PRIVATISATION OF PRISONS

PRELIMINARY REPORT OF OVERSEAS STUDY TOUR
TO THE UNITED STATES OF AMERICA

JUNE – JULY, 1990

DISCUSSION PAPER FOR JUNEE GAOL STEERING COMMITTEE

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This Preliminary Report details issues relevant to the history, management, present position and future of privatised prisons within the United States. The Working Party examined the prison systems in the States of California, Texas, Tennessee and Louisiana. The State of California, with minor exceptions, has not considered privatisation as an issue. This has been brought about by State Government policy and strong union opposition from California's Prison Officers Association, one of the largest and most politically powerful unions in that State.

The main impetus for privatised prisons is most apparent in the Southern States, such as Texas, Tennessee, Louisiana and Florida, where the influence of unions is limited or non-existent.

CHARTER

To examine and investigate all matters relating to the history, development and management of privatised prisons in the United States of America and England including:

1. The ability of present or future privatised prisons operators, to design and construct a 400 bed medium security prison in Junee, New South Wales, Australia.

2. Provide a financial proposal to the New South Wales Government, to enable a decision to be made, acceptable to the potential contractors and the Government, for private or Government Capital Works funding.

3. The legislation where private prisons are operated, to develop New South Wales model legislation.

4. The ability of a private prison contractor to provide all prison services to operate and effectively manage Junee Prison for a period of up to 20 years.
5. Management, financial and performance contracts suitable for the operation of Junee Gaol.

6. The integrity of present operators and the future of privatised gaols in the United States.

HISTORY

Discussions as to probity of private prisons in the United States began in the early 1980s, when a number of firms began negotiations with various State and County administrations to manage mainly juvenile institutions.

The firm of Corrections Corporation of America appears to have been the first to realise the potential of private management of correctional facilities. This firm was established in January 1983 and as at December 1989 was managing 20 institutions of all classes except high security prisons within the United States. Many other organisations have now realised the potential of the private management of gaols within the United States and, as far as it can be ascertained, there are approximately 20 operators managing institutions of varying classes at this time. The field of potential operators is increasing, as privatised prisons gain more acceptance within the United States.

Privatised prisons, with minor exceptions, have been established in the Southern States where unions have little influence or are non unionised. The States of Texas and Tennessee, in particular, are known as "right to work" States. A map of the United States depicting privately operated prisons as at March 1990 is attached (Attachment 1).

STATE OF TEXAS

The history of privatised prisons in the State of Texas began in 1986-1987, when there was a severe reduction in finances available to the State following an economic slump.
The major issues dictating the need to privatise were as follows:

1. Serious capacity crisis as a result of the increasing number of persons incarcerated in that State for serious criminal offences mainly related to drug trafficking.

2. Sweeping Federal Court reform which, as a result of the Ruiz (Prisons Overcrowding) Determination, ruled that Texas prisons were not to exceed 95% of their capacity. Texas authorities were ordered to renovate their gaols and the Federal Court ordered "de-population" to the level ordered by the Federal Judge in the Ruiz case (Constitutional - Human Rights issues).

3. Texas State's fiscal constraints on revenue could no longer afford to pay cash for major capital construction projects.

4. An option was developed and agreed to by the United States Federal Government for financial bonds being tax exempt when issued for approved prison construction either for State, County or private prison construction.

Condition 4 (above) was the real impetus for the acceleration of the private sector involvement in Texas, as this allowed the State to commence negotiations for private design, construction, finance, and following upon the passing of the Texas prison privatisation legislation, management of selected private prisons. This legislation, copy attached (Attachment 2), was passed by the Texas Legislature on 10 March 1987. Similar legislation has also been passed in a number of other Southern States.
PRIVATISED MANAGEMENT OF PRISONS -
DECISIONS FACING THE NEW SOUTH WALES GOVERNMENT

BACKGROUND INFORMATION

The control and management of corrections in New South Wales for over 200 years has been the legal function of the New South Wales Government. Until 1989, there appears to have been little or no discussion about whether the Government should consider a privatised gaol in New South Wales.

The decision by the Queensland National Party Government in 1989 to privatise the management of the Government owned and built medium security institution at Borallon generated considerable discussion in New South Wales.

The Corrections Corporation of Australia (CCA), a consortium of Australian companies and the Corrections Corporation of America, who, it is understood, has the majority share, are the operators of this facility. The operators are paid 92.07A$ for each prisoner the Queensland Corrective Services Commission places in the Borallon facility.

This amount is substantially above the cost for management of similar privatised gaols in the United States, which is in the vicinity of 30-50US$ per day. (See attached survey of privately operated prisons and gaols in the United States, Attachment 3).

The State of Texas also stipulates in its legislation that the costs per day paid by the State for each prisoner be 10% less than the costs estimated by the Texas Department of Corrections for a similar class of State institution. There is no doubt in my mind that both 500 bed pre-release privately managed institutions examined by the Working Party in Texas, at Venus (CCA) and Kyle (Wackenhut), were well managed, and met the great majority of conditions of the contract between the Texas Department of Corrections and the operator.
The comments of executives from CCA and Wackenhut in all our discussions in the United States left no doubt in my mind that either of these two firms could design and construct, in conjunction with a large Australian building firm, an institution which would favourably compare with the most modern facilities recently constructed in the United States.

