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those components of the Veterans Administration furnishing health care to veterans.

(3) *Communication within a program or between a program and an entity having direct administrative control over that program.* The restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse if the communications are

(i) Within a program or

(ii) Between a program and an entity that has direct administrative control over the program.

(4) *Qualified Service Organizations.* The restrictions on disclosure in these regulations do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

(5) *Crimes on program premises or against program personnel.* The restrictions on disclosure and use in these regulations do not apply to communications from program personnel to law enforcement officers which—

(i) Are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(6) *Reports of suspected child abuse and neglect.* The restrictions on disclosure and use in these regulations do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities. However, the restrictions continue to apply to the original alcohol or drug abuse patient records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

(d) *Applicability to recipients of information*—(1) *Restriction on use of information.* The restriction on the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from a federally assisted alcohol or drug abuse program, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see § 2.17) or through patient access (see § 2.23) is subject to the restriction on use.

(2) *Restrictions on disclosures—Third party payers, administrative entities, and others.* The restrictions on disclosure in these regulations apply to:

(i) Third party payers with regard to records disclosed to them by federally assisted alcohol or drug abuse programs;

(ii) Entities having direct administrative control over programs with regard to information communicated to them by the program under § 2.12(c)(3); and

(iii) Persons who receive patient records directly from a federally assisted alcohol or drug abuse program and who are notified of the restrictions on redisclosure of the records in accordance with § 2.32 of these regulations.

(e) *Explanation of applicability*—(1) *Coverage.* These regulations cover any information (including information on referral and intake) about alcohol and drug abuse patients obtained by a program (as the terms "patient" and "program" are defined in § 2.11) if the program is federally assisted in any manner described in § 2.12(b). Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-

based programs, and private practitioners who hold themselves out as providing, and provide alcohol or drug abuse diagnosis, treatment, or referral for treatment. However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment or referral and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

(2) *Federal assistance to program required.* If a patient's alcohol or drug abuse diagnosis, treatment, or referral for treatment is not provided by a program which is federally conducted, regulated or supported in a manner which constitutes Federal assistance under §2.12(b), that patient's record is not covered by these regulations. Thus, it is possible for an individual patient to benefit from Federal support and not be covered by the confidentiality regulations because the program in which the patient is enrolled is not federally assisted as defined in §2.12(b). For example, if a Federal court placed an individual in a private for-profit program and made a payment to the program on behalf of that individual, that patient's record would not be covered by these regulations unless the program itself received Federal assistance as defined by §2.12(b).

(3) *Information to which restrictions are applicable.* Whether a restriction is on use or disclosure affects the type of information which may be available. The restrictions on disclosure apply to any information which would identify a patient as an alcohol or drug abuser. The restriction on use of information to bring criminal charges against a patient for a crime applies to any information obtained by the program for the purpose of diagnosis, treatment, or referral for treatment of alcohol or drug abuse. (Note that restrictions on use and disclosure apply to recipients of information under §2.12(d).)

(4) *How type of diagnosis affects coverage.* These regulations cover any record of a diagnosis identifying a patient as an alcohol or drug abuser which is prepared in connection with the treatment or referral for treatment of alcohol or drug abuse. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by these regulations. The following are not covered by these regulations:

(i) Diagnosis which is made solely for the purpose of providing evidence for use by law enforcement authorities; or

(ii) A diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987, as amended at 60 FR 22297, May 5, 1995]

§ 2.13 Confidentiality restrictions.

(a) *General.* The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in these regulations apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

(c) *Acknowledging the presence of patients: Responding to requests.* (1) The presence of an identified patient in a facility or component of a facility which is publicly identified as a place where only alcohol or drug abuse diagnosis, treatment, or referral is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of these regulations or if an authorizing court order is entered in accordance with subpart E of these regulations. The regulations permit acknowledgement

of the presence of an identified patient in a facility or part of a facility if the facility is not publicy identified as only an alcohol or drug abuse diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the patient is an alcohol or drug abuser.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse. An inquiring party may be given a copy of these regulations and advised that they restrict the disclosure of alcohol or drug abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient. The regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

§2.14 Minor patients.

(a) *Definition of minor.* As used in these regulations the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.

(c) *State law requiring parental consent to treatment.* (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with subpart C of these regulations or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the program director under paragraph (d) of this section.

(d) *Minor applicant for services lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under subpart C of these regulations to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

§2.15 Incompetent and deceased patients.

(a) *Incompetent patients other than minors*—(1) *Adjudication of incompetence.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs,

any consent which is required under these regulations may be given by the guardian or other person authorized under State law to act in the patient's behalf.

(2) *No adjudication of incompetency.* For any period for which the program director determines that a patient, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her own behalf, the program director may exercise the right of the patient to consent to a disclosure under subpart C of these regulations for the sole purpose of obtaining payment for services from a third party payer.

(b) *Deceased patients*—(1) *Vital statistics.* These regulations do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as an alcohol or drug abuser is subject to these regulations. If a written consent to the disclosure is required, that consent may be given by an executor, administrator, or other personal representative appointed under applicable State law. If there is no such appointment the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

§ 2.16 Security for written records.

(a) Written records which are subject to these regulations must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use; and

(b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to these regulations.

§ 2.17 Undercover agents and informants.

(a) *Restrictions on placement.* Except as specifically authorized by a court order granted under § 2.67 of these regulations, no program may knowingly employ, or enroll as a patient, any undercover agent or informant.

(b) *Restriction on use of information.* No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

§ 2.18 Restrictions on the use of identification cards.

No person may require any patient to carry on his or her person while away from the program premises any card or other object which would identify the patient as an alcohol or drug abuser. This section does not prohibit a person from requiring patients to use or carry cards or other identification objects on the premises of a program.

§ 2.19 Disposition of records by discontinued programs.

(a) *General.* If a program discontinues operations or is taken over or acquired by another program, it must purge patient identifying information from its records or destroy the records unless—

(1) The patient who is the subject of the records gives written consent (meeting the requirements of § 2.31) to a transfer of the records to the acquiring program or to any other program designated in the consent (the manner of obtaining this consent must minimize the likelihood of a disclosure of patient identifying information to a third party); or

(2) There is a legal requirement that the records be kept for a period specified by law which does not expire until after the discontinuation or acquisition of the program.

(b) *Procedure where retention period required by law.* If paragraph (a)(2) of this section applies, the records must be:

(1) Sealed in envelopes or other containers labeled as follows: "Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, court order or other legal authority requiring that records be kept] until a date not later than [insert appropriate date]"; and

(2) Held under the restrictions of these regulations by a responsible person who must, as soon as practicable after the end of the retention period specified on the label, destroy the records.

§ 2.20 Relationship to State laws.

The statutes authorizing these regulations (42 U.S.C. 290ee-3 and 42 U.S.C. 290dd-3) do not preempt the field of law which they cover to the exclusion of all State laws in that field. If a disclosure permitted under these regulations is prohibited under State law, neither these regulations nor the authorizing statutes may be construed to authorize any violation of that State law. However, no State law may either authorize or compel any disclosure prohibited by these regulations.

§ 2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by these regulations and by administrative action taken under: Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a) and the implementing regulations at 42 CFR part 2a); or section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These "research privilege" statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* These regulations restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under subpart E of these regulations of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilage granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any imformation which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with subpart E of these regulations authorizes a methadone maintenance treatment program to disclose certain information about its patients, that program may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

§ 2.22 Notice to patients of Federal confidentiality requirements.

(a) *Notice required.* At the time of admission or as soon threreafter as the patient is capable of rational communication, each program shall:

(1) Communicate to the patient that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records; and

(2) Give to the patient a summary in writing of the Federal law and regulations.

(b) *Required elements of written summary.* The written summary of the Federal law and regulations must include:

(1) A general description of the limited circumstances under which a program may acknowledge that an individual is present at a facility or disclose outside the program information identifying a patient as an alcohol or drug abuser.

(2) A statement that violation of the Federal law and regulations by a program is a crime and that suspected violations may be reported to appropriate authorities in accordance with these regulations.

(3) A statement that information related to a patient's commission of a crime on the premises of the program or against personnel of the program is not protected.

(4) A statement that reports of suspected child abuse and neglect made under State law to appropriate State or local authorities are not protected.

(5) A citation to the Federal law and regulations.

(c) *Program options.* The program may devise its own notice or may use the sample notice in paragraph (d) to comply with the requirement to provide the patient with a summary in writing of the Federal law and regulations. In addition, the program may include in the written summary information concerning State law and any program policy not inconsistent with State and Federal law on the subject of confidentiality of alcohol and drug abuse patient records.

