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HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 246

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House Judiciary Subcommittee on  
on Crime and Corrections Hearing

Room 22, Capitol Annex  
Harrisburg, Pennsylvania

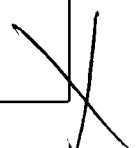
Wednesday, April 24, 1996, 1:00 p.m.

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BEFORE:

- Honorable Jerry Birmelin, Majority Chairman
- Honorable Scot J. Chadwick
- Honorable Brett Feese
- Honorable Stephen Maitland
- Honorable Al Masland
- Honorable Thomas Caltagirone
- Honorable Lisa Boscola
- Honorable Andrew Carn
- Honorable Harold James
- Honorable Kathy Manderino

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1 ALSO PRESENT:

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3 Chief Counsel For Committee

4 James Mann  
5 Majority Research Assistant

6 Pat Rhoads  
7 Administrative Assistant

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1 (Roll call was held off the record.)

2 CHAIRMAN BIRMELIN: We welcome you who  
3 are here to testify as well as those who are  
4 just here to hear the testimony of others. And  
5 we try to be informal as we can so that with  
6 each of our presenters as you've given your  
7 testimony, we will open it up to a question and  
8 answer session.

9 And then after the question and answer  
10 session, if other members of the audience have  
11 any questions of the presenters, feel free to  
12 ask them questions if you like. We will try to  
13 stay within our time schedule so that we don't  
14 impede on the following presenters, however.

15 Our first presenters will be Mary Beth  
16 Rhodes, Legislative Director of the County  
17 Commissioners of Pennsylvania. And with her, a  
18 Vincent Guarini. He is the warden at the  
19 Lancaster County Prison. He's also chairman of  
20 the Pennsylvania Prison Wardens Association.

21 Mary Beth and Vincent, welcome to our  
22 Subcommittee meeting. And I'm not sure which  
23 one of you is speaking first.

24 MS. RHODES: I guess I will. Thank you.

25 CHAIRMAN BIRMELIN: Mary Beth, why don't

1 you go ahead and give testimony then.

2 MS. RHODES: Good afternoon, my name is  
3 Mary Beth Rhodes; and I'm a Government Affairs  
4 Specialist for the County Commissioners  
5 Association of Pennsylvania.

6 We are a nonprofit, nonpartisan  
7 association representing all of the  
8 Commonwealth's 67 counties. I am pleased to  
9 appear before you today to present our comments  
10 on the privatization of prisons.

11 The County Commissioners Association of  
12 Pennsylvania, recognizing the role counties play  
13 as major partners in the correctional system,  
14 has long been concerned with the financial  
15 burden of operating correctional facilities.

16 There are many causes of and solutions  
17 to this problem. We view the use of private  
18 prisons not as an ultimate solution but as only  
19 one of these solutions.

20 The association supports legislation  
21 authorizing privately-owned or  
22 privately-operated prisons in the Commonwealth  
23 of Pennsylvania only if the legislation includes  
24 strict and comprehensive regulation by the  
25 Department of Corrections; recognition of

1 legitimate host-county concerns; limitation of  
2 the use of private prisons for minimum security  
3 prisoners; and prohibition of the use of private  
4 prisons to house out-of-state prisoners.

5 Privatization as a concept should not be  
6 based on the simple notion that the private  
7 sector can do things better at a less cost  
8 than the public sector. A generalization such  
9 as this is simply not true. We cannot regard  
10 the private sector and public sector as  
11 interchangeable.

12 The tasks and activities that government  
13 engages in are different from those typically  
14 carried out by the private sector. Private  
15 sector involvement in public sector activities  
16 ought to be viewed as a partnership, not as an  
17 either/or proposition.

18 The County Commissioners Association of  
19 Pennsylvania views private prison as an option  
20 to be approached with great caution. We should  
21 look at specific tasks and functions which the  
22 private sector has some unique experience and  
23 capacity to provide in a cost-effective manner.

24 In a correctional environment, it might  
25 be construction, maintenance, medical services,

1 treatment or rehabilitative services, including  
2 residential programs. We note that the majority  
3 of counties are already privatized in some  
4 respect.

5 Common practice is for counties to  
6 contract with private companies for services  
7 such as health care, commissary, and food  
8 services. We hope that each of these types of  
9 arrangements are considered and appropriately  
10 treated.

11 Government contracting has not  
12 traditionally involved those activities related  
13 to the exercise of government's coercive  
14 authority over its citizens. There is simply no  
15 basis for concluding that the private sector has  
16 any unique experience or capacity to carry out  
17 those functions.

18 Where there is a component of coercive  
19 authority exercised through the use of physical  
20 force, including deadly force, there is a  
21 concern about the involvement of nongovernment,  
22 for-profit agencies.

23 Where such authority is not a component,  
24 then the decision about privatization should be  
25 left to an assessment of whether privatization

1 of normally public-sector activities provides an  
2 opportunity to bring an added quality of  
3 expertise and service to a particular function.

4 Therefore, we recommend legislation  
5 extend to counties a legal capacity to contract  
6 only for the incarceration of low-risk  
7 offenders. Although we support strict and  
8 comprehensive guidelines, comprehensive  
9 regulation by the Department of Corrections, we  
10 caution that a thorough look at this process is  
11 necessary.

12 We must look at whether the cost of  
13 licensing and regulating the facility along with  
14 the bonding and insurance requirements would be  
15 cost-prohibitive for county and state  
16 governments.

17 We must be careful not to add an  
18 unnecessary correctional capacity at an  
19 increased cost to both county and state  
20 government. The County Commissioner's  
21 Association also supports the concept of  
22 limiting private contracts to in-state inmates.

23 Pennsylvania has already experienced a  
24 problem with this concept in the juvenile  
25 justice system. Some juvenile facilities in



1 Pennsylvania accept juvenile offenders from  
2 other states at a higher fee and no longer have  
3 room for their own juvenile offenders.

4 This situation also contributes to the  
5 overcrowding of juvenile institutions as well as  
6 longer stays for juveniles in detention centers  
7 prior to their placement.

8 Currently, thirteen states operate  
9 privately-managed prisons. The impetus for  
10 these developments of privatization began in  
11 1979 when the Immigration and Naturalization  
12 Service contracted with private firms to detain  
13 illegal immigrants.

14 By 1994, privately-managed prisons were  
15 operating in thirteen states. 36 states  
16 permitted them. Inmates in these prisons  
17 represent just 2 percent of the total inmate  
18 population nationally.

19 The Corrections Corporation of America,  
20 CCA, a private contractor based in Nashville,  
21 began contracting with state and local  
22 governments to operate prison and jail systems  
23 in the mid-1980's. Now CCA is the largest  
24 private prison contractor, operating 37  
25 facilities in the U.S. with 15,000 inmates.

1           As you are aware, the Private Prison  
2           Moratorium and Study Act approved March 21st,  
3           1986, imposed a moratorium on the operation of  
4           private prisons and created a legislative task  
5           force known as the Private Prison Task Force to  
6           study the issue of private correctional  
7           facilities in Pennsylvania.

8           The Act was the culmination of various  
9           events that had occurred in the Commonwealth  
10          during the 1985/86 legislative session. On  
11          March 15th, 1986, 55 inmates from a jail in  
12          Washington, D.C. under court order to reduce its  
13          inmate population arrived at the 268 Center in  
14          Armstrong County, a private, for-profit  
15          correctional facility.

16          Prior to the arrival, the 268 Center  
17          housed inmates from the Allegheny County jail.  
18          The Attorney General of the Commonwealth,  
19          claiming that the 268 Center was not equipped to  
20          handle the out-of-state inmates, obtained a  
21          Commonwealth court injunction requiring the  
22          inmates to be removed by March 18th, 1986.

23          Judge David Caig found that because of  
24          inherent limitations of the 268 Center facility  
25          and the serious lack of coordination and

1 communication between the government agencies  
2 involved, disposition of the present prisoners  
3 from the District of Columbia to the 268 Center  
4 presents a clear and present danger and threat  
5 of irreparable harm to the public welfare and  
6 interest.

7 A few days after the prisoners left  
8 the jail, the General Assembly approved the  
9 legislation for the moratorium and study. The  
10 Private Prison Moratorium and Study Act was the  
11 first legislative expression regarding the  
12 operation of private prisons in Pennsylvania.

13 Finally, it is only a myth that the high  
14 cost of incarceration is a result of amenities  
15 provided to inmates such as cable television,  
16 law libraries, and weight-lifting equipment.  
17 Actually, 4 out of every \$5 of prison  
18 operating costs go for employee salaries and  
19 facility maintenance. On top of that, debt  
20 service to finance prison construction triples  
21 the original cost of building prison beds.

22 Of utmost concern is the costs that have  
23 grown substantially due to the health care needs  
24 of an increasing aging and AIDs-inflicted inmate  
25 population. Thank you for giving us this

1 opportunity it present our comments. And I  
2 would be pleased to answer any questions or  
3 provide any further information.

4 CHAIRMAN BIRMELIN: Before we ask any  
5 questions of you, we will have the testimony of  
6 Mr. Guarini. And before he does that, I would  
7 also like to introduce Representative Chadwick  
8 from Bradford County, who has joined us.  
9 Mr. Guarini, if you would please present your  
10 testimony; and then we will ask both of you if  
11 you would submit to questions.

12 MR. GUARINI: Good afternoon. I'm  
13 Vincent A. Guarini. I'm the warden of Lancaster  
14 County Prison. I'm appearing before the  
15 Judiciary Committee today at the request of and  
16 on behalf of Pennsylvania Prison Warden's  
17 Association.

18 My testimony today is in reference to  
19 the concept of private prisons, privatizing  
20 corrections generally, and with specific comment  
21 on House Bill 246. Our organization is composed  
22 of individuals currently or formally associated  
23 with corrections in various administrative  
24 capacities, including but not limited to wardens  
25 of federal, state, and county prisons throughout

1 the Commonwealth of Pennsylvania.

2 Today within the borders of our state  
3 there are approximately 18,000 prisoners in our  
4 local jails and prisons and another 26,000 in  
5 our state correctional institutions and several  
6 thousand more in federal facilities.

7 These individuals have been incarcerated  
8 either awaiting court action or serving  
9 sentences of less than five years in the county  
10 facilities with those in the state having  
11 received sentences which exceed the statutory  
12 limits of a two-year minimum or five-year  
13 maximum.

14 Conservatively speaking, approximately  
15 50 percent of the prisoner populations in our  
16 county prisons are individuals awaiting trial  
17 but incarcerated in lieu of bail. The remainder  
18 of the offender population inclusive of state  
19 and county therefore represents an incarcerated,  
20 convicted, and sentenced population of 35,000  
21 criminal offenders.

22 These inmates are serving sentences  
23 imposed as sanctions for behavior that society  
24 has criminalized and for which an individual  
25 needs to be separated from the community for the

1 protection of its citizenry.

2 It is a population which consists of  
3 individuals who have been affected by the system  
4 and truly have been rehabilitated or possess the  
5 sincere desire to change and are well on their  
6 way to becoming productive contributors of  
7 society.

8 Unfortunately, it is also a population  
9 which consists of those who continue their very  
10 presence as parasites of society preying upon  
11 others, whether that be in an open community or  
12 the present penal community in which they now  
13 live.

14 It's the latter we think of when we use  
15 the term jail or prison, while it is the former  
16 we refer to when we speak of correctional goals.  
17 The issue under scrutiny of the Committee today  
18 needs to have these target group or groups  
19 clearly identified for purposes of debate and/or  
20 incorporated into the discussion.

21 The Pennsylvania Prison Wardens'  
22 Association position on the concept of private  
23 prisons as a complete turnkey operation has not  
24 yet been fully resolved. It is the intent of  
25 our legislative Committee on which I serve as

1 co-chair that this topic be brought before the  
2 full membership of our organization for a  
3 determination at our business meeting next week,  
4 May 4th.

5           However, I am here today acting with  
6 the sanction of our association's president and  
7 the legislative Committee with the knowledge  
8 that our consensus is that the organization is  
9 not in support of turnkey operations for private  
10 prisons, that our recommendation to our  
11 membership is not to support House Bill 246 in  
12 its current form.

13           This is not to say that private  
14 enterprise has no role in corrections, but it  
15 does underscore the need to be extremely careful  
16 on what we are talking about in this debate.  
17 Privatization does not mean turning your  
18 problems over to the private sector to  
19 resolve.

20           The tremendous growth in our  
21 correctional institutions is the result of many  
22 factors which need not be addressed in today's  
23 discussion and many of which are well known to  
24 this august body. It's a growth industry, and  
25 the job of correctional officer is ranked in the

1 top fifteen growth occupations.

2 It's a field in which it was not  
3 uncommon in the earlier part of this century to  
4 find the private sector actively involved; but  
5 due to the exploitation of the prisoners and  
6 increased societal recognition of human rights,  
7 the public sector resumed its role as protector  
8 of its communities with private enterprises  
9 falling into disfavor.

10 Today, corrections is a multi-billion  
11 dollar arena into which private entrepreneurs  
12 are desirous of entering and which is appearing  
13 as an attractive option to reducing costs of  
14 government. But the question is, Will it reduce  
15 the spiraling costs of incarceration?

16 What often looks tempting on first blush  
17 may not be so when fully examined. According to  
18 American and City Government Magazine, quoting,  
19 Despite the push to privatization, there has as  
20 yet been no significant savings to local  
21 governments.

22 This well-written commentary expounds  
23 further on the true utilization of private  
24 facilities; the nature of variable costs;  
25 construction costs recovery periods; as well as



1 the fiscal responsibility of unusual but  
2 frequent individual offender costs such as  
3 medical services, psychiatric care, etc.; the  
4 hidden costs that most private enterprise would  
5 be reluctant to accept and which put their  
6 profit margins at serious risk.

7 Whether it is a good risk or not perhaps  
8 rests in the art of contract negotiations, but  
9 it does bring to the forefront that private  
10 corrections operates for profit.

11 Quoting from the aforementioned article,  
12 Correctional Corporation of America has seen its  
13 stock triple since the end of 1995 and its  
14 profit rise 85 percent. Its closest competitor  
15 in the market, Wackenhut Corrections  
16 Corporation, has enjoyed similar success, end  
17 quote.

