



Monograph

EMERGING ISSUES ON PRIVATIZED PRISONS



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Emerging Issues on Privatized Prisons

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Foreword

One of the most daunting challenges confronting our criminal justice system today is the overcrowding of our nation's prisons. The past decade has witnessed a doubling of the number of adult offenders brought before our courts. According to one estimate, as we begin the new millennium, the nation's inmate population approaches the 2 million mark. Securing and humanely housing such a large population has placed an enormous burden on prison administrators as well as the federal, state, and local jurisdictions that must finance the institutional confinement of so many inmates.

In the 1980s, the public's frustration over a perceived failure of the penal system to rehabilitate offenders and a reluctance to provide more funding for correctional institutions, coupled with the increasing demand for more jail space, precipitated a crisis. One proposed solution that emerged was the privatizing of prisons and jails by contracting out, in part or in whole, their operations. In 1987, the number of inmates incarcerated in privately operated correctional facilities worldwide was 3,100; by 1998 the number had risen to 132,000. In the United States today there is a total of 158 private correctional facilities. Proponents of privatization have suggested that allowing the facilities to be operated by the private sector could result in cost reductions of 20 percent.

To explore the issues pertaining to the privatization of prisons, the Bureau of Justice Assistance funded a nationwide study that has resulted in this monograph, *Emerging Issues on Privatized Prisons*. The monograph examines the historical factors that gave rise to the higher incarceration rates, fueling the privatization movement, and the role played by the private sector in the prison system. It outlines the arguments, both in support of and opposition to, privatized prisons, reviews current literature on the subject, and examines issues that will have an impact on future privatizations. An appendix provides practical guidelines for policymakers who are considering privatizing a facility.

The study resulted in some interesting conclusions. For example, it was discovered that, rather than the projected 20-percent savings, the average saving from privatization was only about 1 percent, and most of that was achieved through lower labor costs. Nevertheless, there were indications that the mere prospect of privatization had a positive effect on prison administration, making it more responsive to reform. It is hoped that this monograph will prove enlightening to those involved with the issue of privatized prisons and promote a greater discussion about it.

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Executive Summary

The state of corrections has come under attack by many during the past decade. Many contend that the current state of affairs will not work in the 21st century. Some argue that the public sector is incapable of handling the complex and changing dynamics associated with corrections, and therefore more prisons need to be handed over to the private sector; others argue that private industry should not be a part of the public matter of penalizing offenders of crime. Although the private sector has had a long history of involvement in corrections, private prisons make up less than 5 percent of the current market. This study offers a review of the history of privatization, presents a review of relevant research on the issues involved, and compares some of the major findings from the *National Survey of State Prison Privatization, 1997*, conducted by the National Council on Crime and Delinquency (1998) and the *Census of State and Federal Correctional Facilities, 1995*, conducted by the Bureau of Justice Statistics (1997a), on the benefits and costs associated with private- and public-managed prison facilities.

Although private prisons tend to house mostly minimum-security inmates, the findings from this report suggest that private prisons operate much the same as public facilities. Private prisons offer only modest cost savings, which are basically a result of moderate reductions in staffing patterns, fringe benefits, and other labor-related costs. No evidence was found to show that the existence of private prisons will have a dramatic effect on how nonprivate prisons operate.

Current Trends in Privatization

- ❑ It is estimated that worldwide there are 184 privately operated correctional facilities, which hold 132,346 inmates.
- ❑ Within the United States, a total of 158 private correctional facilities are operating in 30 states, Puerto Rico, and the District of Columbia. Texas has the most facilities (43), followed by California (24), Florida (10), and Colorado (9). Most private correctional facilities tend to be concentrated in the Southern and Western United States.
- ❑ Another 26 private facilities operate in 3 other countries, with Australia (12) and the United Kingdom (10) topping the list.
- ❑ Total revenues allocated to private prisons and jails are estimated at \$1 billion.

- ❑ Despite rapid growth in the number of private correctional facilities, they represent only a small share of the entire correctional facilities market. With jail and prison populations totaling approximately 1.7 million in the United States, the estimated 116,626-bed capacity of private correctional facilities makes up less than 7 percent of the U.S. market. Less than 5 percent (52,370 inmates) of the total 1.2 million U.S. prison population is housed in private facilities.

Prior Research Findings on Privatization

- ❑ Few studies have been completed regarding the impact that privatizing prisons has on costs, protection from harm, recidivism, and conditions of confinement.
- ❑ A major conclusion reached from the few studies completed is that privately operated prisons function as well as publicly operated prisons.
- ❑ With respect to operating costs, privately operated prisons can reduce expenditures in those markets in which public employee benefit rates are relatively high in comparison to national rates.
- ❑ Management problems that have occurred with privatized prisons can usually be linked to poorly drafted contracts, lack of oversight by contracting agencies, and transferring inmates with classification level requirements to private prisons that do not have the resources and capabilities to handle these inmates.
- ❑ Evidence shows that the presence of private prisons has encouraged public facilities to adopt similar cost-saving strategies in staff deployment and procurement policies.
- ❑ Evidence also shows that private entities can construct new facilities faster and cheaper than can be done by firms in the public sector.

National Survey Results

- ❑ Most privately operated prisons (not including jails or detention centers) are relatively new, with bed capacities of 800 or less, and designed for medium- and minimum-security custody inmates.

- ❑ Results from previous studies show that privately operated prisons function similarly to publicly operated prisons with respect to program and work participation by inmates and the distribution of staff by key functional areas. Three exceptions to these findings are in the areas of staffing levels, management information system (MIS) support, and critical incidents. Privately operated facilities have a significantly lower staffing level than publicly operated prisons and lack MIS support. They also report a significantly higher rate of assaults on staff and inmates.
- ❑ The differences mentioned above may be related to factors such as reporting standards or the fact that most correctional facilities experience management difficulties when newly opened. However, insufficient training and lack of qualified staff in key positions may also be valid reasons for these differences. Nonetheless, the assumption that privately operated prisons are safer or better managed than publicly operated facilities is not supported by the results presented in this report.