Each firm also indicated they would have no problem in providing a financial proposition to the New South Wales Government for the construction of a large gaol facility. They expressed confidence that following the passing of legislation similar in content to that in Texas or in Queensland and subject to the development of a management contract between the New South Wales Government and the successful tenderer for management, they could both manage a privatised gaol in Junee for a period of up to 20 years. CCA are undoubtedly very keen to manage further prisons in Australia. Wackenhut executives expressed a desire to firmly establish themselves within Australia and were critical of their own efforts in endeavouring to obtain the management contract for the Borallan facility.

Wackenhut officials expressed surprise at the amount of 92.07A$ per day being spent by the Queensland Government.

The firms did not give any indication of the charges they may tender for each prisoner per day. Executives of both firms expressed the very strong view that they must be the designer and builder in order for them to be able to manage the gaol with the least number of personnel. CCA executives, on many occasions, said to me that if they had been able to design and build the Borallan facility, the recurrent costs would have been much less than that now paid by the Queensland Government.

To re-emphasise the position of both of these operators, their view is that the successful tenderer must be able to design and build with the expectation that they will win the subsequent management contract for a number of years to manage, in this instance, the new Junee facility.
FINANCIAL CONSIDERATIONS

As previously stated, one of the main reasons for the development of the private option was the shortage of funds within the State of Texas brought about by the major downturn in the economy following the dramatic drop in oil prices in the early 1980s.

The Federal Government of the United States, together with a number of States such as Texas, then looked at options for the raising of funds to build schools, prisons, waterworks and similar classes of public works which were usually Government funded. The system of debenture bonds was developed in conjunction with the major Stock Exchanges in the United States which provide for debenture issues of bonds, usually with State Government approval, providing for the construction, amongst other public works, of prisons. This has proved to be a very popular option, as bonds are AAA and State guaranteed and pay a dividend of 8% per year without attracting Federal or State taxes.

This taxation exemption was, it is understood, brought about by an Act of the Congress of the United States of America.

It is further understood private companies, CCA, Wackenhut and others, had access to these funds when they built prisons on behalf of various States and Counties. In the light of the very high interest rates in Australia, such bonds would be attractive to US firms contracting for privatised prisons in Australia.

Discussions which I had with executives of CCA and Wackenhut as to their ability to provide finances for the construction of a prison in New South Wales, revealed they would have little difficulty, to use their own words, in raising funds for such a development in Australia. Although not specifically stated, it would appear those funds could be raised in the United States at an interest rate of 8%.
Both CCA and Wackenhut had a number of contracts with State and County Governments in various parts of the United States which provided for the design, construction, finance and subsequent management of institutions. Both organisations left little doubt in my mind they were capable organisations and have a proven track record in the United States.

Whether or not this proven track record and successful application can be transposed to Australia with different financial and management conditions, is still a matter of conjecture.

CORRECTIONS CORPORATION OF AMERICA

This firm, established in 1983, claims to be the leading private sector provider of detention and corrective services in Federal, State and Local Governments in the United States.

Corrections Corporation of America now manages 20 facilities within the United States and is aggressively seeking new markets and contracts to manage new facilities at the State, County and City level within the United States. As principal shareholder in Corrections Corporation Australia they hope to expand their interests in Australia. I am unable to give a view of the financial position of CCA America or Australia.

It is recommended enquiries be made by the New South Wales Treasury through one of the recognised financial ratings firms such as Moodys or Standard & Poors, who for a fee can provide such information. Further, CAA have shown they are capable of designing, constructing, financing and managing a number of institutions similar to that new one to be built in Junee, New South Wales.
The Wackenhut Corporation diversified into private corrective management in 1986-1987. It now conducts a number of facilities within the United States. The main business of the Wackenhut Corporation is providing security systems and security devices for many countries throughout the world.

It employs over 40,000 employees and provides security services for many United States Government defence establishments and atomic power stations. The international affiliations of Wackenhut stretch into the United Kingdom and Africa and, it is now understood, seeking to become affiliated with a large security organisation within Australia.

The executives of the Wackenhut Corporation, which is a publicly listed firm on the New York Stock Exchange, claim the organisation has a very strong financial base with no problem long term debt.

As in the case of CCA, I suggest a financial analysis of this firm be conducted by the New South Wales Treasury. This would have the effect of providing information which would indicate the long term survival of either of these firms.

I formed the opinion that because the management of privatised institutions in the United States is guaranteed by State, County or City Governments, they have a high financial rating. The agreed costs per day are guaranteed by the Government agency involved and it always involves a cash payment per day for each prisoner placed in the private institution. This gives each of the privatised gaols management companies a very strong guaranteed financial base and a very strong cash flow, usually subject to biannual review and usually tied to the inflation rate.