18 I would add that some of the fiscal  
19 success and profit to the Wackenhut Corporation,  
20 a Florida enterprise, might be even attributable  
21 to their recent venture into this Commonwealth  
22 and unprecedented takeover of the Delaware  
23 County Prison in Thornton, Pennsylvania.

24 There are other areas that need to be  
25 considered and which also look attractive on

1 first blush but may hold hidden pitfalls such as  
2 the belief you can contract away liability,  
3 while the truth is you may increase your  
4 liability by the methodology used in choosing a  
5 private contractor and being found negligent in  
6 making that selection for whatever reason.

7 Other intriguing questions also remain  
8 unanswered but could generate enormous fiscal  
9 impact such as constitutional rights. Would  
10 they apply? Would a private enterprise be  
11 subject to due process? What would be the legal  
12 concerns on the use of force issue, inclusive of  
13 deadly force? Does privatization have a role to  
14 play in corrections?

15 Our association has been on record  
16 that, yes, it does. We have endorsed in the  
17 past private contracting for those elements of  
18 corrections that are not unique to nor inherent  
19 in the very core of a penal facility.

20 Private enterprise has provided fiscally  
21 responsible alternatives for such activities as  
22 food services, medical services, maintenance  
23 services, data processing, and transport;  
24 However, these segments are not core functions  
25 that incarceration of and incapacitation of the

1 criminal offender is, nor is there recognition  
2 of the enormous risk that failure of the  
3 custodial responsibility would present to the  
4 community.

5 Can profit really be balanced with  
6 public safety? At what level does safety get  
7 compromised in order to maintain or increase  
8 profitability? Can we safely allow the private  
9 sector to enter the arena of corrections?

10 The answer I propose is currently a  
11 conditional and incomplete one but possibly,  
12 yes, subject to limitations which have been  
13 addressed by the County Commissioners  
14 Association of Pennsylvania that any attempt to  
15 establish privately-owned or operated prisons in  
16 the Commonwealth be subject to preestablished,  
17 strict, and comprehensive regulations  
18 promulgated by and enforced by the Pennsylvania  
19 Department of Corrections and which is pursuant  
20 to legislation that recognizes the legitimate  
21 concerns of the host counties into which the  
22 private enterprise is desirous of operating,  
23 while also recognizing the public risk and  
24 responsibility issues by restricting the  
25 composition of private prisons to nonviolent,

1 minimum-security, criminal offenders and  
2 prohibiting such facilities for the  
3 incarceration of long-term federal prisoners and  
4 also out-of-state prisoners of any type.

5 While the language of House Bill 246  
6 does cover some of our concerns set forth above,  
7 it does not address all of our concerns that we  
8 share with the County Commissioners Association  
9 of Pennsylvania as has already been related.

10 We are of the opinion that House Bill  
11 246, while it includes the prohibition of  
12 incarceration of inmates, quote, From states  
13 other than this Commonwealth, end quote, does  
14 not clearly establish a prohibition on Federal  
15 Bureau of Prisons inmates nor other holding  
16 agencies such as the United States Marshall  
17 Service and the Immigration and Naturalization  
18 Service.

19 Additionally, House Bill 246 attempts to  
20 address the question of liability risks  
21 associated with a correctional operation which  
22 as previously mentioned cannot be totally  
23 contracted away; but this attempt falls short.

24 The term applied is, quote, Adequate  
25 performance bond, adequate insurance. What is

1       adequate? Our concern that any private prison  
2       be subject to strict and comprehensive  
3       regulation of the Pennsylvania Department of  
4       Corrections also is only partially addressed and  
5       is far from comprehensively setting forth in any  
6       detail what those regulations will be and, in  
7       fact, only makes reference there shall be  
8       regulations.

9               The Act requires the development of a  
10       plan of all aspects of the private correctional  
11       facility or provision of security services be  
12       included in any contract for such services but  
13       does not elaborate or suggest what is to be  
14       included, nor does it provide for such a plan  
15       being subject to preapproval by any authority  
16       such as the Department of Corrections.

17              The contract requirement that the county  
18       have access to all records of the private  
19       contractor does not exempt or establish any  
20       regard for those aspects of the operation that  
21       may be subject to confidentiality laws, and this  
22       should be clarified.

23              The requirement that a private  
24       correctional facility may not exceed a capacity  
25       of 250 inmates makes it a fairly good-size

1 facility; yet it is also needs to be recognized  
2 that utilization of a definite, established  
3 number for a maximum capacity may be even more  
4 wisely left to the Department of Corrections in  
5 their regulations rather than the more  
6 unalterable and inflexible language of a  
7 statute.

8 The definition of a low-risk offender  
9 is also left unspecified and should be  
10 addressed. If this legislation is to proceed,  
11 there are or could be delineated the specific  
12 offenses which are not to be considered low-risk  
13 under any system of classification or length of  
14 incarceration.

15 The Act also refers to security  
16 personnel being termed peace officers as are  
17 county correctional officers presently. Yet the  
18 bill also provides for steps to be taken in the  
19 event of a strike.

20 This aspect of privatization  
21 is perhaps the most vexing in that we are  
22 currently enjoying a degree of security in our  
23 job force by the providence of Act 195  
24 prohibiting the correctional officers to strike.

25 Can we have both peace officers and a

1 job action, strike, under the legislation? What  
2 of other unions who would honor a strike action  
3 and not cross picket lines to provide consumable  
4 goods such as truckers unions as well as other  
5 correctional employee unions in the event of a  
6 state takeover?

7 Would AFSCME State Department  
8 of Corrections employees cross the private  
9 corporation picket lines? In the event of a  
10 state takeover due to an emergency, When using  
11 Commonwealth emergency resources necessary to  
12 operate the facility, costs shall be reimbursed  
13 by the private contractor.

14 With this we return  
15 to the question of adequate insurance. What of  
16 a bankruptcy or other fiscal shelters available  
17 to the private sector that would negate any  
18 reimbursement of costs to the state, the  
19 Department of Corrections, or the local county?

20 We feel this needs to be addressed  
21 up front. While the Act recognizes the  
22 authority of the Department of Corrections to  
23 enter and control any private correctional  
24 facility or a facility using private security  
25 forces, it does not delineate what constitutes

1 an emergency; nor does it specify who or what  
2 authority makes the determination that an  
3 emergency exists.

4 Who  
5 will make this call? Who will make the  
6 decision? The Act also provides for corrective  
7 action by a contractor for the correction of  
8 deficiencies cited in the inspection reports but  
9 refers only to, quote, a reasonable period of  
10 time for correction of such deficiencies.

11 Our opinion is that this should be  
12 specifically addressed with set time frames  
13 which the Department should promulgate in  
14 advance and which may be categorized into  
15 subgroups that would allow for more time  
16 extensions for compliance.

17 Our difficulty here is what is  
18 reasonable? Under the regulations that are to  
19 be promulgated within six months of the  
20 effective date of this Act, it appears there is  
21 some overlap of what is required for those  
22 institutions that contract for just the security  
23 forces component.

24 The Department of Corrections is being  
25 required to set minimum standards for jails that



1 already exist and some of which have already  
2 been referred to as being the responsibility of  
3 the, quote, Monitors.

4 The aspect of training, although  
5 addressed, does not specify what that training  
6 shall be and who approves the training  
7 curriculum or certification process. The  
8 license of a contractor can be revoked under the  
9 Act for moral turpitude, yet that is left  
10 undefined.

11 Additionally, the license can be lifted  
12 for, quote, The violation of the civil rights of  
13 an individual inmate, end quote; but it remains  
14 unanswered as to who determines that a violation  
15 occurred.

16 Is it the Department of Corrections?  
17 Is it the Courts? What constitutes a violation?  
18 Is there a proviso for noncorporate policy? Is  
19 the corporation responsible for the actions of  
20 its employees?

21 In closing, it is our opinion  
22 that the private sector has a role to play in  
23 corrections. And that is one of a support  
24 function but not a core function. Support  
25 functions are those areas which assist the

1 agency or facility in the performance of its  
2 main function of detention but are not in and of  
3 themselves unique to that function.

4 Private enterprise has a checkered  
5 history in this Commonwealth and has not been a  
6 panacea for corrections across this state nor  
7 this country. In discussion, we should ask  
8 ourselves -- we should not ask ourselves, Can  
9 the private sector perform traditionally public  
10 service work in a more effective and efficient  
11 manner?

12 But rather, we should ask, Why can't the  
13 public sector perform in a manner equal to or  
14 exceeding the private sector? By asking this  
15 question, in some cases we may find that the  
16 playing fields need to be leveled so all the  
17 players enjoy the same advantage.

18 We may or may not be faced with some  
19 resolutions that would allow for more  
20 cost-efficient operation of the public sector as  
21 a whole and not just segmental comparisons to  
22 the efficacy of private enterprise.

23 Please go slowly and cautiously in this  
24 field with the utmost regard for the enormity of  
25 potential consequences even to the extent of

1 establishing another task force for further  
2 study of this issue. Thank you for this  
3 opportunity to be heard.

4 CHAIRMAN BIRMELIN: Thank you,  
5 Mr. Guarini. And thank you, Ms. Rhodes. I'll  
6 open this up to questions from the Legislators  
7 here this afternoon. And Mr. Caltagirone, we'll  
8 begin with you.

9 REPRESENTATIVE CALTAGIRONE: Thank you.  
10 With the County Commissioners Association, it's  
11 always been my understanding one of the biggest  
12 costs of running local county governments has  
13 been the local county prison.

14 Is that true that most of the counties  
15 or that any counties that are smaller counties  
16 or medium-sized counties that they're any  
17 different than the larger-sized counties as it  
18 relates to running their local county prison?

19 Do you have any figures -- if you don't  
20 have information on that, Mary Beth, maybe you  
21 could get some to the Committee because in my  
22 county -- for example, in Berks County, the  
23 commissioners always complain that the largest  
24 amount of local property tax goes to operate the  
25 cost of the local county prison. Is that

1 accurate?

2 MS. RHODES: Um, it's my impression from  
3 information from the counties that the majority  
4 of the counties, the biggest part of their  
5 budget is in the corrections, running the prison  
6 and the court system.

7 I don't have a breakdown of large versus  
8 small counties because even if it's a smaller  
9 jail and a smaller number of inmates, that is  
10 still a larger percentage of a smaller budget  
11 because the county's budget is not as great as  
12 the larger county's.

13 So a general rule is that the  
14 corrections budget is a very significant part of  
15 the county budget.

16 MR. CALTAGIRONE: Years ago, many of the  
17 local county prisons used to -- I know that  
18 because of the different legal ramifications of  
19 lawsuits and problems that have cropped up, many  
20 of the county farms implemented their own ways  
21 of trying to save money for the operation of the  
22 prison such as growing their own food and  
23 canning.

24 Some of them have dairy herds and things  
25 like that. How much of that is still going on

1           around the state?

2                   MS. RHODES: None to my knowledge.

3                   MR. GUARINI: There may be a couple  
4           circumstances, but it's very rare.

5                   MR. CALTAGIRONE: Are there ways that  
6           can be implemented to cut down on some of the  
7           cost factors in running the county prison short  
8           of becoming privatized?

9                   MR. GUARINI: In reference to the farm  
10          situations just for one, I don't want to speak  
11          for the state. I know they will be testifying.  
12          But I believe they've even, you know, lessened  
13          their farm operation.

14                   The segments -- there are segments of  
15          prison operations that are prone to  
16          privatization. There are also segments that can  
17          be, I guess you could say, contribute something  
18          more to the Commonwealth.

19                   And one of those bills I know is  
20          presently pending is the Prison Ministry Bills,  
21          thing of that sort, to bring in revenues to  
22          offset the cost of incarceration. There are  
23          movements, as your home county is one, with the  
24          housing costs.

25                   All these things are now coming into

1 play in, you know, trying to reduce even  
2 internally on operation costs of incarceration.

3 MR. CALTAGIRONE: With that legislation  
4 that we've had around -- I guess it's going on  
5 three, four, five years now, try to get that off  
6 the block, you mentioned it. Is there any  
7 possibility of proposed figures?

8 I know that  
9 last session and even last year there was  
10 mention that there were a number of businesses  
11 that could not, you know, compete on the outside  
12 but because it was labor intensified and  
13 wouldn't affect any of the ongoing industry or  
14 businesses that we have in Pennsylvania, that  
15 there were companies that were interested in  
16 going inside prisons to manufacturer products.  
17 You mentioned that. Can you expound on that?

18 MR. GUARINI: Yeah. Basically, there is  
19 different areas, different groups in my own home  
20 county. We have individuals interested in what  
21 I would term jobber-type situations where the  
22 activity may be simply existing for two weeks.

23 And the type of work that is being  
24 filled is the type of work that will not be  
25 filled anywhere else but probably outside the

1 borders of this United States. It is something  
2 to me that I believe would create jobs and also  
3 create jobs in the institution for the inmate  
4 populations.

5 It also provides a marketability for  
6 their activities. It lessens the idle time.  
7 It provides a means to support families but also  
8 offset costs of incarceration again. There are  
9 organizations out there. There's one  
10 organization out in Philadelphia that would be  
11 primed to try to locate and be actively locating  
12 these type of jobbers markets.

13 Now, there's also unique things to  
14 certain areas. It's very wide. For example:  
15 We may have an area in which unskilled sewers  
16 are needed and another area in which it's a  
17 glut. That bill provides for this flexibility.

18 It also provides for the protection of  
19 the local community and the labor. As you're  
20 well aware, the safety factors are built in by  
21 the advisory -- not the advisory board, the  
22 approving board that that bill actually would  
23 create. So it is a definite financial impact on  
24 the operations.

25 MR. CALTAGIRONE: Thank you,

1 Mr. Chairman. Thank you.

2 CHAIRMAN BIRMELIN: Representative  
3 Masland.

4 REPRESENTATIVE MASLAND: Thank you,  
5 Mr. Guarini. You've proposed several questions  
6 that you think are important that we ask as we  
7 go about determining what should be done with  
8 respect to privatization in prisons.

9 I think -- and maybe this is implicit in  
10 your remarks -- I think the ultimate question we  
11 have to ask is, Is this a core governmental  
12 function? Is this something that the government  
13 should be doing?