Future Trends

- ❑ The number of privatized prisons is likely to increase, but not at the pace exhibited during the past decade.
- ❑ The number of companies operating privatized prisons is likely to decrease as competition and the costs of doing business increase, thus forcing a consolidation of firms within the industry.
- ❑ It is unlikely that privatized prisons will develop a strong market in the high-security inmate population market due to the recent flurry of well-publicized disturbances. However, important inroads can be expected for the private sector within low-security medical, mental health, and geriatric inmate populations.
- ❑ Speculative prisons will face the greatest scrutiny and resistance by state and federal correctional agencies. These facilities are the most difficult to monitor and regulate.
- ❑ Unless there is a sharp reduction in major incidents at private prisons, litigation directed at facilities that are immune from the Prison Litigation Reform Act will likely increase.

Introduction

Prison overcrowding is one of the most burdensome problems plaguing our criminal justice system and a major catalyst for privatizing correctional facilities. Over the past decade the number of adult offenders under the jurisdiction and control of the United States justice system has doubled. Between 1980 and 1995, the probation, parole, and jail populations grew almost as rapidly as the prison population. In 1995, more than 5.4 million adults—approximately 1 out of every 46—were under some form of correctional supervision (Bureau of Justice Statistics, 1997a). The public has witnessed an increase in the nation's prison and jail populations from nearly 750,000 in 1985 to more than 1.7 million in 1997 (table 1). This rise in prison and jail populations and the corresponding need for additional bed space have been accompanied by similar increases in alternative forms of correctional supervision.

As the number of inmates in prisons and jails and on probation and parole increased, a corresponding surge in prison spending has occurred. According to a report issued by the U.S. General Accounting Office (1996a), prison operating costs grew steadily between fiscal years 1980 and 1994, due in part to the continuous growth in the inmate population. Total U.S. prison operating costs (federal and state) grew from about \$3.1 billion in fiscal year 1980 to more than \$17 billion in fiscal year 1994. This is an increase of nearly 550 percent based on constant or inflation-adjusted dollars (table 2).

The National Council on Crime and Delinquency (NCCD) has estimated that up to \$15 billion will be needed to construct additional prisons to accommodate the anticipated growth in the inmate population by the year 2000, with an additional \$21.9 billion needed to operate these prisons. This combined \$37 billion does not include the additional billions of dollars required to service the debt associated with the loans necessary to pay for additional prison construction (Clark, 1998). Based on current trends, NCCD estimates that prison and jail populations will reach 2 million by the end of 2000.

Compounding the problems created by the growing demand for prison space and funding is the lack of public confidence in the quality of correctional services provided by federal, state, and municipal governments. Penal programs designed to rehabilitate offenders have not demonstrated a significant reduction in crime or recidivism and have thus lost credibility with the public and policymakers. In short, the belief that government is not equipped to meet the challenges of contemporary institutional confinement is spreading.

In the 1980s, private prisons and jails were seen as part of the solution to meet the increasing pressure for prison bed space at a time when taxpayers

Table 1 Number of Persons Held in State or Federal Prisons or Local Jails, 1985, 1990–1997*

| Year | Total Inmates | Federal | State | Jail | Incarceration Rate† |
|-------------------------------|---------------|---------|-----------|---------|---------------------|
| 1985 | 744,208 | 35,781 | 451,812 | 256,615 | 313 |
| 1990 | 1,148,702 | 58,838 | 684,544 | 405,320 | 458 |
| 1991 | 1,219,014 | 63,930 | 728,605 | 426,479 | 481 |
| 1992 | 1,295,150 | 72,071 | 778,495 | 444,584 | 505 |
| 1993 | 1,369,185 | 80,815 | 828,566 | 459,804 | 528 |
| 1994 | 1,476,621 | 85,500 | 904,647 | 486,474 | 564 |
| 1995 | 1,585,586 | 89,538 | 989,004 | 507,044 | 600 |
| 1996 | 1,646,020 | 95,088 | 1,032,440 | 518,492 | 618 |
| 1997 | 1,725,842 | 99,175 | 1,059,588 | 567,079 | 645 |
| 1990–1997 percentage increase | 6.5 | 8.4 | 7.0 | 4.9 | 5.8 |

* Jail counts are for midyear (June 30). State and federal prisoner counts for 1990–1995 are for December 31. Counts for 1994–1997 exclude persons who were supervised outside a jail facility.

† Persons in custody per 100,000 residents on July 1 of each year.

Source: Bureau of Justice Statistics (1998).

were reluctant to pay for correctional services and were not supportive of divestiture of resources from other areas of state responsibilities and services (Travis et al., 1985). To confront escalating prison populations and costs, an increasing number of policymakers are now turning to the private sector for assistance.

Privatization is commonly defined as a contract process that shifts public functions, responsibilities, and capital assets, in whole or in part, from the public sector to the private sector. Privatization in correctional services can assume a number of institutional characteristics. For instance, the most common form of privatization in corrections is the contracting out (or outsourcing) of specific services that entails a competition among private bidders to perform governmental activities. Over the past two decades, the practice of state and local correctional agencies contracting with private entities for medical, mental health, educational, food services, maintenance, and administrative office security functions has risen sharply. Under these circumstances, the correctional agency remains the financier and continues to manage and maintain policy control over the type and quality of services provided.

Table 2 Prison Operating Costs, Fiscal Years 1980–1994

| Fiscal Year | Federal | State | Total |
|--------------------|----------------|------------------|------------------|
| 1980 | \$ 319,274,000 | \$ 2,787,369,000 | \$ 3,106,643,000 |
| 1981 | 346,517,000 | 3,229,234,000 | 3,575,751,000 |
| 1982 | 368,000,000 | 3,794,178,000 | 4,161,178,000 |
| 1983 | 435,000,000 | 4,346,273,000 | 4,781,273,000 |
| 1984 | 529,245,000 | 5,066,666,000 | 5,595,911,000 |
| 1985 | 500,941,000 | 5,934,160,000 | 6,435,101,000 |
| 1986 | 555,097,000 | 6,619,534,000 | 7,174,631,000 |
| 1987 | 580,097,000 | 7,601,594,000 | 8,181,691,000 |
| 1988 | 878,502,000 | 8,586,498,000 | 9,465,000,000 |
| 1989 | 900,334,000 | 9,611,020,000 | 10,511,354,000 |
| 1990 | 1,148,678,000 | 11,194,236,000 | 12,342,914,000 |
| 1991 | 1,318,741,000 | 12,514,171,000 | 13,832,912,000 |
| 1992 | 1,585,498,000 | 13,290,202,000 | 14,875,700,000 |
| 1993 | 1,767,019,000 | 14,239,710,000 | 16,006,729,000 |
| 1994 | 1,918,067,000 | 15,776,174,000 | 17,694,241,000 |

Source: U.S. General Accounting Office (1996a).

