Colorado
Criminal Justice Reform Coalition

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Private Prisons and Public Money

Hidden Costs Borne by Colorado's Taxpayers

A CCJRC Briefing Paper by
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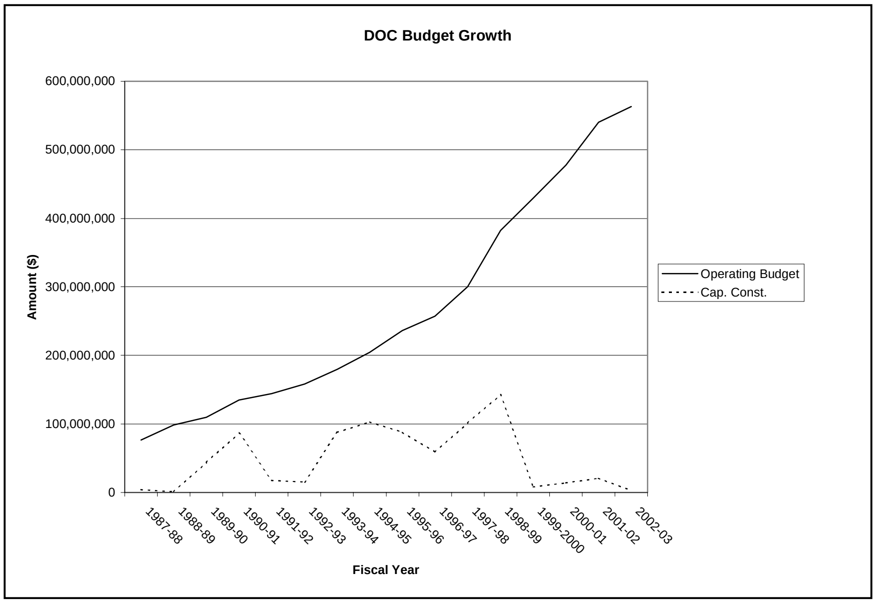
Introduction

Over the past two decades the prison population of Colorado has skyrocketed, following a national trend in lengthy sentences and harsh parole policies. In fact, since 1980 the number of state prisoners has increased over 500%, with accompanying growth of the Department of Corrections (DOC) budget (see Figure 1). In an attempt to save money, Colorado has turned to private, for-profit prisons in the hopes that privatization would provide money-saving efficiencies in prison construction and operation. In 2000, Governor Owens directed the DOC to change state policy in order to increase the number of Colorado prisons which could be housed in private prisons from 25% of the total inmate population to 30%.[1]

Figure 1



Due to the increased emphasis on housing many of Colorado's prisoners in for-profit prisons, there are now four private correctional facilities in the state.* Three are operated by Corrections Corporation of America (CCA) and one is operated by Dominion Correctional Services.

Private prison operators rely on cooperation from elected officials who are willing to continue funding experimentation with privatization within the correctional system. Accordingly, private prison companies, have given a combined total of $21,950 to state candidates and political parties (both Republican and Democrat) since the beginning of 2001.[2] Wackenhut and New Jersey based Community Education Centers each gave $5,000 to Governor Bill Owens's reelection campaign—this despite the fact that neither company operates any facilities under contract with Colorado. Both companies are, however, currently seeking to win a state contract for a new 500-bed medium security prison along the Front Range.

Section 1 of this paper reviews the available literature concerning private prison performance and cost data. Data from Colorado and across the nation show that the performance of private prisons has been troubled—poor inmate programs, security

* In actuality, there are five private prisons in Colorado. One of them, the Wackenhut facility in Aurora, houses only detainees of the federal Immigration and Naturalization Service. Since this prison houses no state prisoners, it is not within the scope of this report and will not be discussed here.

problems, and fiscal woes have befallen all of the major private prison companies. Studies private prisons' fiscal performance have yet to show any conclusive cost savings through contracting. Moreover, some states (including Colorado) tend to send "low cost" inmates (i.e., those with no medical or disciplinary problems) to private facilities, leaving the DOC with the most difficult prisoners thus distorting cost savings.

When the Colorado DOC discusses privatization cost savings, it does so by making a direct comparison between the cost of housing a medium security prisoner in a state prison versus the legislatively-mandated price that the state pays private prisons. This method of cost comparison is problematic since it fails to take into account administrative overhead costs borne by the state. Section 2 examines the administrative costs that the Colorado DOC absorbs for inmates in private facilities. Since these indirect (or "hidden") costs are not factored in to the cost per inmate per day for prisoners housed in private prisons, the supposed cost savings may not exist.

