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## **PRIVATE YOUTH CORRECTIONAL FACILITY**

**Senate Bill 1218 (Substitute H-1)**  
**Sponsor: Sen. R. Robert Geake**

**Senate Bill 1219 as passed by the Senate**  
**Sponsor: Sen. Bill Schuette**

**Senate Bill 1220 (Substitute H-1)**  
**Sponsor: Sen. Michael J. Bouchard**

**Senate Bill 1221 (Substitute H-1)**  
**Sponsor: Sen. Loren Bennett**

**Senate Bill 1222 (Substitute H-1)**  
**Sponsor: Sen. Jon A. Cisky**

**Senate Bill 1223 as passed by the Senate**  
**Sponsor: Sen. Mike Rogers**

**Senate Bill 1224 as passed by the Senate**  
**Sponsor: Sen. Michael J. Bouchard**

**First Analysis (12-9-98)**

**House Committee: Appropriations**  
**Senate Committee: Families, Mental Health and Human Services**

**Senate Bills 1218 - 1224 (12-9-98)**

### ***THE APPARENT PROBLEM:***

In 1996, the legislature passed a law to authorize the Department of Corrections to set up a youth correctional facility for prisoners who are 19 years old or younger. It was suggested at the time that the new facility would provide an opportunity to test the concept of privatizing a prison operation. (See *BACKGROUND INFORMATION* below.)

Since 1996, a privately owned prison for young criminals has been designed and is under construction in Lake County. The prison is owned and operated by the Wackenhut Corporation, has 480 beds, and is expected to accept prisoners beginning in July 1999.

After review by and upon recommendation of the Department of Corrections, a number of statutes must

be updated in order to allow for the private ownership and operation of a youth correctional facility.

Although the prison is privately owned and operated, the director of the Department of Corrections is responsible for ensuring that the conditions of the state's contract are fulfilled. For example, the director of the Department of Corrections must have ultimate control over certain personnel education and training matters. In addition, the private prison's employees must have the same authority as public corrections officers: They must be able to search visitors, carry concealed weapons, and pursue escapees. And finally, prisoners' rights and responsibilities in both private and public correctional facilities should be the same. Prisoners should, for

example, be able to choose medical care when their parents are not available to make the decision.

Although most of the statutory changes recommended by the Office of the Attorney General and the Department of Correction would establish identical but parallel policies for private and public facilities, two changes do not. Instead, two proposed changes to the law hold that a private facility and its employees are different from a public facility and its employees. First, some have argued that a private youth correctional facility should not have to abide by the restriction to separate child and adult criminals, when adult is defined as a person over 16, despite the fact that public institutions do so. In addition, some have argued that private sector employees should not be eligible for certain public sector employees' collectively bargained employment benefits.

For these reasons and others, proponents of a private youth correctional facility argue that legislation is needed to clarify the responsibilities of, and the relationships between, the director of the Department of Corrections, the private owner-operator of a correctional facility, and their respective employees; and also the prisoners who are confined in private correctional facilities.

### ***THE CONTENT OF THE BILLS:***

These seven bills would amend various acts so the Department of Corrections could establish and manage youth correctional facilities. Under current law, youth correctional facilities house prisoners who are 19 years old or younger. The facilities may be established and operated by the department, or the department may contract on behalf of the state with a private vendor for their construction or operation, or both.

Senate Bill 1218 would amend the Mental Health Code (MCL 330.2001b) to expand the definition of "state correctional facility" to include "a youth correctional facility operated by the Department of Corrections or a private vendor." The bill also would redefine "prisoner" to exclude a person confined pursuant to an order of a juvenile division of the probate court "or the family division of circuit court," and "a person who is on parole from a state correctional facility."