A more radical approach is to have government transfer ownership of assets, commercial enterprises, and management responsibilities to the private sector. This approach, called an “asset sale,” leaves the government with a limited or nonexistent role in the financial support, management, or oversight of the sold asset (U.S. General Accounting Office, 1997). This form of privatization was not adopted by governments in operating correctional facilities until the 1980s.

A dramatic increase in the use of private correctional facilities has occurred—initially in the United States and more recently in the United Kingdom, Australia, and South Africa.¹

In 1987, the total number of inmates in privately operated prisons and jails worldwide was approximately 3,100. By December 31, 1998, that number had increased to more than 132,000 (table 3). Although 14 private correctional facility firms existed at that time, 2 companies (Corrections Corporation of America and Wackenhut Corrections Corporation) accounted

Table 3 Private Adult Correctional Firms, December 31, 1998

| Management Firm | U.S. Capacity | Outside U.S. Capacity | Total Capacity | Percentage* |
|-------------------------------------|----------------|-----------------------|----------------|--------------|
| Alternative Programs, Inc. | 340 | 0 | 340 | 0.3% |
| Avalon Correctional Services, Inc. | 350 | 0 | 350 | 0.3 |
| Bobby Ross Group | 464 | 0 | 464 | 0.4 |
| CiviGenics Inc. | 3,563 | 0 | 3,563 | 2.7 |
| Cornell Corrections, Inc. | 5,794 | 0 | 5,794 | 4.4 |
| Correctional Services Corporation | 6,727 | 0 | 6,727 | 5.1 |
| Correctional Systems, Inc. | 272 | 0 | 272 | 0.2 |
| Corrections Corporation of America | 65,748 | 2,244 | 67,992 | 51.4 |
| Group 4 Prison Services Ltd. | 0 | 4,510 | 4,510 | 3.4 |
| GRW Corporation | 362 | 0 | 362 | 0.3 |
| Management and Training Corporation | 7,465 | 0 | 7,465 | 5.6 |
| Maranatha Production Company | 500 | 0 | 500 | 0.4 |
| Securicor | 0 | 800 | 800 | 0.6 |
| Wackenhut Corrections Corporation | 25,041 | 8,166 | 33,207 | 25.1 |
| Total | 116,626 | 15,720 | 132,346 | 100.0 |

* Discrepancy in total is due to rounding.
Source: Thomas (1998).

for more than three-fourths of the entire worldwide market (Thomas, 1998).

In the United States, a total of 158 private correctional facilities are operating in 30 states, Puerto Rico, and the District of Columbia (table 4). Texas has the most facilities (43), followed by California (24), Florida (10), and Colorado (9). Most private correctional facilities tend to be concentrated in the Southern and Western United States. Another 26 private facilities operate in 3 other countries, with Australia and the United Kingdom topping

Table 4 Geographic Distribution of Privately Operated Correctional Facilities, December 31, 1998

| Jurisdiction | Number of Facilities | Percentage of Facilities* |
|--------------------------|----------------------|---------------------------|
| Texas | 43 | 23.4 % |
| California | 24 | 13.0 |
| Florida | 10 | 5.4 |
| Colorado | 9 | 4.9 |
| Oklahoma | 8 | 4.3 |
| New Mexico | 7 | 3.8 |
| Tennessee | 6 | 3.3 |
| Mississippi | 6 | 3.3 |
| Arizona | 6 | 3.3 |
| Georgia | 5 | 2.7 |
| Kentucky | 4 | 2.2 |
| Puerto Rico | 4 | 2.2 |
| Arkansas | 2 | 1.1 |
| North Carolina | 2 | 1.1 |
| Louisiana | 2 | 1.1 |
| Missouri | 2 | 1.1 |
| Ohio | 2 | 1.1 |
| Kansas | 2 | 1.1 |
| 13 other states and D.C. | 14 | 7.6 |
| U.S. total | 158 | 85.9 |
| Non-U.S. total | 26 | 14.1 |
| Total | 184 | 100.0 |

* Discrepancy in total is due to rounding.

Source: Thomas (1998).

the list (table 5). There are another 530 nonsecure, privately operated facilities, such as halfway houses, residential drug treatment, and other juvenile correctional facilities in the United States. Total revenues allocated to private prisons and jails in 1998 are estimated at \$1 billion (McDonald et al., 1998).

Table 5 Geographic Distribution of Privately Operated Correctional Facilities Outside the United States, December 31, 1998

| Country | Facilities | Capacity by Country | Percentage |
|--------------|------------|---------------------|------------|
| South Africa | 2 | 3,000 | 19.1% |
| U.K. | 12 | 8,061 | 51.3 |
| Australia | 12 | 4,659 | 29.6 |
| Total | 26 | 15,720 | 100.0 |

Source: Thomas (1998).

Despite the rapid growth in the number of private correctional facilities, they represent only a small share of the entire correctional facilities market, at least within the United States. With jail and prison populations totaling approximately 1.7 million in the United States, the estimated 116,626-bed capacity of private correctional facilities makes up less than 7 percent of the U.S. market. The recently completed Abt Associates Inc. report (McDonald et al., 1998) found that less than 5 percent (or 52,370 inmates) of the total 1.2 million United States prisoner population was housed in private prisons.

In terms of prison facilities, the Abt study identified no more than 65 facilities that could house state prisoners, which is a small percentage of the more than 1,500 prisons in the United States. Furthermore, indications show that growth in privatization may be slowing. For example, Lanza-Kaduce and colleagues (1998) report that private facility bed capacity has not increased since January 1, 1998. Additionally, stock prices for most of the major firms have dropped substantially in the past year. There have also been a number of highly publicized management problems with several privately operated facilities.

This report gives attention to issues surrounding the current debate on privatization. The privatization of correctional operations and services has resurfaced as a controversial topic, yet its antecedents developed early in this country's history. Chapter 2 examines the factors, particularly demographic shifts, sentencing law changes, and the political backdrop that gave rise to increased incarceration rates since the early 1980s, leading to the recent privatization movement for incarceration. Another section of chapter 2 investigates the historical role of private-sector involvement in the provision of correctional services in the United States. This chapter also briefly outlines the various arguments in favor of and against privately operated prisons.