The Colorado Criminal Justice Reform Coalition's recommendations on how to address this issue are presented in Section 3. We feel that a legislative audit is necessary to examine performance records and cost data pertaining to Colorado's use of private prisons in order to determine whether or not this is a practice that we, as a state, wish to continue.

Section 1: Background on Private Prisons

History
The operation of prisons for private gain first surfaced in the United States shortly after the Civil War, when prison populations in southern states skyrocketed and a system of "convict leasing" was devised in order to relieve overcrowded prisons and enrich private manufacturing concerns. For various reasons, this practice disappeared around the turn of the century.[3] The birth of the modern for-profit prison industry came in the 1970s and private prisons were thrust into the national limelight in the mid-1980s when the upstart Corrections Corporation of America (CCA) sought (unsuccessfully) to take over the entire state prison system in Tennessee.[4]

Private prisons in Colorado started housing state inmates in 1993 when 298 prisoners were sent to the newly-opened Bent County Correctional Facility (BCCF) in Las Animas. In fiscal year 2000-01 there were 2,672 Colorado prisoners housed in four private prisons around the state.[5] A combination of official and *de facto* policies under the guidance of Governor Bill Owens state that further expansion for Level I-III beds (except for special needs offenders) shall be in the private sector, provided that no more than 30% of the state's inmates are housed in private facilities.[6]

Cost and Performance Data
Some supporters of private prisons are motivated by an ideological belief in privatization in all areas of government. Other supporters are motivated by a genuine belief that private contractors can do a better job than the state department of corrections (a claim that has never been substantiated in research). Among policy makers, however, the most frequently cited basis for prison privatization is the claim that contract correctional facilities cost the public less money—that is the subject of this paper.

Let us first address the question of capital construction costs. Elected officials often cite the expense of building a new prison as a reason to utilize private correctional facilities. While capital construction costs are considerable (particularly with Colorado's statutory and constitutional restrictions on budget growth), handing the construction *and operation* of prisons over to private vendors is akin to throwing the baby out with the bath water. While the private sector may well be able to produce cost savings in capital construction, this fails to serve as a proper justification for contracting the operation of the facility once it has been built. Colorado and its local governments have a variety of ways in which to turn to the private sector for construction of prisons, while keeping the operation as a governmental function.[†]

The first major blow to the cost effectiveness argument came in August 1996 when the U.S. General Accounting Office (GAO) released a report which reviewed existing studies

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[†] Governments can use conventional leases or lease-purchase agreements in order to avoid some of the tangles of the capital construction process. We feel, however, that such measures should be used with caution, so as to avoid undue investor influence on the formulation of criminal justice policy.

on cost comparisons between public and private prisons. The GAO found the studies to all have such substantial methodological flaws that they "offer little generalizable guidance for other jurisdictions about what to expect regarding comparative operational costs and quality of service if they were to move toward privatizing correctional facilities."[7]

The industry was further discredited in 1997 when the leading academic analyst who championed private prisons became embroiled in an ethics scandal. Charles Thomas, a professor at the University of Florida (and founder the Private Corrections Project) had produced much data which claimed that private correctional facilities generated significant cost savings. In 1997 Prof. Thomas was named to the board of directors of the Corrections Corporation of America's real estate investment trust, Prison Realty Trust. Many people in the public safety field had already been questioning Thomas' ethics, but his appointment to the board finally pushed Thomas into the spotlight. The Florida Police Benevolent Association filed a complaint with the Florida Commission of Ethics, which eventually fined Thomas $20,000. Thomas subsequently resigned his position at the University of Florida.[8]

The serious doubt cast upon cost data in the private corrections sector, along with a series of security, management, and personnel fiascos too lengthy to detail here, has caused a number of entities to closely examine financial data in the industry. The results have increased skepticism of the private prison industry. The Florida Office of Program Policy Analysis and Government Accountability released an information brief in 1997 which determined that even though state law *mandated* cost savings in private prison contracts, the cost comparisons between public and private prisons were still unreliable due to factors such as prison size, physical plant considerations, geographical location, quality and quantity of inmate programs, and inmate demographics.[9]