(d) *Sample notice.*

CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser *Unless:*

(1) The patient consents in writing;

(2) The disclosure is allowed by a court order; or

(3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities.

(See 42 U.S.C. 290dd–3 and 42 U.S.C. 290ee–3 for Federal laws and 42 CFR part 2 for Federal regulations.)

(Approved by the Office of Management and Budget under control number 0930–0099)

§ 2.23 Patient access and restrictions on use.

(a) *Patient access not prohibited.* These regulations do not prohibit a program from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that the program maintains about the patient. The program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient.

(b) *Restriction on use of information.* Information obtained by patient access to his or her patient record is subject to the restriction on use of his information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 2.12(d)(1).

Subpart C—Disclosures With Patient's Consent

§ 2.31 Form of written consent.

(a) *Required elements.* A written consent to a disclosure under these regulations must include:

(1) The specific name or general designation of the program or person permitted to make the disclosure.

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 2.15 in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Sample consent form.* The following form complies with paragraph (a) of this section, but other elements may be added.

1. I (name of patient) ☐ Request ☐ Authorize:
2. (name or general designation of program which is to make the disclosure)

---

3. To disclose: (kind and amount of information to be disclosed)

---

4. To: (name or title of the person or organization to which disclosure is to be made)

---

5. For (purpose of the disclosure)

---

6. Date (on which this consent is signed)

---

7. Signature of patient

---

8. Signature of parent or guardian (where required)

---

9. Signature of person authorized to sign in lieu of the patient (where required)

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10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition)

(c) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

(Approved by the Office of Management and Budget under control number 0930-0099)

§ 2.32 Prohibition on redisclosure.

Notice to accompany disclosure. Each disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

[52 FR 21809, June 9, 1987; 52 FR 41997, Nov. 2, 1987]

§ 2.33 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 2.31, a program may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 2.34 and 2.35, respectively.

§ 2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs.

(a) *Definitions.* For purposes of this section:

Central registry means an organization which obtains from two or more member progams patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

Maintenance treatment means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

Member program means a detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* A program may disclose patient records to a

central registry or to any detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

(i) Patient identifying information;

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 2.31, except that:

(i) The consent must list the name and address of each central registry and each known detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any detoxification or maintenance treatment program established within 200 miles of the program after the consent is given without naming any such program.

(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under subpart E of these regulations.

(d) *Permitted disclosure by a central registry to prevent a multiple enrollment.* When a member program asks a central registry if an identified patient is enrolled in another member program and the registry determines that the patient is so enrolled, the registry may disclose—

(1) The name, address, and telephone number of the member program(s) in which the patient is already enrolled to the inquiring member program; and

(2) The name, address, and telephone number of the inquiring member program to the member program(s) in which the patient is already enrolled. The member programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollment.

(e) *Permitted disclosure by a detoxification or maintenance treatment program to prevent a multiple enrollment.* A detoxification or maintenance treatment program which has received a disclosure under this section and has determined that the patient is already enrolled may communicate as necessary with the program making the disclosure to verify that no error has been made and to prevent or eliminate any multiple enrollment.

§ 2.35 Disclosures to elements of the criminal justice system which have referred patients.

(a) A program may disclose information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent meeting the requirements of § 2.31 (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the program, the patient, and the person(s)

who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Subpart D—Disclosures Without Patient Consent

§ 2.51 Medical emergencies.

(a) *General Rule.* Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) *Special Rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, the program shall document the disclosure in the patient's records, setting forth in writing:

(1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(2) The name of the individual making the disclosure;

(3) The date and time of the disclosure; and

(4) The nature of the emergency (or error, if the report was to FDA).

(Approved by the Office of Management and Budget under control number 0930-0099)

§ 2.52 Research activities.

(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research;

(2) Has a research protocol under which the patient identifying information:

(i) Will be maintained in accordance with the security requirements of § 2.16 of these regulations (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section; and

(3) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that:

(i) The rights and welfare of patients will be adequately protected; and

(ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the research.

(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

[52 FR 21809, June 9, 1987, as amended at 52 FR 41997, Nov. 2, 1987]

§ 2.53 Audit and evaluation activities.

(a) *Records not copied or removed.* If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and who:

(1) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review; or

(2) Is determined by the program director to be qualified to conduct the audit or evaluation activities.

(b) *Copying or removal of records.* Records containing patient identifying information may be copied or removed from program premises by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in § 2.16 of these regulations (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and

(2) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third part payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review.

(c) *Medicare or Medicaid audit or evaluation.* (1) For purposes of Medicare or Medicaid audit or evaluation under this section, audit or evaluation includes a civil or administrative investigation of the program by any Federal, State, or local agency responsible for oversight of the Medicare or Medicaid program and includes administrative enforcement, against the program by the agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

(2) Consistent with the definition of program in § 2.11, program includes an employee of, or provider of medical services under, the program when the employee or provider is the subject of a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section.

(3) If a disclosure to a person is authorized under this section for a Medicare or Medicaid audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section, then a peer review organization which obtains the information under paragraph (a) or (b) may disclose the information to that person but only for purposes of Medicare or Medicaid audit or evaluation.

(4) The provisions of this paragraph do not authorize the agency, the program, or any other person to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the Medicare or Medicaid audit or evaluation activity as specified in this paragraph.

(d) *Limitations on disclosure and use.* Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under § 2.66 of these regulations.

Subpart E—Court Orders Authorizing Disclosure and Use

§ 2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee–3, 42 U.S.C. 290dd–3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same

time as and accompany an authorizing court order entered under these regulations.

(b) *Examples.* (1) A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of these regulations.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

§ 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

§ 2.63 Confidential communications.

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

(b) [Reserved]

§ 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrunity.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not

disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§ 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 2.66 is sought with an order under this section, the person holding the records must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

[52 FR 21809, June 9, 1987; 52 FR 42061, Nov. 2, 1987]

§ 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a program or the person holding the records (or agents or employees of the program or person) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 2.31 of these regulations) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of § 2.64 of these regulations.

(d) *Limitations on disclosure and use of patient identifying information:* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 2.65 of these regulations.

§ 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the program are engaged in criminal misconduct.

(b) *Notice.* The program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of

providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under §2.65 of these regulations.

PART 2a—PROTECTION OF IDENTITY—RESEARCH SUBJECTS

Sec.

2a.1 Applicability.
2a.2 Definitions.
2a.3 Application; coordination.
2a.4 Contents of application; in general.
2a.5 Contents of application; research projects in which drugs will be administered.
2a.6 Issuance of Confidentiality Certificates; single project limitation.
2a.7 Effect of Confidentiality Certificate.
2a.8 Termination.

AUTHORITY: Sec. 3(a), Pub. L. 91-513 as amended by sec. 122(b), Pub. L. 93-282; 84 Stat. 1241 (42 U.S.C. 242a(a)), as amended by 88 Stat. 132.

SOURCE: 44 FR 20384, Apr. 4, 1979, unless otherwise noted.

§2a.1 Applicability.

(a) Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) provides that "[t]he Secretary [of Health and Human Services] may authorize persons engaged in research on mental health, including research on the use and effect of alcohol and other psychoactive drugs, to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals." The regulations in this part establish procedures under which any person engaged in research on mental health including research on the use and effect of alcohol and other psychoactive drugs (whether or not the research is federally funded) may, subject to the exceptions set forth in paragraph (b) of this section, apply for such an authorization of confidentiality.

(b) These regulations do not apply to:

APPENDIX B

Potential Community Resources for LINKS

Akeela House
Alaska Native Medical Center
Alaska North Alcohol Recovery Center
Alaska Regional Hospital
Alaska State Housing Authority
Alaska Women's Aid in Crisis
Alaska Women's Resource Center
Alternatives
Anchorage Center for Families
Association of Retarded Children
Big Brothers and Big Sisters
Campfire Girls
Catholic Social Services
Charter North Hospital
Child Care Connection
Day Care Assistance (Municipality)
Dena A Coy
Department of Corrections
Division of Alcoholism and Drug Abuse
Division of Family & Youth Services
Division of Public Assistance
Family Planning
Four A's
Girl Scouts
Head Start
Hope Cottages
Job Training Partnership Act
Mary Magdalene
Office of Public Advocacy
Providence Hospital
Public Health (Maternal, Child, Family Health)
Safe City (Municipality)
South Central Counseling Center
South Central Foundation
Standing Together Against Rape
The Salvation Army
Veteran's Association
Volunteers of America
Women, Infants, and Children (Municipality)
YWCA

APPENDIX C

MEMORANDUM OF AGREEMENT

Between Department of Corrections and Department of Health and Social Services

Purpose: To facilitate collaboration between departments to insure program and case coordination for women participating in the LINKS Program.