Senate Bill 1219 would amend Public Act 293 of 1968, the act that establishes the status of minors; parental rights and duties; and, that sets certain

conditions for minors' emancipation (MCL 722.4). Currently the law allows a minor to consent to his or her own preventive health care or medical care including surgery, dental care, or mental health care when he or she is a prisoner under the jurisdiction of the Department of Corrections. The bill would extend the minor's choice to elect these health care services in those instances when the minor is housed in a state correctional facility operated by the Department of Corrections or in a youth correctional facility operated by the department or a private vendor.

Senate Bill 1220 would amend the Michigan Penal Code (MCL 750.139, 750.193, 750.197c, and 750.231). Under current law, a child who is less than 16 years old while under arrest, confinement, or conviction for any crime cannot be placed in any cell or confined area, including a courtroom or vehicle, with adults who are charged or have been convicted of crimes. The bill would specify that the prohibition to separate adult prisoners from young prisoners would not apply to prisoners being transported to or from, or confined in, a youth correctional facility operated by the Department of Corrections or a private vendor.

In addition, the bill would allow a person employed by a private vendor that operates a youth correctional facility to carry a concealed weapon while in the official performance of his or her duties, or while going to or returning from those duties, if the person meets criteria set by the director of the department, and also is authorized in writing by the director to carry the weapon. Under the bill, employees of the private vendor would be required to have the same training for carrying a concealed weapon as do public corrections officers.

The bill also would expand the existing definition of "prison" to mean a "facility that houses prisoners committed to the jurisdiction of the Department of Corrections." Finally, the bill would add new definitions to the Penal Code. Under the bill "place of confinement" would "include a youth correctional facility operated by the Department of Corrections or a private vendor"; and, "employee" would include persons who are employed by the place of confinement as independent contractors." [This change in the definition of "employee" would allow a county prosecutor to charge and prosecute a prisoner with assault of a prison employee, if that employee was an independent contractor instead of a Department of Corrections employee. This definitional change is offered in response to a case of 1) criminal sexual

conduct in the second degree, and 2) assault on a prison employee, in which both charges against an Oaks prisoner were dismissed by Judge James M. Batzer of Manistee County. The judge ruled that a health care provider (such as a nurse) who was an independent contractor could not be "an employee of a Department of Corrections, and the Department had not properly delegated custodial powers" to the health care provider.]

Senate Bill 1221 would amend the Code of Criminal Procedure (MCL 764.23) to permit an employee of a private vendor that operates a youth correctional facility to pursue and arrest without a warrant an escaping prisoner, if the employee meets criteria established by the director of the Department of Corrections. The bill would require that employees in private facilities have the same training to conduct warrantless arrests as do public sector employees. The bill also redefines "state correctional facility" to also mean a youth correctional facility operated by the Department of Corrections or a private vendor.

Senate Bill 1222 would amend eight sections of the Department of Corrections act (MCL 791.201 et al), an act which includes section 20g, the section that authorizes the creation of either a state-run or private youth correctional facility that only would house prisoners who are 19 years old or younger.

The bill would update all references to the juvenile division of the probate court or to the family division of circuit court. The bill also would require probation officers or the assistant director of probation to permit the designated representative of a private vendor that operates a youth correctional facility to have access to the records, reports, and case histories pertaining to prisoners assigned to the youth correctional facility that are privileged or confidential communications not open to public inspection. Currently those records are open only to the attorney general, the auditor general, and law enforcement agencies.

Senate Bill 1222 also would add the new definition of state correctional facility to the section of the act that governs indeterminate sentencing and disciplinary time for those confined in state correctional facilities. Under the bill and in this section, "'state correctional facility' means a facility that houses prisoners committed to the jurisdiction of the department, and includes a youth correctional facility operated under section 20g by the department or a private vendor."

Under current law, wardens of correctional facilities in this state must be appointed by the director of corrections and be within the state civil service; and, the members of the staff and employees of each correctional facility must be appointed by the warden, subject to approval by the department director. Senate Bill 1222 would exempt privately run youth correctional facilities from this requirement. Specifically, the bill would say that "as used in this section, 'correctional facility' does not include a youth correctional facility authorized under section 20g if that facility is operated by a private vendor."

