

**THE PRISON INDUSTRIES ENHANCEMENT  
CERTIFICATION PROGRAM: A PROGRAM HISTORY**

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**May 4, 2012**

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## INTRODUCTION

The Prison Industries Enhancement Certification Program (PIECP) was created by Congress thirty-two years ago, in 1979, with the intent that private sector companies could be induced to form joint industrial ventures with correctional industries. The 1979 legislation created an exception to two Federal laws that had been enacted to prohibit the sale of prisoner-made goods in competition with private sector goods, the Ashurst-Sumners Act and the Walsh Healey Act.<sup>1</sup> Together those laws had effectively eliminated any open market sale of prisoner-made goods by prohibiting the interstate movement of such goods.

Under the 1979 legislation, inmate labor now could be used in the production of products for sale in interstate commerce and to the Federal government, and the goods could compete directly with other goods (services were to remain exempt from regulation). Inmates would gain marketable skills and experience, the companies would gain access to a significant labor pool that had not been previously available, and the public would benefit from wage deductions directed toward easing the financial burdens of incarceration. In the words of the legislation's primary sponsor, Senator Charles Percy of Illinois, "The goal of these pilot projects would be to create as realistic a working environment as possible within the prison walls, while enabling an inmate to become more self-sufficient, to the benefit of himself, the prison system, and the taxpayer."<sup>2</sup>

The Bureau of Justice Assistance (then the Law Enforcement Assistance Administration, or LEAA) was identified by Congress as the program's administrative

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<sup>1</sup> The *Ashurst-Sumners Act*, 49 Stat.494 (1935) and The *Walsh-Healey Act*, 49 Stat.2036 (1936).

<sup>2</sup> The Justice System Improvement Act of 1979 (P.L. 96-157, Sec. 827), now codified at 18 USC 1761(c).

agency.<sup>3</sup> Under LEAA's guidance, correctional agencies would be able to engage in the interstate shipment of prison-made goods for sale on the open market and to the Federal government (for the first time, in amounts over \$10,000) if, and only if:

- Inmates were paid at a rate not less than the rate paid for work of a similar nature in the locality where the work was to take place
- The hiring of inmates did not result in the displacement of employed workers outside the prison or jail, did not occur in occupations in which there was a surplus of labor in the locality, and did not impair existing contracts for services
- Deductions from inmate wages were limited to four purposes only (room and board, taxes, victims' compensation/restitution, and family support) and could not exceed 80% of gross wages<sup>4</sup>
- Inmate workers were provided with the same benefits normally provided by the state or Federal government to similarly situated workers, e.g., Workers' Compensation (or its equivalent) and FICA
- Local labor organizations and competitor manufacturers were notified of the partnership prior to the initiation of operations
- Inmate involvement was voluntary

The program was designed to benefit participating departments of correction by providing both a cost-effective prison work program that would offset some of the costs of incarceration, and a prison management tool that would, it was hoped, reduce institutional violence. The taxpayer would benefit as inmates became tax producers, able to provide financial support to victims of crime and their own families. Victims and the families of participating prisoners would benefit through direct financial contributions from inmate workers. Private sector companies would gain a stable and readily available

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<sup>3</sup> The Director of BJA was first identified as the certifying authority in the Justice System Improvement Act of 1979, and later under the Justice Assistance Act of 1984 (P.L. 98-473, Sec. 819) and The Crime Control Act of 1990 (P.L. 101-647).

<sup>4</sup> Deductions from net wages for legal fines may also be taken.

workforce, and possibly industrial space and training assistance. Inmates themselves would benefit by increasing their job skills and experience and thus their prospects for successful transition to a job upon release.

What follows is a history of the PIE program, covering both the Federal administrative effort to support the program and the programmatic achievements attained over the course of its existence by its participating states and counties and its technical assistance providers. This program history, covering the period 1974 to 2011, does not exist in written form elsewhere. It is the author's hope that it will provide a sound starting point for those who may wish to examine the program in the years to come and encourage policy makers to consider re-invigorating efforts to support and expand the PIECP.

## **THE LEAD-UP PERIOD (1974 – 1979)**

### ***The Free Venture Model***

When prison populations began to rapidly expand in the 1970s, both state prison administrators and interested LEAA administrators recognized the value in creating a cost-effective method of reducing prisoner idleness through the development of effective prison industry programs. Several studies of prison industries had found that traditional prison work programs typically were not operated on a business-like basis, and that they lost money year after year. Moreover, such studies had indicated that a break-even or

profitable operation was a realistic goal if certain fundamental changes in prison industries could be made.<sup>5</sup>

Recognizing that state correctional industry programs possessed the potential to be economically self-sufficient, and that the delivery of training, work attitudes, and specific skills development to prisoners could have a clear impact on the overall reduction of crime, LEAA began to explore how such benefits could best be realized. In 1977, under the guidance of then-Director George Bohlinger, LEAA initiated a study of the economic and other impacts of prison industries, developing and testing what it called the “Free Venture” model. The model was based on an analysis of Connecticut Correctional Industries and was designed to emulate the outside world of work as closely as possible within the prison setting. Its broad goals included--

- A realistic work environment, including a full work day, inmate wages based upon work output productivity standards comparable to those of the private sector; appropriate hire and fire procedures; and transferable training and job skills
- Partial reimbursement of the state by inmates for custody and welfare costs, as well as restitution payments to victims
- Graduated preparation of inmates for release into the community
- Fixing responsibility—with financial incentives and penalties—for job placement of inmates upon release into the community
- Financial incentives to prison industry for successful reintegration of offenders into the community
- Self-supporting or profit-making business operations<sup>6</sup>

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<sup>5</sup> See, for example, John R. Stratton and Jude P. West, The Role of Correctional Industries, Report for the U.S. Department of Justice, Law Enforcement Assistance Administration (Iowa City: University of Iowa, 1971).