Agreement: Program Managers will meet as needed to coordinate services. Service coordination will include the following elements.

1. The parties agree to obtain appropriate "Client Consents for the Release of Confidential Information".
2. The parties agree to coordinate case planning at least quarterly, which will include services to facilitate community transition.
3. The parties agree to maintain communications regarding client case progress to insure service coordination.
4. The parties agree to share statistical data to facilitate program planning and accountability.
5. The parties agree to share training, which may be beneficial to either program.

It is understood by both parties to this Agreement that client confidentiality will be insured pursuant to the Code of Federal Regulations 42, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records and Alaska Statute 47.10.090, 7 AAC 36.010, Title 7, Chapter 36, Section 10 of the Alaska Administrative Code, and 45 CFR 205.50, Title 45, Part 205, Section 50 of Code of Federal Regulations.

Length of Agreement: Either party may request in writing a revision of this Memorandum of Agreement if deemed necessary. This agreement will be in effect until canceled by one or both parties. A written 30-day notice is required for revocation of this agreement.

Authorized Representative of _____ Date _____

Authorized Representative of _____ Date _____

APPENDIX D

MEMORANDUM OF AGREEMENT
(Template)

Between_____**and**_____

Purpose: To facilitate the case coordination of women participating in the LINKS Program who are receiving services from
_____and_____.

Agreement: Program Managers from_____and
_____
will meet as need is indicated to coordinate programming.

Service Coordination:

6. The parties agree to obtain appropriate "Client Consents for the Release of Confidential Information".
7. The parties agree to coordinate case planning at least quarterly, which will include services to facilitate community transition.
8. The parties agree to maintain communications regarding client case progress to insure service coordination.
9. The parties agree to share statistical data to facilitate program planning and accountability.
10. The parties agree to share training, which may be beneficial to either program.

It is understood by both parties to this Agreement that client confidentiality will be insured pursuant to the Code of Federal Regulations 42, Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records and Alaska Statute 47.10.090, 7 AAC 36.010, Title 7, Chapter 36, Section 10 of the Alaska Administrative Code, and 45 CFR 205.50, Title 45, Part 205, Section 50 of Code of Federal Regulations.

Length of Agreement: Either party may request in writing a revision of this Memorandum of Agreement if deemed necessary. This agreement will be in effect until canceled by one or both parties. A written 30-day notice is required for revocation of this agreement.

_____

Authorized Representative of Date

_____

Authorized Representative of Date

APPENDIX E

Roles and Responsibilities

Transition Counselor

The Transition Counselor is one of the certified substance abuse counselors working in the Women's RSAT Program who will spend time in the community providing case management to the women participating in LINKS who have transitioned into the community either on furlough or probation/parole. The role is critical in providing a bridge from the institution into the community. For the community case management activities there will be a workstation at the RSAT treatment provider's outpatient office in Anchorage.

The Transition Counselor will maintain a caseload of LINKS clients before and after release from HMCC, and will implement a phased model of support that will allow clients to decrease their contact over a period of time as their integration into the community becomes complete. Treatment will be provided to the women participating in LINKS while they are still in the institution, but once they move out of the institution, community substance abuse treatment agencies will provide them with aftercare services. The Transition Counselor will be the case manger and primary contact person for the LINKS women in the community. They will be met with individually and in a group setting to follow-up on their community referrals and to provide support. The Transition Counselor will also modify their LINKS release plans as necessary to accommodate revised goals and objectives and will be responsible for disseminating the revised plan to all members of her treatment team.

The Transition Counselor will be a key player in developing and implementing the LINKS project and will establish MOA's with appropriate service agencies in Anchorage.

Institutional RSAT Social Worker

The RSAT Social Worker is a member of the female offender management team comprised of Correctional Officers, Probation Officers, contract Program staff, and the Education Coordinator. The Social Worker is involved with inmates participating in the Women's RSAT Program, and is the institutional coordination of the LINKS Program.

Inmates within three months of completion of the RSAT Program may advise the RSAT Social Worker of her interest in participation in the LINKS Program. To develop a viable release plan, the RSAT Social Worker reviews the inmate file, interviews the inmate, and investigates the status of the custody and custodial arrangements of the inmate's children. The RSAT Social Worker prepares a case plan and reviews it with the inmate. The inmate must commit to working with the agencies involved with the case plan. The RSAT Social Worker co-ordinates the development of the case plans with the community agencies, with the Transition Counselor following up with the inmate's adherence to the plan.

Institutional Probation Officer III/Program Director

The Institutional Probation Officer III position is known as the Program Director in Alaska's Correctional Centers. At HMCC/MCCC, The Program Director supervises the Probation/Parole Officer I/II positions, the Education Coordinators, the RSAT Social Worker, and oversees business associated with the Offender Programs, including program development and monitoring.

Institutional Probation Officer I/II

The Institutional Probation Officer I/II positions manage inmate caseloads. They participate in Program Reviews, and monitor the behaviors and progress of inmates in programs. The Probation Officer makes recommendations to the Board of Parole and the Furlough Officer on inmate requests for Parole and Furlough consideration. The Probation Officer bases the recommendations on the inmate's efforts to reduce their risk of reoffending, their institutional behavioral record, severity of the current office, and their criminal history. The Probation Officer attends Program Reviews, provides the team with background social and criminal information, and advises the inmate of expected program involvement while incarcerated. The Probation Officer and the RSAT Social Worker share information on LINKS program involvement, discharge issues and planning. The inmate has the choice of pursuing the recommendation of the Probation Officer and the team.

STATE OF ALASKA /

DEPARTMENT OF CORRECTIO

Alaska Correctional Industries

P.O. Box 112000
Juneau, Alaska 99811-2000
Phone (907) 465-3317 Fax (907) 465-311

MEMORANDUM

TO: General Distribution
Correctional Industries Commission

DATE: August 24, 1999

PHONE: 465-3309

FROM: Wally F. Roman
General Manager/ACI

SUBJECT: Commission Meeting Agenda
Juneau- 9/99

AGENDA
ALASKA CORRECTIONAL INDUSTRIES COMMISSION
QUARTERLY MEETING
FRIDAY, SEPTEMBER 24, 1999
FAIRBANKS REGIONAL PUBLIC HEALTH CENTER
1025 W. BARNETTE STREET
FIRST FLOOR CONFERENCE ROOM
FAIRBANKS, ALASKA
907-452-1776

9/14
Corr

8:30 AM to 9:30 AM	**Call to Order** **Introductions** **Approval of Minutes** **Initial Announcements**
9:30 AM to 10:15 AM	**Preliminary Evaluations of Proposed Product Lines** **ACI Wood Products Mfg.-Spring Creek C.C.** **-Burial Urns & Flag Cases** **-Church Pews & Communion Rails** **-Library Shelving**
10:15 AM to 10:30 AM	*****BREAK*****
10:30 AM to 11:30 AM	**Preliminary Evaluations of Proposed Product Lines (cont.)** **ACI Garment Shop-Hiland Mountain C.C.** **-Transfer of Product Lines** **-Introduction of Initial Product Line** **-Private Cooperative Venture**
11:30 AM to 12:00 PM	**Budget & Legislative Issues** **Current Operating Budget**

12:00 PM to 1:00 PM	*** LUNCH ***
1:00 PM to 2:00 PM	Marketing Report Alaska Product Preference Program Marketing/Sales Reports State Agency Purchase Waivers
2:00 PM to 3:00 PM	Status of Current Operations Private Industries Enhancement Program -Alaska Sterile Laundry Mt. McKinley Meats -Alaska Producers Cooperative -Cut & Wrap Pricing FCC Garment/Flat Goods Shop
3:00 PM to 3:15 PM	***BREAK***
3:15 PM to 4:00 PM	Status of Current Operations (cont.) SCCC/WWCC Furniture Factories -Production Schedules LCCC Laundry Operation -RSA & Delivery Service/AMHS PCC Body Fender Repair -Transportation Renovation Project
4:00 PM to 4:30 PM	Summary of Recommended Actions Future Meeting Schedule Meeting Guidelines/Closure

PRELIMINARY FY99 CORRECTIONAL INCARCERATION COST REPORT

In response to an informational request from the Commission on Privatization, Corrections Subcommittee, chaired by Sharon Anderson, the Department of Corrections has conducted a preliminary analysis of FY99 state and contract correctional facility expenditures. The subcommittee requested a report of expenditures for the contract facility operated by Corrections Corporation of America in Florence, Arizona compared with state operated facilities in Alaska. The attached report represents identifiable expenditures recorded in the state accounting system. These expenditures should not be interpreted as a cost comparison, but as a general analysis of what the department expended on incarceration of inmates in Alaska and Arizona. An in-depth analysis could be conducted through an audit taking under consideration the issues raised in the U.S. General Accounting Office, Report to the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, Studies "Comparing Operational Costs and/or Quality of Service".