Under current law, prison employees who are injured in a prison assault receive, during their recovery, their full benefits and their full wages, or an amount that equals their full wages that is determined by adding together their workers' compensation and a supplement paid by the department. Senate Bill 1222 would extend this wage and benefit protection to a person employed by the Department of Corrections (such as an outside contract monitor, or a hearing officer) in a youth correctional facility. However, the wage and benefit protection would not apply to any person employed by a private vendor that operates a youth correctional facility. The bill also would redefine "correctional facility" to mean a facility that houses prisoners committed to the jurisdiction of the department, including a community corrections center.

The bill would allow an employee of a private vendor that operates a youth correctional facility to supervise a prisoner subject to disciplinary time who is away from the correctional facility to visit a critically ill relative, attend a relative's funeral, obtain medical services, or participate in a work detail.

Senate Bill 1222 would add the new definition of state correctional facility to the section of the act that governs pat down searches of visitors to state correctional facilities. Specifically, under the bill "'state correctional facility' includes a youth correctional facility operated under section 20g by the department or a private vendor."

Finally, Senate Bill 1222 would add the new definition of state correctional facility that contains reference to a youth correctional facility to the section of the act that governs how employees may monitor telephone communications over telephones available for use by prisoners in correctional facilities. The bill also would extend the right to monitor phone calls to employees of private vendors who operate a youth correctional facility.

Senate Bill 1223 would amend the Prison Code (MCL 800.41) to extend the authority to enforce discipline in prisons to the officers or guards of a correctional facility. The bill would define "correctional facility" to mean a facility that houses prisoners committed to the jurisdiction of the department of corrections, and includes a youth correctional facility operated by the Department of Corrections or a private vendor.

Senate Bill 1224 would amend Public Act 17 of 1909, an act that prohibits access by prisoners and employees of correctional facilities to certain weapons, and to alcoholic liquor, drugs, medicines, poisons, and controlled substances (MCL 800.281a). The bill would extend this prohibition to "a youth correctional facility operated by the department or a private vendor," and to a privately operated community corrections center or resident home which houses prisoners "committed to the jurisdiction of the department." The bill also would define "department" to mean Department of Corrections, and redefine "chief administrator" to mean the warden, superintendent, or other employee "approved or" designated by the Department of Corrections. Finally, the bill would redefine "prisoner" to mean a person committed to the "jurisdiction of the department," instead of a person committed to the Michigan Commission on Corrections.

### ***HOUSE COMMITTEE ACTION:***

The House Appropriations Committee adopted substitutes for Senate Bills 1218, 1220, 1221 and 1222.

Senate Bill 1218 was substituted in order to remove an amendment to MCL 330.2003b which would have specified that the officer in charge of a private youth correction facility could not allow a prisoner to be voluntarily transferred to the corrections mental health program from that private facility, unless the transfer was given prior written approval by the director of the Department of Corrections.

Senate Bill 1222 was substituted in order to 1) limit private correctional facility employees' access to records that are not open to the public, such that only those records pertaining to the youth correctional offenders housed in the private facility would be accessible; and 2) removed references to out-dated effective dates for disciplinary time sentencing, given

the recently passed truth-in-sentencing legislation, Public Act 315 of 1998.

The Senate-passed version of Senate Bill 1220 was substituted to require that the employees in a private youth correctional facility have the same training with regard to carrying concealed weapons as do public sector corrections officers. [A spokesperson for the Department of Corrections testified that MDOC will provide the training criteria; however, the private employer will be responsible to conduct the actual training.]

The Senate-passed version of Senate Bill 1221 was substituted to require that employees in a private youth correctional facility have the same training with regard to the warrantless arrest of escaped prisoners as do public sector corrections officers. [A spokesperson for the Department of Corrections testified that MDOC will provide the training criteria; however, the private employer will be responsible to conduct the actual training.]

