm is awarded a public contract, substantially maintains the operations of the predecessor public institution and hires a majority of its correctional officer work complement from the unionized workforce, the contractor can be considered a "successor employer" with an obligation to bargain with the current union representative.[135] This requirement can exist even where the original bargaining obligation may have arisen under a state or other public employees labor regulatory authority, rather than the NLRB.[136] A firm's duty to bargain arises as soon as a "substantial and representative complement" of its workforce is in place.[137]

Despite this general presumption, no bargaining obligation should generally arise in any private company takeover of a public correctional facility. The reason is that in almost all prison privatization scenarios, the incumbent public employees' union will not be able to represent prison guards in a private employment setting. Under the NLRA, "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership....employees other than guards."[138] In other words, only special guards unions -- such as the United Plant Guard Workers of America -- can represent prison guards under the NLRA.[139] In a prison privatization context this means that a union with a more diverse membership that previously

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prohibitions against strikes by employees whose functions are essential to the public welfare, a category that would include prison employees. *Id.* at 572-73. Only Ohio appears to permit "non-safety" public employees to strike. *See* Ohio Rev. Code Ann. § 4117.01-4117.23.

135 *See NLRB v. Burns International Security Services, Inc.*, 472 U.S. 272 (1972). *See also Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987).

136 *See Base Services, Inc.*, 296 NLRB 172, 174-75 (1989) (NLRB not precluded from finding successorship merely because predecessor employer not covered by the NLRA); *Harbert International Services*, 299 NLRB 472, 476 (1990). Still, there is some question about this requirement if, as in the case of most public labor agreements, there is no successorship clause.

137 *See Fall River Dyeing & Finishing Corp., supra* note 135, at 51-53. The duty to bargain would arise upon the private contractor taking over operations if it was "perfectly clear," even before the contractor, as successor, hired its full complement of employees, that it was going to employ a majority of the predecessor's employees. *See Kingswood Services*, 302 NLRB 247 (1991).

138 NLRA § 9(b)(3), 29 U.S.C. § 159(b)(3).

139 Corrections officers have been deemed "guards" for purposes of the NLRA. *See Crossroads Community Correctional Center*, 308 NLRB 558 (1992). The reason for this provision is to prevent conflicts of interest from developing in situations involving, among other things, employee theft or deceit, where guards could find themselves as witnesses testifying against fellow union members.

represented public correctional officers -- i.e. a union representing many kinds of employees, such as the American Federation of State, County, and Municipal Employees (AFSCME) -- *cannot* be certified as a bargaining representative under the NLRA when a private contractor assumes operational control of a correctional facility. An obligation to bargain collectively with the workforce would only materialize upon an appropriate *new* guards union being selected by the employees and certified under the NLRA.

Even in the extremely rare case that guards at a public facility are already represented by a special guards union, a private contractor will not necessarily be bound by the substantive provisions of the existing labor contract. This is true even if a prison management firm states that it may make employment opportunities available to all existing correctional officers at a facility. So long as the firm expressly reserves the right to establish initial terms and conditions of employment as well as initial job assignments, it will not be required to adopt the terms of the current labor agreement.[140] Indeed, only if the company were to indicate explicitly and affirmatively that it would hire most of the correctional officer workforce at a facility -- or alternatively, would explicitly consent to be bound by the existing guards' collective bargaining agreement -- would an extant labor contract be imposed on the firm.[141] The private contractor will have to determine what kinds of statements and actions it will take toward the hiring of existing correctional officers, and carefully articulate whether it will be establishing new terms and conditions of employment.[142] Under these circumstances, it will be quite rare that a new prison contractor taking over existing facilities will have an obligation either to bargain collectively, or abide by the terms of the existing collective bargaining agreement.[143]

D. The Right to Strike

Any employees covered by the NLRA possess the right to strike. Though the right is not absolute -- there exists no constitutional right to strike for public or private employees[144] -- the extension of NLRA coverage to a wide variety of possible private contractors in the wake of the *Management Training* decision means that the right to strike becomes a presumptive right of prison guards at privatized correctional facilities. In fact, the NLRB has upheld the right of private prison

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140 *See, e.g., United States Can Co.*, 304 NLRB 1127 (1992).

141 *See NLRB v. Burns Int'l Security Services, supra* note 135. Although a successor employer may be found to "constructively adopt" a predecessor contract through particular actions or conduct, merely retaining a particular provision of the predecessor contract that was required by law does not constitute "adoption." *See, e.g., EG & G Florida, Inc.*, 279 NLRB 444, 453 (1986) (paying prevailing wages as required by statute and provided for in predecessor contract does not constitute "adoption" of such contract).

142 Whether these legal doctrines applicable to successorship situations represents good public policy or not is open to debate by labor and corrections specialists, but its practical implications appear quite clear. Nevertheless many observers may be displeased by the degree to which successor employers can keep existing unionized employees in a state of turmoil and limbo as new operations and policies are put into place prior to a substantial and representative complement of employees being deployed. Moreover, more generally, as with the debate about out-sourcing correctional management in the first place, see section IV.A, *supra*, many may view the avoidance of a civil service regime as a sure way to eliminate the training, professionalism, and *esprit de corps* that may characterize certain public corrections departments.

143 It will however, need to permit public union access to the facility if there are public, unionized employees operating a prison industry on-site.

144 *See United Federation of Postal Clerks v. Blount*, 325 F. Supp. 879 (D.D.C. 1971).

guards to strike on at least one occasion in the case of *U.S. Corrections Corp. and United Plant Guard Workers of America.*[145] There, the Board found that guards were entitled to go on strike at a minimum security institution without perimeter fences or guard towers, and simply with unarmed guards on duty.

An important question remaining in the wake of the *U.S. Corrections Corp.* case is whether the NLRB would decline to exercise jurisdiction -- and by extension, permit the right to strike -- at a more secure facility. This question remains unanswered, but significantly, the Board has assumed jurisdiction and permitted strikes at other types of facilities that involved public safety concerns. For example, in *NLRB v. E.C. Atkins & Co.*, the Board exercised jurisdiction over private guards at a defense plant who served as civilian auxiliaries to the plant's military police. In *Career Systems Development Corp.* and *Correctional Medical Systems*, the Board similarly acknowledged guards' right to strike in situations involving a juvenile correctional facility and security services provided to the United States Coast Guard and U.S. Navy, respectively.[146] While the Board or a court might conceivably determine in a given case involving a medium or maximum security facility that matters of public security warranted a decision to decline jurisdiction, this seems unlikely to evolve as a general principle. If correctional authorities seek to limit the right to strike by guards, they will do better to turn to two practical mechanisms discussed below -- no strike clauses in labor contracts, and mandatory notification and strike delays accompanied by binding arbitration.

1. No-Strike Clauses

Even if private prison employees enjoy the right to strike, a private prison contractor can seek to have the employees agree, individually, or collectively (in a labor contract) to the incorporation of a no-strike pledge. Unions often agree to the inclusion of such clauses in labor contracts in return for a management agreement to seek peaceful settlement of contract disputes through an agreed-upon grievance procedure extending to third-party arbitration if necessary.[147] As one court has noted, "a no-strike obligation, express or implied, has been seen as the *quid pro quo* for a grievance arbitration agreement."[148] Consequently, an employer can seek to enjoin any strike in violation of a no-strike pledge.[149]

2. Strike Notification/Mandatory Delays

Either due to the expiration of a labor contract or the refusal of a union to agree to a no-strike clause, private correctional employers may also seek to negotiate other special provisions to blunt the

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145 304 NLRB 934 (1991)

146 *See Champlain Security Services,* 243 NLRB 755 (1979); *Career Systems Development Corp.,* 301 NLRB 59 (1991).

147 The BOP's Taft RFP provides that any collective bargaining agreement entered into during the period of the contract "should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout or other interruption of normal operations." Taft RFP at 14.

148 *AFSCME v. Executive Dept.,* 52 Ore. App. 457, 479, 628 P.2d 1228, 1242 (1980), *citing Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 455 (1957); *Boys Markets, Inc. v. Retail Clerks Local 770,* 398 U.S. 235 (1970).

149 *See Boys Markets, Inc., supra.*

impact of a potential strike on prison operations.[150] First, in the case of contract expiration, the parties may agree to use their best efforts to reach an early and peaceful settlement to any labor dispute that might arise in the interim. Whether or not a contract had expired, the parties might also agree to a notice provision that would potentially allow the private contractor to make arrangements for an impending dispute, including arrangements for notify in a public corrections authorities of the dispute and enabling the latter to prepare to assume possible operation of the facility in the event of an actual strike.[151] Some prison contractors have reportedly also stated that they can enter into special emergency preparedness agreements with government authorities to permit the National Guard to intervene in a timely manner. While this scenario is hardly a congenial one -- relocating replacement guards, supervisors, medical staff, etc. from public corrections facilities to unfamiliar (and sometimes remote) institutions on relatively short notice[152] -- it represents the best that corrections officials can expect in the absence of a no-strike agreement.

150 *See* Robbins, The Legal Dimensions of Private Incarceration, *supra*, at 310-11.

151 *See id.* Robbins suggests a 60-day notice period in cases where a labor agreement is set to terminate, and immediate notification upon an employer learning of a potential dispute.

152 This could prove even more difficult if privatization expands and there are fewer available public correctional employees to assume key positions on short notice.

5. Inmate Labor Questions

The question of inmate labor, though it constitutes a fairly straightforward area of the law, reverberates with the controversial legacy of an earlier era in American history where the shameful treatment of private prison labor ultimately provided a major impetus for the modern public corrections movement. Today, the federal government and most states have in place a regulatory scheme that simultaneously guards against inmate exploitation while ensuring that prison-generated products and services do not gain an unfair competitive foothold in the marketplace. Against this backdrop, it does not appear that privatized corrections would raise any significant legal issues.

A. Constitutional Dimensions

The Thirteenth Amendment to the U.S. Constitution excepts convicted prisoners from its bar against "involuntary servitude."[153] Courts continue to recognize this "convict labor exception," upholding laws mandating prison labor, and finding no constitutionally protected right not to work, or right to reimbursement.[154] Because prison labor has been found under the 13th Amendment to be an acceptable component of punishment, only pretrial detainees are protected from involuntary labor.[155] Meanwhile, the courts have not viewed the Eighth Amendment's prohibition against "cruel and unusual punishment" as providing an obstacle to prison labor per se, or a basis for redress of inmate claims of unfair working conditions.[156]

While it may be possible to imagine policy grounds on which to mount a Thirteenth Amendment objection to inmate labor at privatized facilities based on potential financial incentives for abuse,[157] it is not clear whether these arguments would find a receptive audience in the courts. Even in the event that private prisons were given the freedom to profit from inmate labor -- something not envisioned at present (see below) -- it is unclear whether the Thirteenth Amendment would directly speak to the problem at issue.[158]

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153 U.S. CONST., Amend. XIII.

154 *See, e.g., Berry v. Bunnell,* 39 F.3d 1056 (9th Cir. 1994).

155 *See, e.g., Channer v. Hall,* 112 F.3d 214 (5th Cir. 1997).

156 *See, e.g., Ray v. Mabry,* 556 F.2d 881 (8th Cir. 1977); *Woodall v. Partilla* 581 F. Supp. 1066 (N.D. Ill. 1984).

157 *See* I. Robbins, The Legal Dimensions of Private Incarceration, *supra,* at 125.

158 The theory in favor of a Thirteenth Amendment objection would likely be that for-profit facilities would have financial incentives to exploit inmate workers, and particularly to conceive of ways to keep inmate workers incarcerated. Ultimately, the profit orientation would be seen to overwhelm the penological justification for incarceration of which prison labor is a subordinate part. Still, it is unlikely that for-profit prison labor would ever be permitted to become a dominant part of the correctional environment and it is unclear how useful the Thirteenth Amendment would be as a bar to this phenomenon. It should be remembered that it was labor movement and business community pressure to eliminate cheap prison labor (i.e., the cold logic of economics), not the Thirteenth Amendment and human rights concerns, that led to the elimination of private corrections facilities during the early part of this century.

B. Federal prisons and inmate labor

For decades, Congress has delegated the management of federal prison labor to a governmental corporation known as Federal Prison Industries ("FPI") or "Unicor." Unicor's mandate is to provide employment for all physically fit inmates, so far as practicable. Currently, Unicor employs roughly 20% of all federal inmates in some hundred or so individual operations (two or more may be located at a particular correctional facility). It can, however, only operate under a "state use" principle, whereby products and services are sold solely to federal departments and agencies and not to the public in competition with private enterprise.[159] Moreover, because they are not working voluntarily, *prisoners are not deemed to be "employees" under the Fair Labor Standards Act, and are not entitled to receive minimum wage.*[160]

Privatization of federal facilities with Unicor operations should not face major difficulties, assuming jurisdictional lines are properly drawn. In the context of the federal regulatory framework, federal prisons are prohibited from contracting out prison labor to "any person or corporation."[161] This provision is interpreted to bar both the leasing of prison labor or the relinquishing of control of Unicor industries to any private entity. A private federal prison would therefore require either a 'carve-out' of Unicor facilities -- which would need to continue to be operated by the federal government -- or a legislative change to the applicable statutory impediment, 18 U.S.C. § 436. While the need for continuous, coordinated interaction between federal and private management systems might otherwise seem to create administrative difficulties that could undercut the purported overall cost benefits of privatization, in fact such administrative integration has not proven a deterrent.[162]

C. State Prisons and Inmate Labor

Each state has different laws governing inmate labor. Some distinguish between county and state prisoners and specify in detail the kinds of work that they may perform.[163] Others are more vague. To prevent inmate exploitation, as well as to mollify private business and labor interests concerned about uncompetitive impacts, many states prohibit the use of prisoners in the private sector.[164] In virtually all cases, these statutes were intended to reach situations where prisoners are

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159 Moreover, even in the context of sales to the federal government, Unicor must operate its shops in such a way that no private industry shall be forced to bear an undue burden of competition from the prison-made products and services.

160 *See, e.g., Vanskike v. Peters*, 974 F. 2d 806, 810 (7th Cir. 1992), *cert. denied*, 507 U.S. 928 (1993); *Nicastro v. Clinton*, 882 F. Supp. 1128 (D.D.C. 1995), *aff'd* 84 F.3d 1446 (D.C. Cir. 1996).

161 18 U.S.C. § 436.

162 A "carve out" of this nature is precisely the arrangement adopted at the Bureau of Prisons Taft facility. See Taft RFP at 4-5.

163 *See, e.g.*, Fla. Stat. § 951.01 (1987) and Fla. Admin. Code § 33-8 (1987) (convicted county prisoners can be employed at a facility, on public works projects, or on projects that benefit a county or municipality); Fla. Stat. §§ 946.002, 946.40 (1987) and Fla. Admin. Code. § 33-3.017 (1987) (state Department of Corrections ("DOC") prisoners may be used to perform prison labor, as well as contracted out to other government agencies, political subdivisions, and nonprofit corporations for use in public works projects, with compensation to be determined by DOC rules).

164 *See, e.g.*, Fla. Stat. § 951.10 (1997).

used to produce commercial goods for sale (including instances where prison labor is leased out to private for-profit businesses), not where they are tasked with prison maintenance or service work.

Whatever the particular construction of state rules, the federal government has significantly preempted local legislation in this area by generally restricting the flow of prison products and services in commerce. Thus, the Sumners-Ashurst Act[165] makes it a federal offense to transport prisoner-made goods in interstate commerce -- thereby restricting the use of prison labor to the state or non-profit sector. More recently, though, the Prison Industry Enhancement (PIE) Act of 1994 explicitly permits prison-made goods from 50 non-federal pilot programs to be sold in interstate commerce if the prisoners used at such facilities participate voluntarily, receive prevailing or minimum wages, and are covered by workers' compensation.[166] It is unclear to what degree increasing prison privatization and potential use of inmate labor will have on federal and state regulation. Certainly state correctional authorities and private prison contractors can apply for PIE Program certification, which, if granted, will require inmates to be adequately remunerated in a PIE Program, based on specific guidelines.

Meanwhile, even if state laws prohibiting the contracting out of prison labor to 'private interests' are deemed not to address the situation where a private corporation takes over the operation of an entire correctional facility, concerns will persist about potential exploitation of inmates in *ordinary prison maintenance jobs*. Will inmate labor increasingly be used by private for-profit contractors to handle more aspects of prison operation -- substituting for tasks traditionally performed by government employees in public correctional settings?

The latter scenario could raise significant questions about private companies' commitment to prison welfare rather than their own bottom line. These companies' profit margins are known to be quite modest. All of them, particularly those whose stock trades in public markets, confront quarterly pressures to show improving profits. The temptation to save on certain prison maintenance costs through targeted use of inmate labor could make it hard to distinguish between normal prison labor undeserving of special protection, and work specifically helping prison contractors meet their profit targets. Lines between these should not be too difficult to draw,[167] but public policy should ensure that inmate work responsibilities are non-exploitative and are properly accounted for, and reflected in, lower per diem rates charged to the government by private contractors.

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165 18 U.S.C. § 1761.

166 18 U.S.C. § 1761(c). For a detailed examination of the PIE Program, *see* Note, *Factories with Fences: An Analysis of the Prison Industry Enhancement Certification Program in Historical Perspective*, 33 Am. Crim. L. Review 411 (1996). Note that ordinarily, states exclude state inmates from minimum wage and workers' compensation coverage. *See, e.g.*, Fla. Stat. § 946.002(5) (1996). *Kofoed v. Industrial Commission of Utah*, 872 P. 2d 484 (Utah 1994) (no workers' compensation coverage).

167 Contractors may be required to "build up from the bottom" their costs for each maintenance position and justify the use of prison labor therefore. One easy way to draw lines is use the same inmate staffing plans for private prisons that are used in public facilities. This creates a level playing field and allows for relatively easy cost comparisons. This is the contractual approach taken by the Commonwealth of Virginia, *see, e.g.*, CCA-Va. Contract at § 4.27, p. 24 ("contractor will be allowed to use Inmate labor for facility operations and maintenance to the same extent Inmate labor is utilized in department facilities. However, *Contractor shall not receive a direct financial benefit from the labor of Inmates*") (emphasis supplied). Still, if this method is not used, line-drawing may be complicated by differing notions of what constitutes 'normal' or traditional areas of inmate maintenance responsibilities within a 'traditional' prison, as well as varied opinions about what qualifies as an acceptable threshold of non-exploitative 'basic' work functions for inmates.

6. Other Important Legal Issues

A number of other legal issues have important implications for correctional privatization. These include public access to private prison records, private contractor access to criminal history records, the impact of bankruptcy laws on a possible private contractor insolvency, private contractor use of force, and contractors' environmental responsibilities and liabilities. These topics receive brief treatment in turn.

A. Access to Private Prison Records

As government correctional authorities move to privatize one or more prison facilities, concerns have emerged that the public may lack access to private prison records under state or federal freedom of information acts. The shift to private prisons is viewed as potentially cutting off a major source of information necessary for proper public accountability. While public prison officials have traditionally sought to limit the types of records obtainable through freedom of information act requests, a more fundamental impediment to records access due to privatization would both frustrate the purpose of such acts and undermine public confidence in prison systems that undertake privatization initiatives. While a review of the impact of privatization on state public records legislation lies beyond the scope of this report due to the number and variety of such statutes, this section seeks to examine this general issue by focusing, by way of example, on the federal context, i.e., the degree of accessibility to federal private prison facility records afforded by the federal Freedom of Information Act (FOIA).[168]

Based on accumulated case law interpretation, a number of fundamental records access questions have reached a certain level of clarity over the past decade. First, not surprisingly, records relating to privatized facilities that the U.S. Bureau of Prisons itself generates and holds in its possession would be subject to FOIA disclosure. Private prison operators, as mere federal contractors, however, would not be directly subject to FOIA, since they would not find themselves subject to the kind of day-to-day supervision by the BOP necessary to characterize them as part of a federal "agency."[169] As to private prison records generated specifically *for* the BOP by a prison contractor, they would be presumptively accessible under FOIA only if they were actually *obtained and held* by the BOP at the time of the FOIA request.[170]

Even if private prison records are accessible by virtue of their retention by BOP, a key FOIA exemption might limit disclosure of certain types of information. Exemption Four of the FOIA protects from disclosure privileged or confidential "financial or commercial information."[171]

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168 5 U.S.C. § 552.

169 *See Forsham v. Harris,* 445 U.S. 169, 180 n. 11 (1980) (research funded by the Dept. of Health, Education and Welfare and supervised by the Food and Drug Administration did not constitute "substantial federal supervision" triggering FOIA requirements); *Public Citizen Health Research Group v. Dept. of Health, Education & Welfare,* 668 F.2d 537, 554 (D.C. Cir. 1981) (agency contracts mandating numerous requirements for privatized medical peer review group does not render private entity an "agency" for FOIA purposes).

170 *See Department of Justice v. Tax Analysts,* 492 U.S. 136 (1989).

171 5 U.S.C. § 552(b)(4).

Confidential commercial or financial information has in turn been interpreted to constitute data "of a kind that would customarily not be released to the public by the person from whom it was obtained."[172] Even if such information is voluntarily provided to the BOP by private contractors, it can be withheld by the BOP for no reason other than its confidential nature.[173] Meanwhile, if transmission of information of this nature is compelled by statute or contract, the BOP could still prevent disclosure if either the agency would find it hard to obtain the information in the future or disclosure might cause "substantial harm to the competitive position" of the private contractor in question.[174]

How these FOIA doctrines -- and potential state law analogues patterned generally on them -- would affect the general flow of private prison information to the public remains somewhat uncertain. Certainly, if there is to be maximum public scrutiny of private prison operations, the BOP and other public correctional authorities would want to compel contractually the production of, and retain, the widest variety of private prison records consistent with physical and information management constraints. This would result in at least certain key types of information being regularly collected and retained.[175] At the same time, considerable portions of the overall information obtained might end up being withheld if it were interpreted by the agency to constitute confidential financial or commercial information. A flexible interpretation of the latter might extend to a variety of supposedly "commercially relevant" information covering staffing and procurement -- i.e., well beyond such customarily withheld data such as sensitive cost information contained in proposals submitted in response to RFPs.

Because public oversight might suffer under the foregoing defects even if public officials mandated the collection of voluminous private prison records, one commentator has suggested the adoption of federal legislation to expand disclosure.[176] A more practical and congenial option, employed by the BOP, is to subject a private contractor *contractually* to FOIA requirements.[177] While this kind of solution addresses the critical problem of public agency retention of the records in question, the fact is that privatization itself may continue to shield from disclosure many kinds of privately-generated, "confidential" information that might otherwise be available for public scrutiny if produced by a public corrections department.

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172 *Critical Mass Energy Project v. Nuclear Regulatory Commission,* 975 F.2d 871 (D.C. Cir. 1992) (*en banc*), *cert. denied,* 507 U.S. 984 (1993), *quoting National Parks and Conservation Association v. Morton,* 498 F.2d 765, 766 (D.C. Cir. 1974).

173 The reasoning is that the flow of information of this kind that is voluntarily provided to an agency might dry up if it were released to the public, or information might end up being less candid and accurate. *See Critical Mass Energy Project,* 975 F.2d at 879-80.

174 *Id. at* 878. This justification is frequently cited by public officials in shielding from disclosure financial and other commercial information submitted by private contractors in response to an RFP.

175 Even a fairly selective information collection mandate would have to steer a difficult course between information overload on the one hand and significant blind spots in agency and public oversight on the other. *See* N. Casarez, *Furthering the Accountability Principle in Privatized Federal Corrections: The Need for Access to Private Prison Records,* 28 U. MICH. J. L. Reform 249, 293-96 (1995) (noting the enormous burdens that a comprehensive records delivery program would place on the public agency).

176 *See id.* at 196-301. Casarez would have federal legislation mandate that all prison records created and maintained by private companies be subject to FOIA. The processing of FOIA requests could continue through the channels already in place at the public agency, but the costs of processing the additional requests could be allocated under the privatization contract with the private prison operator.

177 *See* Taft RFP at 17-18.

B. Private Contractor Access to Criminal History Records

To perform its prison management duties properly, private correctional contractors need access to criminal history records for two purposes: (1) to classify inmates properly and take other steps for the proper safety and care of prisoners; and (2) to screen potential private correctional employees. By implication, both of these needs affect the privacy rights and expectations of inmates and private citizens seeking employment in the field of law enforcement and corrections. As it turns out, there exist two related, but distinct legal regimes at the federal level that safeguard these privacy rights. The federal mechanisms established to permit transfer of selected federal criminal history records information ("CHRI") to private firms such as private prison contractors represent a compromise between full disclosure and heavily redacted or edited data that would hamper the contractors' ability to perform their contractual obligations. At the state level, the policies are governed by state law, which reflects varied approaches too numerous to summarize within the scope of this report. At least some of the mechanisms at the state level, however, roughly parallel those employed by federal authorities.

The regime governing the sharing of federal CHRI for law enforcement and corrections purposes is governed by regulations found at 28 C.F.R. Part 20. These address functions related to the "administration of criminal justice." Under 28 C.F.R. § 20.31, the Department of Justice empowers the Federal Bureau of Investigation to operate a National Crime Information Center ("NCIC"), which is able to link local, state, and Federal criminal justice agencies for the purpose of exchanging NCIC-related criminal history information. Pursuant to 28 C.F.R. § 534, and 20 C.F.R. § 20.21(c)(5), the NCIC is able to share full criminal records information with these law enforcement bodies. Those agencies, however, may only summarize or characterize that information if they transmit it to private entities like prison management companies for law enforcement or correctional purposes (such as inmate classification).[178] While access to such information has not appeared to be a problem for private contractors in terms of the quality or promptness of the information provided, private contractors may ultimately benefit from planned revisions to the federal regulations that acknowledge the growth of privatization and that will make more CHRI available to government contractors directly.[179]

A separate federal regulatory regime governs the use of CHRI for uses unrelated to "the administration of criminal justice," which includes employment screening. Since the 1971 decision in *Menard v. Mitchell*[180] and the 1972 passage of legislation in P.L. 92-544,[181] CHRI can only be used for employment screening and licensing purposes pursuant to state and local statutes or regulations that are certified by the FBI's Criminal Justice Information Division, Access Integrity Unit, and that are

178 28 C.F.R. §§ 20.21(b)(3), (c)(3). Transfer of information to private entities such as private prison contractors can only occur "pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, provide sanctions for violation thereof." 28 C.F.R. § 20.21(b)(3).

179 Legislation is reportedly being developed to accomplish these objectives.

180 328 F. Supp. 718 (D.D.C. 1971) (disclosure of criminal suspect's arrest record for employment purposes enjoined).

181 P.L. 92-544 is not codified.

administered by designated state and local agencies. Generally, disclosure parameters are narrowly drawn for the specific purposes involved. Here too, private prison contractors appear to have had few problems in obtaining all relevant CHRI necessary for hiring correctional officers. On the other hand, reports have surfaced of problems with the speed with which such information is transmitted, prompting some private contractors to "end run" the regulations by asking public correctional authorities to make CHRI requests on their behalf.

State regulation of CHRI is too diverse to summarize easily. Suffice it to say that while many of the fundamental principles utilized in the federal scheme are recapitulated at the state levels. To take just one example, Florida has a general statute providing that upon the furnishing of identifying information, "persons in the private sector" may obtain criminal history information -- but not direct records information -- "upon tender of appropriate fees."[182] For employment screening purposes, Florida law requires all private correctional officers to submit to fingerprint and background checks, and all counties and private entities running incarceration facilities are entitled to CHRI provided that they are not the direct recipient of criminal records.[183] Although most states will ensure the availability of CHRI,[184] one alternative to having private contractors seek the information -- with its possible attendant bureaucratic delays -- is to have government corrections authorities retain some or all screening duties. Under the BOP Taft RFP, for example, the BOP conducts key criminal background and records checks. This would operate to maintain consistent screening procedures.[185]

C. Bankruptcy

Of the many topics mentioned in connection with correctional privatization, few seem to generate as much concern and controversy as bankruptcy. Yet, as discussed below, these concerns appear greatly exaggerated. Since privatization became a reality in the mid-1980s, many observers have worried that the security-oriented, politically sensitive nature of the corrections business would make it especially difficult for a government to grapple with a private contractor bankruptcy and ensure a smooth transition to a successor arrangement. They especially worried about the potential for a serious interruption in the provision of correctional services pending the engagement of a new or reorganized provider, as well as the loss of contractual control that government authorities might suffer in the formal bankruptcy process if it were invoked. These concerns have persisted to some extent, even though governments can, as discussed below, protect themselves with certain contract termination clauses and even though private contractor bankruptcies have been very rare.[186]

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182 Fla. Stat. § 943.053(3).

183 Fla. Stat. § 951.063.

184 *See generally* U.S. Dep't of Justice, Compendium of State Privacy and Security Legislation: 1997 Overview (1998).

185 *See* Taft RFP at 11-12. Of course, the government would have to bear the liability for any mistakes omissions in the screening process. Also, the government would have to determine whether to offset any costs under the contract as a result of undertaking this work.

186 Bankruptcies have been virtually non-existent except in the case of companies that have concentrated on building prisons on a speculative basis.

In fact, the bankruptcy of a private prison contractor should not in most instances pose any insuperable problems for the responsible public entity, especially if the prison is owned by the government. Of course, a good public correctional authority that has carefully selected a private service provider based on a thorough investigation of its capabilities and financial status (and that has properly monitored its contract with that provider) should not have to face a provider bankruptcy in the first place, at least not without sufficient advance warning to permit contract termination and other contractual arrangements to be made. Annual financial investigations provide a baseline for monitoring, while interim signals, such as complaints by certain vendors about missed payments, provide additional guidance that may militate in favor of prompt contract termination and selection of another contractor (or resumption of public control). Public corrections authorities may also insist in their contract with a private contractor that the latter maintain a certain net worth at all times[187] and have purchased business interruption insurance that names the relevant public entity as an insured.

As described in greater detail below, even if serious financial problems with a private contractor were to develop quickly, public authorities that own their facilities and that have contracted properly should be able to terminate their agreement with a troubled provider quickly before filing of a bankruptcy petition. It should then be able to settle on a successor arrangement -- either a resumption of public operation or selection of a new contractor -- and have enough funds on hand (from monies that would otherwise have been used to pay the defaulting provider) to be able to pay for the new arrangement and offset any losses incurred in the process. Even in the case of a contractor-owned facility, a sale of the facility to the government at a low price, but sufficient to pay off creditors, should be feasible due to the alignment of interests of all relevant parties.

How is the foregoing possible? First, public correctional authorities must draft a contract that allows for rapid termination in the event of incipient or current financial problems. A general "termination for convenience" clause can serve this purpose. Assuming proper operation of this kind of termination clause, most contracts provide for a ninety-day phase-out or transition period, and may specify special procedures and requirements for the transition.[188] Quickly disengaging from a contract allows the public authority adequate time to resume management of a facility or find another private operator. Today, the private corrections industry is sufficiently active and aggressive, even if concentrated, that reasonably good alternative providers can be accessed relatively quickly.[189] Perhaps the most vital input to prison management -- trained human resources in the form of incumbent correctional officers -- live in the surrounding community and will be ready and willing to continue working for a successor provider.[190]

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187 *See, e.g.,* Contract between Corrections Corp of America and Metropolitan Gov't of Nashville and Davidson County, May 30, 1997 (hereinafter "CCA-Nashville Contract") at § 7.6.

188 *See, e.g.,* M. Gold, *The Privatization of Prisons* 379 (citing Puerto Rico prison contracts); *see also* CCA-Nashville Contract at § 8.9.

189 This might of course, be problematic at any given time in an expanding private prison market with tight labor conditions. Many observers would further contend not only that the market as a whole is quite concentrated, but that the higher quality-end of the market is exceedingly concentrated, resulting in less than ideal competitive conditions. Others, however, would point to the youth of the industry as a reason why competition has been so healthy thus far and signs of true entrenchment have yet to appear.

190 Public authorities can also take special measures, such as payment of overtime to officers or the hiring of additional law enforcement personnel, to help keep operations intact during a transition period.

The reason that a pre-petition notice of termination based on insolvency or "convenience" will be so effective is that it removes from the bankruptcy process what would normally be deemed an "executory contract"[191] otherwise subject to the process's automatic stay and to control by the bankruptcy trustee.[192] Accordingly, a contract providing for automatic termination with or without notice to the private contractor, and *prior to the contractor filing for bankruptcy*, deprives the contractor of protection under the Bankruptcy Code, since the contract terms are enforceable and preempt the Code.[193] By having a contract clause mandating notice of the filing of a petition in bankruptcy by the private contractor several days or weeks in advance, public correctional officials can ensure that they can invoke the termination for convenience provisions of the contract beforehand. Such a clause becomes critical if a contract monitor is unable to detect incipient financial problems on the part of the private contractor.

Note that, as alluded to above, a 90-day or so transition period also provides a government facing an impending private contractor bankruptcy with a significant financial resource with which to engineer a successful transition and cover any expected or unexpected damages. Because private contractors typically invoice their services at least a month after they are rendered, and then demand payment up to 60 days or so later, public authorities can withhold payment and use the sums that would otherwise be due for the purpose of covering current operations, securing a new contractor, or offsetting damages caused by the bankrupt contractor. The amounts involved are usually very significant and place public corrections authorities in an advantageous position relative to other potential creditors. Meanwhile, a public authority may also benefit from a contractor's business interruption insurance, if the latter had purchased such insurance and named the public entity as an insured. However, the withholding of amounts payable to the contractor may well prove to be the more significant financial cushion.[194]

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191 Generally, a contract is deemed "executory" if performance remains due on both sides throughout the life of the contract. Prison management contracts would fit this definition. *See* C. Holley, *Privatization of Corrections: Is the State Out On a Limb When the Company Goes Bankrupt?* 41 Vand. L. Rev. 317, 330 (1988).

192 A termination based "solely" on grounds of the debtor's insolvency, so long as it is invoked prior to the filing of a bankruptcy petition, has been repeatedly upheld as legitimate, and outside the reach of the bankruptcy process. *See, e.g., In re LJP, Inc.*, 22 Bankr. 556 (Bankr. S.D. Fla. 1982). Moreover, a termination at will clause may also avoid the effect of Section 365(e)(1) of the Bankruptcy Code, which generally invalidates bankruptcy termination clauses by providing that an executory contract may not be modified or terminated after the commencement of an action in bankruptcy based on the insolvency or financial condition of the debtor. *See* Ruben, *Legislative and Judicial Confusion Concerning Executory Contracts in Bankruptcy,* 89 Dick. L. Rev. 1029, 1059 (1985). Even if a termination clause were invoked after a petition for bankruptcy was filed by a private contractor, a Bankruptcy Court might sanction termination of a prison management contract for reasons involving "other factors" besides the insolvency itself -- reasons that could rest on a variety of pubic policy grounds. *Cf., id.* at 1043.

193 One commentator has suggested use of all purpose termination at will clause that allows for a pre-petition notice of termination by a government entity:

> [The state] may terminate this agreement upon thirty days written notice to [the private contractor]. [The state] must inform [the private contractor] of its intention to file a petition in bankruptcy at least five days prior to filing such a petition. Debtor's filing without confirming to this requirement shall be deemed a material, pre-petition incurable breach.

Ruben, *supra* note 192, at 1058-59.

194 Business interruption insurance may not have been purchased with very large policy limits, either as a business decision of the private contractor or due to the public authorities' unwillingness to have a certain level of premium charges passed through to them as a segment of the overall per diem cost of operating the prison facility.

Although the case of bankruptcy of a contractor-owned facility is much more serious, even here the system should work to the ultimate advantage of public authorities. To begin with, public correctional authorities should be able to terminate the private prison contract and keep it outside of the bankruptcy process, as described above. Insofar as that process ultimately results in a reorganization or liquidation of the private contractor, a resolution acceptable to the government is eminently possible. It should be kept in mind that the interests of public correctional officials and creditors in this situation are not likely to be in conflict. The former seek control of the facility or seek to have it taken over by another qualified private contractor; the latter simply want to be paid debts owed to them. It is highly likely that the debtor in possession (assuming a Chapter 11 reorganization) or the trustee in bankruptcy (in the case of a Chapter 7 liquidation), would agree with the government and the creditors -- on financial as well as public policy grounds -- that the facility should be sold to a new management company or to government authorities at a price advantageous to the public and sufficient to pay off all or most outstanding debts to creditors.

Finally, if for any reason (despite the foregoing) a government did not properly contract to have a termination at will clause -- or failed to invoke it and became subject to the bankruptcy process -- the government would still potentially retain some important rights. To begin with, a government may still have been alert enough to have inserted a non-assignment clause in its contract. This will prevent a trustee in bankruptcy from assigning a prison management contract to other vendors who may or may not be qualified to assume that responsibility, notwithstanding the pressures from other creditors to do so.[195] Moreover, a government is not stayed by the bankruptcy process from actions to enforce its police or regulatory power.[196] Consequently, any action brought by public correctional authorities regarding the custody and control of prisoners would fall squarely within the police power and should not be stayed by the bankruptcy of the private contractor. This would include legal or other actions to enjoin continued operation of a prison facility or otherwise to safeguard the safety and care of inmates.[197] Only if a private prison contract were actually assigned or rejected by a trustee -- something a trustee would be loath to do on public policy grounds -- would government corrections authorities be truly legally disadvantaged.[198]

D. Use of Force

Legal questions about the use of force often revolve around subtle matters of proper statutory authorization. The major issue for private prisons is whether the use of force generally, or specific variants thereof -- including the use of deadly force -- are properly mandated by the relevant law of the jurisdiction. Without proper enabling legislation or contractual provisions authorizing the use of force

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195 *See, e.g., In re Pioneer Ford Sales, Inc.*, 729 F.2d 27, 29 (1st Cir. 1984).

196 *See* 11 U.S.C. §§ 362(b)(4), (5).

197 Note, however, that a stay would suspend all prison inmate litigation or special claims by the government against the firm. *See* 11 U.S.C. § 362(a).

198 In the case of a trustee rejecting the contract -- where, for example, the contractor faces extraordinary liabilities for civil actions under the contract -- the government would become an unsecured creditor with a claim for damages for breach of the contract as if the breach occurred prior to the filing of the petition. *See* 11 U.S.C. § 365(g). In this event, the government might not be able to recoup all of its expenses incurred in resuming operation of the private prison facility.

by designated private prison officials, it is possible that such personnel and the private contractor could face criminal and civil liability.

The applicable legal standards for the use of force vary tremendously from place to place. Some states' laws may adequately treat the use of force generally, but insufficiently address the use of deadly force in a variety of situations. Other states, for example, recognize a common law right of any citizen to use deadly force in certain circumstances, including the apprehension of one previously arrested for a felony.[199] For states that have adopted the Model Penal Code, which permits correctional officers to use deadly force under certain conditions, correctional firms may be so authorized if their employees are statutorily brought within the definition of "correctional officers."[200] A still different approach is taken by some states like Louisiana, which, in its correctional privatization statute, specifically authorizes private firms to use force and further prescribes standards and procedures for licensing private correctional employees to use weapons.[201]

Even if a contractual solution is adopted on a case-by-case basis -- delegating certain use of force and weapons use powers to private correctional management firms[202] -- care must be taken to explore all of the nuances involved in various scenarios, including escapes and actions taken outside of a correctional facility. ACA Standards for Adult Correctional Institutions address many dimensions of the use of force in generic ways,[203] but specific policies and procedures are necessary to comply with state statutes and case law that have evolved under the Eighth Amendment. So-called rent-a-cop statutes delegating certain use of force powers to private security companies may not be sufficient to cover many of the circumstances encountered by private contractor guards. Also, correctional officials must be sensitive to interjurisdictional issues about the use of force, particularly in the case of escapes where use of certain types of force may not be authorized beyond a facility's perimeter. All of this requires government correctional officials and their legal staffs to think through very carefully all of the possible scenarios requiring different kinds of force, and to ensure that there is proper authorization for their use.

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199 This is ostensibly the case, for example, in Michigan. *See,* e.g., *People v. Whitty,* 96 Mich. App. 403, 292 N.W. 2d 214 (1980).

200 *See* Model Penal Code §§ 3.04-3.07, *cited in* Wooley, *Prisons for Profit: Policy Considerations for Government Officials,* 90 Dickinson L. Rev. 307, 323 (1985).

201 *See* La. Rev. Stat. Ann. § 39:1800.4(D)(5), (6). Note, for example, that the state of Ohio similarly requires a private correctional officer working at a correctional facility housing out-of-state prisoners in Ohio to carry and use firearms only if the officer is certified as having satisfactorily completed an approved training program designed to qualify persons for positions as special policemen, security guards or persons otherwise privately employed in a police capacity. Ohio Rev. Code Ann. § 9.07(E).

202 For example, Virginia's DOC specifies the use of non-deadly and deadly force by private contractors in its contracts with private prison management firms. *See, e.g.,* CCA-Va. Contract, *supra* at § 4.22, pp. 20-21.

203 *See, e.g.,* ACA Standard 2-4206, for example, which simply requires a written policy and procedures to restrict the use of force as a last resort in cases of justifiable self-defense, protection of others, protection of property, and prevention of escapes. Elaboration is left to prison officials.

E. Environmental Law Concerns

Prison privatization appears to raise no significant environmental issues except whether and how governments and private contractors allocate responsibilities for environmental review of prison construction and the risks associated with hazardous waste cleanup. Some guidance exists as to various allocation arrangements.

At the federal level, Section 102(2)(c) of the National Environmental Policy Act (NEPA)[204] requires federal agencies to prepare detailed statements of environmental impact for major federal actions that could significantly affect the quality of the human environment.[205] Federal actions include projects undertaken directly by an agency, agency support of private projects through contracts, grants, subsidies, loans, or other forms of funding assistance, agency issuance to a private project proponent of a lease, permit, license, certificate, or other 'entitlement for use,'[206] or agency sale of government land to a private project proponent.[207] Although a project proponent could be public or private, the federal agency most involved with a project is solely responsible for the preparation of an environmental impact statement (EIS).[208] In the private prison context, if a construction project involving the Bureau of Prisons and a private prison contractor triggers the EIS requirement of NEPA, then the BOP would be responsible for EIS preparation.

Responsibility for environmental review is less certain at the state and local levels. Most states have state environmental policy acts (SEPAs) modeled after NEPA; however, some SEPAs contain important differences.[209] Unlike NEPA, some SEPAs require private project proponents to prepare an EIS if the EIS requirement of the SEPA is triggered.[210] Additionally, some SEPAs require different EIS preparations depending on whether a project is considered public or private in nature. For example, the Washington State Environmental Policy Act (SEPA)[211] requires state agencies to consider alternative project sites only if the project is public; if the project is private, then state agencies need not consider alternative sites. [212] Under NEPA, federal agencies must always consider alternatives to a proposed project.[213] Under the SEPAs that distinguish between public and private

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204 *See* 42 U.S.C. §§ 6901-6992k.

205 *See* 42 U.S.C. § 4332(2)(c).

206 *See* McGregor, *Environmental Law and Enforcement* 10 (1994).

207 *See, e.g., Lockhart v. Kenops*, 927 F.2d 1028, 1035, (8th Cir. 1991) ("When the government sells or exchanges federal land, it must consider the environmental impact of the proposed use of the federal land by the private purchaser . . . .").

208 *See Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1318 (W.D. Wash. 1994) ("Agencies may not delegate the responsibility of preparing an EIS to private parties . . . .").

209 *See* McGregor, *supra* note 206, at 14.

210 *See id*,

211 *See* Wash. Rev. Code. §§ 43.21C.010-43.21C.914.

212 *See* Wash. Rev. Code § 43.21C.030.

213 *See* 42 U.S.C. § 4332(2)(c)(iii).

projects, courts would almost certainly consider private prisons to be public projects because they perform a governmental function.[214]

Due to the transfer of land and property rights that may occur between governments and private prison contractors in a particular construction, sale or lease arrangement, hazardous waste liability presents some concerns. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund),[215] liability for environmental cleanup costs is strict, joint, several, retroactive and prospective: any former, current, or future party who generated, transported, treated, stored, or disposed of hazardous waste is liable for all of the associated cleanup costs without regard to fault.[216] CERCLA does not bar indemnification agreements; however, a liable party can transfer only its responsibility for cleanup costs -- not its underlying liability to the Government.[217] Experience has shown that contracting parties need to state indemnification agreements expressly to minimize the risk of non-indemnification.[218] This applies to private prison contracts no less than other business agreements. Meanwhile, state environmental laws vary, but almost every state has statutes compelling cleanup of hazardous materials.[219] In this arena as well, both government agencies and private prison contractors could be liable for cleanup costs and might rely upon indemnification agreements to shift those costs to the other party.

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214 *Cf. Weyerhaeuser v. Pierce County*, 873 P.2d 498, 504-07 (1994) (*en banc*) (holding that a private contractor's construction and operation of a landfill is a public project because the handling and disposal of waste is a governmental function).

215 *See* 42 U.S.C. §§ 9601-9675.

216 *See* 42 U.S.C. § 9607.

217 *See* 42 U.S.C. § 9607(e); *Purolator Prod. Corp. v. Allied-Signal, Inc.*, 772 F. Supp. 124, 128-30 (W.D.N.Y. 1991).

218 *See* Rhonda K. Hill, *Contractual Indemnifications for Environmental Liabilities*, 21 Colo. Law. 943, 943-44 (1992).

219 *See* McGregor, *supra* note 206, at 40.

7. Regulating Interjurisdictional Private Prison Contracting

Prison privatization, as commonly conceived , involves a government corrections agency contracting out correctional management and/or construction work to a private contractor that operates within the agency's political jurisdiction and is subject to statutory and regulatory authorities promulgated by that jurisdiction. Thus, for example, the U.S. Bureau of Prisons selects a contractor to build and operate a new minimum security prison on federal land; a state department of corrections enters into an agreement with a private corrections company to take over the management of an existing maximum security facility in one of the state's metropolitan areas; a county government, pursuant to state law, authorizes its sheriff to contract out the operation of a county jail. In each case, there exists a close legal and contractual correspondence between the public agency doing the privatizing and the private entity responsible for providing the correctional services.

Correctional privatization can, however, involve other arrangements between public and private correctional specialists that span multiple jurisdictions. These arrangements, which involve the leasing of bed space by public authorities facing prison overcrowding, can implicate the transfer of prisoners to private contractors in distant localities as well as the political and legal interplay of several different jurisdictions that have a stake in such a transfer. Definite legal confusion and ambiguities can result. Two basic factual patterns characterize this phenomenon of interjurisdictional contracting out. The first encompasses indirect arrangements where public corrections authorities send inmates to other jurisdictions via intergovernmental agency agreements (IGA's) -- and the other jurisdictions in turn rely on private contractors to run the particular facilities where the inmates are housed. One example of this arrangement is the State of Montana, which for two years sent prisoners to Dickens County, Texas through an IGA before terminating the agreement for contract violations.[220] Dickens County had in turn contracted with a private contractor, BRG Operations, a division of the Bobby Ross Group, to run the prison where the Montana prisoners were sent.

The second arrangement involves the leasing of bed space directly from a private contractor, but in a foreign jurisdiction. Many of these prisons are operated on a speculative basis, without having been chartered by their home jurisdictions or having been opened on the basis of a contract providing for a certain minimum level of occupancy. The motivating force behind the opening of several such private facilities may have been to reap the supposed economic development benefits of correctional privatization. A prominent example of this phenomenon is the District of Columbia Department of Corrections' contract with Corrections Corporation of America to house medium security prisoners in a new facility -- the Northeast Ohio Correctional Center (NOCC) -- that was built on a speculative basis in Youngstown, Ohio.[221]

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220 The IGA is denominated an "Inmate Housing Agreement" ("Dickens County IHA") between the Montana Department of Corrections and Dickens County, and runs for three years, with an option for annual renewal for a period not to exceed seven years. *See* Dickens County IHA at 2.

221 As discussed in more detail below, the City of Youngstown entered into a "Development Agreement" with CCA whereby the city transferred land to CCA and provided for a three-year tax exemption in return for construction and operation of a private prison within Youngstown city limits that was expected to provide construction and management jobs for the surrounding area.

Both types of arrangements have generated considerable controversy. Relatives complain about family members housed in distant localities. Concerned citizens express their displeasure with the lack of accountability that attends the transfer of prisoners hundreds or thousands of miles away to places where no one from their home jurisdiction may be present to monitor the governing contract or represent or acknowledge their interests and grievances. Perhaps most fundamentally, correctional specialists criticize the fact that the receiving facility may not have legal authorities sufficient to allow it to cope with a variety of critical situations, including inmate escapes and prison emergencies. The law may simply lag behind new correctional realities. This is in fact what happened in the widely-publicized case of two Oregon prisoners who a few years ago escaped from a private prison in Texas, and yet were unable to be charged with a crime since Texas law at the time did not recognize escape from a private prison as a felony.[222] Lack of legal oversight mechanisms also played a prominent role in the decision of the Ohio legislature to pass a law earlier this year subjecting the NOCC and any future private prisons in Ohio housing out-of-state inmates to a variety of additional statutory requirements.

Across the country, it is these inter-jurisdictional private prison arrangements that have seemed to generate the worst performance problems, spawned the most critical articles on private prisons and reflected most poorly on the correctional privatization movement as a whole. While many of these troubles can be traced to poor or hasty arrangements or the difficulties of ensuring proper contract monitoring from afar, a surprisingly large number of problems stem from inadequate legal or contractual frameworks, unsuited to the role of regulating private either contractor conduct outside a particular jurisdiction or the incarceration of out-of-state inmates within that jurisdiction. This section examines briefly a few of the major legal problems that affect interjurisdictional contracting out of prison services, as well as the kinds of legislative and contractual provisions that public corrections authorities have adopted to minimize these problems.

A. Interjurisdictional Contracting Out and Legal Problems

Few public corrections authorities view the transfer of prisoners to other jurisdictions as anything but an unfortunate necessity caused by overcrowding and inadequate or inappropriate facilities at a particular time. Certain transfers to public prisons have occurred for many years pursuant to different statutory mechanisms, including the Interstate Corrections Compact.[223] Still,

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222 *See, e.g.*, Associated Press, Private Prisons Shackle Texas with Confusion; State Laws Haven't Caught Up with New Phenomenon, Chicago Tribune, Nov. 7, 1996 at 34. Further reflecting the huge legal loopholes often opened up as a result of cross-jurisdictional prison arrangements, even the State of Oregon was unable to prosecute the inmates for escape, since Oregon law did not cover escapes outside of the state. *See* Prison Brake; Texas Needs More Scrutiny of Private Prisons, Houston Chronicle, Sept. 3, 1996 at 18A.

223 Various states have adopted the Interstate Corrections Compact, which allows the transfer of convicts to penal institutions in other states that are parties to the compact. *See, e.g.*, 730 Ill. Comp. Stat. 5/3-4-4; 61 Pa. Cons. Stat. § 1601. In addition, there are state statutes authorizing transfers of state prisoners to federal penitentiaries, *see, e.g.*, Mass. Gen. Laws., ch. 127, § 97A; Conn. Gen. Stat. § 18-91. Such transfers do not, by themselves, trigger due process requirements, *see, e.g.*, *Olim v. Wakinekona*, 461 U.S. 238 (1983), or implicate the equal protection strictures of the Constitution. *See, e.g.*, *Tucker v. Angelone*, 954 F. Supp. 134 (E.D. Va.), aff'd, 116 F.3d 473 (4th Cir. 1997) (Virginia inmate who lost certain benefits upon transfer to Tennessee facility no denied equal protection of the laws).

many jurisdictions have been surprisingly willing to go one step further and enter into arrangements whereby their inmates are housed in *private* facilities outside the jurisdiction. In the case of agreements with other jurisdictions, public contracting through an IGA or similar contract mechanism may allow correctional authorities in the sending jurisdiction to avoid procurement requirements mandating competitive bidding for private contracts. There may also be the perception that public authorities in the foreign jurisdiction have developed some kind of legal framework for private prison operation on which the sending jurisdiction can rely. Finally, the sending jurisdiction may believe that the interposition of the receiving jurisdiction between it and the private contractor can act as a buffer relative to various kinds of inmate litigation.

Actual experience with these arrangements may or may not bear out the foregoing suppositions. Certainly contracting can be more rapidly effected through a sole-source agreement with another public entity that may only seek to address the most important legal and inmate care topics. It is understood that certain details can be left to a separate agreement (which may or may not be explicitly referenced in the intergovernmental agreement) between the receiving jurisdiction and the management company actually providing the incarceration services. But that other agreement, and the surrounding legal framework established by the receiving jurisdiction, may prove deficient in a number of significant ways, such as the provision of liability insurance and the handling of escapes. Since even the most egregious, systemic misconduct in the out-of-jurisdiction facility may be beyond the ken of the sending correctional authorities due to the difficulties of long-distance monitoring and responding promptly to problems identified by the contractor, the public authorities may find themselves facing more liability exposure than expected.[224] Finally, the sending jurisdiction may continue to have potential liability for its own negligence in sending inmates to such a facility in the first place or in overseeing the long-distance arrangement.

The experience of Montana correctional officials in the case of the Dickens County, Texas private prison at least partially illustrates these problems. Montana ran out of prison space in 1995, and was forced to look for out-of-state solutions when county jails could no longer accommodate the overflow of inmates. Because out-of-state public facilities were unavailable at that particular time, Montana explored private facilities and eventually settled on the Dickens County facility. In June, 1996, Montana entered into a three-year Inmate Housing Agreement with Dickens County to house up to 400 Montana inmates. It was explicitly understood that actual operation of the prison facility would be in the hands of BRG Operations, part of the Bobby Ross Group, which had a separate Management and Maintenance Agreement with Dickens County. The Inmate Housing Agreement was deemed to be "assigned" or "delegated" to BRG Operations through the Management and Maintenance Agreement.[225] Ultimately, about 260 Montana prisoners were incarcerated in Dickens County.

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224 Even if the sending jurisdiction were in the process of taking steps to remedy problems in the foreign jurisdiction, "deliberate indifference" could still be demonstrated in a Section 1983 action if tangible signs of remediation were delayed or lacking in the facility at issue.

225 Inmate Housing Agreement at 17-18.

Montana terminated the contract well short of its 3-year completion after it found problems with a wide variety of prison conditions, including inadequate food, medical care, and security and housing arrangements inconsistent with a long-term, medium-security facility.[226] Montana's designated prison monitor ended up spending much more time and money than expected addressing these problems. From the standpoint of liability exposure, it was clear to Montana officials that the situation in Dickens County could generate a number of legal claims but the state would not be in the best position to extract prompt compliance from the private prison operator, due both to problems of distance and lack of a direct contractual relationship.

A number of legal and contractual problems common to foreign jurisdiction contracting are illustrated by the Dickens County example. The biggest problem is a lack of communications and reporting requirements. According to Montana officials, the lack of these in the contract meant that it would often take many days before correctional authorities were alerted to the fact that serious disturbances had occurred. This problem loomed very large given the absence of an on-site monitor. Another problem was the failure of the contract to prescribe any level of liability insurance to be provided by the county or the private contractor acting in its stead, something that is standard in in-state private contracts. Also, insofar as the Dickens County contract appeared to allow for Texas county personnel or private contractor personnel to pick up inmates in Montana for transfer to Texas,[227] it is not clear that Montana law permitted either type of officials to use force while transporting inmates within the state or attempting to apprehend them following an escape.

Even more fundamental and serious legal questions may attend *direct contracting* by a corrections authority with a private contractor in a foreign jurisdiction, particularly if the contractor is operating a prison on a largely speculative basis. Many of the problems are the same as those noted above, such as proper authority for use of force and apprehension of escaped inmates. But direct contracting with a contractor in a foreign jurisdiction highlights even more numerous legal problems that may bedevil the receiving jurisdiction if local public corrections oversight is inadequate. These legal problems include potential deficiencies in prison operation and governance, facility standard-setting, state corrections authority oversight, and coordination with local law enforcement.

Many of these problems have emerged into public view recently with the much-publicized troubles surrounding the NOCC, run by CCA in Youngstown, Ohio. The NOCC was essentially built on a speculative basis through a "Development Agreement" between CCA and the City of Youngstown in March, 1996. When CCA later began operations in May, 1997 on the strength of a five-year, $182 million contract with the District of Columbia to house medium security prisoners, the City of Youngstown was essentially a bystander; no local government or law enforcement agency was a party to the contract. This only heightened the legal problems and problems of accountability that

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226 Telephone Interview of Tom Rolfs, consultant to Abt Associates, with Janice Wunderwald, Contracts Manager, Montana Dept. of Corrections, March 27 and 30, 1998; April 15, 1998. It was reported that there were also drug problems at the facility, and a small riot involving the Montana prisoners and inmates from Hawaii.

227 The overall delegation of prison management under the contract left unclear whether private contractor personnel might be tasked with pick-up of the Montana prisoners.

are inherent in this type of three-way arrangement (unlike the case of the Dickens County contract where at least the public entity had some responsibilities for the activities of the private contractor).

These problems received increasing attention in the NOCC's first year of operation. The District began sending prisoners to NOCC as part of its gradual shutdown of the Lorton prison complex, a facility plagued for years by lax discipline and mismanagement. Over the next nine months, the prison witnessed a significant inmate disturbance that prompted prison guards to use gas on inmates, allegations of deficient medical care, and a number of violent assaults on prisoners by other inmates, including two fatal stabbings. A lawsuit was brought in the fall of 1997 alleging use of excessive force, failure to protect inmates, and substandard medical care. The suit also questioned the authority of CCA to operate the prison under Ohio law. After the second fatal inmate stabbing, the judge in the case ordered a preliminary injunction requiring CCA to reexamine the classification of all inmates who had been involved in violence at the institution; and halting the further delivery of prisoners from the District to NOCC pending a satisfactory classification system being put in place.[228]

The lawsuit and Youngstown community fears of further prison disturbances raised a host of questions about the legal basis for CCA's operation of the prison, and about the legal framework necessary for any state or locality to regulate properly the incarceration of out-of-state prisoners. Like many states, Ohio had a private prison statute that only envisioned the incarceration of state prisoners by its own corrections authorities. The lawsuit also drew particular attention to the problem of localities in home rule states taking it upon themselves to enter into private prison contracts -- usually for reasons wholly centered on economic development -- with little or no oversight by the state department of corrections.

Based on community pressure, state legislators highlighted a number of legal gaps and deficiencies overlooked in the Youngstown community's haste to reap the benefits of its new prison facility. These included inadequate standards for: acceptance by private prisons of foreign inmates; coordination of law enforcement activities in the case of riot, rebellion or escape, and reimbursement of state and local governments for the costs therefor; qualifications in hiring of private prison guards; state inspection of private prisons for compliance with applicable standards of care; and release of foreign inmates in their home jurisdictions. These kinds of legal inadequacies have spurred a number of states to consider or enact special legislation giving state corrections authorities and local law enforcement authorities greater regulatory authority over private prisons that may choose to accept foreign inmates. Two examples of such legislation, which recently passed in Ohio and Texas, respectively, are discussed below.

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228 Washington Post, February 23, 1998 at B1.

B. Some Regulatory Solutions

Two states -- Ohio and Texas -- have recently passed legislation that attempts to remedy some of the more egregious legal deficiencies that private prisons have exposed over the past several years as some of them incarcerated out-of-state inmates. Both enactments seek to give state correctional authorities greater overall authority to prescribe minimal operational standards for such facilities and to eliminate gaps and inconsistencies that emerged between the treatment of public and private prisons, and between private facilities that do and do not accept foreign prisoners.

The Ohio legislation passed in March 1998[229] represents a version of a bill introduced in late September, 1997 in the wake of the filing of the Youngstown lawsuit.[230] The bill enacted into law generally limits the operation of correctional facilities housing out-of-state prisoners[231] and provides comprehensive criteria for the establishment and operation in Ohio of such prisons. The most salient provision of the bill created a new statute, Ohio Stat. §9.07, that specifically requires the direct involvement of a local public entity and the indirect involvement of the state's Department of Rehabilitation and Corrections (DRC) in any private prison arrangement with a foreign jurisdiction.[232] Moreover, the local public entity is permitted to enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in Ohio only if the locality and the foreign jurisdiction jointly submit to the DRC a statement that certifies the facility's intended use, projected prisoner population, custody level, and if the DRC reviews and comments on the plans for the design or renovation of the facility concerning its intended use.[233] A contract for the housing of out-of-state prisoners must also contain a provision requiring the sending jurisdiction to assume all responsibilities for housing and transportation of its prisoners should the facility close or cease operations for any reason.[234]

The new legislation then mandates a considerable number of provisions for inclusion in any private prison contract entered into by a local public entity with a private contractor for the operation of a correctional facility. These requirements, which have also been made applicable to CCA at its NOCC facility,[235] obligate the private contractor to do the following:

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229 Ohio House Bill 293, effective March 17, 1998.

230 The original bill, Senate Bill 174, was introduced by Senator Robert Hagan of Youngstown, who emphasized the need for private prisons housing out-of-state inmates to meet certain minimal state-prescribed standards and to permit adequate access to, and coordination with, private prisons by local law enforcement authorities in the case of illegal activities or prison disturbances.

231 Among other things, the legislation keeps the state out of the business of accepting out-of-state prisoners in private facilities and instead limits such arrangements to Ohio localities, subject to the considerable oversight requirements of the new statute. *See* Ohio Rev. Code Ann. § 9.06; Ohio State Legislative Service Commission, Final Analysis of Am. Sub. H.B. 293 at 3.

232 The new statute also seeks to create greater accountability by requiring a local entity and private contractor contemplating a prison contract to hold a public hearing in the locality and by specifically requiring the local public entity to authorize the location and operation of the facility. Ohio Rev. Code Ann. § 9.07(C)(3).

233 Ohio Rev. Code Ann. § 9.07(C)(1).

234 *See id.* at § 9.07(C)(2).

235 The legislation requires the parties operating under a "preexisting contract" to reach agreement on inclusion of these provisions no later than 180 days after the act's effective date -- in the case of CCA and the City of Youngstown, by mid-September, 1998. Ohio Rev. Code Ann. § 9.07(I). Reportedly, however, CCA was supportive of the legislation, although it did engage in considerable lobbying over several specific provisions.

- seek and obtain ACA accreditation within 2 years after accepting its first out-of-state prisoner;

- report to local law enforcement agencies all criminal offenses or delinquent acts committed in or in connection with the facility, and report to the DRC all escapes or disturbances at the facility, as well as "unusual incidents," according to reporting rules applicable to state correctional facilities;

- enter into a written agreement with the DRC setting forth a plan and procedure to coordinate law enforcement activities with state and local police; and permit law enforcement officers to enter into the facility to investigate any criminal offense or delinquent act allegedly committed there;

- reimburse the state or any political subdivision for any costs incurred by state or local law enforcement in responding to an escape or disturbance at the facility;

- maintain a staffing plan adequate to ensure inmate supervision and security maintenance, as well as other operational needs, including programming and transportation;

- indemnify, hold harmless, and reimburse any legal defense costs of the state or the local public entity and their employees, officers, and agents in connection with claims arising from operation of the prison facility;

- develop a security classification system appropriate to the institution;

- reject any out-of-state inmate for whom it has not received an institutional record and medical records; or whose institutional record shows a pattern of violence involving use of a deadly weapon;

- cooperate with the state's Correctional Institution Inspection Committee, whose jurisdiction is extended to private facilities housing out-of-state inmates;

- not employ any person until a criminal records check is performed, and not employ any person whose records check indicates previous malfeasance;

- return out-of-state inmates who have completed their term to the sending jurisdiction and agree with that jurisdiction to return to that jurisdiction any inmate who commits a crime while housed in Ohio; and

- certify its correctional officers to carry firearms consistent with Ohio law requirements.[236]

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236 Ohio Rev. Code Ann. §§ 9.06, 9.07. Other important obligations placed by the new law on private prison contractors for the protection of local public entities and the general public include the following: (1) compliance with all federal, Ohio, and local laws, rules or regulations, including specifically laws on sanitation, food service, safety, and health; (2) sending of all copies of all

The legislation also makes it clear that any act or omission considered a criminal offense or delinquent act or criminal offense if committed at a state correctional institution will be deemed as such if it is committed at a private correctional facility; and that an escape from a "detention facility is specifically deemed to include escape from a private prison.