Privatised gaols in the United States are managed with the least number of executives and corrective officers possible. The companies make their profits by keeping personnel and services as lean as possible.
The State's method for monitoring the vendor's performance involved placing monitors from the Texas Department of Corrections in the privatised gaols. It was noted that they regularly reported on shortages of staff and lack of appropriate programmes. These reports were regularly brought forward by the Texas Department of Corrections and the issues addressed with the contractors.

It was regularly found both organisations were slow to replace executives and/or base grade corrective officers, this obviously provided them with financial advantage.

FINANCIAL SUMMARY

Both CCA and Wackenhut appear to have the financial resources to be able to provide financial propositions for presentation to the New South Wales Government for the construction of a gaol such as is envisaged at Junee.

The financial propositions would need to be carefully investigated by officials of the New South Wales Treasury, particularly if on a long term repayment basis, to ensure costs did not escalate beyond a reasonable level.

It is beyond my capabilities to be able to properly assess these financial considerations.

OTHER PRIVATE PRISON OPERATORS

As previously stated, there are at least 20 other private management operators of prisons within the United States. There is no doubt many of these new operators, in conjunction with large Australian firms, will tender on the project. They intend to aggressively enter the Australian market (Attachment 4).
CONTRACT CONSIDERATIONS

The Working Party was continually warned about the American term called "lowballing". This, of course, has the meaning that in order to win the contract, the successful tenderer purposely tenders a low price. Then, at a later time when there would be no chance of a State, County or City Government being able to take over the management of the prison, they are forced into paying a much higher price than that previously agreed to.

LEGISLATION

Advice from Mr. Rider Scott, General Counsel to Governor William P. Clements Jr., Governor of Texas, was to the effect that the Texas prison privatisation enabling legislation had been found to be sufficient for the purposes of the introduction of privately managed gaols into the State of Texas. A copy of this legislation is attached. It is understood copies of the Queensland legislation has been made available to this Department and is being studied by the executives of the New South Wales Cabinet Office.

I cannot advise further as to the legislative requirements that may be necessary in New South Wales.

PERFORMANCE CONTRACT

It was emphasised that the contract between the State and the private prison operator was the most important document of all and must clearly set out every requirement of the State before the contract is signed.

The State of Texas referred their proposed contract to major US law firms before being approved by the Texas Government and eventually signed with each of the prison operators.
A copy of the Texas model privatised prison contract is, I understand, on its way from the United States and will be made available as soon as it arrives. Copies of the model contract prepared by the American Bar Association are available within the New South Wales Corrective Services, as is a copy of the contract between the Corrections Corporation of Australia and the Queensland Government.

It may be prudent when a model contract is being developed for New South Wales, that it to be given on a tender or allotment basis to a major law firm as any mistakes in the contract could have catastrophic effects for the Government of New South Wales.

REQUEST FOR PROPOSALS

The Texas Department of Corrections has developed a standard "Request for Proposals" document which is provided when the Department is seeking expressions of interest for the design, construction, finance and subsequent management of a privatised prison.

Copies of the Texas Model Contract and the "Request for Proposals" document will be forwarded to Australia; a further request has been made for these documents.

CONCLUSION POSITIVES AND NEGATIVES

The major privatised prison operators in the United States, such as CCA and Wackenhut and all the other private prison operators, are hardnosed US businessmen.

I did not detect during any of my discussions, that they had entered into this business for any other reason than to make money. Typical of US business, "the more, the better".

If the business of privatised prisons was not profitable, why has there been such a rush of operators to become involved in the privatised prison business? The alacrity which executives of the two major prison
operators showed when visiting Australia clearly indicates to me that Borallon has proved to be a financially viable proposition for CCA, and other operators would be aware of this position.

It will be very interesting to see the response to the proposed expressions of interest relative to Junee. If what I have been told is correct, there may be up to eight major operators respond to the expression of interest.

The major benefit to the New South Wales Corrective Services, if it is finally decided that Junee will be privately managed, is that the Department will be totally relieved of the obligation to staff and manage a gaol over 400 kilometres from Sydney. Recruiting for country areas has proved difficult for the Department in the past, coupled with added expenses associated with transferring staff.

Another advantage to the Department will be the provision of the opportunity to monitor and study the management techniques of the private operators. Of particular interest will be such issues as staff ratios, salaries, disciplinary procedures, incentives, etc.

Some of the areas which will require careful consideration by the Department are:

i) the implications of the drain of potential executive staff from the public to the private sector;

ii) the provision of an on site monitor with the ability to maintain objectivity and not succumb to the lure of the private company.

Finally, I believe the management of the proposed Junee Gaol should be privatised as there will be a continuing controversy if this does not take place.
It is therefore submitted that the first contract should not be for a period of more than two years, subject to renegotiation based on the performance and the ability to clearly demonstrate that management techniques are superior to those of the New South Wales Corrective Services. The cost to the New South Wales Government will need to be at least 10% lower than that of a comparable institution managed by New South Wales Corrective Services.