Perhaps the most comprehensive study of private prisons was published in 1998 to fulfill a mandate from the U.S. Congress. Attorney General Janet Reno was required by federal statute to conduct a study of issues and trends in the private correctional industry. The report, *Private Prisons in the United States: An Assessment of Current Practice*, was prepared by contractor Abt Associates. When addressing cost savings, Abt reviewed available literature and concluded that the "survey of recent cost studies does not resolve the question of whether privately-managed prisons are cheaper than publicly-managed ones. The evidence is mixed, with the more detailed studies indicating the smallest cost savings from privatization."[10] More recently, the U.S. Department of Justice's Office of Justice Programs echoed this view, saying that "the cost benefits of privatization have not materialized to the extent promised by the private sector. Although there are examples of cost savings, there are other examples in which such benefits have not been realized."[11]

A 2001 report from Policy Matters Ohio documented a long-standing practice by Ohio prison administrators who manage contracts with private facilities. The practice is known as "cherry picking" and involves "sending less expensive inmates to [private facilities], artificially inflating reported cost savings."[12] The report produced evidence that the Ohio Department of Rehabilitation and Correction intentionally placed inmates with no medical or disciplinary problems in private contract facilities. While Colorado does not have such explicit policies, cherry picking does indeed occur. The Colorado DOC prohibits placing an inmate in a private facility if the inmate (a) presents "a high potential for escape or violence," or (b) is unable to work (thus eliminating prisoners with work-prohibitive illnesses).[13] Furthermore, the contracts entered into with the private companies[‡] stipulate that the Department of Corrections shall "pay for Specialty care, Out-patient surgery and Inpatient care," thus relieving contract facilities from all medical costs except for routine primary care.[14]

In addition to the cherry picking issue, the Policy Matters Ohio report found that there was no documented cost savings by using private prisons and that a wide variety of evidence existed to suggest that substantial hidden costs were being borne by the state.[15]

There also exists anecdotal and published evidence pointing to inferior inmate services and programs in private correctional facilities. From food service to medical care to prisoner education to work programs, private facilities are inclined to cut program quality and quantity in order to increase corporate profits. A 1999 report on programs in Minnesota prisons found that although programs in state-run prisons were far from perfect, they were of measurably higher quality and more accessible than those in privately-run prisons.[16]

Apparently the question of whether cost savings actually materialize from contracting prison operations has also caught the attention of the Federal Bureau of Prisons (BOP). The BOP has recently issued a solicitation seeking a comprehensive cost study comparing a BOP facility with an analogous private facility. This information is being sought in order to provide meaningful data for use in "the BOP's task of evaluating new privatization proposals and monitoring the performance of privatization projects already in place."[17]

Finally, the recent financial troubles in the private prison industry make it even more necessary to scrutinize cost data, since private contractors are under even more pronounced pressure to generate profits from their facilities. As news of troubled contract facilities proliferated, stock prices for the industry leaders (CCA and Wackenhut) dropped sharply. In a September 2001 article on the state of the industry, policy analyst Judy Greene notes

> the financial advantage that may have been most attractive to state legislators—the private companies' ability to construct prisons unhindered by public debt limits or by the need to get voter approval for bonds—has turned out to be the industry's downfall. From 1991 to 1998…the growth in private adult-prison beds averaged

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[‡] For various legal reasons, the Colorado DOC will only sign private prison contracts with governmental entities. Thus, in the case of all four private prisons in Colorado, the DOC signs a contract with the county or city in which the facility is located. The county or city in turn "subcontracts" with the private operator to run the prison. For all intents and purposes, however, the contract is with the private operator (although the county or city may be open to liability in certain areas, a potential problem that has not been thoroughly addressed). Accordingly, we use this language for the sake of simplicity.

> 36 percent per year. But with the states pulling back from the trouble-plagued facilities and Wall Street reacting even more strongly to the [inmate] deaths and scandals, the companies have found themselves overleveraged and undercapitalized.[18]

Greene particularly points to the operational and fiscal problems plaguing CCA, due in large part to a 1-for-10 reverse stock split executed in spring of 2001.

Supporters of privatized correctional facilities often rely on the argument that the free market can provide innovations and cost savings (due to competition) that government cannot. Putting aside the moral question of whether it is appropriate to delegate government police powers to private entities, the free market argument is deeply flawed from a purely economic standpoint since the marketplace for private prisons is both a monopsony and an oligopoly. First, there is only one customer—the state—and even though contract prisons are operated by private entities, the funding still comes entirely from the public sector. Second, private prisons are highly regulated by the government—a practice which has proven to be necessary to ensure public safety, but which is antithetical to a free market. Finally, consider that there are only two major private prison operators (CCA and Wackenhut), which together hold 77% of the private corrections market, resulting in a thin market where states can become "captive to" their own contractors due to limited competition within the industry.[19] With these factors taken into consideration, the allure of competition turns out to be a myth.