Chapter 3 reviews the current research literature on prison privatization, with particular attention given to recent federal, state, and local experiences with privatization. Chapter 4 outlines the methodology used by the NCCD to conduct a national survey of private prison facilities in late 1997 and reports the findings of this survey. Chapter 5 summarizes the major findings of the study and examines the most critical issues that will likely have an impact on privatization of the nation's prison systems.

Finally, the appendix contains practical guidelines for state and local policymakers to consider should they decide to privatize a facility. These guidelines were developed by the Oklahoma Department of Corrections, which has been very active in the privatization movement.

The History of and Key Debates Over Privatization

Privatization of Corrections: A Historical Overview

Private enterprise in the United States has an extensive history of involvement in the provision of correctional services. According to Feeler (1991), the involvement of the private sector in corrections stems, in part, from an Anglo-American political culture that is somewhat skeptical of governmental authority yet promotes private initiative. Feeler traces the private-sector involvement back to shortly after the first English colonists arrived in Virginia in 1607. The colonists were followed by a handful of convicted felons, who were transported by private entrepreneurs to America as a condition of pardon to be sold into servitude.²

The overseas transportation of these felons was organized by private entrepreneurs. Merchants transported convicts in exchange for the privilege of selling them as indentured servants (Ammon et al., 1992). Transporting convicts to America (and later many more to Australia following the American Revolution) was an innovation that radically transformed the administration of criminal justice. This innovation expanded the power of the state to impose sanctions without the need to increase its administrative structure. In other words, transportation of felons increased the state's penal capacity at a low cost to the government.

During the 18th century, the modern prison emerged in America as a viable alternative to servitude or the death penalty. Also during this time, the use of privately operated facilities became popular. In the colonies, criminal justice procedures were copied from English custom, which had a long history of private involvement in operating jails. Privately operated jails date back to medieval England (Pugh, 1968).

For a fixed fee states allowed private contractors to supervise prisoners inside prison walls (Ethridge and Marquart, 1993). Although appointed by the government, a head jailer was considered an independent operator of a profit-making enterprise functioning as a government contractor. Often, jailers employed prisoners (McCrie, 1993). In privately operated facilities, inmates were often engaged as laborers and craftsmen in private-sector activities. Early American jails may be characterized as exploitative. Cripe (1997: 378) describes the conditions:

There was seldom any separation of types of prisoners—women and children were often confined with hardened criminals. Many jails were very crowded; most were unsanitary. Payments were extracted for special services, such as better meals or other privileges. Some money was given to the jailer (often the sheriff) for basic services. But it was widely accepted that jailers could charge additional money for virtually any type of special benefit.

By 1885, 13 states had contracts with private enterprises to lease out prison labor (McCrie, 1993: 24). One of the more interesting situations occurred in California at the San Quentin prison, which was the first facility constructed and operated by a private provider in the 1850s. Private entrepreneurs persuaded state officials that the facility could best be operated under a long-term lease arrangement with an entity that had experience in law enforcement. Even back then the debate centered on costs, with the argument made that a private-sector entity would be less expensive and less corrupt than the government. However, after a number of major scandals surfaced surrounding the mismanagement of the facility by the private provider, the state decided to turn the facility over to the control of state government. Eventually, the government turned out to be as ineffective and corrupt as the private provider (Lamott, 1961: 74, 78):

As the year [1856] went on it became increasingly clear to more and more people that, regardless how much money it might save the taxpayers, a private contract was no way to run the state prison. The *Bulletin* was not alone when it demanded that, whatever it cost, a final end had to be put to the system of farming out the management of the state convicts. . . . After the final ejection of [Warden] McCauley, however, the prison fell into the hands of men who were primarily professional politicians rather than pirates. The distinction is a nice one, and the change was more a matter of style than of substance. The prison remained a rich piece of political spoils, but the looting was now carried on more in line with the ancient traditions of American state politics.

Even back then, private contractors were claiming that they could both manage prisons and employ convicts in labor, arguing that the practice would be both rehabilitative and financially rewarding.³ Prison models of convict labor took various forms. At some, companies outside the prison provided raw materials that were refined in prison workshops and later sold by private companies. At others, prisons leased their inmates out to private farms or other businesses if they could not produce salable items within the prison. In a number of states, contractors paid the prison a fee or a percentage of the profits for the right to employ convicts. For example, in the 1860s the Texas legislature directed state correctional administrators to contract out inmate labor to the private sector. Even when prisons were not operated entirely by private entrepreneurs, inmates were used as a cheap source of labor. Prisoners often worked on farms, railroads, and mines, in addition to other public work programs.⁴

For most of the correctional history of the United States, prison labor was expected to generate a profit for the institution. If generating a profit was not feasible, it was incumbent upon the prisoner to pay the costs of incarceration and become self-supporting. The “managers” of early detention facilities charged their inmates for food and clothing, while providing substandard service. The income generated by inmate labor, however, was not sufficient to cover the high costs of operating correctional systems, despite persistent and intense efforts to make the system pay for itself (Feeler, 1991). Without independent oversight and monitoring, the convict labor system eventually succumbed to bribery and corruption.

Moreover, organized labor, manufacturers, and farmers strongly opposed the convict lease system. This broad constituency opposed what it considered was unfair competition and pressed for legislation restricting the use of convict labor and convict-produced goods. Public opposition was also mobilized by reformers and religious groups that protested the scandalous conditions found at many of the privately run facilities and in labor lease systems. State legislatures began investigating alleged incidents of mismanagement and cruelty within privatized institutions, resulting in modifications to the leasing system.⁵

An executive order signed by President Theodore Roosevelt in 1905 prohibited the use of convict labor on federal projects. In 1929 Congress passed the Hawes-Cooper Act permitting states to ban the importation of inmate products from other states (Ammon et al., 1992: 4–5). During the Great Depression, Congress and state legislatures also passed laws that further curtailed the use of inmates in private enterprise.

By the 1920s, the prevailing practice in American correctional agencies was to increase governmental involvement. The subsequent demise of the convict lease system eventually gave way to state-run institutions. The operations and administrative functions in correctional facilities were delegated to governmental agencies, authorized by statute, staffed by government employees, and funded solely by the government (Cripe, 1997: 380).