<sup>6</sup> U.S. Department of Justice, Law Enforcement Assistance Administration, *Study of the Economic and Rehabilitative Aspects of Prison Industry*, Vol. 6: Analysis of Prison Industries (Princeton, N.J.: ECON, Inc. 1977), p.21.

The Free Venture model was implemented in seven states: in 1977, Connecticut, Illinois, and Minnesota were selected; in 1978, Colorado, Iowa, South Carolina, and Washington were added. The Free Venture program was seen as a necessary first step if fundamental change were to come to prison industries. It was designed to initiate a gradual movement toward realistic business environments within the prison, but did not involve the private sector itself.

In 1979, LEAA began an evaluation of the Free Venture model as implemented in those seven states.<sup>7</sup> The evaluation found that the Free Venture program--

- Lessened violence in participating institutions
- lowered operating costs for prison industries
- led to fewer disciplinary records for participating workers
- resulted in some reduction in idleness
- increased the development of real world work habits and skills
- resulted in a significant improvement of financial rewards for inmates who participated in the program

The Free Venture program not only identified barriers to modernization, but also identified successful approaches to overcoming long-standing obstacles and deficiencies in prison industries. It significantly increased awareness of the potential value of prison industries as a correctional management tool and as an asset to prisoner workers during incarceration and after release. By 1979, the feasibility of implementing change—and involving the private sector itself—had become much more generally accepted within corrections. However, Federal laws prohibited private sector participation of the kind

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<sup>7</sup>U.S. Department of Justice, Law Enforcement Assistance Administration, *Impact of Free Venture Prison Industries Upon Correctional Institutions*, University City Science Center (Philadelphia, P.A., 1981).

envisioned by these pioneer states. A more comprehensive strategy of legislative change was clearly necessary.

In 1979, in the wake of violent prison riots at Attica, New York and Pontiac, Michigan, the PIECP legislation did pass (after earlier unsuccessful attempts), with bipartisan support, initiating a new era in prison industries focused on the return of the private sector to the prison. Senator Charles Percy (R. Illinois) had ushered through Congress a bill which would allow seven pilot projects to sell prison-made goods across state lines and to the Federal government. The possibility of joint ventures between the private sector and correctional industries had become a reality.

#### **THE EARLY YEARS (1979-1984)**

The legislation authorizing the creation of the PIECP had specified the minimum conditions under which the interstate shipment or sale to the Federal government of prisoner-made goods could occur. LEAA, as the program's administrative agency, saw that its initial task was to design a program that would encourage the participation of interested jurisdictions, and at the same time, comply with the new law. Prison industry managers were understandably skeptical of this new legislation that would bring profit-driven private sector companies inside their prison industry operations for the first time, competing for inmates and space with their traditional, program-oriented operations. Corrections officials were wary of possible disruptions to security that would accompany private sector needs. It was unclear whether any of the states would participate or whether any private sector companies would be interested.

Successful achievement of the goals of the PIECP depended upon LEAA's ability to develop the program during a period when the agency's own continuation was in doubt as Congress contemplated a comprehensive re-design of Department of Justice functions. Given its uncertain future, the agency could not anticipate the project's continuation for more than a few months at a time, as a result of which the program tended to develop in spurts rather than to grow smoothly.

LEAA turned to a not-for-profit technical assistance contractor to translate the authorizing legislation into specific program elements. Criminal Justice Associates (CJA) of Philadelphia was selected and worked with LEAA (and later BJA) until 1985 to resolve a number of important issues that had been ignored in the legislation, but which could not be ignored in developing the program—issues such as what employment benefits were required by the law, the scope of the market created by the legislation, what roles the private sector could play, the legal status of prisoner workers participating in the program, and especially, how should participating jurisdictions identify a wage that was “not less than that paid for work of a similar nature in the locality where the work is performed”?

CJA worked with Department of Justice attorneys, representatives of organized labor, Congressional staff, and members of the corrections and business communities to resolve these issues. Regulations were designed, discussed with a sample of states, re-designed, published in the Federal Register,<sup>8</sup> and finally sent out in the form of an announcement to all fifty states. To alert potential private sector partners of the program's existence, information was made available to newspapers; academic, legal, and trade

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<sup>8</sup> Federal Register (Vol. 46, No. 30, Friday, February 14, 1981.)

journals; magazines; and television and radio stations. CJA essentially functioned as BJA's national clearinghouse on private sector prison industries.

In addition to alerting the business community to the program's existence and encouraging state prison industry operations to seriously consider participating, there was a need to provide assistance to those states that did express an interest, but did not have the necessary state legislation to allow the open market sale of prisoner made goods. CJA worked with a number of states to develop legislation that would fit with Federal requirements.

The 1979 Federal legislation had authorized only seven pilot projects, which LEAA had interpreted to mean seven specific manufacturing operations. By late 1982, five of the seven available pilot projects had been "certified"<sup>9</sup> by LEAA and at least two others were in the works, meaning that unless some adjustment in the "pilot project" definition could be made, or the number of certifications was increased by Congress, no further program growth would be possible.<sup>10</sup>

Congress responded to this need in 1984, when it passed legislation increasing the number of available program slots from seven to twenty.<sup>11</sup> BJA (the former LEAA), with assistance from CJA, developed an expanded program Guideline as well.<sup>12</sup> Among other

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<sup>9</sup> LEAA created PIECP certifications as the administrative mechanism by which states could participate in the program. Only when a state met all of the legislation's compliance requirements could it be "certified" to legally enter its prisoner-made products into interstate commerce or sell them to the Federal government.

<sup>10</sup> Five of the seven original, single-operation certifications were awarded to Kansas (Zephyr Products), Minnesota (Magnetic Peripherals), Arizona (ROBE), Utah (Printing/Signmaking), and Nevada (General Household Items); the California Youth Authority was awarded the first departmental certification (TWA and Olga), and the state of Washington was awarded the second departmental certification (several garment operations). Minnesota, Nevada, and Utah were all recertified with departmental certifications in 1985.