Section 2 – Colorado Cost Data

Current Payment System

The Colorado Department of Corrections (DOC) pays private prison operators a set per diem rate for housing state offenders. This rate is set by the General Assembly and is currently $54.66 per inmate per day.[20]

The four private prisons in Colorado are considered Level III (medium security) facilities. Thus by making a comparison of the $54.66 per diem rate to the average cost per day for a state-run Level III prison, $68.99,[21] it would appear that the state is saving money by contracting. Such a direct comparison, however, is not accurate. First, one must examine what inmates are being placed in the private facilities. If minimum or minimum-restricted inmates are being housed in private facilities, the state could be losing money since those prisoners could be housed in Level I or II facilities, which have lower costs. Most important, the per diem rate paid to private operators does not take into account indirect or overhead costs which the DOC still bears for inmates housed in private prisons. Indirect administrative costs *are* factored into cost calculations for state prisons, but not for private facilities. By factoring in possible indirect costs for private prisons, Table 1 shows that actual costs may be equal to or more than state-run Level III prisons. A discussion of each category of indirect costs appears after Table 1.

NOTE: The column "Privatization Ratio" is, in many ways, the crux of such an analysis. The numbers in this column reflect *our estimation* (except for medical care, see below) of what percentage of a given cost is shouldered by the DOC for an inmate in a contract facility as opposed to a prisoner in a comparable state-run facility. Please realize that we do not have full access to the data necessary to calculate these costs precisely. The purpose of this paper is to show that there is a *probability* that private prison cost savings might not exist—we strongly encourage a legislative audit conducted by personnel who can accurately calculate such information. See Section 3 for more information about our recommendations.

Table 1

Function	Avg Annual Cost - Level III Facilities		ADP*		Avg Cost per Inmate per Day - Level III		Privatization Ratio	Potential Indirect Cost
Exec. Dir's Office	$4,008,401	÷	4,198	÷ 365 =	$2.62	X	100%	$2.62
Offender Svcs.	$804,406	÷	4,198	÷ 365 =	$0.52	X	100%	$0.52
Legal Access	$340,613	÷	4,198	÷ 365 =	$0.22	X	100%	$0.22
Parole Board	$235,796	÷	4,198	÷ 365 =	$0.15	X	100%	$0.15
Transportation	$1,007,491	÷	4,198	÷ 365 =	$0.65	X	100%	$0.65
Business Ops.	$1,431,920	÷	4,198	÷ 365 =	$0.93	X	50%	$0.47
Training	$501,245	÷	4,198	÷ 365 =	$0.33	X	40%	$0.13
Case Management	$3,683,480	÷	4,198	÷ 365 =	$2.40	X	40%	$0.96
Medical	$13,617,851	÷	4,198	÷ 365 =	$8.89	X	36%	$3.20
Mental Health	$1,329,759	÷	4,198	÷ 365 =	$0.87	X	36%	$0.31
							Total Hidden Costs	$9.23
							Plus Statutory Per Diem Rate	$54.66
							"Real" Per Diem Rate	**$63.89**

Data Source: Colorado DOC, "FY 2000-2001 Inmate Cost Per Day."

* ADP = Average Daily Population in Level III Facilities

Comparison of Per Diem Rates

Possible "real" per-diem (from Table 1)	$63.89
Low CPIPD* for Level III (Buena Vista Corr. Cmplx.)	$62.08
High CPIPD for Level III (CO Territorial Corr. Fac.)	$80.15
Average CPIPD for Level III	$68.99
Low CPIPD for Level II (Pre-Release Corr. Ctr.)	$53.98
High CPIPD for Level II (Arrowhead Corr. Ctr.)	$71.68
Average CPIPD for Level II	$64.98

* CPIPD = Cost per inmate per day

Discussion of Categories

Executive Director's Office. The Executive Director of the DOC is responsible for many administrative functions which apply to all inmates regardless of the facility they are placed in. Thus, the Executive Director's office sees no cost savings from housing inmates in private prisons.

Offender Services. The Offender Services office fills a multitude of functions within the DOC, all of which apply equally to prisoners in state or contract beds. The duties of this office include population management, classification, oversight of case management system, review of disciplinary write-ups, time computation, prisoner releases, court services, detainer operations, and records management.[22]

Legal Access. According to the DOC's FY 2002-03 budget request, the Legal Access Subprogram "provides offenders the ability to exercise their fundamental constitutional right of 'access to the court(s)', pursuant to law…" The budget request also states that the Office of Legal Services provides its services "to Colorado offenders when housed out of state or in private facilities."[23] Since this service also applies to all prisoners in private facilities, we have estimated that the DOC expends as much money for private prison inmates as for inmates in state prisons.