On a final note, if a gaol containing 500 cells for B and C category prisoners together with accommodation for 100 C2 and C3 category prisoners (totalling 600 in all) is established at Junee, it will create a massive transport problem for the new South Wales Corrective Services. As is the case in all privatised prisons in the United States, the contracting Department is responsible for the transport of prisoners to and from the private gaol.

FINAL CONSIDERATION

I recommend the Junee Steering Committee give consideration to lowering the Junee to 300 cells and accommodation for 100 C2 and C3 category prisoners. I can state my reasons for this recommendation if required.
Privately Operated Prisons in the United States
Spring 1990

Legend
- Federal Facilities
- State Facilities
- Local Facilities
- Private Prison Company Headquarters
TEXAS PRISON PRIVITIZATION

ENABLELING LEGISLATION
AN ACT

relating to contracts with private enterprises for the financing, construction, operation, maintenance, and management of correctional facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 108, Revised Statutes, is amended by adding Article 6166g-2 to read as follows:

(Art. 6166g-2.) (CONTRACTS WITH PRIVATE CORRECTIONAL FACILITIES)

(Sec. 1. (a) The Texas Board of Corrections may contract with private vendors or with commissioners courts of counties for the financing, construction, operation, maintenance, or management of secure correctional facilities.)

(b) A facility operated, maintained, and managed under this article by a private vendor or county must:

(1) except as provided by Subsection (d) of this section, hold not more than an average daily population of 500 inmates;

(2) comply with federal constitutional standards and applicable court orders; and

(3) receive and retain, as an individual facility, accreditation from the American Correctional Association.

(c) A facility authorized by this article may be located on private land or on land owned by the state or a political subdivision of the state. The Texas Board of Corrections may accept land donated for that purpose.

(d) The population requirements imposed by Subsection (b)(1) of
this section do not apply to a facility that is under construction or completed before the effective date of this article.

[Sec. 2. The Texas Department of Corrections may confine only minimum or medium security inmates in a facility authorized by this article. An inmate confined in a facility authorized by this article remains in the legal custody of the Texas Department of Corrections.]

[Sec. 3. (a) The Texas Board of Corrections may not award a contract under this article unless the board requests proposals and receives a proposal that meets or exceeds, in addition to requirements specified in the request for proposals, the requirements specified in Subsections (b), (c), and (d) of this section.]

[(b) A party proposing to enter a contract with the Texas Board of Corrections under this article must demonstrate:]

[(1) the qualifications and the operations and management experience to carry out the terms of the contract; and]

[(2) the ability to comply with the standards of the American Correctional Association and with specific court orders.]

[(c) In addition to meeting the requirements specified in the requests for proposals, a proposal is not acceptable unless it:

[(1) provides for regular, on-site monitoring by the Texas Department of Corrections;]

[(2) acknowledges that payment by the state is subject to the availability of appropriations;]

[(3) provides for payment of a maximum amount per biennium;]

[(4) offers a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than 10 percent of the cost of housing inmates in similar facilities and]
providing similar programs to those types of inmates in state-operated facilities, as determined by the Legislative Budget Board;)

[(5) permits the state to terminate the contract for cause, including as cause the failure of the private vendor or county to meet the conditions required by this article and other conditions required by the contract;]

[(6) provides that cost adjustments may be made only once each biennium, to take effect at the beginning of the next biennium;]

[(7) is for an initial contract term of not more than three years, with an option to renew for additional periods of two years;]

[(8) if the proposal includes construction of a facility, contains a performance bond approved by the Texas Board of Corrections that is adequate and appropriate for the proposed contract;]

[(9) provides for assumption of liability by the private vendor or county for all claims arising from the services performed under the contract by the private vendor or county;]

[(10) provides for an adequate plan of insurance for the private vendor or county and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private vendor or county;]

[(11) provides for an adequate plan of insurance to protect the state against all claims arising from the services performed under the contract by the private vendor or county and to protect the state from actions by a third party against the private vendor or county, its officers, guards, employees, and agents as a result of the contract;]

[(12) provides plans for the purchase and assumption of operations by the state in the event of the bankruptcy of the private vendor or
inability of the county to perform its duties under the contract; and)

[(13) contains comprehensive standards for conditions of confinement.]

[(d) Before the commissioners court of a county proposes to enter into a contract under this article, the commissioners court of the county must receive the written approval of the sheriff of the county. A correctional facility provided by a county under this article is subject to the same standards and requirements as a correctional facility provided by a private vendor.]

[(e) A private vendor or county operating under a contract authorized by this article may not;]

[(1) calculate inmate release and parole eligibility dates;]

[(2) award good conduct time;]

[(3) approve inmates for work, medical, or temporary furloughs or for preparole transfers; or]

[(4) classify inmates or place inmates in less restrictive custody than the custody ordered by the department.]

[(f) In determining costs and cost savings under Subsection (c)(4) of this section, the Legislative Budget Board may consider any factor it determines is relevant, including additional costs to the state for providing the same service as a private vendor or county, indirect costs properly allocable to either the state or the private vendor or county, and continuing costs to the state directly associated with the contract.]