<sup>11</sup> The Justice Assistance Act of 1984 (Pub. L. 98-473, Sec. 819).

<sup>12</sup> Federal Register (Vol. 50, No. 1, Friday, March 29, 1985).

changes, the definition of “certification” was expanded to include both state-wide and single-industry operations (called “project” and “departmental” certifications). Under this new approach, a department of corrections could be certified by BJA and include any number of separate business operations under its one certificate. In addition, at the request of the National Association of Counties (NACo), county jails were determined to be eligible for certification along with state prisons. The PIECP now had the scope to play a major role in the future of correctional industries.

### **THE MIDDLE YEARS (1986 – 1989)**

By 1986, BJA had switched technical assistance contractors. The American Correctional Association (ACA), in conjunction with its subcontractor Correctional Services Group, Inc. (CSG), was selected to assist BJA with administering the PIECP. The ACA/CSG focus was on the provision of technical assistance and training to the program’s participants, and on increasing the number of certified correctional agencies involved in the program. While the primary focus of the technical assistance effort was the preparation of applications for certification, information dissemination was also a key focus. An information clearinghouse was established to provide for the exchange of information among certified program managers.

From 1986 to 1989, eight additional states and counties applied for certification.<sup>13</sup> Several national and regional training meetings designed to meet the special needs of the program’s participating jurisdictions were held in conjunction with ACA’s annual and

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<sup>13</sup> Connecticut, Belknap County (NH), Idaho, Maine, Nebraska, New Mexico, Oklahoma, South Carolina, and Strafford County (NH).

mid-winter meetings and as separate events. A handbook on doing business with the Federal government also was prepared and distributed to program participants.

***ACA Expands the Program: 1989 – 1994***

In the spring of 1989, the ACA's sub-contractual relationship with CSG expired and the ACA began to perform technical assistance tasks for the PIECP on its own. The focus continued to be on increasing the number of certified correctional agencies involved in the program, but also on increasing the number of available certifications beyond the twenty available at the time. ACA worked to educate members of Congress as to the importance of making the program more broadly available to interested states and counties, and in 1990, the Crime Control Act was enacted to further expand the number of certificates, this time from twenty to fifty.<sup>14</sup> This increase in the number of certificates, in combination with the expanded definition of certification, made significant program expansion possible. The ACA continued to focus on growth and on compliance with BJA's 1985 Guideline which had expanded BJA's administrative guidance and further clarified BJA's compliance requirements.

By working closely with prison industry administrators, particularly through the mechanism of national and regional training conferences and compliance-related site visits, the ACA encouraged program participation. During the period 1986-1994, the number of PIECP certifications grew from seven to thirty-four.<sup>15</sup> However, due in large

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<sup>14</sup> P.L. 101-647, which also authorized continuation of the program indefinitely.

<sup>15</sup> Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Belknap County (NH), Strafford County (NH), Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Red River County, Texas, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington State, and Wisconsin. (Delaware, Missouri, Red River County, TX, and the Texas Youth Commission later relinquished their certifications and are not included in the current list of Certified jurisdictions on pp. 28-29 of this report.)

part to a serious downturn in the economy, by December 1994 there were only about 1,500 inmates working in approximately 80 PIECP CACs.

During this period BJA also funded Criminal Justice Associates, its original technical assistance provider for the PIECP, to examine the elements of success in its PIECP operations. In its role as BJA's original technical assistance provider, CJA had identified for BJA several broad approaches or models under which prison industry organizations and private sector partners could develop joint industrial ventures. Clearly the particular needs of the prison and the private sector company would determine the nature of the partnership in any given situation. Over time, private sector correctional industries took one of two broad forms, either the "employer" model or the "customer" model, reflecting the broad distinction as to whether the public sector partner or the prison controls the work process. A small number of jurisdictions favored a variant of the customer model called the "manpower" model.

*The Employer Model*

A private company owns and operates a business inside prison, and has direct control over business operations. Inmates are employed by the company.

*The Customer Model*

A private company purchases most or all of the output of a business which is owned and operated by a correctional agency, but has no other role in the business. Inmates work for the correctional agency.

*The Manpower Model*

A pre-determined fee covering labor, overhead, and profit is paid by the private sector to the prison industry. Inmates are employed by the correctional agency. BJA considers the manpower model to be a subset of the customer model for purposes of determining FICA and other benefits.

BJA now asked CJA to document and assess three sample projects: a small jail in New Hampshire, a large high security prison in Minnesota, and a medium security prison in Nevada.<sup>16</sup> The report was designed both to help BJA determine whether or not private sector prison industries could be successful<sup>17</sup> while meeting the legal and administrative requirements of the PIECP, and to suggest how BJA could help the program's state and local participants to do so. Its findings included:

- Model *type* influenced success, and employer model projects were more likely to be successful than customer model projects under the definition of success noted above.
- New models—especially manpower model projects—were emerging in several sites.
- All of the certified projects paid at least the Federal minimum wage, but wages were not based on productivity.
- There was not strong support in any of the three sites for the wage requirement.
- There was a great deal of confusion among participants as to the laws and regulations concerning: (1) the difference between products and services (certification was required for the sale of products, but not for projects involving only the rendering of services); (2) how to determine appropriate wages and benefits; and (3) what constitutes interstate commerce (certification was not required for products sold exclusively within the state of production).

The report recommended that BJA encourage the development of more employer model projects; be especially watchful of wage issues in customer model projects; continue to monitor all projects, but especially customer and manpower model projects,

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<sup>16</sup> Documenting and Assessing Selected Private Sector/Prison Industries Enhancement Certification Projects, prepared for the Bureau of Justice Assistance by Criminal Justice Associates under grant #91-DD-CX-0024, May 1993.