14 I think we always have to ask whether it  
15 can do it better; but I think in the case of  
16 prisons most people would say, yes. Running  
17 prisons, housing prisoners, the penal  
18 requirements that are implicit within the crimes  
19 code, if you're going to take somebody to court,  
20 if you're going to convict him, you ought to be  
21 responsible for that person afterwards.

22 I think most people would say, yes, that  
23 is important. I guess there's a little bit of a  
24 difference though as I listen to your testimony.  
25 Your position -- and I understand it's not a



1 position of the association yet; but, you know,  
2 let's just assume that it may well become.

3 In any event, if that's going to be the  
4 position of the association, it differs a little  
5 bit from the counties. You're not saying that  
6 you would rule out -- Mary Beth, you would not  
7 rule out any type of prison that basically  
8 involves turnkey operations with the guards?  
9 You would not rule that out?

10 MS. RHODES: That's correct.

11 REPRESENTATIVE MASLAND: I guess my  
12 question -- I'm a little bit hesitant. I know  
13 that other states have done this. I guess I  
14 need to look at some of the information from  
15 other states to see how successful they have  
16 been at that, but that's just one thing where I  
17 just am hesitant having seen what happens in  
18 riots like we had at the Camp Hill prison and  
19 other places.

20 I hesitate to say that these are things  
21 that we're just going to have the private sector  
22 take over and be able to handle in the same  
23 fashion. That's my big concern.

24 When push comes to shove and you  
25 literally are in between a rock and hard place

1           like they were at the Camp Hill prison riots and  
2           other places, I hesitate to state that the  
3           private sector can handle that. Maybe they can.

4                        I don't know if there's any experience  
5           with prison riots in the county level or state  
6           level in terms of private prisons in other  
7           states, but that would be one concern that would  
8           have to be addressed for me.

9                        MS. RHODES: Not to my knowledge has  
10          there been any riots involved with privatization  
11          in other states. The problem is that there's  
12          very little research in this area and studies  
13          done and it hasn't been that long that  
14          privatization has been a big boon in this  
15          industry.

16                       Second, you had stated about the  
17          commissioners' interest in privatization as in  
18          the turnkey. I guess due to the cost of the  
19          operation of the prisons we are in the position  
20          that we would be willing to sit down and explore  
21          all the options including the total  
22          privatization of prisons.

23                       We would be very interested in sitting  
24          down with you and the Commission of Corrections  
25          as representatives of the prison wardens and

1 say, Okay, if we do this, what are the  
2 consequences such as Warden Guarini has listed  
3 in his testimony? We wouldn't rule it out, but  
4 we would like to explore it.

5 REPRESENTATIVE MASLAND: You're not  
6 fully embracing immediate privatization,  
7 full-blown privatization of whole prisons as  
8 opposed to services?

9 MS. RHODES: Correct.

10 REPRESENTATIVE MASLAND: It's something  
11 that under the fiscal circumstances you find  
12 yourself and the counties find themselves that  
13 you're willing to consider?

14 MS. RHODES: Yes.

15 REPRESENTATIVE MASLAND: I think my  
16 earlier remarks -- I do want to make it clear  
17 that although I think that this is something  
18 that the state and the counties need to be  
19 involved in, I do think that there are some  
20 services that are provided in prisons that could  
21 be privatized.

22 I mean, yes, the core function, the  
23 overall, the umbrella function of a prison  
24 should be coordinated by the state or the  
25 county; but there's probably some things in

1           there that maybe the public sector can do  
2           better. And that's certainly worth exploring.

3                   MS. RHODES: May I add that while we  
4           don't totally embrace the privatization but are  
5           willing to explore it, what is more our  
6           priorities at this time are things such as  
7           inmate fees, collecting fees for prisoners for  
8           services and prison industries so that we can  
9           get these inmates to work and pay back their  
10          keep.

11                   REPRESENTATIVE MASLAND: Getting inmates  
12          to work is a problem everywhere. When we went  
13          to Graterford Prison, I believe, a few months  
14          back, Mr. Chairman, we walked down one tier; and  
15          there were very few people there working. And  
16          it made me very nervous I'm afraid to say.

17                   I wish there were a whole lot more  
18          people working on that day. There was a tier  
19          4 -- and the level 2 was okay -- but the level 4  
20          was, you know, I was glad when we got to the end  
21          of the three football fields and didn't have to  
22          turn around and walk back through the same ward.

23                   That was not a lot of fun. So we do  
24          need to do something about that. Thank you,  
25          Mr. Chairman.

1                   CHAIRMAN BIRMELIN: Representative  
2                   Boscola.

3                   REPRESENTATIVE BOSCOLA: When we talk  
4                   about privatization, you know, we do talk about  
5                   cost savings; and I'm sure that's why your  
6                   association is looking at this. But you would  
7                   see it as some kind of cost savings to the  
8                   county.

9                   But I'm having a hard time trying to  
10                  understand if you contract out and it's a  
11                  private company that is contracted out with,  
12                  they're already going to take money off the top  
13                  because this is for profit.

14                  Fewer dollars going into -- the dollars  
15                  that exist and then the private company taking  
16                  it off the top, then there's fewer dollars going  
17                  into the population of prisoners and their  
18                  services.

19                  And that's -- basically, I want you to  
20                  comment on that and -- see, I would think that  
21                  they would have the attitude of get them in, get  
22                  them out. My concern is government has always  
23                  thought about public safety when we talk about  
24                  prison inmates because what we want is when  
25                  those individuals go back in society, they're

1           able to handle society once they get out.

2                       But will the private company that's for  
3 profit really be interested in that? Actually,  
4 they'd probably be interested in inmates going  
5 in then getting them out as quickly as possible.

6                       And then lastly, I agree with  
7 Representative Masland in that I really do  
8 believe that this is a core function of  
9 government. I think health and human services  
10 and also corrections is the core function of  
11 government.

12                      I know that in Northampton County when  
13 I was in the court administrator's office, the  
14 prison board, the county commissioners, county  
15 executive in the instance of a home charter, the  
16 judges, they all worked together with regard to  
17 the county jails.

18                      And if there was overcrowding, the  
19 judges worked with the prison boards and so  
20 forth to ensure that those people that were  
21 going to be let out were those that were  
22 rehabilitated or risk -- not so much risk-free,  
23 but were the low-risk people. And they worked  
24 together very well.

25                      And I think that if you had a third

1 party in here or a private company, I don't  
2 think that that would flow as easily. And I'm  
3 also concerned that the offender would  
4 return -- the private company wouldn't care that  
5 much if the private -- if the prisoner was in  
6 some way going back into the system.

7 Because I know the judges, what they  
8 want and what the county wants and what the  
9 commissioners want and what society wants is not  
10 to see that individual return again. So -- and  
11 it's difficult for a for-profit company because  
12 the motive is different.

13 If you could just comment on that,  
14 that's basically what my concerns are.

15 MR. GUARINI: Basically with the core  
16 function -- and one of the reasons I'd like to  
17 use that term is the United States is a land of  
18 liberties. And if you take that away, it should  
19 just be the government taking that away on  
20 legitimate grounds.

21 The significant cost savings aspect -- I  
22 think the articles that I have read have  
23 indicated there are none because it's an art of  
24 negotiation. And most of the contracting where  
25 there's a great risk to the private sector, the

1 private contractor, they seem to be exclusions.

2 It's sort of like -- and we've all had  
3 the experience -- insurance. We pay for it.  
4 When we need it, it's excluded. So there are  
5 the big risk factors in our prison AIDs cases,  
6 tuberculosis cases, high medical cost cases.

7 And if that risk is going to be assumed  
8 by a private contractor, it's going to be built  
9 into his price. And you can't cover everything  
10 in a contract. If it's not specified, it isn't  
11 there. The county would still wind up paying  
12 for it or the state or whatever.

13 I think that the working together idea  
14 is, again, would come down to sometimes that  
15 cloudy issue of what is a prison for? Is it for  
16 protection of community? Is it rehabilitation?  
17 It is punishment or whatever? It's all those  
18 things.

19 And in the rehabilitation aspect, I  
20 would say it would be correct that profit margin  
21 would have to come into play. It sounds  
22 strange; but if the guy came back, they get a  
23 little bit more. It's not a little bit less.

24 If we do our job in rehabilitating, the  
25 guy's not going to be a recidivist. That's our



1 objective in a lot of cases. It's recognition  
2 of the fact that many of our prisoners are  
3 rightly where they're supposed to be.

4 I mean, when it comes down to it, they  
5 can't function in society. And they must  
6 function in the penal institutions. They're  
7 just going to -- in the harassment aspects, the  
8 costs that go involved in defending frivolous  
9 lawsuits in the state, all these things get  
10 built in.

11 Is that going to be assumed by the  
12 private contractor? If so, it may be assumed in  
13 county "x" but not county "y". That's why I  
14 would be very cautious in the article and in any  
15 research that is done.

16 It may show a cost savings in county or  
17 state "x" of whatever percent, but maybe their  
18 contract has a whole bunch of other things  
19 involved in it. It is -- you know, it is a  
20 thing where I think the public sector works  
21 together for the public good.

22 It isn't a matter of -- there's a  
23 section in there that is privatized. That  
24 penology and corrections itself, the core  
25 functions and then the support functions again,

1 our organization has been on record as  
2 supporting privatization of support functions.  
3 It may be -- and the flexibility of it that's  
4 involved.

5 It may be good in county "x"; but in  
6 county "y", for whatever reason, the public  
7 sector can do it better, okay, a support  
8 function even. We competed at one time against  
9 our -- using prisoners in our county home to do  
10 our laundry.

11 We found we could not compete against  
12 the private sector because of the enormous size  
13 of the corporation that was bidding on our  
14 contract. In the private sector, at least in  
15 our experience, which we are partially  
16 privatized in my county prison, is that the  
17 personnel costs are sort of compressed into the  
18 middle.

19 And the turnover in the private sector  
20 working in a prison setting is a little bit  
21 higher than the norm. It also does not come  
22 into play the -- I guess you could say where can  
23 they cut their losses. Food services is one.

24 Usually it's a corporation that's so  
25 enormous they're buying nationally. If we even

1 bought in the State of Pennsylvania, we couldn't  
2 compete with the purchase price that they can  
3 get it for. That's where they're making their  
4 profit.

5 Our itemization was that their personnel  
6 costs were not too far off our personnel costs;  
7 but their consumables were tremendous, I mean,  
8 the cost difference there. So, again, it  
9 is -- I'm just an advocate of the core function  
10 aspects.

11 MS. RHODES: I was just going to comment  
12 on the cost effectiveness or the cost of  
13 reduction.

14 I guess at first blush you would think  
15 that possibly if you contract with a private  
16 provider you would be able to budget a certain  
17 amount of money and you would be able to specify  
18 certain services to a number of inmates and it  
19 would have to be in good detail.

20 Except as in any contract like Warden  
21 Guarini said, there are exceptions. And we  
22 found out with contracting out health services  
23 for the various counties that it's a very  
24 expensive proposition and there are still  
25 exceptions that we can't budget for.

1           As far as knowing who's coming in and  
2           who's going out, it would be my impression that  
3           although the prison would be privatized that the  
4           parole process would still be under the control  
5           of the judges and your county or state parole  
6           office.

7           REPRESENTATIVE BOSCOLA: I think what I  
8           meant more was that a for-profit private company  
9           would probably not care too much about how that  
10          individual is going out back into the community.

11          I mean, in state prison we have some  
12          kind of educational programs or so forth so that  
13          when people do get released, especially the  
14          low-risk offenders, that at least they come out  
15          with some kind of education or trade or some  
16          kind of work-type -- something that they've been  
17          involved with to help them integrate back into  
18          the society.

19          And a private company's not going to  
20          worry about that. I mean -- in fact, I don't  
21          know if they're going to care for housing that  
22          individual alone if they have any other  
23          concerns.

24          But the way it is now, we do have a  
25          concern and the judge and the prison board and

1 so forth because we don't want to see that  
2 offender back in. And that's why I talked about  
3 what is the core -- the real core function.

4 And possibly by fracturizing this by now  
5 bringing in a third party, you're going to  
6 probably have some counties in disarray. You're  
7 going to have judges probably upset with private  
8 companies handling their inmates. And the  
9 dialogue between them can get pretty hairy at  
10 times.

11 But right now I think it flows pretty  
12 well. And if there's not any cost savings, then  
13 why do it? I mean, what's the problem? If you  
14 said that they haven't seen any cost savings,  
15 then we must be doing something right.

16 If we're looking at this, what are we  
17 doing wrong? I don't understand why we're  
18 thinking this way if there's not really going to  
19 be a cost savings?

20 MS. RHODES: I guess it's our position  
21 that we don't know that it's not going to be a  
22 cost savings but we want to explore it as a  
23 possibility for cost savings.

24 REPRESENTATIVE BOSCOLA: Okay.

25 CHAIRMAN BIRMELIN: Representative

1 Chadwick.

2 REPRESENTATIVE CHADWICK: Thank you,  
3 Mr. Chairman. Ms. Rhodes, I hate to continue to  
4 beat the drum on this core governmental function  
5 issue, but it does seem to me that it's  
6 something of a threshold issue here.

7 In other words, if we don't get past the  
8 issue of whether or not incarcerating people is  
9 a core governmental function, the rest of the  
10 issues don't really matter very much.

11 I've taken the liberty of reading ahead  
12 and reading the testimony of some of the  
13 witnesses who are going to follow. And some of  
14 them say quite bluntly that they believe that  
15 incarcerating people is a core governmental  
16 function and the private sector doesn't have any  
17 business in it.

18 You also seem to share that concern at  
19 least to some degree; although, you're a bit  
20 more delicate with your language. You say,  
21 Where there's a component of coercive authority  
22 exercised through the use of deadly force,  
23 including deadly force, there is concern about  
24 the involvement of nongovernmental, for-profit  
25 entities.

1           Then you go on to say that you may be  
2 willing to look at this though if we're talking  
3 about low-risk offenders. Are you saying that  
4 incarcerating people may be less of a core  
5 governmental function if they're more likely to  
6 behave themselves while they're in jail?