[Sec. 4. A private vendor operating under a contract authorized by this article is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor or county. This section does not deprive the private vendor or the state of the benefit of any law limiting exposure to liability, setting a limit on}
BIL NUMBER:  SB251

[Sec. 5. The Texas Board of Corrections may not convert a facility into a correctional facility operated by a private vendor or by a county if, before the effective date of this article, the facility is:]

[(1) operated as a correctional facility by the board; or]

[(2) being constructed by the board for use as a correctional facility.]

[Sec. 6. (a) If a contract is entered into under this article, the Sunset Advisory Commission shall deliver a report required by this section to the regular session of the 72nd Legislature in January 1991. The report must contain an analysis of the cost to the state for services provided under the contract and an analysis of the quality of services provided under the contract and must compare the cost and quality of services provided under the contract with the cost and quality of similar services provided by the state. The report must specifically state whether the services provided under the contract are superior, essentially equal, or inferior to similar services provided by the state, if the state provides those services. If the commission determines that changes in law are necessary to improve the manner in which the Texas Board of Corrections enters into contracts for the financing, construction, operation, maintenance, or management of secure correctional facilities, the commission shall recommend to the legislature that those changes be made.]

[(b) In making the report required by this section, the Sunset Advisory Commission shall consider, in addition to other factors it determines are significant, the following:]

[(1) the type of inmates in the facility;]

[(2) whether the facility meets professional standards required by]
this article;]

[(3) the extent to which the vendor or county complies with the terms of the contract;]

[(4) the extent to which the private vendor or county complies with the terms of this article;]

[(5) the level of training provided to the staff of the facility;]

[(6) the number and nature of inmate complaints against the staff of the facility;]

[(7) the number of escapes and attempted escapes from the facility; and]

[(8) the wages and benefits provided to the staff of the facility in comparison to wages and benefits provided to state employees performing comparable tasks.]}

[(c) The Sunset Advisory Commission may exercise all powers granted to the commission for the performance of its statutory duties in preparing a report required by this section.]}

[(d) This section expires September 1, 1991.]}

SECTION 2. Section 1, Chapter 21, Acts of the 55th Legislature, Regular Session, 1957 (Article 6184m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. It shall be unlawful for any person to furnish, attempt to furnish, or assist in furnishing to any inmate of a city or county jail or of the Texas Department of Corrections any alcoholic beverage, controlled substance, or dangerous drug except from the prescription of a physician. It shall also be unlawful for any person to take, attempt to take, or assist in taking any of the aforementioned articles into a city or county jail[, into a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes,] or into the confines of
property belonging to the Texas Department of Corrections which is occupied or used by prisoners except for delivery to a jail[,] or prison warehouse or pharmacy or to a physician.

SECTION 3. Subsection (a), Section 22.02, Penal Code, is amended to read as follows:

(a) A person commits an offense if the person commits assault as defined in Section 22.01 of this code and the person:

1. causes serious bodily injury to another, including the person's spouse;

2. threatens with a deadly weapon or causes bodily injury to a peace officer or a jailer or guard employed at a municipal or county jail[,] by the Texas Department of Corrections[,] or by a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes, when the person knows or has been informed the person assaulted is a peace officer, jailer, or guard:

   A. while the peace officer, jailer, or guard is lawfully discharging an official duty; or

   B. in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, or guard; or

3. causes bodily injury to a participant in a court proceeding when the person knows or has been informed the person assaulted is a participant in a court proceeding:

   A. while the injured person is lawfully discharging an official duty; or

   B. in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or
(4) uses a deadly weapon.

SECTION 4. Subsection (a), Section 22.03, Penal Code, is amended to read as follows:

(a) A person commits an offense if, with a deadly weapon, he intentionally or knowingly causes serious bodily injury:

(1) to a peace officer or a jailer or guard employed at a municipal or county jail or by the Texas Department of Corrections or by a correctional facility authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes, where he knows or has been informed the person assaulted is a peace officer, jailer, or guard:

(A) while the peace officer, jailer, or guard is acting in the lawful discharge of an official duty; or

(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, or guard; or

(2) to a participant in a court proceeding when he knows or has been informed that the person assaulted is a participant in a court proceeding:

(A) while the injured person is in the lawful discharge of official duty; or

(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding.

SECTION 5. Subsection (a), Section 39.021, Penal Code, is amended to read as follows:

(a) A jailer or guard employed at a municipal or county jail or by the Texas Department of Corrections, or by a correctional facility authorized by Article 5115d, Revised Statutes, or Article
or a peace officer commits an offense if he:

1. intentionally subjects a person in custody to bodily injury knowing his conduct is unlawful;
2. willfully denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful.

SECTION 6. Article 5115d, Revised Statutes, is amended by adding Subsections (c) through (i) to read as follows:

(c) The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility.

(d) The commissioners court of a county must consult with and receive the written approval of the sheriff of the county before contracting with a vendor for the operation, maintenance, or management of a facility described by Subsection (c) of this article.