Beginning in the early 20th century and until more recently, the custom in American correctional agencies was to provide virtually all correctional services as governmental functions in institutions constructed and maintained at the government’s expense.⁶ In some program areas, rehabilitative services were provided by volunteer associations (religious and educational). Generally, however, private involvement in the provision of correctional services was diminished.

To manage escalating costs associated with supporting the many functions required to effectively run penal institutions, a trend gradually developed in the 1900s for the contracting out of prison services to both profit-making and not-for-profit firms. Prisons added services such as food preparation, vocational training, and inmate transportation to the list of provisions that were contracted out (which already included medical, dental, and mental

health services). By the mid-1970s, federal, state, and municipal governments were again willing to expand their association with the private sector, moving beyond the conventional contractual relationship that had become common in the early 20th century, and private enterprise began to play an influential and expanded role in the functioning of correctional facilities. According to Durham (1993: 33), the 1970s ushered in a new phase in the development of private corrections, beginning with juvenile correctional operations:

In 1976 RCA Services, a private company, assumed control of the Weaversville Intensive Treatment Unit located in North Hampton, Pennsylvania. This facility was designed to handle male delinquents. Although the private sector had long been involved in providing a wide range of correctional services . . . this was the first modern institution for serious offenders to be completely operated in what has become an increasingly lengthy line of such institutions in the American correctional system.

The Weaversville Intensive Treatment Unit for Juvenile Delinquents is widely regarded as the first high-security institution that was entirely privately owned and operated under contract to the state. The second such institution did not open until 1982, when the state of Florida turned the operation of the Okeechobee School for Boys over to the Eckerd Foundation (Logan and Rausch, 1985: 307).

The trend toward privately operated juvenile correctional facilities has continued, with more than 40,000 youth now housed in privately operated juvenile facilities. It is noteworthy that these operations have not received nearly the level of scrutiny and criticism as have their adult counterparts. This may be due to the fact that some, but not all, are not-for-profit operations.

The U.S. Immigration and Naturalization Service (INS) was among the first governmental agencies to take advantage of the emerging market of private prison operators. At the end of 1984, INS had contracts with two private companies for the detention of illegal aliens; by the end of 1988, the number of private INS detention facilities had grown to seven, housing roughly 800 of the 2,700 aliens in INS custody (McDonald, 1994). Also during this period, the Corrections Corporation of America (CCA) was awarded a contract to manage the Hamilton County Jail in Chattanooga, Tennessee. This was followed by the first state-level contract award in 1985, when Kentucky contracted with the U.S. Corrections Corporation to manage a correction facility.

According to McDonald (1994), these developments initially provoked little controversy or even notice, most likely because private-sector involvement in correctional management was still limited in size and scope.⁷ The importance of these early contracts has been noted by Thomas (1997b), a strong advocate of private prisons.

The importance of these contract awards to the subsequent development of correctional privatization would be difficult to over-estimate and the fact that all remain still in force today with the same management firms is not inconsequential for those who would be willing to accept this fact as at least an oblique performance indicator. Each provided a real world opportunity to test the hypothesis that contracting could yield meaningful benefits to government. Each also provided a valuable model that subsequent units of government could examine and improve upon in such critical areas as procurement strategies, the formulation of sound contracts, and the creation of effective means of contract monitoring.

Security adult institutions, once considered the near exclusive and inextricable preserve of government, emerged as a central issue debated among correctional agencies. Finally, in the last few years, governments have sought to contract out capital expenditure costs and operational services, including prison design, construction, and management (Yarden, 1994).

Thus, the pressure of increased incarceration rates, combined with rising correctional costs, has enabled privatization of penal facilities to reemerge as an acceptable political and correctional system operational concept. This reemergence, however, has stirred considerable debate over the viability of privately operated prison facilities. The current enthusiasm for privatization is fueled by the prospect of more innovative, cost-effective prison management, including the anticipated private-sector involvement in the financing of new prison construction. This enthusiasm is not shared by all. Much of the contention is reflected in the literature, especially with regard to the alleged advantages and disadvantages to private facility management.

The Debate

Many claims have been made by observers on the advantages and disadvantages of privatization. Cunningham (1999) has summarized the major reasons either to accept or reject the privatization concept (table 6). These reasons can be reduced to the overriding desire of many states and local governments to rapidly increase desperately needed prison bed capacity and to reduce prison operational costs. Others have raised the issue of whether private prisons can enhance the quality of care for inmates (including enhanced protection from harm for inmates and staff) and reduce litigation. Thus far, there has been little need on the part of private providers to argue that inmates incarcerated in privately operated prisons are more likely to be rehabilitated and less likely to recidivate, although such a claim was recently made in a Florida study (Thomas, 1998). These claims, which form the core of the debate on whether to privatize, are discussed in this section.

Table 6 Public Strategies for Private Prisons

| Reasons To Privatize | Reasons Not To Privatize |
|--|---|
| 1. Private operators can provide construction financing options that allow the government client to pay only for capacity as needed in lieu of encumbering long-term debt. | 1. There are certain responsibilities that only the government should meet, such as public safety and environmental protection. To provide incarceration, the government has legal, political, and moral obligations. Major constitutional competition among both public and private issues revolves around the deprivation of liberty, discipline, and preserving the constitutional rights of inmates. Related issues include use of force, loss of time credit, and segregation. |
| 2. Private companies offer modern state-of-the-art correctional facility designs that are efficient to operate and built based upon value engineering specifications. | 2. Few private companies are available from which to choose. |
| 3. Private operators typically design and construct a new correctional facility in half the time of a comparable government construction project. | 3. Private operators may be inexperienced with key corrections issues. |
| 4. Private vendors provide government clients with the convenience and accountability of one entity for all compliance issues. | 4. Operator may become a monopoly through political ingratiation, favoritism, etc. |
| 5. Private corrections management companies are able to mobilize rapidly and to specialize in unique facility missions. | 5. Government may lose the capability to perform the function over time. |
| 6. Private corrections management companies provide economic development opportunities by hiring locally and, to the extent possible, purchasing locally. | 6. The profit motive will inhibit the proper performance of duties. Private prisons have financial incentives to cut corners. |
| 7. Government can reduce or share its liability exposure by contracting with private corrections companies. | 7. Procurement process is slow, inefficient, and open to risks. |
| 8. The government can retain flexibility by limiting the contract duration and by specifying facility mission. | 8. Creating a good, clear contract is a daunting task. |
| 9. Adding other service providers injects competition among both public and private organizations. | 9. Lack of enforcement remedies in contracts leaves only termination or lawsuits as recourse. |

Source: Cunningham (1999).