7           Low-risk doesn't mean no-risk. You  
8 still will have to use force on that from time  
9 to time.

10           MS. RHODES: I guess what we're  
11 considering, the probability of the use. We're  
12 predicting behavior, which is something that is  
13 very hard to do. It is something that the  
14 association feels strongly about.

15           It's been -- traditionally, we've  
16 contracted out for alternatives to  
17 prisons -- pre-release centers, etc. -- and have  
18 been successful. So I believe what we wanted to  
19 look at is -- we still have the liability for  
20 these inmates even if we contract out privately.

21           So if we're going to do it, should we  
22 target the low-risk, the nonviolent offenders so  
23 that our risk of liability is lower; and  
24 therefore, we can run more efficiently?.

25           REPRESENTATIVE CHADWICK: I guess the

1 point I'm trying to make is that it seems to me  
2 that the issue of core governmental function is  
3 an absolute. Either it is or it isn't. If it  
4 is, we have no business in doing it at all. If  
5 it's not, then we might as well go ahead and  
6 talk about it.

7 But you're saying that it's something of  
8 a sliding scale, that the less likely a person  
9 is to be a problem, the more willing we are to  
10 look past the issue of core governmental  
11 function?

12 MS. RHODES: I don't think we disagree.  
13 I guess I'm saying that's an option that we  
14 would like to see left open. And I think it's  
15 still a question of, Is it our responsibility to  
16 run the prison? Is it the court's  
17 responsibility to run the prison? Is it the  
18 state's responsibility to run all the prisons?  
19 So I'm not differentiating that it's not a  
20 government authority because they're low-risk  
21 versus high risk. And that's what you're asking  
22 me.

23 REPRESENTATIVE CHADWICK: All right.  
24 Thank you, Mr. Chairman.

25 CHAIRMAN BIRMELIN: Mr. Masland.



1                   REPRESENTATIVE MASLAND: Do you have  
2                   some questions?

3                   CHAIRMAN BIRMELIN: Go ahead.

4                   REPRESENTATIVE MASLAND: I just wanted  
5                   to follow-up on that last comment by  
6                   Representative Chadwick. It strikes me that if  
7                   you are going to look at it as a sliding scale,  
8                   high risk to low risk, when you get it down to  
9                   the point where you can say it is a low enough  
10                  risk that we can allow a private concern to be  
11                  completely responsible, that possibly they're a  
12                  low enough concern that they shouldn't be in  
13                  there and maybe there should be intensive  
14                  probation instead.

15                  And that's really where we'll save a  
16                  love lot of money. I think that's one thing we  
17                  need to look at. Whereas low-risk, nonviolent  
18                  offenders -- most of the people out in the  
19                  public say, We spend that much money to house  
20                  these people?

21                  There's got to be a better way. Limited  
22                  tax dollars, that might be better than to say,  
23                  Okay, we'll put this under private concerns  
24                  then.

25                  MS. RHODES: That's a point well taken.

1           And the counties within the last five years have  
2           spent millions of dollars in developing  
3           alternatives to incarceration. So I agree with  
4           you depending on the low -- but this would give  
5           us one more option for that -- we don't control  
6           the guidelines -- for that low-risk that still  
7           needs to be incapacitated.

8                         REPRESENTATIVE MASLAND: Thank you.

9                         CHAIRMAN BIRMELIN: Any other members  
10           have questions? In conclusion then, I would  
11           just note that what Representative Masland said  
12           I think is a key element in the cost-savings  
13           area. It doesn't address the issue of  
14           privatization, of course. It's a completely  
15           different subject.

16                        But I would agree with him that perhaps  
17           there are many, many people who have been put in  
18           prison who could be dealt with more efficiently  
19           and more effectively.

20                        Obviously since it's not solving our  
21           recidivism problems that we have in Pennsylvania  
22           and also we're faced with the very real  
23           overpopulation problem in our state as well as  
24           our county prisons, I'm sure that this Committee  
25           in the months and perhaps years to come will be

1 looking at those issues as well.

2 Thank you for your continued dialogue  
3 with us. It's not been the first time you've  
4 been here, at least for Mary Beth, and probably  
5 won't be the last. We thank you for your  
6 comments and the opportunity to be here with us.  
7 Thank you very much.

8 Our next presenter is Larry Frankel, the  
9 Executive Director of the American Civil  
10 Liberties Union. While he's coming up, let me  
11 suggest to you that the testimony that each of  
12 the presenters is giving today will be given to  
13 all of the Judiciary Committee Members.

14 Many of them obviously were not able to  
15 be here today with us. Also the chief sponsor  
16 of the bill, House Bill 246, is Representative  
17 Zug. And Representative Zug was asked if he  
18 would like to make a statement or to give  
19 testimony and to be present.

20 And he would have wished to have been  
21 here, but his wife was scheduled for surgery  
22 today. And, of course, he's being a good  
23 husband and staying by her side. So you'll  
24 excuse him for not being here; but we will also  
25 see that he gets the testimony that has been

1 presented, I think, particularly to help him to  
2 craft the legislation further if he wishes to do  
3 so.

4 Mr. Frankel, you have the floor. Would  
5 you like to make your presentation, please?

6 MR. FRANKEL: Thank you, Representative  
7 Birmelin, the other Members of the Committee.  
8 I'm happy to have the opportunity to present the  
9 ACLU's position on House Bill 246 and the issue  
10 of private prisons.

11 The ACLU has long had an interest in  
12 private prisons. And we have testified before  
13 the General Assembly several times -- although,  
14 it's been a number of years -- regarding the  
15 various problems associated with the private  
16 prison.

17 The ACLU opposes private prisons because  
18 we firmly believe that private, for-profit  
19 corporations should not assume the state's  
20 responsibility for punishing those found guilty  
21 of committing criminal offenses.

22 The goals of private enterprise conflict  
23 with the goals of punishment and rehabilitation.  
24 The primary interest of private entrepreneurs is  
25 and should be the earning of profits. The

1 managers of any business owe a duty to the  
2 owners of that business a return on their  
3 investment.

4 We believe that the operators of private  
5 prisons will face conflicts between providing  
6 safe and secure facilities and meeting the  
7 expectations of the owners of the prison. We  
8 think that these conflicts will be manifested in  
9 a number of ways:

10 First, the state's responsibility for  
11 maintaining conditions that do not endanger  
12 public safety may be contrary to the private  
13 operator's need to keep expenses down. Running  
14 any prison is costly.

15 Just look at how much Pennsylvania and  
16 our counties spend on prisons and jails aside  
17 from maintaining the buildings, feeding  
18 prisoners, and providing health care. There  
19 must be an adequate warning system and  
20 sufficient number of well-trained security  
21 guards to protect the public from escapes and  
22 prison disturbances.

23 Any attempt by a private operator to  
24 save money by reducing some of these  
25 expenditures would jeopardize public safety.

1            Pennsylvania cannot afford to take the risk that  
2            a for-profit company might eliminate important  
3            positions or compromise its security procedures  
4            in order to meet its bottom line.

5                       Second, the state has the ultimate  
6            responsibility for the conditions of confinement  
7            of prisoners. State officials cannot escape  
8            liability for unconstitutional conditions in  
9            prisons.

10                       A private operator will be able to gain  
11            control over the prisons while leaving liability  
12            in the hands of the state or the county. If  
13            prisoners are injured or their constitutional  
14            rights are violated, the state or local  
15            government can be found liable for those harms.

16                       And I have citations to two court  
17            decisions for that proposition. Requiring the  
18            operators of private prisons to carry liability  
19            insurance will not necessarily solve the  
20            problem, some of which was already explained.

21                       Truly adequate coverage would probably  
22            have very expensive premiums, thus increasing  
23            the costs to the operator. Insurance will be of  
24            little use if that coverage lapses, the  
25            insurance carrier's inadequately funded, or the

1 private prison operator goes bankrupt. The  
2 Commonwealth will have to pick up the pieces  
3 when the private market fails.

4 It is also a realistic possibility that  
5 the state or the political subdivision will be  
6 sued for negligence in selecting or monitoring a  
7 private prison operator.

8 Potential plaintiffs include citizens  
9 whose lives are disrupted due to an escape from  
10 a facility, particularly if there is evidence  
11 that the government failed to discharge its  
12 duties under House Bill 246.

13 You may have noted that just this Monday  
14 the United States Supreme Court accepted a case  
15 for review that raises this very issue. In that  
16 case, the question is whether a county's  
17 negligent hiring decision is sufficient to make  
18 the county responsible for injuries caused by  
19 the negligently-hired employee.

20 This is not an abstract issue. It's one  
21 that the Supreme Court will probably deal with  
22 in its next term.

23 Third and probably our primary concern  
24 is that permitting private companies to operate  
25 prisons and receive payments for housing

1 prisoners will create a unique special interest  
2 that will have a stake in any legislation  
3 affecting what conduct is criminalized and  
4 severity of sentences that will be imposed.

5 The State has legitimate and at times  
6 competing concerns which are weighed when  
7 determining what activities will constitute  
8 criminal offenses and what circumstances call  
9 for mandatory sentences.

10 In assessing those concerns, the General  
11 Assembly must look at a host of factors. One  
12 factor it should not be considering when it  
13 balances those concerns is the interest of a  
14 private entrepreneur in making a profit.

15 House Bill 246 contemplates private  
16 prisons on the county level for low-risk  
17 offenders. It is not unreasonable to expect  
18 that considerable pressure will be asserted to  
19 increase the number of offenders that are deemed  
20 to be low-risk. This could come from the bottom  
21 up or the top down.

22 People -- you know, bills to criminalize  
23 more conduct or require more prison sentences  
24 where we don't have them already or attempts to  
25 reduce what you've previously designated as more



1 serious offenses seeking to have them lowered so  
2 they can be classified as low-risk offenders and  
3 therefore be put in these institutions.

4 The pressure will be from both ends.  
5 Private prison operators will have a  
6 considerable stake in actions taken by  
7 legislators, judges, prosecutors, the probation  
8 and parole departments when decisions are made  
9 in our criminal justice system.

10 Those who stand to gain economically  
11 from certain results should not influence those  
12 actions. Our opposition to private prisons is  
13 not based on abstract concerns. I would like to  
14 briefly relate some of the history of private  
15 prisons in Pennsylvania and other parts of the  
16 country.

17 I think that there have been a  
18 sufficient number of bad experiences of private  
19 prisons to justify barring them from  
20 Pennsylvania. In 1985, Buckingham Security  
21 Limited, a private, for-profit corporation,  
22 sought legislative authorization to operate a  
23 facility in Beaver County.

24 Two of the principle officers of that  
25 company were Charles Fenton and Joseph Fenton.

1 Buckingham Security distributed a glossy  
2 newsletter and vigorously worked for passage of  
3 private prisons legislation. At that time, this  
4 legislature asked a lot of very good questions  
5 similar to those being raised today.

6 Members of the General Assembly probed  
7 into the issues of an operator filing for  
8 bankruptcy, strikes by nonunion guards,  
9 liability for escapees, the potential for higher  
10 fees once the state became dependent on private  
11 prisons.

12 Before legislative authorization was  
13 given, Buckingham Security abandoned its plans  
14 and tried to sell the parcel of land on which  
15 the prison would have been built. The site  
16 turned out to be a hazardous waste dump. One  
17 would only fear what the liability consequences  
18 of that would have been.

19 That wasn't Pennsylvania's only  
20 experience with private prisons. One of the  
21 previous witnesses related the experience with  
22 the 268 Center, which is what spurred the  
23 previous moratorium approximately ten years ago  
24 by this legislature.

25 In 1987, a joint state government

1           commission issued its report on private prisons;  
2           and the majority of the task force that wrote  
3           that report supported a prohibition of private  
4           prisons in Pennsylvania.

5                        Pennsylvania's experience is not unique.  
6           A 1990 government audit found numerous problems  
7           in Texas's private prisons including several  
8           breaches of contract. Florida's first private  
9           prison was recently cited for lapses in security  
10          such as inoperable security cameras and failure  
11          to follow staff training guidelines.

12                       The operation of private prisons in  
13          Tennessee by the Corrections Corporations of  
14          America has raised significant concerns in that  
15          state particularly after several prisoners  
16          escaped from two different facilities and a riot  
17          broke out in another facility.

18                       I have in my file here today -- I pulled  
19          it out while questions were asked of the  
20          previous witnesses. It's actually an editorial;  
21          but it refers to, among other things, a riot that  
22          broke out in October, 1995, at a private prison  
23          in west Tennessee. So there is some experience  
24          to be had that these kind of conditions do  
25          occur.

1           I don't know whether it was just a  
2 low-risk offender institution or not. The jury  
3 is still out on the question of whether private  
4 prisons can actually save money.

5           There are conflicting reports and  
6 studies on this question, but no one can really  
7 predict what will happen with costs if  
8 governments become too dependent on private  
9 prison.

10           Similarly, no one can provide a reliable  
11 estimate of the additional costs that will be  
12 incurred if Pennsylvania continues to  
13 incarcerate more individuals for longer periods  
14 of time. We don't know what's going to happen  
15 to the cost to the public prisons much less can  
16 we predict what the cost for private prisons  
17 would be.

18           Finally, we draw your attention to a  
19 recent New York Times article, *The Pitfalls of*  
20 *Private Penitentiaries*, that appeared on  
21 November 24th, 1995.

22           And I've attached a copy of that  
23 article. The story reports on several problems  
24 that the Federal Bureau of Prisons has  
25 encountered including one instance, a transfer

1 of violent criminals to a private institution  
2 even though residents of the neighborhood where  
3 the institution was located had been promised  
4 that the prison would hold white-collar and less  
5 violent prisoners.

6 The New York City Times story also  
7 reports on overly generous contracts that were  
8 negotiated and difficulties that the government  
9 has encountered in supervising the private  
10 companies.

11 The Justice Department itself has  
12 admitted that the private companies have  
13 negotiated contracts that allow them to recover  
14 their financing costs quite quickly while at the  
15 same time they are pushing the medical expenses  
16 back onto the government.

17 The ACLU knows and recognizes the  
18 Pennsylvania prisons are overcrowded and that  
19 the cost of corrections is skyrocketing, but we  
20 do not believe the privatization of prisons is  
21 the answer to this problem.