<sup>17</sup> The report defined a “successful project” as profitable (or cost-effective), meeting legal minimums, and competing fairly on the open market. In addition, it should be in harmony with the institution in which it is located, politically acceptable, optimize inmate employment, promote a real world work ethic, and meet security requirements.

for potential wage irregularities; continue to vigorously support the wage requirements of the certification legislation; and continue to review wage rates annually, insisting that wage rates reflect changes in productivity. It urged BJA to act upon its findings.

## **THE CURRENT ERA (1995 – Present)**

### ***The Role of the National Correctional Industries Association (NCIA)***

In 1995, BJA again changed technical assistance contractors, selecting the Correctional Industries Association (CIA) as its technical assistance provider for the PIECP, hoping that by bringing the program inside the correctional industries community, support and participation would grow. The CIA was the professional organization for correctional industries employees and as such had a natural interest in the program's success. At the time of its selection, the CIA was run on a volunteer basis by its members. BJA's decision to support the development of correctional industries, and to select the CIA as its technical assistance provider for the PIECP, allowed the CIA to incorporate as a not-for-profit organization with a paid full-time director, dedicated office space, and a small staff. The new, strengthened CIA, re-named the National Correctional Industries Association or NCIA, was now fully capable of performing the tasks necessary to support the PIECP.

Over time, BJA's hopes for program growth were met; prison industry directors, as members of CIA, increasingly came to realize they would benefit by participating in the PIECP. Prison industries were suffering from economic hard times and it was clear that the PIECP could provide them with the tools to build more diverse—and therefore

more market-resilient—correctional industries programs through the involvement of the private sector.

BJA's interest in ensuring that PIECP business operations were operating within statutory and administrative requirements led to an increasing focus on compliance, particularly on on-site assessments, a goal which fit well within NCIA's organizational capacity. By carrying out the first comprehensive on-site assessments of all active PIECP CACs, NCIA was able to inform BJA, in detail, about the compliance-related performance of its program participants.

The assessment process has become increasingly rigorous over the years, but it has remained a technical assistance tool as well. Assessors are asked to identify compliance issues, but they also work with the jurisdictions they assess to solve any compliance-related problems they uncover. The assessments are widely viewed as supportive, not punitive, and they have helped to garner support, within both correctional industries and corrections at large, for strengthening the program.

Since 1995, NCIA has designed and distributed assessment materials to PIECP Certificate Holders, provided compliance-based technical assistance, and conducted on-site and desk assessments of all active CACs on a regular schedule. Training has been provided, at all NCIA annual conferences, with or without financial support from BJA. In recent years, NCIA has presented PIECP assessment training by Webinar for all PIECP certificate holders, as well as separate live, online training for assessors. The organization has done so in the belief that a better informed certificate holder is likely to be a better performing certificate holder, and therefore less likely to create compliance problems. NCIA estimates that since 1995, its members have donated more than 25,000 hours of

professional time in efforts to ensure compliance with PIECP requirements. BJA funding no longer supports NCIA's office operations.

### ***Wage Issues***

Over the life of the program, compliance issues typically have centered on wages and displacement, the single-most difficult PIECP requirements for program participants. In fact, NCIA estimates that well over 75% of all assessment issues deal with wages and displacement. While there were other compliance issues uncovered and resolved over the years, the three most significant compliance disputes that arose during this period all fit into this category.

First, in 1997, an accusation of free world worker displacement against the Wisconsin Department of Corrections was lodged by workers in the Fabry Glove Corporation who believed the company had fired civilian workers and replaced them with PIECP labor. BJA ultimately determined that no displacement had taken place, but Wisconsin closed its Fabry operation in the face of negative local publicity.

Then, in 1999, the Washington State Department of Corrections developed a unique problem with its program when unfair wage complaints were lodged by competitor water-jet manufacturers against its MicroJet PIECP operation. The complaints led ultimately to a decision by the Washington State Supreme Court in 2004 that the entire private sector prison industries program was in violation of the Washington State Constitution. As a result, the entire program was shut down. However, it was later re-opened when Washington voters chose to reinstate private sector employment for state prisoners.

Finally, California's PIECP operations were found to be in violation of California wage law in 2004. PIECP workers there had been paid at least the Federal minimum wage as determined by the California Department of Labor, thereby meeting BJA's wage requirement. However, the California courts found that California PIECP workers should have been paid *California* minimum wage, which was higher than the Federal minimum wage. Ultimately fines and back wages were assessed and paid and the program continued to operate under a State court order that set the California minimum wage as a floor for PIECP inmate workers.

As a result of these and other recurring issues, BJA recognized the need for expanded administrative guidance for the PIECP. In 1999, with assistance from NCIA, a new PIECP Guideline was produced by BJA and the Office of Justice Programs.<sup>18</sup> The new Guideline provided a thorough legislative history of private sector involvement in prison industries, along with a much expanded explanation of how BJA interpreted the program's underlying legislation. Inmate wages, in particular, were dealt with in significant detail, along with a comprehensive explanation of non-inmate worker displacement and what the Certificate Holder must do to avoid it. The Guideline also provided comprehensive guidance on how to determine whether a given operation involved a product or a service and thus did or did not need to be certified under the PIECP.