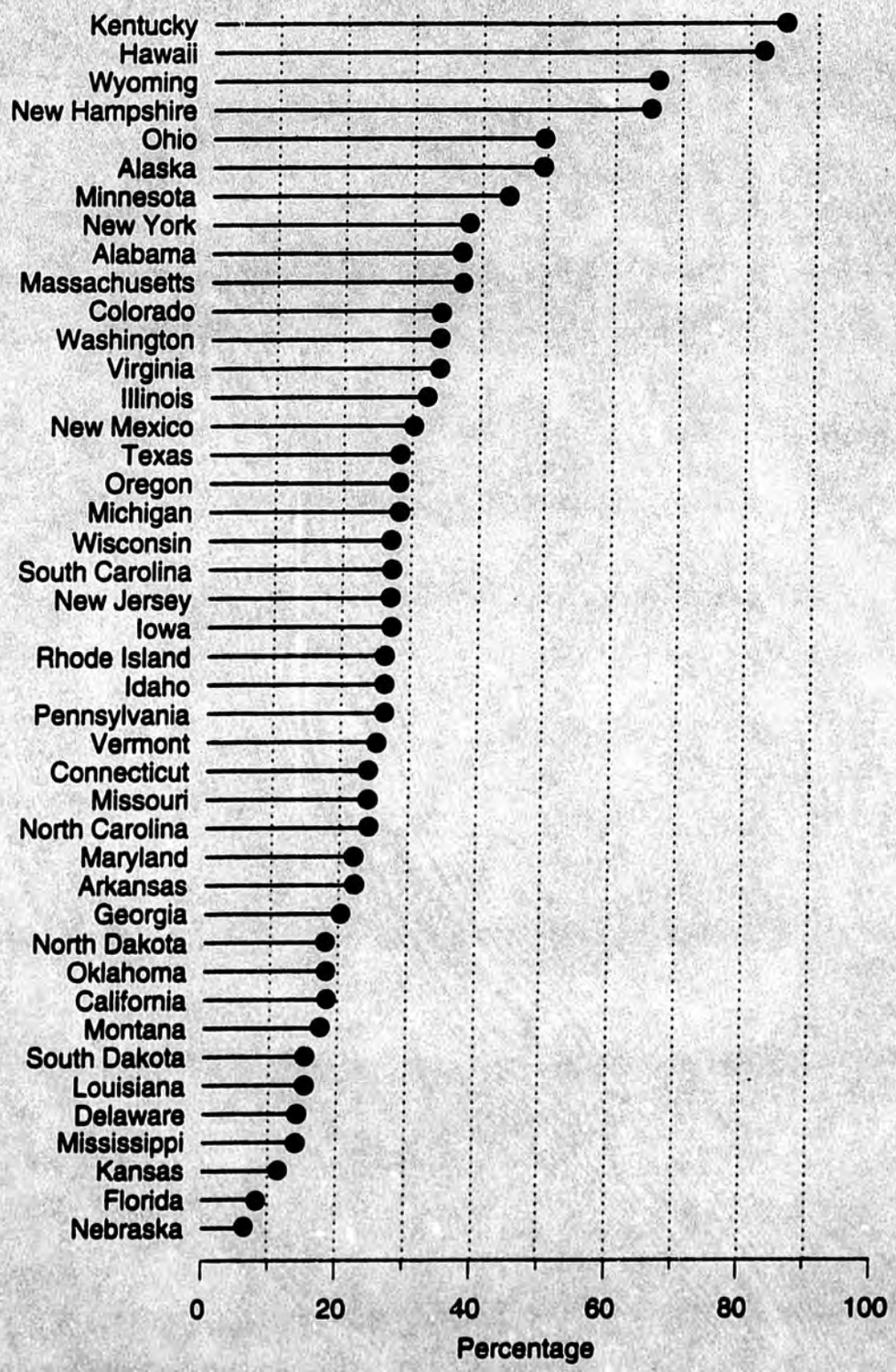
ESTIMATED PER DAY COST OF IN STATE / OUT OF STATE FACILITIES

FY99 EXPENDITURES AND OBLIGATIONS AS OF 8/31/1999

	Out of State Contract CCA		In State Incarceration	
Correctional Institution Associated Expenditure Item	**Per Bed-Day**	**FY99 Total**	**Per Bed-Day**	**FY99 Total**
Bed Day Cost [CCA & State Correctional Facilities]	$55.81	$15,807,199.54	$78.79	$76,761,595.51
Parole Board Costs	$0.48	$135,020.51	$0.48	$487,249.37
Transport Costs (CCA and all other)	$2.56	$724,726.19	$0.71	$726,427.79
Health Care Admin. Costs (all mandays)	$0.39	$111,851.48	$0.39	$501,712.55
Health Care Direct Services Costs (CCA and all other)	$2.51	$710,762.46	$8.74	$11,098,023.94
Institution Directors Office Costs (all mandays)	$0.46	$129,015.82	$0.46	$561,786.83
ACI Admin. (In state facilities - product cost not included)	-		$1.22	$1,191,257.05
In-State Programs	-		$2.09	$2,654,966.73
In-State Mental Health	-		$3.14	$3,983,710.59
Administration	$2.41	$682,608.40	$2.41	$3,061,856.80
TOTAL	**$64.61**	**$18,301,184.39**	**$98.42**	**$100,596,838.76**
Expenditures Not Included				
Return Inmate to point of Arrest as required by law		$319,075		
Gate Money upon release as required by law		$234,450		

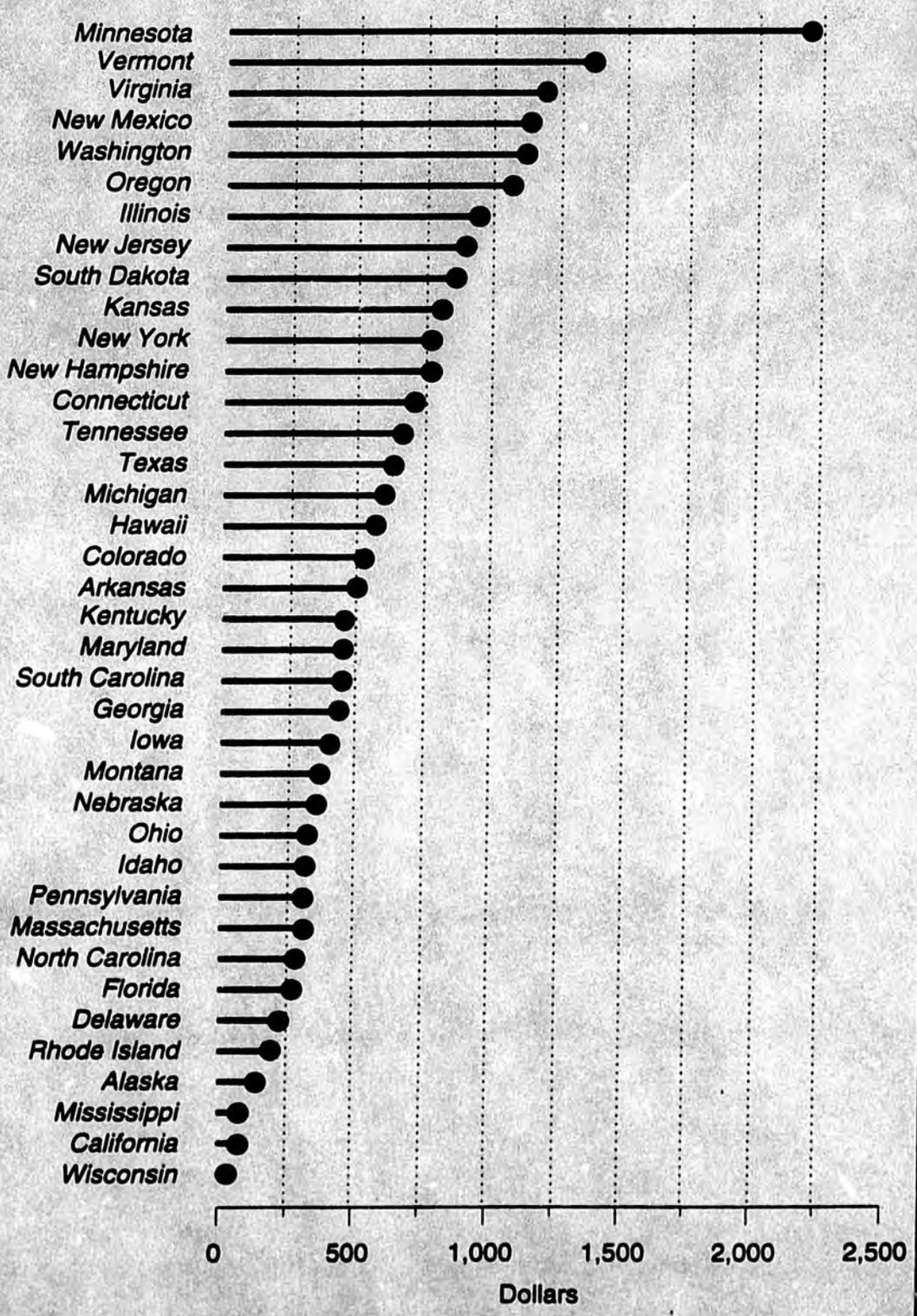
DRAFT

Figure 5
Percentage of Inmates Enrolled in Education Programs, by State



Source: *Corrections Compendium*, Volume XIX, No. 3, March 1994.