The Ohio legislation governing private contractors housing out-of-state inmates is one of the most ambitious attempts by public authorities to gain greater control over a phenomenon that appeared recently to overwhelm state and local authorities with legal and operational confusion. The Ohio act consciously sought to patch up all manner of gaps and inconsistencies in a statutory framework not originally intended to cover interjurisdictional contracting for private correctional services. Quite likely, a number of other jurisdictions will pass similar types of acts in the next few years.

Ohio's legislation itself followed by a few months Texas' effort to accomplish some of the same purposes. Texas, which has the greatest concentration of private prisons in the country, had been plagued for several years by problems of accountability and a legal framework riddled with gaps and loopholes concerning the operation of private correctional facilities. The Texas legislation, effective September 1, 1997, similarly provides for interjurisdictional contracting only if a local public entity is directly involved and submits to the Texas Commission on Jail Standards information on custody level capacity and availability as well as a law enforcement coordination plan. The Commission, in turn, is supposed to inspect the facility and certify to the local public entity that the facility is appropriate for the intended use.[237]

Some of the Texas provisions represent noteworthy variations on, or additions to the type of scheme adopted by Ohio. The Texas act requires any private prison contract involving out-of-state inmates to be sent to the Commission on Jail Standards, and empowers the Commission to adopt rules regulating the number of federal and out-of-state prisoners housed in private facilities in the state. The act also requires all employees at the private facility to maintain certification as required by the Texas Commission on Law Enforcement Officer Standards and Education.[238] From a financial standpoint, the act allows the Commission to require a sending jurisdiction, rather than merely the private contractor, to reimburse the state for any cost incurred by a state agency in responding to a riot, escape, or other emergency situation,[239] and also permits the Commission to charge a private contractor a reasonable fee to cover the costs of regulating a privately-run facility.[240] Perhaps most

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inspection reports to the DRC's Director and to the local public entity; (3) provision of appropriate perimeter and internal security necessary to protect the staff and prisoners at the facility, as well as the general public; (4) agreement with the local public entity for a conversion plan that will be followed if for any reason the facility is closed or ceases operations; and (5) agreement to include in its contract with a local public entity provision for fines to be imposed if the private contractor fails to perform its contractual duties. *See id.*

237 Texas Senate Bill 367, May 7, 1997, § 9 (a)-(e). The Texas act., like the Ohio act, also requires certain minimal facility standards to be met, and certain information to be supplied to the facility by the sending jurisdiction before foreign inmates can be accepted there. *See id.* at § 9(d).

238 *See id.* at § 9(f).

239 *See id.* at § 9(i).

240 *See id.* at § 9(g).

significant, the act requires the Commission to review the qualifications of any private contractor prior to that vendor entering into a contract with a local public entity.[241]

The unmistakable trend of states and localities extracting greater accountability from private contractors who seek to house out-of-jurisdiction inmates can be said to mark the beginning of a third major phase of the prison privatization experience. The first phase was characterized by heated political debates and tentative state experiments. The second phase featured a number of significant state and federal initiatives to rely on private contractors at selected facilities, and witnessed the rapid growth of the private prison industry. The third phase represents a thoughtful and nuanced stock-taking of correctional privatization (both intra- and interstate), with an emphasis on using legal and other tools to ensure local political control of the contracting process and adequate oversight of prison operations. As experience grows, so does the sophistication of those responsible for contract negotiations. Increasingly, a number of experienced lawyers, both public servants and independent consultants, are providing expert advice to correctional authorities on all manner of contracting issues. Some are providing model contracts and legislation that are gaining wide notoriety.[242] Based on this advice and the publicity accorded many privatization failures -- including the interjurisdictional incarceration examples discussed above -- it appears less and less likely that states and localities will enter into private prison contracts without a significant array of legal protections at their disposal.

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241 *See id.* at § 9(h).

242 To take just one prominent example, Richard Crane, a former public corrections lawyer and former general counsel for CCA who now does independent consulting on contracting for correctional services, has published a widely circulated model law for regulating private corrections. In it, he prescribes many of the regulatory tools adopted by the Ohio and Texas legislatures, as discussed above. In addition, he has some important other recommendations, including requirements for competitive bidding for private prison contracts, basic requirements for private contractor qualifications, delegating contract monitoring functions to local authorities when the sending jurisdiction is distant and may be unable to provide sufficiently frequent monitoring by its own personnel, and state review and approval of all private correctional facility construction, so as to curtail the building of speculative facilities. *See* R. Crane, *Wanted: A Model Law for Regulating Privatization,* Correctional Law Reporter 83 (April/May 1998).

8. Legal Dimensions of Contracting

A significant number of legal issues with a direct bearing on contracting approaches and provisions have already received some discussion in this review. Some of them, relating to reduction of liability exposure -- including matters of indemnification, insurance, and monitoring -- have already been discussed in Section 3, above. This section addresses somewhat more general legal concerns associated with contracting, such as careful drafting, the use of objective standards, contract duration, termination, other enforcement mechanisms, and dispute resolution. While contracting parties can easily reduce most policy choices to simple legal provisions, a few of these policy matters have a determinative impact on the efficacy of private prison contracts as a whole. This section will discuss just a few of these critical contracting matters.

A. Regulatory Purposes and Contract Specificity

Some of the most important contracting questions relate to the broad purposes to be served by a particular prison privatization contract and the degree of specificity believed to be necessary to effect those purposes. Contracts may vary substantially in their approach and detail depending on the correctional ideas animating public officials and the kind of regulatory framework and capacity that exists in the public sector. Is there a dense web of regulatory requirements applicable to private prisons, along with capable governmental monitoring, inspection and/or licensing bodies? If not, then a contract may have to import from the outside and treat in detail a number of provisions and mechanisms that would otherwise be expected to govern, at least in part, a private prison arrangement[243] Are standards for private prisons similar to those guiding public prison operation? And is a level playing field desired to promote fairness, increase competition, and allow for meaningful cost comparisons?[244] If not -- because in part, a host of innovations are required -- a contract will need to cover more uncharted territory for the parties than might otherwise be the case. Finally, how new are the parties to contracting? Depending on their experience and track record, public and private authorities alike may be more comfortable with more -- or less -- detail in a contract and definition of terms.

Some of the most critical contents of private prison contracts may be imposed at two distinct levels. First, legislation can require mandatory contract provisions, and provide for a competitive bidding process that prevents industry concentration and entrenchment as much as possible. Second, public corrections officials can use RFPs to dictate both what subjects a proposal must address and which provisions will form the basis of an eventual contract. Of great practical importance are RFPs that mandate inclusion of certain provisions in a contract, and that insist on contractors providing evidence of how they would address certain requirements. This allows for considerable adaptation on

243 For example, statutes or regulations may specify requirements for topics such as the procedures or grounds for termination of a contract. *See, e.g.*, N.M. Stat. Ann. § 33-3-27(F) (specifying bases for termination of a contract); N.M. Stat. Ann. § 33-3-4 (requiring inspections of private prisons by governing bodies of counties and municipalities).

244 For example, public authorities need to be especially careful not to permit private contractors to make money from inmate phone service, commissary sales and the like. Income from these should be reflected in lower per diem rates or should be paid into the general fund.

the part of both contracting parties. It also permits both sides an opportunity to question the judgments of each other early on in the contracting process. Contractors can politely suggest possible changes to the statement of work where demands are viewed as unrealistic. Government officials, meanwhile, can ask for practical illustrations and plans that reveal strengths and weaknesses well before they are applied to actual prison operations. Better contracts, speedier contract negotiations,[245] and a more candid contractual relationship may result.

Based on the degree to which public officials view privatization as specifically benefitting the public, officials may insert into a contract more or less specific language concerning expected cost savings. Cost savings requirements may be phrased in terms of a provider delivering correctional services at significantly less cost or significantly better services at the same or less cost than that which public corrections authorities would need to pay if it did the job itself.[246]

The possibility of intentionally or inadvertently bestowing third-party contract beneficiary status on inmates -- allowing them to sue for contractual deficiencies alongside possible tort and Section 1983 actions -- should also receive careful attention from public corrections officials. Prisoners do not automatically possess such rights. A contract must intend to grant them legally enforceable rights to sue under the contract, which can occur through conscious adoption of contractual language or by a court implicitly reading such an intention into the contract and its surrounding circumstances.[247] If government corrections officials wish to confer such rights on inmates as an means of bolstering the policing (and inevitably raising the cost) of the contract, they can make an explicit statement to that effect in the contract.[248] If they do not wish to encourage additional litigation,[249] even for a laudable monitoring purpose, they can deprive prisoners of third-

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245 However, inclusive -- even if not necessarily overly detailed -- RFP's may or may not establish proper expectations and more efficient negotiations, depending on the specific circumstances.. If RFPs ask for *illustrative* approaches to a variety of subjects, they can indeed result in informative negotiations. If, on the other hand, specific approaches are mandated up front, public corrections officials may artificially circumscribe the negotiations and deprive themselves of otherwise valuable information that could be presented.

246 The State of Tennessee has enacted a statutory requirement to this effect. *See* Tenn. Code Ann. § 41-24-105(c)-(f).

247 *See* Restatement of Contracts (2d) §§ 302(1)(b), 308. There is some precedent for courts reading an implicit intent to bestow third-party beneficiary status on prison inmates. In *Owens v. Haas,* 601 F. 2d 1242 (2d Cir.), *cert. denied,* 444 U.S. 980 (1979), wherein a federal prisoner was beaten and injured while housed in a county jail, a court found such an intent by reference to a statutory policy by the U.S. Bureau of Prisons to safeguard federal prisoners while in the care of county governments pursuant to an intergovernmental agreement under 18 U.S.C. § 4002 (providing for "suitable quarters for the safekeeping, care, and subsistence" of federal prisoners). *See also Cherry v. Crow,* 845 F. Supp. 1520 (M.D. Fla. 1994) (intent to benefit inmate found in contract between county and prison health service provider). *But see, e.g., Oliver v. Vose,* 1991 WL 97453 (D. Mass. 1991) (no third-party beneficiary rights conferred on federal prisoner in custody of Massachusetts Department of Corrections; contract language merely embodies constitutional right to be free of "cruel and inhumane treatment," rather than specific guarantee of a particular level of care).

248 Some commentators have specifically viewed such third-party suits as a valuable, though by no means dominant, component of an overall contract enforcement scheme. *See, e.g.,* Gentry, Note, *The Panopticon Revisited: The Problem of Monitoring Private Prisons,* 96 Yale L. J. 353, 367 (1986).

249 While such litigation will not usually involve expensive relief -- actual contract damages will be small, and most actions will be seeking to enjoin the private contractor to deliver certain services as promised -- it will create additional transaction costs for the contractor and government agency, since such suits may be independent of tort and Section 1983 actions, and may require a lesser showing of harm.

party beneficiary rights by curtailing certain language in the contract [250] or by explicitly renouncing any intent to allow third party suits.[251] The important thing is for public authorities to choose their words as carefully as possible to avoid inadvertent ratification or endorsement of these rights.

B. The Importance of Objective Standards

Substantive standards of inmate care and treatment under applicable constitutional provisions and state law will apply to private prisons just as they do to public correctional institutions, thanks to the "state action" doctrine. Still, public correctional authorities have reason to be concerned that private prison managers, operating outside of direct public scrutiny and the political process, and animated by a powerful cost-consciousness, will attempt to reduce staffing and resources in such as way as to spark increased litigation over alleged constitutional harms. This concern remains strong despite the protection afforded by the contractor's private liability insurance and the contractor's market-driven pressures to provide adequate service. Potential harms resulting from defective due process mechanisms have already been discussed in the broader context of delegation concerns. Other harms, resulting from the excessive use of force, poor inmate safety, or inadequate medical care, may cause unnecessary Eighth Amendment violations to occur. As discussed below, contracting governments can attempt to reduce the frequency of these problems by adopting contractual standards that provide a superior foundation for inmate care and treatment.

Like monitoring, having correctional standards in place may act as a powerful means to judge contractor performance and prevent conditions from developing that could prompt litigation. Some states, like Florida, have an elaborate statutory framework that prescribes some operational standards.[252] Most relevant standards, however, will derive from contract terms specifically made a condition of contracting by an RFP. While a detailed discussion of standards lies beyond the scope of this legal review, it is important for present purposes to acknowledge the importance of standards generally, and particularly the importance of standards that constitute measurable, objective management norms.[253] These can form the basis of meaningful performance evaluations as well as a means -- if backed up by fines or other enforcement mechanisms -- of ensuring compliance with fundamental constitutional obligations.

Most available norms address only the minimum operational requirements. Even the ACA Standards for Adult Correctional Institutions, many of whose requirements are mandated by some contracting agencies to be included in private prison contracts, usually provide only general criteria

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250 *See, e.g.,* CCA-Va. Contract at § 9.7, p. 53. In this case, officials will also have to be alert to the use of preambular language appearing specifically to benefit inmates and provide them with a certain standard of care -- arguably a laudable purpose otherwise consistent with one of the major premises of successful privatization.

251 *See, e.g.,* Oklahoma Dept. of Corrections Contract with Capital Correctional Resources, Inc., Dec. 3, 1996 at 18.

252 *See, generally* Fla. Stat., Chapter 944. Some other states address individual standards, albeit vaguely, by statute. *See, e.g.,* N.M. Stat. Ann. *§* 33-3-6 ("independent contractors shall supply prisoners with food of a good and wholesome quality and sufficient in quantity for the proper maintenance of life").

253 For example, food requirements can be phrased in terms of caloric intake and types of food rather than generalities like "three balanced meals per day."

for the treatment of inmates. The standards are general in nature, are intended for institutions of all types and varieties, and tend to leave prison administrators considerable discretion in developing specific policies and procedures. Moreover, only 41 of the code's nearly 500 provisions are deemed "mandatory." However, public correctional authorities frequently specify in a contract that a contractor shall achieve ACA accreditation within 18 months or 2 years of contract signature, and that it comply with 100% of the mandatory ACA standards.[254] Specific application in a particular facility and contract requires that the standards be refined and adapted to local needs. At the same time government may chose not to spell out requirements in detail in the belief that innovation and alternative approaches would be stifled.

1. Special Attention to Staffing and Training

Adequate, quality staffing and training constitute two of the most critical contract provisions public corrections authorities may address in private prison agreements. Both represent likely areas in which private contractors will seek to reduce expenditures, either through the payment of lower wages and benefits, the hiring of less experienced personnel, the deployment of innovative staffing patterns, or the introduction of special technology (e.g., specialized surveillance equipment).

To prevent unnecessary and unwanted risk-taking in this area, public authorities have often addressed staffing matters in detail. Some observers have suggested including provisions on minimum required personnel per shift, the number of days per week to be worked by each person, and the positions that, for reasons of security, must be filled at all times.[255] Others believe such provisions are sometimes difficult to prescribe up front in an RFP (particularly in the case of new prison construction) and may remove opportunities for creative staffing proposals.[256] Accordingly, public officials have crafted RFPs that define "key personnel"[257] but then specifically require illustrative staffing patterns to be included in private contractors' proposals, so as to help ensure that contractors can deliver the kind of adequate staffing sought by the contracting agency.[258]

Training requirements may loom as large as staffing level requirements in ensuring that private contractors meet their inmate care responsibilities. Some governments have, like the state of

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254 *See, e.g.,* CCA-Va. Contract at p. 11.

255 *See* Gold, *supra* at 393. Gold cites Puerto Rico private correctional contracts that he has negotiated in which these and other matters are addressed through a formula to yield the total number of persons required to fully staff each position in a facility. Such contracts also define which positions are required to be filled, which can remain vacant for some periods, and which are to be filled on an independent contract basis.

256 Richard Crane, a veteran negotiator of private prison contracts, believes that governments are wise to give weight to contractors' competing staffing plans during the proposal evaluation process. Telephone interview with Mr. Crane, June 2, 1998.

257 The BOP's Taft RFP, for example, sets forth 14 positions deemed "essential personnel" with specific qualifications and background experience specified. Taft RFP at 15-16.

258 Contracting officials can also incorporate into RFP's and contracts requirements that private contractors meet applicable ACA standards on staffing. These address the need for ongoing review of staffing requirements, the development of an appropriate formula of time and persons necessary to yield a proper staffing pattern, and policies and procedures governing all types of staffing needs. *See* ACA Standards for Adult Correctional Institutions 4-4072, 4-4073, 4-4074, and 4-4075. *See also, e.g.,* the states of Tennessee and New Mexico, which specifically provide that prison employees do not need to have the same training as sate correctional officers. *See* Tenn. Code. Ann.. 41-24-111(3); N.M. Stat. Ann. 33-3-28(B).

Florida, mandated that private operators meet the same training requirements that public authorities must satisfy. While many contractors and some correctional authorities have wrongly believed that such a requirement is too inflexible,[258] having the same training standards in fact, ensures that proper safety requirements are met and creates a level playing field between public and private facilities, building public trust in the latter and allowing for helpful cost comparisons.[258] While ACA standards address a host of training issues,[259] public authorities can add specialized training requirements for particular purposes or types of employees. And while some corrections authorities may require that the private contractor pay for all necessary training, others like the U.S. Bureau of Prisons, may view certain types of training as so unique, and uniformity of service so important, that they will supply certain types of training themselves at no cost to the contractor.[260]

C. Effective Contract Performance and Enforcement

Effective contract performance and enforcement encompasses far more than the liability reduction mechanisms discussed earlier in Section 3 above. A well-designed and well-written private prison contract obviously looks to superior contractor performance on a variety of fronts, including cost-effectiveness and delivery of services. It also seeks to avoid liability problems and litigation altogether by encouraging flexible preventive systems to operate effectively.

1. Contract Term and Renewal

A good contract seeks to prevent contractor entrenchment and complacency with respect to the agreement as a whole. Rebidding contracts at regular intervals and having shorter-term contracts forces an incumbent firm to emphasize good performance and undertake innovative practices that can keep its costs low and position it advantageously for a re-bid or contract renewal. A shorter contract term will also, particularly at the onset of privatization, relieve the parties of having to foresee and write into an initial contract all types of eventualities. If, however, public authorities set a contract term that is too short, contract incentives will be lessened and contractors will not have sufficient opportunity to demonstrate innovations or returns on certain human or capital investments. Contracting agencies' "availability of funds" restrictions may also prohibit contracting that extends beyond a certain budget period. Most observers seem to believe that three or four years represents an ideal

258 By the same token, however, if public standards themselves are viewed as lax, others concerned about inmates' rights may believe that such training parity is inadequate. *See, e.g.*, Robbins, The Legal Dimensions of the Prison Privatization, *supra* at 276-77. Robbins suggests that contractors meet the higher of applicable ACA Adult Correctional Institution standards or locally applicable state, local, or agency-specific training requirements.

259 *See* ACA Standards 2-4079 through 2-4101.

260 *See* Taft RFP at 16-17 (highlighting as many as 19 different types of training to be provided to a contractor on a one-time basis upon request).

contracting period.[261] Consistent with an overall preference for relatively shorter contracting terms, renewal periods should also be limited in number and duration, although they may provide for renegotiation of the contract price.[262]

2. Bolstering Good Performance

A variety of contractual mechanisms can support good performance on the part of contractors. These include promulgation of clear objectives, and where possible, measurable standards, active monitoring of the contract by government corrections authorities, inmates, and the public,[263] and progressive compliance with certain target indicators or compilations of standards. Requiring a contractor to comply over time with a collection of ACA standards or obtain ACA accreditation[264] represents another approach to encouraging good performance that acknowledges the time necessary for some contractors to demonstrate adequate or superior service delivery in particular institutions. In addition to reliance on generic standards such as these, public corrections officials may fashion performance benchmarks of their own, focusing on indicators like numbers of complaints against staff, numbers of disruptive or violent incidents among inmates or against the staff, number and nature of disciplinary actions against inmates and staff, rates at which inmates complete certain programs successfully, etc. These could conceivably serve as the basis for certain kinds of reward or incentive payments, although the record of employing such bonus payments is relatively poor, and their use tends to muddy comparisons with the private sector, which receives no such bonuses. Also, to prevent complacency, most correctional specialists believe that in a market context, renewal of a contract should serve as a perfectly adequate incentive or award.[265]

3. Contract Enforcement through Termination

Contract termination remains the ultimate lever to ensure contract compliance. Most contracts recognize the following as possible grounds for termination: nonperformance, noncompliance with monitoring or auditing findings, failure to meet minimum standards and conditions of incarceration specified in the contract, replacement of key personnel with unsuitable successors, serious conflicts of interest,[266] the filing of a petition in bankruptcy, reorganization or

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261 *See, e.g.*, Robbins, Legal Dimensions of Private Incarceration *supra* at 186 (three years balances competing interests in efficiency and practicality); D. Shichor, Punishment For Profit 113 (governments often prefer short contracts up to three years in light of possible changes in political administration). Tennessee and New Mexico statutorily limit the duration of contracts to three years.

262 Shorter renewal periods will act against unnecessary entrenchment while allowing a successful contracting relationship to continue without unnecessary disruption or additional costs. Adequate notice, however, should precede a contracting agency's determination to either exercise a renewal option or re-bid a contract. *See generally* CSG Report *supra* at 98-100 (noting that in no case should automatic renewals exceed five years).

263 Many observers believe significant public access to, and monitoring of, private prisons can support monitoring efforts by public officials and inmates. *See, e.g.*, Gentry, *The Panopticon Revisited, supra* at 364-67; Keating, *Monitoring Private Prison Performance, supra* at 151-53.

264 *See* text at fn. 254, *supra*. The BOP's Taft RFP calls for a 24 month period to obtain accreditation.

265 Many believe that causation and measurement problems make reward payments of this nature problematic.

266 Some contracts may include detailed conflict of interest provisions. These provision loom more important today, given controversies that have erupted in recent years about unseemly relationships developing between private contractor officials and public authorities, including both legislators and correctional officials.

liquidation, or unavailability of funds. Virtually all government authorities will also insist on termination without cause, or "for convenience,"[267] as well as specific steps and emergency plans to be deployed in the event the government reassumes control of a facility or turns operation over to another party. As is obvious, however, termination represents an exceedingly blunt instrument for remedying contractual problems that fall short of default or grossly deficient performance. "Even the opening up to rebidding of an existing contract can prove traumatic if the contract involves heavy capital commitments, considerable staff, and a significant number of prisoners."[268]

4. Contract Enforcement Through Fines and Penalties

Fines or performance penalties provide contracting agencies with a more flexible tool to spur contractor compliance with a prison contract. Fines can be set in such a way that they tap market-oriented motivations and provide contractors with a continuous incentive to innovate and improve conditions over time. Although some commentators enthusiastically endorse penalties for significant acts or omissions such as deaths in custody, escapes or instances of recidivism, or incidence of illnesses or injuries, [269] others may question whether these are proper measures for penalties, and whether more objective criteria related to day-to-day performance might be utilized.

Given the pervasiveness, acceptability, and relative neutrality of the ACA Adult Correctional Institution Standards, some have built a performance penalty regime around them. For example, one contract negotiator has recounted the use of monetary payments to the government tied to criteria such as failure to meet a mandatory or essential ACA standard or failure to fill a particular position.[270] While correctional specialists can disagree about reliance on specific ACA or staffing criteria to generate penalties, incorporating some measures like these into a private prison contract can at least provide an early 'tripwire' for informed discussion by contractor and public corrections personnel about performance concerns. This represents an enormous advance over adversarial termination

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267 Both Arizona and Tennessee have formally enacted termination for convenience statutes. Ariz. Rev. Stat. Ann. § 41. 1609.01(C); Tenn. Code Ann. 41- 24-104(a)(4). Each of these statutes provides for 90 days notice to the contractor.

268 Keating, *Monitoring Private Prison Performance supra*, at 142.

269 *See, e.g.,* Gentry, *The Panopticon Revisited, supra* at 362. Gentry also believes that fines can be set in such a way "as to counter the perverse incentive for the firm to create demand for its own product [which it could do] by fomenting violence among current inmates in order to scuttle parole chances, arbitrarily reducing good time, or "dehabilitating prisoners so that they are more prone to recidivism. Such actions will, either directly or indirectly, increase the firm's fine costs." Many would question whether fines are necessary to create the proper incentives for contractors in these particular areas, or would question whether contractors have sufficient control over certain environmental factors to make such penalties as effective and targeted as are generally presumed.

270 *See, e.g.,* Gold, *The Privatization of Prisons, supra* at 395-97. In the Puerto Rico contracts that he showcases in this article, the author states that "monetary payments to the government can be thought of either as performance penalties, liquidated damages, or payment adjustments for the operator's failure to provide services or staff or to meet standards being paid for by the government." *Id.* at 395. In one contract, Gold alludes to monetary penalties of $750 per day per failure for failure to meet a mandatory ACA standard. He also states that a failure to obtain ACA accreditation may "incur several such penalties per day since all of the thirty-eight [now 41] Mandatory ACA Standards must be met for accreditation." Finally, Gold cites as a typical penalty for an unfilled position -- e.g., failure to staff a fixed post -- "the amount of the salary not paid, time a multiplier for fringe benefits, plus a penalty of 10 percent." *Id.* at 397. The penalty rises to 20 percent for vacancies in excess of 30 days for a nonprofessional and 45 days for a professional employee.

discussions by lawyers, which usually occur long after performance problems have manifested themselves or shown themselves susceptible to effective solutions.

5. Dispute Resolution

Given the popularity of alternative dispute resolution (ADR), it is to be expected that the parties to a correctional privatization contract might contemplate incorporation of certain ADR mechanisms into such an agreement. While mediation effects no major change in the rights of either party -- so long as there is some time limit on its use and the parties retain their rights to utilize the judicial process should mediation fail -- arbitration is another story. Under arbitration, parties typically agree to submit a dispute to neutral third parties (typically industry experts) who will enter a decision that, based on the specific contractual terms, will be either binding or non-binding on the parties. While arbitration is generally seen as less costly and formal than recourse to judicial mechanisms, its use by public correctional authorities should be weighed carefully.

One drawback is that arbitration provides for a less formal discovery process, so that a public correctional agency could find it difficult to obtain promptly all of the materials and evidence it needs to prove its case. In many cases there is no substitute for prompt and effective injunctive relief -- something that only a court can render. There is also no substitute for contract termination in many circumstances. Finally, there are also many situations where public policy dictates use of an open, public forum to resolve a dispute, with a detailed, complete elaboration of issues on the record that cannot be obtained through arbitration. In general, public correctional authorities are likely to want to retain as much flexibility as possible to avoid ADR and the extended discussions and delays it can engender. Only on matters involving payment disputes (where industry standards might be important), or relatively inconsequential disagreements (e.g., involving non-mandatory ACA standards) will a public correctional agency be likely to consider submitting disputes to arbitration.

Appendix 4

State and Federal Prisoners in Government and Privately Operated Facilities, December 31, 1997

Table 4.A
State and Federal Prisoners in Government and Privately Operated Facilities, December 31, 1997

	Privately Operated			Government Operated			Total
	In-State Facilities	Out-of-State Facilities	Total Private	In-State Facilities	Out-of-State Facilities	Total Government	
Alaska	—	—	—	—	—	—	—
Alabama	0	0	0	21,870	420	22,290	22,290
Arkansas	0	0	0	10,200	255	10,455	10,455
Arizona	1,335	0	1,335	23,866	0	23,866	25,201
California	2,948	0	2,948	153,937	514	154,451	157,399
Colorado	1,382	1,008	2,390	8,842	0	8,842	11,232
Connecticut	588	0	588	15,558	66	15,624	16,212
Delaware	0	0	0	4,801	0	4,801	4,801
Florida DOC	798	0	798	60,713	162	60,875	61,673
Florida CPC	3,079	0	3,079	0	0	0	3,079
Georgia	0	0	0	38,109	0	38,109	38,109
Hawaii	0	600	600	2,762	0	2,762	3,362
Iowa	0	0	0	6,932	49	6,981	6,981
Idaho	0	613	613	3,333	0	3,333	3,946
Illinois	0	0	0	40,788	0	40,788	40,788
Indiana	0	69	69	16,520	0	16,520	16,589
Kansas	0	0	0	7,914	96	8,010	8,010
Kentucky	1,490	0	1,490	9,330	0	9,330	10,820
Louisiana	3,581	0	3,581	14,889	0	14,889	18,470
Maine	—	—	—	—	—	—	—
Massachusetts	0	0	0	11,738	403	12,141	12,141
Maryland	0	0	0	21,840	0	21,840	21,840
Michigan	0	0	0	45,348	20	45,368	45,368
Minnesota	50	0	50	5,151	125	5,276	5,326
Missouri	58	0	58	23,643	0	23,643	23,701
Mississippi	2,522	0	2,522	12,910	0	12,910	15,432
Montana	357	380	737	1,802	0	1,802	2,539
North Carolina	0	0	0	31,545	0	31,545	31,545
North Dakota	0	50	50	770	0	770	820
Nebraska	0	0	0	3,327	0	3,327	3,327
New Hampshire	0	0	0	2,140	75	2,215	2,215
New Jersey	0	0	0	27,776	0	27,776	27,776
New Mexico	704	354	1,058	3,486	132	3,618	4,676

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January 2002

Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services

Part II: Reviewing the Literature on Cost and Quality Comparisons

by Geoffrey F. Segal and Adrian T. Moore
Project Director: Adrian T. Moore

RPPI
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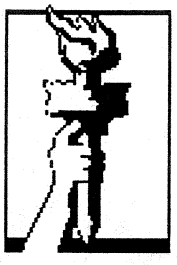

Policy Study No. 290

Weighing the Watchmen:
Evaluating the Costs and Benefits of Outsourcing Correctional Services

Part II: Reviewing the Literature on Cost and Quality Comparisons

By Geoffrey F. Segal and Adrian T. Moore

Executive Summary

The debate over prison privatization continues to revolve around whether privatization saves money. The concept of cost is easy to grasp and the figures are usually large, while other issues are more subtle and less sensational for either proponents or critics to use in arguments. Quality, flexibility, innovation, and competitive pressure on the entire correctional system may be as important as cost savings in justifying privatizing, but they are harder characteristics to measure and even harder to hang an argument on in a political debate.

When critics of privatization focus on cost issues, their assumption is that a mathematical process can determine policy choices. If that were true, a computer could decide whether or not to privatize, and we would not need elected officials. But the decision to privatize or not to privatize is not a mathematical one—it is deliberative, and requires weighing a number of factors, of which some general knowledge of costs is but one.

Government procurement and service contracting are steadily moving toward "best-value" evaluations, wherein governments choose the best combination of both cost and quality rather than selecting a private provider based on low cost alone. Despite this trend, however, a number of states currently have legislated requirements for evidence of cost savings before contract award or renewal.

What We Know About Cost Savings and Quality of Privatized Correctional Facilities and Services

The most important cost-comparison information for policymaking is between competitive and non-competitive regimes. Privatization brings competition into the corrections industry and affects the behavior of individuals throughout the system. Whether from fear of being privatized themselves, or from pride in showing they can compete, or from being held to comparison by higher authorities, workers and managers throughout the system respond to privatization by improving cost efficiencies and the quality of their work.

In Florida, auditors suggest that prison costs statewide have been reduced by the introduction of privatization.

A. Studies on Cost Savings

The most significant body of evidence on the relative costs and quality of privatized correctional facilities comes from a wealth of studies performed by government agencies, universities, auditors, and research organizations. We identified 28 studies that analyze costs data to measure the relative costs of correctional facilities managed by government vs. private firms, 22 of which found significant savings from privatization.

Tables 1A, 1B, and 1C summarize the groups of studies comparing the costs of government-run and private prisons. Though none of these studies is without flaws, the participants in Table 1A applied more rigorous standards in their methodology. Many of them went to great lengths to compensate for the differences between compared facilities and to develop useful comparison figures. Moreover, there is nothing inherent in the problem of differences between facilities that we would expect to bias results toward lower costs at private facilities. Thus the extreme one-sidedness of this literature—near-universal findings of cost savings from privatization—is on its own very persuasive.

Comparative Studies of Private Facility Operational Cost Savings	
Table 1A	
Study	Estimated Savings
Louisiana State University, 1996	14–16%
Wisconsin Task Force, 1996	11–14%
Arizona Department of Corrections, 1997	17%
Delaware County Pennsylvania, 1999	14–16%
Florida OPPAGA, 2000	3.5–10.6%
Arizona Department of Corrections, 2000	12.23%
Table 1B	
Study	Estimated Savings
Hamilton County, Tennessee, 1989	4–8%
Texas Sunset Advisory, 1991	14–15%
Texas Criminal Justice Policy Council, 1991	12.4–20.2%
Florida Corrections Commission, 1993	8–10%
Australia, 1993	23%

Comparative Studies of Private Facility Operational Cost Savings	
Texas Criminal Justice Policy Council, 1993	18.6–22.9%
Australia, 1994	11–28%
Kentucky Department of Corrections, 1994	9%
Texas Criminal Justice Policy Council, 1995	20.5–20.6%
Tennessee Fiscal Review Committee, 1995	0%
United Kingdom, 1996	13–22%
United Kingdom, 1996	11–17%
Washington (TN and LA), 1996	0–2%
Kentucky Department of Corrections, 1996–1997	12%
Texas Criminal Justice Policy Council, 1997	14.9–21%
Texas Criminal Justice Policy Council, 1999	4.4–8.8%
University of Cincinnati, 1999	$0–$2.45 per inmate/day
Texas Criminal Justice Policy Council, 2001	10.7–11.3%
Table 1C	
Study	Estimated Savings
Urban Institute: KY and MA, 1989	0%
Sellers Study, 1989	37%
California Community Corrections, 1993	0%
National Institute of Corrections: Florida, 1995	0%

B. Quality Comparison Studies

The major charge against privatization is that quality and security are sacrificed by reducing costs, yet there is clear and significant evidence that private facilities provide at least the level of service that government-run facilities do. Private correctional facilities have measured well against government-run facilities in almost all criteria of quality, including a wide range of quality-comparison studies, as shown in Tables 2A and 2B. Like cost comparisons, quality-comparison studies can be broken down into two distinct groups: rigorous academic studies (Table 2A) and less methodologically sound analyses (Table 2B).

Comparative Studies of Private Facility Quality	
Table 2A	
Study	Findings
Urban Institute: KY and MA, 1989	Quality advantage to private facilities; staff and inmate ratings are higher; fewer escapes and disturbances.
National Institute of Justice—Well Kept, 1991	Private facility outperforms state facility in 7 of 8 dimensions.
Louisiana State University, 1996	Private outperformed government in 5 categories; government outperformed private in 5 categories.
Arizona Department of Corrections, 1997	Private facilities showed superior performance in public safety issues, protecting staff and inmates, and compliance with professional standards.
Juvenile Facilities in United States, 1998	Private facilities outperformed in 23 of 30 indicators.
Florida Recidivism, 1998	Private facilities outperformed in 4 of 5 measures.
Dallas County Judicial Treatment Center, 1997, 1999	Private-program treatment recidivism rate is almost 50% lower than non-participants.

Comparative Studies of Private Facility Quality	
OPPAGA, 2000	Private facilities showed satisfactory management with three noteworthy examples of performance.
Arizona Department of Corrections, 2000	Private facilities outperformed 7 of 10 measures in 1998; 5 of 10 measures in 1999.
Bureau of Justice Assistance, 2001	Rates of assault on both inmates and staff are higher at private prisons. Rates of riots and inmate death are higher at government prisons. Private prisons produced "an impressive record of programming activities."

Table 2B

Study	Findings
National Institute of Corrections: Okeechobee, 1985	No fundamental differences; noted improvements in private operation.
Silverdale Study, 1988	Private facilities ranked high on most issues; other areas had equal positive and negative responses.
Sellers, 1989	Private facilities showed enhanced level of programming and better conditions in 2 of 3 private facilities.
Tennessee Fiscal Review, 1995	Private facilities showed higher overall performance rating.
United Kingdom, 1996, 1997	Private facilities overall outperformed government prisons.
Minnesota Inmate Interviews, 1999	Services at government facilities rate higher.

What the Literature Tells Us

The cost- and quality-comparison literature tells us two things. First, it is remarkable that such a wide variety of approaches spanning over a decade and a half of research conducted in states across the nation repeatedly come to the same conclusion: that privatization saves money without reducing quality. Second, there is good reason to continue to conduct such comparisons and strive to improve data collection and comparison techniques.

Furthermore, there is clear and significant evidence that private prisons actually improve quality. Independent accreditation by the American Correctional Association (ACA) designates a facility that meets nationally accepted standards for quality of operation, management, and maintenance. There are currently 5,000 government and privately managed detention facilities located around the United States. Only 532 are accredited by the ACA—465 of 4,800 government managed facilities (10 percent ACA accredited) and 67 of 150 privately managed facilities(44 percent ACA accredited). This dramatic difference suggests that private prisons are providing both quality services and significant cost savings.

Conclusions and Policy Recommendations

Departments of corrections at the federal, state, and local levels should closely examine how and by what standards the private sector can be involved in their corrections system. Experience with privatization to date shows that the process and administration require care, but when properly implemented can deliver quality improvement and cost savings.

Further study of the benefits of a competitive environment in corrections is needed. Both theory and real-world examples from other industries suggest that competition results in the optimal level of efficiency and quality. In choosing whether or not to privatize, decision-makers should:

- **Recognize the Varied Motivations for Privatization.** The full measure of worth of privatization has to be assessed in a policy context with full due given to the broader goals that can be achieved. Privatization can offer increased innovation, access to expertise, improved quality, and enhanced accountability. Most important is recognizing that cost savings from privatization is itself a product of competition, and that competition has beneficial effects on the entire system.
- **Avoid Over-reliance on Cost-comparison Data.** Policymakers should recognize that cost comparisons tend to be static in nature, assuming away changes and differences that privatization brings about. The simple fact is that cost comparison is more an art than a science—a fact that pains many who would like cost comparisons to be simple matters of data analysis. With such cautions in mind, however, well-conducted accounting and economic studies can be very helpful in judging the merits of privatization.
- **Use Current Best Practices for Contracting to Ensure Optimal Results.** Performance-based contracts have emerged as a state-of-the-art contracting tool to give government managers better control over contractors and greater assurances of accountability. Performance contracts clearly spell out the desired result expected of the contractor, while the manner in which the work is to be performed is left to the contractor's discretion. Contractors are given both creative and scientific freedom to find ways to best meet the government's performance objective. Performance-based contracts are a key way to capture the broad range of privatization goals that go beyond simple cost savings. They allow governments to purchase results, not just process, rewarding the private firm only if specified quality and performance goals are met.
- **Recognize the Benefits of Meeting Needs and Having Options.** Privatization gives policymakers unique opportunities to address specific needs and specific goals they may have. Contracts can be structured so that goals are met. Furthermore, the breadth of options that privatization gives policymakers is an important benefit. Privatization is not a one-size-fits-all solution; several approaches or techniques are available to decision-makers. After evaluating all of the options available, negotiations with the private partner still take place that enable the creation of a structure and mechanism that is mutually beneficial.

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Part 1

Introduction—The Privatization Debate

The public debate over prison privatization continues to revolve around whether privatization saves money. Costs are easy to grasp, the figures are usually large, and other issues are subtler and less sensational for proponents or critics to use in arguments. Quality, flexibility, innovation, and competitive pressure on the entire correctional system may be as important as cost savings in justifying privatizing, but they are harder to measure and even harder to qualify in a political debate.[1]

When the debate over privatization hinges on cost issues, the assumption is that a mathematical process can determine policy choices. If that were true, a computer could decide whether or not to privatize, and we would not need elected officials. But the decision is not a mathematical one—it is deliberative, and requires weighing a number of factors, of which some general knowledge of costs is but one.

Table 1 - Factors Used in Assessing Privatization
▪ Quality
▪ Faster and Cheaper Bed Capacity
▪ Enhanced Accountability and Better Risk Management
▪ Innovation
▪ Access to Expertise and New Service Delivery Acquisition
▪ Improved Efficiency and Flexibility
▪ Cost Savings

Best practices for government procurement and service contracting are steadily moving toward "best-value" techniques, where, rather than selecting a private partner based on low cost alone, governments choose the best combination of cost and quality. Despite this trend, a number of states have legislated requirements for evidence of cost savings before contract award or renewal.[2]

Part 2

What We Know About Cost Savings and Quality of Privatized Correctional Facilities and Services

The most important body of evidence on the relative costs and quality of privatized correctional facilities comes from a wealth of studies performed by government agencies, universities, auditors, and research organizations. The studies can be broken into three distinct groups. The first group includes rigorous, peer-reviewed, serious academic studies where methodological approaches to comparison are sound and are often refereed. The second group consists largely of government studies focusing on average costs, contract prices, or basic accounting comparisons. The third and final group of studies is widely regarded as less credible, as research methodology does not follow common standards and is less clear.

We identified 28 studies that analyze cost data to measure the relative costs of correctional facilities managed by government vs. private firms—22 of which found significant savings from privatization. We also identified 18 studies that use various approaches to measure the relative quality of care at correctional facilities managed by government vs. private firms—16 of which conclude that quality at private facilities is as good or better than at government-run facilities.

A. Studies on Cost Savings

The most important cost-comparison information for policy making is really between competitive and non-competitive regimes. Privatization brings competition into a correctional system and naturally affects the behavior of individuals throughout the system.[3] Whether from fear of being privatized themselves, or pride in showing they can compete, or from being compared by higher authorities, workers and management throughout the system respond to privatization.[4] In Florida, auditors suggest that prison costs statewide have been reduced by the introduction of privatization.[5] And in Arizona, a report examining costs in the state-run prisons compared to Arizona's one private prison found the cost difference converged over 1998 and 1999, mostly due to falling costs in state-run prisons.[6]

Nevertheless, many governments are using privatization to reduce correctional costs and to finance additional services. Tables 2A, 2B, and 2C summarize the groups of studies comparing the cost of government–run and private prisons. Though none of these studies can be declared perfect, the studies in Table 2A applied more

rigorous standards to their methodology. Many of them went to great lengths to compensate for differences between compared facilities and to develop useful comparison figures. Moreover, there is nothing inherent in the problem of differences between facilities that we would expect to bias results towards lower costs at private facilities. Thus the extreme one-sidedness of this literature—near universal findings of cost savings from privatization—is on its own very persuasive. The following are brief descriptions of the studies and their findings.

Comparative Studies of Private Facility Operational Cost Savings	
Table 2A	
Study	Estimated Savings
Louisiana State University, 1996	14–16%
Wisconsin Task Force, 1996	11–14%
Arizona Department of Corrections, 1997	17%
Delaware County Pennsylvania, 1999	14–16%
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Florida Corrections Commission, 1993	8–10%
Australia, 1993	23%
Texas Criminal Justice Policy Council, 1993	18.6–22.9%
Australia, 1994	11–28%
Kentucky Department of Corrections, 1994	9%
Texas Criminal Justice Policy Council, 1995	20.5–20.6%
Tennessee Fiscal Review Committee, 1995	0%
United Kingdom, 1996	13–22%
United Kingdom, 1996	11–17%
Washington (TN and LA), 1996	0–2%
Kentucky Department of Corrections, 1996–1997	12%
Texas Criminal Justice Policy Council, 1997	14.9–21%
Texas Criminal Justice Policy Council, 1999	4.4–8.8%
University of Cincinnati, 1999	$0–$2.45 per inmate/day
Texas Criminal Justice Policy Council, 2001	10.7–11.3%
Table 2C	
Study	Estimated Savings
Urban Institute: KY and MA, 1989	0%
Sellers Study, 1989	37%
California Community Corrections, 1993	0%
National Institute of Corrections: Florida, 1995	0%

Group "A" Studies

1. *Louisiana State University (1996)*[7]

This study compared three identically constructed prisons with similar inmate populations: one operated by the state, the other two operated by private contractors. The study concluded that: "it is clear from the data analyzed and presented in this study that the two private prisons—Allen and Winn Correctional Centers—significantly out-performed the state operated prison—Avoyelles. Both private prisons...were found to be significantly more cost effective...costs at Allen were $22.96 per inmate per day, Winn $23.51, and Avoyelles $26.76." Estimated savings: 14 – 16 percent.

2. *Wisconsin Task Force on Corrections (1996)*[8]

George Mitchell, a member of the Governor's Task Force on Corrections, carried out a study for the Wisconsin Policy Research Institute. He conducted a comparison of a state facility against a private facility in neighboring Minnesota. Using two different scenarios, conservative assumptions concluded that private management of new Wisconsin prisons could produce annual operating cost savings of up to $12.4 million per year, with 20-year savings totaling $248 million. He conjectures that over the life of a 20-year prison construction bond, these savings could pay for most or all of the interest cost of the bond borrowing. Estimated savings: 11– 14 percent.

3. *Arizona Department of Corrections (1997, 2000)*[9]

A 1997 report compared the cost and performance of a 444-bed private prison to 15 government-run prisons in Arizona. The study, controlling for indirect costs, found average cost per inmate per day was $43.08 in the government prisons and $35.90 in the private prison. Estimated savings: 17 percent.

Though a formal cost comparison was not required by law until 2002, the Arizona Department of Corrections in 2000 used available data to assess costs. They found average per diem costs of $46.72 and $45.85 for state facilities in 1998 and 1999 versus $40.36 and $40.88 for private facilities—savings of 13.6 percent and 10.8 percent respectively. Estimated savings: Average savings over 1998 and 1999 is 12.23 percent.

4. *Delaware County, Pennsylvania (1999)*[10]

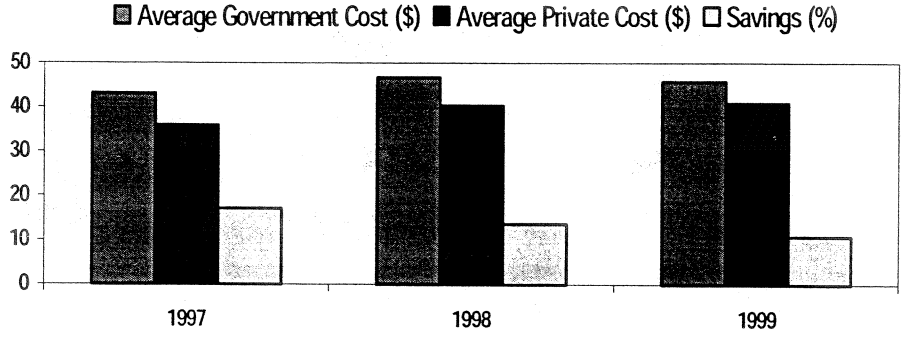
This study compared the actual costs of a new private prison in Delaware County to government estimates of in-house operation and construction. It concludes that, over seven years, the county will save $20 million from management alone, roughly $2.9 million annually. Construction costs were also significantly lower—$56 million—down from an estimated $93 million. Furthermore, the county saved an additional $1.5 million annually in lower debt-service costs. Estimated savings: 14 – 16 percent.

5. *Florida Legislature, Office of Program Policy Analysis and Government Accountability (OPPAGA) (2000)*[11]

As required by Florida statute, OPPAGA is charged with evaluating the costs and benefits of the contract and the performance of the contractor. OPPAGA also recommends whether or not the contract should be renewed. After reviewing the South Bay Correctional Facility, OPPAGA determined that operational savings were 3.5

percent for FY 97–98 and 10.6 percent for FY 98–99, exceeding the state-mandated 7 percent. The report further noted that construction costs were 24 percent less than similar government facilities and recommended contract renewal. Estimated savings: 3.5 – 10.6 percent (operational) and 24 percent (construction).

Figure 1: Arizona DOC Average Per Diem Costs and Savings



Source: Charles W. Thomas, "Comparing the Cost and Performance of Public and Private Prisons in Arizona," Arizona Joint Legislative Committee (August 1997); and "Public-Private Prison Comparison," Arizona Department of Corrections (Phoenix, AZ: October, 2000).

Group "B" Studies

1. Hamilton County (Chattanooga) Penal Farm, Tennessee (1989)[12]

This study compared the contract cost paid to the private firm for operating the 350-bed Hamilton County Penal Farm. Estimates were based on actual 1983–84 expenditures plus annual employee salary increases equal to those received by county employees and non-salary cost increases based on the Consumer Price Index. Estimated savings: 4 – 8 percent.

2. Texas Sunset Advisory Commission (1991)[13]

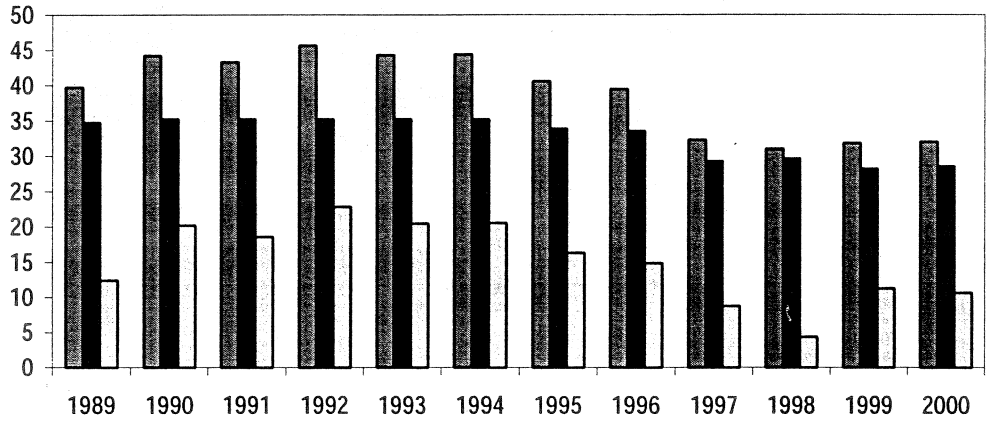
The Texas Sunset Advisory Commission conducted a study in 1991. Their review looked at 1990 operational costs of four privately managed minimum-security prisons. Using data from the Texas Performance Review (below) and the Texas Department of Criminal Justice, the Commission found that private prisons were meeting the mandated 10 percent cost savings. Estimated savings: 14 – 15 percent.

3. Texas Criminal Justice Policy Council (1991, 1993, 1995, 1997, 1999, 2001)[14]

The State of Texas mandates that any privatized facility show evidence of at least 10 percent cost savings compared to a similarly operated government facility. Various agencies of the Texas state government have conducted studies to measure compliance with the privatization cost- savings requirement. The Texas Criminal Justice Policy Council conducts a biannual review of the average cost per day of government facilities and the average contract price at private facilities. The first study was published in 1991 and

evaluated 1989 and 1990. Subsequent studies have been conducted every other year since, with the latest published in 2001. This data represents the best longitudinal evidence of cost savings. The average contract price has consistently been between 4.4 percent (1998) and 22.9 percent (1992) lower than the average cost of government facilities. Estimated savings: 12.4 percent (1989), 20.0 percent (1990), 18.6 percent (1991), 22.9 percent (1992), 20.5 (1993), 20.6 (1994), 21 percent (1995), 14.9 percent (1996), 8.8 percent (1997), 4.4 percent (1998), 11.3 percent (1999), and 10.7 percent (2000).

Figure 2: Texas Criminal Justice Policy Council Time Series Data



4. Florida Corrections Commission (1993)[15]

The Florida Auditor General, in a 1993 study, reviewed the cost of privately run facilities in comparison to projected state costs included in the facility Request For Proposal. The audit found that the private contractors were charging the state $46.96 to $47.05 per inmate, per day, while the state facilities costs were $52.40 per day. A separate comparison, for operation of a larger facility with more potential economies of scale, showed a cost for a private firm of $41.73, vs. $45.64 for the state. Estimated savings: 8 – 10 percent.

5. The Australian Experience (1993, 1994)[16]

A 1993 study compared the privately managed Borallon Correctional Centre to the government-run Lotus Glen Correctional Centre. The study found the private prison to operate at significantly lower cost, largely due to the government facility having 63 percent more staff for each 100 inmates and substantially more overtime and sick leave. Estimated savings: 23 percent.

A two-year comparison of government and private prison operations and cost found that the private facility "provides the highest programme content of any correctional center in Queensland." Annual inmate costs in 1991-92 were $39,240 at the private facility and $54,560 at the government facility; the next year the comparison was $44,200 and $49,880, respectively. Estimated savings: 11 – 28 percent.

6. *Kentucky Department of Corrections (1994, 1996-97)*[17]

The 1994 study by the Kentucky Department of Corrections compared three facilities, two privately operated and one government-run. Using cost data from all three prisons, the department calculated adjusted per-diem costs of $34.26 at the government-run facility and $31.07 and $31.30 at the private prisons. Estimated savings: 9 percent.

A second comparison covering 1996 and 1997 calculated the cost to the state DOC of incarcerating state prisoners in different facilities. Per-diem costs were $35.22 for state minimum-security prisons, and $31.08 for private facilities. This study, unlike the 1994 comparison, excluded debt costs for the government prison, but included debt costs for the private prisons. Estimated savings: 12 percent.

7. *Tennessee Legislature Fiscal Review Committee (1995)*[18]

Three multicustody prisons (minimum- to maximum-security) were compared: one private and two state-run. There was little difference in average daily operational costs per inmate across the three facilities—$35.39 for the private facility, versus $34.90 and $35.45, respectively, for the two government facilities. Estimated savings: 0 percent.

8. *U.K. Analyses (1996)*[19]

In 1996, two thorough cost analyses compared private- and government-run prison costs in the United Kingdom. The first, conducted by the Home Office Economic Unit, audited private contract prison costs compared to costs at similar government prisons. Estimated savings: 11 – 17 percent.

The second report, commissioned from Coopers and Lybrand, compared 1994-95 prison operational costs and found significant savings. Estimated savings: 13 – 22 percent.

9. *Washington State Legislature (1996)*[20]

Authorized to perform a pre-feasibility study of privatizing construction of a new correctional facility, the Legislative Budget Committee examined the construction costs of a government-constructed prison compared with the construction costs for an identical private prison located in Florida. They estimated privatized construction costs to be $26,500 per inmate less than with government construction. The analysis also reanalyzed the operating cost data from the Tennessee Legislature study (above) and found savings from privatization of less than $1 per day (private was less expensive). Finally, they conducted a similar comparison of facilities in Louisiana and found "a virtual equivalence" in per-diem inmate costs. Estimated savings 0 to 2 percent (operational) and $26,500 per inmate (construction).

10. *University of Cincinnati (1999)*[21]

Two researchers at the University of Cincinnati conducted a meta-analysis of 33 cost-effectiveness evaluations of private and government prisons from 24 independent studies. They concluded that private prisons were no more cost-effective than government prisons. However, the authors did note that a simple cost comparison showed a $2.45 cost per day/per inmate advantage to private prisons, attributing differences

in per-diem costs to other institutional characteristics such as a facility's economy of scale, age, and security level. Estimated savings: $0 to $2.45 per day/per inmate.

Group "C" Studies

1. *Urban Institute: Kentucky and Massachusetts (1989)*[22]

The Urban Institute conducted a comparison of a government and private adult facility in Kentucky and two pairs of government and private facilities for violent youth in Massachusetts. In each of the states the costs were very similar. Estimated savings: 0 percent.

2. *The Sellers Study (1989)*[23]

Comparing three privately operated detention and jail facilities with three government-operated prison facilities, but not controlling for significant differences that directly affect costs, Sellers concluded that the three private facilities operated at a lower cost than government facilities—$46.75 per day versus $73.76. Estimated savings: 37 percent.

3. *California Community Corrections (1993)*[24]

The authors examined a private facility and two government proprietary facilities. They concluded that costs were about the same, but start-up costs for the private facility were significantly less. Estimated savings: 0 percent—start up costs were significantly less.

4. *National Institute of Corrections: Okeechobee, FL (1985)*[25]

The NIC assessed the transfer of a state-run juvenile facility to a private not-for-profit organization. The analysis asked two questions: first, would the Florida Department of Health and Rehabilitation Services realize substantial savings, and second, would they receive a program equal or exceeding that of the state? The study revealed that a number of state-required procedures were streamlined, however, on balance, the fiscal data seem to indicate that no significant reduction in operational costs existed.[26] Estimated savings: 0 percent.

Cost Comparison Case Study: South Bay Correctional Facility, Florida[27]

In December 1994, the Florida Correctional Privatization Commission awarded a three-year contract to Wackenhut Corrections Corporation for a 1,318 bed medium facility in Palm Beach County. Inmate intake began in early February 1997. The contract specified that the American Correctional Association (ACA) must accredit the facility within 18 months of the service commencement date. Florida law mandates that privatization cost savings must be more than 7 percent to be subject to a contract award. The baseline cost analysis of the state-run facility estimated in the original request for proposal compared with the contract awarded to Wackenhut demonstrates significant savings:

Table 3: South Bay Baseline Cost Analysis		
	State Facility	Wackenhut Facility
Number of Inmates	1,318	1,318
Occupancy Percentage	95%	95%
Annual Costs		
▪ Personnel	$8,813,524	$6,760,180
▪ General Ops.	$1,866,332	$1,823,152
▪ Food	$1,729,762	$1,482,105
▪ Medical	$3,024,542	$2,645,005
Indirect	$1,187,850	$2,060,416
Total	$16,622,010	$14,770,858
Per Diem/Inmate	$36.36	$32.32
Total Savings	**11.1%**	

B. Quality Comparison Studies

The major charge against privatization is that by reducing costs, quality and security are sacrificed. Yet, there is clear and significant evidence that private facilities provide at least the level of service that government-run facilities do. Private correctional facilities have fared well against government-run facilities in almost all measures of quality, including a wide range of quality comparison studies, as shown in Tables 4A and 4B. Like cost comparisons, quality comparison studies can be broken down into two distinct groups—rigorous academic studies (Table 4A) and less methodologically sound analyses (Table 4B). The following are brief descriptions of the studies and their findings.

Comparative Studies of Private Facility Quality	
Table 4A	
Study	Findings
Urban Institute: KY and MA, 1989	Quality advantage to private facilities; staff and inmate ratings are higher; fewer escapes and disturbances.
National Institute of Justice—Well Kept, 1991	Private facility outperforms state facility in 7 of 8 dimensions.
Louisiana State University, 1996	Private outperformed government in 5 categories; government outperformed private in 5 categories.
Arizona Department of Corrections, 1997	Private facilities showed superior performance in public safety issues, protecting staff and inmates, and compliance with professional standards.
Juvenile Facilities in United States, 1998	Private facilities outperformed in 23 of 30 indicators.
Florida Recidivism, 1998	Private facilities outperformed in 4 of 5 measures.
Dallas County Judicial Treatment Center, 1997, 1999	Private-program treatment recidivism rate is almost 50% lower than non-participants.
OPPAGA, 2000	Private facilities showed satisfactory management with three noteworthy examples of performance.
Arizona Department of Corrections, 2000	Private facilities outperformed 7 of 10 measures in 1998; 5 of 10 measures in 1999.
Bureau of Justice Assistance, 2001	Rates of assault on both inmates and staff are higher at private prisons. Rates of riots and inmate death are higher at government prisons. Private prisons produced "an impressive record of programming activities."

Comparative Studies of Private Facility Quality	
Table 4B	
Study	Findings
National Institute of Corrections: Okeechobee, 1985	No fundamental differences; noted improvements in private operation.
Silverdale Study, 1988	Private facilities ranked high on most issues; other areas had equal positive and negative responses.
Sellers, 1989	Private facilities showed enhanced level of programming and better conditions in 2 of 3 private facilities.
Tennessee Fiscal Review, 1995	Private facilities showed higher overall performance rating.
United Kingdom, 1996, 1997	Private facilities overall outperformed government prisons.
Minnesota Inmate Interviews, 1999	Services at government facilities rate higher.

Group "A" Studies

1. Urban Institute: Massachusetts (1989)[28]

The study compared two pairs of government and private juvenile facilities in Massachusetts on quality-of-confinement issues. A wide range of performance indicators was appraised using survey information, physical observation, interviews, and agency records. For most of the indicators, the private facilities had a slight advantage. Overall, both staff and inmates gave better ratings to the services and programs provided at private facilities. Escape rates were lower, there were fewer inmate disturbances, and comfort levels for staff and inmates were higher at the private facilities. Quality findings: Better quality at private facilities.

2. National Institute of Justice: Well Kept (1991)[29]

Charles Logan of the University of Connecticut conducted a detailed analysis of three multicustody facilities for women. A private prison and a state-run prison in New Mexico and a federal prison in West Virginia were selected for comparison. Three hundred thirty three quality variables were used in eight dimensions (security, safety, order, care, activity, justice, conditions, and management). Quality findings: Private facility outperforms state facility in seven of eight dimensions (all except care).

3. Louisiana State University (1996)[30]

This study found that the private facility performed better than the government facility in terms of safety to inmates, safety of correctional officers, number of incidents, use of discipline, and education programs. However, the government facility had fewer escapes, less substance abuse, and more rehabilitation, social, and recreational services. Quality findings: private facility outperforms in 5 areas, government facility outperforms in 5 areas.

4. Arizona Department of Corrections (1997, 2000)[31]

The 1997 report compared performance of the state's one private prison to other state prisons. Many aspects of prison management were examined, including frequency of escapes, major disturbances, homicides,

assault, and inmate grievances. Quality findings: The performance of the private prison was superior in public safety issues, protecting staff and inmates, and compliance with professional standards.

The primary function of the 2000 study was a quality comparison. Government and private prisons were compared on ten individual dimensions including security, food service, facility safety and sanitation, and inmate health services. Quality findings: In 1998, the private prisons outperformed government prisons in seven of 10 dimensions; in 1999, government and private prisons split the dimensions five to five.

5. *Dallas County Judicial Treatment Center (1997, 1999)*[32]

The Institute of Behavioral Research at Texas Christian University conducted longitudinal research on the Dallas County Judicial Treatment Center (DCJTC), a privately managed facility. DCJTC is a 300-bed residential treatment program for offenders with histories of substance abuse and addiction. Research findings revealed that only 11 percent of DCJTC graduates were re-arrested within a year of program completion. By contrast, 21 percent of program non-participants had rearrests during the same time period. Quality findings: Program participants' recidivism rate is almost 50 percent lower.

6. *Privatization of Juvenile Correctional Facilities in the United States (1998)*[33]

Thirteen studies comparing quality between government and private correctional facilities concluded that:

> *Conditions of confinement may very well be improving for those prisoners confined in private rather than government facilities. This "secondary" effect of better conditions may in the long run reap greater rewards in reduced prison reform litigation and improved rehabilitative outcomes.*

The author then himself conducted the first broad-scale comparison of quality of care in privately operated versus government-operated juvenile correctional facilities and found quality of care to be substantially better at private facilities. Quality findings: Private juvenile facilities outperform government-run facilities in 23 of 30 indicators of conditions of confinement.

7. *Florida Recidivism Study (1998)*[34]

Researchers at the University of Florida conducted an analysis of recidivism rates between government and private facilities for the Florida Correctional Privatization Commission. The study matched 198 inmates each from private and government prisons, and compared them in five areas for the 12 months following release: rearrest, technical violations of the terms of release, resentencing on a new offense, reincarceration, and an overall comparison. The private prison outperformed the government prison in every category except technical violations.