Parole Board. The parole board is the sole review panel for inmates seeking early release, thus its costs per inmate are the same regardless of the type of facility in which an inmate is housed.

Transportation. The DOC transports inmates to and from private facilities. This is a curious practice seeing as how the contracts with private prisons clearly state that DOC will transport the inmate to the *closest state prison* and any inmate transportation after that point is the responsibility of the contractor.[24] Even under this scenario, the state would still bear some cost for inmate transportation. In actuality, the DOC transports prisoners all the way to private facilities,[25] thus showing no cost savings in this category.

Business Operations. The DOC's business office is responsible for the "labor intensive process" of receiving, reviewing, and paying monthly invoices from private prison contractors.[26] While the maintenance of inmates' personal accounts is the responsibility of the private facility, the DOC must prepare funds transfers when an inmate is moved to or from a private prison.[27] Moreover, if an inmate in a private facility is subject to withholding for payment of restitution or child support, the DOC is responsible for the tracking and disbursement of these funds—a complex and time-consuming task.[28]

Training. According to the contracts with private prison operators, staff training is incumbent upon the contractor. However, the DOC's current budget request mentions providing "In-Service, Advanced, and Specialized training" to private prison staff, with no mention of being reimbursed by the contractor for these services. More generally, the DOC promises, in writing, to "assist the [private] Facility in obtaining and maintaining its ACA [American Correctional Association] accreditation,"[29] a task which should, presumably, be the sole responsibility of the contractor.

Case Management. The DOC provides case management for all its inmates—the purpose of which is to assist prisoners with education, training, and eventual re-entry into society. While some of the case management functions are delegated to the private prison operators, the DOC must still monitor and supervise the case management of inmates in contract facilities.

Medical. This is undoubtedly the area with the most potential for hidden costs. Not only does the DOC pay for non-routine medical care for inmates in private prisons, but state DOCs and private operators often collude (officially or unofficially) to place only relatively healthy inmates in private beds, thus artificially lowering the medical costs for private prisons. This is the only area in which we were able to obtain specific data from the DOC. According to budget information, the Department calculates medical expenses paid by the state for inmates in private prisons at $97.07 per inmate per month ($3.20 per day, or 36% of the average cost for Level III inmates in state facilities).[30]

Mental Health. The same concerns which pertain to medical care apply to mental health. Although we have no data regarding mental health that is comparable to the data mentioned above for medical care, we have used the same percentage of 36%.

Private Prison Monitoring Unit (not included in Table 1). The job of monitoring the contract prisons is a complicated one that requires 13.5 state FTEs. The cost of running the Private Prison Monitoring Unit (PPMU) is theoretically covered by fees paid by the private operators (currently 82¢ per inmate per day for Colorado prisoners and 41¢ per inmate per day for out-of-state prisoners).[31] While the current DOC budget request shows that 100% of the PPMU is covered by these funds, an audit confirming this fact would be useful since *actual* private prison populations are sometimes lower than projections, thus resulting in lower revenues from contractor fees than anticipated.

Special Operations (not included in Table 1). Another cost not included above is the price of sending in DOC officers and investigators into private prisons when there is a security breach. In the case of a riot, escape, or other disturbance, state *and* local law enforcement officials are responsible for bringing the situation under control. We were not able to obtain reliable data on how much such operations cost, therefore these funds are not presented in Table 1.

Section 3 – Recommendations

The purpose of this paper is to show the need for a coordinated and formal examination of private prison cost and performance data in Colorado. We strongly urge the General Assembly to direct the State Auditor's Office to conduct an audit of private prison contracts, with a particular focus on indirect costs borne by the Department of Corrections. Without such crucial information on cost savings, the use of private prisons is akin to obtaining a loan without knowing the interest rate. Until an audit has been completed, the state should not enter into any new contracts for the operation of prisons.