22 We doubt that the cost savings will be  
23 as much as promised. We have little reason to  
24 think that the problems encountered elsewhere  
25 will not reappear here in Pennsylvania.

1                   And we particularly fear the distortions  
2                   in policy making that will result if the state  
3                   creates a financial incentive for locking up  
4                   people and keeping them incarcerated.

5                   The ACLU thinks that private prisons  
6                   will not lead us to a better criminal justice  
7                   system; rather, they will only compound the  
8                   problems that already exist.

9                   CHAIRMAN BIRMELIN: Just one note that I  
10                  have, and that is that private prisons aren't  
11                  the only ones that have prison problems. I was  
12                  in Cole Township and heard the story of last  
13                  year's disturbance there.

14                  I was in Camp Hill a week after the  
15                  riots back in the late '80s, and I'm not sure  
16                  that public or private could have answered some  
17                  of those problems.

18                  MR. FRANKEL: If I may, we certainly  
19                  don't disagree with you at all. And I note that  
20                  all of you are quite aware that my organization  
21                  is involved in a variety of lawsuits involving  
22                  prison conditions. And as painful as what we  
23                  have seen and litigate over, we still fear that  
24                  private prisons will not do any better.

25                  CHAIRMAN BIRMELIN: Mr. Chadwick, do you

1 have any questions for Mr. Frankel?

2 REPRESENTATIVE CHADWICK: No questions,  
3 but just one comment. I keep coming back to the  
4 core governmental function issue. It seems to  
5 me the analogy here would be like the defense of  
6 our country, which would be the core  
7 governmental function.

8 And the analogy would be that we may  
9 contract out the building of a jet fighter much  
10 like we contract out the building of a prison;  
11 but when the fighter's done, the government's  
12 own people run it. It just seems to me that  
13 having private enterprises run prisons would be  
14 a little bit like hiring private contractors to  
15 run -- fly our jet fighters to defend our  
16 country.

17 MR. FRANKEL: I agree.

18 REPRESENTATIVE CHADWICK: I have nothing  
19 further, Mr. Chairman.

20 CHAIRMAN BIRMELIN: Those pearls of  
21 wisdom are well taken. Thank you,  
22 Representative Chadwick. Representative  
23 Boscola.

24 REPRESENTATIVE BOSCOLA: I know that you  
25 recognize that Pennsylvania's prisons are





1 we should do is look at what basic element of  
2 needs do these individuals in prison have? What  
3 are the basics, not the three meals a day, not  
4 all the health care going to the doctor every  
5 time they feel a pain or ill or receiving in  
6 some instances a college degree.

7 I think maybe we should look at what is  
8 the basic minimum that that individual needs to  
9 stay in jail. But I was wondering what you  
10 would think about that because I was trying to  
11 come up with a bill to address all these problems  
12 because I don't think it's fair that the working  
13 people out there can't even get the things that  
14 individuals in prison do?

15 And I'm not talking about the  
16 weight-lifting equipment. I'm just talking  
17 about basic health care, basic food, and  
18 shelter.

19 MR. FRANKEL: Well, my understanding is  
20 that while there may be an abstract guarantee  
21 that they will get decent shelter, decent food,  
22 and decent health care in prison; but that is  
23 not always the case.

24 That, in fact, there was -- our office  
25 was involved in litigation with the states over

1 conditions in state correctional institutions.  
2 A lawsuit that former Attorney General Ernie  
3 Preate defended that was settled because the  
4 state knew and admitted that the conditions that  
5 existed at that time were inadequate or not  
6 meeting constitutional standards.

7           Whether costs can be cut in those areas,  
8 I'm not particularly sure that they can. It's  
9 the testimony I believe I just heard. And my  
10 understanding is most of the costs associated  
11 with the prisons have to deal with the cost of  
12 maintaining the physical building and the  
13 personnel.

14           It isn't the provision of food or the  
15 amount of health care. And the health care is  
16 always -- in many cases is contracted out. I  
17 believe that what we need in terms of maybe  
18 reducing some of the costs in the long run is  
19 going back into the prisons and figuring out  
20 what we can do to make it an environment where  
21 there is less need for prisoners to go file  
22 their slip to go get health care because they  
23 have nothing else to do all day.

24           I mean, for them it becomes an activity  
25 in some sense. What ways we can maintain the

1 morale and the staffing in the prisons that some  
2 of the costs may be associated to turnover of  
3 the staff because of the tremendously difficult  
4 conditions they work in.

5 But I think what we ultimately get to,  
6 however, is back a little bit to what  
7 Representative Masland referred to. And I know  
8 that members of the Committee are interested and  
9 that maybe going back and looking at, not the  
10 laws you just passed in the special session -- I  
11 mean, I don't think that's the issue; but laws  
12 that have been on the books a while.

13 Is there another approach to be dealing  
14 with offenders who have substance-abuse  
15 problems? Is both more cost-effective, maybe  
16 more long-term beneficial in reducing recidivism  
17 and, indeed, getting people the treatment they  
18 need.

19 Are there certain things we are  
20 incarcerating people for longer periods of time  
21 now than we used to ten years ago that really if  
22 you talked to the public they would say no?

23 Much of the increase in the prison  
24 population on the state level is either  
25 drug-related or nonviolent-crime related. It's

1 not all violent-crime related.

2 I think it requires the sentencing  
3 commission with the cooperation of the  
4 Legislature to take a look at the revision of  
5 sentencing guidelines which tried to address  
6 some of the issues of violent versus nonviolent  
7 offenders to rectify some of the imbalance that  
8 seemed to have been there to make sure that we  
9 are, with regard to our institutions,  
10 incarcerating those who pose the greatest risk  
11 and then make some calculated decisions about  
12 other ways to deal with those offenders where  
13 there is a consensus that, yes, they should be  
14 punished but being behind the walls of a prison  
15 may not be the way.

16 I don't think you will see the cost  
17 savings come in with trying to reduce health  
18 care, particularly since one of the health  
19 issues and problems that came up was  
20 tuberculosis.

21 And if you don't deal with it in the  
22 prison, you're going to have to deal with it out  
23 in the public and that some of the things we do  
24 for the prisoners may not only benefit the  
25 prison, they may benefit all of us that we are

1 better off if they come out not with, you know,  
2 too many diseases that they could spread or  
3 visitors, you know, catch contagious diseases  
4 while they are there.

5 REPRESENTATIVE BOSCOLA: I agree with  
6 you a hundred percent about finding alternative  
7 ways of incarceration, but just that alone is  
8 not the save-all when you've got taxpayers  
9 footing the bill while the correctional system  
10 is skyrocketing.

11 It's not one thing or one factor alone  
12 that would help alleviate the costs. It's  
13 numerous things. And one of the areas that I  
14 would like to look into in addition to  
15 alternative incarceration alternatives is what  
16 is it that a prisoner basically needs in order  
17 to survive there?

18 And what services are they getting  
19 beyond what an American working in Northampton  
20 County or Lehigh County that's struggling every  
21 day? Why are they not receiving some of the  
22 care a prisoner is? And you're not going to  
23 tell me you can't save costs if a prisoner is  
24 given two meals a day instead of three, you're  
25 not going to have some kind of cost savings.

1           You might save very little; but when  
2           you're talking about costs, every little bit  
3           counts. And it adds up. And I just think that  
4           people out there are just tired of individuals  
5           in jail receiving these medical services  
6           especially, like, even dental services when some  
7           people can't pay for it.

8           They can't even send their children  
9           there because they can't afford it or they don't  
10          even -- they don't even, in fact, get shots for  
11          their children at times because they can't  
12          afford it. So I'm saying yes. I'm not  
13          surprised at your answer. That's why I brought  
14          it out because of which organization you  
15          represent.

16          MR. FRANKEL: I also would submit that  
17          one has to talk also with the people who have to  
18          run these institutions. And many of them  
19          probably are happier with providing three meals  
20          a day and some health care than the alternative.  
21          And yes --

22          REPRESENTATIVE BOSCOLA: I guess what  
23          I'm trying to say is I don't even eat three  
24          meals a day, you know.

25          MR. FRANKEL: I think that if we're

1 looking to reduce costs of the corrections  
2 department we have to look at the numbers of  
3 people we're putting into the system. But  
4 everything else is dodging the real issue that  
5 if people are saying that the voters demand  
6 tougher sentences and more periods of  
7 incarceration, that is going to cost money.  
8 Now, Senator Shaffer --

9 REPRESENTATIVE BOSCOLA: They're  
10 demanding that, but they're also demanding that  
11 criminals do not receive more than they are  
12 receiving as law-abiding citizens.

13 MR. FRANKEL: And some of that is a  
14 mistaken perception as to how much they are  
15 receiving in prison. But I wanted to go --

16 REPRESENTATIVE BOSCOLA: They can  
17 have three square meals a day in prison, don't  
18 they? They are --

19 MR. FRANKEL: And if they did not  
20 receive it, that would be a constitutional  
21 violation.

22 REPRESENTATIVE BOSCOLA: That's what I  
23 was getting to. I don't believe it would be,  
24 and your organization does. And I wanted your  
25 comment on that.

1           MR. FRANKEL: The courts have said it  
2 would be a constitutional violation, not my  
3 organization.

4           REPRESENTATIVE BOSCOLA: But the  
5 legislature has the ability to make the laws,  
6 and the courts interpret the laws. So we can do  
7 some things to maybe change that.

8           MR. FRANKEL: Provided you do not  
9 violate constitutional norms and standards.

10          REPRESENTATIVE BOSCOLA: Okay. Thanks.

11          CHAIRMAN BIRMELIN: Representative  
12 Masland.

13          REPRESENTATIVE MASLAND: Thank you.  
14 To follow-up on Representative Chadwick's pearls  
15 of wisdom and Representative Boscola's comments,  
16 I do think that in all fairness to the American  
17 Civil Liberties Union we should recognize, as  
18 they recognize, the basis of the free-enterprise  
19 system in your comments there so you got a  
20 return from investing.

21                 And that really gives rise to my  
22 comments. We can go into all sorts of analogies  
23 here. I think if you want to say the owner are  
24 the taxpayers and they are looking also for a  
25 return on their investment, but the return



1 they're looking for is that the criminal is  
2 returned to society and doesn't commit another  
3 crime and doesn't end up returning back to  
4 prison.

5 That I think is the main interest  
6 there and that while the person is incarcerated  
7 that they are protected. They want to make sure  
8 that that person is safely behind bars and that  
9 they are protected.

10 And I share your concerns,  
11 as I voiced earlier, with the possible conflict  
12 of interest or incentive problems that a private  
13 institution might have. And it just passed  
14 briefly through my mind some of the discussions  
15 we had about welfare reform.

16 While the provider  
17 of this education gets paid "x" amount if a  
18 person, you know, stays in a job for six months  
19 or twelve months, are we going to have private  
20 institutions or private prisons that are paid  
21 based on how long somebody stays out? Or are we  
22 going to try to tie things down?

23 And that maybe gets to the point of  
24 being absurd and certainly worrisome; but  
25 ultimately, I agree with much of your position

1 here. And I think we need to tread slowly with  
2 respect to how much we privatize. So thank you.

3 MR. FRANKEL: I appreciate your  
4 recognizing that we do believe in the  
5 free-enterprise system also.

6 CHAIRMAN BIRMELIN: It's good to see it  
7 in writing. Thank you, Mr. Frankel. And we  
8 appreciate your being with us today.

9 MR. FRANKEL: If I may say, if you want  
10 to put me under oath, I'll take an oath and  
11 swear to it even.

12 CHAIRMAN BIRMELIN: Our next presenter  
13 is Mr. Angus Love, President of the board of  
14 directors of the Pennsylvania Prison Society.

15 MR. LOVE: Good afternoon.

16 CHAIRMAN BIRMELIN: Welcome to our  
17 Committee, and proceed with your testimony.

18 MR. LOVE: I'd like to thank Chairman  
19 Birmelin and the Members of the Committee for  
20 the opportunity to testify on House Bill 246.  
21 I'm testifying today on behalf of the  
22 Pennsylvania Prison Society, which is the  
23 nation's oldest prison reform organization  
24 founded in 1787 by some of the same signatories  
25 as the Declaration of Independence.

1           The society went on record in 1985  
2 supporting a moratorium on private prisons due  
3 to the many unanswered questions in the  
4 licensure process. We later testified for the  
5 private prison task force of the joint state  
6 government commission pursuant to Act 1986-19.

7           At that time, we stated our opposition  
8 to the use of for-profit companies operating  
9 prison and jails in Pennsylvania. In  
10 preparation for these hearings, the society has  
11 reiterated our opposition to private, for-profit  
12 prisons and to House Bill 246 in its current  
13 form.

14           The decision to take one's freedom is  
15 one of the most powerful tools a government can  
16 utilize. Such a process should not be taken  
17 lightly. Prisons are an important part of this  
18 process.

19           The question I'm here to address today  
20 is whether the Commonwealth should turn over the  
21 authority to run a full-custody confinement,  
22 adult correctional facility to nongovernment  
23 entities operating on a for-profit basis.

24           While we have seen many aspects of our  
25 criminal justice system operations privatized

1 such as food service, medical treatment, halfway  
2 houses, and drug treatment centers, we have yet  
3 to turn the whole facility over to private  
4 enterprise.

5 Such a major endeavor requires much  
6 study and thought. While it may answer some  
7 concerns, it raises many more that have yet to  
8 be adequately addressed. Until all of these  
9 issues are fully studied, we urge the members of  
10 this Committee to vote against House Bill 246.

11 Today I would like to comment on the  
12 cost considerations, legal issues, and other  
13 possible solutions to the high cost of  
14 corrections. In an era of rapidly rising prison  
15 and jail populations, budgets for services have  
16 grown astronomically.

17 Our Pennsylvania Department of  
18 Correction's budget has risen from 30 million in  
19 1971 to 900 million this year. County  
20 governments are under similar pressures. This  
21 is especially true in larger urban areas that  
22 have high crime rates and a shrinking tax base.

23 The pressures to find savings are  
24 enormous, but the solutions are difficult.  
25 Raising taxes or releasing inmates could

1 represent political death for an elected  
2 representative, so other solutions are sought.

