

**House Bill 246  
Private Correctional Facilities**

**Pennsylvania Prison Warden's Association  
House Judiciary Committee Testimony  
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**Presented by**

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Good afternoon.

I am Vincent A. Guarini, Warden of Lancaster County and I am appearing before the Judiciary Committee today, at the request, and on behalf of the Pennsylvania Prison Warden's Association. My testimony, today, will be in reference to the concept of private prisons, privatizing corrections generally, and with specific comment on HB 246. Our organization is composed of individuals currently, or formerly, associated with corrections, in various administrative capacities, including, but not limited to, Wardens of Federal, State and County Prisons, throughout the Commonwealth of Pennsylvania.

Today, within the borders of our state, there are approximately 18,000, prisoners in our local jails and prisons, another 26,000 in our state correctional institutions and several thousand more in federal facilities. These individuals have been incarcerated either awaiting court action, or serving sentences of less than five years in the county facilities with those in the state having received sentences which exceed the statutory limits of a two year minimum, or five year maximum. Conservatively speaking, approximately fifty percent of the prisoner populations in our county prisons are individuals awaiting trial, but incarcerated in lieu of bail. The remainder of the offender population, inclusive of state and county, therefore represents an incarcerated convicted and sentenced population of 35,000 criminal offenders. These inmates are serving sentences imposed as sanctions for behavior that society has criminalized and for which an individual needs to be separated from the community, for the protection of its' citizenry. It is a population which consists of individuals who have been affected by the system and truly have been "rehabilitated" or possess the sincere desire to change and are well on their way to becoming productive contributors of society. Unfortunately, it is also a population which consists of those who continue their very existence as parasites of society preying upon others, whether this be in an open community, or the present penal community in which they now live. It is the latter we think of, when we use the term jail or prison, while it is the former we refer to, when we speak of correctional goals. The issue, under scrutiny of the committee today, needs to have these target group or groups clearly identified for purposes of debate and/or incorporated into the discussion.

The Pennsylvania Prison Warden's Association position on the concept of "private prisons" as a complete turnkey operation has not yet been fully resolved. It is the intent of our "legislative committee", on which I serve as co-chair, that this topic be brought before the full membership of our organization for a determination at our business meeting next week, May 4th. However, I am here today, acting with the sanction of our association's president and the legislative committee with the knowledge that our consensus is that the organization is not in support of turnkey operations for private prisons, and that our recommendation to our membership is not to support House Bill 246 in its' current form. This is not to say that private enterprise has no role in corrections, but it does underscore the need to be extremely careful on what we are talking about in this debate. Privatization does not mean turning your problems over to the private sector to resolve.

The tremendous growth in our correctional institutions is the result of many factors, which need not be addressed in today's discussion and many of which are well known to this august body. It is a growth industry, and the job of correctional officer is ranked in the top 15 growth occupations. It is a field in which it was not uncommon, in the earlier part of this century, to find the private sector actively involved, but due to the exploitation of the prisoners and increased societal recognition of human rights, the public sector resumed its role as protector of its communities with private enterprises falling into disfavor. Today, corrections is a multi-billion dollar arena, into which private entrepreneurs are desirous of entering and which is appearing as an attractive option to reduce costs of government. But the question is, "will it reduce the spiraling costs of incarceration?" What often looks tempting on first blush, may not be so, when fully examined. According to American And City Government Magazine "despite the push to privatization, there has, as yet, been no significant savings to local governments". This well written commentary expounds further on the true utilization of private facilities, the nature of variable costs, construction costs recovery periods, as well as the fiscal responsibility of unusual but frequent individual offender costs such as medical services, psychiatric care, etc. The hidden costs that most private enterprise would be reluctant to accept, and which put their "profit" margins at serious risk! Whether it is a good risk, or not, perhaps rests in the art of contract negotiations, but it does bring to the forefront that private corrections operates for "profit". Quoting from the aforementioned article, "Correctional Corporation of America...has seen its stock triple since the end of 1995 and its profit rise 85 percent. Its closest competitor in the market, Wackenhut Corrections Corporation has enjoyed similar success." I would add that some of this fiscal success and profit to the Wackenhut Corporation, a Florida enterprise, might even be attributable to their recent venture into this Commonwealth, and unprecedented takeover of the Delaware County Prison, in Thornton, Pennsylvania.

There are other areas that need to be considered and which also look attractive on first blush, but may hold hidden pitfalls, such as the belief you can contract away liability while, the truth is, you may increase your liability by the methodology used in choosing a private contractor and being found negligent in making that selection, for whatever reason.

Other intriguing questions also remain unanswered, but could generate enormous fiscal impact, such as constitutional rights, would they apply? Would a private enterprise be subject to due process? What would be the legal concerns on use of force issue, inclusive of deadly force?

Does privatization have a role to play in corrections? Our association has been on record that "yes" it does. We have endorsed in the past private contracting for those elements of corrections that are not unique to, nor inherent in the very core of a penal facility. Private enterprise has provided fiscally responsible alternatives for such activities as food services, medical services, maintenance services, data processing and transport. However, these segments are not core functions, that "incarceration of and incapacitation of the criminal offender is", nor is there recognition of the enormous risk

that failure of the custodial responsibility would present to the community. Can profit really be balanced with public safety ? At what level does safety get compromised to, in order to maintain or increase profitability?