### ***BACKGROUND INFORMATION:***

Public Act 164 of 1996 amended the Department of Corrections Act to authorize the department to establish a youth correctional facility to house prisoners committed to the DOC's jurisdiction who are 19 years of age or less and are convicted as adults for offenses committed as juveniles.

- Certified Correctional Officers and Security. Under Public Act 164 of 1996, the department could either establish and operate the youth correctional facility or could contract on behalf of the state with a private vendor for the construction and/or operation of the facility. If the department contracts with a private vendor for the facility's operation, the contract requires that the personnel employed by the vendor to operate the facility be certified as correctional officers to the same extent as is required if the personnel are employed in a facility operated by the DOC. The contract with the vendor also compels the vendor to meet requirements specified by the DOC regarding security, protection of the public, DOC inspections, programming, liability and insurance, conditions of confinement, educational services (as specified in the bill), and any other issues the DOC considered necessary for the facility's operation.

- Educational Programs for Prisoners. The law requires that regardless of whether the department or a private vendor ends up operating the facility,

juvenile prisoners who had not earned a high school diploma or a general education certificate (GED) must be provided the following educational services: a) if the prisoner has not attained a level of academic achievement sufficient to allow him or her to participate effectively in a program leading to the receipt of a GED certificate, the facility must provide classes that prepare the prisoner to participate effectively in the GED program; b) if the prisoner has completed the classes described above, or has reached a level of academic achievement sufficient to allow him or her to participate in classes leading to a GED certificate, the facility must provide classes that lead to attainment of a GED certificate. In either instance, the prisoners are required to take the classes.

- Legislative Oversight. Before finalizing a contract with a private vendor for the construction or operation of the youth correctional facility, the DOC has to submit the proposed contract to the legislative standing committees having jurisdiction over corrections issues and the corrections subcommittees of the House and Senate Appropriations Committees, and a proposed construction contract has to be submitted to the Joint Committee on Capital Outlay. A contract between the DOC and a private vendor for the construction or operation of the youth correctional facility is contingent upon appropriation of the required funding. Once a year the DOC is required to report on the operation of the facility. Copies of the report must be submitted to the chairpersons of the House and Senate committees responsible for legislation on corrections or judicial issues, as well as to the Clerk of the House of Representatives and the Secretary of the Senate. Under the law, the facility must be open for visits by any elected state senator or representative during all business hours, and during nonbusiness hours unless an emergency prevented it.

- Local Agreement. Finally, the department could not locate the facility in a city, village, or township unless the local legislative body adopted a resolution approving the location.

Private Correctional Facilities Cost-Savings. According to the Government Accounting Office (GAO) Report entitled "Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service" (issued on 8-16-96 as GAO/GGD-96-158), as of March 1996, there were a total of 47 private correctional facilities (secure facilities for adults) being operated or planned for operations by private companies in 12 states. The three states using most private corrections facilities were Texas with 21,

Florida with 7, and California with 5. One facility, in New Mexico, is for women only. In an effort to identify cost savings, the GAO reviewed five research studies undertaken since 1991 in five states--California, Tennessee, Washington, Texas, and New Mexico. The GAO could not draw any conclusion about cost savings or quality of services since the four studies that assessed operational costs indicated little difference or mixed results, and the two studies that addressed quality of life reported either equivocal findings or no differences between private and public facilities.

Private Prison Corporations. Over the next five years, analysts expect the private share of the prison market to more than double. Corporate lockups can now hold an estimated 77,500 prisoners. The ten largest private adult prison companies in the United States, based on Equitable Securities Research and reported by the Philadelphia Tribune (3-3-98) are Corrections Corporation of America, Wackenhut Corrections Corp., U.S. Corrections Corp., Management & Training Corp., Cornell Corrections Corp., the Bobby Ross Group, Capital Correctional Resources, Dove Development Corp., Correctional Services, and Marantha Production Company.

Michigan's youth correctional facility will be owned and operated by the Wackenhut Corrections Corporation, the industry leader in the international market with awards or contracts for over 50 percent of the prison beds which have been privatized in countries outside the United States.