Specifically, 10 percent of the private prison inmates were rearrested in the 12 months following release versus 19 percent of government prison inmates. Six percent of private releases were resentenced to a new offense versus 10 percent. Furthermore, 10 percent of private inmates were reincarcerated compared with 14 percent of government inmates. The overall indicator showed that 17 percent of private releases have an indication of recidivism versus 24 percent of government releases. Nine percent of private prison inmates had a technical violation of release terms compared to eight percent government prison inmates. Quality findings: The private prison outperformed the government facility in 4 of 5 areas.

8. *Florida Legislature, Office of Program Policy Analysis and Government Accountability (OPPAGA) (2000)*[35]

OPPAGA reported that the private facility examined had been managed satisfactorily with three specific examples of noteworthy performance. South Bay programs became fully operational within six months, compared to up to three years with a comparable state facility. Secondly, the facility received a more positive review by the Correctional Medical Authority than a similar state facility. Finally, the report noted innovative approaches to housing certain inmates. Quality findings: Satisfactory management with three noteworthy examples of performance.

9. *Bureau of Justice Assistance (2001)*[36]

BJA compared data from a Bureau of Justice Statistics report on government prisons from 1995 with data gathered from a survey administered to several private prisons. Private prisons produced "an impressive record of programming activities." Every private prison offered both work and education programs. They also offered far more extensive counseling programs than government prisons. Rates of assault on staff was slightly higher in goverment facilities (13.8 vs. 12.7 per 1000 inmates). Total inmate deaths were also higher at government facilities (2.9 vs. 0.7 per 1000 inmates).

Because the public prison sample contained a far greater proportion of maximum-security prisons than the private prison sample, maximum-security prisons were removed from the sample and a second analysis was performed. Rates of assault on both inmates and staff were higher at private prisons, 33.5 and 12.2 respectively versus 20.2 and 8.2 for government prisons. However rates of death were higher in government prisons (2.7 versus 0.7). Furthermore, riots were significantly more common government prisons (3.7 versus 0.3). Quality Findings: Rates of assault on both inmates and staff are higher at private prisons. Rates of riots and inmate death are higher at government prisons. Private prisons produced "an impressive record of programming activities."

Group "B" Studies

1. *National Institute of Corrections: Okeechobee, FL (1985)*[37]

Examining changes in conditions at a privatized juvenile facility, the study found no fundamental program differences, but did note a number of improvements in the delivery of services after privatization. Quality findings: Private management of at least similar quality.

2. *Silverdale Detention Center, Tennessee (1988)*[38]

Inmates at the Silverdale Detention Center in Chattanooga, Tennessee were surveyed to assess the quality of confinement of the private operator. "The evidence is overwhelming that the private takeover of [the facility] has resulted in substantial improvements in the institution's physical conditions and upkeep, as well as several critical areas of inmate service and institutional procedure." Quality findings: Private facility ranked highly on most issues; other areas had an equal balance of positive and negative responses.

3. *The Sellers Study (1989)*[39]

Measuring quality and performance at three government-run and three private facilities, the report found that all three private facilities offered more programs than their public sector counterparts. Furthermore, overall prison conditions were notably better in two of the three private facilities. Quality findings: Enhanced level of programming (three of three facilities) and better overall conditions at private facilities (two of three).

4. *Tennessee Legislature Fiscal Review Committee (1995)*[40]

The Committee compared one private and two government-run prisons and gave higher marks to the private facility. An operational audit was conducted at each facility—the various functional areas included administration, safety, physical plant, health services, treatment, and security. The overall performance scores were 98.49 for the private facility and 97.17 and 98.34, respectively, for the two public facilities. Quality findings: Higher overall performance rating for private facility.

Contractor Performance and Quality Case Study: Florida Corrections Commission

The Florida Corrections Commission's 1996 Annual Report[41] made the following observations about the status of privatized facilities under their purview:

- All of the privatized facilities are fully air-conditioned, including an air-conditioned gymnasium at South Bay Correctional Facility.
- Technology appeared to be one of the main "tools" at the private facilities, as noted with monitoring cameras, correctional officer body alarms, camera-monitored perimeter alarms, and computerized tracking systems for inmate movement.
- Commissioners were extremely impressed with the community at DAYTOP (a private drug treatment facility). Values are instilled in residents while they participate in required academic, vocational, and work assignments.
- Whether accomplished through the Department of Corrections or the Corrections Privatization Commission, privatization of state corrections in Florida has provided additional educational, vocational, substance abuse and other programs for inmates, whereas state-operated facilities have not kept pace with providing programs. This has resulted in the private facilities having an advantage in management tools for controlling inmate behavior and participation in self-betterment programs.

5. *Quality Studies in the United Kingdom (1996, 1997)*[42]

There have been at least seven examinations of the quality of private-prison operations in the United Kingdom, including three inspections by the Chief Inspector of Prisons, three independent research projects, and one independent government inquiry. The studies find that inmates in private prisons enjoy more freedom to associate, better staff-inmate relations, more and better work training, better meals, and more convenient visiting schedules. There are also fewer escapes and less violence in private prisons, assaults between inmates being the only measure where government facilities rank higher. Quality findings: Overall, private prisons outperform government prisons.

6. Minnesota Inmate Interviews (1999)[43]

Inmates at one private and two government prisons in Minnesota were interviewed to determine the experience with privatization and to make quality comparisons between private and government facilities. A detailed, structured questionnaire was used for interviews to measure their perceptions about healthcare and casework services, prison programs, and security and safety.

Inmate accounts of access to health and dental care were almost identical between the facilities. Sessions with case workers appear to be provided on a more regular basis in the private facility—even though more inmates at government facilities report that more sessions were initiated at their own request.

Educational and vocational programming at government prisons rated higher, with more inmates reporting full-time participation in either type of programming. Inmates at the private facility complained about the programming but suggested that it was helping. Substance abuse or drug treatment programs also received higher scores at the government facilities. The only program area where the private facility achieved a higher score was in pre-release programming.

On a scale of one to five, inmates at the government facilities gave them a rating of 3.70 for prison security and safety. By comparison, the private facility received a rating of 2.84. Quality findings: Results were mixed—tilted toward better quality at government facilities—services, programs, and security rated higher at government facility.

C. Conclusion—What This Literature Tells Us

The cost and quality comparison literature tells us two things. First, it is remarkable that such a wide variety of approaches spanning over a decade and a half of research conducted in states across the nation repeatedly comes to the same conclusion—that privatization saves money without reducing quality. No one has offered a technical argument for how the admitted imperfections of this literature could lead to such one-sided conclusions. Rather, it takes a huge leap of skepticism to conclude anything but that privatization saves money without reducing quality. Second, there is good reason to continue to conduct such comparisons and strive to improve data collection and comparison techniques.

Furthermore, there is clear and significant evidence that private prisons actually improve quality. Independent accreditation by the American Correctional Association (ACA) is designed to show a facility meets nationally accepted standards for quality of operation, management, and maintenance. There are currently 5,000 government and privately managed detention facilities located around the United States, with only 532 accredited by the ACA—465 are public and 67 are private.[44] Thus, no more than 10 percent of government correctional facilities have been accredited, whereas 44 percent of private facilities have been accredited. This dramatic difference suggests that private prisons are providing quality services, while remaining cost-efficient and providing significant cost savings.

Part 3

Conclusions and Policy Recommendations

DOCs at the federal, state, and local level should closely examine how and by what standards the private sector can be involved in their corrections system. Experience with privatization to date shows that it requires care in use, but when properly implemented can deliver quality improvement and cost savings.

Further study of the benefits of a competitive environment in corrections is needed. Theory, and examples from other industries suggest that competition ensures the optimal level of efficiency and quality. In choosing whether to privatize, decision-makers should:

1. **Recognize the Varied Motivations for Privatization.** Cost comparisons are only part of the data needed to evaluate the merits of privatization, and the measurable data alone cannot paint a full picture. The full measure of worth of privatization has to be assessed in a policy context given the broader goals that can be achieved. Privatization can offer increased innovation, access to expertise, improved quality, and enhanced accountability. Most important is recognizing that cost savings from privatization is itself a product of competition, and that competition has beneficial effects on the entire system.

The full measure of worth of privatization has to be assessed in a policy context with due given the broader goals that can be achieved.

2. **Avoid Over-reliance on Cost Comparison Data.** In evaluating privatization's merits and deciding whether or not to use it, policy makers should be wary about over-reliance on cost comparisons. They should recognize that cost comparisons tend to be static in nature, assuming away changes and differences that privatization brings about. The simple fact is that cost comparison is more an art than a science[45]—a fact that pains many who would like cost comparisons to be simple matters of data analysis. With such cautions in mind, however, well-conducted accounting and economic studies can be very helpful in judging the merits of privatization.
3. **Use Current Best Practices for Contracting to Ensure Optimal Results.** Performance-based contracts have emerged as a state-of-the-art contracting tool to give government managers better control over contractors and greater assurances of accountability. Performance contracts clearly

spell out the desired result expected of the contractor, but the manner in which the work is to be performed is left to the contractor's discretion. Contractors are given as much freedom as possible in finding ways to best meet the government's performance objective.

What this means for corrections privatization is that performance-based contracts are a key way to capture the broad range of privatization goals that go beyond simple cost savings. They allow governments to purchase results, not just process, rewarding the private firm only if specified quality and performance goals are met.

4. **Recognize the Benefits of Meeting Needs and Having Options.** Privatization gives policy makers a unique opportunity to address specific needs and specific goals they may have. Privatizations and contract awards can be structured so that goals are met. Furthermore, the breadth of options that privatization gives policymakers is important. Privatization is not a one-size-fits-all solution; several approaches or techniques are available to decision-makers. After evaluating all of the options available, negotiations with the private partner still can be used to create a structure and mechanism that is mutually beneficial.

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Endnotes

[1] For a more in depth examination of alternative motivations for privatization, please see www.rppi.org/ps289.html.

[2] States statutorily requiring cost savings are Arizona, Florida, Louisiana, Massachusetts, Minnesota, Mississippi, Ohio, South Dakota, Tennessee, and Texas. The requirements of each state can be found in Section III of the companion volume to this study.

[3] Richard W. Harding, *Private Prisons and Public Accountability* (New Brunswick, New Jersey: Transaction Publishers, 1997), pp. 31.

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[5] Office of Program Policy Analysis and Government Accountability (OPPAGA), *Comparing Costs of Public and Private Prisons* (Tallahassee, FL: State of Florida, March 1997), p.6.

[6] Arizona Department of Corrections, "Public-Private Prison Comparison" (Phoenix, AZ: October, 2000).

[7] William G. Archambeault, Ph.D., and Donald R. Deis, Jr., Ph.D., *Cost Effectiveness Comparison of Private vs. Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers*, Dept. of Accounting, Louisiana State University (Baton Rouge: October 15, 1996).

[8] George A. Mitchell, *Controlling Prisons Costs in Wisconsin*, (Thiensville, WI: Wisconsin Policy Research Institute, December 1996).

[9] Charles W. Thomas, "Comparing the Cost and Performance of Public and Private Prisons in Arizona," Arizona Joint Legislative Committee (August 1997); and Arizona Department of Corrections, "Public-Private Prison Comparison" (Phoenix, AZ: October, 2000).

[10] Paul Kengor and Mark Scheffler, *Prison Privatization in Pennsylvania: The Case of Delaware County*, Report #99-09 (Pittsburgh, PA: Allegheny Institute for Public Policy, August 1999).

[11] Office of Program Policy Analysis and Government Accountability (OPPAGA), *Private Prison Review: South Bay Correctional Facility Provides Savings and Success; Room for Improvement*, Report No 99-39 (Tallahassee, Florida: March 2000).

[12] Charles Logan and Bill W. McGriff, *Comparing Costs of Public and Private Prisons: A Case Study*, National Institute of Justice Reports, 216 (1989).

[13] John Sharp, Texas Comptroller of Public Accounts, *Breaking the Mold: New Ways to Govern Texas*, Texas Performance Review (July 1991), pp. 19-25; Texas Sunset Advisory Commission, *Information Report on Contracts for Corrections Facilities and Services*, Recommendations to the Governor of Texas and Members of the Seventy-Second Legislature (Austin, Texas: 1991).

[14] Texas Criminal Justice Policy Council, *Texas Correctional Costs 1989-1990* (January 1991); Texas Criminal Justice Council, *Texas Correctional Costs per Day 1991-1992* (March 1993); Texas Criminal Justice Policy Council, *Texas Correctional Cost Per Day, 1993-94* (February 1995); Texas Criminal Justice Policy Council, *Apples to Apples: Comparing the Operational Costs of Juvenile and Adult Correctional Programs in Texas* (January 1997); Texas Criminal Justice Policy Council, *Oranges to Oranges: Comparing the Operational Costs of Juvenile and Adult Correctional Programs in Texas* (January 1999); Texas Criminal Justice Policy Council, *Limes to Limes: Comparing the Operational Costs of Juvenile and Adult Correctional Programs in Texas* (January 2001).

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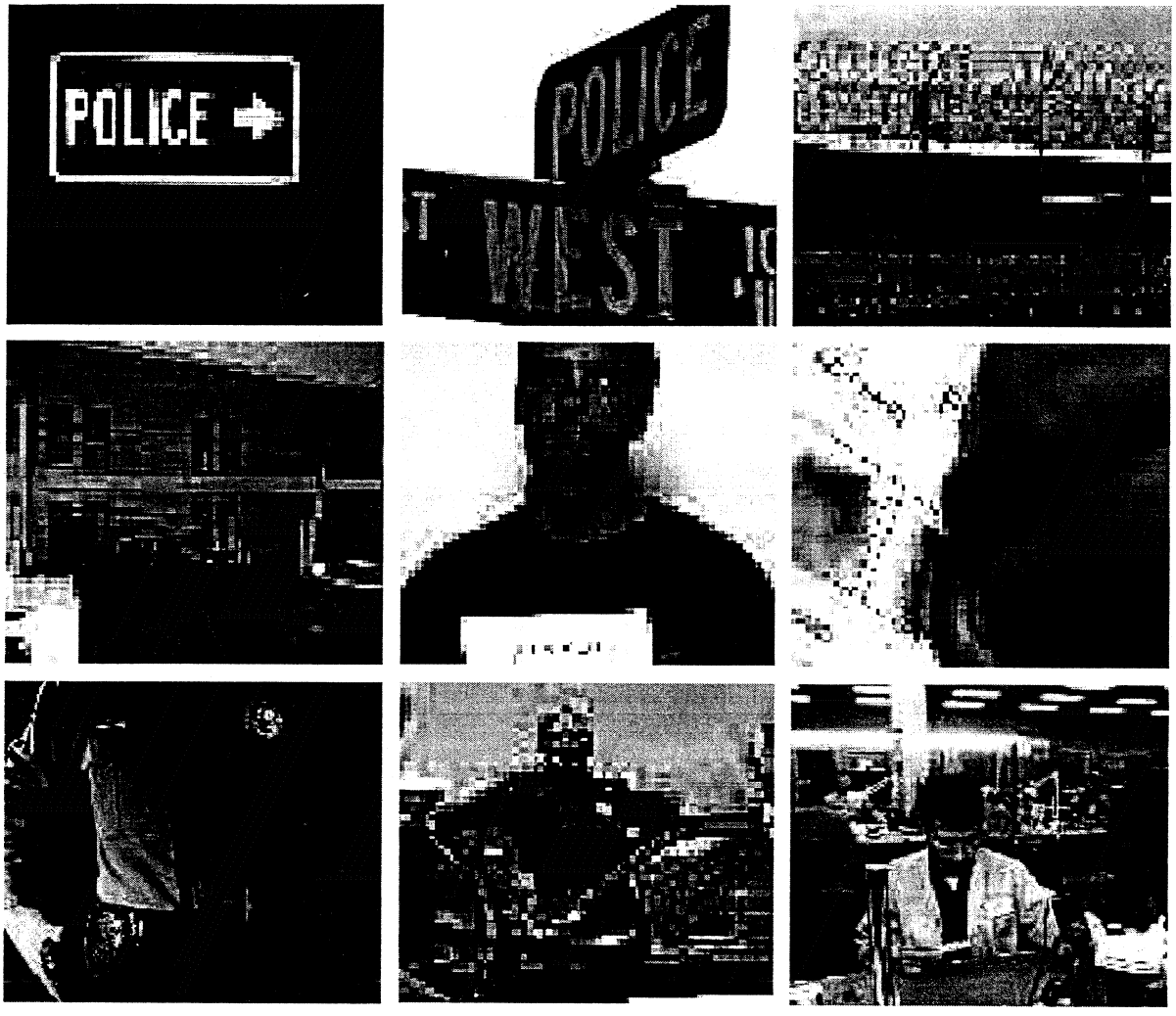

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The Pros of Privately-Housed Cons:

New Evidence on the Cost Savings of Private Prisons

March 2003

By Matthew Mitchell

Research Economist

Foreword

Harry Messenheimer, Ph.D.
President, Rio Grande Foundation

During the three years since its founding, the **Rio Grande Foundation** has been emphasizing the bad policies that have held New Mexico back compared to other states in the nation and region. Indeed, our constant harping on New Mexico's high tax rates and their economic consequences may have contributed to a major shift in thinking about tax policy in the state. Now we have good news: There is a major personal income tax rate reduction in the offing.

There is still more good news. *New Mexico has been on the cutting edge of innovation in privatizing its prisons.* In this study research economist Matthew D. Mitchell conducts an interstate econometric test of the relative efficiency of private-run versus government-run prisons. The econometric test

- demonstrates to state policy makers nationwide strong empirical evidence of potential savings from privatization and
- provides them with a good estimate of the magnitude of those savings.

The econometric model consists of a cross-section comparison of 46 states' corrections outlays per prisoner as a function of the portion of their prisoners that are housed privately. To account for differences among states the econometric model includes interstate differences in labor market conditions (does the state enjoy right to work?), pay for prison guards (using entry level pay for state police as an indicator) and the amount of crowding (utilization of bed space).

The results suggest that privatization *saved New Mexico roughly $51 million in 2001.* This equates to $9,660 per prisoner. We really can do something right!

States facing a budget crunch would do well to follow New Mexico's lead. Privatization can release money for tax reductions or other needs.

While not our primary aim, another result of the study deserves emphasis: The magnitude of estimated saving per prisoner in 2001 for states enjoying *right to work legislation* was $9,365 per prisoner. That means the average state could save roughly 28 percent of its corrections budget by legislating right to work. One wonders how much could be saved elsewhere by right to work. Are you listening, New Mexico?

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I. Abstract

Three-fifths of all U.S. states contract with private corporations to house a portion of their state prisoners. A host of studies have analyzed the cost of incarceration in many of these prisons. This study takes a broader approach. It compares state per-prisoner department of corrections budgets across 46 states. Accounting for a number of cost factors, significant per-prisoner savings were found in states that house a portion of their prisoners privately. All other factors being equal, states such as New Mexico with forty-five percent of their prisoners in private custody spent about $9,660 less per-prisoner in 2001 than non-privatized states. Given New Mexico's prison population of 5,300 this is an annual savings of $51 million. Forty-five percent privatization is expected to reduce the typical department of corrections budget by about one-third.

The paper begins with a short history of the privatization movement and a discussion of the motivation to privatize.

II. Background

Part A. Brief History of Privatization

In the late 1970s and early 1980s, public backlash against soft-on-crime policies delivered a generation of tougher judges to the bench. Levitt noted in 1996 that "the incarceration rate in the United States has more than tripled in the last two decades."[1] Federal and state criminal statutes—particularly those dealing with drugs—were also strengthened and law enforcement budgets redoubled. Between 1982 and 1999, the federal government increased its police expenditure by 485 percent ($35 to $40 billion dollars a year go to the War on Drugs alone).[2] Over the same period, states increased their police expenditures by 239 percent.[3] Both trends out-paced inflation and overall growth in government spending by a wide margin.

The inevitable result was an explosion in the prison population. Between 1980 and 1999, the U.S. prison population grew fifteen times faster than the population at large.[4] By 1986, "all but seven states were operating their prisons in excess of 95 percent capacity."[5]

The overcrowded prisons begat quality lapses. In 1983, "Only about one-fifth of all state and federal prisons were accredited by the Commission on Accreditation for Corrections."[6] More seriously, courts began to intervene, asserting that states' old and crowded facilities violated the Constitution.

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[1] See Levitt, p. 319.
[2] See *The Economist*, p. 4 for War on Drugs figures.
[3] See Gifford, p. 3. for increases in law enforcement budgets.
[4] The U.S. population grew by 20 percent while the prison population grew by 303 percent. Sources: *Historical National Population Estimates, 1900-1999*, and *Correctional Populations, 1980-2000.*
[5] See McDonald, p. 8.
[6] Ibid, p. 8.

When in the early 1980s Tennessee's entire correctional system was found unconstitutional, the state considered contracting with a private firm. The firm, the Corrections Corporation of America (CCA), had been incorporated in 1983 to contract with the Federal Immigration and Naturalization Service to detain illegal immigrants pending hearings or deportation.[7] Tennessee refused CCA's offer. But not long after, prison privatization began in earnest.

In 1985, Florida's Bay County contracted with CCA to operate its jail. The next year, CCA contracted with Santa Fe County, New Mexico to run its jail. By 1987, there were about 3,000 people held in private prisons nationwide. This represented little over one half of one percent of the entire prison population.[8] By 2001, the private prison population had soared to over 91,000 inmates. Despite such rapid growth, only about seven percent of all prisoners were in private custody in 2001.[9]

Part B. Motivations to Privatize[10]

Capacity management and speed of delivery continue to drive privatization. According to one survey, 21 percent of state agencies who privatized say they turned to private firms because of their reputation for speedy delivery.[11] This is because private firms can construct jails and prisons in about half the time it takes government to do so.[12] But in addition to capacity management and speed of delivery, states also turn to private firms in order to improve quality and lower cost.

There are a number of reasons to believe that private prisons offer a better, safer product. One is accreditation. The American Correctional Association is an independent, non-profit

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[7] Ibid, p. 4.
[8] Private prison population from McDonald, p. 7; total prison population from *Correctional Populations, 1980-2000.*
[9] Private prison population from Harrison and Beck; total population from *Correctional Populations, 1980-2000.*
[10] Much of this discussion follows Segal and Moore.
[11] See Chi and Jasper, p. 8.
[12] See Levinson and Chase, pp. 156-9.

professional corrections organization. They accredit public and private prisons. Forty-four percent of all private prisons are currently accredited. Just ten percent of public prisons are accredited.[13] Court orders offer another perspective on quality. "In 2001, of the 50 state correctional departments, 13 entire departments were under a court order to relieve unsatisfactory conditions."[14] Not a single private prison has ever been placed under a court order for unsatisfactory conditions.[15] Finally, there is evidence from a number of independent studies. Sixteen of eighteen studies surveyed by the Reason Public Policy Institute found private prisons to perform as well or better than public prisons.[16]

In addition to capacity and quality, many states choose to privatize in order to save money. State prisons are often encumbered by expensive court rulings and statutory regulations. Quality lapses in New Mexico's state prison system, for example, have led to a costly court order. After a bloody 36 hour riot in Santa Fe's state prison in 1980, a federal judge ordered that the state could not house more than one prisoner per cell. As noted, private prisons have altogether avoided such court trouble. In New Mexico, the private prisons with which the state contracts are still permitted to house prisoners two to a cell.

State constitutions have also restricted prison finance. If states are at their legal bonding capacity, they cannot borrow further to build new prisons. But, if they contract with private prisons, they can get around the constraint. Private prisons are free to spend their contracted money on debt service.

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[13] See *Accredited Facilities and Programs*.
[14] See Segal and Moore, p. 13.
[15] See *2001 Directory*, p. 16.
[16] See Segal and Moore, p. 12.

But beyond any legal or statutory constraint, there is a more fundamental reason private prisons are cost effective. The power of economic competition virtually forces them to be so.[17] And there is good empirical evidence that private prisons save money. Segal and Moore identify twenty eight private prison cost studies. They report that "virtually all of them found private prisons to provide significantly lower cost—on average between 5 and 15 percent."[18] These studies suggest a new approach: How does prison privatization affect costs state-to-state? Answering that question is the main task that follows.

[17] See Benson for a sweeping discussion of private sector competition in criminal justice. The literature on competitive markets is extensive. See Landsburg for an accessible treatment.
[18] See Segal and Moore, p. 6.

III. New Approach: Interstate Comparison of How Privatization Affects Cost

Part A. Previous Studies

Most work on prison privatization has been conducted at the micro level—usually comparing specific prisons to one another.[19] (Many of the studies were commissioned by states whose privatization laws require cost analysis.) The studies, therefore, often look at prisons in one (or occasionally a handful) of state(s). Arizona, for instance, commissioned a study that compared one private prison to the state's fifteen government run facilities.[20] Likewise, Texas conducts a biannual review of the average cost of private and public Texas prisons.[21]

Such focused studies may have little widespread applicability. They fail to isolate and quantify an important source of cost savings: the effect of competition induced by privatization. By focusing on the prisons themselves, rather than the broader public and private mix of correctional services, these studies may miss the forest for the trees. Because competition and its threat forces cost discipline, one would expect all prisons—private *and* public—in a competitive market to be more efficient than prisons in an all-public, monopolistic market. Empirical evidence, in fact, supports this expectation. In Florida, researchers found statewide prison costs were reduced by privatization.[22] Likewise, researchers in Arizona found that after privatization, public prisons lowered their costs, narrowing the gap between public and private prison spending.[23]

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[19] See Thomas (2001) for an extensive bibliography of correctional privatization research.
[20] See Thomas (1997).
[21] See Segal and Moore, p. 7 for a discussion of the Texas studies.
[22] See *Comparing Costs of Public and Private Prisons.*
[23] See *Public-Private Prison Comparison.*

Studies often contain the caveat that any public/private cost comparison is an "apples to oranges" exercise. Because private and public prisons operate within such radically different environments, critics say, one ought to be skeptical of the apparent cost savings of private prisons. This has led many to conclude that the only sound comparison is one between prisons similar in all respects except for ownership. This was the tack taken by studies conducted in California, Washington and Tennessee, for example.[24] But as Segal and Moore argue:

> Achieving identical facilities, populations, and conditions is perhaps impossible. More important, creating identical situations puts the cart of cost comparison before the horse of motivations for privatization in the first place. If a government and private prison are identical in every detail that could affect cost, what is the point of privatizing, since many of the driving factors for privatization (quality, innovation, etc.) are necessarily lost?[25]

Many of the dangers of this kind of micro-analysis may be avoided by taking a "bird's eye view" of the issue. Rather than focusing on individual prisons, this study focuses on states. The data are collected from 46 states (the most complete data set obtainable). This allows us to isolate cost savings induced by privatization rather than the specific cost savings of a particular prison. Because data are from a wide cross-section of states, the findings have much broader implications.

Part B. What is the Appropriate Measure of Cost?

An important difference in the way publicly and privately-owned prisons finance capital assets (e.g., building, land, equipment) makes cross-state cost comparisons difficult. Private firms attempt to spread the cost of an asset throughout the asset's useful life. Public managers make no such attempt. Instead, the public accounting practice is to count the capital expenditure only in the year it was made. Since the fee charged by a private firm incorporates capital

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[24] See Sechrest and Shichor; *Department of Corrections Privatization Feasibility Study, Report 96-2*; and *Cost Comparison of Correctional Centers*, respectively.
[25] See Segal and Moore, p. 9.

financing, the ideal public measure of cost would also include some annualized portion of capital investment. Such a measure is not available. We must therefore rely on a measure of spending which excludes public capital expenses (which can vary wildly depending on whether it is a building year), but not the capital expenses of privately-owned prisons.[26] This may bias the data to make private prisons appear more expensive than public prisons. Still, it is the best measure possible.

Part C. Why do Per-Prisoner Costs Vary From State to State?

Our primary interest is in how privatization affects per-prisoner costs. But what factors affect a state's capital-exclusive per-prisoner department of corrections budget? Input costs such as labor conditions vary wildly from state to state. So too does the extent to which a prison can efficiently use its capacity. To isolate the impact of privatization, we must also account for these other factors.

In selecting factors that might affect cost, it is important to mind Segal and Moore's warning that all too often researchers put the cart of cost comparison before the horse of privatization. Assuming that privatization affects prison management policy, it is important not to "control" for any prison policy differences that could be *due* to privatization. The study, therefore, does not include factors over which prison managers (public or private) have influence. The reader will find no mention of cost-affecting factors such as the type of food or laundry service the state's prisons establish or the salary paid prison employees. Instead, the factors represent a priori conditions that each state's corrections department must deal with.

Wages paid no doubt affect cross-state differences in prison spending (recall that our focus is on non-capital spending, so labor is likely the single most important input). Though prison

[26] Only 59 percent of privately managed prisons are also privately owned (and therefore privately financed). See McDonald, p. 35 for further discussion.

managers may have some discretion over what they choose to pay, they must compete with other employers for comparably skilled employees. Managers are restrained, therefore, by the state's prevailing market wage.

Another important cost factor is organized labor. Where the power of organized labor is strong, labor markets tend to be less competitive. An uncompetitive labor market, in turn, can drive up a number of prison costs. A union of prison guards, for example, might be able to obtain more liberal leave than would be determined absent the union monopoly. Unions may also push up the cost of an employee benefit package. In addition to salary and benefits, unions affect the size of a workforce. They may erect barriers to entry in order to restrict the supply (and therefore raise the price) of labor. Or they may make it difficult for an employer to shrink his workforce when market conditions change. This can lead to over-staffing (featherbedding). Other expenses are also affected by union power. For example, organized labor may raise the price of contracted services such as food, laundry or maintenance. The power of organized labor and the labor conditions created by union-encouraged state laws vary from state to state.

Finally, prisons in different states face different constraints on their ability to use prison space. If a prison can place more prisoners in a given space, it can save money on important variable costs such as guards, surveillance equipment and even electricity.[27] But prison managers face different state laws and court rulings that govern the legally permissible crowding level. Furthermore, states differ in their fiscal outlook and ability to match growth in prison populations with new prisons. These differences lead to disparities in prison density.[28]

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[27] Of course, higher prison density can also save money on construction costs as well. Recall, however, that to the extent possible, this study excludes construction costs by focusing on non-capital expenditures.

[28] Because crowded conditions tend to lead to more probationers and parolees, we can help control for differences in what departments of corrections spend on these punishments by controlling for differences in prison density.

In sum, to better understand the effect of privatization on department of corrections budgets, it is important to control for other factors that affect spending. This study identifies the market wage for prison employees, union power within a state and restraints on space utilization as the most important of these other factors.[29] The next section discusses how we included these differences.

Part D. Model and Predictions

To estimate the relationship that exists between per-prisoner spending and cost factors (including privatization), the study relies on an economic model that summarizes how per-prisoner costs are explained by the factors discussed in Part C. The factors explaining per-prisoner costs are known as "explanatory variables." Data on each of these variables were gathered and the regression technique of ordinary least squares (OLS) was employed to estimate how they explain per-prisoner cost.

For each state's cost measurement, the model uses the statewide, per-prisoner cost of incarceration in 2001. This is based on each state's total department of corrections expenditure (excluding public prison capital costs), and each state's prison population.[30]

As noted in Section C, any prison—public or private—must offer a salary that can compete with alternative jobs. Though state data on prison guard salary is unavailable, we do have data for state police officer pay, and that should be a good gauge of the market wage for guards.[31] We should find a positive relationship between state police salary and per-prisoner cost.

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[29] To these factors, it might seem appropriate to add the security level of prisoners. We found the factor has little effect on cost, however. Please see the Appendix for details.

[30] See *Prison and Jail Inmates at Midyear* and *State Expenditure Report*. The author thanks Jim Meade of Lattimore, Black, Morgan and Cain for gathering and codifying the cost data. Department of corrections budgets do include other items such as probation and parole expenses. There is no reason to think these other expenses are in any way related to privatization.

[31] See *Base salary for entry-level officer*.

It was also noted in Section C that union power can affect a prison's costs in a number of ways. By controlling for the presence of state "right to work laws," we can help control for the presence of union power. In a state with a right to work law, it is illegal for a union to require that a firm hire only union members. In states with right to work laws, employers not only enjoy greater freedom in staffing, but they presumably operate in an environment where labor monopolies (unions) are not terribly powerful. The impact of a right to work law is captured with a "dummy" variable that takes on a value of "1" if the state is a right to work state and a value of "0" if it is not. This variable should account for the total effect of union strength. We expect to find a negative relationship between right to work laws and per-prisoner cost. In other words, states with freer employment laws and weaker unions are likely to be less burdened by the cost of labor monopoly.

The model also controls for a prison's ability to utilize space efficiently—its density. Our variable for density is "crowding" data obtained from the U.S. Bureau of Justice Statistics. In a recent survey, the Bureau asked each state to rate its prisons' capacities based on three measures: what the prison was built to handle, what the prison was rated to handle and what the prison could handle.[32] Each state's prison population was then taken as a percentage of the three capacity measures to create three different measures of crowding. Each state's lowest and highest measure of crowding was averaged to obtain the most objective measure possible.

As noted above, it is reasonable to expect that as crowding (density) increases, prisons will be able to utilize their resources more efficiently. A negative relationship between crowding and per-prisoner spending is a reasonable expectation. That is, as crowding goes up, per-prisoner cost goes down.

[32] See Harrison and Beck, Table 10, p. 9.

Finally, for the variable of interest, *percent of state prisoners in private custody*, we expect a negative relationship between cost and the extent of privatization.[33] That is, as the percent of prisoners privately housed increases, per-prisoner cost should decrease. Furthermore, it is reasonable to expect the relationship to be non-linear. There are two reasons for these expectations. Some savings are likely to be achieved simply because of better private sector management. As the number of prisoners under such management increases, one would expect per-prisoner costs to decline (though perhaps with diminishing marginal savings).

Another important source of cost saving from privatization is competition. The credible threat of contract termination should induce *both* public and private prisons to carefully mind costs. Here, diminishing marginal cost savings are likely. Once the threat of contract termination has been well established, increased privatization seems unlikely to have the same marginal impact as at lower levels of privatization. Such diminishing marginal cost savings can be captured by taking the natural log of the percent of prisoners privately housed.[34]

In sum, the algebraic form of the estimated equation (model) is $Y = \alpha + \beta_1 \ln(X_1) + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \varepsilon$. Where:

Y = Annual Per-prisoner Cost of Incarceration (excluding capital expenditures). This is what the model is to explain.
α = An intercept term
X_1 = The Percentage of Prisoners Housed Privately, (see footnote 34)
X_2 = A crowding variable based on the prison population's percent of capacity
X_3 = The entry level salary of a state police officer
X_4 = A "dummy" variable, taking the value of "1" if the state is a right to work state and "0" if it is not
ε = A random disturbance term
$\beta_{1...4}$ = Coefficients that measure the marginal impact each X (explanatory variable) has on Annual Per-prisoner Cost (Y). Expected signs of estimated coefficients are $-\beta_1$; $-\beta_2$; $+\beta_3$ and $-\beta_4$

[33] See *Prison and Jail Inmates at Midyear*. Again, I would like to thank Mr. Meade for gathering and codifying this data.
[34] More precisely, the model uses the natural log of 1 plus percent privatization. One was added to each percent privatization observation because it is impossible to take the log of 0.

Part E. Findings

The model provides a good statistical fit for the interstate cost factors posited above, explaining nearly 40 percent of variation in per-prisoner cost across states. This is quite respectable for a cross-sectional study. But more important than the overall explanatory power of the model is what it tells us about each explanatory variable. The estimated coefficients associated with each of these variables are presented in Table 1.

Table 1

Annual per-prisoner department of corrections spending = $\alpha + \beta_1 \ln(\text{Transformed Percent Private}) + \beta_2(\text{Crowding}) + \beta_3(\text{State Police Pay}) + \beta_4(\text{Right to Work}) + \varepsilon$

Explanatory Variable	Estimated Coefficient (beta) Value
ln(Transformed Percent Private)**	-2,537.59
Crowding*	-147.57
State Police Pay***	0.92
Right to Work***	-9,364.66

General Information			
R-Squared	0.40	Mean Annual Per-prisoner Spending	$33,289
Adjusted R-Squared	0.34	Standard Deviation of Annual Per-prisoner Spending	$14,101

Notes:
* = Statistically significant at 10%
** = Statistically significant at 5%
*** = Statistically significant at 2.5%

All estimated coefficients except crowding were statistically significant at the 5 percent level (crowding was significant at 10 percent). Furthermore, the estimated coefficients had the predicted effect on cost. Importantly, the findings indicate that privatization reduced per-prisoner cost by quite a lot.[35]

[35] As noted in Table 1, the privatization estimate is statistically significant at the 5 percent level. This means that if the true population coefficient were zero, the chance of getting our estimated coefficient would be less than 5 percent in repeated sampling.

When all other factors are held constant, a state with five percent of its prisoners in private custody can expect to save an additional $423 per-prisoner per year by increasing privatization by one percent (see Table 2). A state with 45 percent of its prisoners already in private custody, however, will save an additional $55 per-prisoner per year by upping its private prison population by one percent.[36]

Estimated total savings are quite staggering. A 45 percent privatized state spends about $10,000 less annually per-prisoner than a state with no privatization. In other words, an unprivatized state that chooses to privately house 45 percent of its prisoners can cut its per-prisoner budget by a third!

Table 2

Estimated Cost Savings of Privatization, All Other Factors Held Constant			
Percent of Prisoners In Private Custody	Additional Savings Per Prisoner for a One Percent Increase in Privatization	Total Estimated Per-prisoner Saving relative to No Privatization	Per-prisoner Savings as a Percentage of Median Per-prisoner Spending
5%	($423)	($4,084)	14%
15	(159)	(6,872)	23
25	(98)	(8,168)	27
35	(70)	(9,022)	30
45	(55)	(9,660)	32
Notes: Median Per-prisoner Sending is $29,937. Parentheses indicate negative value (savings).			

The other explanatory variables have no less of an interesting effect on cost. For example, when all other factors are held constant, every extra dollar earned by an entry-level state police officer (as an indicator of the market wage for prison guards) leads to an increase in 92 cents in a state's annual per-prisoner cost.

The magnitude of right to work legislation was particularly interesting. All else being equal, the presence within a state of a right to work law reduces annual per-prisoner cost by over $9,000. This is strong evidence of the costly nature of union power.

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[36] Implicitly differentiating with respect to X_1, the equation $Y = \alpha + \beta_1 \ln(X_1) + \beta_2(X_2) + \beta_3(X_3) + \beta_4(X_4) + \varepsilon$ becomes $dY/dX_1 = \beta_1(1/X_1)$. Clearly, an incremental (marginal) change in Y due to an incremental change in X_1 will have a different impact depending on the specific value of X_1.

Finally, the study finds that crowding tends to reduce costs. All else being equal, every one percent increase in a state's ratio of prison population to capacity, lowers annual per-prisoner cost by $147. Prisons reduce per-prisoner non-capital costs by increasing density.[37]

[37] This finding must be weighed against quality, which may very well suffer when prisons are over-crowded. On the other hand, an attempt to reduce crowding by prematurely releasing prisoners to parole status may endanger public safety.

IV. Conclusion

Other factors being equal, those states with a strong commitment to privatization in prison services spend significantly less per-prisoner per year than states without privatization. The data indicate, for example, that annual per-prisoner spending in a five percent privatized state was $4,084 less in 2001 than in a state with all-public prisons. A 45 percent privatized state, meanwhile, was estimated to spend $9,660 less per year per-prisoner than a non privatized state. This is an annual savings of nearly one-third of per-prisoner cost.

V. Appendix

Part A. Technical Note on the Model

The estimates in Table 2 are based on the estimated β_1 coefficient value of -2,537.59 reported in Table 1. "Marginal Cost Savings" can be interpreted at the partial slope coefficient of cost (Y) with respect to percent privatization (X_1). It is the dollar savings to be expected with a marginal increase in percent privatization. Notice that the marginal value is lower at higher levels of privatization. This is indicative of the diminishing marginal returns to privatization.

Any econometrician must be wary of the polysyllabic problems: multicollinearity and heteroscedasticity.[38] The first arises when dependent variables are collinearly related. This does not appear to be a problem in this data, however.

Heteroscedasticity is also not likely to be a problem. Using the White test of heteroscedasticity, we were not able to reject the hypothesis that there exists no relationship between the explanatory variables, their squares, and the squared residuals. Park tests were also run, assessing the relationship between the squared residuals and a) state population and b) departments of correction population.[39] Here, again, we cannot reject the hypothesis that the squared residuals are unrelated to these variables. Homoscedasticity is a safe bet.

Part B. Variations on the Model

The model upon which this study is based is economically sound. No doubt, however, additional variables might have been included (though given the limited number of observations,

[38] See Gujarati, pp. 341-440 for a discussion of these problems.
[39] See *Table ST-2001EST-01-Time Series of State Population Estimates: April 1, 2000 to July 1, 2001* and *Prison and Jail Inmates at Midyear*.

parsimony is a virtue). Different approaches are also available. What follows is a short discussion of some of these approaches.

This study is based entirely on 2001 data. Though time series data on all of the variables proved too costly for us to gather, the subject might benefit from an industrious researcher following a pooled-data approach.

The log model assumes a non-linear relationship between prison privatization and annual per-prisoner cost. A linear approach yields comparable results, though the estimated coefficient on privatization is less statistically significant (10% vs. 5%).

Among the other variables initially considered was type of prisoner. It was hypothesized that the security level of prisoners might affect cost. Information was gathered on the percentage of prisoners in each state classified as maximum security.[40] The regression was then run with this variable. Though the *other coefficients were little affected* and the overall explanatory power was only slightly reduced (as measured by the adjusted R^2), the security level variable did not explain much of the variation in per-prisoner cost.

Crowding might not be linearly related to per-prisoner cost, as predicted by the model. Non-linear approaches to crowding, however, do not appreciably change the results.

None of these alternative approaches improves the overall explanatory power of the model. More importantly, none fundamentally alters the principle finding. In every model, privatization is found to have a large impact on per prison spending.

The complete data set and findings are available upon request. The author may be reached at mattdmitchell@aol.com. Questions and comments are welcome.

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[40] See *Number of Inmates in State and Federal Correctional Facilities, by Facility Security Level, Midyear 2000, Draft.* These as-yet-unpublished figures were generously provided to the author by Bureau officials.

VI. About the Author

Matthew Mitchell is research economist at the Rio Grande Foundation. He has also written for the Phoenix-based Goldwater Institute and Washington's Heritage Foundation. His articles have appeared in both Arizona and New Mexico newspapers and have received mention in the Heritage Foundation publication, *The Insider*. Matthew graduated with honors from Arizona State University in 2002. He holds a B.S. in economics and a B.A. in political science. Next fall, he will enter a Ph.D. program in economics.

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THE INTERRELATIONSHIP BETWEEN PUBLIC AND PRIVATE PRISONS:

DOES THE EXISTENCE OF PRISONERS UNDER PRIVATE MANAGEMENT AFFECT THE RATE OF GROWTH IN EXPENDITURES ON PRISONERS UNDER PUBLIC MANAGEMENT?*

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EXECUTIVE SUMMARY

This study investigates the relationship between (i) the fact that a particular state houses some of its prison population in prisons that are privately owned or operated and (ii) the growth in costs per prisoner in publicly operated prisons. The core objective has been to determine whether the existence of prisoners under a state's jurisdiction that are held in **private** facilities can have a beneficial effect on the rate of growth in expenditures on **publicly held** prisoners.

The hypothesis is that states that allow prisoners under their jurisdiction to be held in private facilities will experience significant cost savings in the per diem cost of public prisons. Anecdotal evidence supports this hypothesis.[1] Recent studies on private prisons have directed their focus away from actual dollar cost differences between the public and private sectors. Instead, researchers have noted that one effect of the introduction of private prisons might be that their existence helps control the cost of public prisons. The insight of these studies has been that "[p]rivatization can offer increased innovation, access to expertise, improved quality, and enhanced accountability." That is, much of the cost savings from the introduction of private prisons stems from competition, and "that competition has beneficial effects on the entire system," as "workers and management throughout the system respond to privatization."[2] As one commentator has recently noted, "private prisons are a promising avenue for the future development of the prison system."[3]

Thus, this project is not premised on a hypothesis of private-public prison displacement. Rather, the focus has been on an assumption of public-private prison symbiosis, which can stem from a number of factors – *e.g.*, a learning effect on public prisons, an incentive effect for public prisons to operate efficiently, and a "yardstick" or "benchmark" effect that allows public prisons to compare themselves to a standard.

The fundamental conclusion of the study is that, for the three-year period 1999-2001 (the period for which appropriate data exist), states that have some of their prisoners in privately owned or operated prisons experience lower growth in the cost of housing their public prisoners. As presented in Model 2 in Table 3A, that finding is statistically significant at the conventionally accepted 5% level ($p = .04$). Although the data on private prisoners available prior to 1999 are less detailed and reliable, the same relationship also would appear to exist for the twelve-year period 1990-2001.

The following are some highlights of the findings:

- During the period 1999-2001, the existence of prisoners under private management in a jurisdiction seems to have had a restraining effect on the growth of expenditures on public prisons. That finding is statistically significant at the 4% level ($p = .04$). See Table 3A, Model 2.

- During the period 1999-2001, the existence of prisoners under private management in a jurisdiction seems to have resulted in reduced growth in per diem expenditures on publicly held prisoners by 8.9%, about 4.45% per year (1999-2000 and 2000-2001 budget cycles). That finding is statistically significant at the 4% level ($p = .04$). See Table 3A, Model 2.

- During the period 1999-2001, the average growth in cost per public prisoner in states without any prisoners under private management was 18.9%. During that same period, the average growth in cost per public prisoner in states that had at least some prisoners under private management was 10.8%. The differential in the average growth in cost per public prisoner in states with and without prisoners under private management was 8.1% (18.8% - 10.8%). That finding is statistically significant at the 9% level ($p = .09$). See Table 2, Part I.

- During the period 1999-2001, there is also evidence consistent with the hypothesis that the growth in cost per public prisoner was less in states with higher percentages of private prisoners. For example, states with under 5% of their prison population under private management experienced a 12.5% growth in their per capita public prison costs, compared to only a 5.9% increase in per capita public prison costs in states with 20% or more of their prison population under private management. While these findings are suggestive, they are not statistically significant by conventional standards. See Table 2, Part II. and Report, pages 10-11 & n.19.

In 2001, the average Department of Corrections expenditures in states without private prisoners was approximately $455 million. Our findings suggest that if the "average" state in that group were to introduce the use of private prisons to some extent, the potential savings for one year in Department of Corrections expenditures for public prisons could be approximately $20 million (4.45% x $455 million). These putative savings on public prisons would be in addition to any direct savings from the use of private prisons by itself.[4]

We have been asked to investigate the relationship, if any, between (i) the fact that a particular state houses some of its prison population in prisons that are privately owned or operated and (ii) the growth in costs per prisoner in publicly operated prisons. The assumption underlying this project is that the prison system of the future is likely to be more pluralistic than in the past and that it will include both public and private prisons.[5]

The hypothesis is that states that allow prisoners under their jurisdiction to be held in private facilities will experience significant cost savings in the per diem cost of public prisons. Anecdotal evidence supports this hypothesis. For example, when private prison operators in Virginia decided not to use expensive

[1] Russell L. Boraas, "Structuring Successful Privatization Projects," Virginia Department of Corrections, 1997 (as reported in Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part II: Reviewing the Literature on Cost and Quality Comparisons." Reason Foundation Report No. 290, January 2002.)

[2] Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part II: Reviewing the Literature on Cost and Quality Comparisons." Reason Foundation Report No. 290, at p. 2, January 2002.

[3] Note, *A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*, 115 HARVARD L. REV. 1868, 1891 (2002).

[4] There are numerous empirical studies comparing public to private prison costs. One review of the evidence indicates that "virtually all of the studies find private prison costs to be lower – on average between 5 and 15 percent." (See Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part I: Employing a Best-Value Approach to Procurement." Reason Foundation Report No. 289, at p. 2, January 2002.)

[5] In 1999, the number of states with no prisoners housed in privately operated prisons was 20, and the number of states whose prison population included some prisoners housed in privately run prisons was 30. See Table 2.

warehouse and staff to store 30 days of food – a habitual practice that apparently had harkened back to the days of mule trains - state prison officials quickly adopted these innovations and reduced overall public prison costs as well.[6]

Recent studies on private prisons have focused much less on actual dollar cost differences between the public and private sectors. Instead, the trend has been to identify other equally important motivations. For example, one study noted, "The full measure of worth of privatization has to be assessed in a policy context with full due diligence given to the broader goals that can be achieved. Privatization can offer increased innovation, access to expertise, improved quality, and enhanced accountability. Most important is recognizing that cost savings from privatization is itself a product of competition, and that competition has beneficial effects on the entire system."[7] "Whether from fear of being privatized themselves, or pride in showing they can compete, or from being compared by higher authorities, workers and management throughout the system respond to privatization."[8]

Thus, our project has not been premised on a hypothesis of private-public prison displacement. Rather, our focus has been on an assumption of public-private prison symbiosis. That symbiosis can stem from a number of factors, including a learning effect on the part of public prisons, an incentive effect for public prisons to operate efficiently, and a "yardstick" or "benchmark" effect that creates an empirically-based standard by which public prisons can compare themselves (*i.e.*, a means of comparison akin to a market in the private sector, something that public agencies lack in the absence of a mode of comparison afforded by a "yardstick" or a "benchmark" institution).

Our objective has been to determine (a) whether the existence of prisoners under a state's jurisdiction that are held in **private** facilities can have a beneficial effect on the rate of growth in expenditures on **publicly held** prisoners. If the answer to that question is yes, as we have found it to be, then the questions we sought to investigate are (b) whether there is a threshold or other relationship between the percentage of privately-managed prisoners in a state and the rate of growth of costs per prisoner in the public prison sector and (c) whether there is a typical period of time in which the positive effect of private prisons on public prison costs emerges and is most significant.

MODELING THE GROWTH IN CORRECTIONS SPENDING: THE MAIN HYPOTHESIS

Our main hypothesis is that the existence of private prisons to manage a portion of a state's prison population has the effect of moderating the growth in costs per prisoner in the public sector. That is, states that have some of their prisoners in privately owned or operated prisons are expected to have lower growth in the cost of housing their public prisoners.

Our investigation has determined that, for the three-year period 1999-2001 (the period for which appropriate data exist), that relationship seems to exist. Data on private prisoners are available prior to 1999, but they are less detailed and reliable. Nevertheless, that relationship also would appear to exist for the twelve-year period 1990-2001. While not as statistically valid these data tend to reinforce the conclusion that a relationship exists between including some prisoners in privately owned or operated prisons and lowering the rate of growth in per-prisoner costs in publicly operated prisons.

DATA AVAILABILITY

In order to perform our assignment, we had to identify the kinds of data that were necessary and to match those needs with the sources of data that were available.

At the outset, we needed to determine for each state whether any prisoners were housed in privately owned or operated prisons and, if so, the percentage of that state's prison population housed in privately owned or operated prisons. The reason that those data are important is that, in order to determine whether a relationship exists between privately housed prisoners and the rate of growth in the per-prisoner cost of operating public prisons, we needed to have a source of information about privately housed prisoners and about per-prisoner state expenditures for its public prison system.

As it turns out, systematic data on the number of private prisoners have only been available annually from the federal Bureau of Justice Statistics since 1999.[9] These data are available for the three-year period 1999-2001. Those data allow us to have most confidence in our findings for the 1999-2001 time frame.

Prior to the availability of Bureau of Justice Statistics data for 1999, a survey conducted by Abt Associates in 1997 also provided data on privately managed prisoners.[10] However, the definitions of private prisoners are not identical in the two surveys (e.g. the Abt survey may have included half-way houses in some states), and thus the two sources of data cannot be directly compared. Another source of data on the existence of private prisons is the Corrections Yearbook, an annual compilation of survey data that includes information on whether a state allows private prisoners and/or has a private prison facility located within its borders. From that source, we can also construct an annual time series of "0-1" variables indicating whether or not private prisoners were allowed by law and whether or not they were actually housed in the State. However, that source does not have private prison population data.

METHODOLOGY: IN GENERAL

Methodologically, our dependent variable is the cost per prisoner in public facilities. While one can easily estimate the overall cost per prisoner in a State by dividing total corrections expenditures by the number of prisoners,[11] that

[6] Russell L. Boraas, "Structuring Successful Privatization Projects," Virginia Department of Corrections, 1997 (as reported in Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part II: Reviewing the Literature on Cost and Quality Comparisons." Reason Foundation Report No. 290, January 2002.)

[7] Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part II: Reviewing the Literature on Cost and Quality Comparisons." Reason Foundation Report No. 290, at p. 2, January 2002.

[8] *Id.*

[9] Source: U.S. Department of Justice, "Prison and Jail Inmates at Midyear" (various years).

[10] Douglas McDonald, Elizabeth Fournier, Malcolm Russell-Einhourn, and Stephen Crawford. Private Prisons in the United States: An Assessment of Current Practice. Abt Associates, 1998.

[11] This calculation assumes that the prison count data at mid-year reflect the average daily prisoner count. For comparison purposes, however, what matters most is that there are no systematic differences in the mid-year versus average daily prisoner count by state or with respect to public versus private prisons.

figure would not reflect the cost per prisoner in **public prisons.** If we include private prisons in the "cost per prisoner" calculation, we would not be able to determine whether or to what extent lower overall costs might be attributable to lower per-prisoner costs of privately-run prisons because lower private prison costs would be part of and contribute to the lower overall state costs per prisoner. That is, if private prisons are less costly than public prisons, then overall prison cost data would not, by itself, be a reliable way of determining whether the existence of privately run prisons within the state's system contributed to a reduced rate of growth in prison spending in publicly run prisons. To be able to examine that question, we constructed a measure of the cost per prisoner held in public facilities from available data. We did that by isolating private prison costs and subtracting them from overall per-prisoner expenditures. That allowed us to examine per-prisoner costs in public prison facilities and thereby determine what relationship, if any, those public prison costs had with the existence of privately run prisons managing prisoners within a state's prison system.

Tables 1A and 1B list the variables and provide descriptive statistics for data used in this report. Those variables are as follows: (a) the number of private prisoners (as a percentage); (b) whether or not prisoners are housed in privately run prisons; (c) overall government expenditures per capita; (d) Department of Corrections per diem budget (net of private prisons); and (e) percent of prisons under court order.[12] Total expenditures on **private** prisons are derived from multiplying the average cost per prisoner per day for private prisons by the number of prisoners in privately run facilities. Our measure of the cost per prisoner in **public** facilities is obtained by subtracting out the total expenditures on private prisoners from the Department of Corrections spending, and dividing this result by the number of public prisoners.[13] Note that because we only have the **number** of private prisoners from 1999-2001, this key variable is unavailable in prior years. Later, we will discuss the robustness of our results in earlier years. While Table 1A contains data on all 50 states (if available), Table 1B limits the data to those 46 states that are ultimately used in much of the empirical analysis that follows.

METHODOLOGY: STATISTICAL SIGNIFICANCE

An important methodological issue relates to the concept of "statistical significance." The conventional representation of "statistical significance" is described as a "p-value." A "p-value" is the "probability of getting data as extreme as or more extreme than the actual data, given that the null hypothesis is true."[14] In this case, the "null hypothesis" is that there is no difference between the rate of growth in public prisoner per diem costs in states that have private prisoners versus states that do not. Thus, for example, if $p < .05$, the likelihood of getting particular results in error is less than five in one hundred or 5%; that is, with a "p-value" of $p < .05$, one can confidently reject the "null hypothesis."

Statistical significance is not a yes/no inquiry; degrees of statistical significance fall on a continuum. As a general matter, a "p-value" of $p < .05$ has become the conventional standard for determining statistical significance. Failure to achieve a "p-value" of $p < .05$ does not negate the findings but means that the certainty of the association is less assured. Thus, a "p-value" of $p < .06$ suggests that there is a less than six in one hundred chance (or 6% chance) of (erroneously) finding that a relationship exists even though it does not in fact exist. Higher p-values indicate that the relationships under investigation are less assured. Oftentimes, statisticians will label findings with a "p-value" $< .10$ as "weakly significant."

As shown in Table 1A, 62% (31 out of 50) states had privately held prisoners under their jurisdiction in both 1999 and 2001.[15] The percentage of prisoners in the U.S. that were held in privately run facilities increased from 6.9% in 1999 to 7.3% in 2001. Average government expenditures per capita (unadjusted for inflation) rose by 9.6% over this time period, compared to an average 13.7% increase in the cost per publicly held prisoner. In 1999, 11.5% of prison facilities in the U.S. were under court order, compared to only 9.1% in 2001. Similar figures are shown in Table 1B.

THE COST PER PRISONER IN PUBLIC FACILITIES: THE DATA

Table 2 reports on the growth in costs of housing prisoners in public prisons. It compares states in two ways -- by the percentage of **private** prisoners under their jurisdiction (Part II) and by distinguishing among states that do have and do not have prisoners under private management (Part I).

Part 1 of Table 2 compares states that have prisoners held in private facilities versus those that do not. From 1999 through 2001, states that had no private prisoners had an average increase in the per diem cost of housing their (all publicly managed) prisoners of 18.9%. During that same three-year period, states that had some prisoners in privately run institutions faced a 10.8% increase in the per diem cost of housing a prisoner in a **public** facility. This difference represents an 8.1% higher expenditure growth rate in states that do not have private prisoners,[16] a difference that is

[12] Both public and private prison populations are taken from U.S. Department of Justice, *supra* note 5. Department of Corrections and state general fund expenditures were provided by the National Association of State Budget Offices. Data on the number of facilities under court order were taken from the Corrections Yearbook. All but the latter were provided us by Lattimore Black Morgan & Cain, P.C. To obtain the per diem cost of public prisons (net of private prisoners), we estimated the cost of private prisoners in a state based on the weighted average contract price for private prisons in that state as reported in the Corrections Yearbook. In states where those data were not available, we used the weighted average private prison contract price in the U.S. This figure is multipled by the number of private prisoners to arrive at the total cost of private prisons.

[13] Note that throughout this report we refer to the term "per diem" costs of public or private prisoners. As explained in the text of the report, our measure of per diem costs is based on total Department of Corrections expenditures divided by the number of prisoners. Thus, we would necessarily include non-prison related costs in the numerator – including the cost of departmental overhead, parole, etc. Actual variable costs associated with adding a prison day would likely be less than the "average per diem" amount we calculate. While we cannot directly compare the cost of running a public versus private prison - that is not our purpose. Instead, we interested in the effect on the entire system.

[14] David H. Kaye & David A. Freedman, "Reference Guide on Statistics," in Reference Manual on Scientific Evidence. Federal Judicial Center, 2000, p.122.

[15] This figure diverges slightly from the number presented in Table 2, which reports on growth in per diem expenditures. Since corrections expenditure data from Alaska are unavailable during the 1999-2001 time period, Table 2 compares 30 states with prisoners in privately run prisons to 19 states that do not.

[16] The 8.1% differential is derived as follows: 18.9% - 10.8% = 8.1%. A more dramatic way of stating this finding is that the rate of per diem expenditure increase in states without private prisons in the system's mix was 75% higher than in jurisdictions in which some prisoners were held in privately run institutions. That calculation is as follows: 8.1%/ 10.8% = 75.0%

significant at $p < .09$.

Part II of Table 2 compares growth in public prison costs depending upon the percentage of a state's prisoners that are held by privately operated facilities. This inquiry is designed to investigate whether the relationship between privately run prisons and the rate of growth in per diem costs of public prisons depends on the percentage of a jurisdiction's prison population maintained in privately run facilities.

As shown at the bottom of the first column, between 1999 and 2001, the overall average cost of housing a prisoner in a public facility grew by 14.0%. This figure represents an average of the 19 states that (in 1999) had no private prison population (18.9% increase), and the remaining 30 states that (in 1999) had some prisoners held in privately run prisons (10.8% increase). This 14.0% rate of average growth varied considerably depending upon how many prisoners the state had under private management. Three comparisons seem worthy of highlighting because they seem to suggest the possibility of threshold or breakpoint characteristics. The levels of statistical significance of these comparisons, however, only allow us to advance these specific comparisons on a tentative basis.

- The first comparison of potential special note is between the two extremes. States with no private prisoners had an average growth of 18.9% over this time period, compared to an average growth rate of only 5.9% for those that had 20% or more of their prisoners under private management between 1999 and 2001. That is, when one compares jurisdictions in which a relatively high percentage of the prison population is under private management with jurisdictions in which no private prisons play a role, the difference in the rate of growth in public per diem prison expenditures is quite substantial (13%).[17]

- The second comparison of potential special note is between states with no private prison presence and those with a small percentage (under 5%) of its prison population under private management. There appears to be a substantial difference in the cost per prisoner simply by comparing those states that have private prisoners versus those that do not. States with fewer than 5% of their prisoners under private management had a 12.5% growth in costs of publicly run prisons compared to 18.9% growth in costs of publicly run prisons for those states that do not have any private prisoners, a differential of 6.4%.[18]

- The third comparison of potential special note is between states that had some but fewer than 5% of their prison populations under private management and states that had 20% or more of their prison populations in privately run prisons. States with fewer than 5% of their prison populations under private management experienced a growth rate of 12.5% in the cost per public prisoner. In comparison to states in which no prisoners were under private management, that 12.5% rate of growth in the cost of public prisons is favorable (12.5% is considerably lower than 18.9%, as discussed above). However, the rate of growth of expenditures for public prisons stabilized for states that had between 5%-20% of their prison population in private prisons. Once the level of the prison population held in privately run prisons reached beyond 20%, another substantial breakpoint emerged. States that housed 20% or more of their prison population in **privately run** prisons experienced a rate of growth in the cost per prisoner in **publicly run** prisons of only 5.9%. Therefore, the difference in the rate of growth in cost per public prisoner between states at the 5% threshold and states at or beyond the 20% threshold (in terms of the percentage of prisoners under private management) was 6.6% -- reflecting a decrease from 12.5% to 5.9%.[19]

[17] This is derived from the following calculation: 18.9% - 5.9% = 13%. Stated otherwise, the rate of growth in per diem expenditures in public prisons in states without any private prison presence is 220% of the growth in comparable expenditures in states in which 20% or more of the prison population is managed in privately run facilities (13%/5.9% = 220%). Note that this difference is only significant at $p = .18$.

[18] Stated otherwise, the rate of growth in per diem expenditures in public prisons in states without any private prison presence is 51% greater than the growth in comparable expenditures in states in which some but less than 5% of the prison population is managed in privately run facilities (6.4%/12.5% = 51%). However, this difference is only significant at $p < .30$.

ALTERNATIVE EXPLANATIONS

The fact that states with **private** prisoners have lower growth in **public** prison costs does not necessarily imply causation. For example, it is possible that there is a third variable that causes both a slow growth in public prison costs and the existence of private prisons. It might be, for example, that Southern states happen to be both fiscally conservative and have a proclivity to use private prisons. In this section, we attempt to control for these potential factors in order to isolate the effect that the introduction of private prisons has on public prison costs. The key factors we have looked at are: (1) growth in non-corrections-related expenditures; (2) growth in court-ordered mandates that affect the cost of prisons; and (3) the number of years since private prisons were first introduced in a state. Additional factors we considered but which had no measurable impact include differences in the cost of living across states, percentage of prisoners held in maximum security, and prison capacity utilization.