Can we safely allow the private sector to enter the arena of corrections? The answer I propose is currently a conditional incomplete one, but possible, yes, subject to limitations which have been addressed by the County Commissioners Association of Pennsylvania, that any attempt to establish privately owned or operated prisons in the Commonwealth be subject to preestablished strict and comprehensive regulations promulgated by and enforced by the Pennsylvania Department of Corrections and which is pursuant to legislation that recognizes the legitimate concerns of the host counties into which the private enterprise is desirous of operating, while also recognizing the public risk and responsibility issues by restricting the composition of private prisoners to non-violent minimum security criminal offenders and prohibiting such facilities for the incarceration of long terms federal prisoners, and also out of state prisoners of any type.

While the language of HB 246 does cover some of our concerns, set forth above, it does not address all of our concerns, that we share with the County Commissioners Association of Pennsylvania, as has already been related. We are of the opinion that HB 246 while it includes the prohibition on incarceration of inmates "from states other than this commonwealth" does not clearly establish a prohibition on Federal Bureau of Prisons inmates, nor other holding agencies, such as the United States Marshall Service, and the Immigration and Naturalization Service.

Additionally, HB246 attempts to address the question of liability risks associated with a correctional operation ,which as previously mentioned, can not be totally contracted away, but this attempt falls short. The term applied is "adequate" performance bond, "adequate" insurance. What is "adequate" ?

Our concern that any private prison be subject to strict and comprehensive regulation of the Pennsylvania Department of Corrections also is only partially addressed, and is far from comprehensively setting forth, in any detail, what those regulations will be and, in fact, only makes reference that there shall be regulations. The act requires the development of a plan of all aspects of the private correctional facility, or provision of security services, be included in any contract for such services, but does not elaborate or suggest what is to be included, nor does it provide for such a plan being subject to preapproval by any authority, such as the Department of Corrections.

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

The requirement that a private correctional facility may not exceed a capacity of 250 inmates, makes it a fairly good size facility, yet it is also needs to be recognized that utilization of a definite, established number for a maximum capacity, may be more

wisely left to the Department of Corrections in their regulations, rather than the more unalterable and inflexible language of a statute.

The definition of a low-risk offender is also left unspecified, and should be addressed, if this legislation is to proceed. There are, or could be delineated, the specific offenses which are not to be considered low-risk, under any system of classification, or length of incarceration.

The act also refers to security personnel being deemed "peace officers", as are county correctional officers, presently. Yet, the bill also provides for steps to be taken in the event of a strike. This aspect of privatization is perhaps the most vexing, in that we currently enjoy a degree of security in our job force, by the provisos of Act 195 prohibiting the correctional officers to strike. Can we have both "peace officers" and a job action (strike) under this legislation. What of other unions, who would honor a strike action and not cross picket lines to provide consumable goods, such as truckers unions; as well as other correctional employee unions in the event of a state takeover. Would AFSCME State Department of Corrections employees cross the private corporation picket lines?

In the event of a state takeover, due to an emergency, when using "Commonwealth emergency resources necessary to operate the facility"..."costs ....shall be reimbursed by the private contractor". With this we return to the question of "adequate" insurance. What of a bankruptcy, or other fiscal shelters available to the private sector that would negate any "reimbursement of costs" to the state, the Department of Corrections or the local county ! We feel this needs to be addressed upfront.

While the Act recognizes the authority of the Department of Corrections, to enter and control any private correctional facility, or a facility using private security services, it does not delineate what constitutes an "emergency", nor does it specify who, or what authority makes the determination that an emergency exists. Who makes the call ?

The Act also provides for corrective action by a contractor for the correction of deficiencies, cited in the inspection reports, but refers only to "a reasonable period of time" for correction of such deficiencies. Our opinion is, that this should be specifically address with set time frames, which the Department should promulgate, in advance and which may be categorized into subgroups, that would allow for one or more time extensions for compliance. Our difficulty here is, "what is reasonable" ?

Under the regulations that are to be promulgated within six months of the effective date of this act, it appears that there is some overlap of what is required for those institutions that contract for just the security forces component. The Department of corrections is being required to set minimum standards for jails that already exist, and some of which have already been referred to as being the responsibility of the "monitors". The aspect of training, although addressed, does not specify what that "training" shall consist of, or who approves the "training curriculum" or "certification process".

The license of a contractor can be revoked for "moral turpitude", yet is left undefined. Additionally, the license can be lifted for "the violation of the civil rights of an individual inmate", but it remains unanswered as to who determines that a violation occurred. Is it the Department of Corrections ? Is it the Courts ? What constitutes "a violation"? Is there any provisos for non corporate policy ? Is the corporation responsible for the actions of its' employees ?

In closing, it is our opinion that the private sector has a role to play in corrections and that is one of a support function, but not as a core function. Support functions are those areas which assist the agency, or facility, in the performance of its' main function of detention, but are not, in and of themselves, unique to that function. Private enterprise has a checkered history, in this Commonwealth, and has not been a panacea for corrections across this state, nor this country.

In discussion, we should not ask ourselves "can the private sector perform traditionally public service work in a more efficient and effective manner ?", but rather we should ask, "why can't the public sector perform in a manner equal to or exceeding the private sector ?" By asking this question, in some cases we may be find that the playing fields need to be leveled so all the players enjoy the same advantage. We may, or may not be, faced with some resolutions that would allow for more cost efficient operation of the public sector, as a whole, and not just segmental comparisons to the efficacy of private enterprise.

Please, go slowly and cautiously in this field, with the utmost regard for the enormity of potential consequences, even to the extent of establishing a task force for further study of this issue.

Thank you for this opportunity to be heard.