(e) A contract entered into under this article must:

1. require the private vendor to operate the facility in compliance with minimum standards of construction, equipment, maintenance, and operation of jails promulgated by the Commission on Jail Standards and receive and retain a certification of compliance from the commission;
2. provide for regular, on-site monitoring by the sheriff;
3. if the contract includes construction, contain a performance bond approved by the commissioners court that is adequate and appropriate for the proposed contract;
4. provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;
(5) provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private vendor;

(6) provide for a plan for the purchase and assumption of operations by the county in the event of the bankruptcy of the private vendor;

(7) provide for an adequate plan of insurance to protect the county against all claims arising from the services performed under the contract by the private vendor and to protect the county from actions by a third party against the private vendor, its officers, guards, employees, and agents as a result of the contract; and

(8) contain comprehensive standards for conditions of confinement.

(f) A private vendor operating under a contract authorized by this article is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor. However, nothing herein is intended to deprive the private vendor or the county of any benefits of any law limiting exposure to liability, setting a limit on damages, or establishing defenses to liability.

(g) A facility authorized by this article must be designed, constructed, operated, and maintained to hold not more than an average daily population of 500 inmates.

(h) The commissioners court of a county may not convert a facility into a correctional facility operated by a private vendor if, before the effective date of this article, the facility is:

(1) operated as a correctional facility by the county; or

(2) being constructed by the county for use as a correctional
facility.)

[(i) The requirements imposed by Subsection (e) and Subsection (g) of this section do not apply to a facility that is under construction or completed before the effective date of this section.]

SECTION 7. Article 42.18, Code of Criminal Procedure, as added by Chapter 427, Acts of the 69th Legislature, Regular Session, 1985, is amended by adding Section 35 to read as follows:

[Sec. 35. The Board of Pardons and Paroles and the Texas Department of Corrections are authorized to enter into interagency contracts for the placement of offenders in secure correctional facilities authorized by Article 6166g-2, Revised Statutes.]

SECTION 8. Article I, General Appropriations Act for Fiscal Year 1987 (Chapter 13, Acts of the 69th Legislature, 3rd Called Session, 1986) is amended by adding to the Department of Corrections at p. I-67 the following:

[49. The Texas Board of Corrections is authorized to contract with private vendors or commissioners courts of counties for the financing, construction, operation, maintenance, or management of secure correctional facilities to house no more than 2,000 inmates. In determining the mission of each facility, the board shall consider requiring any vendor to provide prerelease programming, including employment counseling, drug and alcohol counseling, and family counseling.]

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.
BILL NUMBER: SB251

President of the Senate Speaker of the House

I hereby certify that S.B. No. 251 passed the Senate on February 19, 1987, by the following vote: Yeas 23, Nays 2; March 17, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; April 2, 1987, Conferees discharged by unanimous consent; April 2, 1987, Senate concurred in House amendments by the following vote: Yeas 22, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 251 passed the House, with amendments, on March 10, 1987, by the following vote: Yeas 122, Nays 19, two present not voting.