Figure 3
Total Education Budget Per Inmate, 1993-1994



Source: *Corrections Compendium*, Volume XIX, No. 3, March 1994.
Missouri, Oklahoma, and Wyoming are not included because their reported budgets do not include personnel costs.

INMATE EDUCATION PROGRAMS

Provided at all facilities:

Adult Basic Education - includes basic academic instruction in reading, writing and computational skills below the ninth-grade level. ABE services are provided to adults whose inability to speak, read, or write the English language and/or perform basic math computations prevents their functioning at the highest level of their ability to meet family, job and societal responsibilities. ABE includes English as a Second Language (ESL) instruction for prisoners whose primary language is other than English and who have a need to improve speaking, reading and writing. Additionally, ABE includes Literacy instruction for prisoners whose reading and writing skills are below fourth-grade level. ABE instruction is provided on both an individual and small class basis.

General Equivalency Degree(GED) - includes instruction above the eighth-grade level and below the college level in the areas of writing, reading, science, social studies, and mathematics. GED programs provide pre-testing, instructional classes, and GED testing.

Life Skills – there are four core curriculum areas provided in the Life Skills area, including Health and Safety, Communications Skills, Cultural Activities, and Pre-Release/Pre-Employment Preparation. Topics vary by institution within the core areas. The individual institution list below provides specific information on the courses being offered at the current time.

SPECIFIC EDUCATION PROGRAMS (by facility)

Pretrial facilities:

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
6th Avenue CC	Human Relationships Women's Issues (as needed) CPR/First Aid Stress Reduction Men's Issues Cross-Cultural Issues Parenting&Family Skills Employment Skills Money Mgmt&Consumer Educ. Safer Sex & Health Issues	None	Career Counseling Educ. Opportunities Center (EOC)	Correspondence Only

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
Cook Inlet	Cross-Cultural Communication Anger & Stress Mgmt. CPR/1st Aid Men's Issues AIDS Awareness Career Development Resumes & Job Skills Parenting and Family Skills Presentation Skills Business Entrepreneurship Financial Aid/AKCIS	None	Career Couns By EOC	Correspondence Only- various colleges
Mat-Su Pretrial	Computer Skills Anger&Stress Mgmt AIDS/HIV & other STD's Intro to CPR/ 1st Aid Communication Parenting Skills Cultural Awareness Money Management Time Management Job Skills Health & Nutrition Blood-Bourne Pathogens Critical Thinking Decision Making Goal Setting Life Planning Various Writing, Art, Literature, History	None	None	Correspondence Only

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
WildWood Pre-Trial	Women's Anger Management Women's Self Esteem Men's Anger Management Stress Management (men & women) First Aid/ CPR (men & women) Computer Skills	None	None	Correspondence Only
Yukon-Kuskokwim C.C.	Nutrition Anger&Stress Mgmt. Basic 1st Aid/CPR Various Arctic/Winter Survival Tobacco Free AIDS/STD Education Communications Across Cultures Family & Parenting Couples Skills Family Secrets How to Deal With Difficult People Interpersonal Relationships AK Native Cultural Activities (Potlatches, Elder Visits) Computer Skills Job Seeking/Training Opportunities Budgets & Money Mgmt/Consumer Education	None	None	None
Ketchikan C.C.	Parenting Assertiveness; Decision Making Anger&Stress Mgmt Cross-Culture awareness Basic Computer Skills Job Seeking Skills	US Coast Guard(1988) Boating Safety	None	Correspondence Only

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
Anvil Mountain C.C.	CPR/1st Aid Parenting Nutrition Beading/Quilting/Painting Animal First Aid Eskimo Dancing & Drumming Net Mending & Hanging Ivory Carving & Scrimshaw Small Business Operations Intro. to Photography Arctic Survival FAS/FAE	Div. of Public Health: Emergency Trauma Tech. Board of Nursing: Nurse Aid DEC: Wastewater Tx Plant Operator	Small Engine Repair Snowmachine/ 4-wheeler repair Welding	UAF NW Campus Correspondence & Audioconf.

Sentenced Facilities:

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
Hiland Mountain CC	Self Esteem Health Issues Interpersonal Psychology Women's Issues in Film Literature Pre-Release Cognitive Restructuring Grief & Loss Budgeting & Consumer Math Personal Growth Current Events Career Tracking/AKCIS Parenting Motheread Domestic violence Mary Magdalene groups	UAA Comm&Tech College: Intro to Computers Horticulture Program Building Maintenance Program Job Savvy Program (goals, values, Customer service, etc) What's Out There? (job-hunting) Cert. by: AK Postsecondary Commission	None	Correspond & distance-various colleges

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
Spring Creek CC	Parenting CPR/1st Aid Native Heritage Group Computers (indep study) Creative Writing Anger & Stress Mgmt Starting a Business Marketing & Finance Intro to Business Pre-Release Typing	DOL Certified: Building Maintenance Repairer Materials Coordinator Cook Baker AVTEC (AK Post-Sec Commission) Instruction for Apprenticeships	None	UAA: CLEP/DANTES Testing Various Indep. Study
Wildwood C.C.	Anger & Stress Mgmt CPR/1st Aid Parenting Computer Skills Communication Skills Native Culture Awareness Pre-Release	OSHA certified: Oilfield Health & Safety Oilfield Confined Spaces	Intro Basic Comp. Private Pilot Ground School & Instrumentation	KPC- AutoCAD (comp.assisted drafting) Various independent study
Palmer C.C.	Anger Management Art Classes CPR/1st Aid Newspaper Personal Finance	OSHA Certified: Hazardous Materials Handling DOL Certified: Butcher/Meat Cutter (1/90) Baker (1/90) Building Maintenance Custodial Maintenance	AutoCAD Building Maint.	Correspondence Only

Institution	Life Skills	Certified Vocational Programs	Non-Certified Vocational	Post-Secondary
Fairbanks C.C.	Job Preparation Skills Creative Writing Parenting Native Culture Club Personal Finance Small Businesses Personal Hygiene Stress Management Basic Computer skills Native History Health & AIDS Awareness Options/Cog. Restructuring	Div. of Public Health: Emergency Trauma Tech DOL Certified: Cook Baker Materials Coordinator Div. of Forestry: Wild Land Firefighter Red Card Certification	None	UAF – 1 cr. computer course Misc. Correspondence
Lemon Creek C.C.	Stress Management Assertiveness Training Health Issues Native Culture Club Parenting Guitar classes CPR/1st Aid Employment Skills Job Readiness Computer Basics/Keyboarding	Office Skills Program- AK Computer Inst (cert. by AK Post-Sec Comm) 7/91 DOL pgms: Landscape Technician	Basic Construction Basic Electricity CDL Study & Testing	Correspondence Various Univ.
Point McKenzie Project	Resume Workshop CPR/1st Aid Computer fundamentals Typing/keyboarding Word perfect Employment Skills AK Drivers License	Microsoft Certification Course Wildland Firefighting (DOF) Pesticide Handling (EPA) HazWoper Commercial Driving License	Food Svc.Sanitation Swine Mgmt. IBM Dos Trng. Mastercook Comp.	Misc correspond Elect. Journeyman Facilitation

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GAO

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,[1] 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.[2]

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.

To help frame the continuing deliberations of the Justice Department's privatization plans, we self-initiated this review to (1) identify studies

[1]Private Prisons: Cost Savings and BOP's Statutory Authority Need to Be Resolved (GAO/GGD-91-21, Feb. 7, 1991).

[2]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.

(completed since 1991) comparing the operational costs and/or the quality of service[3] 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.[4] 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.