(1) Growth in government

In theory, one would expect that state governments that spend more per capita on government services in general would also spend more on prison services. There are several reasons we would expect this to be the case. First, states with a taste for government spending on social services (*e.g.*, high welfare or education spending) would likely also spend a lot on prison services (*e.g.*, more spending on rehabilitation services). Second, states that generate high levels of revenue, that do not have very significant fiscal restraints, and/or that have a lot of wasteful spending are likely to spend more on prison services because of fund availability, ineffective management controls, or waste.

(2) Court imposed or other legal requirements

If a court imposes legal restrictions that have significant cost implications, that could mask any findings about the effect of the introduction of some private prison management on overall costs. For example, if a court orders prisons in a state to increase education programs in prison, one would expect costs to rise in that state. However, if this is a state that also has a large private prison population, the fact that costs are rising due to the court-ordered education program could hide the fact that private prisons are holding costs down.

(3) Years since Privatization began in State

[19] Stated otherwise, this reflects a drop in the rate of increase in costs in public prisons of 52.8%. That calculation is as follows: 6.6/12.5 = 52.8%. Note, however, that this difference is not statistically significant ($p = .48$).

There is some evidence that the effect of privatization is not constant from year to year. For example, evidence from Arizona, Tennessee and Texas suggests that the gap between public and private costs narrows over time.[20] This would be consistent with a "yardstick" or "benchmark" hypothesis whereby state corrections officials learn from and/or compete with their private prison colleagues. One would expect that learning and innovations in the public sector would take some time to implement so that any observed effect on costs would occur after a lag. Thus, the important figure is not just the number (or percent) of prisoners that are under private supervision, but also how long the state has had to adjust to the pluralistic environment.

REGRESSION RESULTS

Multiple regression analysis is a technique often used by statisticians to control for confounding factors.[21] It models a dependent variable (in this case the growth in per diem public prisoner costs) as being explained by a series of explanatory factors. For example, in this report, we have controlled for potential confounding factors such as court-ordered provisions that raise the cost of running prisons, and the overall growth in government spending. After controlling for these factors, we found that states with private prisoners have significantly lower growth in the per diem expenditures on their public prisoners.

A. Main Findings, 1999-2001 (Tables 3A and 3B)

Table 3A reports on several regression analyses that attempt to control for these factors. In all cases, the dependent variable is the percentage growth in per diem costs for prisoners held in public facilities. As before, this is measured after expenditures on private prisons are subtracted from total prison expenses for the years 1999 through 2001. Table 3B provides an interpretation of the regression coefficients in Table 3A, illustrating the marginal effect of a change in the explanatory variable on the growth in public per diem prison costs.

The key explanatory variable of interest is the existence of some prisoners in privately run prisons. We have measured this variable in several ways.

- Model 1 measures the percentage of prisoners in the state that are under private prison management. The analysis indicates that states with a larger percentage of prisoners under private management have lower growth in the cost of housing prisoners in public facilities. The coefficient is -0.29, As shown in Table 3B, this suggests that a one percentage point increase in the number of state prisoners that are held in private facilities is associated with a -0.29 percentage point decrease in public per diem prison costs. Note that this variable is not statistically significant ($p = .24$).

  Model 1 contains two other explanatory variables: (a) growth in government expenditures (other than corrections), and (b) the growth in prisons that are under court order. Both of these coefficients are positive. The "growth in government expenditures" variable is statistically significant at $p < .05$; the "growth in prisons under court order" variable, while positive, is not statistically significant for Model 1. The statistically significant finding confirms our hypothesis that states that have higher growth in overall per capita government spending are also likely to have higher growth in spending on publicly managed corrections (on a per diem basis). Overall, Model 1 explains 17% of the variance in the growth in per diem costs for public prisoners.[22]

- Model 2 is identical to Model 1 except that the private prison variable is now measured as a 0-1 dummy instead of a continuous percentage. That is, it examines the yes/no question whether the existence of some prisoners under private management has an effect on the growth of expenditures for public prisons. This variable is still negative, suggesting that the existence of private prisoners in a jurisdiction has a restraining effect on the growth of expenditures on public prisons. Note that the finding is now statistically significant at $p < .05$. As shown in Table 3B, the coefficient of -0.089 indicates that the existence of prisoners in privately run facilities in a state's system reduced its growth in per diem expenditures on publicly held prisoners by 8.9 percentage points over the 1999-2001 time period. The other explanatory variables maintain their signs and are slightly more significant than before. Overall, this change increases the explanatory power of the equation, with 22.4% of the variance being accounted for.

- Model 3 is identical to Model 2 except that an additional variable has been added to account for the first few years of in which private prisons were introduced into a state. The objective here is to determine whether the presence of privately run prisons in a system after two or three years has an effect on the expenditures in the public prison system that is in addition to the initial effect of instituting private prisons in the first place[23] This variable is negative as expected, but not statistically significant by conventional standards ($p=.19$). Thus, we find some evidence consistent with the notion that gains from privatization are higher during the first few years of introducing private prisons into a state. However, that evidence is not conclusive.

[20] Segal and Moore, *supra* note 3 at 6-10 (recounting Arizona report that examined costs in the state-run prisons compared to Arizona's one private prison and found the cost difference converged over 1998 and 1999, mostly due to falling costs in state-run prisons).

[21] Kaye and Freedman, *supra* note 10, also discuss multiple regression analysis as a technique often used to control for confounding factors.

[22] The "adjusted-R^2" of 0.17 indicates that the model was able to explain 17% of the variation in the growth rate of per diem public prisoner costs. This is often called the "goodness of fit." The remaining variation is said to be random or unexplained. There is no yardstick to measure whether or not 0.17 is "good enough," since that depends on the purpose of the model. Mark Cohen has published numerous peer-reviewed academic articles with regression equations yielding an adjusted-R^2 of this magnitude or less. If one were interested in forecasting the ultimate growth rate for any individual state, this model would not likely provide a very accurate prediction for that one state. However, we are not interested in predicting the actual growth rate, but instead, want to know how the growth rate will vary by the existence of private prisons. The purpose of the multiple regression analysis is to capture the non-random component of growth in public prison costs so that we can be certain that the private prison variable is not otherwise serving as a proxy for another variable that we have omitted. Once we have controlled for the main independent factors that determine the growth rate, it does not matter that there is still considerable randomness. We are not interested in estimating the growth rate that any one state would receive. Instead, our purpose is to determine whether states with private prisons have a lower markup, on average, than those that do not have private prisons – after controlling for the other non-random factors that make up prison costs. The adjusted-R^2 ranged from approximately 0.17 to 0.239. For the purposes discussed in this report, Dr. Cohen believes that these models are a sufficiently "good fit."

[23] This additional 0-1 dummy variable has been coded 0 in all years except during the 2nd and 3rd year in which a state has private prisoners. In other words, it is coded 1 if private prisoners were first allowed in the state in either 1999 or 2000.

Model 3 increases the explanatory power of the model, accounting for 27.6% of the variance.

Although not reported here, additional models were estimated for robustness of our results. For example, several potential explanatory variables were included, such as the prison capacity utilization (under the theory that prisons that are over capacity might have lower costs per prisoner) and the average security level of prisons in a state (under the theory that a higher proportion of maximum security facilities would raise the per diem cost of prisoners). We also tried various specifications of the private prison variable, including a nonlinear specification (*e.g.*, percentage of prisoners squared), various threshold levels (*e.g.*, 10% or 20% of private prisoners), and piece-wise linear formulations. None of these alternative models provided any significant explanatory power that proved to be better than the models presented here. However, they were generally consistent with the findings reported here.

B. Confirmatory Evidence (Tables 4 & 5)

This section reports on several robustness tests of our key variables, using more limited data from a longer time period, 1990-2001. In order to estimate the per diem cost of public prisons for the period 1999-2001, we have relied on the availability of data on the private prison population and average costs for maintaining prisoners in privately run facilities. The total cost of operating privately run prisons is established by multiplying the average cost per prisoner by the number of privately held prisoners. The amount spent on public prisons is then derived by subtracting that amount from the amount spent overall by a jurisdiction on its prisons.

Because we do not have private prison population data prior to 1999, we cannot estimate the per diem cost of public prisons prior to that date. Prior to 1999, we do have data on gross Department of Corrections expenditures. Those figures include total expenditures on prisons, lumping together expenditures on public and private prisons. While we do not know the size of the private prison population prior to 1999, we do know whether or not a state had any private prisoners under its jurisdiction. From those data, we can construct annual data on gross Department of Corrections expenditures and relate that to the existence or non-existence of private prisons as far back as 1990.

Since we have not been able to subtract out from the gross cost the cost of private prisons, we may be underestimating the per diem cost of public prisons in states that have private prisoners. If a state increases the percentage of its prisoners that are held in private prisons, this will have the effect of muting any increase (or magnifying any decrease) in the growth in public per diem costs. Thus, we cannot necessarily rely exclusively upon these gross expenditure data. Nevertheless, it is instructive to examine these gross data to see if we obtain similar findings to what we find in the more refined (but more time-circumscribed) 1999-2001 data. The advantage of performing this analysis is that it allows examination of a longer time period.

Table 4 reports on a panel regression model using all 50 states for the 12-year time period 1990 through 2001. Because of the long time span, we have controlled both for inflation (by placing all dollar figures in 2001 dollars) and a time trend. As shown in Table 4, the existence of private prisoners in a state has a significant negative effect on the per diem cost of prisoners in that state.[24] The coefficient of

[24] This result is statistically significant, with a "p-value" for the private prison variable of $p < .01$.

-0.046 indicates that the existence of private prisoners under a state's jurisdiction reduces overall corrections expenditures in that state by 4.6%. This is consistent with our earlier findings for 1999-2001, when we were able to measure per diem costs for **publicly** held prisoners net of private prison costs. Of course, we do not know what portion of that 4.6% is due to reduced public as opposed to private prison costs. Note that the time trend is also significant and negative, indicating that over time, independent of the existence of private prisons and controlling for inflation, there has been a downward trend in the per diem cost of prisoners. It is possible that this downward time trend partly masks the effect that private prisons have had on holding down the cost of public prisons. That is, both the threat of introducing private prisons into a system and the "learning effect" of watching states that have embraced private prisons may have some effect on restraining the cost of public prisons even in states that have not accepted private prisons.

In Table 5, we compare the gross measure of public per diem costs of Table 4 with the more refined measure of Table 3. Instead of examining the gross data for twelve years (as is done in Table 4), we examine the three-year period 1999-2001 – the time period for which we have the more refined data. This is a rough attempt to see whether the gross data, which extend for twelve years, are likely to be reliable. Our thought was that a comparison of the gross and the refined data for the same period (1999-2001) would allow us to determine whether the analysis of the gross data fairly tracked the analysis of the more refined data.

The first model in Table 5 repeats Model 2 of Table 3, which measures public per diem costs net of private prison costs. These reflect analysis of the more refined data. The second model measures the dependent variable as "gross" per diem costs as we have done in Table 4. That is, the second model does not subtract out the cost of private prisons in calculating the per diem cost and, therefore, makes use of gross per diem prison cost data.

As expected, use of and analysis of the gross data tend to slightly overstate the effect that private prisons have on the cost of public prisoners. The effect on costs in public prisons from the introduction of private prisons is a cost reduction over two budget cycles of 8.9%. This is shown by reference to the coefficient (-.089) on the private prison dummy in the first column of Table 5. Analysis of the gross data suggests that the introduction of private prisons is linked to a greater (9.4%) cost reduction in the growth in overall per diem costs for prisons (including both public and private prisons lumped together) over the same two budget cycles. This is reflected by reference to the comparable coefficient (-.094) in the third column of Table 5. Moreover, this model has higher explanatory power, explaining 23% of the variance in per diem costs.

While analysis of the gross data may slightly overstate the effect that the introduction of private prisons can have on public prison expenditures, that analysis is sufficiently close to the more refined analysis for 1999-2001 to lend comfort to the reliability of the analysis of the gross data over the twelve-year period 1990-2001. That reinforces the overall finding that the introduction of private prisons into a jurisdiction's system is linked to reduced growth in the cost of operating public prisons within that jurisdiction.

CONCLUSION

This study was designed to investigate the relationship between (1) the fact that a particular state houses some of its prison population in prisons that are privately owned or operated and (2) the growth in costs per prisoner in

publicly operated prisons. The core objective has been to determine whether the existence of prisoners under a state's jurisdiction that are held in **private** facilities can have a beneficial effect on the rate of growth in expenditures on **publicly held** prisoners.

The fundamental conclusion of the study is that, for the three-year period 1999-2001 (the period for which appropriate data exist) – and a period that covers two budget cycles --, states that have some of their prisoners in privately owned or operated prisons experience lower growth in the cost of housing their public prisoners. That finding is statistically significant at the conventionally accepted 5% level ($p = .04$). Although the data on private prisoners available prior to 1999 are less detailed and reliable, the same relationship also would appear to exist for the twelve-year period 1990-2001.

The study indicates that the existence of prisoners in privately run facilities in a state's system reduced growth in the state's per diem expenditures on publicly held prisoners by 8.9% over the 1999-2001 time period, covering two budget cycles. That reduction in the rate of growth amounts to about 4.45% per year.

In 2001, the average Department of Corrections expenditures in states without private prisoners was approximately $455 million. Our findings suggest that if the "average" state in that group were to introduce the use of private prisons to some extent, the potential savings for one year in Department of Corrections expenditures for public prisons could be approximately $20 million (4.45% x $455 million). These putative savings on public prisons would be in addition to any direct savings from the use of private prisons by itself.[25]

[25] There are numerous empirical studies comparing public to private prison costs. One review of the evidence indicates that "virtually all of the studies find private prison costs to be lower – on average between 5 and 15 percent." (See Geoffrey F. Segal and Adrian T. Moore, "Weighing the Watchdog: Evaluating the Costs and Benefits of Outsourcing Correctional Services, Part I: Employing a Best-Value Approach to Procurement." Reason Report No. 289, at p. 2, January 2002.)

Table 1A
List of Variables and Average Values
(50 states)

Variable	1999	2001	Ave. Change
Private Prisoners in (percentage)	6.9%	7.3%	0.4%
Private Prisoners (0-1 dummy)	62.0%	62.0%	--
Government Expenditures (per capita)*	$1,497	$1,641	9.6%
Per Diem Department of Corrections Expenditures (net of Private prisons)*	$74.09	$84.22	13.7%
Percent of Prisons under Court Order	11.5%	9.1%	-2.5%

* General fund expenditures and Department of Corrections expenditures in 2001 were not available for Alaska. For comparison purposes, both Department of Corrections per diem expenditures and government expenditures are shown for the remaining 49 states in both 1999 and 2001.

Table 1B
List of Variables and Average Values
(46 states*)

Variable	1999	2001	Ave. Change
Private Prisoners in (percentage)	6.2%	6.6%	0.4%
Private Prisoners (0-1 dummy)	57.8%	57.8%	--
Government Expenditures (per capita)	$1,518	$1,679	10.6%
Per Diem Department of Corrections Expenditures (net of Private prisons)	$74.66	$84.88	13.7%
Percent of Prisons under Court Order	10.9%	8.2%	-2.7%

* These 46 states are included in the regression analysis in Table 3. States eliminated due to lack of available data are: Alaska, Nevada, North Carolina and Wyoming. Alaska is missing Department of Corrections data. Nevada, North Carolina and Wyoming were eliminated from the regression analysis because the calculated growth in general government expenditures per capita was negative over this time period.

Table 2
Growth in Per Diem Cost for Public Prisoners by Percent of Prisoners in Private Facilities

Percent Private Prisoners	1999 to 2001 Average Growth in Cost per Public Prisoner	Number of States
I. Yes/No Private Prisoners*		
No	18.9%	19
Yes	10.8%	30
p-value	**0.09**	
II. By Percentage		
None	18.9%	19
< 5%	12.5%	9
5% to < 10%	12.1%	10
10% to < 20%	9.7%	7
20% or higher	5.9%	4
Total	**14.0%**	**49**

Note: Due to lack of data on Department of Corrections expenditures, Alaska was eliminated in the 1999-2001 comparison. Since Alaska authorized privately held prisoners in 1999, a total of 30 states had privately held prisoners in 1999, while 20 did not.

Table 3A
Regression Models:
Growth in Per Diem Cost for Public Prisoners, 1999-2001

	Model 1: Percent Private		Model 2: Private vs. Public Only		Model 3: Learning Hypothesis	
	Coeff.	p-value	Coeff.	p-value	Coeff.	p-value
Constant	0.31	0.001	0.35	0.001	0.38	0.001
Private Prison (percentage)	-0.29	0.24				
Private Prison (0-1 dummy)			-0.089	0.04	-0.083	0.06
Private Prison in state 2-3 years					-0.064	0.19
Growth in Government Expenditures (per capita)*	0.06	0.01	0.06	0.004	0.06	0.001
Growth in Prisons under Court Order (percent)	0.16	0.17	0.19	0.09	0.21	0.06
Sample size	46		46		46	
Adjusted R-squared	0.17		0.224		0.239	

* This variable has been transformed into natural logs as it better fits the model. See Table 3B for further details.

Table 3B
Predicted Effect of Variables on Growth in Public Per Diem Prison Costs
(Based on estimates in Table 3A)

	Model 1: Percent Private	Model 2: Private vs. Public Only	Model 3: Learning Hypothesis
Private Prison: - Increase Percentage in State by 1%	-0.29%		
Private Prison: - Introduce private prisoners in State		-8.9%	-8.3%
Private Prison in State 2 or 3 years			-6.4%
Government Expenditures - Additional 1% increase in spending during 1999-2001*	+0.48%	+0.50%	+0.54%
Prisons under Court Order - Additional 1% of prisons under court order between 1999 and 2001	+0.16%	+0.19%	+0.21%

* Government expenditures have been transformed into natural logs. A natural log transformation is commonly used in regression analysis of economic data. In this case, it means that while there is a positive relationship between the growth in per capita government expenditures and the growth in per diem department of corrections expenditures, that relationship is not linear. Instead, increases at a decreasing rate – in other words, it tapers off at extreme levels of growth in government. For example, in Model 1, a 1% increase in government spending results in a 0.48% increase in per diem corrections expenditures. However, if we were to double the growth in government spending we would incur less than a doubling of the rate of growth in corrections expenditures. In this case, a 2% increase in government spending would result in a 1.14% increase in corrections, while a 5% increase in government spending would result in a 2.76% increase in corrections.

Table 4
Per Diem Prison Expenditures
Panel Data: 50 States, 1990-2001

	Coeff.	p-value
Constant	2.94	0.001
Private Prison (0-1 dummy)	-0.046	0.01
Government Expenditures (per capita)	0.28	0.001
Trend variable (1999=1)	-0.057	0.001
Sample size	588	
Adjusted R-squared	0.358	

Note: Both the dependent variable (per capita prison expenditures) and general government expenditures have been adjusted to constant 2001 dollars in order to take out any overall inflationary trends. They have also been transformed into natural logs as they better fit the model. See Table 3B.

Missing Data: Alaska (2001), Mississippi (1991), Nevada (1990-1993 and 1996-1998), New Mexico (1992-1993), Wyoming (2000).

Table 5
Growth in Per Diem Prison Costs, 1999-2001
(Public and Private Corrections Expenditures Combined)

	Growth in Public Per Diem Costs Net of Private Costs (from Table 3)		Growth in Per Diem Costs including Private Costs	
	Coeff.	p-value	Coeff.	p-value
Constant	0.35	0.001	1.34	0.001
Private Prison (0-1 dummy)	-0.089	0.04	-0.094	0.02
Growth in Government Expenditures (per capita)*	0.06	0.004	0.06	0.004
Growth in Prisons under Court Order (percent)	0.19	0.09	0.18	0.10
Sample size	46		46	
Adjusted R-squared	0.224		0.239	

* This variable has been transformed into natural logs as it better fits the model. See Table 3B for further details.

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The Proper Scope of Government: Theory and an Application to Prisons

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THE PROPER SCOPE OF GOVERNMENT: THEORY AND AN APPLICATION TO PRISONS*

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When should a government provide a service in-house, and when should it contract out provision? We develop a model in which the provider can invest in improving the quality of service or reducing cost. If contracts are incomplete, the private provider has a stronger incentive to engage in both quality improvement and cost reduction than a government employee has. However, the private contractor's incentive to engage in cost reduction is typically too strong because he ignores the adverse effect on noncontractible quality. The model is applied to understanding the costs and benefits of prison privatization.

I. INTRODUCTION

As a general rule, government employees provide most services paid for with tax revenues, such as the police, the military, operation of prisons, fire departments and schools, collection of garbage, and so on. Yet in some cases, these services are privatized through government contracting out their provision to private suppliers. The choice between in-house provision and contracting out has proved to be controversial. Advocates of government contracting point out that private suppliers deliver public services at a lower cost than public employees do [Savas 1982 1987; Logan 1990]. The critics of government contracting, while quibbling with these figures, stress that the quality of public services that private contractors deliver is inferior to that delivered by public employees [AFSCME 1985; Shichor 1995]. In this paper we develop a theory of government ownership and contracting

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that may throw light on the cost and quality of service under alternative provision modes.

The perspective we adopt is that of incomplete contracts [Grossman and Hart 1986; Hart and Moore 1990; Hart 1995]. Suppose that a public-spirited politician chooses between having a service delivered by a public agency and contracting it out. In the first case, the politician hires public employees and gives them employment contracts specifying what they need to do. In the second case, the politician signs a contract with a private supplier who in turn contracts with his (or her) employees. If the politician can sign a complete or comprehensive contract (with either employees or a contractor), he can achieve the same outcome in each case. From the traditional incentive viewpoint, motivating the contractors and the public employees presents the same problem to the politician even in the presence of moral hazard and adverse selection. To understand the costs and benefits of contracting out, we need to consider a situation where contracts are incomplete and where residual rights of control in uncontracted for circumstances are important in determining agents' incentives.

The assumption of contractual incompleteness is not hard to motivate once it is recognized that the quality of service the government wants often cannot be fully specified. Indeed, critics of privatization often argue that private contractors would cut quality in the process of cutting costs because contracts do not adequately guard against this possibility. Critics of private schools fear that such schools, even if paid for by the government (e.g., through vouchers), would find ways to reject expensive-to-educate children, who have learning or behavioral problems, without violating the letter of their contracts. Critics also worry that private schools would replace expensive teachers with cheaper teachers' aides, thereby jeopardizing the quality of education. In the discussion of public versus private health care, the pervasive concern is that private hospitals would find ways to save money by shirking on the quality of care or rejecting the extremely sick and expensive-to-treat patients. In the case of prisons, concern that private providers hire unqualified guards to save costs, thereby undermining safety and security of prisoners, is a key objection to privatization. Our model tries to explain both why private contracting is generally cheaper, and why in some cases it may deliver a higher, while in others a lower, quality level than in-house provision by the government.

Many discussions of privatization lump together the issue of

public or private ownership with the issue of competition. That is, those who advocate privatization often do so on the grounds that private ownership allows the benefits of competition to be reaped. We believe that the identification of privatization with competition is misleading. In principle, it is possible to have several government-owned firms competing to supply the public, or several management teams competing for the right to run a government enterprise (e.g., a prison). It is also possible to have a private firm with no effective competitors (a monopoly). Our analysis is based on the idea that the fundamental difference between private and public ownership concerns the allocation of residual control rights, rather than the degree of competition per se. Competition may strengthen the case for privatization—in fact we show that it does under some conditions—but only because the allocation of residual control rights is different under privatization.

In the next section we present a model of government contracting that focuses on quality issues. The basic idea is that the provider of the service—whether a government employee or a private contractor—can invest his time to improve the quality of the service or to reduce its cost. The cost reduction has an adverse effect on quality. Neither innovation is contractible ex ante. However, both types of innovation, to be implemented, require the approval of the owner of the asset, such as a prison, a hospital, or a school. If the provider is a government employee, he (or she) needs the government's approval to implement either improvement, since the government retains residual control rights over the asset. As a result, the employee receives only a fraction of the returns to either the quality improvement or the cost reduction. Moreover, an additional limit to how well a government employee can be effectively compensated for either improvement arises because the employee is replaceable.

In contrast, if the provider is a private contractor, he has the residual control rights over the asset, and hence does not need to get government approval for a cost reduction. At the same time, if a private contractor wants to improve quality and get a higher price, he needs to negotiate with the government since the government is the buyer of the service. As a consequence, the private contractor generally has a stronger incentive both to improve quality and to reduce costs than the government employee has. But, the private contractor's incentive to engage in cost reduction is typically *too* strong since he ignores the adverse impact on quality.

We analyze this model in Section III and establish several propositions concerning the relative efficiency of in-house provision and government contracting. In general, the bigger the adverse consequences of (noncontractible) cost cutting on (noncontractible) quality, the stronger is the case for in-house provision.The efficiency of in-house provision also turns on the strength of the incentives of government employees, and on the importance to the government of generating quality innovations. The conclusions emerging from the model are generally extremely intuitive, including the result that private provision is generally cheaper, but may generate either higher or lower quality. Section III also briefly addresses a key omission from the model, namely, the possibility of ex post competition between contractors, which typically strengthens the case for privatization. Finally, Section III examines the consequences of moving away from the assumption of benevolent government, and incorporating such elements as corruption and patronage into the model. A fuller treatment of competition and politics is left to future work.

In Section IV we apply our framework to discuss privatization of prisons. Should the government contract out the operations of prisons to private firms, who then have power over incarceration and treatment of convicts? Private prisons have been growing rapidly in the United States, although they still hold only about 3 percent of prisoners. Critics voice a strong concern about the quality of private incarceration, including the quality of prisoner life, the incidence of prison violence by inmates and use of force by guards, escapes, and to a lesser extent rehabilitation. We show that our model can be used to organize, if not resolve, the debate over prison privatization.

Our results may help in thinking about other government services as well. The parameters of the model, namely, the adverse quality effects of cost reduction, the importance of quality innovation, the incentives of government employees, as well as possibilities of competition which we do not model, may shed light on the wisdom of privatization of such activities as defense procurement, garbage collection, police and armed forces, education, and health. In Section VI we discuss these examples and consider some of the new issues they raise.

Ours is not the first normative analysis of government contracting.[1] Some of the issues addressed in our paper are raised in

1. There is also a considerable literature on positive aspects of contracting; see, e.g., Shleifer and Vishny [1994] and Savas [1982, 1987].

the now-classic book by Wilson [1989]. Economists working in this area have generally focused on traditional adverse selection and moral hazard problems raised by contracting [Laffont and Tirole 1993; Tirole 1994], as well as on competitive and antimonopoly problems following privatization [Vickers and Yarrow 1988]. Some recent studies have examined contractual incompleteness [Schmidt 1996; Shapiro and Willig 1990; Laffont and Tirole 1993]. Unlike our work, they have emphasized informational losses from contracting or the costs of having multiple bosses. Theoretically, our paper is new primarily in deemphasizing the role of incomplete information in contracting, and emphasizing quality issues. In this regard, our paper is related to the work of Holmstrom and Milgrom [1991, 1994], who, in a comprehensive contracting framework, show that providing an agent with strong incentives to pursue one objective, such as profits, can lead to his shirking on other objectives, such as quality. Our framework is different from theirs, although the issues we are interested in are similar. In addition, the existing literature is primarily theoretical, and does not go into the problems of specific sectors, such as prisons, in much detail.[2]

II. The Model

A. Basic Assumptions

In this section we present a simple model of the choice between the public and private provision of a good, such as prison, hospital, or school services.

Suppose that society, represented by the government, wants a certain good or service to be provided. We assume that consumers cannot buy this good directly in the marketplace, e.g., because it is a public good.[3] One possibility is to contract out the provision of this good, e.g., the government can write a contract with a private company to run a prison for five years.[4] A second possibility is to provide the good "in-house," e.g., the government can ar-

2. There are some exceptions. For example, Vickers and Yarrow [1988] discuss the possible decline in quality at British Telecom following privatization and price cap regulation. Domberger, Hall and Li [1995] examine the consequences for price and quality of contracting out cleaning services.

3. This assumption makes good sense in the case of prisons but is more controversial in the case of schools or hospitals.

4. An alternative interpretation is that the government regulates the private company for five years. In this case the contract simply describes the regulatory policy. We do not deal explicitly with regulation in this paper, but note that any regulatory policy can be interpreted as an (incomplete) contract and vice versa.

range for public employees to run the prison. The model is based on the idea that the crucial distinction between these arrangements concerns who has residual rights of control over the nonhuman assets used to provide the service—we call these assets the "facility F" (e.g., the prison). If the good is publicly provided, then the government (represented by a bureaucrat), as owner, has residual control rights over the facility. If the good is privately provided, then the private provider, as owner, has residual control rights over the facility. Residual control rights matter because they determine who has the authority to approve changes in procedure or innovations in uncontracted-for contingencies.[5]

We suppose that the facility—public or private—is run by a single manager/worker, M. There is also a single bureaucrat or politician, represented by G. We start by considering the case where the bureaucrat perfectly represents the interests of society; i.e., there is no agency problem between the bureaucrat and society.[6] Later we consider self-interested bureaucrats and politicians.

We assume that G and M are able to write a long-term contract specifying some aspects of the good or service to be provided and the price. In fact, we suppose that a long-term contract is required in the case where F is private in order to support relationship-specific investments.[7] We call the good thus described in the contract the "basic" good and denote its price by P_0. P_0 has different interpretations according to whether the facility F is private or public. If F is private, i.e., M owns F, then P_0 is the price that M as an independent contractor receives for providing the basic good. If F is public, i.e., G owns F, then P_0 is the wage that M receives as an employee. In the latter case provision of the basic good can be regarded as part of M's job description; i.e.,

5. See Grossman and Hart [1986]. What may be more important is not who owns the physical prison, but who has the right to use it (perhaps for a restricted period of time). For example, the government may own the prison, but sell the right to operate it to a private company for n years (a franchising arrangement). In this case, the private company has residual control rights during the n year period. In this paper we do not distinguish between physical ownership and possession of the right to use the prison.

6. To be more precise, we assume that G's utility function is given by the welfare of the rest of society, excluding M. A justification for this is that the political process aligns G's and society's interests (since M has negligible voting power, his interests receive negligible weight). As will become clear, if G placed the same weight on M's utility as on the rest of society, the first-best could be achieved.

7. We do not model these relationship-specific investments explicitly. They might correspond to physical investments, e.g., building the prison. For the idea that a long-term contract is required to support relationship-specific investments, see Klein, Crawford, and Alchian [1978] and Williamson [1985].

M does not get paid unless he provides the good.

Although G and M can specify some aspects of the good or service in advance, we suppose that there are others that they cannot specify. We have in mind that various contingencies can arise which call for some modification of the basic good. For instance, M can suggest a way to modify the prison to increase security. Alternatively, M may find a way to reduce costs by hiring cheaper (or fewer) guards. Our assumption is that there are so many possible contingencies ex ante that it is impossible to anticipate them all and contract on how to deal with them in advance.[8] Instead the parties revise the contract ex post once it is clear what the relevant contingencies are. We refer to the basic good modified to allow for relevant contingencies as the "modified good."

The modified good yields a benefit B to society and costs the manager C to produce. C is a cost borne directly by M. For example, B might be the social benefit from having a prison with few fights between inmates and well-fed and healthy prisoners. Although B cannot be measured or verified (it does not show up in any accounts), we suppose that it can be represented by a dollar amount. Similarly, C can be represented in dollars.

The manager can manipulate B and C through prior effort choices. We assume that M can devote effort to two types of "innovation" relative to the basic good: a cost innovation and a quality innovation. We suppose that a cost innovation leads to a reduction in costs C but is typically accompanied by a reduction in quality (i.e., B). Similarly, a quality innovation leads to an increase in quality, but is typically accompanied by an increase in costs. We write

$$B = B_0 - b(e) + \beta(i),$$

$$C = C_0 - c(e),$$

where e, i denote effort devoted to the cost innovation and quality innovation, respectively, $c(e) \geq 0$ is the reduction in cost corresponding to the cost innovation; $b(e) \geq 0$ is the reduction in quality corresponding to the cost innovation; and $\beta(i) \geq 0$ is the quality increase net of costs from the quality innovation.[9] The function b plays a key role in this model: it measures how much

8. For a further discussion see Hart [1995].

9. We need to keep track of the separate cost and quality components of the cost innovation (c and b), but not of the quality innovation.

(noncontractible) quality falls because of a (noncontractible) cost cut, and hence serves as the variable that critics of privatization focus on.

We make standard assumptions about the convexity, concavity, and monotonicity of b, c, and β: $b(0) = 0$, $b' \geq 0$, $b'' \geq 0$; $c(0) = 0$, $c'(0) = \infty$, $c' > 0$, $c'' < 0$, $c'(\infty) = 0$; $\beta(0) = 0$, $\beta'(0) = \infty$, $\beta' > 0$, $\beta'' < 0$, $\beta'(\infty) = 0$; $c' - b' \geq 0$. Note that the assumptions $c' - b' \geq 0$, $\beta' > 0$ say that the quality reduction from a cost innovation does not offset the cost reduction; and the cost increase from a quality innovation does not offset the quality increase. The former, in particular, is an important substantive assumption, since one can imagine in principle that cost cutting by a contractor (e.g., failing to train prison guards) produces social damage in excess of cost savings. Our assumptions rule out this case, although it can be easily analyzed.

The manager's ex ante effort cost must be added to C to get M's overall costs. We write total effort costs as $e + i$, and assume a zero interest rate (no discounting). Hence M's overall costs are[10]

$$C + e + i = C_0 - c(e) + e + i.$$

One important assumption we make is that both the cost and quality innovations can be introduced without triggering a breach of the contract for the basic good. That is, although each innovation leads to a change in quality (in the case of the cost innovation, a reduction in quality), the initial contract is sufficiently vague or "incomplete" that neither innovation violates it.

We also assume that i, e, b, and c are observable to both G and M, but are not verifiable (to outsiders) and hence cannot be part of an enforceable contract. Similarly, G's benefits and M's costs are observable, but not verifiable or transferable, which means that revenue and cost-sharing arrangements are infeasible.[11]

We suppose that G and M are at least partially locked into each other once their relationship is under way. Specifically, there is no facility available other than F that can supply society, and there is no other potential customer for the service (e.g., a prison)

10. In an earlier version of this paper, we assumed a more complicated cost-of-effort function in which e and i were substitutes (along the lines of the multitasking work of Holmstrom and Milgrom [1991]). The current model generates simpler and easier-to-interpret results.

11. For a more extensive discussion of verifiability, noncontractibility, and revenue and cost-sharing arrangements, see Hart [1995].

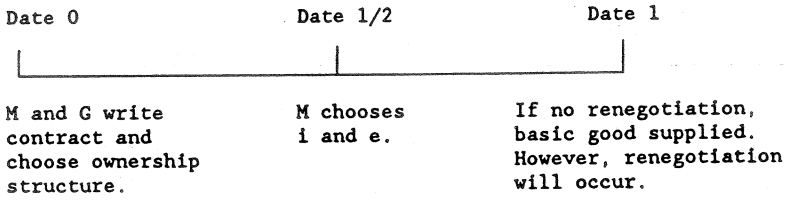


FIGURE I

apart from G. However, M's labor services may be partially substitutable (see below). Finally, we assume that M and G are risk neutral and that there are no wealth constraints. A time-line is presented in Figure I.

B. Default Payoffs

As noted, the parties want to renegotiate the contract at date 1 once they learn the nature of potential quality improvements and cost reductions. We assume that G and M divide the gains from renegotiation according to Nash bargaining, i.e., they split the surplus 50:50. This means that the parties' default payoffs—that is, what occurs in the absence of renegotiation—influence final payoffs.

We take the point of view that any cost or quality innovation requires the agreement of the owner of the facility F, since implementing these innovations involves a change in the way F is used. Only the owner (the possessor of the residual control rights) has the right to approve such a change. Thus, in the case of a public facility, G needs to agree to any cost or quality innovation, whereas, if the facility is private, M can implement these innovations without G's agreement. However, even if the facility is private, it is not in M's interest to introduce a quality innovation without the approval of G since no payment will be forthcoming for an uncontracted-for quality improvement unless G agrees to make it; i.e., unless a new contract is written.

It remains to discuss the extent to which the fruits of M's efforts e and i are embodied in M's human capital. Suppose that if M has an idea about how to reduce costs or increase quality then a fraction of the benefits of this idea requires M's participation, but the remainder can be realized without M because some aspects of M's ideas become public knowledge (at least within the organization). In particular, assume that, in the case where F is public, G can realize a fraction $0 \leq (1 - \lambda) \leq 1$ of the net social

gains $-b(e) + c(e) + \beta(i)$ from innovation without M by hiring a different manager and paying him at cost. If F is private, G can obtain none of these benefits since M has the residual control rights and can prevent any innovations (and can also avoid being replaced). The parameter λ is very important, since it effectively measures the weakness of the incentives of government employees. In the case $\lambda = 1$, the public employee (warden) is irreplaceable, and hence can command the same share of the total rents in the negotiation with G as a private manager (but, in contrast to a private manager, a public warden will have to get G's permission to implement a cost reduction).

We can sum up the above discussion as follows.

(A) If F is privately owned, then, *in the absence of renegotiation,* the cost innovation is implemented (since it is in M's interest to implement it and M has the residual control rights), but the quality innovation is not (since no payment from G will be forthcoming). That is, G's default payoff is $B_0 - P_0 - b(e)$ and M's default payoff is $P_0 - C_0 + c(e) - e - i$.

(B) If F is publicly owned, then, *in the absence of renegotiation,* both cost and quality innovations are implemented. However, G must replace M and hence gets only a share $(1 - \lambda)$ of the gains from these innovations. That is, G's default payoff is $B_0 - P_0 + (1 - \lambda)[-b(e) + c(e) + \beta(i)]$, and M's default payoff is $P_0 - C_0 - e - i$.

C. The First-Best

Consider as a benchmark the first-best situation where e and i are contractible (or equivalently, where long-term contracts describing the modified good can be written). In this case, G and M would choose e and i to maximize the total net surplus from their trading relationship, and divide the surplus between them using lump-sum transfers. That is, in the first-best, G and M solve

$$\max_{e,i} \{-b(e) + c(e) + \beta(i) - e - i\}. \tag{1}$$

Given our assumptions, (1) has a unique solution (e^*, i^*), characterized by first-order conditions:

$$-b'(e^*) + c'(e^*) = 1, \tag{2}$$

$$\beta'(i^*) = 1. \tag{3}$$

At the social optimum, the marginal social benefit of spending extra effort to reduce costs, measured to take account of marginal quality deterioration, must equal the marginal cost of that extra effort, which equals one. Similarly, the marginal social benefit of spending extra effort to improve quality must equal the marginal cost of that extra effort, which again equals one.

D. Equilibrium under Private Ownership

Suppose that M owns F. Then in light of (A), the renegotiation takes place over the quality innovation. The gains from renegotiation are $\beta(i)$, which are split 50:50. (There is symmetric information about i.) The parties' payoffs are

$$U_G = B_0 - P_0 + 1/2\beta(i) - b(e), \tag{4}$$

$$U_M = P_0 - C_0 + 1/2\beta(i) + c(e) - e - i. \tag{5}$$

Note that because M can reduce costs without seeking G's approval, G bears the full brunt of quality deterioration resulting from cost reduction.

Since the parties are assumed to have rational expectations, M chooses e and i to maximize U_M, that is, to solve

$$\max_{e,i}\{1/2\beta(i) + c(e) - e - i\}. \tag{6}$$

Denote the (unique) solution by (e_M, i_M) (where M stands for ownership by M). The first-order conditions for (6) are

$$c'(e_M) = 1, \tag{7}$$

$$1/2\beta'(i_M) = 1. \tag{8}$$

There are two deviations from first-best here. First, M ignores the deterioration of quality resulting from cost reduction, and hence exaggerates the social benefit of cost reduction. Second, because M must get G's approval to implement a quality improvement, on the margin he gets only half the benefits of that improvement, which stunts his incentive to improve quality.

The total surplus S_M under M's ownership is then given by

$$S_M = U_G + U_M = B_0 - C_0 - b(e_M) + c(e_M) + \beta(i_M) - e_M - i_M. \tag{9}$$

The price P_0 is chosen to allocate this surplus between the parties according to their relative bargaining positions at date 0. The formula for S_M reflects the fact that the parties bargain efficiently

ex post, but there is a distortion in relationship-specific investments e and i.

E. Equilibrium under Public Ownership

Suppose that G owns F. Then in light of (B) the renegotiation takes place over the fraction λ of both the cost and quality innovations that G cannot appropriate: $\lambda[-b(e) + c(e) + \beta(i)]$. The gains are split 50:50, and so the parties' payoffs are

$$U_G = B_0 - P_0 + (1 - \lambda/2)[-b(e) + c(e) + \beta(i)], \tag{10}$$

$$U_M = P_0 - C_0 + \lambda/2[-b(e) + c(e) + \beta(i)] - e - i. \tag{11}$$

Note that, in the case $\lambda = 1$, when the manager is completely irreplaceable, the parties split the gains from innovation 50:50. M chooses e and i to solve

$$\max_{e,i}\{\lambda/2[-b(e) + c(e) + \beta(i)] - e - i\}. \tag{12}$$

Denote the (unique) solution by (e_G,i_G) (where G stands for ownership by G). The first order conditions for (12) are

$$\lambda/2\,(-b'(e_G) + c'(e_G)) = 1, \tag{13}$$

$$\lambda/2\,\beta'(i) = 1. \tag{14}$$

In contrast to the private ownership case, because the publicly employed M needs to negotiate the cost reduction with G, he takes account of quality reductions that may result from cost-cutting innovations. However, there are new distortions in the case of public ownership. First, for both quality and cost innovation, the public manager needs the approval of G and hence surrenders half the gains from trade. Second, if $\lambda < 1$, the public manager can be replaced, and hence has even weaker incentives to innovate. Both of these factors stunt a public manager's incentives.

The total surplus S_G under G ownership is given by

$$S_G = U_G + U_M = B_0 - C_0 - b(e_G) + c(e_G) + \beta(i_G) - e_G - i_G. \tag{15}$$

Again the price P_0 is chosen to allocate the surplus at time 0 according to relative bargaining power.

F. The Choice of Ownership Structure

The optimal ownership structure is the one that produces the largest total surplus (the division of surplus can always be ad-

justed through P_0). That is, G ownership is superior to M ownership

$$(16) \quad \Leftrightarrow S_G > S_M$$
$$\Leftrightarrow -b(e_G) + c(e_G) + \beta(i_G) - e_G - i_G > -b(e_M) + c(e_M) + \beta(i_M) - e_M - i_M.$$

Renegotiation under symmetric information ensures that all ownership structures yield an ex post efficient outcome. The only difference between the ownership structures concerns the choice of the ex ante investments e and i.

III. Analysis of the Optimal Ownership Structure

A. Main Results

A comparison of (1) and (6) shows that private ownership leads to two distortions relative to the first-best. First, M ignores the fact that e reduces noncontractible quality $b(e)$; in other words, that he damages G through his effort to reduce costs. Second, M places 50 percent weight on the gains from quality innovation $\beta(i)$ as opposed to 100 percent weight. It follows immediately from the first-order conditions (2), (3), (7), (8), and concavity that e is inefficiently high and i is inefficiently low under private ownership.

Proposition 1. $e_M > e^*$, $i_M < i^*$.

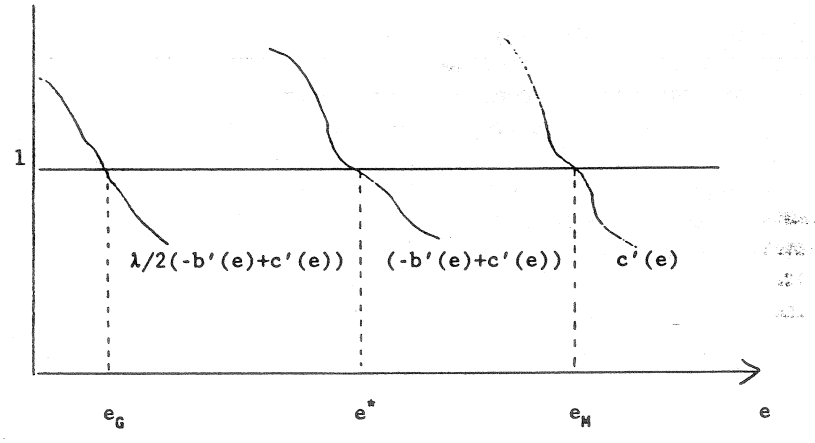
The private ownership equilibrium is illustrated in Figure II.

Consider next public ownership. A comparison of (1) and (12) shows that under public ownership, M does worry about the damage $b(e)$. The reason is that M cannot implement the cost reduction without G's permission and so they bargain about the net surplus $-b(e) + c(e)$ from the cost-reducing innovation. However, M places weight $\lambda/2$ on the gains from cost innovation $-b(e) + c(e)$ and on the gains from quality innovation $\beta(i)$, as opposed to 100 percent weight in the first best. It follows from the first-order conditions (13)–(14) that e and i are both inefficiently low under public ownership. Moreover, i is lower under public than under private ownership unless $\lambda = 1$; i.e., unless M is irreplaceable.

Proposition 2. $e_G < e^*$, $i_G \leq i_M < i^*$ (with $i_G < i_M$ unless $\lambda = 1$).

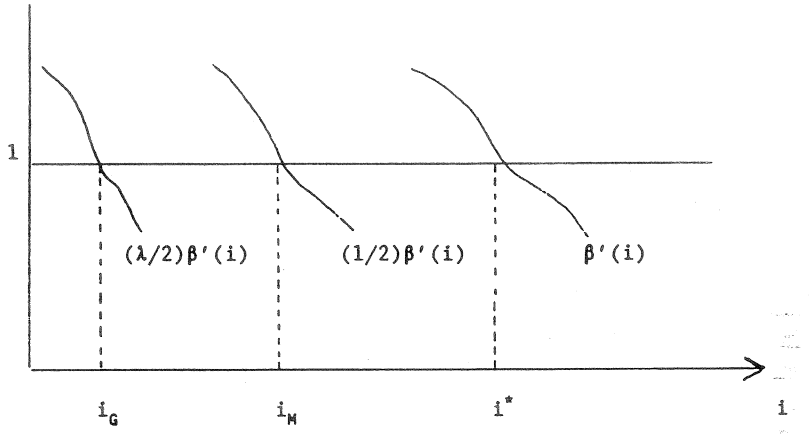
The public ownership equilibrium is also illustrated in Figure II.

The trade-off between public and private ownership is now



Equilibrium Levels of e under Different

Ownership Structures



Equilibrium Levels of i under Different

Ownership Structures

FIGURE II

fairly clear. Private ownership leads to an excessively strong incentive to engage in cost reduction ($e_M > e^*$) and to moderate—although still too weak—incentives to engage in quality improvement ($i_M < i^*$). Public ownership removes the excessive tendency to engage in cost reduction but replaces this with a weak incentive to engage in both cost reduction and quality improvement. Which arrangement is superior therefore depends on which distortion is less damaging.

The next two propositions provide conditions under which private ownership and public ownership can be ranked.

PROPOSITION 3.

(1) Suppose that the function $b(e)$ is replaced by $\theta b(e)$, where $\theta > 0$. Then for θ sufficiently small, private ownership is superior to public ownership.
(2) Suppose that the function $b(e)$ is replaced by $\theta b(e)$ and the function $c(e)$ is replaced by $\phi c(e)$, where $\theta, \phi > 0$. Then, for θ, ϕ sufficiently small and $\lambda < 1$, private ownership is superior to public ownership.

Part (1) of Proposition 3 follows from the fact that, as $\theta \to 0$, the damage to quality from cost reduction disappears. Under these conditions, private ownership leads to the efficient choice of e (since $c'(e) \approx -b'(e) + c'(e)$). Since the level of i is always closer to the first-best under private ownership than under public ownership, private ownership dominates public ownership. Part (2) follows from the fact that, as $\theta, \phi \to 0$, e^*, e_M and e_G all converge to zero. Thus, only the choice of i matters; private ownership is better than public ownership because it yields a level of i closer to i^*.

Proposition 3 has a very natural interpretation. There are basically two cases when private ownership is unambiguously superior. The first case is when the deterioration of quality from cost reduction is small. In this case, the stronger incentives that a private contractor has to reduce costs *and* improve quality are both desirable. The second case is when the opportunities for cost reduction (and hence the damage to quality as well) are small and the government employees have relatively weak incentives (λ is small). In this case, the private contractor would not do much of the potentially damaging cost reduction, and his stronger incentive to make quality innovations gives him the

edge over in-house provision. Both of these are extremely intuitive cases.

The cases where in-house provision is superior are given by the following result:

PROPOSITION 4.

(1) Suppose that $b(e) \equiv c(e) - \sigma d(e)$, where $\sigma > 0$. Then for σ sufficiently small and λ sufficiently close to 1, public ownership is superior to private ownership.
(2) Suppose that $b(e) \equiv c(e) - \sigma d(e)$, where $\sigma > 0$. Suppose also that the function $\beta(i)$ is replaced by $\tau\beta(i)$, where $\tau > 0$. Then for σ, τ sufficiently small public ownership is superior to private ownership.

Part (1) follows from the fact that as $\sigma \to 0$ the social gains from cost reduction, $-b(e) + c(e)$, converge to zero: the quality damage fully offsets the cost savings. Thus, the weak incentives for cost reduction under public ownership are socially efficient. In contrast, the incentives for cost reduction under private ownership are inefficient, since the private owner ignores the substantial damage $b(e)$. If λ is close to 1, the incentives for quality innovation under public ownership are similar to those under private ownership, and so public ownership dominates private ownership.

Part (2) replaces the condition λ close to 1 with the condition that τ is small. In this case i^*, i_M and i_G are all approximately zero, and so only the choice of e matters. For σ small, public ownership is superior to private ownership because it delivers a socially more efficient level of e.

Proposition 4 as well has a very natural interpretation. Public ownership is most likely to be better when the adverse effect of cost reduction on quality is large. But that is not enough. For public ownership to be definitely superior, it must also be the case that either quality improvement is unimportant or that government employees do not have weaker incentives in quality improvement (λ is large). If one of the latter conditions holds, then private contractors are not significantly superior at improving quality, and hence public ownership is preferred.[12]

12. We have analyzed private ownership under the assumption that the private owner actually manages the firm. This is not a bad assumption for the case we are most interested in—prisons. In situations where ownership is separated from control, some of the trade-offs that we have identified are still likely to be relevant. In particular, the owners and managers of a private firm will still have an excessive tendency to reduce costs, since they can collectively divide the gains

Finally, we consider the cost/quality comparison between private and public ownership:

PROPOSITION 5. Costs ($C_0 - c(e)$) are always lower under private ownership. Quality ($B_0 - b(e) + \beta(i)$) may be higher or lower under private ownership.

We know that e is higher under private ownership than under public ownership ($e_M > e^* > e_G$) and hence costs are always lower under private ownership. Quality may be higher or lower, since although e is higher, so is i. One case where quality is higher under private ownership is when $b'(e)$ is small (more precisely, we replace $b(e)$ by $\theta b(e)$ and let $\theta \to 0$); then quality is determined by differences in i and not differences in e. On the other hand, if $\beta'(i)$ is small, quality is higher under public ownership; in this case quality is determined by differences in e rather than differences in i.

Proposition 5 explains what we believe to be the basic stylized facts, namely that private contracting typically yields greater cost efficiency, but there is ambiguity about quality. We could not get ambiguity if we had a simpler model, in which there was no investment in quality improvement. In that model, there would be a straight trade-off between quality and cost, with public provision delivering more quality at a higher cost. That model (i.e., one without β) would resemble the comprehensive contracting treatment of Laffont and Tirole [1993, Chapter 4], who argue that higher powered incentives (which might be associated with private ownership) lead to both lower costs *and* quality. Our model, in contrast, explains why in some—arguably most—cases private provision leads to both lower costs and higher quality.

B. Competition

Perhaps the single most important issue that our model does not deal with is ex post competition between the suppliers of the good. To take the simplest case, suppose that consumers buy the

from cost reduction among themselves, ignoring the adverse quality impact on society. The implications for quality innovation are more complicated. To the extent that the manager of a private firm is less replaceable than the manager of a public firm (because the private company's shareholders are dispersed, say), the private company manager's incentives to innovate will be greater than the public manager's. However, to the extent that the manager of a private firm must share the fruits of his innovation with both the owner(s) and the government, as opposed to just the government, the private manager's incentives to innovate will be smaller (on the latter effect, see Laffont and Tirole [1993] and Hart and Moore [1990]).

good, or service, directly from a contractor, without any government intervention, even in financing. Suppose also that consumers can assess the quality on their own (a good assumption with most goods, a plausible assumption for education, and probably the wrong assumption for health). Suppose finally that the suppliers are perfectly competitive at every quality level. In this case, a private contractor would face exactly socially optimal incentives, since, on the margin, he gets a lower price for any quality shortfall resulting from a cost reduction, and a higher price for any quality improvement through innovation (that is, he receives $-b(e) + c(e) + \beta(i)$). Private supply in this case delivers the first-best. On the other hand, a public manager needs to negotiate any innovation with the government, and might be replaceable, so his incentives to innovate are stunted. In this extreme case—where there is no need for the government at all—the private sector delivers the first-best, and public provision is inefficient.

Of course, in most interesting cases, the situation is more complicated, and some government role is needed, at least in financing. For example, in education most arrangements would allow for the government to pay for the service of at least some consumers (e.g., through vouchers). The idea is that the government needs to participate in the financing of these services to reduce the inequality of consumption across consumers. As long as consumers can assess quality and have a choice among competitive suppliers, however, private suppliers would still pay for deterioration in quality resulting from cost reduction because the consumers can go elsewhere. Even in the case of government financing, competition strengthens the case for contracting out.

The objections to private, competitive supply typically focus on more subtle distributional issues, related to inefficient sorting of consumers. We discuss these objections in Section V in the context of health care and education.[13]

C. Alternative Views of Government: Corruption and Patronage

In this subsection we relax the assumption that the bureaucrat/politician acts on behalf of society and allow for him to be self-interested. This self-interest can express itself in a number

13. Another kind of competition may also be important. Suppose that consumers cannot buy from contractors directly, i.e., the government must buy on their behalf, but there are many (similar) contractors. Then, if one contractor does a bad job, the government can always switch to another. Such switching is possible whether contractors are private or public. Thus, it is not immediately clear that competition of this sort makes private provision more attractive.

of ways. First, the politician may be corrupt, in the sense of being willing to use his control rights to extract money (or campaign contributions) for himself from the contractor. Second, the politician may use his control rights to pursue political objectives other than the public interest, such as catering to interest groups that might support him in the election. These alternative characterizations of political behavior matter for the choice of the optimal delivery mode.

To illustrate these issues, we describe two simple—but possibly important—cases. In one of them, corruption leads to an excessive tendency to privatize. In the other, patronage leads to excessive in-house provision.

Suppose that the privatization decision is made by a higher level politician at some date $-\frac{1}{2}$ before date 0 (see Figure I). Suppose also that the politician is not involved in F's operations after the privatization decision; that is, contracting decisions pass to a bureaucrat who is assumed to be honest. In contrast, the politician takes monetary bribes.

Under these conditions the politician has a simple choice. He can privatize F (a prison)—in which case he arranges to sell it to a private company owned by M (the future owner-manager of F). Suppose that the politician can set the price artificially low and extract a bribe from M; i.e., the politician can avoid selling F through competitive bidding. Alternatively, the politician can keep F public and appoint M as the future manager (the warden). In this situation we suppose that the politician can extract a bribe from M in return for M's future benefits as manager.

Under reasonable assumptions the politician can extract a higher bribe if he privatizes F than if he does not. If the politician privatizes F, then at date 0, M is in a bilateral bargaining position with the bureaucrat G concerning the terms of the contract. The total surplus to be divided is given from (9) by S_M. Under the assumption of Nash bargaining, M receives $\frac{1}{2}S_M$ through the price P_0. Now move back to date $-\frac{1}{2}$. At this date, as long as there are many potential (identical) firms and managers who can run the prison, the politician can offer to sell F to whoever pays the highest bribe: the highest bribe is of course $\frac{1}{2}S_M$ and so this is the politician's payoff.

Now consider the case where the politician keeps F public. How much would M pay for the privilege of being the warden? The problem M faces is that, prior to a contract with G being written, he has no job security; i.e., if the prison is public, there is nothing to stop the bureaucrat from replacing M with another

manager at date 0 (no relationship-specific investments have yet been made). Hence M's future payoff is zero, which means that this is also the politician's bribe! The conclusion is that the corrupt politician always wants to privatize F even if this is socially inefficient.

An equally important consideration ignored by assuming that politicians act in the public interest is that politicians often cater to special interest groups, such as labor unions, to win elections [Stigler 1971; Becker 1983]. Politicians may choose to use public money to provide jobs for the workers who then favor them in the elections, or to pay such workers wages above market levels. If spending public resources to transfer wealth to such interest groups is easier with in-house provision than with contracting, then politicians would have a bias toward too little privatization [Shleifer and Vishny 1994]. Patronage thus has the opposite effect to corruption: it leads to an excessive bias toward in-house provision. Interestingly, excessive employment in public firms may lead to excessively high quality (if having more people increases quality). For example, the quality of service in some European state airlines, such as Air France and Lufthansa, may be excessively high, and a possibly lower quality at private airlines is no evidence of lower efficiency.

Avoiding excessive public spending on politically powerful interest groups is indeed one of the principal goals of privatization throughout the world. In the United States, public sector unions are a powerful special interest group that has delivered some of the most vocal opposition to government contracting, including privatization of prisons [AFSCME 1985]. Some evidence suggests that the presence of strong public sector unions, as well as soft budget constraints of the government, are important obstacles to privatization of local government services in the United States [Lopez-de-Silanes, Shleifer, and Vishny 1997].

Positive considerations thus suggest an important trade-off between privatization and in-house provision. To the extent that corruption is a serious problem, the case for privatization is weaker than it is under benevolent government.[14] But to the ex-

14. A similar set of issues arises when the politician is lazy or unmotivated. Such a politician, like his corrupt counterpart, may write bad contracts that fail to protect the public, award contracts to inefficient suppliers, pay excessive prices, fail to supervise contractors, fail to enforce important contractual provisions, etc. Because privatization locks the government into these bad arrangements, laziness of politicians, like corruption, tends to point against privatization.

tent that political patronage is a severe problem, the case for privatization is stronger. A reformer considering privatization must have a clear idea as to whether corruption or patronage is a bigger problem in his polity.

IV. Privatization of Prisons

A. Overview

Privatization of prisons refers to the contracting out by the government of the operations of prisons to private companies. In the middle ages, prisons were typically private, but by the twentieth century, governments in most countries had taken over their operation. In the United States today, while private companies by law are restricted from meting out punishment, and public employees are usually present even in private prisons to make decisions on issues that can be interpreted as changes in the severity of prisoners' punishment, almost all the other activities related to incarceration can in principle be privatized. Private prisons have grown rapidly in the United States in the last decade from a capacity of about 1200 prisoners in 1985 to almost 50,000 prisoners at the end of 1994 [Thomas 1995]. Still, private prisons house only about 3 percent of the total prison population. Despite their quantitative insignificance, private prisons have stimulated an extensive debate on the cost and quality aspects of private incarceration (e.g., AFSCME [1985]; Donahue [1988, 1989]; Logan [1990, 1992]; Shichor [1995]; and others). Although there are no large sample studies of either cost or quality comparisons of public and private prisons, the available literature is informative enough for us to assess the relevance of the incomplete contracting approach to the study of prison privatization.

Private prisons are perhaps 10 percent cheaper, per prisoner, than public prisons.[15] The major reason for the lower costs appears to be the roughly 15 percent wage premium for public guards over private guards [Donahue 1988]. Part of the labor cost difference is that private contractors do not pay the public union wage premium; another part is that they hire lower quality work-

15. The comparisons are often disputed by critics of prison privatization, since private prisons apparently get somewhat less violent prisoners [Donahue 1988; Shichor 1995], and since some of the costs of private incarceration—such as the continued need for public oversight—are often ignored in the comparison. On the other hand, some of the costs of public prisons, such as forgone tax revenues and often even capital costs, are also often ignored in the comparisons.

ers. Since labor accounts for two-thirds of the incarceration costs, the differences in labor costs can roughly account for the 10 percent cost saving from private prisons.

The most controversial and interesting issues raised by private prisons concern the quality of service. Quality covers order in the prisons (security of prisoners, escapes, staff conduct toward prisoners, violence by guards and between prisoners, disciplinary procedures, etc.), amenities that prisoners receive (quality of food, health care, dental care, mental care, clothes, quality of facilities, prison work, entertainment, access to legal help, etc.), and rehabilitation (vocational training, other education, parole procedures, etc.). Objections to prison privatization typically focus on quality. To quote DiIulio [1987], "The history of private sector involvement in corrections is unrelievedly bleak, a well-documented tale of inmate abuse and political corruption. In many instances, private contractors worked inmates to death, beat or killed them for minor rule infractions, or failed to provide inmates with the quantity and quality of life's necessities (food, clothing, shelter, etc.) specified in their often meticulously-drafted contracts." This account is not extreme among those by critics of private prisons, such as Webb and Webb [1963] and Shichor [1995, Chapter 2]. On the other hand, Logan [1992] reports the results of a survey of three women's prisons in New Mexico that point to superior quality of the private prison. The central question of prison privatization is whether the poor history is a good guide to the present and the future.

Our theoretical analysis helps organize some of the thinking about prison privatization around the questions of what contracts can and do accomplish. Accordingly, we show first that many of the quality problems in incarceration can actually be addressed through contracts. Nonetheless, we also show that serious and unavoidable incompleteness remains even in the "best practice" existing contracts. Moreover, the incompleteness takes the form described in the model: contractors have an opportunity to reduce costs in ways that may lead to a substantial deterioration of quality. We also address the highly pertinent problems of corruption and poor enforcement of contracts. We conclude by applying the model to the choice of prison privatization.

B. What Contracts Can Accomplish

To assess the possibilities of contracting, we examine modern "best practice" in the United States. One measure of best practice

is accreditation by the American Correctional Association, a pseudo-public body that issues standards for good prisons (e.g., ACA [1990]) and accredits prisons that meet them. The ACA proposes 463 standards for adult correctional institutions covering such matters as administration and management of prisons (including personnel policies, staff training and development, bookkeeping, fiscal management, etc.), physical plant (including building and safety codes, security, inmate housing, prison size, etc.), operations (including rules and discipline, security procedures, inmate rights, special confinement, etc.), services (including inmate classification, food, hygiene, health care, social services, etc.), and inmate programs (work, education, recreation, mail, visiting, library, religion, etc.). Of these standards, 38 are mandatory and cover training and staff development, building and safety codes, security and control, safety and emergency procedures, inmate rights, classification, food service, sanitation and hygiene, health care, and work in correctional industries. To get ACA accreditation, which is renewed every three years, an institution must meet all 38 mandatory standards and 90 percent of the nonmandatory standards. In general, only a small percentage of either public or private prisons get ACA accreditation. However, even if a private prison does not get ACA accreditation, a prison contract can use some or many ACA standards as contract provisions.