Wackenhut Corrections Corporation is a subsidiary of the Wackenhut Corporation (NYSE: WAK WAKB) and offers government agencies a turnkey approach to developing new correctional facilities that includes design, construction, financing, and operations. It provides a broad spectrum of correctional services, which include adult corrections, juvenile facilities, community corrections, correctional health care, and special purpose facilities. The company has contracts/awards to manage 47 facilities in the United States, Puerto Rico, England, Scotland, South Africa, and Australia with a total of 32,053 beds.

In July 1998, Wackenhut Corrections Corporation reported second quarter 1998 net income had increased 48 percent to \$4.0 million, from \$2.7 million in the second quarter 1997. Earnings per share increased to 18 cents from 12 cents a year ago. Second quarter revenue increased 45 percent to \$74.6 million from \$51.5 million in the 1997 quarter. Net

income for the first six months of the year increased 46 percent to \$7.7 million or 34 cents a share compared with \$5.3 million or 23 cents a share during the first six months of the previous year. Revenue for the first half of the year was \$145.9 million compared to \$92.7 million during the first half of last year, an increase of 57 percent. The corporation's chief executive officer said the income and revenue increases reflect the maturing of the thirteen facilities which opened in calendar year 1997, as well as the opening of six additional facilities in the first six months of 1998. He said that he anticipated the company's dynamic growth rate to continue, given the present backlog of over 3,900 beds currently under development and scheduled to come on line later in 1998. In addition, 2,266 beds under development are scheduled to come on line during 1999 (of these, 480 beds are in Michigan's youth correctional facility), and an additional 2,500 beds have been awarded for openings after year 2000. Another 4,450 beds have been proposed.

The largest private facility owner and operator in the United States is Corrections Corporation of America, which sometimes makes as much as \$14,000 a day on the out-of-state inmates it houses at its facilities in Texas. CCA controls more than half of all inmates in private prisons nationwide and is moving to expand into the global market with prisons in England, Australia and Puerto Rico. The firm was founded in Nashville, Tennessee, and modeled on the Hospital Corporation of America, then the nation's largest owner of private hospitals. CCA was founded in 1983 with backing from the investors behind Kentucky Fried Chicken. According to the Media Awareness Project, although private prisons have failed to save much money for taxpayers, they generate enormous profits for the companies that own and operate them. Corrections Corporation of America ranks among the top five performing companies on the New York Stock Exchange over the past three years. The value of its shares has soared from \$50 million when it went public in 1986 to more than \$3.5 billion at its peak in October 1997.

U.S. Justice Department Investigation of Private Youth Correctional Facility in Louisiana. In recent years, the U.S. Justice Department has investigated conditions at juvenile prisons in Kentucky, Puerto Rico, Georgia, and Louisiana, and has reached agreement with all states but Louisiana on improving problems that have been found. In contrast, the U.S. Justice Department has filed suit against Louisiana, which has four juvenile prisons, for failing to address

the problems repeatedly cited at the privately owned Tallulah Correctional Center for Youth. According to a *New York Times* story (11-6-98), Tallulah is operated by Trans-American Development Associates, which is owned by several close friends of former Governor Edwin W. Edwards. The private company is named as a defendant in the suit which was filed on 11-5-98. State officials in Louisiana took over temporary management of the facility after Justice Department officials reported high levels of brutality and an almost total lack of education or care for the large number of Tallulah inmates suffering from severe mental illness. Also suing the state over conditions at the private facility is the Juvenile Justice Project of Louisiana.