Results in Brief

On the basis of literature searches and discussions with correctional officials and criminal 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

[3]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 a variety of quality measures or outcomes, such as safety and incident data and the extent of treatment programs for inmates.

[4]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.

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 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 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.[5] 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 are 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:[6]

- **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.

[5]Charles H. Logan, "Criminal Justice Performance Measures for Prisons," Performance Measures for the Criminal Justice System, U.S. Department of Justice, Oct. 1993.

[6]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).[7] Regarding quality of service, the study compared the three Tennessee facilities, the three Louisiana facilities, and two Washington facilities.

[7]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.[8] The Texas study analyzed operational costs only, and the New Mexico study analyzed quality of service only.

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 could

[8]The authors of the California study noted, however, that their findings regarding quality of service were based upon a small, nonrandom sample of inmates.

change the size or even the direction of the differences in the comparative operational costs.[9]

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.[10]

The 1994 California study compared three for-profit community correctional facilities located in that state—one run by a private firm 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

[9]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.

[10]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 necessary 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.

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 the 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 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 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.[11] 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.

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

[11]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.

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 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-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.[12] 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 truly 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

[12]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.

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."[13]

The BOP Director noted that by contracting out the management of selected facilities incarcerating general inmate populations, BOP was moving to the "next level of privatization," which would provide a good basis for comparative evaluations focusing on "like or similar 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

[13]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).

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.

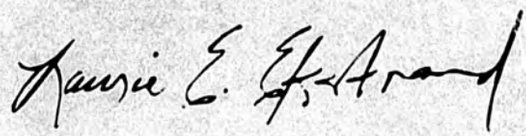
The Northeastern University reviewer[14] commented that (1) our evaluation synthesis was an important contribution to the corrections field, (2) the report's conclusion that the five studies offer little generalizable guidance for other jurisdictions regarding the comparative cost and quality of service of private and public correctional facilities was "right on point." and (3) our cautions concerning interstate comparisons were "well-founded."

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.

[14]Dr. Edith Elisabeth Flynn, College of Criminal Justice, Northeastern University, Boston, Massachusetts.

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

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

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).[1] 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.

[1]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 by the respective study.[2] 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.

In reviewing each applicable study's comparative evaluation of operational costs, we focused on whether (1) both direct and indirect cost 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 the 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. Thus, we did not attempt to generically define "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 methodological 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

[2]Two of our staff—senior analysts with specialized training and years of experience in designing and assessing evaluation methodologies—independently reviewed each of the five studies.

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.

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 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 Results of Five Studies Comparing Private and Public Prisons

State	Study citation	Evaluation parameters	Reported results
Texas	"Information Report on Contracts for Correction Facilities and Services," Recommendations to the Governor of Texas and Members of the Seventy-Second Legislature, Sunset Advisory Commission, Final Report, Texas Sunset Advisory Commission (Austin: 1991).	Operational costs were studied. Four private, prerelease, minimum-security prisons (500 beds each) for males were compared with hypothetical public facilities in Texas. Fiscal year 1990 data were analyzed.	The private prisons' operational costs were 14 to 15 percent less than the costs of the hypothetical state facilities.
		An empirical assessment of quality of service was not conducted.	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. Also, the study noted that all four facilities were in compliance with 11 of the 16 mandates of court rulings applicable to Texas prisons.
New Mexico	Charles H. Logan, Well Kept: Comparing Quality of Confinement In a Public and a Private Prison, National Institute of Justice (1991).	A detailed analysis of operational costs was not conducted.	Not applicable.
		Quality of service was studied. Three multicustody facilities (minimum- to maximum-security) for women were compared: a private prison and a state-run prison in New Mexico and a federal prison in West Virginia. The data analyzed for the private facility covered June 1989 through November 1989; data for the state facility covered June 1988 through November 1988; and the federal data covered December 1987 through May 1988.	The results of the study depended on the data-collection instruments that were employed. For example, data from staff surveys and official records showed that the private prison "outperformed" the state and federal prisons across nearly all dimensions. However, inmate survey data showed that one of the public facilities "outperformed" the private facility on every dimension except "activity" (e.g., work and training programs).

(continued)

State	Study citation	Evaluation parameters	Reported results
California	Dale K. Sechrest and David Shichor, Final Report: Exploratory Study of California's Community Corrections Facilities, California State University (San Bernardino: 1994).	Operational and construction costs were studied. Three for-profit community correctional facilities—one managed privately (medium-security) and two managed by local governments (low- to medium- and high-security)—for males were compared with one another and with other state correctional facilities. Fiscal year 1991-1992 data were analyzed.	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). Due to methodological limitations, conclusions could not be reached by comparing the three for-profit community correctional facilities with other state correctional facilities. For example, different cost components were used for the two sets of facilities in the comparison. In addition, it is likely that the universe of the state's correctional facilities reflected wide-ranging differences concerning inmate populations and services.
		Quality of service was studied. The same three community correctional facilities for males were compared with two state correctional facilities. Data were collected in summer 1992.	Due to methodological limitations, conclusions could not be reached by comparing the community correctional facilities with two state facilities. For example, the results could not be generalized to the inmate or staff populations of the facilities because small, nonrandom samples were used.
Tennessee	Cost Comparison of Correctional Centers, Tennessee Legislature Fiscal Review Committee (Nashville: 1995).	Operational costs were studied. Three multicustody prisons (minimum- to maximum-security) for males were compared: one private and two state-run prisons. Data from July 1993 through June 1994 were analyzed.	There was little difference in the 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 public facilities.
	Comparative Evaluation of Privately Managed CCA Prison and State-Managed Prototypical Prison, Tennessee Legislature Select Oversight Committee on Corrections (Nashville: 1995).	Quality of service was studied. The same three multicustody prisons for males were compared. Data from March 1991 through September 1994 were analyzed.	There was no difference in quality of service between the private and public facilities.
Washington	Department of Corrections Privatization Feasibility Study, Report 96-2, State of Washington Legislative Budget Committee (Olympia: 1996).	Operational costs of the same three Tennessee facilities mentioned above were studied. Data from July 1993 through June 1994 were analyzed.	The average daily operational costs per inmate for the private facility ($33.61) were slightly lower than such costs for the two public facilities ($35.82 and $35.28, respectively).

(continued)

State	Study citation	Evaluation parameters	Reported results
		Operational costs of three multicustody facilities in Louisiana (two private and one state-run) for males were studied. Projected data for July 1995 through June 1996 were analyzed.	The average daily operational costs per inmate for the two private facilities were $23.75 and $23.34, respectively, compared with $23.55 for the public facility.
		Operational costs of a Washington state prison were compared with the costs for one Tennessee state prison and a Louisiana state prison. Data analyzed for Washington state covered calendar year 1995; time frames for Tennessee and Louisiana data are mentioned above.	The average daily operational costs per inmate for the Washington facility ($44.52) were higher than such costs for the Tennessee and Louisiana facilities ($37.07 and $24.04, respectively).
		Construction costs were studied. The estimated costs for Washington state to construct a planned multicustody public prison for males were compared with a private company's costs for constructing a similar facility in Florida. Data analyzed for Washington state were based on projected July 1998 cost figures; and data analyzed for the Florida facility were based on projected July 1998 cost figures.	The estimated cost per bed for the Washington state facility ($60,400) was approximately double the estimated cost per bed for the Florida facility ($33,900).
		Quality of service was studied. Three multicustody male facilities in Tennessee (mentioned above), three multicustody male facilities in Louisiana (mentioned above), and two multicustody male facilities in Washington were compared. Data analyzed for Tennessee covered 1994 (for review of institutional records) and 1995 (for on-site visits); data analyzed for Louisiana covered 1995; data analyzed for Washington covered 1995.	Site visits showed that all prisons were "clean and appeared to be orderly." Additional data indicated that the prisons generally were similar regarding quality of service. However, the Washington facilities had more counselors per inmate than the Tennessee and Louisiana facilities.

Source: GAO summary of information reported in the cited studies.

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 audit 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.[1] 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

[1]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.

authorities)[2] 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 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.

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.[3]

[2]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 taxing authorities an annual amount, which generally approximated the taxes that would have been owed if the property were privately owned.

[3]The New Mexico study used a "confinement model" of imprisonment to develop 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 turnover and job satisfaction).

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.

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,[4] 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.

The study concluded, generally, that "the private prison '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

[4]The study noted that fewer official records were collected for the federal prison.

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).[5] 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[6] 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,

[5]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."

[6]This public community correctional facility housed narcotics offenders who were sentenced under a "civil addict program" and subsequently violated parole.

respectively, for the two public facilities. The two public facilities were relatively new (operational by mid-1991), while the study referred to the private facility as "older."

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 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).[7] 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.