ACA standards tend to be process rather than outcome oriented. They typically insist that a facility have a written set of rules or a policy manual dealing with specific matters, as well as staff to attend to these matters. ACA standards usually do not specify the content of these rules. Presumably, a manual helps train prison staff, as well as enabling inmates to complain (or sue) if the written rules are violated—something they could not do without a manual to point to. On some matters, such as food and health, ACA actually does specify minimum quality standards that would be relatively difficult to get around. On food, ACA specifies the number of meals that must be served, caloric intake, time between meals, conditions for preparation and keeping of food, as well as palatability. It also refers to the standards of the American Dietetic Association on food quality. A 1990 contract between the Corrections Corporation of America (CCA) and the Metropolitan Government of Nashville and Davidson County, Tennessee, illustrates the role that ACA standards can play in contracting. This contract covers the construction and three years

of operation of a prison by CCA, to be compensated by a fixed construction fee plus a per-diem rate for prisoners. The contract specifies that CCA must achieve accreditation of the prison by the ACA within two years of the service commencement day, and more generally relies on ACA standards, particularly in the matters of amenities and service. The contract also specifies that three government employees must be permanently present at the premises, including the Contract Monitor, in order to monitor contract performance as well as review disciplinary and appeals reports. A reading of this contract suggests that, if best practice is followed, many aspects of the quality of incarceration can be addressed through contracting.

C. Contractual Incompleteness

Although contracts can address some quality issues, in several important areas incompleteness is evident, and could in principle compromise the quality of service delivered by a private contractor. The two crucial areas we consider are use of force and quality of personnel. These areas have been the focus of much of the criticisms of private prisons (e.g., Shichor [1995]).

The mandatory ACA standard on the use of force is not especially detailed: "Written policy, procedure, and practice restrict the use of physical force to instances of justifiable self-defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority. In no event is physical force justifiable as punishment. A written report is prepared following all uses of force and is submitted to administrative staff for review." A separate, but equally vague, mandatory standard governs the use of firearms. The Tennessee contract allows the use of deadly force to prevent escapes, and of nondeadly force to enforce institutional regulations and orders, which is a weak restriction indeed.

In the area of the quality of personnel, the ACA (nonmandatory) standards require that a procedure be used to determine staffing needs, and that the vacancy rate be kept under 10 percent for any eighteen-month period. Correctional officers are also required to receive 120 hours of training in their first year, and 40 hours in subsequent years. Little is said about the quality of the training (except for topics covered) or the quality of the officers. The Tennessee contract follows the ACA on training, but

also specifies that "at the time the facility opens and during the first year of the contract, a minimum of 25 percent of contractor's security employees will have at least one year of corrections security experience. Davidson County residents will be given a hiring preference in staffing the facility." What is most interesting about these standards is how few there are, and how much discretion the contractor has in saving costs on personnel.

Does contractual incompleteness lead to the deterioration of quality? Unfortunately, no systematic evidence is available on this matter. We can get a glimpse of the issues by looking at two (very small sample) reports. The first is a comparative evaluation of two public prisons and one private (CCA-managed) prison in Tennessee, done by that state's government [State of Tennessee 1995]. Although this evaluation has concluded that all three prisons are overall of extremely high quality, with the implication that a cheaper private prison is a good deal for the state (see also *The New York Times* [September 19, 1995]), it is clear from the body of the report that the level of violence is higher in the private prison: "The number of injuries to staff and prisoners is a measure of the security and safety of the facility. During the fifteen month period, the private prison reported significantly more (214) injuries to prisoners and staff, compared to 21 and 51 for the two state prisons, respectively. The private prison also reported 30 incidents of the use of force, compared to 4 and 6, respectively, for the state prisons." The Tennessee report minimizes this evidence because of the possible differences in reporting practices, but it is suggestive nonetheless.

While CCA private prisons in Tennessee are widely regarded as a success of private prison management, ESMOR's detention facility in Elizabeth, New Jersey, operated for the Immigration and Naturalization Service (INS), is widely regarded as a failure, in part because a riot broke out at that facility on June 18, 1995. The ESMOR facility housed foreign nationals who were caught attempting to enter the United States illegally through Kennedy and Newark airports, and who were awaiting deportation—not exactly a hard core criminal crowd. ESMOR won the INS contract by significantly underbidding another private competitor, in part because it assumed in its bid lower wage rates for prison staff. The contract actually specified the types of workers that ESMOR was supposed to hire, but it turned out to be possible within the contract to hire as guards individuals who previously guarded

goods in warehouses. With respect to training, ESMOR evidently just violated the contract: the INS reports that ESMOR "did not meet requirements of the contract" in this area.

Overall, the ESMOR facility was seriously understaffed, guards did not receive enough training, guards were implicated in incidents of physical abuse of prisoners, and supervision of staff by management was lacking. When the riot broke out, the guards immediately ran away, and called the police from a pay phone. INS attributed many of the problems at the facility to ESMOR's cutting corners, principally on labor. The evidence in the report points to the possibility of cost savings by private contractors at the expense of quality, as well as to the government's failure to respond to explicit contract violations by the contractor (see footnote 14).

In sum, while systematic evidence on the quality of incarceration by private and public prisons is not available, the existing shreds of evidence suggest that in important dimensions, such as prison violence and the quality of personnel, prison contracts are seriously incomplete. This incompleteness can, and sometimes does, give rise to quality shortfalls in private contracting.

D. What Does Our Model Say about Prison Privatization?

Prisons seem to fit reasonably well into our framework. Although in some respects prison contracts are very detailed, they are still seriously incomplete. There are significant opportunities for cost reduction that do not violate the contracts, but that, at least in principle, can substantially reduce quality. Moreover, from the available evidence we have the impression that the world may not be far from the assumptions of Proposition 4. First, the welfare consequences of quality deterioration might be of the same magnitude as those of cost reduction ($b(e)$ and $c(e)$ are comparable). Second, the opportunities for quality innovation are limited ($\beta(i)$ is small). Under these conditions, Proposition 4 suggests that public ownership is superior.

Would ex post competition between prisons for inmates strengthen the case for privatization? One possibility is that convicts themselves choose the prison in which to serve their sentences, but this is probably a bad idea, since prisoner choice would encourage contractors to attract customers by allowing gangs, drugs, and perhaps even easy escapes. A more plausible alternative is to have judges choose a private prison to send a convict to,

with the idea that judges would send more inmates to higher quality prisons and fewer to lower quality prisons. Private contractors would then have the appropriate incentives to invest in quality improvements, and to avoid excessive cost reductions, to bring in more business. At the moment, such schemes have not been tried, in part because there is a shortage of prison capacity in the United States, but it is possible that they could be tried in the future. One potential disadvantage of such judge choice is that some judges might actually choose lower quality prisons because they want the inmates to get a stiffer penalty, whereas other judges might choose prisons that are soft on inmates. Contractors would then cater to the preferences of the judges, which need not coincide with social welfare.

Finally, the choice of whether to privatize prisons depends on the importance of corruption and patronage. Patronage does not appear to be a huge problem in prison employment in the United States, since the union premium as of this writing is not large. Corruption appears to be a greater concern, at least judging from the available anecdotal evidence. To begin, private prison companies are very active politically. For instance, ESMOR evidently lobbies politicians and makes political contributions to receive contracts [*The New York Times,* July 23, 1995]. The wife of Tennessee governor Lamar Alexander invested early and profitably in the stock of Corrections Corporation of America, which subsequently got involved very deeply in the privatization of Tennessee prisons with the governor's endorsement [*The New Republic,* March 4, 1996, p. 9].

A related problem is that contract enforcement cannot be taken for granted. The INS report concludes that ESMOR's changes in policies "hindered INS ability to effectively perform its oversight functions." The report also notes that ESMOR told its guards not to share information with the INS officials working on the premises, and in one instance encouraged the INS to reassign an officer who complained about the performance of the Elizabeth, New Jersey, facility several months prior to the riot. The report indicates that ESMOR violated the contract in some instances, and also pursued policies preventing the INS from enforcing the contract. But it is also clear from the report that the INS did not do what it could to enforce this contract. The INS report vividly illustrates how a government bureaucracy with relatively weak incentives has trouble enforcing a contract with a pri-

vate supplier determined to reduce its costs, even if this involves violations of the contract and not just the issues on which the contract is silent.

In sum, our model suggests that a plausible theoretical case can be made against prison privatization. This case is weakened if competition for inmates can be made effective, but strengthened by the relevance of political activism by private contractors. One instance in which the case against prison privatization is stronger is maximum security prisons, where the prevention of violence by prisoners against guards and other prisoners is a crucial goal [*The New York Times Magazine* 1995]. In many cases, the principal strategy for preventing such violence is the threat of the use of force by the guards. We have shown that it is difficult to delineate contractually the permissible circumstances for the use of such force. Moreover, hiring less educated guards and undertraining them—which private prisons have a strong incentive to do—can encourage the unwarranted use of force by the guards. As a result, our arguments suggest that maximum security prisons should not be privatized so long as limiting the use of force against prisoners is an important public objective. Consistent with this view, only 4 of the 88 private prisons in Thomas's [1995] census of private adult correctional institutions in the United States are maximum security. In contrast, private halfway houses and youth correctional facilities, where violence problems are less serious, are common [Shichor 1995].

V. Other Activities

In some ways, our model was constructed to fit prisons. However, it can help analyze other activities as well, as we show in this section. We also examine some of the model's limitations.

A. Straightforward Cases: Garbage Collection and Weapons Procurement

In the case of garbage collection, the damage to quality resulting from the private contractor hiring inferior employees or failing to maintain the equipment is probably trivial ($b(e)$ is low). Our analysis then implies that private provision is superior. This result obtains even though in garbage collection ex post competition is extremely expensive, since it is essential that the same company pick up garbage from neighboring houses [Donahue

1989].The superiority of private provision in garbage collection is documented by several empirical studies [Donahue 1989].

Weapons procurement is another case where our model points to the superiority of private provision. Although the damage to quality from cost reduction might be significant, to a large extent this problem can be dealt with contractually through the requirement that weapons meet well-specified performance requirements. Moreover, quality innovation is enormously important in weapons design, and the incentives of private suppliers are probably stronger than those of public employees. As a consequence, if $b(e)$ can be limited through contracts, Proposition 3 points to the superiority of private ownership.

B. Foreign Policy

In many situations the nature of the service that the government wants to be performed is extremely complex and unpredictable, so any contract is inherently extremely incomplete. Most actual decisions of the contractor have to be renegotiated at the government's initiative, which exposes the government to the high costs of paying up to the contractor who has a lot of power. For example, as Wilson [1989] shows, it is virtually impossible to describe in advance what services need to be performed to carry out American foreign policy, a task now assigned to the State Department. Suppose that the State Department were to be privatized, and a set of policies toward different countries specified in the contract. In this case, when the government wants to change its policy toward a country (say because Russia renounces communism), it would have to persuade the private contractor to change what it does. In this renegotiation the government presumably would have to pay the private contractor more than it would pay an employee, who is totally replaceable when few ex ante investments are involved. In-house provision in this case of few investments and enormous ex post holdup opportunities seems clearly superior.

A skeptic can respond to this analysis by suggesting that perhaps, ex ante, the government should auction off the foreign policy contract for a vast amount of money with an understanding that it is going to be regularly held up ex post. What is wrong with this arrangement? In our theory we have assumed that M is wealthy enough to pay up front for the right to own F when private ownership is optimal. However, in some cases, such as

the conduct of foreign policy, M may not be wealthy enough. This creates a further argument for public ownership when M's ex post hold-up power vastly exceeds the amount he can raise ex ante for the contract. If M cannot compensate G in advance for all the future holdups when G changes the contract, then the extraction of surplus from G by M is socially wasteful. Hence the government may wish to own F simply to avoid having to compensate M when it changes its mind at date 1.[16] This logic confirms the conclusion that foreign policy should be conducted by government bureaucrats.

C. Schools

An important example that goes outside of our basic model is the provision of schooling. For schools, the damage to quality from cost cutting, $b(e)$, may be large, but innovation is probably important, and the incentives of publicly employed teachers, especially when they are protected by unions, are weak. Our propositions, therefore, do not give a clear answer as to which arrangement is superior. The key aspect of schools, however, is the potential for ex post competition. In voucher arrangements combined with school choice, the government pays for each child's education, but children and parents select schools. We conjecture that the case for such private arrangements is extremely strong. School choice would force private schools to compete for students by providing higher quality, since schools cannot compete in price when students pay with vouchers. This competition should significantly reduce the incentive to cut quality while cutting costs, as well as increase the incentive to innovate quality. Indeed, the available evidence suggests that competition between schools is associated with a higher quality of education [Hoxby 1994].

Critics of vouchers and school choice often point to a particular aspect of quality that they believe would fall as a result of privatization, namely reduction of access of some students to good education. Specifically, critics fear that sorting of students by ability would increase as a result of such arrangements, which they regard as socially undesirable. Such sorting can take two

16. This argument is developed further in Trinh [1996]. One may ask why M could not borrow against the receipts from his future hold-up opportunities. The answer is that a bank may be unwilling to lend to M, since there is nothing to stop M from "holding up" the bank by refusing to hold up the government. That is, having received his loan, M can threaten not to hold up the government at date 1 and use this threat to renegotiate downward his repayment to the bank [Hart and Moore 1994]. Anticipating this, the bank will refuse to lend to M.

forms. First, good private schools paid with vouchers would select the best students, leaving the not-as-good students to not-as-good schools. Second, private schools would avoid expensive-to-educate children altogether, who would then get stuck in residual government programs. Critics charge that such outcomes are less socially desirable than those involving less sorting. Some school districts have tried to solve these sorting problems contractually by, for example, using courts to allocate students to private schools that wish to be paid with vouchers [Moe 1995]. Whether contracts can successfully address the concerns of the critics of school choice, and whether these concerns are actually justified from the social welfare viewpoint, are questions requiring further inquiry.

D. Health Care

In the case of health care, as with education, the government wants to pay for the services of at least some consumers, and needs to design a good arrangement for doing so. One aspect of this design is whether hospitals should be private or public. In the analysis of optimal ownership, there are some similarities between schools and hospitals, as well as some differences. To begin, in health care, as in education, gains from innovation are enormous, but so is the damage to quality from cost cutting. Moreover, the distributional aspect of quality is extremely important in both services, namely, the danger that expensive-to-treat consumers would be denied care if the government pays less than it costs to treat them.

One further similarity is that ex post competition between hospitals—letting patients choose their hospital—can play a role in health care. Such competition generally strengthens the case for privatization. However, a crucial difference is the limited ability of consumers to assess the quality of health care they receive. Consumers often cannot tell whether hospitals have failed to provide care to save costs, and hence would not so readily change suppliers in response to poor quality. For this reason, the combination of private ownership and competition would not be nearly so effective in health care as in education, making the case for some government ownership stronger.

Perhaps because of all these concerns about private provision, most countries have responded to the need to provide health care to all their people through government provision. The United States has been different in relying on both private and

public hospitals, with the latter taking care primarily of indigent patients. Historically, private hospitals have been paid on a cost-plus basis—an approach that our model does not accommodate (since we assume that costs are nonverifiable) but which, unsurprisingly, has proved extremely expensive. More recently, the form of compensating providers has shifted to fixed fees for services, a contract very similar to that analyzed in our model. Not surprisingly, these contracts have increased concerns about quality deterioration, particularly in the so-called Health Maintenance Organizations. An analysis of health care would require a significant generalization of our model, especially since verification of costs and cost-plus contracts have played an essential role in paying for this service.

E. Police and Armed Forces

Consider finally some basic services provided by the government that nobody seriously thinks of privatizing: the police and the armed forces. Our framework helps to explain why these services should not be privatized.

If the police or armed forces were privatized, the owners of the resulting private companies would have enormous power. Part of this power would stem from the direct ownership of weapons that are currently in public hands. The owners could use this power to hold up the government and society. For example, suppose as an extreme case that nuclear weapons were sold off to a private company and an (incomplete) contract was written with the company as to how these weapons should be used in the event that the country is threatened with attack. The concern is obviously that the private company would wriggle out of the incomplete contract and either threaten to withhold the weapons in the event of an emergency to extract a huge side-payment from the government, or even threaten to use the weapons against the country itself unless it receives such a side-payment.

We stress that keeping the nuclear stockpiles—or armed forces—public does not eliminate the possibility of attempted holdup. A general who is a state employee could use his access to nuclear weapons to attempt to hold up society. After all, coups and rebellions by the armed forces do sometimes occur. However, there is a difference between the private and public cases. If nuclear weapons or the armed forces are publicly controlled, the government can take early action to prevent a potential holdup. If it suspects that an errant general is engaged in treason, it can

fire the general. In contrast, in the private case, the government would have to wait until a clear breach of contract occurred; this might be too late.

VI. Conclusion

We have examined the conditions that determine the relative efficiency of in-house provision versus outside contracting of government services. Our theoretical arguments suggest that the case for in-house provision is generally stronger when noncontractible cost reductions have large deleterious effects on quality, when quality innovations are unimportant, and when corruption in government procurement is a severe problem. In contrast, the case for privatization is stronger when quality-reducing cost reductions can be controlled through contract or competition, when quality innovations are important, and when patronage and powerful unions are a severe problem inside the government.

We then applied this analysis to several government activities using the available evidence on the importance of various factors. We concluded that the case for in-house provision is very strong in such services as the conduct of foreign policy and maintenance of police and armed forces, but can also be made reasonably persuasively for prisons. In contrast, the case for privatization is strong in such activities as garbage collection and weapons production, but can also be made reasonably persuasively for schools. In some other services, such as provision of health care, an analysis of the efficiency of alternative arrangements is a great deal more complicated and requires a much more detailed model of competition, contracts, and regulation than we could provide in this paper. We defer such analysis to future work.

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C

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Developments in the Law

*1868 III. A TALE OF TWO SYSTEMS: COST, QUALITY, AND ACCOUNTABILITY IN PRIVATE PRISONS

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Private prisons are on the rise. Privately operated juvenile facilities-- mostly community-based group homes or halfway houses--***1869** and federal adult halfway houses have been common in the United States since the 1960s. [FN1] In 1979, private firms began contracting with the Immigration and Naturalization Service to detain illegal immigrants pending hearings or deportation. [FN2] Private, large-scale investment in the construction and management of conventional prisons and jails dates from the mid-1980s. [FN3] Prison privatization has been driven not only by the growing support among lawmakers and the public for private provision of traditional government services, [FN4] but also by exploding prison populations resulting from stricter drug and immigration laws and changes in sentencing procedures. [FN5]

By the end of 2000, there were 87,369 state and federal prisoners in private detention facilities in the United States--6.3% of all state and federal prisoners, [FN6] and 22.7% more than in 1999. [FN7] Of these, 15,524 were federal prisoners (10.7% of all federal prisoners) and 71,845 were state prisoners (5.8% of all state prisoners). [FN8] The use of private facilities is concentrated in the South and the West. [FN9] Texas and Oklahoma have the greatest numbers of inmates in private facilities; only six states--Alaska, Hawaii, Montana, New Mexico, Oklahoma, and Wisconsin, which combined account for approximately one-fifth of all state inmates--house over 20% of their prison population in private facilities. [FN10] Privatization has been less widespread in ***1870** local jails than in state prisons--only about 2% of jail beds are private--but jail privatization has been called the "next frontier" of privatization. [FN11]

Comparative studies on the cost and quality of private and public prisons give reason to be cautiously pleased with private prison performance. [FN12] The empirical evidence is consistent with economic theory, which predicts that with privatization, costs will fall and quality (however defined) may rise. [FN13] The idealist could ascribe the satisfactory performance of private prisons to the power of market incentives; the cynic could point out that given public prisons' bleak history and patchy present, private prisons perform satisfactorily compared to a rather low baseline. Each would be right.

Public prisons are not the most accountable of government systems; in fact, under certain circumstances, private prisons may be more accountable. In the qualified immunity context, recent Supreme Court decisions such as Richardson v. McKnight [FN14] and Correctional Services Corp. v. Malesko [FN15] have held private prisons to at least as high a standard of constitutional protection as public prisons. [FN16] Judges' and juries' greater skepticism of private agencies than of government may also make private prisons more accountable; moreover, government oversight of private prisons may be less deferential than government oversight of its own operations. [FN17] In addition, private prisons have substantially greater market accountability because they are concerned with winning new contracts and renewing old ones, and with avoiding both adverse publicity and drops in stock price. [FN18] The continued promise of private prisons requires three concurrent innovations. First, evaluators must develop a rich set of performance measures, and prison data must be gathered and publicized. [FN19] Second, the government must implement performance-based contracts that tie compensation to actual results. [FN20] Finally, the government should maximize the efficiency gains from privatization and minimize

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opportunities for capture by institutionalizing competition between public correctional departments***1871** and private prison firms and making contract monitoring independent of both the public and the private sectors. [FN21]

A. Private Prisons, Criminal Policy, and Democracy

Critics have argued that statutes authorizing private prisons unconstitutionally delegate core government functions to private parties. [FN22] This contention has never been tested in court, but such arguments seem dubious given the uneven history of the nondelegation doctrine and the Supreme Court's recent decision in American Trucking Ass'ns v. Whitman. [FN23] True, private prison officials "determine when infractions occur, impose punishments and . . . make recommendations to parole boards," [FN24] but as long as they implement well-defined correctional policy with sufficient oversight, this delegation seems unobjectionable on federal constitutional grounds.

One modern-day objection to private prisons stems from opposition to corrections and criminal policy generally: if the problem is the incarceration of too many people, making prisons cheaper or more efficient is a false solution and may exacerbate the problem. [FN25] Another objection is the "expressivist" critique "that to turn over responsibility for administering prisons and jails to private, for-profit companies at some level compromises the legitimacy of the state's exercise of its authority to punish." [FN26] This Part takes a frankly consequentialist view of private prisons and this does not address these critiques. Private prisons might be inherently problematic under some moral theories and ***1872** acceptable under others (both consequentialist and deontological), [FN27] but space constraints preclude engaging this debate.

What about the specter of corruption? Industry lobbies government, and regulatory agencies can be captured by the entities they regulate; the private prison industry is no different. [FN28] Not only may private prison companies lobby for preferential treatment, they may also, as entities that directly profit from incarceration, influence substantive criminal legislation by supporting tough-on-crime candidates, scaring the public about crime, and advocating tougher sentencing. [FN29] The story is plausible, [FN30] but it does not explain current levels of prison privatization or modern-day demand for more and cheaper prisons because the forces leading to the explosive growth of the prison population substantially predate the modern growth of the private prison industry. [FN31]

Moreover, though private prison companies do lobby state and federal governments, so do prison guard unions, which also benefit from increased incarceration rates and prison construction. [FN32] Prison guard ***1873** unions generally contribute vastly more money to politicians than do private prison companies. [FN33] The California prison guard union, for example, endorses and contributes millions of dollars to state candidates and "is among the largest campaign donors in the state." [FN34] Does privatization further distort criminal policy by replacing a single strong voice for incarceration with two voices? Or does the second, private, voice weaken the first by generally weakening the underlying public sector union? The answer is unclear.

Quite apart from whether political influence peddling distorts criminal policy, does such peddling weaken the case for privatization? Not necessarily, particularly when one considers different kinds of influence peddling: corruption and patronage. If a politician is corrupt and uses his power to extract money from the contractor, then privatization is likely to be inferior to public provision. Conversely, if a politician is involved in patronage and uses his power to pursue other political objectives, like serving politically powerful interest groups such as public employees' unions, private provision is preferable. [FN35]

B. Do Private Prisons Work?

1. Obstacles to Effective Assessment.--Effectively evaluating prisons requires specifying goals and objectives, developing measures and indicators, and collecting comparison group data. Unfortunately, the political process does not value rigorous evaluation highly. [FN36] Some states require only cost evaluation; [FN37] only a handful require comparisons of both cost and quality, often to comply with statutory targets. [FN38] ***1874** Some neglect

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evaluation altogether. What monitoring data exist are often inadequate for outcome evaluation. [FN39]

As if that were not enough, "cost" and "quality" are not clearly defined. Public agencies and private firms measure costs differently. Public prison budgets usually exclude various central administrative and support expenses, such as medical, legal, and personnel administration services, which other state agencies typically handle. Private budgets include these costs but do not include the government's costs of preparing and monitoring contracts. [FN40] As for quality, definitions differ across studies, and quality is difficult to compare in any case. If one facility has fewer assaults but more escapes than another, is it better or worse?

Few studies are rigorous. [FN41] Even reasonably good studies leave much to be desired. No study seriously controls for many important factors that influence misconduct rates, such as staff-to-inmate ratios, custody technology, correctional policies, or age and race of inmates. [FN42]

***1875** Furthermore, comparative studies do not adequately address serious overcrowding problems. [FN43] Overcrowding, which may increase inmate violence and the incidence of infectious and stress-related diseases, [FN44] thereby contributing to unconstitutional conditions, [FN45] is a serious problem in prisons and jails. Less expensive prisons allow for more capacity because the same prison budget can build more prisons, and increased capacity can relieve overcrowding. (Of course, cheaper prisons do not guarantee greater capacity, and greater capacity does not guarantee decreased crowding; still, it is reasonable to expect that cheaper prisons will not exacerbate crowding.) Thus, to the extent that private prisons decrease costs, [FN46] privatization can improve conditions in both public and private prisons. Comparative studies between private and public prisons at a specific moment in time cannot register this across-the-board quality increase.

Finally, most studies do not analyze both cost and quality and thus are of limited value in assessing private prisons. Studies that do not look at both elements simultaneously cannot begin to analyze the costs and benefits of private prisons. [FN47]

2. Evidence from the Studies.--Studies that look at cost or quality alone do, however, provide some information. The most rigorous studies [FN48] find clearly positive cost savings. [FN49] On the quality side, comparisons are trickier, as there is no single metric representing quality. ***1876** But none of the more rigorous studies [FN50] finds quality at private prisons lower than quality at public prisons on average, and most find private prisons outscoring public prisons on most quality indicators. [FN51] Most of these quality studies do not examine cost, but as private prisons are not expected to be more expensive, this result belies statements in the prison literature that assume that cost reductions must come at the expense of quality. [FN52] Indeed, the few methodologically sound studies that evaluate both cost and quality suggest that cost is no higher in private facilities and quality is at least roughly equivalent.

Researchers at Louisiana State University compared three Louisiana prisons, one public and two private. [FN53] The researchers concluded that the prisons were "as comparable as reasonably possible in terms of history, capacity, design, types of inmates, number, gender and ethnicity of inmates." [FN54] Privatization produced estimated cost savings of 12-14 percent (costs of $22.93 and $23.49 per inmate per day for the two private facilities, compared to $26.60 for the public facility). [FN55] The quality comparison was a wash, with the private facilities faring better in some areas and worse in others. The private facilities, among other things, reported fewer critical incidents, provided safer work environments for employees and safer living environments for inmates, and had proportionately more inmates complete basic education, literacy, and vocational training courses. [FN56] The public prison had fewer (zero) escapes and fewer aggravated sex offenses, more effectively controlled substance abuse among inmates, more consistently offered a broad education and vocational adult education program to inmates over four years, and provided more treatment, recreation, and rehabilitative services to inmates. [FN57]

An Arizona study performed in 2000 by the state Department of Corrections compared three private prisons with fifteen public ones. [FN58] The study found average savings of 13.6% at the private prisons in ***1877** 1998 ($40.36 per inmate per day compared to $46.72 at public prisons) and 10.8% in 1999 ($40.88 compared to $45.85). [FN59] The quality comparison gave the edge to neither group: private and public prisons had about

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equal inspection results, though public prisons generally had somewhat less severe disciplinary problems. [FN60]

Finally, a 2000 study of Florida prisons compared the private South Bay Correctional Facility, operated by Wackenhut Corrections Corporation, with the most comparable public facility, Okeechobee Correctional Institution. [FN61] After adjusting for various differences, including capacity, the study found that the private prison's costs were 3.5% lower than the state's costs for fiscal year 1997-98 and 10.5% lower for 1998-99, [FN62] meeting the 7% cost reduction mandate established by law. [FN63] Additionally, construction costs were 24% lower for the private prison. [FN64] As for quality, the study found that South Bay had fully operational programs within six months of opening (as opposed to three years for Okeechobee), had fewer health service deficiencies than Okeechobee, was able to house more inmates three months after opening than Okeechobee could house after seventeen months, and implemented an innovative approach to housing certain "close management inmates." [FN65] On the negative side, two inmates escaped from South Bay in 1999, while none had ever escaped from Okeechobee. [FN66]

3. That's Fine in Practice, but How Does It Work in Theory?--Private prisons fare rather well in quality comparisons, but why? Contracts are necessarily incomplete: because the government and the private provider can only describe a general service and cannot specify beforehand in full detail exactly how the contractor should provide that service, the contractor has wide latitude in running the prison. [FN67] This latitude permits the contractor to cut corners, reducing costs by reducing quality. It is no surprise that early economic models of privatization ***1878** predicted that private ownership would reduce both cost and quality. [FN68]

But more recently, economists have observed that cutting corners is not the only way to make money. It is easy to assume that an aversion to out-of-pocket costs will deter firms from implementing a "quality innovation" [FN69] --but this assumption ignores opportunities for contract renegotiation. Because private prison companies can suggest such innovations to the government and renegotiate their contracts (or, in the real world, include extra services in a higher bid), they can capture some of the gains from quality innovation. They therefore have greater incentive to innovate in this way than their public counterparts, who cannot capture such gains.

Thus, while economic theory predicts that costs will decline under private management, it does not necessarily predict the same of quality. [FN70] Whether quality increases or decreases overall depends on whether cost-cutting or quality innovation has a greater effect. [FN71]

This simple model does not take into account other factors that may strengthen the case for privatization. For instance, the government may observe a provider's harmful cost cutting and hold it against the provider in future rounds of bidding or decline to renew the contract. If even a few private providers compete against each other, the government can seek an alternative provider once it observes harmful cost cutting, rather than having to retake control of the prison. [FN72] In addition, because of inefficiencies in current prison practices, there may be opportunities for cost cutting that does not reduce quality. [FN73]

4. How Does the Private Sector Save Money?--The private sector saves money in several ways. First, private companies save money at the design and construction stage. They can typically design and build prisons in half the time required for governments to do so, because they can avoid the layers of red tape that play a role in safeguarding ***1879** against government corruption [FN74] but are arguably unnecessary when the government purchases a service from the private sector (using a procurement process that itself has safeguards against government arbitrariness). Private firms are also usually free of purchasing restrictions and subcontracting quotas. Contracting out prison design and construction reduces costs by 15 to 25 percent. [FN75]

Second, private companies save money at the operation stage. The main savings come from reducing labor costs, both through lower wages [FN76] and through more efficient use of labor. A private firm that had a role in designing a facility would be likely to use innovative design techniques that could minimize the number of guards required to monitor inmates. Moreover, because they are not bound by civil service rules in managing their personnel, [FN77] private prisons use roughly one-third the administrative personnel of government prisons and use incentives to reduce sick time and consequent overtime expenditures. [FN78] Private firms also save money by

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"maintaining tight control of inmates and keeping them well-fed and occupied with work, education, or recreation." [FN79] Finally, private firms are free from many bureaucratic purchasing rules and can often buy supplies at lower cost than the government. [FN80]

C. Public and Private Accountability

Abuses happen in any system. But how do different systems react to abuse when it occurs? While there is no systematic information about the reaction to prisoner abuse in public and private prisons, case studies may provide a flavor of the accountability mechanisms at work.

1. Private Prisons' Legal Accountability.--The traditional hostility of juries toward corporate defendants, private prison guards' inability to claim qualified immunity in § 1983 [FN81] civil rights suits, and ***1880** courts' unwillingness to defer to the judgment of corporations all increase private prisons' legal accountability relative to public prisons.

(a) Jury Hostility.--Empirical studies have found that juries are more likely to award large verdicts against corporations than against governments. [FN82] Jury hostility also affects settlements, which are made in the shadow of expected recovery amounts at trial. Consider, for example, the case of the Northeast Ohio Correctional Center, a federal prison in Youngstown, Ohio, run by CCA under a contract with the District of Columbia. As part of a recent settlement of a lawsuit alleging inadequate security and medical treatment as well as excessive force, CCA paid $1,650,000 in damages to the 2000 members of the inmate class--an extraordinarily high settlement amount for class actions involving prisoners. [FN83] This huge settlement amount probably reflects the well-known tendency of juries, rightly or wrongly, to be less sympathetic to large corporate defendants. Moreover, monetary awards against public prisons are more limited. [FN84]

(b) Qualified Immunity: The New Bifurcated Regime.--A danger inherent in privatization is that public responsibilities will be performed by private individuals without effective oversight. Recent cases, however, have sought to avoid this pitfall and, in some ways, hold private prisons to an even higher standard than public prisons. Under Harlow v. Fitzgerald, [FN85] government officials (including prison guards [FN86]) performing discretionary functions are shielded from liability for civil damages if their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would ***1881** have known." [FN87] In Richardson v. McKnight, [FN88] however, the Supreme Court held that private prison guards do not enjoy this qualified immunity. [FN89] Thus, McKnight bifurcates the treatment of public and private prisons in a way that makes private prisons more, not less, accountable. [FN90]

Does this dichotomy make sense? If governments are cost-minimizers, it does not. [FN91] In the presence of liability, cost-conscious governments would hire timid guards, who require less indemnification, for public prisons, and would choose timid contractors, who submit a lower bid, for private prisons; thus, the argument for qualified immunity would not depend on whether the prison is public or private. [FN92] But governments often do not minimize costs. They often face soft budget constraints, may award contracts to friends or political allies, and may monitor prisons more or less depending on their political ideology. [FN93] Because government officials' motivations are complex, it is difficult to predict how the effects of qualified immunity will vary as between public and private prison operators. The efficiency arguments for only extending qualified immunity to public guards are thus somewhat indeterminate.

Considerations of compensation and accountability, however, cut against immunity for both public and private prisons. On the compensation side, immunity presumably makes a difference in some cases, and where it does, it may prevent victims from being compensated. On the accountability side, immunity allows prisons to externalize the ***1882** cost of constitutional violations onto prisoners--not a particularly well-represented segment of society.

Nor does qualified immunity seem necessary to reduce the drain on the court system. Most § 1983 prison lawsuits are considered frivolous, and almost all fail before getting to the merits. [FN94] Qualified immunity

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would probably not change inmates' filing behavior, and even if it did, it is not clear that this would be desirable, because our system deliberately tolerates a certain amount of meritless litigation to avoid missing the occasional worthwhile claim. A regime of liability, with high procedural hurdles (such as requirements of exhaustion of administrative remedies [FN95]) or penalties for frivolous litigation (such as the frequent-filer penalties in the Prison Litigation Reform Act [FN96]), may better serve the goals of compensation and accountability for both government and private actors.

Thus, given the bifurcated regime established in McKnight,[10] private prisons are, if anything, more accountable for their constitutional violations than are public prisons. The presence of this additional judicial check should in turn increase private prison quality.

(c) Other Legal Accountability Mechanisms.--Not only may privatization make juries more skeptical of prisons and guards more susceptible to suit, but it may also make judges less deferential. Courts have traditionally been deferential to the government in prison suits because of the common judicial unwillingness to second-guess the political branches. [FN97] Though this unwillingness is understandable, deference is the enemy of robust accountability. Yet courts have often been hostile to private, for-profit delegations; while the nondelegation doctrine is almost never applied, judicial hostility manifests itself through more vigorous due process scrutiny. [FN98] As administrative power moves to private prison corporations, courts may abandon their deference to prison officials, because conflicts of interest will appear more obvious and contractual terms will necessarily be incomplete. [FN99]

In addition to litigation, government monitoring adds a further layer of review. While public prisons have government monitors, ***1883** monitors of private prisons (even if captured to some degree) are likely to be more independent than monitors of government-run prisons. [FN100]

2. Private Prisons' Market Accountability.--Market mechanisms, such as governments' ability to rescind or decline to renew private firms' contracts, and more generally, the potential for bad publicity to cause a drop in firms' stock prices, further increase private prison companies' accountability.

(a) Contract Rescission.--A private prison may have its contract rescinded. This possibility is not always as easy as it sounds--the private prison industry is a somewhat concentrated oligopoly, though that may change with increased privatization. But as long as more than one firm is operating and the government continues to run part of the prison system, someone will be available to take over a dysfunctional prison, making the government's threat to rescind a contract somewhat credible. At any rate, even such imperfect discipline is more difficult to impose on public prisons--the government cannot take over its own prison except by firing civil servants, and it cannot have a private firm take it over except by opening a new bidding process, which is more difficult than finding someone to take over an existing contract.

In 1995, for example, an investigative reporter and a surprise inspection revealed appallingly crowded, unsanitary, and abusive conditions at the Bowie County Correctional Facility, a private "warehouse turned prison facility" in Texarkana, Texas, housing 500 inmates from Colorado. [FN101] After a federal lawsuit and a riot, the state of Colorado terminated Bowie County's contract and relocated its inmates. [FN102]

At the Seal Beach City Jail, operated by the private Correctional Systems, Inc. since 1994, [FN103] two private prison guards were indicted in August 2001 for allegedly "arranging and concealing an attack on a drunken inmate who was singing boisterously in the jail's detoxification cell." [FN104] Within ten weeks of the attack, both guards had been fired; one guard was charged with federal civil rights violations and the other with being an accessory after the fact for trying to conceal the attack. [FN105] The first guard was sentenced to over four years in ***1884** prison. [FN106] This incident prompted the city to review its contract with CSI and to consider other options. [FN107]

Similarly, in Santa Fe County, New Mexico, CCA brought in prisoners convicted of murder and rape from Oregon to fill its private jail cells but reportedly failed to notify the Sheriff's Department that it was housing

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inmates who posed a danger to the public. The Oregon prisoners were removed from the jail only after county officials threatened to cancel the county's contract with the company. [FN108]

(b) Adverse Stock Price Effects.--Private corporations are sensitive to drops in their stock prices. Contract rescission, as well as the possibility of lawsuits with high damage awards, affects profitability, and perceptions of a company's profitability are reflected in the price of its stock. Thus, a private corporation is punished financially for bad news, and possibly for mismanagement that may impose costs in the future. For example, the INS detention center in Elizabeth, New Jersey, run by Esmor Corrections, erupted in a massive riot in 1994 because the company had continuously cut corners on food and facility upkeep. Esmor's stock price dropped from $20 a share to $7 after news of the riot became known. [FN109]

While fear of stock price drops may make private prisons conceal their problems [FN110]--CCA has been accused of covering up escapes from the Youngstown prison described above--such secrecy has its limits, because escapes, riots, and prisoner litigation are hard to cover up. Following disclosure of the problems at the Youngstown prison, CCA's stock hit a one-year low. [FN111] A more plausible story is that private companies are more concerned with keeping their stock prices high over the long term by insisting on sound management and that guards and wardens can be encouraged to act responsibly through stock ownership in the company. [FN112]

(c) Greater Market Flexibility.--Not only are private prisons under greater market pressure to keep conditions from getting out of hand, they are also more able to change because they are free from some of the constraints of government management. In July 2001, for ***1885** instance, four hundred prisoners in a CCA prison in Kentucky started a riot in which "inmates set[] mattresses on fire and toss[ed] TVs and toilets through the windows. Two weeks later, CCA fired the warden and his top assistant, citing 'policy violations" ' [FN113] Government employment protection, in this case, would have been an obstacle to disciplining the offending prison officials. [FN114]

3. Are Public Prisons Any More Accountable Than Private Prisons?--(a) The Dynamics of Organizational Stasis.--Susan Sturm describes the "dynamics of organizational stasis," which "lock in the current conditions in prisons" (both public and private) and "disable regular prison participants from achieving institutional self-correction": [FN115]

Even in the face of riots, violence, or public exposure of brutal conditions, legislatures frequently provide minimal support for change. The familiar study commission or task force conducts a public hearing or investigation, culminating in a report with recommendations that are infrequently enacted into law. Even when the legislature does respond to abuse with legislation, there is little accountability for its enforcement and the administration may comfortably ignore it without legislative sanction. [FN116]

Much of Sturm's description of prisons applies equally to public and private prisons--inmates are generally powerless to change prison conditions, [FN117] and both guards and administrators often resist reform. [FN118] Other elements, however, apply primarily to public prisons: unions concentrate on preserving their members' pay, benefits, and seniority, [FN119] and the budgetary process, in which this year's allocation is presumed to be the baseline for next year's, supports the status quo. [FN120] It is well known that public bureaucracies have different incentives and attitudes toward change than do private companies. [FN121] Companies concerned about winning a bid, retaining their contracts, maintaining their stock price, or just being marginally more protected against prisoner lawsuits seem more likely to overcome their institutional stasis.

(b) Corcoran State Prison.--Contrast the above factors, which promote accountability in private prisons, with the sad tale of Corcoran ***1886** State Prison, a California public prison, in which guards killed seven inmates and wounded forty-three others between 1989 and 1995. [FN122] Rival gang members fought in human cockfights overseen by prison guards; officers abused and beat inmates; problem inmates were disciplined by being locked in a cell and then beaten or raped by an inmate enforcer dubbed the "Booty Bandit." [FN123]

Conditions at Corcoran are not typical of public prisons. What is striking about Corcoran, however, is how little was done to alter these conditions even once they were discovered. The Corcoran episode serves as a reminder of

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the weakness of public prisons' accountability. When replacing one's service provider is difficult--and especially when the provider is identified with the purchaser, capturing the policy advice process--moral outrage at abuses can only get one so far.

In 1994, the FBI began its probe of Corcoran, and in 1996, prompted by media attention, the state launched a pair of investigations, one by the Department of Corrections and another by the Attorney General's office. [FN124] These investigations were stymied by political pressure from the governor's office and the prison guard union, and the state probes yielded not a single criminal charge. [FN125] Instead, state investigators "spent considerable manpower trying to dig up dirt" on the whistleblowers who had reported these abuses to the FBI. [FN126] One whistleblower, Richard Caruso, was the only officer disciplined as a result of the state investigations (though he sued and received a large settlement from the state, the largest amount ever given to a whistleblowing officer in California). [FN127] Another whistleblower changed jobs within the prison system because of alleged retaliation by prison officials (and recovered nothing). [FN128] The FBI inquiry ultimately resulted in charges against eight officers, but all were acquitted in June 2000. [FN129]

D. The New Frontier: Information, Contracts, Monitoring

While private prisons today provide acceptable quality at a lower cost than do public prisons, they will only continue to do so as long as their ***1887** buyers--federal and state governments--care. Bad things still happen at private prisons. Private prison companies have not always been forthcoming with information about the types of inmates they are holding, [FN130] and reports of maximum-security prisoners being housed in portions of private prisons designed for the general population are not uncommon. [FN131] Effective judicial, legislative, and administrative oversight continues to be necessary. Perhaps the scope of prison litigation should be expanded to keep both public and private prisons honest, but there is no substitute for performance contracts that encourage quality improvements, effective monitoring, and information gathering and disclosure.

1. Performance Measures.--Susan Sturm notes that prison officials often know little about their own operations. [FN132] Prison administrators gather some information to prove the prison's compliance with court orders, [FN133] but it would be preferable for them to do so without being forced. One way to increase private prisons' disclosure, at least in the case of federal institutions, is by subjecting them to the same Freedom of Information Act disclosure requirements as public prisons [FN134]--though this, too, is a piecemeal solution.

Perhaps the environmental information regime can provide a model for the disclosure of prison information. The Toxics Release Inventory (TRI), [FN135] which requires that industrial facilities report the release and transfer of specific chemicals, has been credited with dramatic reductions in pollution. [FN136] In part because of the existence of these reporting requirements, much formerly fragmented and incomparable data has become standardized and can be aggregated to allow ***1888** comparisons of different firms or states, or to track performance over time. [FN137]

Of course, TRI mandates only that information be gathered and made public, not that anything be done with that information. But the mere availability of information, whether environmental information about industrial facilities or correctional information about prisons (floor space, number of violent incidents, recidivism), has real effects. [FN138] First, "you manage what you measure"--administrators have a natural desire to improve what they have data about. [FN139] Second, information gathering encourages peer monitoring within an industry, and industry self-regulation can be a valuable supplement to other forms of monitoring or control. [FN140] Third, information is valuable to regulators, would-be regulators, industry actors seeking to stave off regulation, community monitors and "informal regulators," capital markets, labor markets, and customers (in the prison case, state and federal government entities). [FN141]

Information as regulation has its critics. Regulation proponents charge that information does not guarantee any action or results and that it is most useful in combination with other regulation. [FN142] From the other side, critics charge that because information is highly contextual, any mandated information will be too simplistic and

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perhaps misleading, especially when presented at a high level of aggregation. [FN143] But while particular information initiatives may be flawed, and while mere disclosure may not be sufficient, collecting and publicizing a rich (and meaningful) set of performance indicators will increase the incentives for improvement that are already inherent in the competitive contracting process.

2. Improving Performance Through Contract.--At best, contracts "represent potentially useful accountability instruments [and] vehicles for achieving public law values, such as fairness, openness, and accountability." [FN144] Private prison contracts should have specific terms, graduated penalties, and strong oversight by a "contract manager" working for the public agency; they should require private prisons to "observe minimal administrative procedures such as notice and hearing requirements," and perhaps explicitly give inmates or surrounding communities third-party beneficiary rights, which would allow oversight ***1889** through contract litigation when government oversight fails. [FN145] States could also require, as contractual terms, compliance with American Correctional Association and National Commission of Correctional Health Care standards. [FN146]

Moreover, states could mandate that private prisons provide the same training that is required of public prison guards, [FN147] though requiring certain inputs is presumptively less effective than looking to outcomes where these are measurable. Contracts could require that private firms carry civil rights liability and other insurance; that they disclose conflicts of interest; that they allow access to records and entry to the facility by inspectors; or that they be independently monitored or audited by certified professionals. [FN148] Finally, contracts could tailor termination rights and provide for easy amendment of contractual terms. In short, contract designers can be highly creative--and thorough--in writing accountability into contractual terms.

Most basically, corrections departments should move toward performance-based contracts. Ideally, performance-based contracts should "clearly spell out the desired end result" but leave the choice of method to the contractor, who should have "as much freedom as possible in figuring out how to best meet government's performance objective." [FN149] These contracts also structure contractor payments to encourage the desired results, rewarding the contractor for improvements and penalizing it for poor performance or rising costs. [FN150]

This approach seems feasible for corrections. The American Correctional Association is revising its accreditation standards to include performance measures, and the Office of Juvenile Justice and Delinquency Prevention is developing performance-based standards for juvenile correctional facilities. [FN151] Performance measures for prisons could include process measures such as the number of educational or vocational programs, or outcome measures such as the Logan quality ***1890** of confinement index, [FN152] the number of assaults, or the recidivism rate. Governments could even require that contractors pay for elements that are often externalized, such as the cost of escapes. [FN153] Because no single statistic adequately captures "quality," and because focusing on any single measure could have perverse effects, [FN154] performance-based contracts should tie compensation to a large and rich set of variables.

3. Awarding and Monitoring Contracts To Maximize the Gains from Privatization and Minimize Capture.--Accountability can also be improved by redesigning correctional agencies. Under the basic model of accountability, the public correctional agency sets contract terms, awards contracts, and monitors compliance. Capture is frequent, cross-fertilization rare. [FN155]

But there are other models of accountability. In the United Kingdom, "the role of the chief inspector of prisons brings some external scrutiny to the prison system generally, including the private sector . . . . This aspect of the accountability system is vigorously independent, with no danger of capture to date." [FN156] However, the chief inspector's reports are not binding, and the government has resisted attempts to give the office more teeth. [FN157] In Florida, private prisons have their own regulatory authority that operates independently of that of public prisons; the private prison monitor is in turn independent of the private prison authority. [FN158] This system minimizes capture, but it also minimizes cross-fertilization. [FN159] Moreover, "[t]here is also a danger that the monitors may develop a loyalty to the Privatization Commission which in turn might inhibit their willingness to make public criticisms--a variant of the capture principle." [FN160]

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Perhaps the most promising model is one suggested by British penologist Richard Harding, in which both public and private prisons are subject to, and monitored by, an independent body that takes over new prison projects from the outset and allows both public and private systems to bid on them. [FN161] After the contract term expires, both public and private systems may bid on the prison again, so that facilities can ***1891** move among private firms and between the private and public sectors, promoting both accountability and cross-fertilization. [FN162] This model separates the roles of government as purchaser and provider, making it more difficult for service departments to capture the policy advice process and use their power to recommend themselves as service providers. [FN163]

E. Conclusion

This Part has not engaged the "softer" arguments about privatization, but has rather taken correctional policy as given and prison privatization as ethically neutral in itself. Does political influence peddling weaken or strengthen the case for privatization? It depends whether corruption by corporations is worse than patronage of public prison guard unions--a question that calls for further research.

Turning to the cost and quality comparisons, what imperfect empirical evidence there is suggests that private prisons cost less than public prisons and that their quality is no worse; it is perhaps unsurprising that prison privatization behaves in this respect much like privatization of other state and local services. [FN164] Moreover, there are many reasons to believe that private prisons are more accountable than public prisons--both because of heightened legal and market accountability for private forms and because accountability in the public sector is so limited. There are also numerous untapped opportunities for improving private prisons even further with richer information gathering and dissemination, performance contracts, and better monitoring. In short, despite all of their possible faults, private prisons are a promising avenue for the future development of the prison system.

[FN1]. See Douglas McDonald, Elizabeth Fournier, Malcolm Russell-Einhorn & Stephen Crawford, Abt Assocs. Inc., Private Prisons in the United States: An Assessment of Current Practice 4-5 (1998) [hereinafter Abt Report].

[FN2]. Id. at 5.

[FN3]. Id. at 5-6.

[FN4]. See generally, e.g., Mayor Stephen Goldsmith, The Twenty-First Century City: Resurrecting Urban America (1997) (discussing the desirability of contracting out many municipal services).

[FN5]. Abt Report, supra note 1, at 7-10; Judith Greene, Bailing Out Private Jails, Am. Prospect, Sept. 10, 2001, at 23, 26 (describing the sudden interest of the Federal Bureau of Prisons in privatization, and attributing the Bureau's need for tens of thousands of new beds to harsher drug sentencing laws enacted in 1986 and to the 1996 Immigration Reform Act).

[FN6]. Bureau of Justice Statistics, U.S. Dep't of Justice, Bulletin: Prisoners in 2000, at 7 tbl.8 (2001) [hereinafter Prisoners in 2000].

[FN7]. Bureau of Justice Statistics, U.S. Dep't of Justice, Bulletin: Prisoners in 1999, at 7 tbl.10 (2000) (reporting that there were 71,208 inmates in private facilities (5.2% of all state and federal prisoners), of which 3828 were federal (2.8% of all federal prisoners) and 67,380 were state (5.5% of all state prisoners)).

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[FN8]. Id. The federal and state numbers are not directly comparable, as the federal number includes 6143 federal inmates held in private community correctional centers. Id.

[FN9]. For a table of state and federal statutory authority to outsource prison operation, see Charles W. Thomas & Sherril Gautreaux, The Present Status of State and Federal Privatization Law, at http://web.crim.ufl.edu/pcp/html/statelaw.html (last visited Mar. 18, 2002).

[FN10]. Prisoners in 2000, supra note 6, at 7 tbl.8 (16,979 out of 87,369).

[FN11]. Richard G. Kiekbusch, Jail Privatization: The Next Frontier, in Privatization in Criminal Justice: Past, Present, and Future 133, 135 (David Shichor & Michael J. Gilbert eds., 2001) [hereinafter Privatization in Criminal Justice].

[FN12]. See infra Section B.2.

[FN13]. See infra Section B.3.

[FN14]. 521 U.S. 399 (1997). See id. at 401, 412 (holding that private prison guards cannot claim qualified immunity in §1983 suits).

[FN15]. 122 S. Ct. 515 (2001). See id. at 515 (holding that companies operating private correctional facilities, like agencies operating analogous public facilities, are not subject to civil rights suits under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)).

[FN16]. See infra Section C.1(b)-(c).

[FN17]. See infra Section C.1(a), (c).

[FN18]. See infra Section C.2.

[FN19]. See infra Section D.1.

[FN20]. See infra Section D.2.

[FN21]. See infra Section D.3.

[FN22]. See, e.g., Joseph E. Field, Note, Making Prisons Private: An Improper Delegation of a Governmental Power, 15 Hofstra L. Rev. 649 (1987). But see Ira P. Robbins, The Impact of the Delegation Doctrine on Prison Privatization, 35 UCLA L. Rev. 911, 915 (1988) (arguing that the case against private prisons on delegation

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grounds is "extremely close").

[FN23]. 121 S. Ct. 903 (2001) (upholding a portion of the Clean Air Act against a nondelegation challenge).

[FN24]. Jody Freeman, The Contracting State, 28 Fla. St. U. L. Rev. 155, 188 (2000) (footnote omitted).

[FN25]. Greene, supra note 5, at 26 ("[L]ike the state legislators before them, members of Congress were madly building new prisons ..., searching for cheap new private-prison beds, and refusing to consider changes in the draconian sentencing laws that were causing most of the increase in prisoners."); Ahmed A. White, Rule of Law and the Limits of Sovereignty: The Private Prison in Jurisprudential Perspective, 38 Am. Crim. L. Rev. 111, 145 (2001) (arguing that all imprisonment is "intensely problematic and in many waysinherently irrational," "dysfunctional," and "socially malignant," and that government should "wage its own wars against its citizens ...in an obvious and maximally costly way").

[FN26]. Sharon Dolovich, The Ethics of Private Prisons 73-74 (Nov. 1999) (unpublished manuscript, on file with the Harvard Law School Library); see also Dan Markel, Are Shaming Punishments Beautifully Retributive? Retributivism and the Implications for the Alternative Sanctions Debate, 54 Vand. L. Rev. 2157, 2233-34 (2001).

[FN27]. The consequentialist treatment does not abandon the moral high ground--consequentialism itself implies certain normative commitments. Even for a nonconsequentialist, private prisons may not be especially problematic. See, e.g., Markel, supra note 26, at 2234-40 (arguing that private prisons are consistent with the "confrontational conception of retribution").

[FN28]. See Richard W. Harding, Private Prisons and Public Accountability 42-47 (1997) (discussing capture or the risk of capture in private prisons in Australia, Florida, and the U.K.); id. at 159 (arguing that under the "basic model" of accountability, in which the public sector correctional agency is at the center of privatization decisions, "[c]apture occurs frequently"); David Shichor, Punishment for Profit: Private Prisons/Public Concerns 240-41 (1995) (noting the involvement of Tennessee state officials with the Corrections Corporation of America (CCA) while CCA was bidding on the management of Tennessee's prison system in 1985); Greene, supra note 5, at 27 (describing links between the federal government and private prison companies).

[FN29]. Shichor, supra note 28, at 236.

[FN30]. This very claim is made about prison labor contractors in the nineteenth century. Id. at 37 ("[T]hree governors [of Tennessee] during the 1870s and 1880s expressed a negative opinion of the convict lease system but realized that the abolition of this practice would create a severe financial burden on the state, and therefore they continued, albeit reluctantly, this policy.") (footnote omitted); Beverly A. Smith & Frank T. Morn, The History of Privatization in Criminal Justice, in Privatization in Criminal Justice, supra note 11, at 3, 17 ("Prosecutions, sentences, and paroles were all manipulated to ensure a supply of a disproportionately high number of black inmates, in what some have seen as replication of or an economic replacement for slavery without a capital investment in workers."). The claim is also made about modern-day prisons. See, e.g., Greene, supra note 5, at 23 (describing how the warden of CCA's Tulsa Jail in Oklahoma had directed the addiction treatment manager "to make a 'sales pitch' to local judges, urging them to sentence offenders to a treatment program in the jail even though the program had been eviscerated in order to cut operating expenses").

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[FN31]. Harding, supra note 28, at 94.

[FN32]. See Mark Arax & Mark Gladstone, State Thwarted Brutality Probe at Corcoran Prison, Investigators Say, L.A. Times, July 5, 1998, at A1 ("[State investigators] had watched the [prison guard] union under president Novey ride the prison construction wave, growing from a kind of social club into one of the more powerful forces in the state, with a rank-and-file 27,000 strong.").

[FN33]. See Adrian T. Moore, Private Prisons: Quality Corrections at a Lower Cost 33-34 (Reason Public Policy Inst., Policy Study No. 240, 1998) (comparing correctional officers' $1.5 million donations to Pete Wilson alone during his 1990 and 1994 California gubernatorial bids with private prison companies' $150,000 total political contributions nationwide in 1995-1996). Straight by- the-numbers comparisons are not enlightening because private prisons remain smaller players than public prisons. The interesting point is merely that whoever provides prison services will seek to influence the political process.

[FN34]. Dan Morain, Davis To Close State's Privately Run Prisons, L.A. Times, Mar. 15, 2002, at A1, available at 2002 WL 2461282 (noting that the Correctional Peace Officers' Association spent $2.3 million to help elect Governor Gray Davis); see also Arax & Gladstone, supra note 32 (listing donations of $5.2 million to state candidates from 1987 to 1998, including $667,000 to gubernatorial candidate Pete Wilson, $159,000 to Attorney General candidate Dan Lungren, and an additional $760,000 in 1990 to defeat Wilson's gubernatorial opponent, Dianne Feinstein).

[FN35]. See Oliver Hart, Andrei Shleifer & Robert W. Vishny, The Proper Scope of Government: Theory and an Application to Prisons, 112 Q.J. Econ. 1127, 1144-47 (1997).

[FN36]. Alexis M. Durham III, Evaluating Privatized Correctional Institutions: Obstacles to Effective Assessment, Fed. Probation, June 1988, at 65, 67.

[FN37]. See, e.g., Ohio Rev. Code Ann. §9.06(A)(4) (West 2001 Supp.) (requiring that the contractor "convincingly demonstrate" that it can operate the facility and provide required services with at least a 5 percent savings over the projected cost to the public entity).

[FN38]. See, e.g., Ariz. Rev. Stat. §41-1609.01(G) (2001) (requiring the contractor to offer cost savings); id. § 41-1609.01(H) (requiring the contractor to offer services of "at least equal" quality); id. §41- 1609.01(K) (requiring a biennial comparative public-private performance comparison study); id. §41-1609.01(L) (requiring a five-year cost comparison); Tenn. Code Ann. §41-24-104(c)(2)(A) (1997) (requiring quality to be at least equal to that provided at state prisons); id. §41-24- 104(c)(2)(B) (requiring cost to be at least 5% less than the state's cost); id. §41-24-1-105(a) (mandating the establishment of objective performance and cost criteria); id. §41-24-1-105(c) (requiring evaluation of performance, with the contract to be renewed only if the contractor provides "essentially the same quality" as the state at 5% lower cost, or superior services at "essentially the same cost" as the state, where "superior" is defined as 5% better and "essentially the same" is defined as within 5%). The Florida statute requires evaluation of both cost and quality, though only cost savings and not quality improvements are required by the statute. Fla. Stat. Ann. §957.07 (West 2002) (requiring 7% cost savings, where a private entity's corporate income and sales tax payments count as an offset to costs, and where the cost of services provided to the public entity at no direct cost by other government agencies is allocated to the public entity); id. §957.11 (requiring evaluation of "costs and benefits" of contracts).

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[FN39]. Durham, supra note 36, at 67; see Robert B. Levinson, Okeechobee: An Evaluation of Privatization in Corrections, 65 Prison J. 75, 76, 88 (1985) (citing the vague or nonexistent goals specified in the 1982 contract to run the Florida School for Boys in Okeechobee, a secure facility for adjudicated delinquents; the contract focused on administrative inputs rather than outcomes or even outputs).

[FN40]. Abt Report, supra note 1, at 35-37; Moore, supra note 33, at 10.

[FN41]. For a summary of the cost and quality studies on private prisons and a brief discussion of which studies are more methodologically sound, see 2 Geoffrey F. Segal & Adrian T. Moore, Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services 2, 3 & tbls.2A-2C, 9- 10 & tbls.4A-4B (Reason Public Policy Inst., Policy Study No. 290, 2002). For a highly critical evaluation of all prison privatization cost and quality studies (even some of the ones the Reason report considered sound), see also Abt Report, supra note 1, at app. 2.

[FN42]. Scott D. Camp & Gerald G. Gaes, Private Adult Prisons: What Do We Really Know and Why Don't We Know More?, in Privatization in Criminal Justice, supra note 11, at 283, 285 (attributing the insufficiency of current empirical studies to a failure to control for structural factors and only weak attempts to control for age and race); see also Abt Report, supra note 1, app. 2, at 18 ("[T]hese background data are a sine qua non of valid institution performance comparisons. What may appear to be differences in institution performance may be nothing more than differences in the background characteristics of inmates....").

[FN43]. See generally Peter J. Duitsman, Comment, The Private Prison Experiment: A Private Sector Solution to Prison Overcrowding, 76 N.C. L. Rev. 2209 (1998).

[FN44]. Id. at 2211.

[FN45]. See generally Susanna Y. Chung, Note, Prison Overcrowding: Standards in Determining Eighth Amendment Violations, 68 Fordham L. Rev. 2351, 2362-66 (2000).

[FN46]. See infra Section B.2.

[FN47]. See U.S. Gen. Accounting Office, Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service 13 (1996) ("[I]t is important that any study focus on both operational costs and quality of service."). Interestingly, in the GAO study itself (which is really just a literature review), only the Tennessee studies compare both cost and quality, id. at 23-25, and these are not particularly rigorous, see Segal & Moore, supra note 41, at 3 tbl.2B, 10 tbl.4B. Surprisingly, given the solid methodological discussion, the GAO did not examine the Louisiana State University study, the Arizona DOC studies, or the Florida OPPAGA study, which analyzed both cost and quality. Nonetheless, later writers have called the GAO report a "thorough[] review[]," Greene, supra note 5, at 25, "one of the more comprehensive reviews," Bureau of Justice Assistance, U.S. Dep't of Justice, Emerging Issues on Privatized Prisons 26 (2001), and the "most comprehensive study to date," Joel Dyer, The Perpetual Prisoner Machine: How America Profits from Crime 229 (2000).

[FN48]. Six of the twenty-eight cost studies are considered especially methodologically sound. See Segal & Moore, supra note 41, at 2-3.

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[FN49]. Id. at 3 tbl.2A. Most of the less rigorous studies also report cost savings, and none reports that private prisons are more expensive. Id. at 3 tbls.2B, 2C. The causes of private prison cost savings are explored below in Section B.4.

[FN50]. Segal and Moore consider eleven of the eighteen quality studies methodologically more sound. See id. at 9-10.

[FN51]. Of the eighteen studies, only one clearly gives the edge to public prisons. Id. at 9-10, tbls.4A, 4B.

[FN52]. See, e.g., Greene, supra note 5, at 25 ("[Quality] problems seem to be endemic to the enterprise [of private prisons]--a result, in great part, of the private companies' mission to hold down costs.").

[FN53]. William G. Archambeault & Donald R. Deis, Jr., Executive Summary, Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers, Phase I (rev. ed. Dec. 10, 1996).

[FN54]. Id. at 25.

[FN55]. Id. at 73.

[FN56]. Id.

[FN57]. Id. at 74.

[FN58]. Ariz. Dep't of Corr., Public-Private Prison Comparison (2000).

[FN59]. Id. at 47.

[FN60]. Id. at 2-4. A 1997 study of Arizona's correctional system, which compared a private prison to fifteen public prisons, found 14 percent cost savings in the private prison relative to the public prison average and 17 percent cost savings after adjusting for the private prison's property tax payments. Charles W. Thomas, Comparing the Cost and Performance of Public and Private Prisons in Arizona: An Overview of the Study and Its Conclusions (1997), available at http://web.crim.ufl.edu/pcp/research/Ariz.html (last visited Mar. 18, 2002). But see Abt Report, supra note 1, at 45 (criticizing this study's methodology).

[FN61]. Office of Program Policy Analysis and Gov't Accountability, Fla. Legislature, Private Prison Review 2 (2000) [hereinafter Florida Study].

[FN62]. Id. at 5.

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[FN63]. See Fla. Stat. Ann. §957.07 (Supp. I 2002).

[FN64]. Florida Study, supra note 61, at 3.

[FN65]. Id. at 10.