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, to the extent that the bills make various statutes consistent with legislation that has already been enacted to authorize and fund the youth correctional facility, they would have no significant fiscal implications. Senate Bill 1220, however, also would amend the Penal Code to include contractual prison employees within a statute that provides special criminal penalties for assaulting a prison employee. To the extent that sentences were lengthened as a result of this change, the bill could present additional costs to the department. (12-8-98)

### **ARGUMENTS:**

#### **For:**

The Department of Corrections (DOC) must finalize its contract with Wackenhut Corporation in order to open the private youth correctional facility now under construction in Lake County. That facility is set to open in July 1999; however, the Office of the Attorney General and DOC recommend statutory changes before the agreement with the private contractor is finalized. A facility to house only juvenile offenders is needed in order to provide a place for criminals up to the age of 19. Without such a facility, violent young criminals are sentenced to the jurisdiction of the Department of Social Services, or they must be placed in an adult facility.

According to the Senate Fiscal Agency, there were 1,317 prisoners age 19 or younger in state correctional facilities as of December 1994. Furthermore, it is anticipated that the number of juveniles in the system will increase due to other components of the recent juvenile crime package. Specifically, changes in the waiver provisions lowering the age to fourteen and

requiring adult sentencing for more juveniles could increase the number of juveniles sentenced to prison terms.

**For:**

Separate correctional facilities for juveniles are necessary. Juveniles placed in adult prison settings are at risk of victimization by adult inmates, and those juveniles capable of rehabilitation are at risk of negative influence from adult inmates. According to an Amnesty International USA report released on 11-18-98, 38 states house juveniles in adult prisons with no special programs or educational services. The child criminals in adult prisons are five times more likely to be sexually assaulted and twice as likely to be beaten by staff members than those in juvenile prisons.

Ideally, a separate facility is able to provide educational and training programs specifically suited to juveniles that are not available in an adult prison. Segregation of younger prisoners is in the best interests of both the juveniles and society; a juvenile placed in an adult prison setting where he or she is preyed upon by the older inmates or comes to see the inmates as appropriate role models has little or no chance of rehabilitation and indeed may leave prison a greater threat to society than when he or she entered.

**For:**

According to many sources there has been a significant increase in both the overall number of crimes committed by juveniles and, worse, in the level of violence involved in these crimes. For example, the August 1995 issue of the U.S. Department of Justice's *National Institute of Justice Journal*, "That young people commit crime at a high rate is no revelation. Age is so fundamental to crime rates that its relationship to offending is usually designated as the 'age-crime curve.' This curve, which for individuals typically peaks in the late teen years, highlights the tendency for crime to be committed during an offender's younger years and to decline as age advances." According to the same journal article since 1985 there has been a significant increase in the number of murders committed by individuals under the age of 18 (for example, the rate of murders committed by 16 year olds increased by 138 percent between 1985 and 1992).

According to the Michigan State Police uniform crime reports, the juvenile arrest rate for serious violent crimes in Michigan increased by 36 percent between 1983 and 1993. The juvenile murder rate increased by

160.6 percent, the aggravated assault rate increased 71.4 percent, and the arson rate increased 56.1 percent; all these increases are higher than those of adult offenders.

Beyond these statistics, there is widespread public perception that there exists a growing population of juvenile offenders who are without remorse or compassion, and pose an increasing threat to average citizens. It is apparent that the efforts to reform Michigan's juvenile justice system in 1988-89 have not significantly altered the behavior of juveniles. In fact some believe that those in leadership positions in gangs take advantage of the perceived leniency of the juvenile system by compelling younger members to commit those crimes which carry the most severe penalties for adults.

As a result of the number of violent juvenile offenders and the public perception that these offenders should be dealt with more strongly, judges are confronted with an increasing number of juvenile offenders who should be removed from society at large. Unfortunately, placing juveniles in the adult prison environment places them at risk of either being influenced or harmed by adult prisoners. Segregating juveniles makes it easier to protect them and easier to provide specific rehabilitation programs more suited to the offenders' age.