The new Guideline provided a strong incentive to upgrade compliance assessments and assessment teams. The teams, normally made-up of volunteer assessors and trainees who had operated PIECP programs, were now strengthened with the addition

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<sup>18</sup> Federal Register, Vol. 64 No. 66, Wednesday, April 7, 1999.

of independent observers from the business and academic spheres. A comprehensive review of PIECP wage policies and practices also was developed and distributed to all PIECP participants.<sup>19</sup>

In 2000, NCIA embarked upon a multi-year, full-scale marketing campaign to increase awareness within the private sector business community of the availability of partnerships with correctional industries. Written materials and a partnerships video were produced and widely distributed. Training for all PIECP Certificate Holders in the use of the marketing kit was held at multiple correctional industry venues over the next four years. The marketing effort led to a significant increase in the number of prison and jail inmate workers actively participating in the PIECP, and in a significant increase in the number of businesses partnered with PIECP Certificate Holders. By the end of 2005, 6,555 PIECP inmate workers were working in 206 separate business operations or CACs.<sup>20</sup>

***Community Resource Services, Inc. and BJA's Jail Work and Industries Center***

From 1986 to 2000, BJA funded the Jail Work and Industry Center (JWIC), staffed by Community Resource Services, Inc. The JWIC worked to expand PIECP in county jails through training and technical assistance to the field. Activities included responding to requests for information, writing articles for professional publications, national mailings, on and off site technical assistance, and educating localities on the role of industries within the broader context of inmate work. The JWIC, and its founder Rod

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<sup>19</sup> Emerging Practices: Wage Policies and Practices for the PIECP, by Barbara Auerbach for NCIA, prepared under grant #2001-RE-EX-001, December 2001.

<sup>20</sup> NCIA, December 31, 2005 *Cost Accounting Center Listing*.

Miller, worked closely with jail industries managers for many years to increase participating in the PIECP and to improve PIECP administrative approaches.

***NCIA's Research Advisory Board Activities***

As part of its support for the PIE program, BJA also funded several inquiries into the efficacy and impact of the program, including a major recidivism study (also supported by the National Institute of Justice), a look at the financial beneficiaries of PIECP inmate worker salaries, and an examination of the post-release employment picture for correctional industries inmates.

*Correctional Industries Preparing Inmates for Re-entry, by Cindy Smith, Ph.D.*<sup>21</sup>

This major study examined recidivism and post-release employment for PIECP inmate workers for the first time on a national scale. Two research questions were addressed: (1) Does PIECP participation increase post-release employment as compared to traditional industries work or other non-work activities; and (2) Does PIECP participation reduce recidivism as compared to traditional industries work or other non-work activities?

The primary finding of the research was that inmates who worked in PIECP jobs were significantly more successful in post-release employment. They became tax-paying citizens more quickly and remained in that status longer than traditional industries workers or those engaged in non-work activities. PIECP releasees had slower and less recidivism, as measured by arrest, conviction and incarceration, than either traditional

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<sup>21</sup> Correctional Industries Preparing Inmates for Re-entry: Recidivism and Post-release Employment, prepared for the National Institute of Justice under award #2004-DD-BX-1001, June 2006, in coordination with the Bureau of Justice Assistance under grant #2001-RE-CS-001.

industries releasees or those engaged in non-work activities. The report provided important support and encouragement for the future of the PIECP.

*Identifying Beneficiaries of PIE Inmate Incomes, by Thomas W. Petersik, Ph.D.*<sup>22</sup>

In 2002, NCIA asked Dr. Tom Petersik, of George Washington University, to examine how PIECP wages were dispersed and who benefited financially from the program. Dr. Petersik wanted to identify the program's primary financial stakeholders and allies and to understand PIECP in its broader economic and social contexts. His key finding was that others, not the inmate, are the primary financial beneficiaries of PIECP inmate incomes (53-57 cents of every dollar earned): About 30% goes to state households and business taxpayers, mainly due to payments into room and board; 11% to Social Security and Medicare; 8% to victims of crime; 4% to the Federal Treasury; 3% to unemployment and workers compensation; and 2% to inmates' children. About 43-47% goes to the inmate worker.

Projecting forward from 2003 PIECP wage levels to wage levels more like U.S. averages, Dr. Petersik determined that full employment of inmate workers at such pay rates could result in \$8 to \$37 billion per year in employer payouts, including \$2 to \$11 billion in room and board; \$0.6 to \$5.1 billion in Social Security; \$0.8 to \$3.7 billion in victims' compensation; and \$0.2 to \$2.1 billion in family support.<sup>23</sup>

*Post -Release Job Market Study, by Morgan Reynolds, Ph.D.*<sup>24</sup>

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<sup>22</sup>Identifying Beneficiaries of PIE Inmate Incomes: Who Benefits from Wage Earnings of Inmates Working in the Prison Industry Enhancement (PIE) Program?, by Thomas W. Petersik of The George Washington University Center for Economic Research, prepared for the Bureau of Justice Assistance under grant # 2001-RE-CX-0001, July 2003.

<sup>23</sup> The wage range is based upon assumed low to high wage rates.

<sup>24</sup> Post Release Job Market Study, prepared for the Bureau of Justice Assistance under grant # 2001-RE-CX-0001, March 2004.

In pursuit of its interest in post-release employment for correctional industries workers, the Research Advisory Board selected Dr. Morgan Reynolds, the former Chief Economist for the U.S. Department of Labor and Professor Emeritus, Economics at Texas A & M University, to examine what and where post-release jobs were most likely to exist. Dr. Reynolds found that the South and West hired faster than the Northeast and Midwest; that hiring declined in the winter and rose in the summer and fall; and that the trade, transportation, and utilities sectors were most likely to hire ex-offenders.

He also found that total job growth and the unemployment rate were more important than the “microeconomic distribution of employment,” and that jobs available to ex-inmates were primarily in ten occupational groupings, from food preparation and serving to transportation and material moving occupations. He noted that because of the strong positive association between schooling and pay, ex-inmates might start in entry-level jobs, but must improve their skills through training and education to obtain higher pay. Finally, he found that attitude and general employability skills were more important than specific job skills, “making the paucity of correctional industry jobs the principal problem.”

## **PIECP IN ACTION**

Over the years of the program’s existence, PIECP businesses have produced a wide variety of products, including: utility cargo trailers, wiring harnesses and circuit boards, apparel, fiberglass products, furniture, saddles and leather goods, printing, eyeglasses, dental products, food products, metal products, industrial air filters, boats, embroidered garments, balloons, disposable coveralls and safety items, international

dolls, cement products, archery sights, biodegradable waste bags, motorcycle parts, goose decoys, mattresses, limousine parts, vinyl waterbeds, pillows, multi-sports cords, materials used in electric cars, wood pallets, doors, windows, hardwood flooring, truck suspension, boat docks, kitchen and bath cabinets, street hockey sticks, brass valves and fittings, veneer and laminate products, modular buildings, sub assemblies for spas, and road signs.