While this report focuses primarily on cost data, an independent examination of private contractor *performance* is necessary as well to ensure that private prisons are adequately serving the rehabilitative and public safety objectives of the state. If the state actually is saving money by using private prison services, but these savings come at the cost of public safety, the citizens of Colorado still end up on the losing end of the deal. Private facility programming, grievances, personnel data, escapes, security incidents, medical care, and foodservice should be scrutinized to determine how the private prisons compare to state-operated prisons. Special attention should be given to the question of whether private contractors' salary scales (which are significantly less than DOC salaries) result in substandard staffing. Although the Department of Corrections' Private Prison Monitoring Unit (PPMU) examines the performance of contract prisons, the close relationship between contractors and the PPMU makes this office and inappropriate candidate for an independent audit.

As noted in Section 1 of this report, many of the studies around cost savings in the private prison market have been inconclusive. Some of these studies are hampered by the fact that they are national in scope. The contracting practices of different jurisdictions vary to the point where interstate comparisons become problematic and untrustworthy. A study focusing exclusively on Colorado, however, could avert many of these pitfalls and address potential problems and successes in Colorado, thereby giving citizens and policy makers a clearer picture of how privatization of prisons has effected our state.

Only when the public has an objective review of the performance record of private prisons and the actual cost savings (or lack thereof) can we make an informed decision as to whether private, for-profit prisons have a place in Colorado.

Notes

[1] Steven Paulson, "Colorado forced to rely more on private prisons," *Associated Press*, January 18, 2000.

[2] Colorado Secretary of State, Fair Campaign Practices Act Database, online at www.sos.state.co.us.

[3] James Austin and Garry Coventry, *Emerging Issues on Privatized Corrections*, NCJ#181249 (Washington, DC: GPO, 2001) 9-11.

[4] Judy Greene, "Comparing Private and Public Prison Services and Programs in Minnesota: Findings from Prisoner Interviews," originally published in *Current Issues in Criminal Justice*, v. II n. 2 [1999] 3.

[5] Colorado Department of Corrections, *Statistical Report Fiscal Year 2000* (Colorado Springs, CO: June 2001) 101.

[6] Colorado Department of Corrections, *Budget Request FY 2002-03* 297.

[7] U.S. General Accounting Office, *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service* GAO/GGD-96-158 (Washington, DC: GPO, 1996) 3.

[8] Philip Mattera, et al., *Jail Breaks: Economic Development Subsidies Given to Private Prisons* (Washington, DC: Institute on Taxation and Economic Policy, 2001) 4.

[9] Florida Office of Program Policy Analysis and Government Accountability, "Information Brief: Comparing Costs of Public and Private Prisons," Report 96-69 (Tallahassee, FL: OPPAGA, 1996) 1-4.

[10] Julianne Nelson, "Comparing Public and Private Prison Costs," Appendix 1 of *Private Prisons in the United States: An Assessment of Current Practice* (Cambridge, MA: Abt Associates, 1998) 16.

[11] Austin and Coventry 29.

[12] Michael Hallett and Amy Hanauer, *Selective Celling: Inmate Population in Ohio's Private Prisons* (Cleveland, OH: Policy Matters Ohio, 2001) 1.

[13] Colorado Contract 01CAA00031, page 1 of Exhibit B.

[14] Colorado Contract 01CAA00031, page 1 of Exhibit D.

[15] Hallett and Hanauer 20.

[16] Greene, "Comparing" 38-39.

[17] U.S. Department of Justice, Bureau of Prisons, "Solicitation Number 1CO-0309" (Washington, DC: December 19, 2001) 3.

[18] Judy Greene, "Bailing Out Private Jails," *The American Prospect* v.1 n.16 (Sept 10, 2001).

[19] Hallet and Hanauer 17.

[20] Colorado DOC, *Budget Request* 296.

[21] Colorado Department of Corrections, "FY 2000-01 Inmate Cost Per Day" 2.

[22] Colorado Department of Corrections, *Annual Report 1999* (Colorado Springs: DOC) 16.

[23] Colorado DOC, *Budget Request* 658-59.

[24] Colorado Contract 01CAA00031, 4-5.

[25] Office of the State Auditor, *Department of Corrections Transportation of Inmates Performance Audit* (Denver: Legislative Audit Committee, 2000) A-1.

[26] Colorado DOC, *Budget Request* 684.

[27] Colorado Contract 01CAA00031, 6.

[28] Colorado DOC Administrative Regulation 200-15, May 15, 2001, page 3.

[29] "Memorandum of Understanding between the Colorado Department of Corrections and Bent County," page 3 of attachment to Colorado Contract 01CAA00031.

[30] Colorado DOC, *Response to Joint Budget Committee Staff Questions* (Denver, CO: January 7, 2002) 2.

[31] Colorado DOC, *Budget Request* 290, 297.