Faster and Cheaper Bed Capacity

The dramatic increase in prison and jail populations and the associated need to construct prison and jail facilities quickly and cheaply have often been cited as a major impetus behind the move toward privatization. Contracting with the private sector allows prospective prisons to be financed, located, and constructed quicker and cheaper than government prisons. This flexibility is especially advantageous when a new facility is under consideration. Based on experience, governments take 5 to 6 years to build a facility, whereas some private companies claim they can do it in 2 to 3 years (or less).

For example, CCA built a 350-bed detention center in Houston, Texas, for INS. CCA completed the project in 5 1/2 months at a cost of \$14,000 per bed. INS calculated construction to take 2 1/2 years at a cost of \$26,000 per bed (Yarden, 1994: 328). In a comprehensive study of privatizing the District of Columbia's Department of Corrections, Clark (1998) estimated that rebuilding several prison facilities would take the public sector 5 to 6 years, whereas it would only take the private sector 3 to 4 years.

Based on these and other reports, it seems clear that the private sector can add prison bed capacity faster and cheaper than most public entities. Cripe (1997: 384) cited the numerous advantages advocates assert in support of private prison construction:

Because private firms are not bound by governmental rules that tend to slow down prison construction, such as political pressures from unhappy neighbors, environmental hassles, and requirements of competed bidding and construction contracting, private firms have shown an ability to open new facilities more quickly. They claim they can also get the money to build new institutions more quickly from private investors or from lenders, while the government has to work more slowly, getting appropriations from the legislature or going through a bond issue process.⁸

On the other hand, Robbins (1997) points out that privatization allows prisons to be built without the approval of the public. For example, the construction costs of a privately operated facility can be lumped together in the state's prison operating budget whereas the state must seek voter approval on a construction bond for a publicly operated facility, as is usually the case.

Reduced Operational Costs

Representatives of private-sector firms assert that they can save taxpayers money by providing correctional services traditionally supplied by government at less cost. As already noted, private entrepreneurs can build facilities faster and cheaper than the government. However, the next claim is that they are also able to operate facilities more efficiently than the government. This can be achieved by reducing the costs of labor associated with

operational costs. Labor costs are controlled by reducing one or more of the following personnel cost factors: (1) number of staff, (2) wages, or (3) fringe benefits. The private sector alleges that these costs can be contained or that, for the same dollar, it can provide more or at least better services (Travis et al., 1985: 13).

This point of containing labor costs is the crux of the privatization movement. Prisons are extremely labor intensive, with approximately 65 to 70 percent of the costs of operating a prison going to staff salaries, fringe benefits, and overtime. Controlling these costs is more difficult to achieve with unionized government workers. Private firms typically use nonunion labor, allowing for the lowest benefit packages. Overall, private firms claim that they can save 10 to 20 percent in prison operations due largely to efficient handling of labor costs.

Another, less powerful argument in favor of private contracting is that the private sector has greater flexibility in the procurement process. It is argued that private-sector contractors are not bound by the cumbersome and rigid government procurement system. Consequently, private vendors can purchase goods and services quicker; maintain lower food, supplies, and equipment inventories; and negotiate better prices for these goods (Ammon et al., 1992: 10).

It is not uncontested that a private institution would be more cost effective. The incentive to contain costs is directly related to the type of contract structured (Travis, Latessa, and Vito, 1985: 14).

A public utilities or “pentagon” model reimbursement where a contractor receives costs plus a profit percentage would not necessarily provide an incentive to contain costs of service. On the other hand, a client charge may result in cost-overruns or even bankruptcy should the initial estimate prove wrong.

One expense not normally included in the financial calculation of private firms is the cost to the government for monitoring contract performance. Constant monitoring of all aspects of internal performance is essential to a good contractual relationship, which may become expensive over time. If continual federal or state monitoring of private institutions is required for accountability purposes, the costs of monitoring ultimately raise the price of privatized services. The potential costs of increased prison litigation is also rarely discussed by private prison advocates.

As a policy matter, opponents to privatization also claim it is inappropriate to operate prisons based on a profit motive. In many instances, private prison operators are paid according to the number of inmates housed. Arguably, it is in the operator’s financial interests to encourage lengthier sentences for inmates to keep bed spaces filled. If the private vendor enters into a contract based on a per-client charge, the profit margin and even the continued operation of the private facility depend upon total population

size. Firms driven by the profit motive could adversely influence prison population size by lobbying for longer sentences and stricter sentencing guidelines. Similarly, as private firms are in business to make a profit, high returns on their investments are important. Critics of prison privatization argue that firms will cut corners, from construction materials to hiring inexperienced personnel, forsaking security and quality of service in the process of making a profit.

Improved Quality of Service

In addition to the proposed cost savings and associated efficient services, one must also remember that the nation's prison and jail systems were facing widespread allegations about the lack of quality of care afforded to staff and inmates. Since the 1980s, most of the state prison systems as well as the major urban jails have been under far-reaching consent decrees regarding medical, mental health, education, overcrowding, and protection-from-harm issues. There have also been major prison disturbances in California, Illinois, New Mexico, and New York, to name a few, that have added to the public perception that public agencies have not been doing a good job in managing prisons.

However, one of the central concerns raised by critics of correctional privatization is that firms motivated by financial gain might make decisions that enhance profits at the expense of the rights and well-being of inmates (Durham, 1994). History shows that privately operated prison facilities were plagued by problems associated with the quest for higher earnings. The profit motive produced such abominable conditions and exploitation of the inmates that public agencies were forced to assume responsibility. The lack of contract supervision contributed, in part, to the squalid and inhumane living conditions in privately run prisons.

The current movement to reprivatize primary facility management assumes that modern entrepreneurs are somehow more benevolent and humanistic so that the exploitations of the past will not reoccur (Walker, 1994). Critics, however, contend that privately managed facilities will bring new opportunities for corruption. Given poorly paid, undereducated, and inadequately trained staff, opponents question the professionalism and commitment that privatized staff will bring to the job.