The five PIECP certificate holders that currently employ the largest number of inmate workers are producing a rich variety of products.<sup>25</sup> South Carolina has joined with several wood flooring companies to produce wood flooring; they also produce electronic cables and sewn products. Florida produces furniture, eye glasses, apparel, metal products, and a number of other products. Kansas has specialized in recent years on embroidered and screen printed garments, wood and Lucite products, and wire harnesses. Tennessee has also developed partnerships to produce hardwood flooring, and Minnesota has developed multiple PIECP operations including party balloons, wood products, plastic products, and metal fabrication, among others.

In terms of tangible financial benefits for the public sector, the Federal legislation identified four allowable deductions from inmate wages—taxes, room and board, victims’ compensation, and family support—which participating states and counties could impose. As of June 30, 2011, according to NCIA, approximately 5,000 inmate workers were involved in 190 separate business operations in 38 states and 6 counties.<sup>26</sup>

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<sup>25</sup> South Carolina (1,073 workers), Florida (627), Kansas (551), Tennessee (522), and Minnesota (364), according to NCIA’s *June 30, 2011 Cost Accounting Center Listing* .

<sup>26</sup> *June 30, 2011 Cost Accounting Center Listing*.

In the same report, NCIA states that cumulative wages earned since the program's inception totaled \$576,474,822; victims' compensation contributions totaled \$56,758,577; room and board \$171,094,345; family support \$36,529,578; and taxes \$73,508,700.

As of September 2011, the following forty-four jurisdictions (in the order in which they were certified) were participating in the PIECP:<sup>27</sup>

\* = Active CACs

1.*	Kansas	7/86	[Zephyr Products in 1981]
2.*	Minnesota	11/85	[Magnetic Peripherals in 1981]
3.*	Arizona	3/91	[ROBE in 1982]
4.*	Utah	12/85	[Printing/Signmaking in 1981]
5.*	Nevada	8/85	[GHI in 1982]
6.*	California Youth Authority	1985	[TWA and Olga]
7.	Washington	3/87	[Garment operations in 1985]
8.*	Idaho	7/86	
9.	New Mexico	11/86	
10.*	Oklahoma	7/87	
11.*	Nebraska	10/87	
12.*	South Carolina	12/87	
13.*	Strafford Cty. (NH)	5/87	
14.*	Maine	10/88	
15.	Belknap Cty. (NH)	10/88	
16.	Connecticut	1/89	
17.*	Oregon	3/89	
18.	Alaska	5/89	
19.*	Iowa	8/89	
20.*	Colorado	1/90	
21.*	South Dakota	1/91	
22*.	Tennessee	1/91	
23.*	Texas Oversight Authority	2/93	(umbrella certification) <sup>28</sup>

<sup>27</sup> According to NCIA, some additional jurisdictions were in the program at one time, but have since terminated their involvement. They include Delaware, Missouri, Red River County (TX), and the Texas Youth Commission. The Texas Youth Commission later became part of the Texas Oversight Authority's umbrella certification. For a period of time, the Washington State Department of Corrections was prohibited by its State Supreme Court from participating in the program on the grounds that private sector employment of prisoners violates the state Constitution. However, Washington State was allowed to reenter the program when new legislation reversed this decision.

<sup>28</sup> An umbrella certification allows the certificate holder to include multiple administrative units within its borders, such as counties and juvenile justice agencies, under one "umbrella" certificate.

24.*	Indiana	7/92
25.*	Maryland	8/92
26*.	Hawaii	10/92
27.	Wisconsin	1/93
28.	North Carolina	5/93
29.	Vermont	1/93
30.*	Montana	1/94
31.	Louisiana	1/94
32.	Virginia	3/95
33.*	Florida	4/95
34.	Ohio	10/95
35.	Jail Industries Board (WA)	12/98 [umbrella certification]
36.*	North Dakota	3/99
37.*	Utah County (UT)	7/99
38.*	Mississippi	12/99
39.*	Wyoming	9/01
40.*	Hennepin County (MN)	12/04
41.*	Arkansas	5/05
42.*	Georgia	5/06
43.	Denver County (CO)	6/09
44.	West Virginia	8/10

## **SUPPORT FOR PIECP FROM ADDITIONAL SOURCES**

### *National Institute of Justice Activities*

From the mid-1980s through the late 1990s, the National Institute of Justice (NIJ) took a strong interest in the potential of what it came to call private sector prison industries (PSPI), a definition that included both PIECP manufacturing operations and service operations not included in PIECP. NIJ supported the development of a number of demonstration projects in hopes of increasing the number of jurisdictions capable of participating in private sector prison industries. Criminal Justice Associates, BJA's first PIECP technical assistance contractor, worked with NIJ through 1995 in an effort to strengthen and expand the relationships between public sector prison and jail work programs and private sector companies.

CJA examined, among other issues, contemporary forms of private sector involvement in prison-based businesses, resulting in the identification of six models for private sector partnerships.<sup>29</sup> (Several of the models are no longer in use today,<sup>30</sup> but see page 13 of this report for a description of the three models in use today.)

CJA also provided technical assistance in the marketing of the prison labor force, held a series of seminars on private sector prison industries; conducted several surveys of state and local practices; held two national conferences focused on the issues critical to the development of such projects;<sup>31</sup> conducted marketing and planning seminars for interested jurisdictions; and produced a marketing manual for use by those wishing to develop private sector partnerships in prison industries.<sup>32</sup> Other CJA reports funded by NIJ included: “The Private Sector and Prison Industries;”<sup>33</sup>; “A Guide to Private Sector Prison Industries: Identifying, Screening, and Contacting Companies;”<sup>34</sup> “Work in

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<sup>29</sup> Private Sector Involvement in Prison-Based Businesses: A National Assessment, prepared for the National Institute of Justice by Criminal Justice Associates under grant #83-IJ-CX-K451, November 1985.