Chief Clerk of the House

Approved: Date

Governor
SURVEY OF PRIVATELY OPERATED

PRISONS AND JAILS
<table>
<thead>
<tr>
<th>Facility/Vendor</th>
<th>Date Completed</th>
<th>Date Occupied</th>
<th>Rated Cap/Current Pop</th>
<th>Cost($)</th>
<th>Inmate Type/Classification</th>
<th>Contracting Agency</th>
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</thead>
<tbody>
<tr>
<td>Bay County Jail (FL) Corrections Corporation of America</td>
<td>Takeover</td>
<td>10/85</td>
<td>204/221</td>
<td>34.42/day</td>
<td>County Jail</td>
<td>Bay County U.S. Marshals Service</td>
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<td>Bay County Annex (FL) Corrections Corporation of America</td>
<td>5/86</td>
<td>5/86</td>
<td>255/241</td>
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<td>Jail Annex Work camp</td>
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<td>Houston Processing Center (TX) Corrections Corporation of America</td>
<td>4/84</td>
<td>5/84</td>
<td>350/317</td>
<td>34.29/day (INS) 33.00/day (BPP)</td>
<td>Detention &amp; Return-to-Custody</td>
<td>Immigration and Naturalization Service/Texas Board of Pardons and Paroles</td>
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<td>Laredo Processing Center (TX) Corrections Corporation of America</td>
<td>3/85</td>
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<td>258/219</td>
<td>47.00/day (Oregon) 47.00/day (BOP)</td>
<td>Detention</td>
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<td>Santa Fe Detention Facility (NM) Correction Corp. of America</td>
<td>Takeover</td>
<td>8/86</td>
<td>201/189</td>
<td>62.70/day(others) 48.75/day(Santa Fe Co.)</td>
<td>County Jail</td>
<td>Santa Fe County, NM U.S. Marshals Service Bureau of Prisons Inter Mountain Youth Cibola County, NM Colfax County, NM Guadalupe County, NM Los Alamos County, NM Rio Arriba County, NM San Juan County, NM San Miguel County, NM Sandoval County, NM Union County, NM City of Bernalillo, NM City of Las Vegas, NV City of Santa Fe, NM Village of Pecos, TX Torrance County, NM</td>
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<td>Shelby Training Center (TN) Corrections Corporation of America</td>
<td>5/86</td>
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<td>150/154</td>
<td>72.00/day (county) 85.00/day (BOP &amp; Nevada)</td>
<td>Secure Juvenile Training Center</td>
<td>Shelby County, TN Bureau of Prisons State of Nevada</td>
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<tr>
<td>Facility/Vendor</td>
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<td>Tall Trees (TN) Corrections Corporation of America</td>
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<td>50/50</td>
<td>43.29/day</td>
<td>Juvenile Residential Center</td>
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<td>Silverdale Unit #1 (TN) Corrections Corporation of America</td>
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<td>320/328</td>
<td>22.66/day</td>
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<td>Silverdale Unit #2 (TN) Corrections Corporation of America</td>
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<td>117/46</td>
<td>22.66/day</td>
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<td>Hamilton County, TN U.S. Marshals Service</td>
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<td>Reeves County Law Enforcement Center (TX) Corrections Corporation of America</td>
<td>Takeover</td>
<td>9/88</td>
<td>532/499</td>
<td>36,000/mo.</td>
<td>Detention Facility</td>
<td>Reeves County, TX U.S. Marshals Service</td>
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<td>10/88</td>
<td>252/231</td>
<td>29.72/day (Hernando Co.) 40.50/day (USMS) 32.84/day (Citrus Co.)</td>
<td>County Jail &amp; Federal Detainees</td>
<td>Hernando County, FL U.S. Marshals Service Citrus County, FL</td>
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<td>New Mexico Women's Correction Facility Corrections Corporation of America</td>
<td>5/89</td>
<td>6/89</td>
<td>200/192</td>
<td>69.75/day</td>
<td>State Prison</td>
<td>State of New Mexico</td>
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<td>Venus Pre-Release Center (TX) Corrections Corporation of America</td>
<td>7/89</td>
<td>8/89</td>
<td>500/500</td>
<td>35.25/day</td>
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<td>State of Texas</td>
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<td>Cleveland Pre-Release Center (TX) Corrections Corporation of America</td>
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<td>500/500</td>
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<td>Borallon Correctional Centre (Queensland, Australia) Corrections Corporation of America</td>
<td>11/89</td>
<td>1/90</td>
<td>244/236</td>
<td>92.07/day (AUS)</td>
<td>Prison</td>
<td>Queensland Correctional Services Commission</td>
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<td>Inmate Type/Classification</td>
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<td>3/90</td>
<td>4/90</td>
<td>144/63</td>
<td>92.44</td>
<td>Juvenile Training Center</td>
<td>State of Tennessee</td>
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<td>Mason Tennessee Regional Correctional Facility (TN) Corrections Corporation of America</td>
<td>Under Construction</td>
<td>9/90 (est.)</td>
<td>256/na</td>
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<td>Estancia Regional Correctional Facility (NM) Corrections Corporation of America</td>
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<td>Pending</td>
<td>Detention facility</td>
<td>U.S. Marshals Service</td>
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<tr>
<td>Mineral Wells Pre-Parole Transfer Facility (TX) Concepts, Inc.</td>
<td>7/89</td>
<td>7/89</td>
<td>500/502</td>
<td>32.00/day</td>
<td>Pre-Parole Transfers</td>
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<td>Bridgeport Pre-Parole Transfer Facility (TX) Concepts, Inc.</td>
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<td>11/87</td>
<td>63/63</td>
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<td>Baker Return-to-Custody Facility (CA) Eclectic Communications, Inc. (ECI)</td>
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<tr>
<td>Eden Detention Center (TX) Eden Detention Center, Inc.</td>
<td>1/89</td>
<td>1/89</td>
<td>324/322</td>
<td>32.14/day</td>
<td>Minimum to Light-Medium Federal Prisoners</td>
<td>Bureau of Prisons/Immigration and Naturalization Service</td>
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* Indicates information not available.
## Survey of Privately Operated Prisons and Jails