Proponents, on the other hand, suggest that present-day judicial activism provides oversight over private prison operations. The threat of inmate lawsuits and court-mandated consent decrees act as a deterrent to abusive behavior. Further arguments suggest that tolerance of abusive behavior by staff defeats the long-term interests of private contractors and can be avoided with careful monitoring mechanisms. Moreover, it is presumed that competition between firms will hold down costs and provide for superior service because contract renewals will depend on job performance. To date, the limited experience with privately managed prisons does not

allow a thorough evaluation of public and private prisons in terms of overall quality of inmate services.

Legal Issues

Disagreements surrounding cost and efficiency may eventually be resolved with more complete data. Better contract monitoring and judicial oversight should curtail instances of exploitation and abuse of the inmate population. However, the legal ramifications of privatization pose challenging questions not easily rectified. Three complex issues stimulate heated debate on correctional privatization:

- ❑ The propriety of private firms taking over state functions.
- ❑ Inmate rights and due process considerations.
- ❑ Liability and accountability for state actions.

A fundamental issue is public responsibility for the well-being of society. It is taken for granted that the apprehension and conviction of offenders are public responsibilities. Hence, the notion that convicted offenders should be the responsibility of private entrepreneurs motivated by profit seems contradictory (Walker, 1994: 582). The central question should be whether government has the authority to contract out what is now widely regarded as a public function. Commenting on the issue, Durham (1993: 43) states with some urgency that, "if the transfer of responsibility to penal institutions is not carefully executed, the consequences may be disastrous. Beyond inconvenience and unanticipated costs, both public safety and inmate well-being may be at stake."

The courts have clearly decided that private prisons can be assigned the same management responsibilities as those undertaken by state and local governments. This is not to say that state and local governments can wholly delegate their functions and duties to a private provider. Indeed, based on a number of recent infractions committed in private facilities, the courts will hold government responsible for actions taken by a private provider that violate an inmate's constitutional rights or that put the prison staff, inmates, or surrounding community in harm's way (Schosser, 1998; Clark, 1998).

What has not yet been resolved is whether privatization will undermine or enhance prisoners' rights as compared to publicly operated systems (Thomas, 1991). The U.S. Constitution protects individuals against the violation of due process (5th and 14th amendments) as well as the related issue of cruel and unusual punishment (8th amendment). Recent decades have witnessed a large volume of prison litigation concerning inmate rights and prison conditions that has resulted in most state correctional systems (or a facility within a state) operating under an imposed consent decree. The concern is whether private prisons can operate in such a manner that the exposure to litigation against government is reduced.

A number of U.S. Supreme Court cases have held that a person can only assert a denial of due process rights if that deprivation resulted from “state action” (Yarden, 1994: 331). The ultimate issue in determining whether an entity is subject to suit for violation of an individual’s rights is whether the alleged infringement is attributable to an action by the state.

A person acts or purports to act under the “color of state law” when in the performance of official duties under any state, county, or municipal law, ordinance, or regulation (42 U.S.C. 1983) (Robbins, 1986). Federal civil rights law prohibits state officials or agencies from being named as defendants in civil suits while operating in their official capacities if a plaintiff seeks monetary damages. The question remains whether the actions of private corrections facilities regulated by the state can be considered transformed into state actions under “color of state law.”

Thus far, the courts have decided that persons who provide services to inmates under contract are not immune from litigation for constitutional violations.⁹ What is yet to be settled is the propriety of private firms running entire correctional facilities and the broad legal or constitutional questions that might apply (Cripe, 1997: 394).

The issues raised heretofore have practical implications in the day-to-day operations of a private correctional facility. Before entering into a contractual agreement with a private firm for the operation of a prison or jail, it would be necessary to identify whether the private company can be authorized to exercise force (including deadly force) to prevent escapes, to imprison citizens against their will, and to impose penalties on those who violate the regulations and rules of the institution. In the event that staff of private facilities are not allowed to enforce the rules and regulations of the institution, the likelihood of success of these corporations is obviously diminished. However, allowing a private prison to punish inmates who have violated institutional rules (which may differ from publicly operated facilities) without oversight by the state could be a denial of due process, especially if the punishment entails the loss of good time, which would serve to lengthen an inmate’s period of imprisonment.

The other area of concern deals with actual prison conditions, such as access to medical care, mental health services, work, vocational and educational services, overcrowding, and protection from harm. Travis and colleagues (1985) pose a series of questions to be considered before full privatization of correctional facilities becomes commonplace. These issues include whether the contracting government agency would be liable for any illegal actions of the contractor; if conditions in the contracted penal facility are found to violate constitutional requirements, who would ultimately be responsible for their correction and held liable for damages; whether the contracting governmental agency could be rendered immune to the actions of the contractor, any negligence that results in the escape of prisoners, or the financial mismanagement of the facility; and whether the

contracting agency would be responsible for bailing out a bankrupt contractor. With no clear court precedent on whether private prisons will come under the state action doctrine, prisoners' rights may ultimately depend on the nature of the contractual agreement between the state and the private operator.

Recent Research Regarding Privatization

Background

The debate over whether private-sector involvement in corrections should be increased has generated an extensive body of literature, comprising for the most part essays and position papers that reflect the author's stance on the issue. Often the ideological and political predispositions of the researchers seem to have shaped the interpretation of the data. However, as stated by Thomas (1997a):

[I]t is equally clear that a rapidly growing body of literature is accumulating within which one finds highly repetitive themes. The core theme is that properly conceptualized, properly managed, and properly monitored privatization initiatives can serve the public interest. . . . Sound performance presupposes competent and qualified people from both the public and the private sector coming together cooperatively to attack important public policy problems.

Much of the discourse on correctional privatization entails an introduction to the topic, a review of the circumstances that gave rise to the demand for increased private-sector involvement, followed by a discussion of the issues involved (see for example, Bowman et al., 1993). The discussion of issues is invariably cast in favor of or in opposition to privatization. As discussed in chapter 2, there are a number of reasons why advocates support the use of the private sector in the provision of institutional correctional services. Most are related to the potential cost savings and efficient service that the private sector can achieve over the public sector. On the other hand, the movement against privatizing prisons is gaining momentum by attacking such issues as the transfer of services from a public to private provider, the potential decline in the quality of inmate services, the propriety of private-sector operation of correctional facilities, and the legal liability surrounding privatization.