**For:**

The potentially high cost of construction and/or operation of a youth correctional facility highlights the importance of considering the potential savings involved in having the construction and/or operation of the facility performed by private vendors. Many states have private corporations running correctional facilities quite adequately and with significant savings to the units of government. For example, according to a Mackinac Center report, on October 1, 1985 Bay County, Florida turned over operation of its main jail to a private vendor for the daily rate of \$24 per prisoner (the Bay County sheriff had requested \$37 per day to operate the facility). The private vendor retained all of the former jail employees and hired additional staff. Employee salaries were raised and a full-time medical staff was added. The privatization of the jail has saved the county over \$700,000 per year compared to what it would have cost to publicly operate the jail. The private vendor built an additional new facility at no extra cost to the county. Furthermore, the lawsuits that had been filed by inmates prior to the private vendor taking over were dropped after the private company took control.

**Against:**

Since 1996 when the Michigan legislature passed the law to allow a privately operated prison, hoping to save money, the Government Accounting Office (GAO) has submitted a report to the U.S. Congress in an effort to determine the cost and quality advantages of private vs. public prisons. According to that report, there are no extant comparative studies that substantiate cost-savings. Issued on 8-16-96, the GAO report reviewed the five existing studies in the nation (in California, Tennessee, Washington, Texas, and New Mexico) that compared privatized and public correctional facilities in terms of operational costs and quality of service. The report was submitted to the Chairman of the Committee on the Judiciary in the U.S. House of Representatives.

As to cost, the GAO report states: "Three of the studies we reviewed (California, Tennessee, and Washington) made comparisons of costs between reasonably matched private and public facilities that were operating within each state that was studied. Of the four private/public comparisons reported in these three studies, two showed no significant differences in operations costs, one showed a 7 percent difference in favor of the private facility, and the other reported the private facility to be more costly than one public facility but less costly than another public facility. One additional study (Texas) reported a 14 to 15 percent savings from privatization; however, the analysis for the Texas study was problematic because the comparison was based on hypothetical public facilities, not existing ones. We could not conclude from these studies that privatization of correctional facilities will not save money. However, these studies do not offer substantial evidence that savings have occurred."

As to quality of services, the GAO report states: "Two studies (New Mexico and Tennessee) assessed a wide variety of factors in their reviews of comparative quality of private and public facilities. These factors, among others, included measures of safety, personnel qualifications, physical conditions of the facilities, health care, and inmate activities. One of these two studies (Tennessee) reported no difference between private and public facilities. The other study (New Mexico) reported a higher quality score for one private facility compared with two public facilities. However, on the inmate survey portion of the assessment, one public facility had higher scores in all of the areas that were assessed, except one. One additional study (Washington), using a less detailed

approach to assessing comparative quality, found no differences between private and public facilities."

**Against:**

It is not right to privatize the youth prison. State law sentenced these kids to prison, not the private sector, and it is the responsibility of the state government to punish them. As opponents to privatizing prisons have noted, government essentially auctions off inmates--many of them young black men--to the highest bidder when it privatizes prisons. Opponents ranging from the American Civil Liberties Union to the National Sheriffs Association have argued that justice should not be for sale at any price. As a spokesperson for the American Bar Association has noted, "The bottom line is a moral one. Do we want our justice system to be operated by private interests? This is not like privatizing the post office or waste management to provide services to the community. There's something meaningful lost when an inmate looks at a guard's uniform and instead of seeing an emblem that reads 'Federal Bureau of Prisons' or 'State Department of Corrections,' he sees one that says 'Acme Prison Corporation.'"

**Against:**

The U.S. Justice Department holds a state responsible for the policies of privately owned and operated youth prisons, as evidenced by the recent federal suit brought against the State of Louisiana over uncorrected abuse in the privately owned Tullulah Youth Prison. (See *BACKGROUND INFORMATION* above.) If the state is ultimately responsible for a private prison's program, then it makes little sense to delegate daily operational authority to an independent contractor outside the jurisdictional and organizational reach of the director of the Department of Corrections.

**POSITIONS:**

The Department of Corrections supports the bills. (12-8-98)

The Office of the Attorney General has taken no policy position on the bills, but has advised the Department of Corrections in its contract negotiations. (12-8-98)

Analyst: J. Hunault

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.