[FN66]. Id.

[FN67]. Hart, Shleifer & Vishny, supra note 35, at 1134 (discussing the assumptions motivating their incomplete contracting model).

[FN68]. See Jean-Jacques Laffont & Jean Tirole, A Theory of Incentives in Procurement and Regulation 231 (1993) (noting that "[a] high concern for quality [requires] low-powered incentive schemes" because providers who care too much about cost will reduce quality).

[FN69]. See Hart, Shleifer & Vishny, supra note 35, at 1133.

[FN70]. See id. at 1143 ("Costs ...are always lower under private ownership. Quality ...may be higher or lower under private ownership.").

[FN71]. Id. at 1137-43.

[FN72]. Id. at 1143-44.

[FN73]. The Hart-Shleifer-Vishny model assumes that all cost cutting decreases quality--in other words, that the public sector already operates at the frontier of technological efficiency. Id. at 1133. But no one knows the most efficient way to run a prison; this information must be discovered. Markets can encourage the discovery of efficient methods; government bureaucracies often do not. See generally Friedrich A. Hayek, The Use of Knowledge in Society, in Individualism and Economic Order 77, 77-78, 84, 86 (reprint 1980) (1948).

[FN74]. Moore, supra note 33, at 5 (noting the "often laborious approval process and multiple contact requirements a government construction project must go through").

[FN75]. Id. at 4-5.

[FN76]. See Dyer, supra note 47, at 214 (noting that "[m]ost guards at state and federal facilities earn union-scale wages and receive both retirement benefits and health insurance," while "their counterparts at private prisons ...often earn as little as $7.00 an hour, with little or no benefits"); Greene, supra note 5, at 25 (citing "wages and benefits substantially lower than those in government-run prisons").

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[FN77]. Moore, supra note 33, at 17.

[FN78]. Id. at 16.

[FN79]. Id.

[FN80]. Id. at 18. Moore provides an interesting example of private sector cost savings: Virginia prisons once kept thirty days of food on hand in expensive warehouses. This practice possibly dated back to when prisons were remote and supplied by mule train, and was never questioned until a private company did something different. Id. at 19.

[FN81]. 42 U.S.C. §1983 (1994 & Supp. II 1996).

[FN82]. There is no statistical evidence on jury attitudes toward corporations in the prison context, but more general jury studies suggest that juries tend to be turned off by a defendant's wealth and by arguments that a defendant's behavior was profit maximizing. See Daniel Kahneman, David A. Schkade & Cass R. Sunstein, Shared Outrage, Erratic Awards, in Punitive Damages: How Juries Decide 31, 40 (2002) (showing higher punitive damage awards for corporations with greater wealth); cf. W. Kip Viscusi, Corporate Risk Analysis: A Reckless Act?, 52 Stan. L. Rev. 547, 550 (2000) (discussing juror bias against companies merely for having undertaken a risk analysis); see also Greene, supra note 5, at 23 (reporting that in December 2000, a South Carolina jury awarded $3 million in punitive damages against a CCA juvenile prison for abusing a youth using a level of force "malicious to the conscience of mankind").

[FN83]. Alphonse Gerhardstein, Private Prison Litigation: The "Youngstown" Case and Theories of Liability, 36 Crim. L. Bull. 183, 198 (2000). CCA also paid class counsel of the city of Youngstown $803,000 in litigation expenses, and agreed to pay annual fees to Youngstown for ongoing monitoring. Id.

[FN84]. See 42 U.S.C. §1997e(d)(3) (capping attorney fees at 150 percent of statutory hourly rates); id. at § 1997(e) (barring recovery for emotional injury in the absence of physical injury). The limitation on recovery for emotional injury may not apply in many cases, but the attorney fee cap may be more significant in cases in which inmates seek damages. Even if the settlement by its terms included attorney fees, the total amount of the recovery would probably be lower than it otherwise would be because expected recoveries affect settlement amounts.

[FN85]. 457 U.S. 800 (1982).

[FN86]. See Procunier v. Navarette, 434 U.S. 555, 561 (1978).

[FN87]. Harlow, 457 U.S. at 815-19.

[FN88]. 521 U.S. 399, 412 (1997).

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[FN89]. Private guards might still have a good faith defense to a §1983 suit. Id. at 413-14.

[FN90]. In Correctional Services Corp. v. Malesko, 122 S. Ct. 515, 517 (2001), the Court held that private companies operating federal halfway houses, like their public counterparts, were not subject to civil rights suits under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 395-97 (1971), though the offending officials could personally be sued under Bivens, which allows awards of monetary damages against federal agents for a violation of federal constitutional rights. Malesko, 122 S. Ct. at 517. Malesko held private operators to the same standard as public agencies.

[FN91]. See Clayton P. Gillette & Paul B. Stephan, Richardson v. McKnight and the Scope of Immunity After Privatization, 8 Sup. Ct. Econ. Rev. 103, 123- 24 (2000).

[FN92]. See id. at 126. Different prisons may react to liability in different ways; one might imagine reactions that either increase or decrease costs. For instance, a prison may save money by instructing guards to discipline inmates less. Or a prison may spend more money if guards, who would rather avoid litigation even if they are fully indemnified, always call for more backup before disciplining an inmate, to avoid the possibility of a violent confrontation that could lead to a civil rights suit. But under competitive bidding with a cost-conscious government, the cost-cutting reactions will tend to win out over the cost-increasing reactions. Because some forms of timidity decrease costs, while overzealousness presumptively increases costs, a liability regime fosters timidity.

[FN93]. See id. at 125-26.

[FN94]. See generally Bureau of Justice Statistics, U.S. Dep't of Justice, Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation 19 tbl.4 (1994).

[FN95]. 42 U.S.C. §1997e(a) (1994 & Supp. II 1996) (prohibiting a prisoner from bringing a section 1983 action unless he has exhausted available administrative remedies).

[FN96]. 28 U.S.C. §1915(g) (1994 & Supp. II 1996) (prohibiting a prisoner from suing in forma pauperis if, on three previous occasions while he was imprisoned, an action of his was dismissed as frivolous, malicious, or failing to state a claim, unless he is "under imminent danger of serious physical injury").

[FN97]. See David N. Wecht, Note, Breaking the Code of Deference: Judicial Review of Private Prisons, 96 Yale L.J. 815, 819-20 (1987).

[FN98]. See id. at 822-28.

[FN99]. See id. at 829-33.

[FN100]. See Charles H. Logan, Private Prisons: Cons and Pros 65 (1990).

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[FN101]. Dyer, supra note 47, at 200-01; Steve Lipsher, Colorado Withdraws the Rest of Its Inmates from Texas, Denver Post, Jan. 1, 1998, at B3, available at 1998 WL 6097832.

[FN102]. Dyer, supra note 47, at 200-01; Lipsher, supra note 101. When the prison crowding crisis that prompted Colorado to send inmates to Texas was over, Colorado returned its inmates to in-state prisons, some of which were private. Id.

[FN103]. Monte Morin & Stuart Pfeifer, 2 Jail Officers Indicted Over Inmates' Fight, L.A. Times, Aug. 30, 2001, at B8.

[FN104]. Id.

[FN105]. Id.

[FN106]. Lisa O'Neill, Riverside Man Receives Prison in Civil Rights Case, Press-Enterprise (Riverside, Cal.), Mar. 12, 2002, at B2.

[FN107]. Morin & Pfeifer, supra note 103.

[FN108]. Dyer, supra note 47, at 206.

[FN109]. Id. at 203-04; see also id. at 211 (contract rescinded after a private prison riot in Texarkana).

[FN110]. Id. at 204; see also id. at 211 (dubbing the tendency to cover up bad news the "Esmor effect"); id. at 221 (calling honest disclosure "financial suicide" for a private prison firm and interpreting private firms' fiduciary duty to their shareholders as "an obligation to prevent bad press").

[FN111]. Id. at 211.

[FN112]. See id. at 214 (noting that some private firms offer guards and wardens "stock in the prison company in an effort to reduce turnover," but arguing that such stock ownership exacerbates the Esmor effect described above, supra note 110).

[FN113]. Greene, supra note 5, at 23-24.

[FN114]. See supra p. 1879.

[FN115]. Susan Sturm, Resolving the Remedial Dilemma: Strategies of Judicial Intervention in Prisons, 138 U. Pa. L. Rev. 805, 810-11 (1990).

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[FN116]. Id. at 840 (footnote omitted).

[FN117]. Id. at 824-26.

[FN118]. Id. at 816, 820-21.

[FN119]. Id. at 836.

[FN120]. Id. at 832.

[FN121]. See, e.g., James Q. Wilson, Bureaucracy: What Government Agencies Do and Why They Do It 72-89 (1989) (describing the nonmarket incentives that operate in agencies).

[FN122]. Arax & Gladstone, supra note 32.

[FN123]. Id.; see also Mark Arax, Ex-Guard Tells of Brutality, Code of Silence at Corcoran, L.A. Times, July 6, 1998, at A1.

[FN124]. Arax & Gladstone, supra note 32.

[FN125]. Id. (describing also how union officials told guards not to cooperate with the earlier county prosecution of two lieutenants who "delivered a Taser jolt to an inmate's testicles in 1989 and engaged in a cover-up").

[FN126]. Id.

[FN127]. Id.; Mark Arax, Defense Landed All the Punches in Corcoran Case, L.A. Times, June 11, 2000, at A1.

[FN128]. Mark Arax, Judge Dismisses Lawsuit by Prison Whistle-Blower, L.A. Times, Oct. 4, 2000, at A19.

[FN129]. Arax & Gladstone, supra note 32; Arax, supra note 127.

[FN130]. Dyer, supra note 47, at 206 (describing a case in which Texas authorities learned that a CCA facility was housing sex offenders from out of state only when a few of them escaped); id. at 207 (describing a case in which, without the knowledge of local authorities, a privately run Denver drug rehabilitation program accepted felons from out of state, one of whom, after being expelled from the program, allegedly raped and murdered a local resident); see also Gerhardstein, supra note 83, at 184-85 (reporting that the private prison in Youngstown did not inform local authorities of the transfer of maximum-security inmates to a medium-security prison).

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[FN131]. See Dyer, supra note 47, at 206 (noting that the CCA Houston facility was not designed for inmates with a "violent criminal history"); id. at 207 (reporting that at a Texarkana private prison, "murderers and other violent offenders from Colorado were ...housed in the general population, despite the facility not being rated for maximum-security inmates"); Gerhardstein, supra note 83, at 184-85 (noting that at Youngstown, a medium security prison in Ohio, hundreds of inmates "were transferred directly ...from the Maximum Security Facility at Lorton").

[FN132]. Sturm, supra note 115, at 898.

[FN133]. See id.

[FN134]. See Dyer, supra note 47, at 216; Nicole B. Cásarez, Furthering the Accountability Principle in Privatized Federal Corrections: The Need for Access to Private Prison Records, 28 U. Mich. J.L. Reform 249, 296-99 (1995).

[FN135]. 42 U.S.C. §11023 (1994).

[FN136]. Bradley C. Karkkainen, Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?, 89 Geo. L.J. 257, 287-88 (2001).

[FN137]. Id. at 260-61.

[FN138]. Id. at 295.

[FN139]. Id. at 295-305.

[FN140]. See id. at 309.

[FN141]. See id. at 309-31.

[FN142]. See id. at 338-45 (noting that industry laggards may be unconcerned with improving their reported information).

[FN143]. See id. at 331-38 (also raising data quality and timeliness issues).

[FN144]. Freeman, supra note 24, at 201-02.

[FN145]. Cf. id. at 202 (making this argument in the context of private nursing homes); see also Gerhardstein, supra note 83, at 197.

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[FN146]. Freeman, supra note 24, at 204-05.

[FN147]. Id. at 205.

[FN148]. Id. at 206.

[FN149]. William D. Eggers, Performance-Based Contracting: Designing State- of-the-Art Contract Administration and Monitoring Systems 2 (Reason Public Policy Inst., How-To Guide No. 17, 1997).

[FN150]. Id. at 10-14.

[FN151]. See Performance Standards Home: Performance-Based Standards for Juvenile Correction and Detention Facilities, at http://www.performance- standards.org (last visited Mar. 18, 2002); see also 1 Geoffrey F. Segal & Adrian T. Moore, Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services 15-16 (Reason Public Policy Inst., Policy Study No. 289, 2002).

[FN152]. See Harding, supra note 28, at 113-15 (describing Charles Logan's index of prison quality, which includes measures of "security, safety, order, care, activity, justice, conditions and management").

[FN153]. Cf. Ohio Rev. Code Ann. §9.07(D)(16)(b) (imposing reimbursement requirements for certain externalized costs).

[FN154]. Tying compensation to safety alone could encourage abuse; tying it to the number of civil rights complaints could harm safety.

[FN155]. See Harding, supra note 28, at 159.

[FN156]. Id. at 159-60.

[FN157]. Id. at 160.

[FN158]. Id. at 161.

[FN159]. Id.

[FN160]. Id.

[FN161]. Id. at 161-62.

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[FN162]. Id. at 162.

[FN163]. William D. Eggers, Competitive Neutrality: Ensuring a Level Playing Field in Managed Competitions 28 (Reason Public Policy Inst., How-To Guide No. 18, 1998).

[FN164]. See, e.g., Adrian T. Moore, Geoffrey F. Segal & John McCormally, Infra-structure Outsourcing: Leveraging Concrete, Steel, and Asphalt with Public-Private Partnerships (Reason Public Policy Inst., Policy Study No. 272, 2000) (discussing water and wastewater, solid waste, and highway and street maintenance, in addition to jails and prisons). For a wider-ranging argument in favor of privatizing more of the criminal justice system, see Bruce L. Benson, To Serve and Protect: Privatization and Community in Criminal Justice (1998).

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Policy Study No. 240

PRIVATE PRISONS:
Quality Corrections at a Lower Cost

BY ADRIAN T. MOORE

EXECUTIVE SUMMARY

Why are U.S. federal agencies and state and local governments turning to the private sector for correctional services? Because tougher crime policies and budget constraints have combined to create a problem, if not a crisis, in the nation's prisons and jails. Governments are incarcerating more criminals, but they have recently become unwilling to spend sufficient tax dollars for new prisons to house them. The prison system is increasingly characterized by overcrowding, lawsuits, and court orders.

With taxpayers clearly demanding that criminals be put in prison and kept in longer, there seems to be no choice but to increase the capacity of the prison system. But with popular pressure to cut government spending, funding the increase will be difficult. Legislators face a lot of pressure to hold the line on corrections spending, and fewer than half of all referendums to approve bond financing of new prisons are being approved by voters.

This has led federal, state, and local officials to consider how the private sector can become involved in corrections to lower costs while maintaining or even improving the quality of services and help cope with the growing number of prisoners without busting the budget. This study surveys the evidence on what private prisons have to offer and the evidence on how they have performed.

Extent of Private Prisons: Contracting with private prisons is widely practiced— there are over 120 private facilities in 27 states, and around 120,000 inmates in their keeping. Private firms operate several maximum security facilities and dozens of medium security ones.

Cost Savings: Private prisons save money—10 to 15 percent average savings on operations costs, based on fourteen independent cost comparison studies. Other evidence of cost savings is examined as well. Cost savings are achieved through innovation and efficient management practices.

Quality Services: Private prisons provide at least the same quality services that government prisons do—based on six independent quality comparison studies, rates of American Correctional Association accreditation, recidivism comparison studies, contract terminations, and prisoner and correctional officer lawsuits.

Private prisons save money—10 to 15 percent average savings on operations costs, based on fourteen independent cost comparison studies.

The evidence is overwhelming that the private sector delivers quality correctional services at lower cost to the benefit of taxpayers. Moreover, public official's experiences with contracting for correctional services, through contract terms, legislation, and best practices, has resolved many of the thorny questions that come up when privatizing corrections is suggested. This study examines the answers to such questions as: Can private correctional officers use deadly force?, Can they manage riots?, How can we be sure private prisons do not violate prisoners' rights?, Do private correctional officers receive lower-quality training than government correctional officers?, Have private prisons been "skimming the cream"—taking only low-security and less-expensive inmates?, and many others.

Part 1

Background: Not Enough Space or Money

Why are U.S. federal agencies and state and local governments turning to the private sector for correctional services? Because tougher crime policies and budget constraints have combined to create a problem, if not a crisis, in the nation's prisons and jails. Governments are incarcerating more criminals, but they have recently become unwilling to spend sufficient tax dollars for new prisons to house them. The prison system is increasingly characterized by overcrowding, lawsuits, and court orders. Therein lies the problem for federal, state, and local officials—expenditures on corrections have grown rapidly, but the prison population has grown faster.

Corrections is one of the fastest-growing state budget items. In the last 15 years, state spending on corrections grew more than 350 percent—compared to 250 percent growth for spending on public welfare and 140 percent growth for spending on education. More than one-third of the states devote 5 percent or more of their spending to corrections. (See Table 1.)

A. The Numbers Tell the Story

State spending on corrections has gone up because the number of inmates in the system has skyrocketed. Since 1984 the number of inmates has risen 100 percent in local jails, 213 percent in state prisons, and 290 percent in federal facilities. Incarceration rates are well over double what they were in 1980.[1]

Some states have embarked upon unprecedented prison building programs. Texas and California have led the pack, spending billions of dollars in the last decade building new facilities. According to the Bureau of Justice Statistics, the capacity of state and federal prisons grew 41 percent in the first half of this decade. Local jurisdictions have felt similar pressure: over 800 jurisdictions have identified the need for new construction in the next few years.

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[1] Camille Camp and George Camp, *The Corrections Yearbook, 1997* (South Salem, N.Y.: Criminal Justice Institute, 1997), p. 11.

Table 1: States with High Corrections Expenditures as a Percentage of Total Budget (1994)

State	% of Budget to Corrections	Total Annual Corrections Expenditures (in millions)
TX	10	$2,046
CA*	9	$4,042
VA	9	$651
OK	8	$274
RI	8	$130
SC	8	$299
MD	7	$509
NY	7	$2,430
OR	7	$220
TN	7	$372
WY	7	$33
KS	6	$200
NJ	6	$941
CT	5	$392
FL	5	$1,457
ID	5	$60
NM	5	$136
SD	5	$34

Sources: American Correctional Association; California Department of Corrections.
*1996 figures

Table 2: Most Overcrowded Prison Systems (1996)

State	% of Capacity*
CA	196
IA	171
OH	171
DE	163
WA	150
MA	148
MI	146
VA	145
NJ	142
NH	140
IL	138
PA	138
OK	133
WI	133
WY	132
NE	131
NY	131
ND	127
HI	125
FEDERAL	124

Sources: U.S. Department of Justice; Camille Camp and George Camp, *The Corrections Yearbook, 1997* (South Salem, N.Y.: Criminal Justice Institute, 1997), p. 62.

*These figures are rough; different states calculate capacity in different ways.

But all the building to date has not met the need. Today many state and federal prisons are holding over 20 percent more prisoners than their capacity, and a great number of facilities—even entire state and county systems—are under court order to limit or reduce their inmate populations.[2] Nineteen state prison systems are 25 percent or more over capacity, and at least 10 more state systems, and federal prison systems, could be considered very overcrowded. (See Table 2.) In most of these states, the situation is not getting better. Crowding in California's prison system worsened between 1994 and 1996, going from 84 percent over capacity to 96 percent over capacity.

With taxpayers clearly demanding that criminals be put in prison and kept in longer, there seems to be no choice but to increase the capacity of the prison system. But with popular pressure to cut government spending, funding the increase will be difficult. Legislators face a lot of pressure to hold the line on corrections spending, and fewer than half of referendums to approve bond financing of new prisons are being approved by voters.[3]

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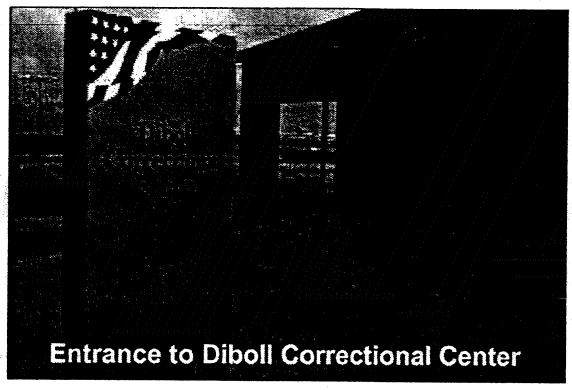
[2] Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 1995* (Washington, D.C.: U.S. Department of Justice, 1996), at www.ojp.usdoj.gov/bjs/abstract/csfcf95.htm. For general BJS corrections statistics see www.ojp.usdoj.gov/bjs/correct.htm.

[3] Dana C. Joel, "The Privatization of Secure Adult Prisons: Issues and Evidence," in *Privatizing Correctional Institutions*, edited by Gary W. Bowman, Simon Hakim, and Paul Seidenstat (New Brunswick, N.J.: Transaction, 1993), p. 58.

B. Alternatives

There are alternatives to incarceration. Many states are starting to look at alternative sentencing, including community-based institutions, home confinement, and other programs. But there is a limit to how many criminals such methods can cope with. California's nonpartisan legislative analyst calculates that alternative punishments will be appropriate or possible for only a small share of future convicted criminals.[4] The need for additional prisons and jails will not disappear, and policy makers must look in new directions for corrections policy.



Entrance to Diboll Correctional Center

This has led federal, state, and local officials to consider how the private sector can become involved in corrections. The private sector's lower costs and quality services can help cope with the growing number of prisoners without busting the budget. But what do private prisons have to offer? And what evidence is there on how they have performed?

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[4] Elizabeth G. Hill (California legislative analyst), "Joint Ventures: Private Prisons Could Benefit State and Business," *Comstock's*, July 1997, p. 19, (Also see www.lao.ca.gov/pb052097_addressing_inmate_pop.html).

Part 2

Correctional Services Offered by the Private Sector

There are three basic types of correctional services offered by the private sector:

1. Design and construction of jails and prisons.
2. Services for offenders, such as food service or medical care, and juvenile and community correction centers.
3. Contract management of major detention facilities.

Local, state, and federal governments have contracted with the private sector for each of these types of services. The first two services have been used widely, with little controversy, for decades. The last has grown rapidly, amidst controversy, since the early 1980s.

A. Design and Construction

Private contractors have long designed and built jails and prisons. In a relatively new development, some governments have accelerated completion of projects by delegating more authority to, and reducing regulatory requirements on, private design-build teams. Even more recent is the appearance of prisons wholly financed and built by the private sector, which offer their bed space on a per-diem contract basis to jurisdictions experiencing an overflow of prisoners.

The per-bed cost of prison space is influenced by many factors, including the security level, location, and jurisdiction of the facility. Coming up with useful average costs for government construction is difficult. However, the Criminal Justice Institute has calculated that the average cost of government construction is $80,562 for a maximum-security cell, $50,376 for a medium-security cell, and $31,189 for a minimum-security cell.[5]

1. Cost Savings

Private companies can build prisons and jails for considerably less than these figures and in less time. Firms in the industry often contend that they can cut between 10 percent and 40 percent off construction costs, with 30

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[5] Camp and Camp, *Corrections Yearbook,* p. 69.

percent being the most common savings estimate.[6] Independent estimates of the cost savings show a similar range of 15 to 25 percent.[7] In addition, private construction can shift a number of risks, including that of cost overruns, to the private sector.

Sources of Design and Construction Cost Savings

1. Faster construction.
2. Freedom from government procurement processes and restrictions.
3. Flexibility in adapting to change.
4. Efficiency of combined design-build.

2. Sources of Cost Savings

Since the final payment does not come until project completion, private firms have an incentive to complete construction more quickly. Construction of a prison or jail takes governments an average of two and one-half years—private firms complete the same type of project in about half the time.[8] One company may have set a record, constructing a new facility in less than 90 days. The firm purchased land, got zoning clearance, lined up financing, and designed, built, and opened a 100-bed maximum-security juvenile facility in just three months.[9]

When a private firm is asked to build a new facility or expand an existing one, only one person has to approve the request—the CEO. This is in sharp contrast to the often laborious approval process and multiple contract requirements a government construction project must go through. The speediness of private construction gives public officials more flexibility in making corrections policy than does the slower-moving government construction process.

Speed of construction is only one way private firms cut building costs. They also save money because they are free of many costly rules imposed on government projects, such as purchasing restrictions and subcontracting quotas. The most extensive savings are reaped when the private firm is allowed to both design and build a facility. Public-works projects all over the world have used design-build contracts and achieved greater efficiency and cost savings—design-build contracts for corrections projects can do so as well.

Allowing private operating firms to design facilities can lead to considerable long-term operating-cost savings as well. Operating costs are 75 to 85 percent of the overall cost of a prison, and about 60 percent of the operating costs are for personnel.[10] This means that designing a facility to require less staff, while providing the necessary security, can dramatically reduce operating costs. Innovative designs that require fewer personnel are a specialty of private corrections firms, but they have been very slow to catch on with government corrections projects.

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6 Industry annual reports; Alex Singal and Raymond Reed, "An Overview of the Private Corrections Industry," Legg Mason Equity Research, 1997, p. 16.

7 Charles W. Thomas, "Private Adult Correctional Facility Census, 1994," University of Florida, Gainesville, 1994, p. 2. The United Kingdom's National Audit Office reports that the first two privately built prisons there were built 45 percent faster than usual (National Audit Office, "The PFI Contracts for Bridgend and Fazakerley Prisons," Comptroller and Auditor General, London, 1997, p. 5).

8 Samuel J. Brakel, "Privatization and Corrections," Reason Foundation Policy Insight No. 107, 1989; and Charles H. Logan, *Private Prisons: Cons and Pros* (New York: Oxford University Press, 1990), p. 79, (See www.ucc.uconn.edu/ ~wwwsoci/proscons.html for an excerpt.)

9 Cathy Lazere, "Privatizing Prisons," *CFO: The Magazine for Senior Financial Executives,* February 1997, p. 41.

10 For example, see the box on p. 14. See also Charles Mahtesian, "Dungeons for Dollars," *Florida Trend,* October 1996, p. 80, highlighting the differences between the personnel and maintenance costs of a private medium-security prison and state prisons.

Prison Health Care Outsourcing

Contracting with the private sector to provide prison health care is a proven money and life saver. The practice is not new: At the beginning of 1997, 12 states had contracts with private firms to provide health care to their entire prison system, and another 20 states had contracted health care for part of their systems—a total of 498 prisons in the 32 states. The largest company that provides these services has contracts for facilities in 28 states and is responsible for over 162,000 inmates.

Private health care for prisoners is likely to become even more widespread. Recent activity includes the 1996 sale by the District of Columbia of its Correctional Treatment Facility to a private firm. The District then leased it back and contracted with the firm to run it. In early 1997 New Jersey hired a private company to provide health care for its 26,000 inmates. State officials estimate that this will save taxpayers $14 million in the first year alone. At the end of 1997, Indiana signed a four-year contract with a private firm to provide health care for all state inmates; state officials anticipate saving $3.8 million each year. At almost the same time, Mississippi contracted with another firm to build and operate a 500-bed mental-health correctional facility.

Some critics have expressed concern over this trend, fearing that lack of public visibility means private companies have little incentive to provide quality care. Indeed, in at least one case, prison officials terminated a contract with a private company because of poor care. But this appears to be the exception rather than the rule. In fact, several cases of government medical care were so bad that courts found they violated inmates' rights and ordered jails to hire a private company. Many officials claim that medical treatment in prison is far better than most inmates could expect to get outside of prison. Also, the National Commission on Correctional Health Care provides an accreditation program, which can assist officials to monitor the quality of contract medical care. Some states are making achieving accreditation part of the contract—all private prison contracts in Puerto Rico include such requirements.

Some people object that private prisons are authorized and built so fast that the public has little chance to weigh in on the decision.[11] They say that although public hearings and procurement procedures take time, they are part of the democratic process that many jurisdictions have established. They accuse local officials of avoiding public debate over facility financing by entering into a lease-purchase agreement or by allowing a private firm to build a prison on its own and then contracting on a per-diem basis for each inmate it sends to the facility.[12] Since the capital cost of the facility is embedded in the lease payment or the per-diem rate paid to the private firm, the taxpayers still pay the cost—but the structure of the deal sometimes avoids democratically established review procedures for capital expenditures. This is clearly a problem that local governments have to resolve with their citizens. Some officials that have failed to do so have found themselves facing challenges in court from local citizen groups.

Whichever way the courts come to decide this issue, public officials will continue to find that private construction cuts the cost of new facilities. This will be increasingly important not only to provide space for new prisoners, but also to replace existing aged facilities as needed. Nearly 300 prisons in the United States are over 50 years old, and more than 50 are over 100 years old.[13] These facilities will need replacement or thorough renovation as they decay or become obsolete and inefficient to operate.

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[11] David N. Ammons, Richard W. Campbell, and Sandra L. Somoza, "The Option of Prison Privatization: A Guide for Community Deliberations," University of Georgia, Atlanta, 1992, p. 9.

[12] Ibid., p. 9; and Mahtesian, "Dungeons for Dollars," p. 82.

[13] Singal and Reed, "Overview of the Private Corrections Industry," p. 24, citing Bureau of Justice Statistics figures.

B. Services for Offenders

For-profit and nonprofit private organizations play a major role in providing services to correctional agencies. Most correctional institutions use some form of privatization in such areas as medical services, mental-health services, substance-abuse counseling, educational programs, food services, and management of prison industries.[14]

The use of private services by correctional agencies is most extensive outside institution walls. This reflects the fact that more than 80 percent of convicted offenders in most states are in community supervision, either on parole or on probation.

Private involvement in community corrections (low-security work-release or halfway-house facilities) is a long-standing tradition in most states. In addition, state governments have traditionally let contracts for services such as counseling on abuse of alcohol and other drugs; assessment and treatment of sexual offenders; and job training and placement.

Private involvement in providing services to inmates during detention and after release has brought a new wave of innovation. Florida legislators found the private prisons in their state to be miles ahead of the state prisons in providing effective rehabilitation, education, and other services.[15] Private firms are developing efficient and effective post-release programs aimed at reintegrating inmates into the community and reducing recidivism rates.[16]

Providing these kinds of services does cost money. Inmates will receive these services only if the services are included in the terms of the contract. However, given that a contract with a private firm to house inmates saves money, more funds may be available to pay for specialized services that can reduce recidivism rates.

Private Success: Juvenile Corrections

Public concern over rising crime among juveniles has led to renewed efforts to find effective treatment and incarceration facilities for young offenders. Many states are turning to private providers for help.

At the end of 1995, nearly 40,000 adjudicated juveniles were housed in over 2,000 privately operated facilities, including training centers, ranches, shelters, halfway houses, and group homes.* This amounts to more than one-third of all adjudicated youths.

The goal of contracts with private firms is to change dramatically the thinking and behavior of troubled youths, preparing them to become self-sufficient. This involves teaching students not just educational and vocational skills, but also behavior-management skills.

The cornerstone of most programs is education—with state-accredited education programs that offer a high-school diploma or GED and allow students to earn credits that are transferable to regular schools.

Program success is usually measured in terms of reduced recidivism and completion of school. The best private juvenile programs report recidivism rates about one-third of the national average for juvenile offenders—and for about 20 percent less than it costs the state to run similar programs.

*Office of Juvenile Justice and Delinquency Prevention, "Juveniles in Private Facilities, 1991–1995," Washington, D.C., 1997, at www.ncjrs.org/txtfiles/fs-9764.txt.

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14 Michael Welch, *Corrections: A Critical Approach* (New York: McGraw-Hill, 1996), p. 443.

15 David Sedore, "Private Prisons Don't Lock in Savings," *Broward Daily Business Review,* May 16, 1997, p. A8.

16 "Correctional Services Corporation and New York's Community Corrections Forging Concrete Partnerships," *Nation's Cities Weekly,* January 20, 1997, p. 8; and Joseph Johnson, chairman of National Corrections and Rehabilitation Corporation, on National Public Radio's *Talk of the Nation,* January 9, 1997.

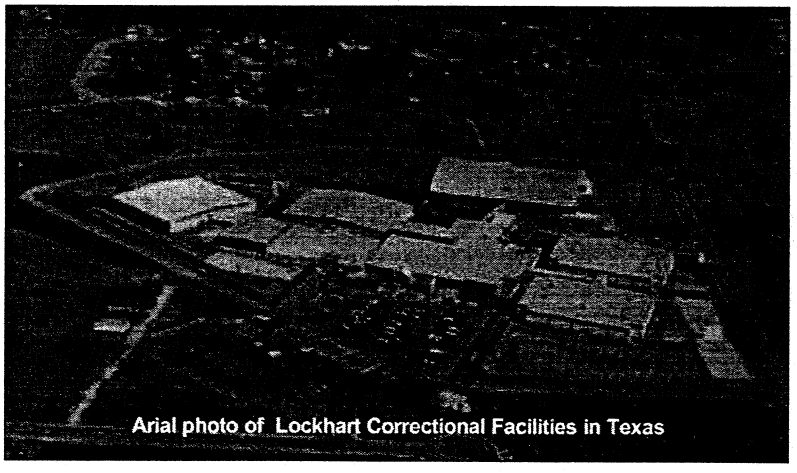
C. Management of Detention Facilities

A decade ago, private management of jails and prisons was almost unheard of. The first county, state, and federal prison management contracts were awarded in 1984 and 1985. In 1986, only a fraction of 1 percent of the nation's adult jail and prison population was privately managed.

This has changed. According to the 1997 "Private Adult Correctional Facility Census" (PACFC),[17] at the end of 1996 private firms operated 132 adult facilities in the United States, holding 85,201 inmates. (See Figure 1.) This amounts to around 4 percent of the total U.S. adult prison population and reflects a 25 percent annual growth rate. Experts anticipate that this rate of growth will continue for some time. The PACFC predicts that the capacity of private adult prisons in the United States will exceed 275,000 inmates by the year 2002. Other nations are turning to private prisons as well—the United Kingdom has four in operation and several more under construction, Australia has four in operation, and Canada and South Africa are expected to move forward soon with planned projects.

More states than ever are making use of private corrections—25 states, as well as the District of Columbia and Puerto Rico, have a private facility in operation or under construction. The federal government is also turning to the private sector for corrections services. The Immigration and Naturalization Service and the U.S. Marshals have long contracted with private firms to manage detention centers and other low-security facilities. And in mid-1997, the federal Bureau of Prisons turned a prison over to a private operator for the first time. Just a few weeks after that contract was signed, Congress passed legislation directing the Bureau of Prisons to take control of most District of Columbia correctional facilities and to place 50 percent of the District's inmates in privately operated facilities by 2003.

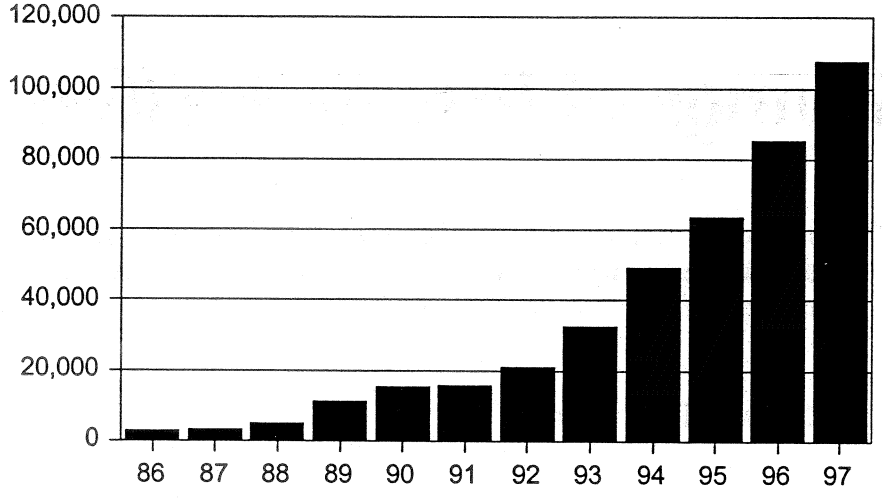
There are currently at least 15 firms operating adult correctional facilities in the United States. Two large firms—Corrections Corporation of America and Wackenhut Corrections Corporation—manage the majority of private prisons. Four midsize firms—Correctional Services Corporation, Cornell Correction, Management and Training Corporation, and U.S. Corrections Corporation—each manage a number of facilities and have developed a breadth of experience. Other firms in the industry manage just a few facilities each. Two British firms—Securicor and Group 4 Prison Services—operate pri-sons in the United Kingdom and Australia and now have subsidiaries in the United States. A key point: the size of the smaller firms belies their experience. Most of the pri-vate firms' management per-sonnel come from careers in government prison systems, so even small private companies can draw upon a wealth of experience and expertise.



Arial photo of Lockhart Correctional Facilities in Texas

[17] Charles W. Thomas, "Private Adult Correctional Facility Census, 1997," University of Florida, Gainesville, 1997.

Figure 1: 11-Year Growth in Rated Capacity of Private Prisons



Source: Charles W. Thomas, "Private Adult Correctional Facility Census, 1997," University of Florida, Gainesville 1997, and his unpublished estimated figure for 1997.

Managing major facilities has been the most controversial form of private-sector involvement, but it also has the most potential to help public officials cope with their correctional needs. The rest of this study is devoted to helping public officials and others understand the issues and controversies that surround this use of private-sector corrections—in particular the evidence that private prisons save money, yet still provide quality service.

Key Facts: Two Types of Private Management

Private management of prisons takes two forms. One is standard contract operation, where a private management firm is hired to run a government prison. The other is contracting to house prisoners, where private firms own their own prisons or lease excess space in local jails and house prisoners from many different jurisdictions in return for per-diem payments. States such as Oregon, Hawaii, and Wisconsin have no privately operated prisons within their borders but contract with out-of-state private prisons to house overflow inmates.

Part 3

Cost Savings of Private Prisons

There is a growing body of evidence that private prison operating costs are around 10 to 15 percent less than typical government prison operating costs. The number of detailed academic cost comparisons continues to grow, as does the first-hand experience of local officials with tangible cost savings.

A. Cost Comparison Studies

Any discussion of cost savings must compare private and government facilities. But it is hard to find two facilities that are exactly alike in design, age, personnel, inmate population, and other factors. So adjustments have to be made to data from different facilities to make them comparable.

Government agencies and private firms use different budgeting and accounting methods. Adjustments can help correct for most differences, but the result is a comparison of estimates, not specific expenditure data. Also, there are hidden costs that are hard to account for. A government institution's budget normally does not include various central administrative and support expenses. For example, some state prison budgets do not include the cost of some medical services, legal services, or personnel administration services, many of which are handled on a central accounting basis by other state agencies. On the other hand, a private facility's budget will include administrative and support costs but will not include the government's costs of preparing and monitoring contracts.[18]

By making necessary adjustments, reasonable estimates and approximations can be used to compare government and private costs. The professionals who conduct comparison studies are versed in the difficulties and the adjustments needed to overcome them. They are familiar with the sometimes subjective nature of comparative analysis and point out assumptions and qualifications that readers need to understand. In most cases the authors make it clear that potential savings could be somewhat more or less than identified.

Table 3 summarizes the conclusions of a comprehensive list of independent studies comparing public and private prison costs. Of the 14 studies, 12 found private prison costs to be lower than government prison costs—5 percent to 28 percent lower.

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[18] Several sources discuss the indirect or hidden costs of both private and public operation of prisons. See Charles H. Logan and Bill W. McGriff, "Comparing Costs of Public and Private Prisons: A Case Study," *NIJ Reports,* September/October 1989, pp. 385–386; James T. Gentry, "The Panopticon Revisited: The Problem of Monitoring Private Prisons," *Yale Law Journal,* vol. 96 (1986), pp. 355–357; and Martin E. Gold, "The Privatization of Prisons," *Urban Lawyer,* vol. 28, no. 3 (1996), p. 353.

Table 3: Comparative Studies of Private Management Cost Savings

Study	Description	Estimated Savings
"Comparing Costs of Public and Private Prisons: A Case Study," by Charles H. Logan and Bill W. McGriff, NIJ Reports, September/October 1989.	A comparison of the contract cost for operating the 350-bed Hamilton County Penal Farm, Chattanooga, Tennessee. Based on actual 1983–84 expenditures plus annual employee salary increases equal to those received by county employees and nonsalary cost increases based on CPI.	5%
"Breaking the Mold: New Ways to Govern Texas," by John Sharp, Texas Comptroller of Public Accounts, Texas Performance Review, July 1991.	A study to determine if private prison management in Texas was achieving the 10% savings required by statute. The Texas Sunset Advisory Commission was directed by legislation to conduct the study.	14%
"Certification of Correctional Facility Actual Per Diem Costs Pursuant to Section 957.07, Florida Statutes," Florida Office of the Auditor General, November 1993.	Florida state law requires that private firms managing state prisons attain savings of no less than 7%. This study compared per-diem costs per inmate in bids by two private firms ($46.96 and $47.05) with an estimate of state costs ($52.40). A separate comparison, for operation of a larger facility with more potential economies of scale, showed a cost for a private firm of $41.73, vs. $45.64 for the state.	8% to 10%
"Privatization Review: Minimum Security Correctional Facilities," Auditor of Public Accounts, Commonwealth of Kentucky, 1994.	This study, ordered by the legislature, compared three facilities, two privately operated and one government run. Final adjusted per-diem costs: $34.26 at the government-run facility; $31.07 and $31.30 at the private prisons.	9%
"Texas Correctional Cost Per Day, 1993–94," Texas Criminal Justice Policy Council, February 1995.	A more recent report than "Breaking the Mold," this report estimated the average cost per day per inmate (FY 1994) in government facilities to be $44.40, vs. $35.25 per day in privately managed facilities.	21%
"Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons," Select Oversight Committee on Corrections, Tennessee Legislature, 1995.	Compared one private and two government facilities. Daily costs per inmate were very close, with the private facility cost of $35.39 slightly lower than one government facility, at $35.45, and slightly higher than the other, at $34.90. The circumstances of the study were unusual in that all the facilities knew they were being compared during the year the data were collected, so they were, in a sense, competing.	0%
"Department of Corrections Privatization Feasibility Study," Legislative Budget Committee, Olympia, Washington, January 1996.	Compared the same three Tennessee facilities as the study above and found a savings of less than $1 per day (private was less expensive). Made a similar comparison of facilities in Louisiana and found "a virtual equivalence" in per-diem inmate costs.	0% to 2%
"Cost Effectiveness Comparison of Private Vs. Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers," by William G. Archambeault, Ph.D., and Donald R. Deis, Jr., Ph.D., Louisiana State University, Baton Rouge, October 15, 1996.	A very thorough study of the cost effectiveness of private prisons. It found: "It is clear from the data analyzed and presented in this study that the two private prisons significantly out-performed the government operated prison. Both private prisons . . . were found to be significantly more cost effective." One private prison cost $22.96 per inmate per day, the other $23.51. The government prison cost was $26.76.	14% to 16%
"Costs to Incarcerate," Kentucky Department of Corrections, FY 1996–	Lists the cost to the Kentucky DOC of incarcerating state prisoners in different facilities. Per-diem costs were $35.22	>12%

Table 3: Comparative Studies of Private Management Cost Savings		
97.	for state minimum-security prisons, $31.08 for private ones. And, unlike the 1994 Kentucky comparison above, the government prison costs in this study do not include debt costs, but the private prison costs do.	
"Comparing the Cost and Performance of Public and Private Prisons in Arizona," by Charles W. Thomas, Arizona Joint Legislative Committee, August 1997.	Compared the cost and performance of a 444-bed private prison to 15 government-run prisons in Arizona. Study does well at controlling for indirect costs. Average cost per inmate per day was $43.08 in the government prisons and just $35.90 in the private prison.	17%
"The Pros of Private Prisons," by Monte Wynder, *The Australian Accountant*, November 1993, pp. 19–22. The article was financed by a research grant from the Australian Society of Certified Public Accountants.	This study's findings are similar to independent findings reported a year later in a separate study (see next item). The author found that average costs were about 23% less in the privately managed Borallon Correctional Centre vs. the government Lotus Glen Correctional Centre. Major factors were 63% more staff for each 100 inmates and substantially more overtime and sick leave at the government facility.	23%
"Economic and Qualitative Aspects of Prison Privatisation in Queensland (Australia)," by Allan Browne, in *Private Prisons and Police: Recent Australian Trends* (Annandale, New South Wales: Pluto Press, 1994).	A two-year comparison of government and private prison operations and cost found that the private facility "provides the highest programme content of any correctional centre in Queensland." Annual per inmate costs (Australian currency) in 1991–92 were $39,240 at the private facility and $54,560 at the government facility; the next year the comparison was $44,200 and $49,880, respectively.	11% to 28%
Home Office Economic Unit, U.K., 1996	Audited private contract prison costs compared to costs at similar government prisons.	11% to 17%
HM Prison Service Research Report, no. 1, U.K., June 1996.	This report, commissioned from Coopers and Lybrand, compared 1994–95 costs, finding "significant savings . . . in the order of 13%–22%."	13% to 22%

Two of the studies in Table 3 deserve particular attention. The study by researchers from Louisiana State University (LSU)[19] has been widely acclaimed for overcoming the problem of comparing "apples to oranges." It compared three facilities, two privately operated (by different firms) and one operated by the state of Louisiana. The facilities were built from the same plans and had very similar populations—as much "apples and apples" as one could reasonably hope to find. This study found both private prisons to be about 15 percent more cost-effective than their government counterpart.

Private firms are developing efficient and effective post-release programs aimed at reducing recidivism.

[19] William G. Archambeault and Donald R. Deis, Jr., "Cost Effectiveness Comparison of Private Vs. Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers," Louisiana State University, Baton Rouge, 1996), at www.ucc.uconn.edu/~wwwsoci/exsumla.html.

While not able to directly compare identical facilities, the Arizona study[20] went to considerable lengths to adjust and compensate for differences between the privately run prison and the government-run prisons. Careful steps were taken to account for indirect costs. The state's first private prison, a 444-bed facility, was compared to all 15 government-run prisons in the state. Some government prisons performed better than the private prison, and some performed worse, but the private prison's costs were 17 percent less than the average cost of the state prisons.

In stark contrast to these two studies is a report issued in 1996 by the General Accounting Office (GAO).[21] The GAO examined five studies comparing government and private prison costs and concluded that it "could not draw any conclusions about cost savings or quality of service." Four of the studies the GAO examined are the first, second, sixth, and seventh in Table 3; the fifth study it examined is not included in Table 3 because it compares halfway houses, not major facilities.

The GAO report is important because it is widely cited by privatization opponents, but its methods and conclusions are odd. Of the four studies it examined that are listed in Table 3, two found the private facilities to have significantly lower costs. The GAO argued that the results of those two studies should be ignored because they suffered from limitations, specifically: (1) the fact that some comparisons involve actual costs and "hypothetical" costs; and (2) the fact that facilities being compared might be designed differently or operated differently.

It is precisely the innovative practices of private firms—their breaking away from "the way things have always been done"—that bring about cost savings.

The GAO report has been widely criticized for a number of shortcomings,[22] including:

- The GAO, without explaining why, chose to ignore a number of cost comparisons (listed in Table 3) and focus on only five studies. Among those overlooked were studies from Australia and the United Kingdom, which are not as useful in the United States (although they are certainly relevant). But why ignore the studies by the Texas Criminal Justice Policy Council, the Kentucky Auditor of Public Accounts, and the Florida Office of the Auditor General? The GAO also left out the prominent LSU study. It had not yet been published, but the GAO investigators had been made aware of it by several of the sources they contacted. Ignoring the Louisiana study was particularly egregious because it compared identical facilities—exactly the type of comparison the GAO report said was needed.

- The GAO's insistence that cost comparisons must look at identical facilities, besides being belied by their ignoring the LSU study, misses a crucial point. One of the principal advantages that private firms bring to

[20] Charles W. Thomas, "Comparing the Cost and Performance of Public and Private Prisons in Arizona," Arizona Joint Legislative Committee, Phoenix, August 1997.

[21] U.S. General Accounting Office (GAO), "Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service," Washington, D.C., August 1996, at www.gao.gov/AIndexFY96/abstracts/gg96158.htm.

[22] For example, see testimony to the House Subcommittee on Crime by Prof. Charles H. Logan, of the University of Connecticut, on September 2, 1996, at www.ucc.uconn.edu/~wwwsoci/gaochl.html, and by Prof. Charles W. Thomas, of the University of Florida, on September 1, 1996, at www.ucc.uconn.edu/~wwwsoci/gaocwt.html.

corrections is that they do things differently. It is precisely the innovative practices of private firms—their breaking away from "the way things have always been done"—that bring about cost savings.

- The GAO report discounts the results of the Texas Comptroller's study because it compared the cost of existing private facilities to the cost of "hypothetical government facilities."[23] Actually, the Texas study compared the cost of the private facilities to the "cost that the TDCJ [Texas Department of Criminal Justice] would incur if it *took over the operation of the four private facilities*"[24] (emphasis added). Moreover, the GAO chose to ignore a subsequent report by the Texas Criminal Justice Policy Council (a state agency) that found the cost advantage of the private facilities to be even greater (21 percent).

- Two of the studies the GAO gave credence are in fact flawed or at least limited. The Washington report[25] was similar to the GAO report in that it reanalyzed earlier data rather than collecting new data—so it is not surprising that it reiterated the results of the Tennessee Legislature's study.[26] The GAO also included a report that compared community corrections facilities in California.[27] This study should not have been included, because it compares halfway-house facilities, not real prisons, and the two "government" facilities were in fact for-profit facilities operated by special agencies of local governments to house state prisoners.

- Finally, the GAO report was not an objective

Local Cost Comparison: An Example

A study of Wisconsin prisons compared the costs of a private prison in Minnesota, Prairie Correctional Facility, to a similar Wisconsin state prison, Jackson Correctional Institution. The two prisons are about the same age, have similar inmate populations, and are geographically close. The study found that the daily cost per inmate in the private facility was 23 percent lower than in the government facility. A summary of the comparison is presented in the table below. For more details, see George Mitchell, "Controlling Prison Costs in Wisconsin," Wisconsin Policy Research Institute, December 1996.

Staffing and Operating-Cost Comparison:Prairie Correctional Facility (PCF) and Jackson Correctional Institution (JCI) (1995)

	Private (PCF)	Public (JCI)
Inmates	516	663
• Inmates as % of capacity	100%	108%
Staff		
• Correctional officers (C.O.s)	103	163
• Other staff	63	110
• Staff per 100 inmates	32.2	41.2
• C.O.s per 100 inmates	20.0	24.6
Estimated 1995 spending	$7,200,000	$12,000,000
1995 per diem/inmate	$38.23	$49.59
1995 spending/inmate/year	$13,953	$18,100

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23 GAO, "Private and Public Prisons," p. 7.

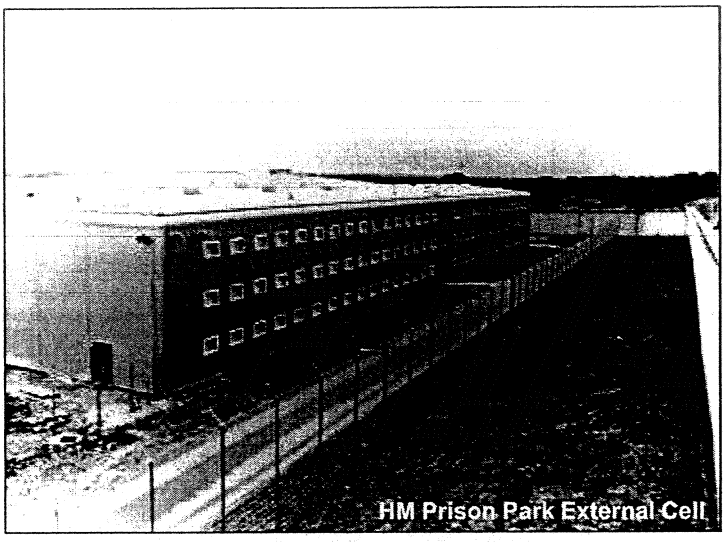
24 John Sharp, "Breaking the Mold: New Ways to Govern Texas," Texas Comptroller of Public Accounts, Texas Performance Review, July 1991, p. 8.

25 Legislative Budget Committee, "Department of Corrections Privatization Feasibility Study," Olympia, Washington, January 1996.

26 Select Oversight Committee on Corrections, "Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons," Tennessee Legislature, 1995.

27 Dale K. Sechrest and David Shicor, "Final Report: Exploratory Study of California's Community Corrections Facilities," California State University, San Bernardino, 1994.

survey of available information, as was requested by the House of Repre-sentatives when it asked the GAO to undertake the study. Rather, according to Dr. Charles Logan, it is "so consistently one-sided and negative that it reaches the point of dishonesty."[28]


HM Prison Park External Cell

B. Other Evidence

To buttress the copious empirical evidence that the private operation of prisons saves money, there are simple commonsense observations. For one thing, why would so many states and federal agencies enter into contracts with private prison firms if not to save money? Tennessee state senator Jim Kyle points out that only the potential cost savings that private prisons offer will entice a politician to take on the battle to contract for correctional services.[29] Indeed, the most frequent reason given for privatization is to save money. Unless we assume that the decision makers in all the governments that contract with private prison firms are willfully stupid, we have to believe that cost savings are being achieved.

This observation is buttressed by the legislation many states have passed to ensure cost savings from prison privatization. For example, Texas and Mississippi both require contracts with private prisons to cost at least 10 percent less than using the state system, Florida requires 7 percent savings, and Tennessee requires payments to private firms to be less than government facility costs. States are refining their methods of assuring savings. Several of the studies in Table 3 were commissioned by state governments checking to see that cost savings were achieved. The Arizona Department of Corrections, in cooperation with the state Office of Excellence, is developing a new and sophisticated cost comparison model.[30]

C. How the Private Sector Cuts Costs

Undeniably, the key to the lower costs of the private sector is competition. In order to win contracts—and keep them—a firm must be efficient. Rising costs, or cuts that lead to poor quality, would soon take a firm to where it could win no more contracts.

The private sector saves money by doing a number of things differently from government. Since their success hinges on delivering the same product as the government but at lower cost, or a better product at a cost-effective price, they turn to new management approaches, new monitoring techniques, and administrative

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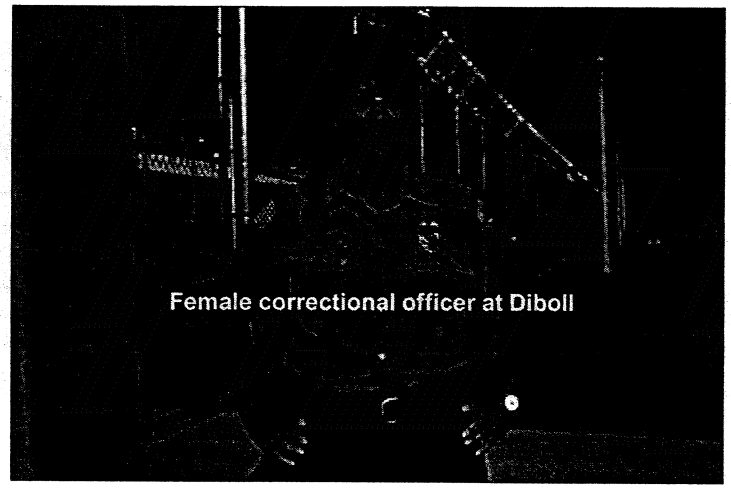
28 Logan, testimony.

29 Sen. Kyle, in an interview with the author, September 1997.

30 Carl Nink, Assistant Director, Prison Operations, Arizona Department of Corrections, in an interview with the author, December 1997.

efficiencies—in a word, innovation.[31] Moving beyond "the way it has always been done" allows them to reduce labor costs, reduce tension between correctional officers and inmates, make full use of a facility's capacity, and make more efficient purchases.


Female correctional officer at Diboll

1. Reducing Labor Costs

About two-thirds of correctional departments' operating budgets are devoted to personnel,[32] so naturally that is where most of the opportunity for savings lies. Private operating firms strive to reduce personnel costs without understaffing a facility. They do this by:

Using more efficient facility design. If a private firm has a role in designing a facility, it is likely to use innovative new design techniques, with sight lines and technology that allow inmates to be monitored with fewer correctional personnel.[33]

Reducing administrative levels. Private operating firms tend to have fewer administrative personnel than the often bureaucratic structures of government correctional departments.[34] One private prison administrator, with 14 years of experience in government corrections, says that private prisons use roughly one-third the administrative personnel government prisons use.[35]

Minimizing the use of overtime. Many correctional departments are understaffed, leading to the use of overtime to ensure sufficient correctional officers for each shift in each facility. Sometimes it is less expensive to use overtime than to hire more employees, but only up to a point. Overtime also increases when employees call in sick. In the public sector, sick time is considered an entitlement, not a privilege, and it is almost rebellious not to use it.[36] With considerable success, private firms use incentives to reduce sick time and the consequent overtime expenditures.[37] While overtime helps raise the take-home pay of existing employees, it

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31 Daniel W. Okada, "Maybe This Will Work," *Infrastructure Finance,* October 1996, emphasizes how innovative private-sector practices change the very static world of corrections.

32 American Correctional Association (ACA), *Vital Statistics* (Washington, D.C.: American Correctional Association, 1994), p. 43.

33 Logan, *Private Prisons,* p. 81; Gold, "Privatization of Prisons," pp. 382–383; Randy Gragg, "A High-Security, Low-Risk Investment," *Harper's Magazine,* August 1996, p. 50. The United Kingdom's first prison to be designed, financed, built, and operated entirely by the private sector is also its first "smart prison," using innovative new technology to track and monitor prisoners, assuring direct observation of inmates but using fewer personnel.

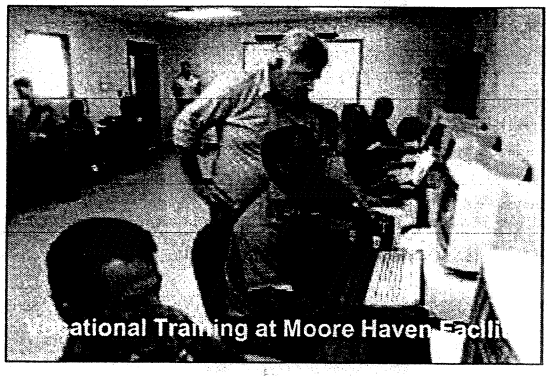
34 Public prisons spend about 29 percent of their operating budgets on administrative costs (ACA, *Vital Statistics,* p. 43), while annual reports of private operating firms indicate average administrative expenditures of around 6 to 8 percent.

35 Mahtesian, "Dungeons for Dollars," p. 83. This ratio is similar to that experienced with administrative staff in the privatization of many services and industries.

36 Richard W. Harding, *Private Prisons and Public Accountability* (New Brunswick, N.J.: Transaction, 1997), p. 20.

37 Federal employees use two-thirds more sick time than private employees, according to Peter Samuel, "Battling the Budget—Gracefully," *Reason,* May 1984, p. 36.

can significantly raise operating costs. By using full staffing and more efficient personnel management, private prison firms use less overtime.[38]



Exercising greater freedom to manage personnel. Private operating firms are not bound by civil-service rules in managing their personnel; this significantly reduces personnel management costs.[39] Private operating firms can use both positive and negative incentives to induce employees to perform. Civil-service rules and terms of public-employee union contracts tend to increase costs.[40]

As a rule, private operating firms do not cut costs by cutting personnel quality. Pay for correctional officers at private firms tends to be nearly the same, or only slightly lower, than for government correctional officers.[41] Where compensation is lower, private operating firms make up for it in part by offering opportunity for advancement based on merit rather than civil-service rules. Also, many private operating companies offer employee incentive packages that can be very lucrative. For instance, employee stock ownership plans have reaped tremendous rewards for many employees.[42]

2. Reducing Incidents

Almost every incident between inmates, or between inmates and correctional officers, costs a prison money. These incidents lead to lawsuits, which also increase personnel costs. Private operating firms respond to these incentives by managing facilities in ways that minimize incidents.[43] This means maintaining tight control of inmates and keeping them well-fed and occupied with work, education, or recreation—in short, establishing in the inmates' eyes the legitimacy of the private correctional officers' authority.[44] Several studies have shown that privately operated facilities tend to have fewer incidents than comparable government facilities.[45] In Florida, "get tough" policies in the state-run prisons have been accompanied by a 62 percent increase in inmate

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38 Logan, *Private Prisons,* p. 82; Lazere, "Privatizing Prisons," p. 45.

39 Logan, *Private Prisons,* pp. 82–83.

40 Harding, *Private Prisons,* pp. 19–20.

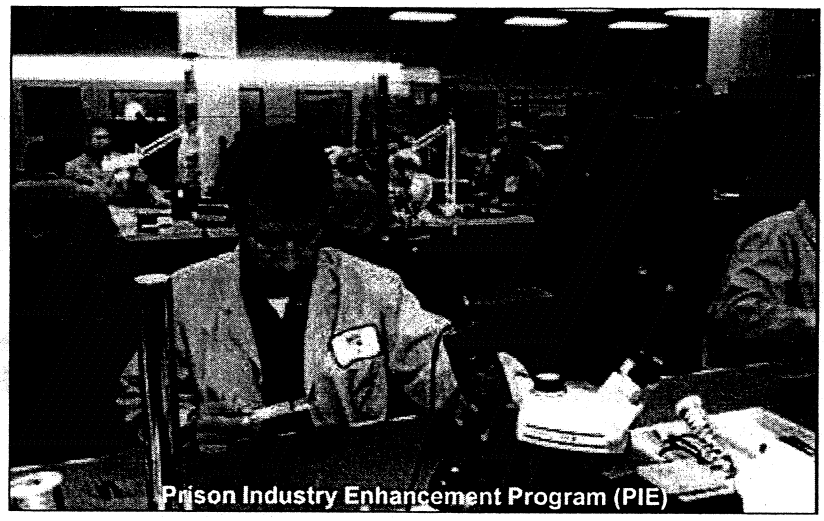
41 Logan, *Private Prisons,* p. 82; Singal and Reed, "Overview of the Private Corrections Industry," pp. 14, 22. Private correctional officers are usually paid less only in areas where the salaries of public correctional officers are disproportionately high. For example, in California government correctional officers are paid 50 percent more than the national average, and $10,000 a year more than the average teacher in California. It requires only a high-school diploma to be a correctional officer.

42 Charles Logan, on National Public Radio's *Talk of the Nation,* January 9, 1997, tells the story of a man who worked for a private operating firm for five years; when he left, his employee-benefit stock options were worth $35,000. In the state system, he would not even have been vested in five years. (See p. 36 for more on benefits.)

43 Robin M. Gragal, "With a Captive Audience, Private Prisons Propagate," *Investors' Business Daily,* May 21, 1996. Investment analysts say that private prisons maintain less-crowded and better conditions than many government prisons, meaning fewer inmate fights, happier correctional officers, and less employee absenteeism and turnover.

44 Logan, *Private Prisons,* p. 55.

45 See Archambeault and Deis, "Cost Effectiveness Comparison"; Thomas, "Comparing the Cost"; and Charles H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison* (Washington, D.C.: National Institute of Justice, 1991), also at www.ucc.uconn.edu/~wwwsoci/nmexsum.html.


Prison Industry Enhancement Program (PIE)

assaults on other inmates and a 250 percent increase in inmate assaults on correctional officers. In the state's private prisons, where the new policies did not apply, there has been no such increase in incidents.[46]

3. Fully Using Facility Capacity

If a jurisdiction does not use all of the beds in its facility, private operating firms can often lower the per-inmate costs by contracting to hold prisoners from other juris-dictions in the excess space. This allows the local jurisdiction to reduce its share of covering the fixed costs of operating the facility.