<table>
<thead>
<tr>
<th>Facility/Vendor</th>
<th>Date Completed</th>
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<th>Rated Cap/Current Pop</th>
<th>Cost($)</th>
<th>Inmate Type/Classification</th>
<th>Contracting Agency</th>
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<tbody>
<tr>
<td>Esmore (WA)</td>
<td>5/89</td>
<td>7/89</td>
<td>80/63 (Increasing to 98)</td>
<td>1-45 90.08/day over 45 45.00/day</td>
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<td>Immigration and Naturalization Service</td>
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<td>Brooklyn Correctional Center (NY)</td>
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<td>56.00/day</td>
<td>Federal prisoners</td>
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<td>Eagle Mountain Return-to-Custody Facility (CA)</td>
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<td>9/88</td>
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<td>36.00/day</td>
<td>Minimum-security Parole violators</td>
<td>California Department of Corrections</td>
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<td>Management and Training Corp.</td>
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<td>City of Big Spring Correctional Center (TX)</td>
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<td>5/89</td>
<td>350/322</td>
<td>33.75/day</td>
<td>Medium-security Federal prisoners</td>
<td>Bureau of Prisons through City of Big Spring</td>
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<td>Mid-Tex Detention, Inc.</td>
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<td>Upper East Tennessee Regional Juvenile Detention Facility (TN)</td>
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<td>106.00/day</td>
<td>Maximum-security juvenile pre-trial</td>
<td>Carter County, TN, Green County, TN, Hawkins County, TN, Johnson County, TN, Sullivan County, TN, Unicoi County, TN, Washington County, TN</td>
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<td>Pricor</td>
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<td>Tuscaloosa Juvenile Facility (AL)</td>
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<td>27</td>
<td>37.83/day (avg.) (570,000/yr.)</td>
<td>Maximum-security Pre-trial residential</td>
<td>Tuscaloosa County, AL</td>
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<td>Tuscaloosa County, AL, City of Tuscaloosa, AL, City of Northport, AL</td>
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<td>Pricor</td>
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<td>Houston Reintegration Center (TX)</td>
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<td>Sweetwater Pre-Parole Center (TX)</td>
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<th>Contracting Agency</th>
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<td>Pecos County (TX)</td>
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<td>San Saba County, TX</td>
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<td>Late 1990</td>
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<td>Pending</td>
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<td>Swisher County, TX</td>
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<td>500</td>
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<tr>
<td>La Salle County (TX)</td>
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<td>Falls County (TX)</td>
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<tr>
<td>Marion Adjustment Center (KY)</td>
<td>12/85</td>
<td>1/86</td>
<td>500/484</td>
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<td>River City Correctional Center (KY)</td>
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<td>Jefferson County, KY</td>
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<td>Volunteers of America Regional Corrections Center (MN)</td>
<td>1984</td>
<td>1984</td>
<td>74/72</td>
<td>34/day</td>
<td>Short-term incarceration (females)</td>
<td>Ramsey County, MN</td>
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<td>Parole violators/ Federal prisoners</td>
<td>Texas Board of Pardons</td>
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<td>State of Texas</td>
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<td>Bridgeport Pre-Release Center (TX)</td>
<td>8/89</td>
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<td>30.60/day</td>
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<td>31.55/day</td>
<td>State prisoners</td>
<td>California Department of Corrections</td>
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**Survey of Privately Operated Prisons and Jails**

<table>
<thead>
<tr>
<th>Facility/Vendor</th>
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<th>Inmate Rated Cap/Current Pop</th>
<th>Cost($)</th>
<th>Type/Classification</th>
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<td>City of Detroit</td>
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<td>274/267</td>
<td>1-266 47.60/day over 266 5/day</td>
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<td>County Jail</td>
<td>Monroe County, FL</td>
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<td>Job Corps Training Center (OK)</td>
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<td>Disadvantaged youth training</td>
<td>U.S. Dept. of Labor</td>
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<td>Parole violators</td>
<td>California Department of Corrections</td>
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<td>Gary White and Associates</td>
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PRIVATE PRISON COMPANIES
Private Prison Companies

Behavioral Systems Southwest
300 Park Avenue South, Suite 750
Post Office Box 558
Pomona, CA 91766
(714) 623-0604
Ted Nissen

Concepts, Inc.
Post Office Box 3333
Louisville, KY 40201
(502) 585-5023
Bill Sandbach, CEO; Jack Smith, President

Continental Corrections Group, Ltd.
1 Continental View Drive
Boulder, CO 80303
Mark Van Ark

Corrections Corporation of America
102 Woodmont Boulevard
Nashville, TX 37205
(615) 292-3100
Doctor R. Crants, President

Eclectic Communications, Inc.
1823 Knoll Drive, Suite 8
Ventura, CA 93003
(805) 644-8700
Art McDonald, President

Eden Detention Center, Inc.
Post Office Drawer F, Hwy 87 East
Eden, Texas 76837
(915) 869-5306
Roy Burnes, President
Pricor, Inc.
745 South Church Street
Post Office Box 8
Murfreesboro, TN 37133-0008
(615) 896-3100
Gil R. Walker, President

Rebound, Inc.
Denver, CO
(303) 292-9717

U.S. Corrections Corporation
Suite 805, Kentucky Home Life Building
239 South Fifth Street
Louisville, KY 40202
(502) 585-2212
Michael Montgomery, V.P., Operations
J. Clifford Todd, President

Wackenhut Corrections Corporation
(subsid. of The Wackenhut Corp.)
1500 San Remo Avenue
Coral Gables, FL 33146-3009
(305) 666-5656
George C. Zoley, President

Gary White Associates
425 Golden State Avenue
Bakersfield, CA 93301
Richard Millwee, Director
(805) 326-0411

Volunteers of America
1771 Kent Street
Roseville, MN 55113
Bill Nelson, Director
Bob Denkmann, Program Manager
(612) 488-2073