[7]These data reflect the second year of operation.

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)

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.

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.[8] 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.[9]

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.

[8]When completed, the Florida facility is to be operated by Wackenhut.

[9]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.

The Washington study concluded that privatization per se would not result in cost savings to the state. 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.

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[1] occurs when the number of inmates actually incarcerated exceeds the rated capacity[2] 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.[3] For example, on January 1, 1991, California's prisons held 94,050 inmates, which was 41,352 inmates (or 78.5 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:

[1]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).

[2]The term "rated capacity" refers to the maximum number of beds or inmates assigned by a rating official to institutions within the jurisdiction.

[3]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[4] 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[5] 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.
- In Tennessee, the 1982 Grubbs v. Bradley[6] 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[7] 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.

[4]503 F. Supp. 1265 (S.D. Tex. 1980), aff'd in part and vacated in part, 679 F.2d 1115, amended in part, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983).

[5]C.A. No. 77-721-C (D.N.M. July 14, 1980).

[6]552 F. Supp. 1052 (M.D. Tenn. 1982).

[7]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,[8] 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.

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

	States studied				
Factors	**Texas**	**New Mexico[a]**	**California**	**Tennessee**	**Louisiana**
Year of initial operation of private facilities[b]	1989	1989	1991	1991	1991
Geographic region[c]	South	West	West	South	South
All state facilities[d]					
Rated capacity	41,252	2,878	52,698	8,700	15,006
Inmate population	39,525	2,932	94,050	8,380	13,849
Under or (over) capacity	1,727	(54)	(41,352)	320	1,157

(continued)

[a]As defined earlier, the rate of incarceration is the number of sentenced prisoners (per 100,000 resident population) in correctional facilities.

Factors	States studied				
	Texas	New Mexico[a]	California	Tennessee	Louisiana
Status of ACA accreditation of state correctional facilities[e]	none accredited	some accredited	some accredited	some accredited	none accredited
Incarceration rate[f]	240	180	311	207	427
Unions[g]					
Right to organize	yes	yes	yes	yes	yes
Right to bargain	no	yes	yes	no	no
Right to strike	no	no	no	no	no
Percent of correctional employees represented	not applicable	20 percent	83 percent	55 percent	12 percent

[a]The New Mexico data apply to all state facilities, while the New Mexico study (see app. II) focused on women's correctional facilities.

[b]The year that inmates were first sent to privatized facilities in the respective state.

[c]The Bureau of Justice Statistics groups all 50 states and the District of Columbia into four regions—northeast (CT, ME, MA, NH, NJ, NY, PA, RI, VT), midwest (IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI), south (AL, AR, DE, D.C., FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV), and west (AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY).

[d]Texas and New Mexico data are for January 1, 1989. California, Tennessee, and Louisiana data are for January 1, 1991.

[e]ACA provided us information on the general accreditation status of state facilities in each state studied at the time of privatization; specific numbers were not available.

[f]Incarceration rates for Texas and New Mexico are for December 31, 1988. Incarceration rates for California, Tennessee, and Louisiana are for December 31, 1990.

[g]Responses shown are from an ACA-sponsored survey of state adult correctional departments (April 1994) and refer only to public, state-level employees. Regarding the percentage of correctional employees represented by unions in Texas, the term "not applicable" was not defined. The data refer only to adult correctional departments.

Source: Data on geographic region and incarceration rates are from Kathleen Maguire and Ann L. Pastore, eds., Sourcebook of Criminal Justice Statistics, 1993, Department of Justice, Bureau of Justice Statistics, 1994. Data on overcrowding are from the Corrections Yearbook, 1989 and 1991, Criminal Justice Institute, Inc., 1989 and 1991. Data on accreditation status and union rights and representation are from ACA.

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

State	Number of private facilities[a]	Security classification of facilities	Total rated capacity[b]
Arizona	2	minimum to medium	850
Colorado	1	medium	752
California	5	minimum	1,446
Florida	7	minimum/medium to medium	4,636
Kentucky	3	minimum	1,300
Louisiana	2	medium/maximum	2,948
Mississippi	2	medium	2,034
New Mexico	1[c]	all security levels	322
Tennessee	1	medium	1,506
Texas	21	minimum to maximum	15,702
Utah	1	minimum/medium	400
Virginia	1	medium	1,500
Total	**47**		**33,396**

Note: According to the author of the data, the information presented is subject to change and represents the number of actual or planned facilities at a particular point in time only. We did not verify the accuracy or completeness of the information.

[a]The information presented includes only state-sponsored private facilities that primarily house inmates from the sponsoring state's correctional system.

[b]The term "rated capacity" refers to the maximum number of beds or inmates assigned by a rating official to institutions within the jurisdiction.

[c]This is an all-women's facility.

Source: Charles W. Thomas, Private Corrections Project, Center for Studies in Criminology and Law, University of Florida, Private Adult Correctional Facility Census, 9th ed. (Gainesville, FL: Mar. 1996).

Major Contributors to This Report

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SCOMM

122:44

Department of Corrections
Commissioner's Office

Facsimile Transmittal

To: Marco **Fax:** 0223

From: Bruce Richards **Ph: (907) 269-7397**
Fax: (907) 269-7390

Date: 11-24-99

RE: Privatization questions from full committee.

Happy Turkey Day!

Page 1 of ___

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

TONY KNOWLES, GOVERNOR

Margaret Pugh, Commissioner
4500 Diplomacy Drive, Suite 207
Anchorage, Alaska 99508
Phone: (907) 269-7397
FAX: (907) 269-7390

November 22, 1999

FROM: Bruce Richards
Special Assistant

TO: Commission on Privatization

RE: Information Request

Question: What is the cost per day per offender for Palmer CC and Point MacKenzie?

Answer:
The cost per day for Palmer Correctional Center in 1999 is $84.34
The cost per day for Point MacKenzie Farm in 1999 is $61.84

Question: How much does the state spend on education broken out by state vs. private contracts?

Answer:
Education costs:

State Costs	$1,051,381
Contracts	$385,800

Question: What is the percentage of DWI's vs total admissions to the Department of Corrections?

Answer:

FY 1999 Total Admissions to Institutions:	28,691	
FY 1999 DWI Admissions:	4,409	15%
DWI Misdemeanors:	2,260	
DWI Felonies:	84	
DWI Multiple Charges:	2,065	

DEPARTMENT OF CORRECTIONS PRIVATIZATION

SUBCOMMITTEE MEETING

SEPTEMBER 14, 1999

1. **Members Present:** Sharon Anderson, Russell Lewis, Garland Warren, Gail Schubert, Mary Pate, and Mel Tipton (telephonic)
   - Greg Pease, Dwayne Peeples, Charlene Griffin in Juneau
   - Barbara Miller via phone from Wasilla

   Senator Ward was present
   Betsy Robson, Bruce Richards, Bill Parker, all DOC were present.

2. **Betsy Robson spoke on Inmate Education for the first part of the meeting.**

- **Education Programs Present at All Facilities:** amount of education services varies by facility; type of programs is tailored to each facility.

- **Programs Include:** Adult Basic Education/G.E.D.; Lifeskills Programs; Literacy; Vocational Education and Apprenticeship;

- **Program Numbers:** 961 Students in ABE/GED; 35 students in English as a Second Language; 426 inmate/students have 8 years or less of education. 500 were studying at secondary level, 185 earned GED in FY 1998
  - **(NOTE):** These numbers only include incarcerated persons, not prisoners in Arizona or persons at CRC's

- **Baseline Education:** DOC has tried to establish a baseline level of education. There is not enough data to establish a true baseline, but the data indicates that less than 48% of inmates have a high school diploma or equivalent.

- **Lifeskills Class:** duration ranges from 1-2 hours to several weeks (depending on the length of prisoner incarceration at any given facility); involves human relations workshops;

Cross Cultural programs exist within Lifeskills classes; CPR and stress reduction are taught within these classes.

- **Senator Ward: Asks how the lack of a Rural Affairs Coordinator affects cross-cultural issues in inmate education?**

  - **Betsy Robson:** Lack of an RAC does not affect programs since the RAC was not directly involved in the education programs.

- **Additional Numbers:** In FY 99: 5465 inmates in lifeskills classes; 3771 inmates completed the class
  1. Transient population affects completion percentage
  2. No recidivism data is available
  3. Data that is available doesn't reflect interrelation of lifeskills programs and recidivism.
  4. National data reflects information that lifeskills teaching reduces recidivism.

     - General Discussion re: Collecting Data with OBSIS #'s
     - B. Richards: OBSIS # stays with any given inmate for life
     - Gail Schubert: Are computers available and used to track inmates?
     - B. Richards: Computer system is an out-of-date system designed for a narrow purpose. The current system is very cumbersome to try to use as a database.
     - Betty Robson: OBSIS #'s not used in data collection efforts.