4. Efficient Purchasing and Maintenance

Freedom from bureaucratic purchasing rules and procedures lets private operating firms shop locally for the lowest-cost necessary supplies and services.[47] This saves both time and money. One private prison warden explains that if he needs some item, such as camera film, he doesn't have to order it through a complex state purchasing process or wait for it to be shipped from a distant supplier—he just goes to a store and buys it.[48]

The story is similar for facility maintenance. Private operators and owners of prisons have incentives to make maintenance decisions that save long-run capital costs as well as current operating costs. Private firms can invest today in ways that generate savings over time, while the public sector often has difficulty getting approval or funds for such investments. For example, in one prison a private company that took over operations switched all lighting over to fluorescent bulbs and refitted the plumbing to stop rampant leaks, generating considerable savings in utility costs.[49]

D. Competition, Not Private-Sector "Magic," Creates Efficiency and Innovation

When governments contract with the private sector, efficiency and innovation do not come about because private firms have some magic pixie dust, unobtainable by the public sector, to sprinkle about. It is competition that creates efficiency and innovation, because competition punishes inefficiency and inertia. That

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46 National Public Radio, *All Things Considered,* report on private prisons, October 18, 1997.

47 Joel, "Privatization of Secure Adult Prisons," p. 64.

48 Kevin McKenzie, "Tennessee Considers the Pros and Cons of Prisons for Profit," *The Commercial Appeal,* May 25, 1997, p. A1.

49 Joel, "Privatization of Secure Adult Prisons," p. 64.

means two things: first, that the contracting process needs to be competitive in the long run for efficiency to remain, and second, that competition from the private sector makes the public sector more efficient as well. This is the great uncounted benefit of private-sector provision of correctional services. Contracts usually save money not only directly, but also indirectly, by forcing the government corrections departments to tighten up their ships.

There has been little success at quantifying the indirect benefits competition brings to the overall provision of correctional services. Perhaps the best attempt was part of the 1995 cost comparison study in Tennessee.[50] The study compared costs at two government prisons and one private prison at the beginning and at the end of the year of study. When the facilities knew they were being compared, they strove for their best efficiency, and the cost at all three prisons declined over the year—5 and 8 percent at the two government prisons and 15 percent at the private prison.

Anecdotal evidence of competitive pressures and "cross-fertilization" abounds as well. Russ Boraas, Private Prison Administrator for the Virginia Department of Corrections, believes the cross-fertilization benefits of contracting with private firms to run some prisons may be the greatest benefits of contracting. Virginia has two new prisons designed, built, and operated by private firms. Both firms dramatically reduced capital and operating costs of the facilities by replacing expensive external guard towers with high-tech sensors and a roving patrol, and by eliminating a 30-day food storage warehouse and storing just enough food for a week.

For no reason that anyone can remember, Virginia prisons keep 30 days of food on hand in warehouses that are expensive to build, maintain, and operate. Boraas believes it is a practice going back to when prisons were remote and supplied by mule train. No one had ever bothered to question the practice until the private companies came in and did something different. He says that the rest of the state prisons are now adopting the private firms' food storage practices, and that only maximum-security prisons are likely to have external guard towers in the future.

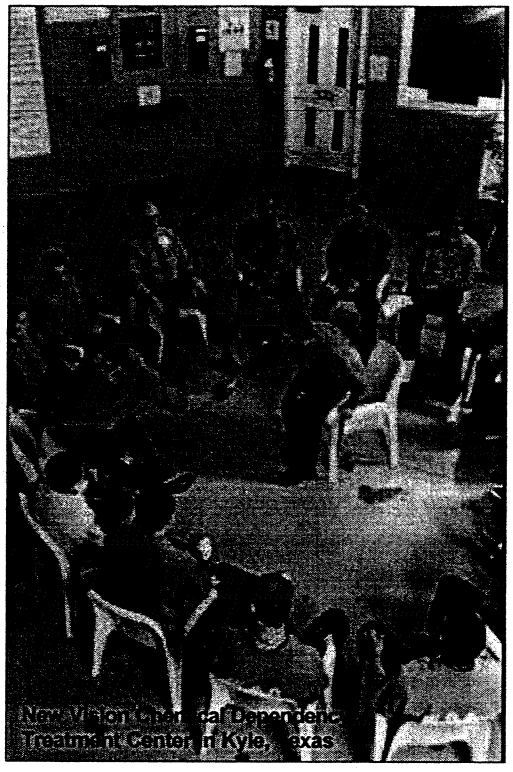
There are plenty of similar stories:

- Responding to a perceived threat from the growth of private prison operation, the Connecticut Department of Corrections (DOC) adopted a philosophy of running its prisons more like businesses and dramatically cut annual spending. At the end of 1996, the department returned $46 million to the state treasury. Savings were realized by cutting staff and increasing revenue generated by inmates. Despite this, Connecticut still spends $65 a day for each inmate, one of the highest per-inmate cost rates in the nation.[51]

House unit and control pod in HM Prison Park, Bridgend

[50] Select Oversight Committee, "Comparative Evaluation."

[51] Mike McIntire, "State Prison Costs Down, Clouding Privatization Issue," *Hartford Courant,* January 12, 1997, p. A1.



- Carl Nink, of the Arizona DOC, explains how the state's prison wardens had never defined the measures that constitute successful perfor-mance of a prison until they had to write a contract with the operator of the state's first private prison. The result forced a lot of wardens to go back and reevaluate their own policies and practices to ensure they meet the same standards being asked of the private firm.
- According to Tim Wilson, Head of Contracts for Her Majesty's Prison Service, in the years since the lower costs at new private prisons have become public, costs at government prisons in the United Kingdom have been falling.

The existence of private prisons, and the threat of privatization, changes the incentives for government corrections officials. As long as there is a credible threat of privatization, these incentives to reduce costs and improve quality will remain. It remains to be seen what amount of competition is necessary to maintain these incentives for the public sector.

E. Conclusion

The evidence from comparative cost studies strongly supports the conclusion that private prisons save an average of 10 to 15 percent on operating costs. The conclusion is also supported by the experience of public officials in many states that use private prisons. Competitive pressure provides the incentive to be efficient that helps drive private-sector costs down, and the firms achieve cost savings through innovative design and management practices. The next section considers whether these savings are accompanied by adequate quality.

Part 4

Quality of Private Prisons

The first step in seriously examining the performance of private prisons is to look deeper than lurid media reports and anecdotes. Incidents and investigations make the news, but the results of the investigations rarely do. The widely reported incident in Brazoria, Texas, is a good example. In September 1997, nearly every news show in the nation played a video of correctional officers treating inmates very roughly in a jail where a private firm housed inmates from other states. What the reports rarely pointed out was that it was sheriff's deputies, not private correctional officers, shown on the tape. No evidence of any wrongdoing by the private correctional officers or firm surfaced. Upon viewing the video, the judge in a brutality suit against the private firm threw out the case. That fact did not make many news reports. (Since the deputies are immune from such lawsuits, they were not sued in turn.)

In the issue of quality, as with cost, competition is the key. Private operators, knowing they could be replaced if they fail to deliver, have strong incentives to provide quality service. Moreover, being able to grow and acquire new contracts depends on successful performance of existing contracts.[52] Very few contracts with private operators have been terminated, but for those that were, public officials were able to quickly bring in a competing firm to assume operations.

Competition can also help improve service quality by lowering costs. Let's say it costs a state $50 a day to house a prisoner. If a private firm can operate the prison for 10 percent lower cost, $5 per inmate per day could potentially be used to provide education, job training, rehabilitation, or other services for inmates. If cost savings free up dollars for programs that reduce recidivism, taxpayers get more of what they really want from the prison system. The more competition, the more public officials can expect to get from a contract. Even better, public officials can take advantage of the competition in the industry by tying contracts to a broader definition of performance—one that links payment to precise outcomes in service quality as well as cost savings. Such contracts have been developed in Australia (see box) and Puerto Rico[53] and hold real promise for the future in the United States.

Still, it is not easy to measure the quality of correctional services, because so many dimensions and variables can be included, from recidivism to access to phones, from health care to the variety of vegetables with meals.

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[52] Ammons et al., "Option of Prison Privatization," p. 14.

[53] Gold, "Privatization of Prisons," pp. 394–397.

Any sweeping statements about the quality of either government or private prisons would be on thin ice.[54] Experiments with benchmarking, as in Australia, should eventually help us move to firmer ground.

Linking Payment and Performance: Aussies Show the Way

The Australian state of Victoria has signed 20-year contracts for three new private prisons. About 65 percent of Victoria's female prisoners and 40 percent of its male prisoners are in private correctional facilities. To facilitate competition, the government has separated corrections policy-making from service delivery. The corrections department's contract administrator "purchases" correctional services from either private firms or the public Correctional Services Agency, then monitors and evaluates the performance of both from arm's length.

A crucial innovation brought about by Victoria's contracts with private prisons is the performance-based structure of payments. The private operators receive three revenue streams from the government.

- An *accommodation-service fee* pays for housing the prisoners; this essentially offsets the private debt incurred in constructing the facility.
- A *correction-service fee* covers specific services, such as correctional officers, health care, food, education, and rehabilitation programs.
- A *performance-linked fee* aligns the company's long-term interests with the government's goal of quality services. The fee is tied to a set of performance indicators, including escapes, deaths in custody, assaults on inmates, and assaults on staff. As long as the company meets standards in these areas, based on averages from government prisons, it receives the full fee.

This last fee is what makes the Aussie model innovative. It ties the private companies' return on equity to a set of performance goals, thus aligning their long-term interests in running profitable facilities with the government's interest in quality services.

Source: Victoria Department of Justice. See also William D. Eggers, "Prison Reform," *Infrastructure Finance,* December/January 1997, pp. 53–55.

Progress is also being made in comparing recidivism rates of inmates released from government and private prisons. This is especially important since what most people really want from the prison system is less crime. A study just released in January 1998 by the Center for Studies in Criminology and Law at the University of Florida may be the best recidivism comparison study yet.[55] It went farther than any study before in carefully matching pairs of inmates from government and private prisons, attempting to make them as much alike as possible in terms of age, race, crime committed, and other factors. The results are a resounding endorsement of the effectiveness of private prisons. The overall recidivism rates were 17 percent for releasees from private prisons and 24 percent for releasees from government prisons. Moreover, the gap in favor of private prisons was the largest with respect to violent offenses by releasees. Hopefully, future research will apply this effective methodology in other states to expand our understanding of comparative recidivism rates.

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[54] For one thing, we would have to come to more of an agreement about what standards for prison service quality we want. In Florida recent "get tough" legislation withdrew funding for all manner of "luxuries" for prisoners, such as televisions and weight-lifting equipment. To the consternation of some legislators, private prisons in Florida continue to provide these things to inmates. In a rich irony, we now have some who complain of the "opulence" of private prisons, while others accuse them of being too harsh and cutting quality to increase profits.

[55] Lonn Lanza-Kaduce and Karen F. Parker, "A Comparative Recidivism Analysis of Releasees from Private and Public Prisons in Florida," Center for Studies in Criminology and Law, University of Florida, 1998.

Key Fact: Comparative Recidivism Rates in Florida

Private Prisons
17 percent (1 percent for violent crimes)

Government Prisons
24 percent (5 percent for violent crimes)

Typical Performance Indicators for Corrections

1. Public safety (measured by frequency of escapes, major disturbances, and injury to visitors).
2. Protection of staff and inmates (measured by personal injury or death from arson, assault, battery, or homicide).
3. Compliance with professional standards (measured by audits, litigation initiated by prisoners or staff, inmate grievances, and in-service training for staff).
4. Quality of programs (education, counseling, and work).
5. Quality of health care and food.

Meanwhile, a sensible approach to comparing private and government prisons considers the various factors that typical taxpayers might consider in judging what kinds of prisons their tax dollars are buying. Studies that compare private and government prison quality, independent accreditation, and amounts of litigation by prisoners are all fair indicators of the level of quality of correctional facilities. In each of these areas, private prisons do at least as well as government prisons. There is little reason to believe that private prisons cut service quality to improve their bottom line.

A. Quality Comparison Studies

A number of studies have examined the quality of private correctional services in the United States, Australia, and the United Kingdom,[56] comparing such measures as inmate and staff safety, escapes, health care, education and work programs, and counseling and rehabilitation programs. The research reveals a pattern of high-quality services in private facilities:

One U.S. study by Dr. Charles Logan, of the University of Connecticut, is notable for its depth and detail, examining 333 quality variables in comparing a private facility to state-run and federal facilities. He found that the private facility performed better than the government facilities across all but one of eight dimensions.[57]

The LSU study discussed earlier also looked at quality variables, and it found that both of the privately run facilities performed better than the government facility in terms of safety of inmates, safety of correctional officers, number of incidents, use of discipline, and education programs, all the while using fewer personnel. The government facility had fewer escapes, less substance abuse, and more rehabilitation, social, and recreational services.[58]

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[56] For a partial list, see Harding, *Private Prisons*, p. 110 ff.; and Charles W. Thomas, "Correctional Privatization: The Issues and the Evidence," paper presented at the Privatization of Correctional Services Conference, Toronto, Canada, July 1996, note 56.

[57] Logan, *Well Kept*.

[58] Archambeault and Deis, "Cost Effectiveness Comparison," sec. 2.

The Urban Institute compared government and private adult prisons in Kentucky and government and private juvenile facilities in Massachusetts. Using surveys of staff and inmates, as well as state data, they compared dozens of variables between the facilities, including health care, escapes, violence, counseling, and education programs. For most variables, the private facilities in both states scored better than the government facilities, especially with regard to programs, escapes, and violence.[59]

Vocational Class in Gadsen Institution

Arizona commissioned a study comparing its first privately operated prison to the rest of its prison system. That study found that the performance of the private prisons was superior in public safety issues (measured by frequency of escapes, major disturbances, and injury to visitors), protecting staff and inmates (measured by personal injury or death from arson, assault, battery, or homicide), and compliance with professional standards (measured by DOC audits, litigation initiated by prisoners or staff, inmate grievances, and in-service training for staff).[60]

In the United Kingdom, at least seven examinations of the quality of private prison operations have been conducted: three inspections by the Chief Inspector of Prisons, three independent research projects, and one independent government inquiry.[61] Overall, the studies find that the private prisons outperform the government prisons. Prisoners in the private prisons enjoy more associative freedom, better staff-inmate relations, more and better work training, better meals, and more convenient visiting schedules. There are also fewer escapes and less violence in the private prisons. Assaults between inmates is the only measure where the private facilities have fallen short, and their performance in that area has been converging on that of government prisons. The Director General of Her Majesty's Prison Services has asserted that the private prisons are the "most progressive in the country at controlling bullying, health care, and suicide prevention." He strongly urges the government prisons to emulate these progressive practices, and he has issued training circulars describing them to all wardens. He concludes that the private prisons create a "healthy competition" that is improving the quality of the entire prison system.[62]

A Tennessee Legislature study compared one private facility to two government facilities over two years and gave the private facility a higher overall performance rating than the two government facilities.[63]

Besides these detailed comparisons of specific facilities, commonsense observations provide considerable anecdotal evidence that private prisons provide quality correctional services.[64] Inmate surveys have revealed

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59 H. P. Hatry, P. J. Brounstein, R. Levinson, D. M. Altschuler, K. Chi, and P. Rosenberg, *Comparison of Privately and Publicly Operated Corrections Facilities in Kentucky and Massachusetts* (Washington, D.C.: Urban Institute, 1989).

60 Thomas, "Comparing the Cost."

61 National Audit Office, "PFI Contracts"; Adrian James, A. Keith Bottomley, Alison Liebling, and Emma Clare, *Privatizing Prisons: Rhetoric and Reality* (London: Sage, 1997); HM Chief Inspector of Prisons, "HM Prison Doncaster: Report of a Full Inspection," Home Office, London, October 1996; Prison Service Planning Group, "Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons: 1995–96," Prison Research Service Report No. 2, London, October 1996; Home Affairs Committee, "The Management of the Prison Service (Public and Private)," House of Commons, London, March 1997; Harding, *Private Prisons,* pp. 139–142.

62 "Survey—Private Finance Initiative," *Financial Times,* November 14, 1997, p. 5.

63 Select Oversight Committee, "Comparative Evaluation."

that they rate private prisons better than government-run ones, especially inmates who have been in both types of prison (see box). As one private prison inmate told National Public Radio, "You have your fights. You have your arguments and stuff. But you know, you don't have no knifings and, you know, guys trying to rape you or you know, things like that. It's pretty . . . it's pretty well controlled."[65]

What the Inmates Say

- A 1988 survey of inmates showed that inmates rated conditions and programs in private prisons higher than in government prisons, especially in terms of cleanliness, staff competence, work assignments, and requests and grievances. More significant, those inmates who had been in both public and private prisons rated private prisons better six to one.*
- A similar survey in 1989 found nearly identical results: inmates rated private prisons superior to government ones overall, especially with respect to health care, victimization and violence, staff use of force, and counseling.**

* Samuel Brakel, "Prison Management, Private Enterprise Style: The Inmates' Evaluation," *New England Journal on Criminal and Civil Confinement,* vol. 14 (1988): 175–244.

** Judith C. Hackett, Harry P. Hatry, Robert B. Levinson, Joan Allen, Keon Chi, and Edward D. Feigenbaum, "Contracting for the Operation of Prisons and Jails," (U.S. Department of Justice, Washington, D.C.), 1989.

B. American Correctional Association (ACA) Accreditation

Independent accreditation by the ACA is designed to show that a facility meets nationally accepted professional standards for quality of operation, management, and maintenance. Of the 50 private correctional facilities that have been operating long enough to achieve accreditation, 29 have done so. In comparison, of the nearly 5,000 government correctional facilities, only 416 are ACA accredited. (See Figure 2.) ACA accreditation is important to the courts as an indicator of improved conditions for prisons under court order. Louisiana's state prisons were under court order for overcrowding and poor conditions for decades. A crucial step to getting the order lifted was achieving ACA accreditation for each facility. For years, little effort was expended to meet that goal and none of the facilities, including new ones, succeeded. But in 1990, when writing its first contract with a private firm to operate a prison, the state required the firm to achieve accreditation. It did. Encouraged, the new head of state corrections ordered the rest of the state system to seek accreditation. Serious improvements had to be made, but by 1996 every prison in the state save the one maximum-security facility had achieved the goal, and the court order was lifted.[66] A private prison has set the standard in Florida as well—in the spring of 1997, the Gasden Correctional Facility earned an ACA rating of 99.8 percent, the highest rating ever given a Florida correctional facility. And last fall, private firms got an additional incentive to pursue and maintain ACA accreditation—a large U.S. underwriter began offering a 10 percent discount on liability insurance. In many cases the savings on premiums are greater than the cost of achieving compliance with ACA standards.

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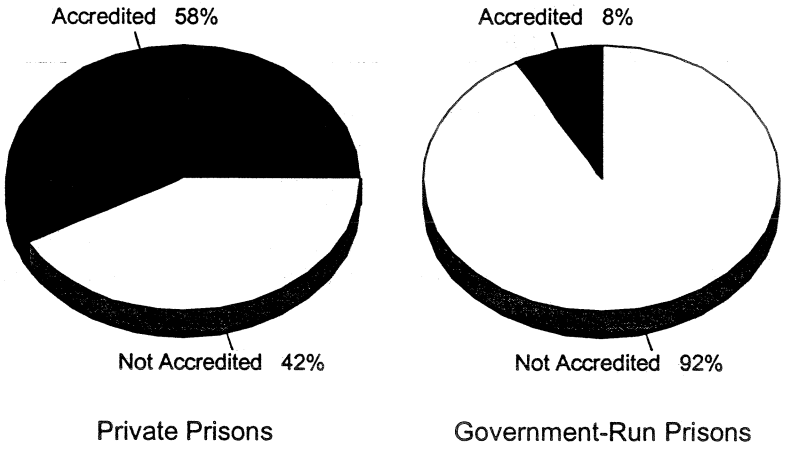
64 In *Well Kept,* Logan devotes a full chapter to anecdotes of state inspections, local audits, etc., demonstrating private firms' success at meeting and, often, exceeding required standards.

65 National Public Radio, *All Things Considered,* report on private prisons, October 18, 1997.

66 Harding, *Private Prisons,* pp. 64, 139; "Louisiana DOC Collaborates with Wardens, Jails to End Consent Decree," *Corrections Professional,* July 11, 1997.

Figure 2: Facilities with ACA Accreditation



C. Court Orders and Prisoner Litigation

Court orders to improve conditions of confinement are one indicator of problems in an institution or a correctional system. By this measure, privately managed facilities compare very well to government-run prisons and jails.

In 1996, of the 50 state correctional departments, 15 entire departments were under a court order to relieve unsatisfactory conditions, and 25 states had at least one facility under court order.[67] The situation is worse in county jails: in 1996, 22 percent of jail systems had at least one facility under court order to improve unsatisfactory conditions, and 30 percent had at least one facility under court-mandated population caps.[68]

In comparison, no privately operated facility has been placed under a court order, and on average, privately operated facilities do not suffer as many lawsuits as government-run facilities do. In fact, it is increasingly common for a state or county to bring in a private firm to turn a facility around and get it *out* from under a court order (see box). A perfect example is the District of Columbia, which included in the terms of its sale/leaseback and operating contract for its Correctional Treatment Facility a provision that the private firm must achieve compliance with a court order long in place. Another example is the story of how Louisiana's first private prison set the example and led the whole state system out from under a court order.

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67 American Correctional Association, *1997 Directory* (Washington, D.C.: American Correctional Association, 1997), p. xx.

68 Camp and Camp, *Corrections Yearbook,* p. 219.

Texas Cinderella Story

In 1989, the 28-year-old, 2,000-bed Bexar County jail was closed by a federal court for unsatisfactory conditions and severe overcrowding. The cost of bringing the jail into compliance with the court order was estimated at $12 million. The inmates were moved to a new county jail.

Meanwhile, the state needed 2,000 beds for parole violators being returned to custody. A private firm leased the Bexar County jail to house the state prisoners. The firm financed the repair and remodeling of the jail and paid the county a percentage of its contract revenues from the state. Under county operation, the jail had never been able to achieve state certification. The private firm got the facility certified in 90 days after beginning operations.

The county gets about $1 million each year in lease payments, and county officials are so pleased with how the jail is run that they house their overflow inmates there now. The private firm charges the county $23.63 to house an inmate for a day. The new county jail costs $45 per day per inmate.

Source: National Academy of Public Administration Foundation.

Fewer lawsuits in private prison is particularly notable since inmates have much more recourse to act on complaints against private prison operators than against government correctional officers, wardens, or correctional departments. For one thing, inmates can appeal to the contracting state or local agency: most government corrections agencies keep a contract monitor in the facility. If that doesn't work, they can sue private prison correctional officers and officials much more readily than they can government employees.[69] The Supreme Court recently confirmed the widely held belief that private correctional officers do not have the "limited immunity" from lawsuits that government officials enjoy.[70] So, while prisoners in effect have more rights and recourse to sue in private prisons, they do so less often, per capita, than they do in government prisons. And private prison firms pay for insurance against such lawsuits, so they have extra incentives to train their staff to stay within legal bounds in managing prisoners.

D. Contract Termination

Since the first modern private prison opened in 1985, virtually every contract up for renewal has been renewed with the original firm or, in a few cases, with a competing firm. There have been only a handful of contract terminations. For example, the state of Montana was unable to resolve differences with the private firm housing several hundred of its prisoners. When the state decided it was not getting what it had contracted for,

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69 Ammons et al., "Option of Prison Privatization," p. 14; Susan L. Kay, "The Implications of Prison Privatization on the Conduct of Prisoner Litigation Under 42 U.S.C. Section 1983," *Vanderbilt Law Review,* vol. 40 (1987): 871–888; Charles W. Thomas, "Prisoners' Rights and Correctional Privatization: A Legal and Ethical Analysis," *Business and Professional Ethics Journal,* vol. 10, no. 1 (1991): 3–45; Charles W. Thomas, "Resolving the Problems of Qualified Immunity for Private Defendants in Section 1983 and *Bivens* Damage Suits," *Louisiana Law Review,* vol. 53, no. 2 (1992): 449–493; and David N. Wecht, "Breaking the Code of Deference: Judicial Review of Private Prisons," *Yale Law Journal,* vol. 96 (1987): 815–837.

70 The case is *Richardson v. McKnight* (U.S. 96-318). Government officials have "limited immunity" from lawsuits—they cannot be sued if they believe their behavior is legal. Private prison officials have never assumed they had such immunity, and most firms insure against prisoner lawsuits.

it quickly found a new company to take its prisoners and terminated the original contract.[71] Once again, the pressure that competition exerts works to the public benefit. The threat of contract termination is a potent one for public officials to wield. A private firm that has had a contract terminated for poor performance will have great difficulty getting any more business when there are other competent firms waiting in the wings. No such threat is available for public officials to wield against their own correctional departments.

Public Officials Convert

Florida State Rep. Dick Locke

Despite the considerable savings private operation brought to the two jails in Bay County, Florida, the sheriff complained that the jails had been made too comfortable. He was particularly offended that the jails had become model facilities, with people coming from all over the world to look at them.

Soon after the privatization, Florida state representative Dick Locke responded to appeals from national and state sheriffs' associations and introduced a bill in the state legislature to outlaw all private prisons and jails in Florida. But when Rep. Locke visited a Bay County private facility, he declared it to be "the cleanest jail I've ever been in" and one of the best operated. He quietly withdrew the bill to prohibit private correctional facilities.*

Delaware Co. Councilmember Wally Nunn

In 1996 Delaware County, Pennsylvania, decided to hire a private firm to run its 1,500-bed jail. County Council member Wally Nunn wound up spearheading the privatization. "I'm a strong law and order guy," he says. "I came into this not caring if the prison cells consisted of holes in the ground. But after visiting a privately run prison and talking with the facility's management, I came to understand that a well-managed facility which takes into account keeping prisoners in a relatively good mood will in the end save taxpayers dollars."**

*Randall Fitzgerald, *When Government Goes Private: Successful Alternatives to Public Services* (New York: Universe Books, 1988), p. 111. **Interview with William Eggers, Reason Foundation, May 1996.

E. Conclusion

A simple story highlights the ability of private operators to turn around a facility that seemed to be hopelessly mired in incidents, court orders, and lawsuits. For years, a jail in Bay County, Florida, was a basket case. The facility was relatively new but falling apart rapidly. State inspectors cited the facility for over 75 violations and rated it one of the state's worst. Yet nothing seemed to change. Then, in 1985, the jail became one of the first facilities in the nation contracted to a private operator. Within three years, the private firm turned the jail around, obtaining ACA accreditation and saving the county hundreds of thousands of dollars.[72]

As with cost savings, comparative studies and the experience of public officials with existing private prisons support the conclusion that private prisons offer at least the quality that government prisons do. Add to that the pressure to excel that we know competition puts on private prisons, their success at getting accredited by the

[71] Kathleen McLaughlin, "What the Market Will Bare," *Missoulian,* November 9, 1997, p. A1. Contracts were also terminated in South Carolina and Georgia when public officials became unhappy with the service received, and in both cases they simply contracted with another firm.

[72] Logan, *Private Prisons,* pp. 29–30, 129.

ACA, and their greater vulnerability to legal action by prisoners, and the evidence is overwhelming that private prisons provide quality services.

Part 5

Frequently Asked Questions About Private Prisons

The biggest questions about private prisons tend to be about cost savings and quality, but other serious questions often surface. The answers to these questions should help policy makers determine whether private prisons should be part of their correctional toolbox.[73]

Are private prisons ethical? Some people are concerned that "prisons for profit" are ethically inappropriate; they believe that a firm with a financial motive should not be put in control of prisoners' lives. But to an inmate who has had his freedom taken away, it makes little difference who guards his cell, a government or a private employee. Contracting with a private firm to run a prison does not relieve government officials of the ethical and legal responsibility to ensure proper treatment. They may achieve this with a properly run correctional department or through a well-written and well-monitored contract with a private firm. And, as the evidence indicates, the private operating firm can often ensure better treatment.

Is it legal to put prisoners in private prisons? Federal, state, and local officials have all recognized the need for legal authority to delegate correctional responsibilities to nongovernmental entities. It is possible to define imprisonment as a uniquely governmental function that cannot be delegated. However, this interpretation is rare. The responsibility for *sentencing* individuals to be confined is certainly a purely governmental function, but the mechanics of holding someone in confinement are not.

At the federal level, this is recognized in the language of 18 U.S.C. Sec. 4082(b), which remands all federal offenders to confinement in "any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise." The Bureau of Prisons has interpreted this to mean there is authority to contract with private prisons.[74]

State and local governments deal with the legal authority to contract for correctional services in their own ways. The 25 states that currently have a private prison in operation or under construction obviously have assured legal authority to do so, as have a number of states that do not yet have a private facility. One very common method state and local governments use to assure legal authority is to pass enabling legislation.

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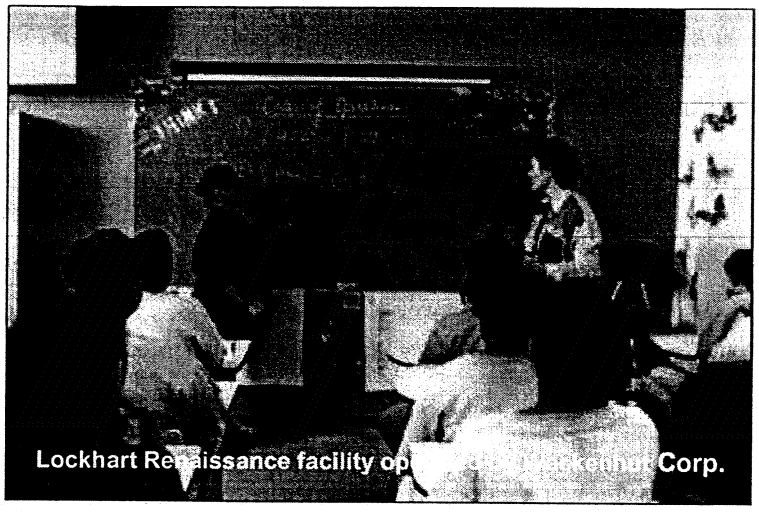
[73] This section draws in part upon Logan, *Private Prisons,* (see www.ucc.uconn.edu/~wwwsoci/fraser.html, for a summary); and Ira P. Robbins, "Privatization of Corrections: Defining the Issues," *Vanderbilt Law Review,* vol. 40, no. 4 (1987): 813–828.

[74] Brakel, "Privatization and Corrections," p. 13.

Others seek a determination by the state attorney general that there is no law forbidding contracts for private prisons.


Lockhart Renaissance facility op[illegible] Corp.

Can private correctional officers use deadly force? Can they manage riots? If private firms are managing prisons of every security level, then use of deadly force is bound to come up. Common law allows private citizens to use deadly force in self-defense, defense of another, or to prevent the escape of a felon. Presumably, Supreme Court limitations on use of deadly force by police would apply to civilians as well: it is justified only if it is necessary to prevent escape and there is probable cause to believe the felon poses a significant threat of death or serious injury to someone.[75] Contract terms or state legislation often prescribe more specific guidelines on use of force in private prisons.[76]

There are concerns about private prisons' ability to bring to bear the force or manpower to quell a riot. There have been only a few riots in private prisons, and most were dealt with appropriately. But in at least one infamous case, at an INS facility in Elizabeth, New Jersey, the private operator was unable to cope with an uprising; local authorities moved in, and the contract was terminated. Since then, public authorities have been more careful to assure that contracts require private prisons to maintain enough personnel, with sufficient training, to manage disturbances. Ultimately, though, both government and private prisons rely on help from outside law enforcement to quell large riots. The difference is that private prisons may be asked to defray some or all of the costs of such aid.

How can we be sure private prisons do not violate prisoners' rights? Critics of private prisons legitimately wonder who will watch the watchmen. The government remains responsible for ensuring that prisoners' rights are protected even if they send them to a private prison. Exploiting or abusing prisoners can occur in both government and private prisons. We hear terrible stories all too frequently: of "gladiator" fights between inmates orchestrated by correctional officers, sexual assaults by correctional officers, and other individual and systematic abuses. Our goal should be to prevent this in any institutional setting.

Arguably, abuse and violations of rights should be easier to prevent in private prisons than in government prisons. Due process is not only implicit in the law of the land; it is usually explicit in private prison contracts.[77] Prisoners have more legal options against private prison officials than against government officials. Private prisons are monitored by state inspectors, and the state is liable for abuses committed by

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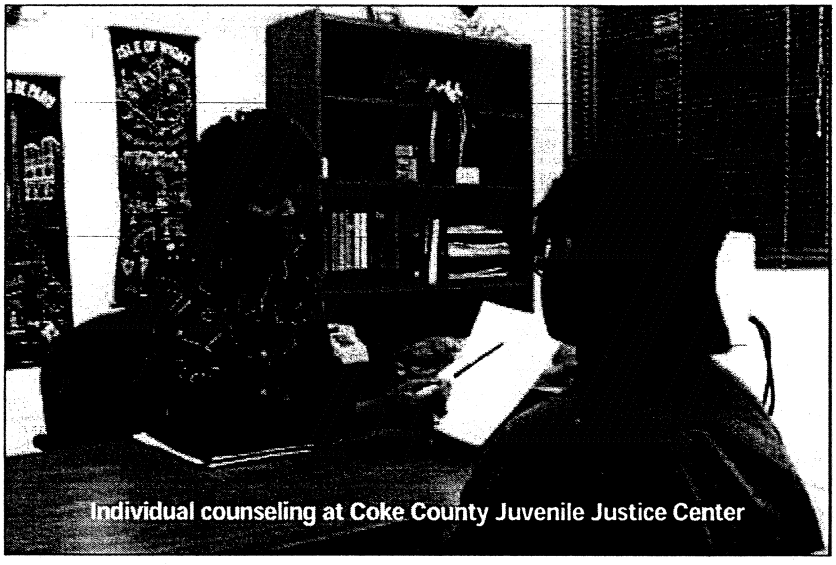
75 Logan, *Private Prisons,* pp. 172–174.

76 Concern about use of force in private prisons recently prompted the Texas government to propose statewide guidelines on use of force, only to withdraw in the face of intense opposition from *sheriffs and government correctional officers* (James Herrington, "Commission Must Curb Inmate Beatings," *Dallas Morning News,* January 5, 1998, p. 11A).

77 Logan, *Private Prisons,* p. 64.


Individual counseling at Coke County Juvenile Justice Center

employees of the private firm, so they have an incentive to monitor their conduct.[78] Government cor- rectional departments police themselves, with obvious conflict of interest.

In addition, private prisons offer public officials two powerful tools to ensure good conduct. First, a well-written, performance-based contract will reward the private firm for providing the kind of care public officials require.[79] Tying compensation to measurable outcomes in public safety and prisoner treatment puts the private operating firm in the business of serving the public interest. Second, private firms find that mistreating inmates only creates resentment and hostility, which makes managing the prison more difficult and costly. They find that a softer touch can make long-run management more effective, such as in Florida, where private prisons' management style has led to much lower levels of violence than in the state-run prisons.[80] A number of studies have shown similar comparisons in other states.[81]

Do public officials have less control over private prisons than over government prisons? No. Contracts with private prisons give public officials a great deal of control. Elected officials control government prisons through budgets, legislative requirements, and their power to appoint heads of correctional departments. With a private prison, public officials have these same tools of control, and more. The contract process lets them control the price paid for services and determine who is going to run the prison. And legislation regarding correctional policies can be applied to private prisons as well. In addition, contracts provide for termination for failure to perform, while no such measure can be used with a government prison. Finally, contracts with private prisons introduce an additional level of accountability through the monitoring process. Government corrections departments are largely self-policing, while private prisons are continuously monitored by an outside agency to assure compliance with the law and the terms of the contract.

Of course, this implies a greater responsibility on the part of public officials. If they enter into incomplete contracts, fail to monitor compliance, or allow contracts to become noncompetitive, then a private firm may take advantage. The history of private prisons is not without blemishes, and failure by public officials to

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78 Robert H. Chaires and Susan A. Lenz, "Some Legal Considerations in Prison Privatization," in *Privatization and the Provision of Correctional Services: Context and Consequences,* edited by G. Larry Mays and Tara Grey (Cincinnati: Academy of Criminal Justice Sciences/Anderson Publishing, 1996), pp. 44–45; Gold, "Privatization of Prisons," pp. 379–382.

79 See William D. Eggers, "Performance-Based Contracting: Designing State-of-the-Art Contract Administration and Monitoring Systems," Reason Public Policy Institute How-to Guide No. 17, 1997.

80 National Public Radio, *All Things Considered,* report on private prisons, October 18, 1997.

81 See Archambeault and Deis, "Cost Effectiveness Comparison"; Thomas, "Comparing the Cost"; and Logan, *Well Kept.*

practice due diligence can create problems. However, experience clearly shows that well-written contracts, proper monitoring, and a competitive industry can ensure successful public-private partnerships—where both sides get what they want from the relationship.

Do private correctional officers receive lower-quality training than government correctional officers? This is usually not the case. Many states require by law or in contracts that all staff be trained to the same level as government staff.[82] Moreover, most contracts now stipulate adherence to ACA standards, which include training standards more stringent than those of many correctional departments.[83] Many private firms set very high training standards. The largest firm in the industry requires 160 hours of training for its correctional officers, while the ACA standard requires only 120 hours. Other firms have established innovative training programs in partnership with state universities, as well as specialized team training for disturbance control and other emergencies. Evidence from the United Kingdom paints a similar picture. There, private firms must train their staff to the government's training syllabus, and private prison staff measure up very well to government staff.[84]

Contracts with private prisons introduce an additional level of accountability through the monitoring process.

What if a private prison has a strike, goes bankrupt, or fails to meet contract terms? Some public officials may ask what their recourse would be if a private firm operating their jail or prison suddenly stopped operating due to a strike or bankruptcy. They may also ask how they could fire a firm for failure to perform. Who would run the prison in such circumstances? Once again, the key to protecting the public interest lies in the terms of the contract.

In more than 10 years of modern private prison operations, there has never been a strike at a private facility. Strikes do not occur at government prisons either, but correctional officers' unions do engage in "job actions."[85] In every state save Hawaii, it is illegal for correctional officers to strike.[86] It seems likely that those laws would apply to private correctional officers as well as government ones, with the government asserting a right to step in as it did with air traffic controllers. In any event, contracts should ensure that the firm is financially liable for costs incurred by the government if private correctional officers do strike.

Bankruptcy is another event that has not occurred with a private prison operator. Should it happen, the law allows officials to require sufficient notice from the private operating firm and to terminate the contract.[87] Contract clauses to deal with bankruptcy contingencies are standard, with private operators required to have insurance or a performance bond. And in the event of a bankruptcy, a competing firm can take over fairly

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82 Harding, *Private Prisons,* p. 85.

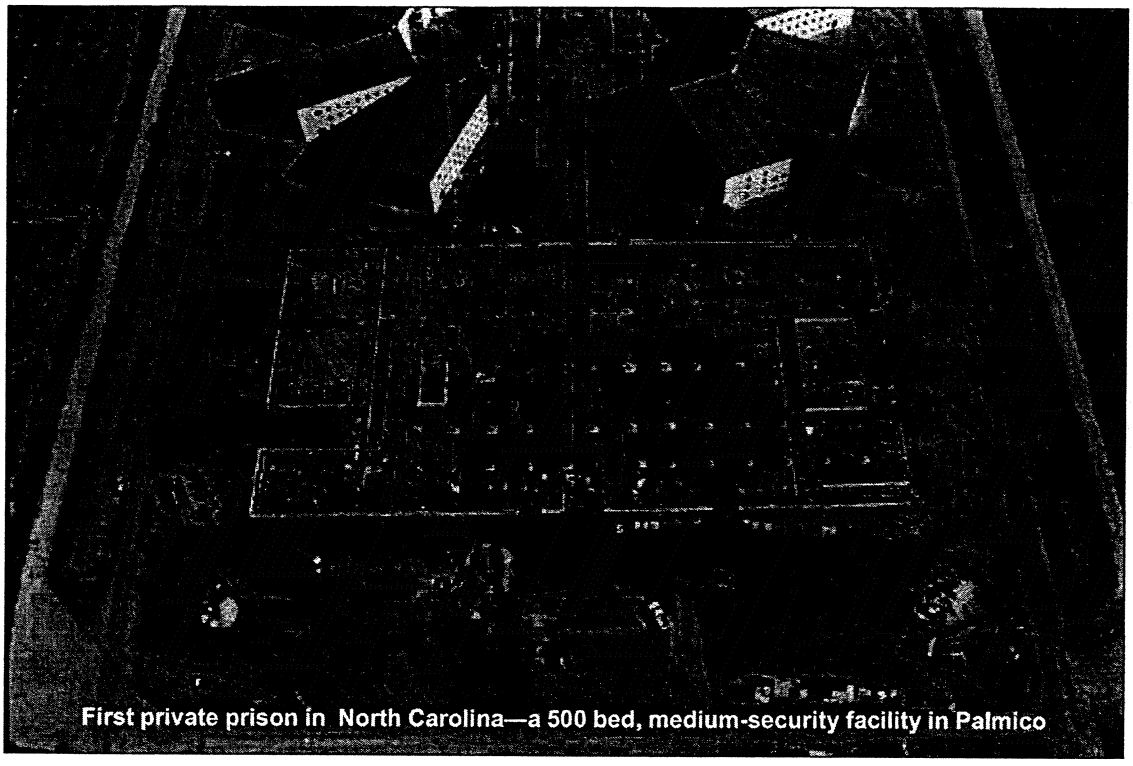
83 See American Correctional Association, *Standards for Adult Correctional Institutions,* 3rd ed. (Washington, D.C.: American Correctional Association, 1990), standards 3-4053 and 3-4081.

84 James et al., *Privatizing Prisons,* pp. 178–179.

85 Logan, *Private Prisons,* p. 177.

86 Ibid., p. 177.

87 Cathy E. Holley, "Privatization of Corrections: Is the State Out on a Limb When the Company Goes Bankrupt?" *Vanderbilt Law Review,* vol. 41, 1988, pp. 317–341.



First private prison in North Carolina—a 500 bed, medium-security facility in Palmico

easily, likely needing only management staff—most correctional officers are hired locally and will probably be happy to hire on to the new firm rather than look for a new career.

Competition will protect the public from problems if a contract has to be terminated for cause. For one thing, competition puts tremendous pressure on firms not to violate the terms of their contracts in the first place. A breached contract would mean great difficulty getting any future contracts. Also, competition ensures that there are a number of firms waiting in the wings to step in and take over if asked. If a private firm can design, build, and open a facility in just 90 days (see p. 5), then one can take over an existing facility on much shorter notice.

Will private prisons seek to increase incarceration and to keep inmates in prison longer? Critics of private prisons raise the specter of an evil "prison-industrial complex," lobbying for "tough on crime" laws and creating more prisoners with longer sentences and little chance of parole.[88]

There is little evidence of this kind of lobbying. Do private garbage collectors lobby against recycling? Do day-care centers lobby against birth control?[89] In fact, unions representing government prison correctional officers give vastly larger sums to politicians than do private prison operating companies. In California alone, correctional officers gave $1 million to Pete Wilson when he ran for governor in 1990, and another $500,000

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88 For example, see Eric Lotke, "The Prison-Industrial Complex," *Multinational Monitor,* November 1996, pp. 18–21; John DiIulio, *No Escape* (New York: Basic Books, 1991); Michael Janus, "Bars on the Iron Triangle: Public Policy Issues in the Privatization of Corrections," in *Privatizing Correctional Institutions,* edited by Gary W. Bowman, Simon Hakim, and Paul Seidenstat (New Brunswick, N.J.: Transaction, 1993), p. 82; and JusticeNet at www.igc.apc.org/ justice/prisons/crisis/.

89 Joel, "Privatization of Secure Adult Prisons," p.70.

to his 1994 reelection campaign.[90] In contrast, the two largest private prison firms' total political contributions nationwide in 1995–96 was less than $150,000.[91]

It is unlikely that private prison firms are going to sway policy in favor of greater incarceration when such policies are obviously already very popular with the general population. Moreover, prisons these days are so crowded that the private operating firms almost always find their prisons full without such effort..

This is not to say that private firms are not capable of the kind of lobbying critics fear. In the past, large industries have used their influence to sway the political process against the public interest. But the private prison industry is not large. It manages only 3 to 4 percent of the nation's prison population.

Concerns about private firms acting to prevent inmates from getting parole are equally unfounded. For one thing, revoking "good time" is a punishment used in only about 10 percent of cases.[92] The government retains control of parole decisions and the authority to take away good time, which accrues automatically unless revoked by proper authorities.[93] It is true that the authorities have to rely to some extent on the information provided by the prison regarding an inmate's behavior. However, competent monitoring and inspections, as well as the threat of inmate lawsuits, minimize any temptation by private firms to abuse their power. Denying earned time would create costly hostility between inmates and staff, and for little gain: there are usually more inmates entering the system.

It is competition that creates efficiency and innovation, because competition punishes inefficiency and inertia.

Meanwhile, there are ways to mitigate the potential problem before it begins. One method is for contracts to move toward a performance basis, basing a firm's payments on performance measures and not just on keeping a full house. We also must recognize that even if we decide as a society to put more effort into dealing with criminals by means other than incarceration, there will continue to be a need for some prisons, and the private sector can run them well and at lower cost.

Will there be access to information for the public with private prisons? Watchdog groups, family members, and others are sometimes concerned about access to information about conduct within private prisons. Of course, this is not a problem unique to private operations. Recent scandals regarding the FBI crime lab and IRS file tampering show that abuse of information can occur in government agencies as well. Private prisons must disclose any information not of a proprietary nature if they are operating on government contract, and proprietary information is of little public interest. Again, contract terms can specify conditions for inspections or audits by outside groups or state agencies to ensure that relevant information is freely available to the public. Likewise, rules regarding policy for visits with prisoners can be specified in the contract. Victoria, Australia, after experiencing problems with public access and information in private prisons, is

90 Noel Brinkerhoff, "Guardians of the Guards," *California Journal,* March 1997, p. 46; Marc Lifscher, "Governor and Union Split on Fund Raising Issue," *Wall Street Journal,* October 29, 1997, p. CA1; and "Guard Union Now Key Political Influence," *Press Enterprise,* at www.pe.net/prison/html/union_guards.html.

91 Kristin Bloomer, "America's Newest Growth Industry," *In These Times,* March 17, 1997, p. 17.

92 Logan, *Private Prisons,* p. 67.

93 Harding, *Private Prisons,* pp. 89–97.

experimenting with new techniques to improve matters, including establishing an Official Visit Program, an ombudsman, and stronger freedom-of-information rules.[94]

How are private prisons regulated? The contract provides the primary regulatory oversight of private prisons. It can stipulate conditions on crowding, handling escapes, prisoner complaints, incidents, and so on. Moreover, performance in private prisons is monitored by an outside party; the same cannot be said for government prisons.

T. Don Hutto, a former corrections commissioner in two states and now an executive for a private prison company, observes: "As a director of corrections, I did a better job of monitoring and evaluating private-sector contracts than I did of monitoring and evaluating my own operations. Through the contracting process, government can be more objective about the goals it wants to reach."[95]

Correctional policy should be aimed at providing the appropriate prisons and programs with as few taxpayer dollars as possible.

In addition, some states have recently passed legislation requiring private prisons to inform local officials about prisoners brought in from other jurisdictions, to notify them of escapes, and to compensate local law enforcement agencies for the cost of recapturing escapees.

What prevents a private prison from making "lowball" initial bids and then raising prices later? Good contracting practices and competition can easily prevent this kind of problem. The government has little incentive to give in to price increases that are not specified in the contract—especially when there are plenty of other firms willing to take over for the original price. The more competitive the market, the more recourse the government has in contract terms. It is incumbent upon public officials to look after the public interest by crafting contracts that provide incentives to lower costs, rather than raise them.

Have private prisons been "skimming the cream"—taking only low-security and less-expensive inmates? Private prisons do not just hold minimum-security prisoners. There are currently three maximum-security, 16 all-level, and 53 medium-security private facilities, as well as many minimum-security private facilities.[96] They are not just taking the easy inmates.

For example, contracts typically do not allow private firms to refuse to take sick prisoners.[97] But the higher costs of ill inmates are passed on to the public in the form of reduced savings. Older inmates are also more expensive to care for, and the private prison industry is developing a niche specialty to provide facilities just for elderly inmates. They charge more than for younger inmates but still cost considerably less than keeping the older inmates in government prisons. Similarly, in 1997 Mississippi awarded the nation's first contract for a private firm to run a mental-health correctional facility.

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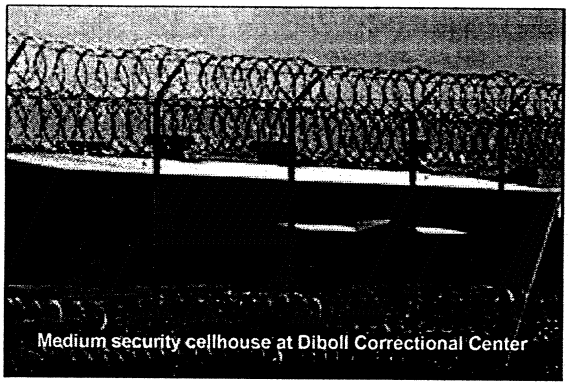
94 Victoria Department of Justice, "Innovations in the Victorian Corrections System," 1997.

95 Logan, *Private Prisons,* p. 208.

96 Thomas, "Private Adult Correctional Facility Census, 1997."

97 Harding, *Private Prisons,* p. 11.


Medium security cellhouse at Diboll Correctional Center

Is prison privatization unfair to government correctional employees? Contracting with private prisons has not led to large-scale firing of government employees.[98] Despite this fact, correctional employees' unions are the most vocal and organized opponents of privatization. Since they are usually well-organized, well-funded, and quite vocal, it is difficult for policy makers to put their concerns in perspective.

There are two reasons why the unions' concerns should not dominate the policy debate. First, while we can all sympathize with workers who do not want to lose their jobs, correctional policy should be aimed at providing the appropriate prisons and programs with as few taxpayer dollars as possible. This has to take precedence over the desire of government employees to keep their jobs.

When public servants put their own interests ahead of the public interest, bad policy can result. Government correctional officers have threatened to burn down prisons if they are privatized,[99] and the Corrections and Criminal Justice Coalition, a group speaking for government correctional officers nationwide, is advocating that federal funds be denied to correctional departments pursuing privatization projects.

This leads us to the second point—there should not be such hostility. Privatization need not mean layoffs. On average, privatization leads to only 7 percent of employees being laid off.[100] (See Figure 3.) A number of techniques have been developed as part of privatization programs for managing the transition of displaced government employees in as fair a way as possible. These include: requiring contractors to hire displaced workers (but not requiring them to replace workers who resign), offering early retirement, and shifting workers to other vacancies within the system.[101]

Neither should privatization mean a dramatic loss of benefits. In fact, it can mean an increase. Employees should look at their own retirement plans and compare them to private plans before they decide. A typical government retirement plan deducts 3 to 5 percent of the employee's earnings each year to pay into a pension plan, requires 10 years of employment in order to vest, and pays $3,000 to $7,000 a year in benefits after age 55 (or from the date of retirement if the employee serves 25 years or more).

The typical retirement plan of a private prison firm is an employee stock ownership plan (ESOP) in which employees may buy as many shares in the company as they want to each year, and the company will match them. The shares are immediately owned by the employees, who may sell or reinvest the shares as they choose. There is no wait to vest, so employees who retire early or move to other careers get all of their accrued benefits, regardless of length of employment. Suppose an employee invested 5 percent of each paycheck in the

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98 At some point, privatization may mean a reduction in government jobs: for example, if Tennessee completes its plans to privatize two-thirds of its entire prison system.

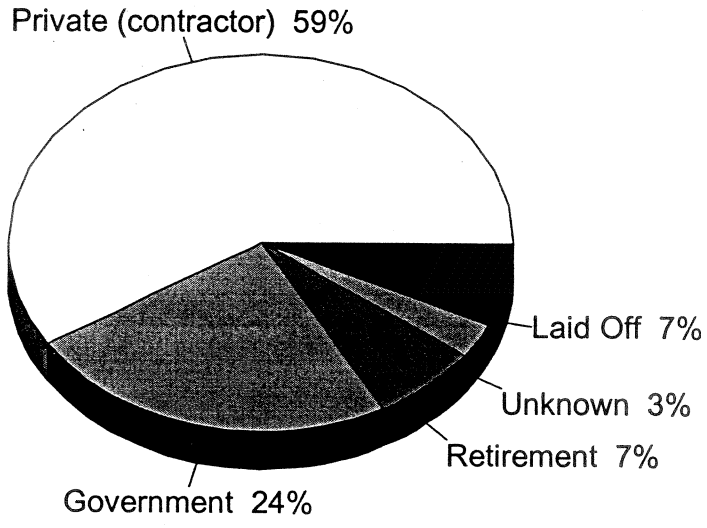
99 Jennifer Gonnerman, "On Guard: Correction Officers Fight Privatization by Storming Conference," *Village Voice,* September 30, 1997, p. 53.

100 National Commission on Employment Policy, "The Long-Term Employment Implications of Privatization," U.S. Department of Labor, Washington, D.C., 1989.

101 A comprehensive survey is provided in John O'Leary and William D. Eggers, "Privatization and Public Employees: Guidelines for Fair Treatment," Reason Foundation How-to Guide No. 9, 1993.

ESOP and at the end of each year sold some of the stock and rolled it into a medium-risk mutual fund. Assuming an average annual return on the stock and the mutual fund of 15 percent, after just 10 years of employment, the employee would be able to draw about $3,200 a year from age 55 to age 72. After 25 years of employment, the employee would have an income of $38,538 a year from age 55 to age 72.

Figure 3: Employment Status of Affected Government Workers



Source: "The Long-Term Employment Implications of Privatization," NCEP, 1989.

Part 6

Conclusion

Federal, state, and local officials across the nation are facing a real crisis in their prisons and jails—too many prisoners and not enough money. Crime rates may be falling, but inmates are on average serving more time, so the problem is only going to get worse.

Private prisons can be a big part of the answer to this problem. The evidence is very strong that private prisons are comparable to government prisons in quality, and significantly less costly. State and local officials in 25 states, as well as several federal agencies, have turned to private prison operators to cope with growing prison needs, with great success. Although private prisons may not be a panacea, they are certainly part of the answer.

Part 7

About the Author

Adrian T. Moore is the Director of Economic Studies at the Reason Public Policy Institute, where he does research on public safety and other policy issues. He is an analyst for the RPPI Privatization Center, and he edits its monthly newsletter, *Privatization Watch,* and the influential *Annual Privatization Report*. He has written extensively on public policy and privatization, including co-authoring *Curb Rights: A Foundation for Free Enterprise in Urban Transit* and writing about private prisons in *The American Enterprise* and *Correctional Building News*.

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Coming Soon: Contracting for Correctional Services: A "How-to" Guide

Part 8

Appendix: Resources

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Alternative Programs
425 Golden State Ave.
Bakersfield, CA 93301
(805) 326-0411 (fax 1168)

Bobby Ross Group
1021 Ranch Road 620 S., Suite D
Austin, TX 78734
(512) 263-9480 (fax 9481)

Cornell Corrections
4801 Woodway, Suite 400W
Houston, TX 77056
(713) 623-0790 (fax 2217)

Correctional Systems
209 Camaro Way
San Marcos, TX 78666
(512) 396-7583 (fax 353-2910)

Group 4 Prison Services
Farncombe House, Broadway
Worcestershire, England WR12 7LJ
(44) 1-38685-8585

Management and Training Corporation
P.O. Box 9935
Ogden, UT 84403
(801) 626-2000 (fax 2685)

Securicor New Century
9609 Gayton Road, Suite 100
Richmond, VA 23233
(804) 754-1100 (fax 741-9515)

Wackenhut Corrections
P.O. Box 10963
Palm Beach Gardens, FL 33410
(561) 622-5656 (fax 6659)

Avalon Community Services
13401 Railway Dr.
Oklahoma City, OK 73157
(405) 752-8802 (fax 8552)

CiviGenics
100 Locke Dr.
Marlboro, MA 01752
(800) 525-9479 x122

Correctional Services Corporation
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Sarasota, FL 34236
(941) 953-9199 (fax 9198)

Corrections Corporation of America
10 Burton Hills Blvd.
Nashville, TN 37215
(615) 263-3000 (fax 3140)

GRW Corporation
P.O. Box 1403
Brentwood, TN 37204
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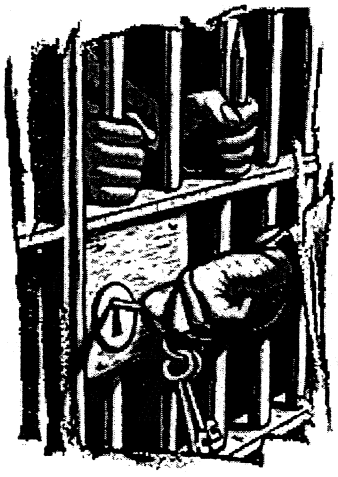
URL: http://www.corpwatch.org/issues/PID.jsp?articleid=852

The Prison Industrial Complex: Crisis and Control

By Christian Parenti
Special to CorpWatch
September 1, 1999

In 1964 a tsunami swept over Crescent City, California completely destroying the downtown. Only nine people died, but the town - nestled just below the Oregon border -- never recovered.



In 1989 another tsunami hit -- this time the tidal wave was political. The California Department of Corrections rolled in, and with little opposition built the sprawling $277 million Pelican Bay State Prison, one of the newest, meanest super-max lockups in the system. The prison is also Crescent City and Del Norte County's largest employer.

The new prison's political and economic clout is exaggerated by Crescent City's extreme isolation and poverty. Only four of the area's seventeen saw mills are still in operation, commercial salmon fishing is dead, and during the mid-eighties 164 businesses went under. By the time the California Department of Corrections came scouting for a new prison site, unemployment had breached twenty percent.

Today, Pelican Bay provides 1,500 jobs, an annual payroll of $50 million. Indirectly, the prison has created work in everything from construction to domestic violence counseling. Also cashing in on the action is a huge Ace Hardware, a private hospital and a 90,000 square foot K-mart, selling everything from toothpaste to Spice Girl paraphernalia.

The Prison Industrial Complex

The little town and the big prison: it is a marriage of convenience replicated in scores of communities in recent years. From Bowling Green, Missouri, to rural Florida, economically battered towns are rolling over for new prisons. Nationally the tab for building penitentiaries averaged about $7 billion a year over the last decade. One report has more than 523,000 full-time employees working in American corrections -- more than in any Fortune 500 company except General Motors.

The little town and the big prison is a marriage of convenience replicated in scores of communities.

Is prison building the jobs program and vehicle for government economic stimulus in a post- cold-war, demilitarized America? Is the emerging prison industry replacing the web of civilian, government, military interests and private capital that Eisenhower dubbed the "military industrial complex"? This is the position held by a few on the left and, to some extent, by writers in the *Wall Street Journal* and *Atlantic Monthly*.

But this perspective raises several questions. First, is the military industrial complex withering and being transformed piece by piece into a domestic war machine? A glance at the facts suggests not. The 1999 Pentagon budget topped $297 billion, the greatest in real terms ever. That's six to ten times the total annual tab for incarceration. So while Hekler and Koch and other

arms dealers may be pushing their wares on America's cops and Wackenhut Corrections sinks more capital into private prisons, these expansions are not forced by a peace-driven pentagon downswing.

Nonetheless, are specific corporate interests driving criminal justice policy, as is often the case with military policy? This "prison as pentagon" argument generally cites three ways in which incarceration bolsters capitalism: government economic stimulus for stagnant communities (like Crescent City), the privatization of prisons and prison-related services, and the exploitation of prison labor by private firms. All of these facets of the prison industrial complex are important, but none of them -- alone or together -- explains why we are headed for what Jerome Miller, co-founder of the National Center on Institutions and Alternatives, calls a "gulag state."

This article explores each of the crucial points on the prison-business nexus, and then offers a different explanation for the lockdown economy: one based not on specific corporate interests, but rather on an analysis of criminal punishment as a class struggle from above.

Prison Labor

Critics of the prison industrial complex focus a great deal of attention on prison labor. Many say that incarceration is increasingly driven by big corporations looking for profits. They point the finger at Microsoft, Starbucks, Victoria's Secret and TWA for using cheap, well disciplined prison labor. In reality, most corporations use subcontractors who on occasion use prison labor, but more often use cheaper, more productive overseas workers. Nationwide, only 2,600 convicts work for private firms. Corporations don't like the invasive, controlled environment of prisons, where guards often interrupt production to strip search the employees. Nor are many big firms willing to risk the bad press associated with exploiting convicts. Montgomery Ward, for example, has a charter pledging that the company will not use child, slave, or convict labor.

Then there are state owned "prison industries." The federal government's Unicor employs 20,000 convict workers manufacturing everything from wire to office furniture. These are impressive numbers, and it might seem that there's a lot of money being made. In fact, Unicor - like other ventures owned by the state prison system - is heavily subsidized and would collapse in a few months if forced to compete with the private sector. Navy officials say that compared to the open market Unicor's "product is inferior, costs more and takes longer to procure."

Microsoft, Starbucks, Victoria's Secret and TWA use cheap prison labor.

This is not to suggest that prison labor is unimportant. Politically and ideologically it is very important. And for the inmates who do the work, issues of fairness and safety are paramount. But in terms of explaining *why* policy makers are so eager to lock people up, prison labor is a sideshow.

Private Prisons

Another player in the prison industrial complex is the fast growing and powerful private prison industry. For-profit lockups currently control some five percent of all U.S. prison beds. They make huge profits and spend amply to sway politicians and public opinion. The current round of private incarceration began with a Reagan sponsored experiment to house INS detainees at private detention centers in Houston and Laredo, Texas.

In response to the federal government's broad invitation to capital, a pair of Tennessee entrepreneurs using money from Kentucky Fried Chicken and the know-how of several public sector corrections veterans set up the first private prison company, Corrections Corporation of America (CCA). For most of the eighties and early nineties CCA, like its competitors, concerned itself with cherry picking -- seeking easy to handle contracts for minimum-security prisons.

But CCA and the others soon set out after bigger prizes. Corporate jailers now control roughly 100,000 prison beds nationwide, in 27 different states. CCA's market share is approximately half of all privatized America prison beds. Globally, its barely regulated empire includes 78 prisons in 25 states, the District of Columbia, Puerto Rico, Australia and the United Kingdom. CCA's record of inmate escapes and hiring untrained guards who brutalize prisoners is notorious.

Yet, financially CCA has performed handsomely. One investment firm dubbed it "a theme stock for the nineties." To maintain market dominance CCA does things the old fashioned way: giving generously to politicians and

buttering up the press. In recent years CCA's CEO has distributed more campaign money to Tennessee politicians than any other individual. The company also operates a robust lobbying operation in DC and in several states where it has operations.

The second largest private jailer is Wackenhut Corrections, with about 17,000 beds at 24 facilities. Named after its founder, former FBI agent George Wackenhut, the firm is a subsidiary of Wackenhut's private security service, which made it big more than forty years ago by scooping up contracts to guard America's nuclear waste dumps and testing installations. Wackenhut also did some freelance spooking. By the late sixties the corporation had dossiers on three million American "potential subversives." This was the largest collection of private surveillance files in American history and was later handed over to the FBI. By the 1970s and 1980s the company had expanded into strikebreaking and guarding US embassies. George Wackenhut still runs the business from his castle-like mansion in Florida and from the deck of his yacht, Top Secret.