3 Privatization offered a quick fix.  
4 Gives us the contract, and we'll save you the  
5 money is the usual pitch. To date, neither the  
6 White House or the Justice Department can  
7 produce one study that shows privatization saves  
8 money.

9 Experience has shown the opposite. When  
10 the U.S. Marshals contracted with Corrections  
11 Corporation to build and operate its  
12 Leavenworth, Kansas, facility, the corporation  
13 was able to recoup construction costs in five  
14 years -- a task that normally takes government  
15 twenty to thirty years.

16 It prompted a study by the Marshals that  
17 showed that costs were running 24 percent higher  
18 in private facilities than in public facilities  
19 in the same region. The U.S. Bureau of Prisons  
20 similarly found that cost shifting represents a  
21 hidden cost of a contract.

22 When medical costs rose from 175 million  
23 in 1991 to 250 million in 1995, contracts had to  
24 be renegotiated in two Texas facilities. Under  
25 the terms of the contract, medical treatment

1 outside the facility such as specialized  
2 treatment and hospitalization were the  
3 responsibility of the federal government.

4 All of a sudden, inmates were getting  
5 the outside treatment they had longed for. I  
6 have seen similar experiences here in  
7 Pennsylvania. Disabled inmates that require  
8 constant care are frequently transferred in the  
9 state prison system where each facility has a  
10 different private medical provider.

11 Similarly, county inmates in need of  
12 costly operations or treatment are often given  
13 early release or are transferred to the state  
14 system as soon as is legally permissible.

15 As staffing is the largest part of any  
16 correctional budget, cuts in salaries, pensions,  
17 and benefits are perceived savings in a  
18 privatized scenario. These cost savings are  
19 often temporary as the new staff eventually  
20 unionizes and fights to get back lost wages.

21 The real loss is professionalism and  
22 experience. The effort to destabilize the work  
23 force results in loss of experienced staff,  
24 increased turnover, the need for more training,  
25 and mistakes by inexperienced correctional

1 officers.

2           These savings are illusionary and unfair  
3 to the dedicated men and women who work in our  
4 prisons under extremely difficult circumstances.

5           As contracts are usually awarded on a  
6 per-inmate basis, the incentive to maintain full  
7 capacity is great. Introducing this additional  
8 motive in running a prison may affect decision  
9 making in several ways.

10           If it does not appear that new arrivals  
11 are imminent, release decisions could be  
12 affected. Quasi-judicial functions that affect  
13 release could be altered. Awards of earned  
14 time, parole recommendations, and disciplinary  
15 actions can keep an inmate in for a longer  
16 period of time.

17           Prisons operating at less than capacity  
18 have contracted with brokers who bring in  
19 prisoners from other states. The prison society  
20 finds such flesh peddling repugnant. Lobbyists  
21 can no doubt be employed to push legislation  
22 increasing prison populations.

23           Corporate campaign contributions will go  
24 to the staunchest law and order candidates. In  
25 an era where it becomes more costly to run for

1 office, elected officials can be tempted to sell  
2 off governmental services to ensure continued  
3 campaign contributions.

4 The quest for privatization raises many  
5 more legal questions than it answers. These  
6 questions arise out of the transference of the  
7 legal authority to maintain custody and control  
8 of inmate population.

9 How do we prevent strikes by privatized  
10 guards who are forbidden to strike while  
11 employed by the state? What legal authority  
12 does the state have to retake a facility plagued  
13 by riots, escapes, fire, epidemics, or natural  
14 disasters?

15 How can we regulate employee  
16 qualifications such as the current ban on  
17 employment of ex-offenders as correctional  
18 officers which was imposed after the Banks  
19 tragedy? What do we do if a company declares  
20 bankruptcy and goes out of business?

21 This has already happened in  
22 Pennsylvania at the 286 Center in Armstrong  
23 County. Will private providers follow state  
24 rules such as the use of deadly force? One such  
25 provider refused to comply with new federal



1 guidelines imposed after Waco and Ruby Ridge.  
2 Their policy called for the use of deadly force  
3 to protect personal property.

4 How can we continue as a member of the  
5 Interstate Corrections Compact when only states  
6 can transfer inmates to other states? Can the  
7 government or court order the firing of an  
8 employee who has abused his authority? How can  
9 we prevent creaming; i.e., the taking of the  
10 easiest and cheapest inmates and dumping the  
11 most expensive back into state facilities?

12 The mental health  
13 de-institutionalization movement and the health  
14 care industry provide many examples of these  
15 practices. While it is easy to criticize new  
16 ideas, it would be irresponsible not to offer a  
17 few concrete solutions to the dilemma we find  
18 ourselves in.

19 Fortunately, the Commonwealth has  
20 commissioned many excellent studies that offer  
21 some relief to overburdened taxpayers and  
22 overcrowded prisons. Prison and jail space must  
23 be utilized as a scarce resource and as a last  
24 resort for the criminal offender.

25 An escalating scale of punishment should

1 incorporate a variety of ' to  
2 incarceration, especially for the nonviolent  
3 offender. The use of intensive parole, house  
4 arrest, electronic monitoring, restitution of  
5 the victim, offender/victim reconciliation,  
6 community service, work release, and treatment  
7 for the drug and alcohol offender are all much  
8 cheaper alternatives to incarceration.

9 Governor Thornburg's panel to  
10 investigate the Hostage Siege at Graterford in  
11 1984; Governor Casey's interdepartmental Task  
12 Force on Corrections in 1989; Governor Casey's  
13 Blue Ribbon Panel on Corrections Planning in  
14 1993; Justice Arlin Adam's Report on the Camp  
15 Hill Riot, 1989; and the Pennsylvania Commission  
16 on Crime and Delinquency Report on overcrowding  
17 in 19-- that should be '85 -- are a few of the  
18 better studies that we have undertaken.

19 The solutions to the high cost of  
20 corrections are contained therein. Now we need  
21 only the political will to implement them.  
22 Thank you.

23 CHAIRMAN BIRMELIN: Thank you, Mr. Love.  
24 One of the comments you made on page 2 about  
25 halfway through the second paragraph, To

1 date, neither the White House or the Justice  
2 Department can produce one study that shows  
3 privatization saves money.

4 One of our staffers has an article that  
5 I'm going to share with you, and that is a 1985  
6 study.

7 MR. MANN: It's being copied right now.

8 CHAIRMAN BIRMELIN: I'm not familiar  
9 with it, so I'm not going to talk to its  
10 veracity. We thought you should see what that  
11 study is so that --

12 MR. LOVE: I strongly urge the Committee  
13 to find any and every study that's there that  
14 bears on this subject so we can have a thorough  
15 understanding. If I missed that, I apologize.

16 CHAIRMAN BIRMELIN: My assistant here,  
17 Mr. Mann, has indicated that this is a study  
18 that deals with that subject and it does support  
19 the fact that there were some cost savings. But  
20 just for your edification. I'm not asking you  
21 to comment on it because you haven't seen it.

22 MR. LOVE: Some of the cost savings are  
23 in that first couple of years. To get the  
24 contract, they low-ball the other bidders. They  
25 come in, and they may save some money initially;

1 but down the road when the contract's  
2 renegotiated and they have their foot in the  
3 door, I'm not sure all of those savings will  
4 continue to be there.

5 CHAIRMAN BIRMELIN: I understand your  
6 point. And I would agree with you that you  
7 don't look at the short term; you look at the  
8 long-term because ultimately somebody's got to  
9 pay sooner or later if their costs continue to  
10 increase. Let me give Representative Boscola an  
11 opportunity to ask any questions.

12 REPRESENTATIVE BOSCOLA: I just want to  
13 make one comment in defense of our profession  
14 here. You said that in an era where it becomes  
15 more costly to run for office -- I agree with  
16 that -- elected officials can be tempted to sell  
17 off government services to ensure continued  
18 campaign contributions.

19 I don't think so because if that was the  
20 case then all of us would probably be supporting  
21 this bill right now, and we seem to be going in  
22 the opposite direction.

23 I mean, we're not looking at selling off  
24 or privatizing for increased campaign  
25 contributions. That was unfair.

1                   MR. LOVE: I apologize. It was not  
2 meant towards any particular individuals. It's  
3 just that it's fairly clear to me that every  
4 election the costs of running for office are  
5 dramatically increased and at a time when tight  
6 budget exists and no new taxes is the word of  
7 the day, you have to do something.

8                   And we see governments selling off  
9 parks, various departments, a lot of things.  
10 And I don't know if there's a correlation there  
11 or not, but it does lead one to be suspicious.  
12 I think the answer is campaign financing reform  
13 myself.

14                   REPRESENTATIVE BOSCOLA: I agree with  
15 you.

16                   CHAIRMAN BIRMELIN: Representative  
17 Masland.

18                   REPRESENTATIVE MASLAND: No.

19                   CHAIRMAN BIRMELIN: We have no further  
20 questions for you, Mr. Love. I want to thank  
21 you for your testimony and appreciate your  
22 spending a minute or two. If you can get an  
23 opportunity to look at this inspection we've  
24 supplied to you --

25                   MR. LOVE: I certainly will.

1                   CHAIRMAN BIRMELIN: Our next testifier  
2                   is Michael Fox, Assistant to the Executive  
3                   Director of AFSCME. He'll be accompanied by  
4                   Barry Bogarde, Legislative Director. If you'll  
5                   just hang on a minute, our stenographer needs to  
6                   make a change in the equipment.

7                   (Pause)

8                   I think we're back in action.

9                   MR. BOGARDE: Mr. Chairman, my name is  
10                  Barry Bogarde; I'm the Director of Political and  
11                  Legislative branch of Council 13. I'm not going  
12                  to be testifying today, but I'm going to  
13                  introduce you to Michael.

14                  Michael as the Assistant to the  
15                  Executive Director has jurisdiction for Council  
16                  13, most of our corrections information systems,  
17                  and deals directly with the commissioner of  
18                  corrections for the Commonwealth.

19                  And with that, I will stay along with  
20                  Michael to answer any questions you may have  
21                  that I'm familiar with legislation in the past.  
22                  But with that, I'm going to introduce you to  
23                  Mike Fox, Assistant to the Executive Director  
24                  for Council 13.

25                  CHAIRMAN BIRMELIN: Thank you,

1 Mr. Bogarde. Mr. Fox, you may make your  
2 presentation.

3 MR. FOX: Thank you, Mr. Chairman.  
4 If I could, before getting into my prepared  
5 comments if it's okay with the Chairman, I'd  
6 like to make a few comments on some points that  
7 have been made in the other testimony.

8 CHAIRMAN BIRMELIN: Feel free to do so.

9 MR. FOX: Thank you. First,  
10 Representative Masland and yourself commented  
11 about Camp Hill and Coal and how those two very  
12 serious incidences were controlled within the  
13 perimeters of those institutions.

14 And I'd like to say that I believe and I  
15 think most people would agree with me that that  
16 occurred because of the well-trained,  
17 experienced, professional staff that work in  
18 those institutions.

19 And that's a problem that when you  
20 examine the issue of privatization you have to  
21 take into consideration because working in law  
22 enforcement and working in a jail or prison in  
23 particular, a lot of your skills are developed  
24 through your experience.

25 Working with inmates, reading inmates,

1       you know, their moves, their signals, their  
2       different language, that all comes from  
3       experience and working within a system.

4               One of the problems that occurs in  
5       private corrections, and Corrections Corporation  
6       of America being the largest, is that they have  
7       an alarming high turnover rate. Using their own  
8       statistics, it indicates that in the first year  
9       of employment in Corrections Corporation of  
10      America institutions, anywhere from 50 to 90  
11      percent of the staff turnover.

12             You cannot staff institutions with  
13      well-trained, competent, highly-qualified,  
14      experienced officers with that kind of turnover  
15      rate. So you have to keep that in mind and keep  
16      in mind the incidences that the professional  
17      corrections officers around the Commonwealth  
18      have handled.

19             In addition, Representative Masland,  
20      I've walked the tiers of Graterford also; and  
21      they are -- it's a scary experience. And, you  
22      know, whenever you made the comment, Mr. Bogarde  
23      and I kind of thought about the same thing.

24             Think about the men and women who have  
25      to walk to tiers eight to sixteen hours a day



1 working with those criminals. It's a very  
2 difficult job.

3 REPRESENTATIVE MASLAND: And I might add  
4 that it didn't help having the Commissioner with  
5 us. Well ahead of the Commissioner and  
6 wardens -- we had everybody there. We had a few  
7 lieutenants. And I think it was a day we had a  
8 couple female college interns who were walking  
9 up the tier with us. And that --

10 MR. FOX: That tends to incite some  
11 activity. And a couple other comments in terms  
12 of the support services. When we talk about the  
13 core function of government, I don't think you  
14 can separate out the turnkey operation from the  
15 other support services that exist.

16 I think everything that occurs within a  
17 correctional institution are all intertwined.  
18 You know, one complements the other. One works  
19 with the other. And you have to be careful  
20 wherever you try to separate them out.

21 If the medical care is not being  
22 provided in a way that the inmate population  
23 feels that their needs are be taken care of,  
24 that can affect their behavior back on the  
25 block.

1           If the food is not prepared or is cold  
2           or is something, that can affect their behavior  
3           back at the block. Using inmates as workers in  
4           these support areas -- in the State Department  
5           of Corrections, one of the largest employers  
6           inside the prison system is the kitchen system.

7           And there's where inmates can learn  
8           skills and can come out of a system hopefully  
9           with some basic skills that would enable them to  
10          get a job. So I would ask you in your  
11          deliberations over this issue not to separate  
12          those support services from the corrections  
13          officers' services, our turnkey service.

14          They all work together, and all are  
15          important. With regard to the question of can  
16          you separate out, if you accept as a basic  
17          premise that the incarceration of our citizens  
18          is a governmental function, a core function of  
19          government, can you then separate out -- and the  
20          Representative made a comment made about how can  
21          you say it's okay for low-risk but not for high  
22          risk.

23          I would just like to make the Committee  
24          aware of the fact that whenever you're -- and I  
25          think you are aware of this -- when you're

1       dealing with anybody who's incarcerated in a  
2       jail or prison, you can classify them within  
3       that system in terms of their risk level now in  
4       assigning them security levels.