<sup>30</sup> The *investor model* (the private sector capitalizes, or invests in, a business operated by a state correctional agency); the *manager model* (the private sector manages a business owned by a correctional agency); the *joint venture model* (the private sector manages or helps to manage a business in which it has jointly invested with a correctional agency); and the *controlling customer model* (the private sector is the dominant customer of a business that it owns or has helped to capitalize and which it may help to operate).

<sup>31</sup> *Marketing Prison Labor to the Private Sector*, Scanticon Conference Center, May 4-5, 1991 and *National Conference on Private Sector Prison Industries*, Omaha, Nebraska, June 3-5, 1990. Both conferences were jointly sponsored by the National Institute of Justice and the Bureau of Justice Assistance.

<sup>32</sup> Developing Private Sector Prison Industries: From Concept to Start-up, prepared for the National Institute of Justice by Criminal Justice Associates under grant #87-MU-CX-0002, 1991.

<sup>33</sup> Research in Brief, the National Institute of Justice, prepared by Criminal Justice Associates, August, 1985.

<sup>34</sup> Prepared for the National Institute of Justice by the Wharton Center for Applied Research under contract #OJP-88-M-132, and Criminal Justice Associates under grant #86-IJ-CX-0002, June 1988.

American Prisons: The Private Sector Gets Involved;”<sup>35</sup> “Private Sector Prison Industries: A Study of the Impact on Incarceration Costs;”<sup>36</sup> “Private Sector Prison Industries: A Viable Alternative to Mexican Labor;”<sup>37</sup> and “Work in American Prisons: Joint Ventures with the Private Sector.”<sup>38</sup>

In September 1996, NIJ sponsored a major national symposium to explore a variety of themes relating to corporate investment in criminal justice, including a heavy emphasis on the PIECP.<sup>39</sup> The conference brought together Department of Justice officials, criminal justice researchers and practitioners, judges, U.S. Department of Education officials, political representatives, and private sector business owners and operators to discuss promising programs and partnership needs.

In later years, NIJ also funded the analysis of BJA’s recidivism and post-release employment study, under the auspices of NCIA’s Research Advisory Board for the PIECP, described above at page 18 of this report. That funding marked the end of NIJ’s support for the PIECP to date.

### ***Chief Justice Warren Burger and The National Center for Innovation in Corrections***

The PIECP generated interest in the concept of private sector involvement in prison industries in other areas of the Federal government as well. In the early 1980s, Chief Justice Warren Burger became interested in the concept of private sector

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<sup>35</sup> NIJ *Issues and Practices*, May 1988.

<sup>36</sup> Prepared for the National Institute of Justice by Criminal Justice Associates under award #90-MU-CX-0004, May 1994.

<sup>37</sup> Prepared for the National Institute of Justice by Criminal Justice Associates under grant #90-MU-CX-0004, 1994.

<sup>38</sup> *A Program Focus Document* prepared by Criminal Justice Associates for the National Institute of Justice, November 1995.

<sup>39</sup> “It’s Our Business: A Corporate Symposium on Investment in Criminal Justice Solutions,” sponsored by the National Institute of Justice, September 30 – October 1, 1996, Austin, Texas.

partnerships with prison industries, which he named “Factories with Fences.” In 1984, Chief Justice Burger’s influence and interest in the private sector prison work culminated in a conference at the Johnson Foundation’s Wingspread Conference Center in Racine, Wisconsin.<sup>40</sup> In 1985, a second conference was held at the George Washington University in Washington, DC, where state and Federal leaders gathered to develop new directions for prison industries, with heavy emphasis on private sector involvement. The conference participants studied laws, executive orders and regulations, marketing, inmate compensation, and a host of other topics.

Chief Justice Burger’s interest was a factor in the establishment of the National Center for Innovation in Corrections (NCIC) at George Washington University. NCIC was jointly funded by NIJ, the National Institute of Corrections (NIC), and others. Dr. Judith Schloegel was selected as its Executive Director. The organization’s main focus was to assist in bringing together the public and private sectors in the creation of innovative work projects within the scope of the PIECP.

NCIC’s advisory board, made up of senior government officials and representatives of the private sector, spawned the creation of a National Task Force on Prison Industries which attempted to increase the acceptance of prison industries among business and labor leaders who feared that prisoners would displace private sector businesses and laborers.

In spite of the support of numerous prominent public and private sector individuals and organizations, no significant involvement on the part of the private sector took place. By 1989 NCIC had closed its doors and state and local jurisdictions were

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<sup>40</sup> National Conference on Prison Industries: Discussions and Recommendations, National Center for Innovation in Corrections, The George Washington University, June 1984.

once again in the position of relying on their own abilities to market the prison work force to the private sector.

### ***The Open Society***

The Open Society's Center on Crime, Communities & Culture conducted a seminar at its New York headquarters in 1997,<sup>41</sup> focused on efforts to expand prison industries and the controversy surrounding that attempted expansion. The PIECP was a main topic of discussion, primarily in terms of the fairness of its use in recapturing a lost labor force.

### ***The National Symposium on The Economics of Inmate Labor Force Participation***

In 1999, Dr. Thomas Petersik of the George Washington University, along with Rod Miller of Community Resource Services, Inc., supported by the Open Society, called together a number of the country's prominent economists to examine two basic questions, (1) whether inmate labor force participation in the civilian economy is good or bad for the economy in terms of GDP, and (2) what key steps they would recommend to improve inmate labor's contribution to the economy.<sup>42</sup> They addressed two main contemporary beliefs: (1) that banning inmates from the civilian labor force is good for the economy (that is, employed inmates hurt the economy, destroy civilian jobs and drive down wage rates); and (2) that banning inmates is good criminal justice policy (that is, that it constitutes meaningful punishment). The economists included Ray Marshall, of the University of Texas and former U.S. Secretary of Labor; Richard Freeman of Harvard

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<sup>41</sup> "Winners and Losers in Private Sector Prison Industries," The Center on Crime, Communities & Culture, October 16, 1997.