- **Senator Ward expresses concern regarding the "lack of outcome measures" General Discussion on COST/EFFECTIVENESS/APPROPRIATENESS follows**

  - Senator Ward: Is there a measurable benefit to the education program:
  - B. Robson: Notes that many of the education services are contracted out to the private sector.
  - Senator Ward asks if those private contractors would have outcome data?
  - B. Robson: No. The only available data is regarding the pre- and post- program educational level of the inmates.
  - R. Lewis: Is education ever a part of the sentence?
  - B. Robson: Not very often. National data (only source available) supports the following

1. Recidivism reduced by education
2. (remember *Cleary* settlement requires educational effort)
3. Education can be a tool to manage the institutions by keeping the problem populations separated and keeping violence down.

- Sharon Anderson questions whether the length of stay acts as a deterrent to involvement in the education program?
- B. Robson: programs are tailored to the length of average stay at each facility. Both pre-programming and shortened programs are used.
- B. Robson/B. Richards: New MIS will allow greater tracking of inmate progress/education/recidivism
- Senator Ward: What is cost of education effort?
- B. Robson: $316,000 is allocated from DOC budget. 50-55% of that figure goes to private contractors. The rest goes to books and supplies.
- Gail Schubert asks if university credits are given and if so, who pays for them?
- B. Robson: Because of the recent PELL grant cuts, the inmates must pay on their own for any university classes they take.
- Gail Schubert questions the private pilot lessons being offered at certain facilities.
- Barbara Miller asks how many state employees are in the education program
- B. Robson: Two in central administration, at least one in each facility.
- Barbara Miller: How many total? B. Robson: 17
- Barbara Miller: What is the cost for the 17 employees?
- B. Robson: Unclear. These particular employees are funded through the institution budgets, not the education budgets.
- Garland Warren asks why there are no certified programs at the Yukon-Kuskokwim Correctional Center?
- B. Robson: Most inmates stay only a short time in that facility.
- Mel Tipton asks if written testing is done. Bruce Richards replies that it is done for Adult Basic Education.
- Mel Tipton: Is there written testing after or during other classes? B. Robson: Only pre- and post- class testing to measure the change in abilities.
- Mel Tipton: Are written tests used to measure results?

- B. Robson: Any certified classes use testing at the completion of the class.
- Senator Ward: Are classes relevant? Are the results of the education worth the effort? Senator Ward reiterates his desire to see some measurement of value from the tax dollars being spent on education in the prison system.
- Mary Pate asks how the schedule of which classes to offer is determined?
- B. Robson: Education Coordinator at each facility determines classes to offer.
- Mary Pate: Is then any relationship between classes offered and the jobs available upon release?
- B. Robson: The DOC's Criminal Justice Planner coordinates with DOL regarding the potential job market.
- B. Robson: National data indicates that Alaska is 4th from bottom in education spending on a per capita basis.
- Bruce Richards: New MIS will allow better tracking of dollars and inmates: can't be done now.
- Greg Pease: What correctional assessment tool(s) will be used to determine if programs work? Greg Pease offers to provide them to the DOC and the committee.
- Senator Ward is of the opinion that if people are trained and have a job, they won't re-offend. Senator Ward is certain that the data can be compiled, manually if need be.
- Garland Warren expresses concern about Alaska's low position in regards to the education dollars being spent on inmates.
- Barbara Miller wants inmates restricted to a total of 13 years of education services.
- Bill Parker (DOC) expresses his belief in the need to educate since the inmates will eventually return to society.
- Barbara Miller expresses doubts as to whether education will prevent recidivism when inmates do return to society.
- B. Robson expresses her belief that education is the key to prevent recidivism and that the new MIS will allow the date to be gathered to show that.
- Gail Schubert points out the age of some of the statistics and asks if the budget and the numbers have changed in recent years.
- Gail Schubert points out that most if not all of the crimes committed by indigenous peoples involve substance abuse: shouldn't most of the education dollars be directed at substance abuse prevention/treatment?

- ❖ Sharon Anderson concurs with the need for outcome measures.
- ❖ Garland Warren states his opinion that as Alaska is only spending $350/year/inmate on education, any further cuts would mean that the program should just be dismantled.
- ❖ Mel Tipton asks if there could be greater selectivity about persons entering the education programs. Mel also notes that testing might be a proper means of assessing entry screening and measuring progress in the programs.
- ❖ Russell Lewis asks for the total money spent on education in the prison system. B. Robson will get that information together.
- ❖ Senator Ward asks the DOC personnel to assemble outcome information on all the programs.

3. Sex Offender Treatment Programs: The second part of the meeting was devoted to a discussion of the sex offender treatment programs, again presented by Betty Robson.

- The Sex Offender program has a total of 260 slots: Meadow Creek, 78 slots; Lemon Creek, 24 slots; Fairbanks, 10 community spaces; Anchorage, 60 community spaces; Juneau, 15 community spaces; Kenai, 8-10 community spaces; Ketchikan, 8-10 community spaces.

- B. Robson discusses the 1996 Study at Hiland Mountain. This study produced "good news" and "bad news":

  - ➢ Good news: Rapists do not appear to be reoffending

  - ➢ Bad news: Alaska Natives are not progressing in the program and have low numbers in the treatment programs compared to the number of offenders.

  - ➢ Results and Procedures from study: DOC will reevaluate the aspects of culturally relevant programs, the length of the Sex Offender treatment programs, and restructure the programs so that more people can be treated.

  - ➢ "Summit" Meeting of DOC staff and care providers was held to discuss: 1) shortening of the Sex Offender treatment program to 17 months; 2) identify specific needs of treatment; and 3) do as much pre-program work as possible to improve chances of success in the program.

- B. Robson discussed a study recently done by DOC evaluating the revised Sex Offender program. This study evaluated the results from 5/1/98 to 5/1/99 after the (some/all ???) of the above changes were implemented in the above program. This study revealed:

  - Rate of completion improved by 20%: up to 1 inmate per month completing the program.
  - Other inmates benefited from the program, even if not completing it.
  - Participation rate improved in the program from 38% to 57% (of offenders???).

- Gail Schubert asks questions regarding the completion rate and the completion rate of Alaska Natives specifically.

- B. Robson states that 23 Alaska Natives were discharged from the program: 15 quit or were discharged; five completed the program; and three left when their sentence expired.

- B. Robson noted that the national dropout rate is 50%-60%.

- Gail Schubert asks how many of the slots in the sex offender treatment program are occupied by Alaska Natives. B. Robson responds that 50% of the Meadow Creek Correctional Center Sex Offender population is Alaska Native. There apparently are no numbers available on the population make-up of the community slots.

- Gail Schubert asks if there is a waiting list for entry to the Sex Offender program at any given facility. B. Robson responds that there is a two or three month wait for Meadow Creek and a period of a few months at Hiland Mountain. B. Robson indicates that wherever there is a waiting list, the facility tries to offer treatment prior to actual entry into the program.

- Barbara Miller asks why individuals leave treatment. B. Robson responds that there are several reasons for leaving treatment. Some people refuse treatment, some have their parole revoked, some are kicked out.

- Senator Ward asks for information on the five Alaska Natives that completed the program. What was the cost of their

treatment? Have they reoffended? Senator Ward would like to see a comparison of cost for treatment and the reduction in repeated offenses, if there is such a reduction.

- B. Robson indicates that the Sex Offender treatment program is 88% contracted out. The annual budget is $1,000,000, which includes elements in the facilities budgets as well as the community treatment budget.

- Barbara Miller asks how many state employees are involved with the Sex Offender program. B. Robson indicates that there is one part-time criminal justice planner and that there are no full-time employees dedicated to the Sex Offender treatment program.

- B. Robson indicates that psychological/psychiatric testing is included in the 12% of the Sex Offender program budget that is not contracted out.

- Gail Schubert asks if the inmates pay any part of their treatment. B. Robson responds that inmates in the community slots pay part of the cost of their treatment.

- Russell Lewis asks if the DOC personnel could assemble statistics on what part of the parole board's time is spent doing revocation hearings for sex offenders.

4. General Discussion Regarding Inmate Monies:

- Garland Warren asks for data on inmate funds; i.e. how inmates earn funds and how those funds are segregated and maintained.

- Bruce Richards indicates that there is some data on inmate funds, but it is hard to get. All inmates have a HOFA (???) fund.

- Senator Ward indicates that he would like to see copies of any HOFA fund audit.

- Garland Warren expresses his concern about letting offenders back into society without either money or training.