5                But to say one represents less of a risk  
6       to the safety and the security of the public and  
7       to that institution over another I think is  
8       faulty thinking. The state prison system over  
9       the years has had a low escape rate, which is to  
10      their credit.

11               But it's interesting to note that  
12      probably 30 percent -- and when you're talking  
13      about 30 percent, you're talking about 2 or  
14      3 -- of those escapes were inmates who were  
15      considered low-risk.

16               A trustee at Greensburg correctional  
17      facility on outside work detail had gotten a  
18      disturbing call from his wife the night before.  
19      Something snapped inside, took a clerical  
20      employee hostage, and escaped.

21               Just recently in Pittsburgh a trustee  
22      just decided to take a walk out the front door  
23      and leave. So you can't, again, distinguish  
24      between inmates in terms of how you're going to  
25      incarcerate them I don't believe.



1 were whether the acts of a private entity  
2 operating a correctional institution constitutes  
3 state action with regard to the issue of  
4 liability. I believe that was commented on by a  
5 few of the earlier speakers.

6 No. 2, probably more importantly, is  
7 whether in any event delegation of corrections  
8 function to a private entity is in itself  
9 constitutional. After detailed discussion on  
10 these questions, the ABA adopted a resolution  
11 which opposed prison privatization until these  
12 very important and complex issues are resolved.

13 We would suggest that until these issues  
14 are resolved, the public policy of the  
15 Commonwealth should be to withhold endorsement of  
16 privatization. House Bill 246 suggests that the  
17 private sector has demonstrated the ability to  
18 provide government services in an efficient and  
19 innovative manner, thus suggesting the private  
20 sector can do the job of running the prisons  
21 better than government.

22 I would suggest that is flawed thinking.  
23 Studies in states that now have private prisons  
24 have demonstrated that private prisons do not  
25 save significant dollars or operate more

1           efficiently.

2                         More specifically the State of  
3           Washington in January of 1996 issued a  
4           feasibility study which examined private prisons  
5           in Tennessee and Louisiana, two of the largest  
6           users of private prisons in the country, and  
7           compared them to publicly-run institutions in  
8           those states.

9                         What they found was that the private  
10          prisons in some instances cost more than the  
11          public prison and in some instances cost less.  
12          In those cases where the cost was less, the  
13          amount was rather insignificant, 1 percent.

14                        They also found that the prisons were  
15          not run any more efficiently than the public-run  
16          institutions. Based on this study, the State of  
17          Washington recommended against privatization.  
18          The state of Washington is not alone.

19                        The state of Delaware studied the  
20          possibility of privatizing a new, 600-bed  
21          institution. Delaware's findings were the same  
22          as Washington, and so was the final conclusion;  
23          that is, not to privatize.

24                        Here in Pennsylvania the issue of  
25          private prisons was reviewed by the Pennsylvania

1 Commissions on Corrections planning. The  
2 conclusion of the PCCP is best stated using  
3 their own words.

4 The Commission acknowledges that there  
5 are significant opportunities for the efficient  
6 and effective delivery of a variety of services  
7 through the private sector; however, we believe  
8 that the basic activities involved in the  
9 operation of a prison or jail which involves the  
10 deprivation of the liberty of another citizen  
11 are essential government functions and should  
12 not be contracted out to private enterprise.

13 Aside from our fundamental opposition to  
14 the concept of private prisons, some specific  
15 provisions of the bill are troublesome.

16 Section 305 establishes a maximum  
17 population for private prisons. With the  
18 increasing rate of incarceration, the question  
19 would arise, What do you do with the overflow?

20 Section 307(b) provides in the event of  
21 a strike, the Department of Corrections would  
22 take over the operation of the jail. Currently,  
23 the Pennsylvania Department of Corrections is  
24 struggling to adequately staff their own  
25 institutions.

1           Where would the staff come from to run  
2 this county jail? And would the private vendor  
3 be responsible to pay the cost of a staff at  
4 their facility and the overtime cost to the  
5 department to fill in for the staff that would  
6 be set?

7           And then the final question is, What is  
8 the county's responsibility? It would appear  
9 that once a decision is made to privatize, the  
10 county has no further responsibility. Section  
11 308(b) provides that in an emergency the  
12 department has the authority to take control of  
13 the private facility.

14           The first question one would ask is, Why  
15 isn't the private sector required to be  
16 qualified to handle their own emergencies? In  
17 addition, the same questions that I raised  
18 earlier with regard to costs apply here as well.

19           Finally, the American Bar Association  
20 said -- and I quote -- We should further be wary  
21 that private corrections corporations may  
22 initiate advertising campaigns to make the  
23 public even more fearful of crime than it  
24 already is in order to fill the prisons and  
25 jails.



1           Mr. Chairman, the incarceration of our  
2 citizens and the operation of our jails and  
3 prisons should remain with the government. And  
4 we should not allow profit into the criminal  
5 justice process so that crime doesn't pay for  
6 anyone.

7           Thank you for the opportunity to present  
8 our views to you, and I'll be happy to answer any  
9 of your questions.

10           CHAIRMAN BIRMELIN: Thank you, Mr. Fox.  
11 Representative Masland.

12           REPRESENTATIVE MASLAND: Just one  
13 comment as an attorney. The American Bar  
14 Association may be afraid that private  
15 correction corporations would initiate  
16 advertising campaigns to make the public more  
17 fearful.

18           And I'd say that the public is afraid  
19 now. The ABA really believes that these  
20 corporations can get out there doing that, well  
21 that's the ABA. And I would respectfully  
22 disagree with that. Other than that, I have no  
23 questions.

24           MR. FOX: Representative Masland, the  
25 point I was trying to make --

1                   REPRESENTATIVE MASLAND: I'm not  
2                   disagreeing --

3                   MR. FOX: I understand.

4                   REPRESENTATIVE MASLAND: I'm attacking  
5                   the ABA.

6                   MR. FOX: And I'm not defending the ABA.  
7                   But the point -- and I think you understand my  
8                   point; and that is the point made by earlier  
9                   presenters. And that is, they're a private,  
10                  profit-making company. The plan is to make a  
11                  profit. And the way they make a profit is to  
12                  keep their cells filled.

13                  CHAIRMAN BIRMELIN: Representative  
14                  Boscola.

15                  REPRESENTATIVE BOSCOLA: No questions.

16                  CHAIRMAN BIRMELIN: Representative  
17                  Maitland.

18                  REPRESENTATIVE MAITLAND: No questions,  
19                  thank you.

20                  CHAIRMAN BIRMELIN: Mr. Fox, I would  
21                  take a little bit different tack than  
22                  Mr. Masland took when we talk about initiating  
23                  advertising campaigns promoting the filling of  
24                  prisons and things of that sort and then couple  
25                  that with the testimony of the prior speaker

1           that somehow politicians would then turn that  
2           into an opportunity to get campaign  
3           contributions.

4                       I'm somewhat offended by those remarks,  
5           and I think that's not really a legitimate part  
6           of this discussion to suggest that we're going  
7           to promote the filling of prisons to make  
8           ourselves look good in the process or to enhance  
9           our ability to stay in office.

10                      I'm not pointing at you specifically,  
11           but I think that kind of rhetoric sometimes is  
12           counter-productive. And I would hope that  
13           that's not the main reason why you oppose  
14           privatization because of these types of what I  
15           would consider to be unfounded fears.

16                      I just get a little concerned when I  
17           hear people say that we're in this for ourselves  
18           and that we're promoting the filling up of  
19           prisons because it's somehow or other going to  
20           benefit us.

21                      MR. FOX: Mr. Chairman, if I can, I'm  
22           not sure if you misread my comments. I do not  
23           believe that our legislators would be enacting  
24           or supporting the concept of private prisons to  
25           hopefully secure campaign contributions. I

1 don't believe that at all.

2 CHAIRMAN BIRMELIN: Your predecessor  
3 did. The gentleman who spoke --

4 MR. FOX: I'm not adopting that. My  
5 comments are pointed very directly at the  
6 for-profit corporations and not to you, sir, or  
7 any other member of the legislature. And I am  
8 not endorsing the comment that you would endorse  
9 privatization simply to get contributions. I do  
10 not endorse that.

11 CHAIRMAN BIRMELIN: No, you didn't make  
12 that comment; your predecessor did. I was  
13 careful to point that out. But your statement  
14 to the effect that the American Bar Association,  
15 you know, said that we need to be aware that the  
16 corrections corporations would have advertising  
17 campaigns in order to fill the prisons, it's a  
18 different -- and you didn't say it.

19 And as Mr. Masland points out, the  
20 American Bar Association says it; but you're  
21 using it in your testimony to make a point. And  
22 I think those statements are way off base. And  
23 I think we have to be careful not to include  
24 them in our argument for or against something  
25 just because somebody else has said that

1 something may happen.

2 It's just a note of caution.

3 MR. FOX: Your point is well taken.

4 CHAIRMAN BIRMELIN: Representative  
5 Masland.

6 REPRESENTATIVE MASLAND: Mr. Chairman,  
7 it just dawned on me that the ABA's concern  
8 about this increased advertising by private  
9 corporations is you'll have more competition for  
10 limited time on the air waves. And so the  
11 attorneys might not be able to get some of the  
12 peak hours for some of their very cogent  
13 advertisements. And the July 4th/Memorial Day  
14 weekend is important times of the year.

15 CHAIRMAN BIRMELIN: Enough said about  
16 attorneys today.

17 MR. FOX: Yeah, I just have to remember  
18 not to comment about anything regarding  
19 attorneys.

20 CHAIRMAN BIRMELIN: When you're before a  
21 Committee that's made up largely of attorneys --

22 MR. FOX: I understand that.

23 CHAIRMAN BIRMELIN: Although I do not  
24 number myself among them. Thank you very much.

25 MR. FOX: Thank you.

1                   CHAIRMAN BIRMELIN: Our last presenter  
2 of the day is Mr. Joseph T. Fenton, President of  
3 Fenton Security, Incorporated. While he's  
4 coming up to prepare to give his testimony, let  
5 me inform you that tomorrow morning the  
6 Committee will be hearing from three more  
7 witnesses. And you may be interested in hearing  
8 from them.

9                   I know that the first several that we've  
10 had today already have basically been opposed to  
11 privatization. Mr. Fenton, who you'll be  
12 hearing from now, is in favor of it as will be  
13 at least some of the people who will be speaking  
14 tomorrow morning.

15                   We will be hearing from Mr. Morris, the  
16 Secretary of the Department of Treasury; Mr.  
17 Charles of the Commonwealth Foundation; and  
18 Robert Spreckerts, who is the Vice President of  
19 the Wackenhut Corporation, which also is into  
20 private prisons.

21                   If it seems like to the Committee the  
22 presenters at this point have been leaning  
23 against, you will think by tomorrow noon that we  
24 were leaning for. So I apologize that it  
25 didn't work out the way we wanted it to, but

1           because there were scheduling conflicts on the  
2           part of some of the members, we've had to do it  
3           some way.

4                       We've heard from those who are for.

5                       MR. FENTON: Thank you, Mr. Chairman.  
6           Good afternoon, Chairman, distinguished Members  
7           of the Subcommittee, ladies and gentlemen. I'd  
8           like to thank you for inviting me here today to  
9           share my views on House Bill 246.

10                      My name is Joseph Fenton. I'm president  
11           and chief executive officer of Fenton Security,  
12           Incorporated. Founded in 1928 as a Pennsylvania  
13           corporation, Fenton Security, Incorporated, was  
14           one of the first companies in the nation to  
15           privately operate a prison.

16                      Today, Fenton Security owns and operates  
17           community corrections centers in Pennsylvania  
18           under contract of the Federal Bureau of Prisons,  
19           provides halfway house services for the  
20           Department of Corrections, and alternative  
21           housing for nonviolent offenders for county  
22           government.

23                      I might add at this point the services  
24           that we provide in the Pittsburgh area mirror  
25           very closely the services that are enumerated in

1 House Bill 246. And we have vast experience in  
2 providing these kind of services over the past  
3 eight years for various jurisdictions in western  
4 Pennsylvania.

5 In Colorado, we have successfully forged  
6 public/private partnerships with county  
7 government for the professional management of  
8 county jails. The number of prisoners in state  
9 and federal institutions has now more than  
10 tripled since 1980.

11 The increase in local jail population,  
12 those awaiting trial, or those with less than a  
13 year's sentence has been 165 percent over the  
14 same period while the U.S. population has  
15 increased just 15 percent.

16 In a time of budgetary constraints,  
17 burgeoning prison populations, and public  
18 concerns for safety, many counties and states  
19 must now examine alternatives to our present  
20 correctional system.

21 The growth of the private corrections  
22 industry has brought 90 of the approximately  
23 1500 state and federal prisons and 12 local  
24 jails under contracted jail management. An  
25 additional 18,000 beds are planned, and 21 new



1 facilities are expected to open under private  
2 management within the next 18 months.

3 The success of professional management  
4 in providing security for the public in average  
5 operational savings of 10 percent -- and  
6 construction savings are even more -- are  
7 certain to generate continued growth in the  
8 industry.

9 Fenton Security, Incorporated, strongly  
10 supports the responsible regulation of private  
11 correctional facilities. Our operations have  
12 proven the consistent records of meeting or  
13 exceeding the most stringent requirements of the  
14 Federal Bureau of Prisons, The American  
15 Correctional Associates Standards, and the  
16 Department of Correction's own regulations.

17 We believe that professional, private  
18 management must not only offer safety to the  
19 community and cost efficiency but also superior  
20 services based upon original concepts and  
21 methodologies.

22 The opportunity exists for private  
23 management in cooperation of partnership with  
24 the public sector to develop long-term solutions  
25 to the challenges facing the criminal justice

1 system.

2           There are a number of issues which must  
3 be considered with respect to regulating the  
4 emergency professional correctionals industry.  
5 Regulatory provisions for private operators  
6 which ensure high standards of operation,  
7 accountability, and fiscal responsibility will  
8 enhance the Commonwealth's criminal justice  
9 function.

10           Regulations that inhibit the  
11 professional operator's ability to efficiently  
12 and effectively administer will benefit no one.  
13 With respect to Section 102, Item 3 of House  
14 Bill 246, which addresses security levels for  
15 privatization, I would comment that the  
16 provision of correctional services is a function  
17 that is provided by people as opposed to  
18 organizations.