<sup>42</sup> "The Economics of Inmate Labor Force Participation," The George Washington University, funded by the Open Society Institute, May 29, 1999.

University; Jeffrey Kling and Alan Krueger of Princeton University; and Steven D. Levitt of the University of Chicago.

The economists generally agreed: (1) in contrast to popular perceptions, that increased inmate labor force participation would be good for the U.S. economy in the sense of increasing the nation's output of goods and services; (2) that increasing inmates' legal employment prospects might constitute the greatest likely social and economic good from inmate labor force participation, with benefits in reduced future crime and recidivism; and (3) that inmate labor force participation would have little or no discernible effect on U.S. civilian labor employment or wage rates overall, but could slightly reduce the wage rate and employment levels for low-wage civilian workers. Unfortunately, no significant policy impact resulted from the symposium.

#### ***PIECP Under Current Funding Conditions***

By 2005, BJA had experienced a reduced ability to fund the PIE program and NCIA began to focus primarily on its compliance assessment function. In recent years, desk assessments have been used to supplement the more expensive on-site assessments. Assessments teams are now one-person teams without independent observers. Compliance-based technical assistance, where necessary, remains a part of the assessment process, and training Webinars continue to train certificate holders and assessors as to assessment requirements. NCIA brings its PIECP manager to annual NCIA national conferences so that individual issues can be addressed when certificate holders request assistance and in most years provides formal PIECP compliance training its own expense. Growth in the program continues, though at a slower pace than was the case in the past. Michigan will likely be certified in 2011, and New Hampshire has begun

the application process. Pennsylvania and Kentucky are also considering certification. NCIA has submitted a new draft program Guideline to BJA, in hopes of influencing new policy directives in response to compliance issues revealed during recent assessment cycles. BJA hopes to release a new policy Regulation for the PIECP in the upcoming months.

## **CONCLUSION**

Criminal justice practitioners, along with Federal and state criminal justice agencies, are intently focused today on how to create and manage successful re-entry strategies for the nation's millions of incarcerated men and women. Experience with meaningful work while incarcerated is clearly one important answer to the problem, and participation in the PIECP is clearly an important vehicle for providing that experience. It is an approach which the Department of Justice and the great majority of the states have supported. And yet the number of inmates involved remains small, at roughly 5,000, when more than 2,000,000 men and women are incarcerated in the nation's prisons and jails as of this writing.

The concerns expressed by organized labor and community businesses remain major obstacles to success: (1) the concern that inmate workers will be paid less than their community counterparts and so displace civilian workers, and (2) the concern that inmate workers will themselves be exploited by private sector companies eager to preserve profits at the workers' expense.

Nothing in the PIECP experience to date supports either of these concerns. BJA has taken care to ensure that wages are comparable to the wages of private sector

counterparts, funding team after team of on-site assessors to examine this issue in detail. While it is true that wages typically remain low in PIECP CACs (almost always at or just above the 10th percentile), it is also true that most PIECP work is labor-intensive, entry-level work for which these wages are appropriate. It is important to note that BJA leaves the wage setting decision at the local level, with state departments of economic security, where equalization between prison and community wages is best understood. In the few instances where wages have been found to be too low, actions were taken by state courts or agencies, or by BJA , to remedy the problem.

There have been almost no complaints from prisoner workers over the years of the PIECP's existence. Prison and jail inmates want more of the program, not less, and they consistently attest to its value in terms of real world work experience and the kinds of contacts that lead to jobs on the outside, as well as how the program has given them the ability to continue to help in the support of their families. Prisoner workers do want higher wages; they lose more than half the income they earn under the program to pay taxes, room and board, victims' compensation, and family support, yet they continue to ask for more such work—a testament to the program's value to its most central participants.

The thirty-two years of PIE program experience also have been overwhelmingly positive for prison and jail administrators, who recognize the program's value in terms of covering some of the costs of corrections, of meaningful experience for inmates, of the normalcy that the injection of private sector personnel and ideas brings to the prison, and of the value of such jobs in increasing positive behavior among inmates who work in them as well as those who hope to do so in the future. As a prison management tool, there

is no question of the value of the PIECP. Correctional industries directors agree, especially in times of economic downturn when the need to supplement public markets with private markets is most acute. Finally, the amounts of money created through PIECP jobs that have gone to ease the public tax burden cannot be ignored: As noted above, from the program's inception, PIECP workers have contributed approximately \$57 million to victims' compensation funds, \$171 million to cover some of the costs of incarceration, \$36 million in family support, and \$75 million in taxes. By any measure, the PIECP has made a substantial contribution to American taxpayers.

Whatever needs to be done to encourage and support private sector companies to explore the possibilities of the PIECP can and should be done. We should support and encourage corrections officials to explore the potential of PIECP--especially the benefits of truly replicating conditions in the private sector work place--and ensure that they are rewarded for doing so. In the current economic climate it will be difficult to develop what amounts to a jobs program for current prisoners. Nonetheless, it makes economic sense to do so if we are to begin to turn around the cycle of recurring incarceration that plagues a significant segment of our population. Finally, Congress should take this opportunity to re-examine its thirty-two year "pilot project." It must strengthen and clarify underlying wage and benefit provisions, and it must provide more significant incentives to both the private and the public sectors. If we are really interested in cutting the rate of recidivism among the nation's prisoners, and in creating lasting ties to community that will allow our ex-offenders to succeed, then we must recognize the PIECP as one of the most important tools we have for doing so.