While private prisons are profitable, they don't lower the cost of incarceration for state governments.

Behind CCA and Wackenhut is a hungry pack of some sixteen other firms that run local jails, private prisons, and INS detention centers. Underwriting the growth of both public and private prisons are a battery of mainstream financial houses. Giant Wall St. firms such as Goldman Sachs, and Merrill Lynch write between two and three billion dollars in prison construction bonds every year. Swimming along side the big fish of incarceration are schools of for-profit caterers, prison HMOs, private transport companies, architecture firms and other subcontractors that feed at the margins of the prison industrial complex.

While private prisons are profitable, they don't lower the cost of incarceration for state governments. They merely gouge at the other side by taking all amenities and services from prisoners and by hiring often incompetent, unqualified guards. The private jailers are bad but they only control 5 percent of all prison beds and they have not hijacked national corrections policy the way military contractors have. Besides they are increasingly unpopular -- even with many Republicans. Therefore it seems that private prisons are not pushing criminal justice policy in the way that arms manufactures do with defense policy.

Class Warfare From Above

So what is driving the lockdown? At the heart of the matter lies a basic contradiction: capitalism needs and creates poverty, intentionally through policy and organically through economic crisis. Yet corporate America is also threatened by the poor. These so called "surplus populations" help scare working people into obedience, and keep wages low. Yet at the same time the poor (who in the United Sates are disproportionately people of color) make the upper middle class (who are mostly white) uneasy. At times they rebel and burn down the ghetto, or even more threatening to the status quo, they organize and demand economic redistribution.

Capitalism needs and creates poverty, yet corporate America is threatened by the poor.

In the past the poor were managed through a mix of social amelioration and repression. From the New Deal of 1930's through the 1970's an increasing portion of the system's cast off population were absorbed through a social safety net. People of color, particularly in the rural South, were largely excluded and managed the old fashion way: via brut force. But America's incipient social welfare state began to cause trouble in the late sixties, that's when profits began to shrink and the economy slid into recession.

Crucial to that crisis was rising labor agitation. By the early seventies wildcat strikes had shut the nation's postal system, coal fields, truck industry and railways. During one nationwide strike in which 12 unions whooped General Electric's ass, strikers reportedly collected $25 million in welfare. Despite recession in the early seventies the ratio of quits to lay-offs was rising. Workers were no longer afraid of unemployment because there was a social welfare system supporting them. The war on poverty was subsidizing the war against corporations.

Reagan put an end to all that. A severe recession in the early eighties, conservative courts, and a mass assault on all forms of government subsidies to poor and working people -- from low-income housing programs, to job training to welfare -- helped to tip the scales back to capital's favor. So now profits are in recovery while the working public, particularly people of color, bleeds. But how to regulate the poor?

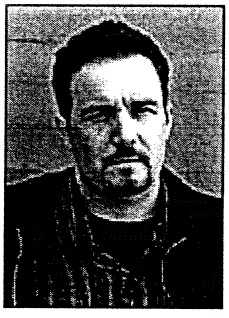
The answer in the 1990's is clear: racialize poverty via criminal codes, such as drug laws

and mandatory minimum sentences that disproportionately affect poor people of color. Then lock up as many people as possible for as long as possible. In this way criminal justice regulates, absorbs, terrorizes and disorganizes the poor. It also bolsters institutionalized racism by disenfranchising and marginalizing large numbers of brown people. But unlike social welfare programs, the war on crime doesn't have the side effect of empowering, or at least cushioning, the poor and subsidizing their struggles. Nor does the new model of control set loose dangerous notions of racial equality or social inclusion, as did some War on Poverty programs of the 1960's. The prison industrial complex is containment the old fashioned way, via segregation, fear mongering, race-baiting, and naked force.

Criminal justice regulates, terrorizes and disorganizes the poor.

As for solutions: we need less. Less policing, less incarceration, shorter sentences, fewer laws governing individual behaviors, and less obsessive discussion of every lurid crime in the news media. Two-thirds of all people entering prison are sentenced for non-violent offenses, which means there are literally hundreds of thousands of people in prison who pose no major threat to public safety.

There is already an over abundance of good ideas on how to handle troubled youth, drug addicts, impoverished sex workers, and spousal abusers. Many are quite inexpensive and effective. And since the need for work is at the heart of any real war on crime, we should create jobs that pay a living wage and meet human needs. All over the country there are small pockets of dedicated activists fighting against tremendous odds and the deafening silence of the mainstream press, from Latino youth demanding more schools and fewer prisons, to inmates filing joint grievances against abusive staff, to Families Against Mandatory Minimums. These are the people pointing the way out from the waste, terror, and abuse of America's criminal justice lockdown.



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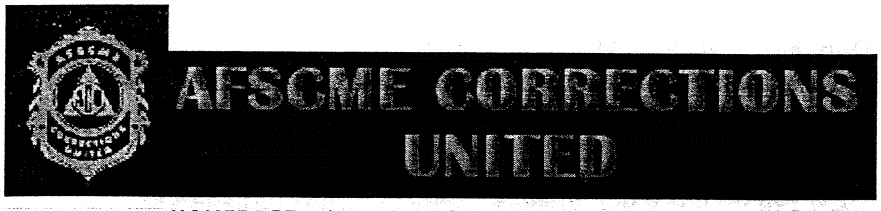

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PRIVATE PRISONS SURVEY

Findings from a nationwide survey of 800 likely voters and 200 members of the law enforcement community, including 75 AFSCME members. Survey conducted in August 1999 by Lake Snell Perry & Associates.

- **Voters believe that prisons in their states are run fairly well, regardless of partisan affiliation.**

  Thinking about prisons for a minute, how well would you say prisons are run in your state? Are they run very well, fairly well, not very well, or not well at all?

	DEMOCRATS	INDEPENDENTS	REPUBLICANS
Well	58%	61%	62%
Not Well	29%	22%	22%
Don't Know	13%	17%	16%

- **Voters are closely divided on privatization generally, but a majority oppose privatization of prisons and intense opposition is more than twice as great as intense support.**

  In general, do you favor or oppose privatization of public services? In general do you favor or oppose the privatization of prisons?

	PUBLIC SERVICES	PRISONS
Favor	37%	28%
Oppose	42%	51%
Don't Know	22%	21%

- **Republicans, Democrats, and independents all oppose prison privatization. Women are more opposed than men, particularly independent women, but both groups lean against.**

  In general, do you favor or oppose the privatization of prisons?

	DEMOCRATS	INDEPENDENTS	REPUBLICANS
Favor	26%	29%	29%
Oppose	50%	53%	50%
Don't Know	24%	18%	22%

MEN	WOMEN	INDEPENDENT MEN	INDEPENDENT WOMEN

Favor	30%	26%	39%	20%
Oppose	48%	54%	45%	61%
Don't Know	30%	26%	39%	20%

- **Unlike other areas of public service, people assume prisons do a better job on more dimensions. Public prisons are seen as significantly more accountable and better able to protect public safety than private prisons.**

  After you hear each word or phrase, please tell me whether it is more likely to describe prisons operated by government agencies or prisons operated by private companies.

	GOVERNMENT AGENCIES	PRIVATE COMPANIES
***Be accountable to the public**	59%	19%
Protect public safety	56%	16%
Provide better security for the public	55%	20%
Keep prisoners from escaping	53%	16%

  * Asked of whole sample. All others asked of only half the sample.

- **Public prisons are also seen as better able to provide mental health, alcohol, and drug treatment. They are also seen as more likely to have well trained employees.**

  After you hear each word or phrase, please tell me whether it is more likely to describe prisons operated by government agencies or prisons operated by private companies.

	GOVERNMENT AGENCIES	PRIVATE COMPANIES
Provide full disclosure to the public	46%	23%
Provide mental health treatment	46%	21%
Provide good-paying jobs	46%	25%
Provide alcohol and drug treatment	43%	23%
Have well-trained employees	42%	24%
Separate hardened from first time offenders	42%	21%

  * Asked of only half the sample.

- **Public prisons are also given the advantage over private prisons on inmate rehabilitation and preventing violence.**

  After you hear each word or phrase, please tell me whether it is more likely to describe prisons operated by government agencies or prisons operated by private companies.

	GOVERNMENT	PRIVATE

	AGENCIES	COMPANIES
Rehabilitate inmates	41%	24%
Prevent inmate violence	41%	22%
Control gangs in prisons	41%	20%

* Asked of only half the sample.

- **Private companies have a down side as well. They are viewed as much more likely to cut corners, and be understaffed, but only slightly more likely to have poor training.**

Please tell me whether each one is more likely to describe prisons operated by government agencies or prisons operated by private companies.

	GOVERNMENT AGENCIES	PRIVATE COMPANIES
Cut corners	27%	46%
Be understaffed	27%	42%
Bee poorly trained	27%	33%
Make mistakes	23%	30%

* Asked of only half the sample.

- **By comparison, government is seen as more likely to waste tax dollars and slightly more likely to be corrupt, but in the long run voters do not think it will save them that much money.**

Please tell me whether each one is more likely to describe prisons operated by government agencies or prisons operated by private companies.

	GOVERNMENT AGENCIES	PRIVATE COMPANIES
Waste taxes	49%	20%
Be corrupt	33%	27%
Save tax dollars	34%	42%

* Asked of only half the sample.

- **The most commonly shared beliefs among voters are that private companies place profits ahead of safety and that government is better equipped to handle violent prisoners.**

Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with each statement.

	DISAGREE AGREE
Private companies cut corners, placing	

profits ahead of public safety	19%	26%
There are some things that private companies are just not qualified to do and running prisons is one of them	23%	60%
Government is better equipped than private companies to handle violent criminals	22%	59%

* Asked of only half the sample.

- **While all voters heard a powerful message in support of privatizing prisons, half heard an opposition message focused on public safety and the other half heard a message focused on accountability.**

Supporters of privatization say that state of the art private facilities can do a better job for less money than the older, government run prisons. They point to studies that show that private companies can save taxpayers up to 20 percent of the cost to operate prisons. They force government run facilities to compete and be more cost effective, and unlike government prisons, they even pay property taxes. Private companies are tough on criminals and can also require prisoners to earn their keep rather than become a drain on the taxpayers. Government run facilities face state and federal bureaucracies that limit their ability to pout these inmates to work. We should increase the number of privately run prisons, making sure that these inmates pay for their own mistakes and earn money to compensate victims.

PUBLIC SAFETY MESSAGE
Opponents of privatization say that private prisons put local communities at risk and don't save money in the long run. To boost profits, these companies have shown they are willing to cut corners, threatening public safety. I Houston, one private company imported violent sex offenders from Oregon and housed them in a supposedly low risk minimum security facility, without getting permission from community leaders. They even failed to notify the local police. Two violent sex-offenders escaped and because local law enforcement had not been notified, response was delayed. These private companies sometimes use untrained workers to transport these dangerous criminals across state lines. Most communities don't find out about it unless something goes terribly wrong. We shouldn't put public safety in the hands of big out-of-state corporations who are not accountable to the public and whose top priority is to make money for stock holders and C.E.O.'s.

ACCOUNTABILITY MESSAGE
Opponents of privatization say that even though private companies CLAIM it costs less for them to build and maintain prisons, three independent studies have shown that private prisons haven't saved the taxpayers any real money or improved service. These companies make their profits by cutting corners and hiring untrained workers at lower pay. In fact, because there is little or no supervision by the public, private prisons have dangerously low levels of security. In some cases, because of poor management by these private companies, law enforcement officers have been unable to track and apprehend escaped prisoners. In two states — Texas and New Mexico — private companies started contracts and then, after cost overruns, dumped the problem back on the state. Private prisons put the public at risk. We shouldn't put public safety in the hands of big out-of-state corporations

who are not accountable to the public and whose top priority is to make money for stock holders and C.E.O.'s.

- **Both messages leave opposition solidly ahead. On the surface it appears that messages focusing on protecting public safety and accountability are equally powerful against the best pro-privatization arguments.**

Overall, would you favor or oppose privatization of prisons?

	PUBLIC SAFETY	ACCOUNTABILITY
Favor	26%	28%
Oppose	57%	57%
Don't Know	17%	16%

- **However, it is clear that among Democrats the public safety argument is far more engaging than accountability. In contrast, Republicans show a much greater response to the accountability aspect.**

PUBLIC SAFETY MESSAGE

	DEMOCRATS	INDEPENDENTS	REPUBLICANS
Favor	20%	30%	26%
Oppose	63%	53%	55%

ACCOUNTABILITY MESSAGE

	DEMOCRATS	INDEPENDENTS	REPUBLICANS
Favor	33%	28%	22%
Oppose	51%	56%	61%

- **Opposition to privatization solidifies and intensifies after voters hear messages on both sides.**

In general, do you favor or oppose the privatization of prisons? Overall, would you favor or oppose the privatization of prisons?

	INITIAL VOTE	VOTE AFTER MESSAGES*
Favor	28%	27%
Oppose	51%	57%
Don't Know	21%	17%

* Combined split sample.

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Assessing Prison Performance from the Inmates' View: Comparing Private and Public Prisons

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Assessing Prison Performance from the Inmates' View: Comparing Private and Public Prisons

Assessing Prison Performance from the Inmates' View:
Comparing Private and Public Prisons

Abstract

The public sector needs to monitor the performance of the private prisons, and it is necessary to conduct the monitoring as objectively as possible. This paper demonstrates that an often overlooked source of data, surveys of inmates, can be used to differentiate prisons on areas such as gang activity, safety and security, sanitation, and food service delivery. Hierarchical linear models were used to generate the prison performance measures. Second, we show that inmates and staff largely agree in their assessments of conditions at the prison. Finally, we demonstrate that while there is considerable consistency for different measures within the topical areas examined, there is no necessary correspondence in performance across the different topical areas of gang management, safety and security, sanitation, and food service delivery. While surveys will and should never replace operational reviews and audits, we demonstrated that they can be effectively used to obtain information about operational differences between prisons.

Assessing Prison Performance from the Inmates' View:
Comparing Private and Public Prisons

The emergence of private adult prisons has generated an industry of proponents and opponents who articulate, respectively, the merits and dangers of privatization. Even when the arguments have turned to empirical matters, the results have been less than conclusive (see the reviews by Austin & Coventry, 2001; Gaes, Camp, & Saylor, 1998; General Accounting Office, 1996). Largely missing from discussions of prison privatization are the views of inmates themselves. Also, existing studies rarely examine whether the methods employed used to compare prisons are appropriate (for an exception on prison quality see Camp & Gaes, 2000; for an exception on cost comparisons see Nelson, 1999).

The question of how best to compare public and private prisons is relevant because both proponents and opponents of private prisons claim that public and private prisons operate differently. Obviously, proponents of private prisons claim that private prisons operate more efficiently with higher quality provided, and opponents argue the opposite or at least that quality is threatened by private operations. The existing quality comparisons have primarily relied upon reviews of operational data and/or audits (Archambeault & Deis, 1996; Bowery, 1997; Tennessee Select Oversight Committee on Corrections, 1995; Thomas, 1997). There are some issues that make audits problematic for comparing prisons on a continuing basis. First, audits are expensive and somewhat subjective, although the solution used in Tennessee to use members of both the public and private sectors as audit team members was creative. Another problem with audits is the difficulty of obtaining information on a sufficient number of facilities at approximately the same time. Finally, audits disrupt normal institutional operations at the respective prisons.

The collection of operational data is certainly less disruptive than audits as it is generally part of normal institutional operations, but the use of operational data presents its own challenges. The most serious challenge to operational data is the ease with which it can be manipulated by differences in reporting, correctional philosophy, and operational practice. The operational data that are most commonly used to compare prisons are misconduct data. The usual assumption is that differences in reported misconduct result from "real" differences in the underlying behaviors. While this assumption may be more adequate for the most serious types of misconduct in prison, such as murders or escapes from secure prisons, it is more tenuous for less serious misconduct. If a warden can convey a philosophy of informal resolution of minor disputes, and especially if the warden is fortunate enough to have a seasoned workforce, then many types of misconduct may never appear in official, operational records. As a result, the operational data are "contaminated" in the sense that they reflect differences other than differences in underlying misconduct rates. The contamination of data for less serious misconduct is most unfortunate for research purposes as the more serious misconduct is much less common, especially in lower security level prisons where private operators tend to be concentrated.

A less common source of data for comparing prisons is survey data collected from inmates and staff (Camp, Gaes, & Saylor, 2001; Logan, 1992; Sechrest & Shichor, 1996). Survey data have the normal advantages associated with survey data: the data are cheap to collect, they cause little disruption during collection, and they can be administered to many institutions in a relatively short time span. Of course, survey data have the typical disadvantages, the one of apparent concern to prison administrators is the ability of respondents to "exaggerate" if they are so inclined. To be blunt, prison administrators often fear that respondents lie to make them look bad. However, an analysis of inmate survey data demonstrated that inmate responses systematically

fluctuated at different U.S. federal prisons, suggesting that the surveys provided something more than a uniform "gripe" forum for the inmates (Camp, 1999). Likewise, researchers in the Office of Research and Evaluation at the Federal Bureau of Prisons have demonstrated that staff responses to certain survey questions are influenced by differences between prisons (Camp, Saylor, & Harer, 1997; Camp, Saylor, & Wright, 1999).

This paper focuses upon how inmate attitudes are influenced by the conditions of the prisons in which the inmates are incarcerated. This is a use of the data not usually undertaken, with some exceptions such as Camp (1999). Most analysts of inmate survey data typically use the data to describe the needs, program experiences (Carlson, 1997), characteristics, or other experiences of inmates, such as victimization in prisons (Maitland, 1996; McCorkle, 1993) or the extent and nature of victimization and violence within prisons (O'Donnell, 1998). Data collected for these surveys often consist of questions which asked inmates about their personal experiences of victimization within the last month of their incarceration (Edgar, 1998; O'Donnell, 1998).

A different use of survey data collected from inmates is provided by the Correctional Service of Canada (CSC). In 1994, CSC contracted with Price Waterhouse to conduct a National Inmate Survey of approximately 4,000 inmates across the five regions of the CSC. The questionnaire was thorough and broken down into five sections: background information, institutional environment, security, staff and programs, and health (Robinson, 1996). The final report examined each question and presented a table which compared the survey responses by region and security level (Price Waterhouse, 1996). However, no further controls were used to adjust the comparisons for individual differences among the raters, controls such as those used by Camp (1999). Also, the measures were not examined to determine whether they actually provided

desirable measurement properties at the levels of institution and region to which the data were aggregated as discussed below.

Given the focus of previous studies using inmate data, analysts have rarely asked extremely important and fundamental questions: How were the inmate responses conditioned by the institutions in which the inmates are incarcerated? Were the responses impervious to the experiences of the inmates in their respective prisons? Or were the responses affected by operational and other differences between the prisons in which the inmates are incarcerated? And, finally, do inmates provide the same information as staff when asked about prison conditions? Typically, analysts have made the mistake of either assuming that responses are necessarily influenced by the prisons in which inmates are incarcerated (see the critique of Logan in Camp et al., 2001), or they simply never address the issue at all.

Several methodological tasks were addressed to answer the overriding question of this analysis: Do inmates provide information about prison conditions that is different from the information solicited from staff. Clearly we could and did ask inmates questions that were not relevant to staff, and we report the results of selected questions here. Beyond this obvious difference in the information provided by inmates and staff, the question is whether inmates have their own perspective on prison operations that differs from that of staff. Common sense could certainly lead us to this presumption. Alternatively, it could also be argued that the same institutional features that influence staff perceptions at an institution also have an impact upon inmates. While inmates and staff are unlikely to have identical opinions about their institutions, their respective opinions may rank the same when compared respectively to inmates and staff at other institutions.

Given the above objective, there were four steps that were followed. First, we investigated the organizational properties of the data collected from inmates and staff. As has been demonstrated elsewhere, it is not sufficient to compare prisons on the proportion of inmates and staff who provide favorable evaluations to survey questions (Camp et al., 2001). Instead, it is necessary to use multilevel modeling techniques to control for pertinent factors when constructing appropriates measures for comparisons at the organizational level (Bryk & Raudenbush, 1992). Second, once the appropriate measures were defined, it was necessary to examine how well inmate and staff evaluations correlated across institutions. That is, if inmates rated institution X as being high on a given measure in comparison to their peers at other prisons, did staff at the institution provide a corresponding evaluation? Both bar graphs and correlations (parametric and nonparametric) were used to assess this component. Third, we examined the coherence of measures within an institution to answer whether inmates at a particular institution tended to rate all aspects of prison operations similarly. A unique graphing package, *Parallel Coordinates Display*, that was designed to implement the data presentation ideas developed by analysts such as Hartigan (1975), Inselburg (1990), and Wegman (1990), was used to generate the graphs for this portion of the study (Howell, 2001). Finally, we used all of the preceding information to compare the operations at one private prison with operations at selected BOP prisons.

Data and Methods

The Federal Bureau of Prisons routinely administers a survey of staff, known as the Prison Social Climate Survey (PSCS). The PSCS was first administered in 1988, and it has been administered annually since that time. In 1999, the year analyzed here, 86.9 percent of the 10,710 staff surveyed returned useable surveys. The complete PSCS questionnaire is divided into topic areas on the socio-demographics of the respondent and their work history, the work environment,

personal safety and security, personal well-being, and quality of life. The sections are mixed across four versions so that individual respondents answer only a subset of the entire instrument. Some questions are asked of all respondents (see Camp et al., 2001).

In March and April of 2000, about six months after the 1999 staff administration, an inmate version of the PSCS was given to inmates at ten low-security prisons. The ten institutions were deliberately chosen to be representative of all low-security prisons in the BOP. Surveys of inmates occur on an as-needed basis, and this survey administration was predicated on the need to obtain additional information about prison operations at Taft Correctional Institution, a private prison operated by Wackenhut Corrections Corporation for the Federal Bureau of Prisons. A little over 100 inmates were surveyed at each institution, or 1,080 inmates overall. Completed surveys were obtained from 950 inmates, for a response rate of 88.0 percent.

As can be seen in Appendix 1, the inmates who completed the survey looked different from the inmates selected for the survey with the exception of age where the intended and actual sample data agree. Even with the discrepancies noted in Appendix 1, we are confident that there was no systematic bias in the types of respondents who completed the survey because of the control that was exercised in administering the survey. The survey was completed by calling inmates out to an area of the prison where the surveys were administered. We are confident that the inmates on our survey lists were the inmates who showed up. For the most part, almost all inmates who were available for callout completed the survey. Most of the non-completions were the result of inmates not being available or even present at the prison. Plus, there were reporting differences reflected in Appendix 1. Hispanic inmates who classified their own race, as opposed to the official data where race was coded with staff assistance, were likely to choose their race as other (88 inmates) or leave the race question blank (231 inmates). Clearly, many Hispanic inmates

viewed their *race* as being Hispanic, where the survey forced this to be a choice for *ethnicity*. Nonetheless, it does appear from the appendix that more inmates view themselves as Hispanics than were recorded as such by the BOP.

There are two other caveats about the data worth noting. First, in the random selection of inmates into the sample, inmates with an IHP status were disproportionately sampled in five of the ten prisons.[1] Taft, at the time, held a large number of IHP inmates, and we wanted to collect information from other prisons to test whether IHP status influenced inmate evaluations of prison conditions. Originally, we had planned to match survey responses back to the respective individual-level operational data with a matching program to re-identify the IHP inmates. However, the socio-demographic information collected in the surveys was not rich enough to obtain satisfactory matches. Since we could not identify the IHP inmates with the matching technique, and because we did not ask the respondents directly about their IHP status, we included a variable in all of the models analyzed here for the propensity, or predicted probability, that the respondents were IHP inmates. The coefficients for predicting the propensity scores were derived from the operational data on the intended sample, where IHP status was known, and the coefficients were then used on the survey responses to calculate the propensity score. In almost all cases, the propensity score did not significantly enter into equations of the outcome variables examined here, leading us to conclude that the sample was not biased in those institutions where IHP inmates were oversampled. The second caveat in the data is the time separation between the inmate and staff surveys. There were no major events in the BOP, such as Bureau-wide inmate

[1]As used here, IHP inmate indicates an inmate who will be turned over to the Immigration and Naturalization Service upon release from Federal prison. Generally, these inmates are deported back to their home countries.

disturbances, that would have had an undue, systematic impact upon altering the later-collected inmate views. Nonetheless, it would have been desirable to collect the data contemporaneously.

Missing data in the inmate and staff databases were handled with the data augmentation procedures described by Schafer (1997) and implemented in the experimental SAS Version 8.1 procedure PROC MI. Since PROC MI requires that categorical variables be measured on an ordinal scale, some variables in the inmate and staff databases were recoded into dummy variables that were appropriate. In particular, race in both the inmate and staff databases was recoded into a dummy variable comparing non-minorities (whites) and minorities. Additionally, for the staff database, an eleven-category variable measuring job category was collapsed into correctional officers, non-correctional officers. For each data source, three imputed databases were produced for the analyses that follow.

Step 1. The inmate and staff data were modeled with the HLM package developed by Raudenbush, Bryk, Cheong, and Congdon (2000) as described in Bryk and Raudenbush (1992). While HLM models are estimated in one step, the models can be thought of as existing at different levels. At level-1, the outcomes observed for each individual are modeled as a function of the covariate pattern for that individual. The following level-1 equation looks very much like an OLS model with some important exceptions. First, error and associated variance has been separated into two components, only one of which is shown in the level-1 equation. The other component of variance, represented by u_{0j} in the level-2 equation, is associated with the clustering unit, in this case each prison. It is used to measure the systematic differences between prisons and their impact upon individual-level evaluations. The error component shown at level-1, r_{ij}, is the typical error associated with each individual, stripped of the influence of the clustering unit. The i subscript references the i individuals with the j units.

Level 1: $Y_{ij} = \gamma_{00} + \Sigma\beta X + r_{ij}$.

The second level of an HLM model specifies how the level-1 random coefficients are modeled as a function of the characteristics of the clustering unit. In the models examined here, the only level-1 coefficient that is treated as random is the intercept. As such, the intercept for each institution is modeled by the following level-2 equation. The estimate of u_{0j} is important for this analysis as it is the estimate of the amount by which the "average" response for the outcome variable is raised or lowered by the respondent being located at institution j.

Level 2: $\beta_{0j} = \gamma_{00} + \Sigma\gamma W + u_{0j}$.

The equations presented above were used where the outcome variables were treated as quasi-continuous. While none of the outcome measures we used were truly continuous, previous experience has demonstrated that Likert items with at least seven categories work well when treated as continuous measures. Most of our items met this criteria (see Table 1). Several of the outcome measures, though, were dichotomies where respondents indicated their agreement or not with a survey item. For models of these items, a nonlinear specification was used for the model. Conceptually, the models still existed at two levels, but level-1 of the model estimated a logit, or the log odds of agreement with the statement. Since the estimate of the variance of a probability or proportion used to compute a logit is a function of the probability/proportion, there is no independent estimate of variance available for the individual-level error term, the r_{ij}. This means that a measure of the intra-class correlation (ICC) could not be computed. The ICC was computed for the quasi-continuous measures and can be thought of in either of two ways. First, ICC can be viewed as the amount of variance that exists in the dependent measure at the level of

the organization. ICC can also be thought of as the correlation between responses associated with the nesting of respondents within the respective institutions, e.g., inter-rater reliability.

The matrix of individual-level covariates, **X**, differed in the respective analyses for inmates and staff. Different information was collected for each group. For inmates, the individual-level controls included dummy variables indicating Hispanic ethnicity, race (minorities coded 1), and whether the survey was taken in Spanish. Sex was not included as all inmates surveyed were male. The continuous variables used for inmates consisted of age, time in prison, time left to serve on sentence, time at current prison, number of federal prisons, number of state prisons, time spent in current housing unit, and the propensity score for being an IHP inmate. For staff, the individual-level controls included dummy variables for sex (females coded 1), Hispanic ethnicity, race (minorities coded 1), supervisory status (supervisors coded 1), college degree, being a correctional officer, working on the day shift, and not working at the main facility (such as at a prison camp). The only continuously measured variables for staff were age and years of BOP tenure. For parsimony, the individual-level controls were treated as nuisance variables impacting upon the u_{0j} estimates of institutional differences and are not presented for discussion.

The matrix of organizational-level covariates, **W**, also differed for inmates and staff. Because information on inmates was only collected at ten prisons, there were not sufficient degrees of freedom to model the random $\bullet_{0j}$ coefficients in the inmate models. As such, the level-2 model for inmates was simply $\beta_{0j} = \gamma_{00} + u_{0j}$. For staff evaluations, surveys were collected at 98 institutions, and the **W** matrix included controls for the security-level of the prison as well as region of the BOP. Region of the BOP corresponds roughly to U.S. geographical regions. With the exception of the effect of region, though, the inmate and staff models did not differ significantly because all of the inmate prisons surveyed were low-security prisons.

Because of the inability to model the random $\bullet_{0j}$ for inmate responses, partial results for staff data are presented where no level-2 covariates were included. Further, the limited models for staff data were restricted to the ten institutions for which inmate data were collected. This allows for at least an intuition about how inmates results would look if the surveys were distributed to more institutions.

Step 2. Once measures were identified with desirable organizational properties, those measures were examined to see if there was correspondence between the organizational measures developed from inmate and staff data, the u_{0j} terms from the HLM models. The u_{0j} terms that were generated from staff data for the ten prisons examined in this step were taken from models of all 98 prisons. First, correlations were computed for the respective u_{0j} terms. For example, there were two measures of problems of sanitation in the dining hall (DIRTDINE) for each prison, one calculated from inmate data and one from staff data. The correlations assessed the congruence between measures developed from the different sources. The actual metric of the u_{0j} terms were compared with a Pearson correlation coefficient, and the rankings of the institutions produced by the u_{0j} terms were assessed with the nonparametric Spearman's rho coefficient. In addition to examining the Pearson and Spearman correlation coefficients, bar graphs were generated as an aid in visualizing the correspondence between measures of organizational performance that were developed from inmate and staff data.

Step 3. William Saylor and Schoeneck Howell of the Office of Research and Evaluation have worked over the past decade to develop better means of presenting information on measures of prison performance. They have consistently tried to simplify the presentation of information so that more data can be grasped at one time by BOP managers. One graphical method they have developed, building upon the work of Hartigan (1975), Inselburg (1990), and Wegman (1990),

for such a display of information is the technique called Parallel Coordinates Display. The idea is rather straightforward. For a given number of institutions defined by the user, create horizontal axes for each measure selected. Then, plot the values recorded for each prison on the axes and join the values for each prison on adjacent axes with a vertical line. The result is a plot that easily demonstrates whether the prisons as a group or separately are ranked consistently by the measures. If the lines on the plot are generally parallel to one another, it is an indication that the prisons are consistently ranked on the measures in question. On the other hand, if the lines crisscross one another, this is an indication of inconsistency. The software developed to realize this notion, PCDisWin, was used to examine the u_{0j} values produced by the HLM runs in step 1 (Howell, 2001).

Step 4. The information gleaned from the previous steps was used to compare the operations at one private prison, Taft Correctional Institution (TCI), with the operations of the 9 BOP prisons at which inmate surveys were gathered. In particular, TCI was compared with three other BOP prisons, FCI Elkton, FCI Forrest City, and FCI Yazoo City, that were built upon identical architectural footprints and activated at about the same time as TCI (cite). Primarily, these comparisons were generated from information produced in steps 2 and 3 above.

Results

The results of the analyses of the organizational properties of the different outcome variables, step 1 of the analysis, are presented in Table 2. For all measures, the reliability of the ranking of the institutions that was based on the deviations from the intercept or the typical response, the u_{0j}, is presented. While there is no technical cut-off value, most analysts consider as acceptable a measure with a reliability of at least .70. For those outcome variables that were measured with more than two categories (quasi-continuous variables), it was also possible to

calculate the ICC. Obviously, the most desirable measures for making institution comparisons are those with high values for ICC and reliability.

Step 1. Identify Organizational Properties of Measures

The results presented in Table 2 strongly suggest that there is merit to using inmates to evaluate conditions at prisons. A striking finding is that if we had relied only upon staff working at the ten prisons where inmate surveys were given, then we would have not been able to conclude that any of the measures had desirable organizational properties. None of the reliability scores for measures generated with staff data from the limited number of prisons exceeded 0.7. In fact, almost all of the reliability scores were well below the cutoff. We also encountered difficulty in generating estimates for several of the nonlinear models. At least partially due to the low reliability in measuring the random component associated with the intercept, the u_{0j}, many of the nonlinear models for the limited staff data failed to converge in 3,000 iterations for at least one of the multiply imputed databases. Since the results from the other databases clearly suggested low levels of reliability for the measures, and because similarly low levels of reliability were noted for the measures when using staff data from all institutions, the problematic models were not "fixed" in any sense and the results were reported in Table 2 for those models where there was convergence to a solution.

Likewise, the reliability values for the measures computed from staff data for all 98 prisons were generally low. There were only two measures, the measure of sanitation in the dining halls (DIRTDINE) and the measure of sanitation in the housing unit (DIRTUNIT), that had sufficient levels of reliability to be used as organizational-level measure. Even for these two measures, the reliability values for the measures derived from inmate data were higher, as were the ICC values. Nonetheless, since these two measures could be reliably used when generated from either inmate

or staff data, they were used in the next step of the analysis (presented below) to assess whether there was general congruence between inmate and staff evaluation of sanitation.

The reliability values for measures computed from inmate survey data were typically acceptable. Of the twenty-four outcome measures examined here, a reliability of at least .7 was noted for sixteen of the measures. In fact, most of these measures had reliability values in excess of .8, with some going as high as .97. Given the fact that there were only ten institutions, this finding is remarkable, especially in comparison to the general failure of any of the measures computed with staff data to exceed a reliability of .7 for these same ten prisons. All of the inmate measures that did not meet the general cutoff for reliability were items that asked about security and safety conditions at the prison. With perfect hindsight, it would be easy to speculate about why these measures were not reliable, but we resist the temptation. Instead, we note that there were five security and safety condition questions that were reliable.

Step 2. Congruence between Inmate and Staff Evaluations

Table 3 and Figures 1 and 2 turn attention to the next issue addressed by this analysis, whether inmates and staff provide congruent responses when evaluating prison conditions. The obvious caveat to this portion of the analysis was that we only found two questions with which to compare measures generated from inmate and staff data. Nonetheless, the results presented in Table 3 and Figures 1 and 2 suggest that inmates and staff were highly congruent in their evaluations. From Table 3, we see that the correlations, both the parametric, Pearson and the non-parametric, Spearman correlation coefficients suggested a close match between inmate and staff evaluations. For the sanitation in the dining hall question, the respective coefficients were .741 amd .661. Both coefficients were statistically significant even with scores on only ten prisons. For

the item about sanitation in the housing unit, the correlations were even stronger, .900 and .855. Again, both correlations were statistically significant.

The relationship between the organizational measures generated from inmate and staff data are illustrated nicely in Figures 1 and 2. As can be seen there, it was almost universally the case that if inmate evaluations were effected in a positive direction that staff values were as well. There were two exceptions noted in the graphs, but both of these exceptions were for prisons where both inmates and staff provided evaluations that were near the expected value, see FOR (FCI Forrest City) in Figure 1 and YAZ (FCI Yazoo City) in Figure 2. An interesting feature of these graphs is that they reflect why the reliability coefficients were greater measures generated from inmate data for these measures. As can be easily seen, the inmate deviations from the overall expected value are much greater than the staff deviations. It is important to keep in mind that a positive deviation from the expected is not a desirable feature in these graphs. A positive value indicates that the evaluations at that institution were pushed to where inmates and/or staff were more inclined to agree that sanitation was a problem. In Figure 1, for example, conditions at BAS led inmates to indicate a problem with sanitation in the dining hall, controlling for all individual-level characteristics of the inmates included in the model. At WAS, on the other, conditions led to more favorable evaluations as evaluations of dining hall sanitation were systematically lower than expected. In Figure 2, we see that the institutions with systematically higher indications of sanitation problems in the housing units were ASH and BAS. ALF, COL, and WAS stood out as having lower than expected evaluations.

Step 3. Assessing Congruence of Subject Area Measures

The evaluation of whether the different measures were congruent for the topical areas noted in Tables 1 and 2 was accomplished with Figure 3 through 6. Generally speaking, the

different measures did tend to hold together. Figure 3 presents the results for the three measures of gang activity. With the exception of several of the institutions which were in the center of the graph, the plot demonstrates that prisons high on one measure tended to be high on the others and vice versa. Plus, the institutions at the extremes tended to hold their rank in comparison to the other prisons. One thing to keep in mind when looking at the plots is that the dichotomous and quasi-continuous variables are both plotted on the same graph. They are easy to distinguish as the dichotomies always range between 0 and 1, demonstrating what proportion of the inmates at the given facilities answered affirmatively to the measure under examination. For example, almost 48 percent of the "typical" inmates (.48 multiplied by 100) at TAF (Taft) claimed that there was gang activity at the facility.[2] The quasi-continuous measures can take on both positive and negative values. In the case of these measures, the value is the amount above or below the "mean" value the institution fell. For example, the institution represented by the line furthest to the right in Figure 3 is approximately .85 units above the expected value for rating danger to gang members (GANGSAFE). This is a substantial amount of distance above the expected value for a measure that has only seven values.

Figure 4 shows the same general consistency for the security and safety measures. The graph has a funny bend between SAFEHIT and ENUFSTFD, but that is really a function of the change from a quasi-continuous metric to a proportion. Figure 5 seems to show the least consistency of the subject area measures examined so far. But this first perception is somewhat misleading. It appears that there are two factors underlying the measures plotted here. The first two measures

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[2]"Typical" is defined by the specification of the model, but it is the proportion of those respondents who were coded 0 on all of the independent variables considered in the analysis. In this analysis, that would have meant a non-Hispanic, non-minority, respondent who took the survey in English. The person would have been of average value for age, time in prison, time left to serve on sentence, time at current prison, number of federal prisons, number of state prisons, time spent in current housing unit, and the propensity score for being an IHP inmate. All of these variables were centered on the mean for all respondents.

are clearly sanitation measures, and the institutions hold their respective rankings well. The other factor appears to be noise at the institution. If we look at the lines connecting EVENOISE and SLPNOISE, it can be seen that the measures are fairly congruent. There does appear to be incongruity between sanitation and noise at an institution. Figure 6 shows that there is stability in the rankings of food service. Not only is there stability, there is greater separation (distance) between highly and lowly ranked prisons. The clear separation of these institutions was also captured in the reliability scores. The reliability values for the group of food service measures were the highest noted in this analysis.

Step 4. Comparing Taft and the BOP Prisons

The graphs produced for this analysis make it easy to compare the different prisons. In Figures 3 through 6, Taft and three of the BOP prisons were highlighted. These three prisons have been identified by the BOP as comparisons for Taft. In Figure 3, it is easy to identify that all of the comparison prisons and Taft fall in the middle of the pack when ranking gang-related aspects of prison operations. Taft is generally lower than FOR, ELK, and YAZ. The only exception to this pattern was that ELK rated slightly better than TAF on the danger to inmates.

Figure 4 shows that TAF ranked near the middle of all of the prisons with respect to safety and security concerns. The three BOP comparison prisons, on the other hand, generally had the worst ratings for these measures. Inmates at these facilities rated the institutions as higher than the other prisons both in terms of their own perceived safety from being hit or assaulted, and these same comparisons facilities tended to have the worst ratings for sufficient numbers of staff being available at the institution to protect inmates.

Figure 5 demonstrates that Taft experienced some problems with sanitation, at least according to the inmate evaluations. Taft was higher than almost all BOP prisons on the measures

of sanitation in the dining hall and housing units. The three BOP comparison prisons fell in the middle of the distribution of ten prisons. For noise at the institution, on the other hand, Taft ranked very well with the lowest rating for noise during the evening hours and the next to lowest rating for noise during sleeping hours. The BOP prisons produced mixed results, but noise was clearly more of an issue at these prisons. In fact, ELK had the highest score for noise being a problem during sleeping hours. YAZ was not far behind and FOR fell in the middle of the prisons for these measures.

Figure 6 demonstrates that Taft clearly had problems with food services. The rankings produced with the inmate data demonstrate that Taft rated less favorably than the BOP prisons as they had the highest ranking of problems for three of the four items, namely lack of quality for the food, lack of variety of food, and not enough food being served. For the fourth item, the lack of appeal or the appearance of the food, Taft had the second highest score, again indicating a problem. The BOP comparison prisons scored better than Taft, but they tended to be on the higher side of the scores or in the middle of the rankings of the prisons.

Discussion and Conclusion

Measures derived from inmate data deserve better treatment than the distrust they often receive from prison administrators. As demonstrated here, inmate data can be used to generate reliable measures that differentiate performance at prisons. Not only were the inmate measures much more reliable than measures developed from staff data, the inmate-derived measures correlated well with staff evaluations for the two measures of sanitation where comparisons were appropriate. The correspondence between inmate and staff evaluations on the sanitation items and the non-correspondence for the other survey questions clearly demonstrated two facts. First, where items of common interest to staff and inmates are used, inmates and staff appear to be

affected by similar situational factors in providing evaluations of institutional operations. Second, it is important to identify and develop survey items that are clearly relevant to and appropriate for the intended sample.

The parallel coordinates graphs demonstrated the ease by which multiple measures can be examined together. Even though the models used to construct the graphs were probably beyond the understanding of the typical correctional administrator, the results of the models are easily explained to nontechnical audiences. By dividing the 24 measures into subject areas, and limiting the graphs to subject areas, we were able to quickly examine how Taft compared to the other nine BOP prisons, but especially how Taft compared to the three comparison institutions that were very similar with respect to physical plant. The findings suggested that Taft was neither better nor worse than BOP prisons in a consistent manner. In several areas, Taft performed about average in comparison to all BOP prisons, most notably on the gang measures and the safety and security concern measures. In other areas, Taft had some problematic findings. There were problems noted for the measures of sanitation in both the dining hall and housing units, and there were more serious problems noted for the food service measures where Taft had the most problematic ranking for three of the four measures. For the fourth measure of food services, Taft had the next to worst rating. While we would have liked to provide a simple solution to the question of whether private prisons perform better or worse than public prisons, our results suggest that the answer is more complex. We would argue that private prisons need the same level of monitoring as public prisons to insure adequate performance.

The BOP comparison prisons also had some problematic findings that may have been related to the competition between them and Taft. In particular, the finding that the institutions generally rated worst in terms of providing an environment in which inmates felt safe from being

hit or assaulted was noteworthy, especially since these institutions also rated lowest in terms of inmates believing that there were enough staff during the different shifts to provide for their safety. This is an interesting finding because Nelson has documented that the BOP comparison facilities operate with fewer staff than Taft (Nelson, 1999). The BOP comparison prisons also tended to have bad ratings for the food service measures, although clearly Taft was more problematic in this area. These findings are significant as the money spent on food is more easily manipulated than other parts of a prison budget such as wages for staff, even though as part of the overall prison budget food service spending is small. In estimates of BOP spending at comparison prisons in 1999, Nelson found that the BOP spent $2.63 on food for each inmate per day out of a total per diem cost of $37.14.

Taft was not different from the BOP comparison prisons in a generally consistent manner. Taft did exhibit some troubling outcomes, as did the BOP comparison prisons. Without complete consensus among all measures used, we could not conclude that on the whole Taft did better or worse than the BOP comparison prisons. While the prisons clearly differed on a number of measures, we did not develop an overall rating of the institutions with some combination of the different aspects of prison operations examined here. In part, the failure to provide an overall judgement of performance of Taft and the BOP comparison prisons was methodological, and part of the failure was substantive. From the substantive side, subject matter experts need to determine which factors of prison operations are more important than others for ranking prisons. Food service, where Taft ranked poorly, is generally accepted as a key area of institutional operations, but so is safety and security where the BOP comparison prisons fared poorly. Methodologically, more work is necessary to document the correspondence between subjective measures of prison performance and operational outcomes, such as inmate misconduct or the success of prison

operations and programs. With a better substantive understanding and related methodological work, we think it will be possible to develop more systematic overall evaluations.

We would never argue for sole reliance upon survey data, whether collected from inmates or staff, to assess performance at prisons. But given the relative ease and low expense associated with surveys, we do argue for using them as part of a more comprehensive strategy for comparing prisons.

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Figure 1. Dining Hall Sanitation Problems

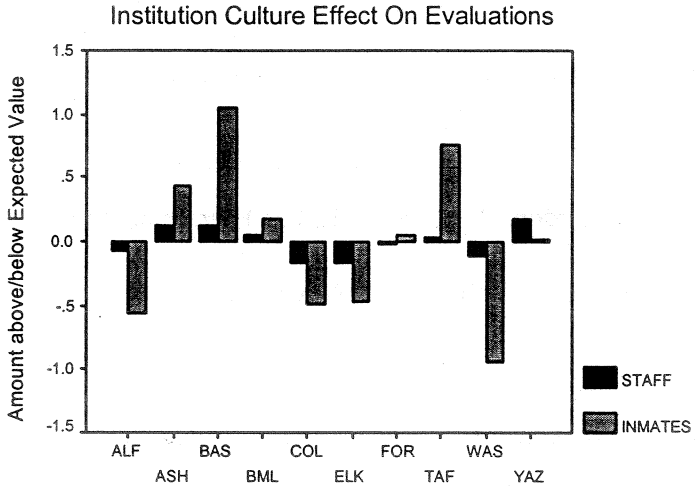

Figure 2. Housing Unit Sanitation Problems

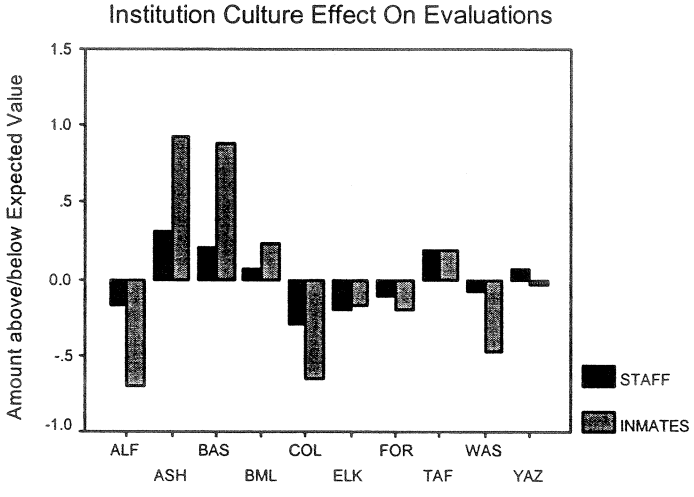

Figure 3. Gang-Related Activity

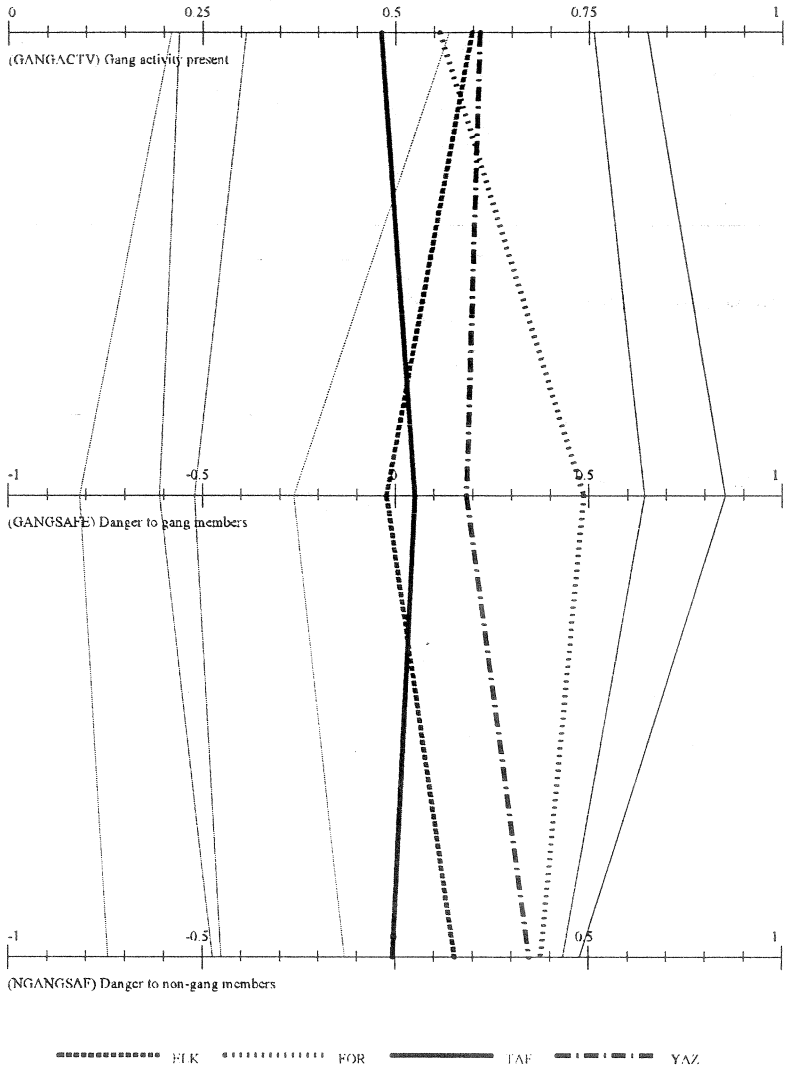

Figure 4. Security/Safety Concerns

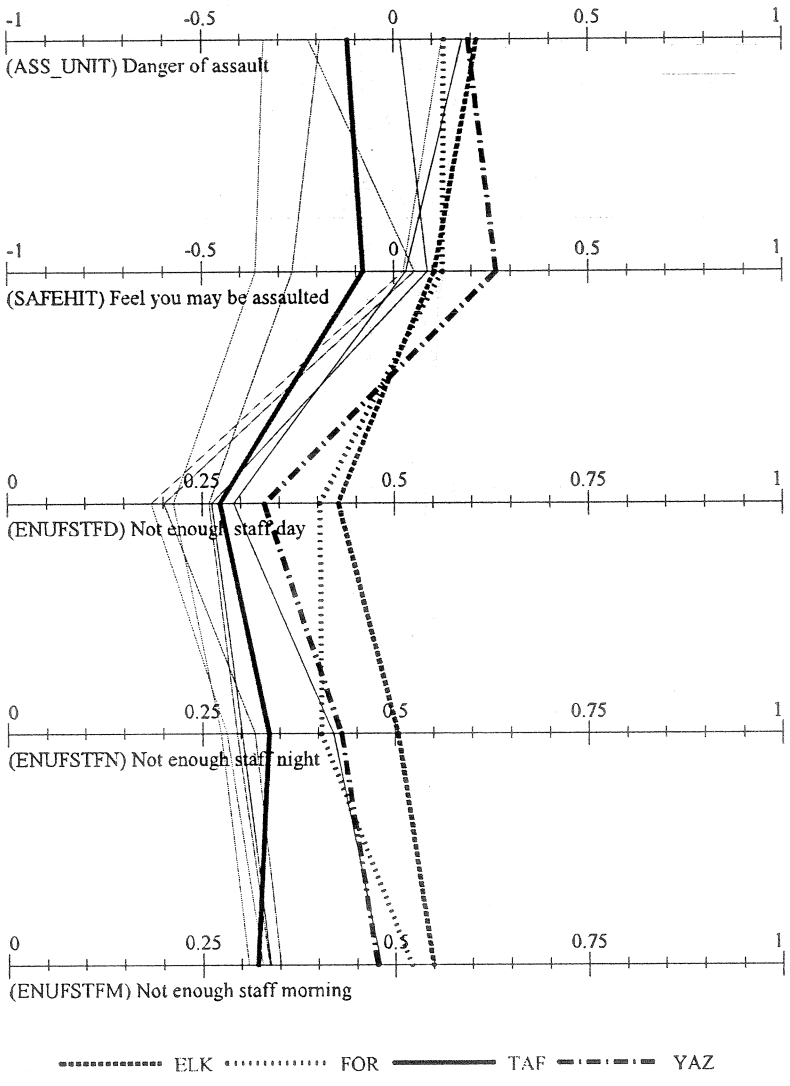

Figure 5. Overall Sanitation/Conditions

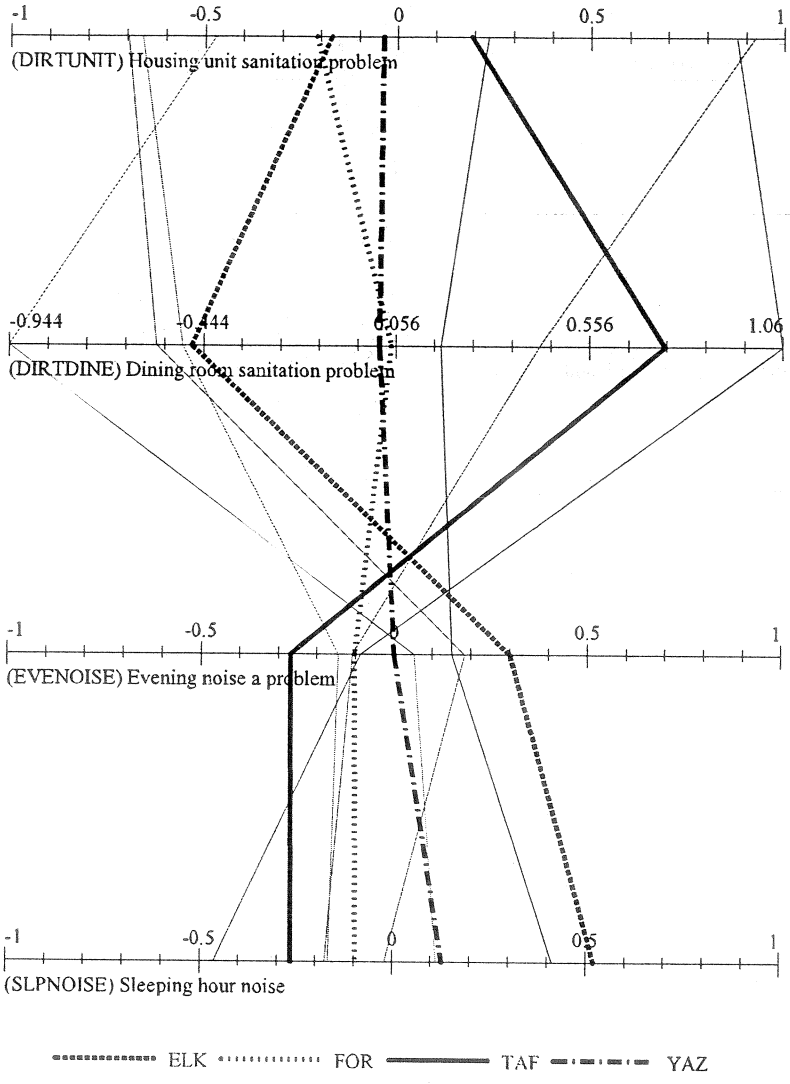

Figure 6. Food Service Delivery

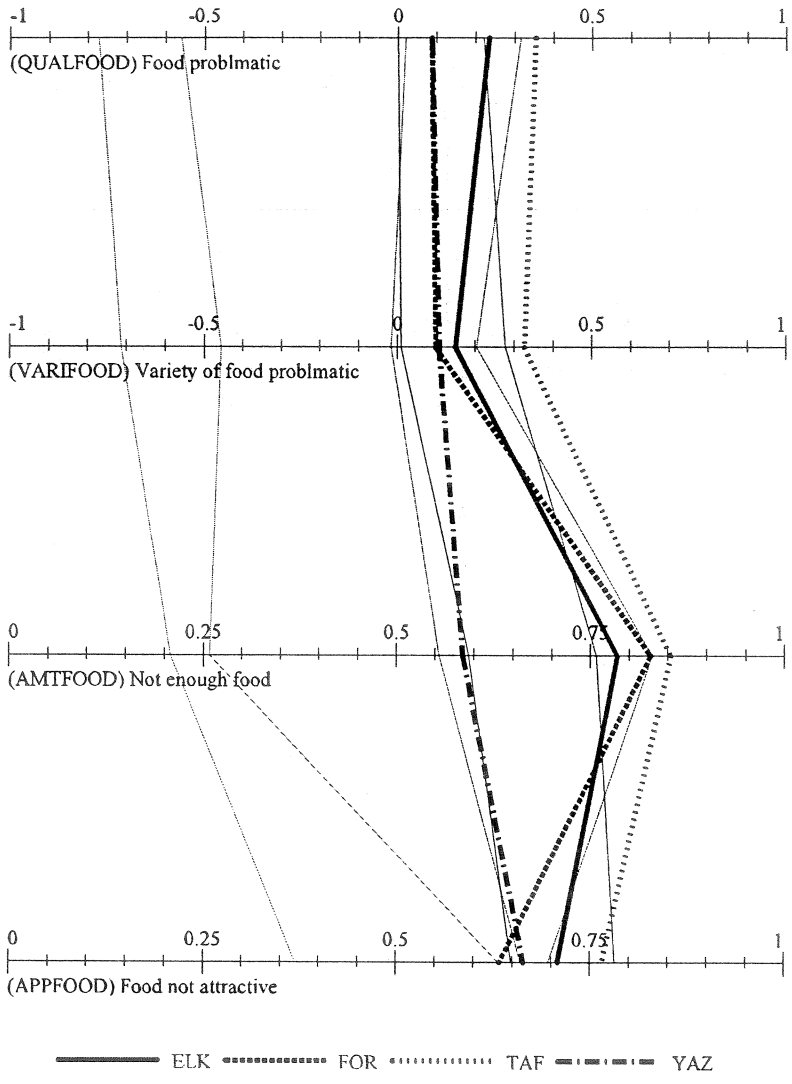

Table 1. Questions Analyzed

Variable Name	Wording of Question	Staff Version	Differences	Categories*
Gang-Related Issues				
GANGACTV	Has there been any gang activity in this prison during the past 6 months?	Yes	No Knowledge Choice for Staff	2/3
GANGSAFE	How safe or dangerous do you think it has been in this prison for inmates who ***are*** members of a gang?	Yes	None	6
NGANGSAF	How safe or dangerous do you think it has been in this prison for inmates who ***are not*** members of a gang?	Yes	None	6
Security/Safety Concerns				
ASS_UNIT	How likely is it that an inmate would be assaulted in his/her living unit?	Yes	Slight Wording	4
SAFE_HIT	How safe do you feel from being hit, punched, or assaulted by other inmates?	No		5
SAFE_PRP	How safe do you feel your property has been?	No		5
YUASSLTD	Have you been physically assaulted by an ***inmate*** within the last 6 months?	No		2
STOPSEX	Staff have prevented forced sex among inmates.	No		6
ENUFSTFD	Do you think there have been enough staff here to provide for the safety and security of ***inmates***: During the *day* (8 am - 4 pm) shift?	Yes	No Knowledge Choice for Staff	2/3
ENUFSTFN	Do you think there have been enough staff here to provide for the safety and security of ***inmates***: During the *night* (4 pm - midnight) shift?	Yes	No Knowledge Choice for Staff	2/3
ENUFSTFM	Do you think there have been enough staff here to provide for the safety and security of ***inmates***: During the *morning* (midnight - 8:00 am) shift?	Yes	No Knowledge Choice for Staff	2/3
SAFSTFMA	How safe do you think it is for ***male*** staff members who have frequent contact with inmates in this prison?	Yes	Slight Wording	6
SAFSTFFE	How safe do you think it is for ***female*** staff members who have frequent contact with inmates in this prison?	Yes	Slight Wording	6

Table 1. Questions Analyzed, Continued

Variable Name	Wording of Question	Staff Version	Differences	Categories*
SEARCHES	How often have there been shakedowns in this institution during the past 6 months?	Yes	Slight Wording, No Knowledge Choice for Staff	7/8
STRPSRCH	How often have you been strip or pat searched at this institution during the past 6 months (*not* including those required for visits)?	No		7
SEARFREQ	Are the shakedowns done frequently enough?	Yes	None	2
Overall Sanitation/Conditions				
DIRTUNIT	How often have insects, rodents, dirt, or litter been a problem in the housing units?	Yes	No Knowledge Choice for Staff	7/8
DIRTDINE	How often have insects, rodents, dirt, or litter been a problem in the dining hall?	Yes	No Knowledge Choice for Staff	7/8
EVENOISE	How noisy has it been in your housing unit during the evening hours?	Yes	Wording, question and choices	5
SLPNOISE	How noisy has it been in your housing unit during sleeping hours?	Yes	Wording, question and choices	5
Food Service Delivery				
QUALFOOD	The quality of food at this prison has been: (poor, fair, good)	No		3
VARIFOOD	The variety of food at this prison has been: (poor, fair, good)	No		3
AMTFOOD	The amount of food served for main courses has been (Not enough, Enough)	No		2
APPFOOD	The appearance of the food at this prison has been: (Unappealing, Appealing)	No		2

Table 2. Results for Inmate and Staff Administrations of the PSCS in 2000

	Inmate PSCS[1]		Staff PSCS (Limited)[2]		Staff PSCS (All, Full)[3]	
Variable Name	Reliability	ICC	Reliability	ICC	Reliability	ICC
Gang-Related Issues						
GANGACTV	.939	ND[4]	.614[5]	ND	.583	ND
GANGSAFE	.936	.134	.018	.000	.299	.005
NGANGSAF	.895	.084	.052	.001	.284	.004
Security/Safety Concerns						
ASS_UNIT	.848	.056	.125	.002	.411	.008
SAFE_HIT	.706	.025	NA[7]	NA	NA	NA
SAFE_PRP	.409	.008	NA	NA	NA	NA
YUASSLTD	.443	ND	NA	NA	NA	NA
STOPSEX	.672	.023	NA	NA	NA	NA
ENUFSTFD	.764	ND	.363[6]	ND	.157	ND
ENUFSTFN	.721	ND	.116[6]	ND	.437	ND
ENUFSTFM	.812	ND	.357[5]	ND	.344	ND
SAFSTFMA	.676	.022	.011	.000	.367	.006
SAFSTFFE	.618	.017	.015	.000	.361	.006
SEARCHES	.662	.021	.026	.000	.233	.003
STRPSRCH	.596	.016	NA	NA	NA	NA
SEARFREQ	.089[5]	ND	.259	ND	.270	ND
Overall Sanitation/Conditions						
DIRTUNIT	.919	.107	.593	.017	.802	.042
DIRTDINE	.930	.123	.314	.006	.803	.042
EVENOISE	.761	.033	.540	.013	.648	.020
SLPNOISE	.852	.057	.659	.024	.567	.014
Food Service Delivery						
QUALFOOD	.978	.316	NA	NA	NA	NA
VARIFOOD	.971	.262	NA	NA	NA	NA
AMTFOOD	.952	ND	NA	NA	NA	NA
APPFOOD	.831	ND	NA	NA	NA	NA

TABLE 2 NOTES:

1. N=950 2. N=916 3. N=9,491
4. Not defined. ICC cannot be computed for binomial models where there is no estimate of individual error, r_{ij}.
5. Estimate based on results for only one of the three multiply imputed databases. After 3,000 iterations, HLM was unable to derive a solution for the other two databases. This result should be treated with caution.
6. Estimate based on results for two of the three multiply imputed databases. After 3,000 iterations, HLM was unable to derive a solution for the third database.
7. Not available. The question was not asked of staff respondents.

Table 3. Correlations between Inmate- and Staff- Based Evaluation of Prison Operations
Where both Inmate and Staff Data Produce Reliable Measures

Variable Name	Pearson (metric of u_{0j})		Spearman rho (rankings of u_{0j})	
DIRTINE	.741	p=.014	.661	p=.038
DIRTUNIT	.900	p=.000	.855	p=.002