19           The private firms, including ours, which  
20 are most capable of significant contributions  
21 have and will continue to bring appropriate  
22 staff, key administrators, and personnel to each  
23 project.

24           Effective operation of minimum-,  
25 medium-, or maximum-security institutions by

1 highly-qualified, experienced administrators is  
2 therefore equally possible by either the private  
3 or public sector.

4 The number and types of beds managed by  
5 key members of the respective firms during their  
6 careers and the benefits to be derived from  
7 privatization of a particular institution  
8 should then guide the determination.

9 The limitation of minimum-security  
10 correctional facilities may preclude involvement  
11 of the private sector from operation of full  
12 service jails thereby denying county government  
13 the ability to provide for an increasing inmate  
14 population at a reasonable cost to taxpayers.

15 An additional and critical function of  
16 the privately-operated correctional facilities  
17 is to offer custody to those jurisdictions  
18 incapable of providing it due to overcrowding.

19 The provision of services to a  
20 number of jurisdictions and maintaining full  
21 occupancy of facilities not only ensures the  
22 economic viability of the institution but also  
23 results in the generation of revenue and  
24 consequent overall savings to government and the  
25 taxpayers.

1                   The limitation of Section 301 to  
2                   incarceration of inmates from the Commonwealth  
3                   would eliminate the generation of revenue from  
4                   out-of-state contracts. We believe this may be  
5                   an issue warranting determination on a  
6                   case-by-case basis.

7                   Contract monitoring is an essential  
8                   element. Inspections must assure contract  
9                   compliance. House Bill 246 requires a contract  
10                  monitor at the private correctional facility.  
11                  We have two suggestions which will increase  
12                  productivity, efficiency, and morale at those  
13                  institutions.

14                  One, there should be no resident  
15                  monitor. Such a position becomes, de facto,  
16                  another warden. No facility can function well  
17                  with two wardens.

18                  Two, the monitors should be monitored.  
19                  A prime function of a monitor is to facilitate  
20                  and improve performance. A poor monitor is  
21                  destructive in direct proportion to his  
22                  inadequacy. A contractor cannot evaluate the  
23                  performance of the monitor.

24                  Our experience in operating under  
25                  contract with local, state, and federal

1 jurisdiction has shown that the compliance is  
2 best accomplished through a system of  
3 clearly-defined responsibilities, open and  
4 productive communication, and ongoing internal  
5 and external auditing.

6 House Bill 246 also addresses the  
7 important issue of maximum facility capacity.  
8 Optimal operating capacity should be determined  
9 based on function, services, and resources. For  
10 example, the traditional halfway house was a  
11 small operation housing up to 25 inmates.

12 When Fenton Security developed the  
13 concept of combining halfway house and drug and  
14 alcohol clinic into an effective urban  
15 institution, we believed it was essential to  
16 establish a facility of sufficient size to  
17 ensure a full range of educational, vocational,  
18 and rehabilitation opportunities.

19 Our programs which include a diversity  
20 of opportunities for educational, vocational,  
21 wellness, and drug and alcohol treatment would  
22 be impossible in that traditional setting.

23 Our facilities in the Pittsburgh area  
24 with a combined capacity of over 400 beds have  
25 provided the opportunity for a comprehensive

1 rehabilitation experience thereby maximizing the  
2 potential for successful integration into the  
3 community upon release.

4 We would suggest that the bill include a  
5 provision that would enable the Department of  
6 Corrections to review each licensing request and  
7 determine the rated capacity upon the relative  
8 merits of each.

9 A key element of correctional management  
10 regulation is staffing level. Cost  
11 effectiveness and private corrections come in  
12 part from efficient personnel management and  
13 manpower utilization, not cost-cutting.  
14 Bringing to bear on a task the right number of  
15 properly trained staff, doing the right job is  
16 essential.

17 Personnel expenses are the real driving  
18 force behind a total long-range institutional  
19 costs. Over the life span of a typical  
20 facility, 90 percent of its total operating  
21 expenditures will be staffing costs. We  
22 recommend the regulations not restrict the  
23 ability of the private professional operator to  
24 tailor personnel needs to actual duties, the  
25 requirements of the physical plant, and the

1 programming level.

2 We strongly believe that a competent,  
3 highly-qualified, and trained staff in  
4 sufficient numbers to perform the complex work  
5 of the institution has been our company's  
6 strength.

7 We also hold that an abstract staffing  
8 model devoid of correlation to function,  
9 facility design, and program requirements does  
10 not promote efficiency and morale. We suggest  
11 that the staffing levels be evaluated by the  
12 department in these terms.

13 The correctional institution's  
14 effectiveness and safety depend upon high levels  
15 of staff morale. The private market approach to  
16 staffing and the unique demands of the  
17 corrections industry require opportunities for  
18 personal growth and good wages and treatment of  
19 staff.

20 The private, professional operator  
21 simply cannot afford incompetence and high  
22 turnover. We therefore support the Bill's  
23 emphasis on staff training and development.  
24 The potential benefits of public/private  
25 partnering to effectively fulfill the

1 Commonwealth's responsibility for incarcerating  
2 offenders are considerable.

3 A comprehensive and responsible system  
4 for forging such partnerships to maximize the  
5 efficiency and achieve the objectives of  
6 government will be essential to progress. In  
7 the past decade, private prison operators across  
8 the nation have shown that the challenges facing  
9 the criminal justice system can be met through  
10 innovation.

11 The opportunity for improved and  
12 enhanced correctional service delivery by the  
13 private sector can best be achieved through a  
14 concerted, cooperative effort with government.

15 In closing, I would like to repeat my  
16 genuine appreciation for the opportunity to  
17 appear here. We at Fenton Security support the  
18 objectives of House Bill 246.

19 And while I have indicated a few areas  
20 of concern, it is essential that the  
21 Commonwealth provide legislation that will  
22 protect and promote the highest degree of  
23 integrity, efficiency, and cost-effectiveness in  
24 our correctional system.

25 The public/private partnership



1 encompassed in this bill can and will accomplish  
2 that mutual goal. Again, it has been my  
3 privilege to appear before this Committee; and I  
4 would be happy to respond to any questions you  
5 might have.

6 CHAIRMAN BIRMELIN: Thank you,  
7 Mr. Fenton. Representative Maitland.

8 REPRESENTATIVE MAITLAND: No questions,  
9 Mr. Chairman.

10 CHAIRMAN BIRMELIN: Representative  
11 Boscola.

12 REPRESENTATIVE BOSCOLA: No questions.

13 CHAIRMAN BIRMELIN: Representative  
14 Masland.

15 REPRESENTATIVE MASLAND: Thank you, Mr.  
16 Chairman. Just a couple things. Mr. Fenton,  
17 you talked about how a private entity cannot  
18 afford a high rate of turnover.

19 MR. FENTON: Yes, sir.

20 REPRESENTATIVE MASLAND: The previous  
21 speaker, Mr. Fox, talked about -- and I forget  
22 the specific institution or private  
23 institution -- but talked about the turnover  
24 rate of 50 to 90 percent in the first year.

25 I may be off a little bit on my notes,

1 but that seemed to be pretty high. What is your  
2 experience in turnover rate at your facility?  
3 Do you have an average? Does it depend on the  
4 type of facility?

5 MR. FENTON: I could not respond to a  
6 specific average. We have a number of different  
7 facilities, and each have unique problems that  
8 we have to face every day with personnel issues.

9 What our corporation concentrates on is  
10 the provision of high staff morale, of  
11 maintaining staff morale to a point where high  
12 turnover is not an issue in our organization.  
13 We have professionally-trained staff that we  
14 provide comprehensive career development  
15 programs for, and staff turnover has not been a  
16 problem within our organization.

17 REPRESENTATIVE MASLAND: I'd be  
18 interested as a follow-up if you could get us  
19 some type of statistics to show what type of  
20 turnover you do have at some of your various  
21 facilities to see how it has worked in practice.  
22 I accept your answer --

23 MR. FENTON: I might address -- I  
24 believe Mr. Fox stated that the turnover  
25 was -- that he alluded to was within the first

1 year of operations. Generally within the first  
2 year of a new operation you are training staff  
3 that has never worked in an institution before.

4 And that's the same with the  
5 Commonwealth. Whether they open a new  
6 institution, they generally hire people that are  
7 from the local area who may have never worked in  
8 an institution before that are trained new to  
9 the institution.

10 And, frankly, corrections is hard work;  
11 and it is not for everybody. And I am not  
12 surprised that there is turnover in the first  
13 year of operation. Until you establish a base  
14 of operation, a base of employment, there is  
15 going to be turnover.

16 And I would suspect that that's the case  
17 within the Department of Corrections as well as  
18 in private industry.

19 REPRESENTATIVE MASLAND: Just a couple  
20 other questions and comments. You expressed  
21 some concern on page 2 of your testimony about  
22 regulations, the fact that on the one hand we'll  
23 need regulations here; but on the other hand  
24 you're concerned about too much regulation.

25 My thought on this as I read your

1 testimony is that if there's ever an area where  
2 there could be too much regulation from your  
3 perspective, it's this one.

4 If people thought that the public was  
5 concerned about the environment and DER was  
6 going too far with things like that; but when  
7 you have a situation where it's not just the air  
8 or the water that you can't always see or taste  
9 that could be affected but it's actual prisoners  
10 that have committed crimes that the public knows  
11 about, they may demand regulation which could  
12 well be too onerous for private enterprise.

13 MR. FENTON: No, sir. We support and  
14 welcome regulation. That is not our concern.  
15 We operate on the regulations of the  
16 Pennsylvania Department of Corrections in our  
17 western Pennsylvania operations under the  
18 regulations of the Department of Corrections and  
19 the regulations of Federal Bureau of Prisons,  
20 under the regulations of the American  
21 Correctional Association.

22 Regulations don't bother us. It is the  
23 over-regulation that inhibits the ability to  
24 meet the goals that have been established by the  
25 contracting agency.

1           REPRESENTATIVE MASLAND: One of those  
2 over-regulations sort of, although, it's in the  
3 legislation itself dealing with limitation on  
4 out of state prisoners, I think that raises a  
5 legitimate concern.

6           And if you think the public is concerned  
7 about out-of-state trash coming into  
8 Pennsylvania, I think it's safe to say you ain't  
9 seen nothing yet until they're concerned about  
10 out-of-state criminals.

11           MR. FENTON: I don't suspect at this  
12 point that Pennsylvania's in any danger of not  
13 being able to fill any new beds that come on  
14 line.

15           My statement as to out-of-state  
16 residents is that operations work best and most  
17 efficiently when they are full and when they  
18 have -- as our western Pennsylvania operations,  
19 when we have a number of different jurisdictions  
20 that we deal with, a downturn in client base  
21 from jurisdiction doesn't tear down the whole  
22 organization.

23           We can still continue to operate the  
24 more jurisdictions that we have within our  
25 facility and the more full that we can keep our

1 facility and keep the cost down for everybody.

2 REPRESENTATIVE MASLAND: Okay. Just as  
3 you were talking, I'm starting to think of all  
4 this (inaudible) brave new world. And I think I  
5 have to go back and read what all types of  
6 setups they have there, what kind of pills that  
7 they would give people to enable them to keep  
8 control over them people.

9 I'd hate to see us really have a problem  
10 with an industry that is performing a  
11 governmental function that could get out of  
12 control to the extent that we have x, y, z  
13 industry over here and a, b, c over there and  
14 Acme rental prisons --

15 MR. FENTON: Frankly, I think the more  
16 operators that are involved in the  
17 industry -- competition is not a bad thing.  
18 Competition keeps private operators operating;  
19 one, efficiently; two, within the standards.  
20 And I don't think that -- the competition within  
21 the industry is not a bad thing. It is a good  
22 thing.

23 REPRESENTATIVE MASLAND: Well,  
24 competition isn't bad in fast food; but  
25 competition in prison is a little bit different.

1           You know, I don't mind having McDonald's and  
2           Burger King's customers scald themselves with  
3           coffee and get a \$3-million award. But if it's  
4           a prison, it's a bit different.

5                   MR. FENTON: And House Bill 246  
6           addresses that through the licensing provision.  
7           And the Commonwealth will determine where these  
8           programs are going.

9                   REPRESENTATIVE MASLAND: Okay. Thank  
10          you very much, Mr. Chairman.

11                   CHAIRMAN BIRMELIN: Mr. Fenton, I just  
12          wanted to bring one thing to your attention and  
13          ask you whether or not you were here for the  
14          testimony of Mr. Frankel?

15                   MR. FENTON: No, sir, I was not.

16                   CHAIRMAN BIRMELIN: I'd recommend that  
17          you read page 4. You are mentioned in there  
18          specifically about an activity you were involved  
19          with in Buckingham Security.

20                   And some issues were raised as a result  
21          of his testimony. And while you haven't had the  
22          opportunity to read it, I wouldn't ask you the  
23          questions. That would be unfair of me to do so.

24                   But I would encourage you to get a copy  
25          of that. And if you would like to respond to

1           that in writing, I would appreciate knowing what  
2           your position is.

3                       MR. FENTON: I'll certainly do that,  
4           sir.

5                       CHAIRMAN BIRMELIN: And I think you  
6           should respond to Mr. Frankel as well.

7                       MR. FENTON: Okay.

8                       CHAIRMAN BIRMELIN: I want to thank you  
9           all who were here for the hearing this  
10          afternoon. I appreciate your coming. We will  
11          have the remainder of our witnesses tomorrow  
12          morning at 9:30 a.m. in this room. And we hope  
13          you're able to make that hearing. For now, this  
14          Committee is in recess until 9:30 tomorrow  
15          morning.

16                      (AT OR ABOUT 3:14 P.M., THE HEARING WAS  
17          adjourned.)

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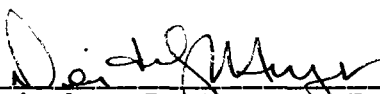


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I, Deirdre J. Meyer, Reporter, Notary Public, duly commissioned and qualified in and for the County of Lancaster, certify that the foregoing is a true and accurate transcript to the best of my ability of my stenotype notes taken by me and subsequently reduced to computer printout under my supervision and that this copy is a correct record of the same.

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