There are literally hundreds of documents related to privatization of correctional services, and a few dozen studies have attempted an empirically based comparison of public and private facilities. This chapter examines the results of some of the more well-known comparative institutional studies, rather than the numerous essays and position papers that comprise the bulk of the publications in the field.

Costs

As noted previously, one of the most often debated issues in privatization literature is whether private facilities are more cost-efficient than government-operated institutions. The first and foremost argument in favor of privatizing prisons is that private managers will be more effective and efficient than public managers of prison facilities. It is argued that unlike state and federal governments, private firms are free (to some extent) from politics, cumbersome bureaucracies, and costly union contracts. Private contractors are accountable to their investors and, therefore, are presumably more motivated to satisfy the terms of their financial obligations to return a profit, which, in turn, would lead to more cost-effective operations.

There is no consensus among academics and professionals in the field concerning the potential cost savings that privately managed operators can provide. Some researchers looking at privatization initiatives proclaim “a realistic expectation of cost savings as a result of contracting is probably in the range of 5 to 15 percent,” whereas others declare that the evidence accumulated thus far is not yet persuasive (Thomas and Logan, 1993).

The National Institute of Corrections Study: Okeechobee, Florida

One of the first evaluation studies of costs was funded by the National Institute of Corrections (1985) to assess the transfer of a state-operated juvenile facility to private management by a private, not-for-profit organization. In August 1982, the Jack and Ruth Eckerd Foundation was awarded a contract to manage the Florida School for Boys at Okeechobee. The Arthur G. Dozier Training School for Boys in Marianna, Florida, was chosen as the comparison facility.

Essentially, two questions were posed by the National Institute of Corrections study:

1. Would Florida’s Department of Health and Rehabilitative Services (which manages the juvenile training school system) realize substantial cost savings under the new management structure?
2. Would the Eckerd Foundation deliver a program that was equal to or exceeded that provided by the state?

Data pertaining to client characteristics, managerial and administrative functions, and staff morale were collected and compared. Bearing in mind that the Eckerd Foundation is a private, not-for-profit foundation that may not have cost-efficiency profit motives, the Okeechobee study concluded:

Management data collected during the project indicated that a number of state-required procedures were streamlined by the Eckerd Foundation; e.g., a more expeditious operation was initiated in such areas as purchasing and personnel procedures. However, the transfer brought with it additional expenses which the state-operated facility met at a less costly level; e.g., insurance, overhead charges, etc. In response to the first question: on balance, the fiscal data seem to indicate that the Eckerd Foundation achieved no significant reduction in operational costs. (National Institute of Corrections, 1985: xiii).

The study also found that no fundamental program differences were found when comparing Eckerd Foundation and Dozier clients, although staff morale was significantly lower at the Eckerd Foundation. The study noted a number of improvements in the delivery of services at the Eckerd Foundation. It also concluded that after 2 years, the Eckerd Foundation did not exceed the overall services provided by the state at the Dozier Training School.

The National Institute of Justice Studies: Tennessee, Kentucky, and Massachusetts

Two earlier studies completed for the National Institute of Justice (NIJ) analyzed the issue of cost savings and reached varied conclusions. In the first study, research conducted by Logan and McGriff in 1989 estimated that by contracting out prison management to the Corrections Corporation of America, located in Hamilton County, Tennessee, saved at least 4 to 8 percent annually over a 3-year period on operating costs for the Hamilton County Penal Farm. Potential cost savings were estimated at 5 to 15 percent (Logan and McGriff, 1989). The Hamilton County study provided an illustrative analysis that can serve as a guide for calculating accurate cost comparisons.

The Hamilton County Penal Farm shifted from public to private management in 1984. The physical structure of the facility was in a state of deterioration that required extensive renovation by CCA. The private contractor's claim to lower operating costs while renovating the physical aspects of the facility, expanding inmate capacity, and improving the quality of correctional services was tested.

The Hamilton County auditor supplied the data for the study and also assessed the hidden costs.¹⁰ Despite the hidden costs, which were estimated to be as high as 20 to 30 percent above direct agency costs, CCA was able to demonstrate an overall savings.

A second 1989 study reached a different set of conclusions. The Urban Institute compared a public adult minimum-security institution with a privately operated prison in Kentucky and compared two pairs of public and private facilities for violent youth in Massachusetts (Urban Institute, 1989). In Kentucky, the Marion Adjustment Center, which began operation in 1986 under private contract, was compared with the state-run Blackburn Correctional Complex. In Massachusetts, the Connelly Secure Treatment Unit (public) was matched with Boston Secure Treatment (private) and the Westboro Secure Treatment Program (public) was matched with the Delany School (private). The selection of private and public juvenile facilities in Massachusetts was based on similar offender characteristics and facility conditions. In each of the three sets of facilities, the Urban Institute found that the costs were similar.

The unit costs of the private Kentucky adult facility were approximately 10 percent higher than the publicly operated facility. The authors of the Urban Institute report suspect that this 10-percent difference is likely to have occurred because of (1) the inclusion of capital costs in the private organization price and (2) economies of scale achieved by the public facility, which had an inmate population that was approximately 50 percent larger than the private facility population. The program costs in Massachusetts were all within 1 percent of one another.

The study on juvenile facilities in Kentucky and Massachusetts also examined quality-of-confinement issues. Using survey information, physical observation, interviews, and agency records, the study appraised the quality of service based on a number of key dimensions, or performance indicators (confinement, internal security and control, participation of inmates in and the quality of programs aimed at social adjustment and rehabilitation, management issues, and health care). For most of these performance indicators, the privately operated facilities had a small advantage. Overall, both staff and inmates gave better ratings to the services and programs provided at the privately operated facilities. In addition, escape rates were lower, there were fewer inmate disturbances, and, in general, both staff and clients felt more comfortable at the privately operated facilities.

The Sellers Study

Sellers (1989) compared three privately operated detention and jail facilities with three publicly operated prison facilities to learn which type operates more efficiently.¹¹ Due to the limited number of private correctional facilities in operation at the time, well-known privately operated institutions were selected first before matching them with comparable public facilities.

The criteria used to select public facilities included similarity in size, location, structure, age, type, capacity, and average daily occupancy. Site visits consisted of structured interviews with executive and custodial personnel, as well as other key staff (such as chaplains and nurses). The structured interview questions focused on management's view of privatization, barriers

to privatization, program and service availability, program goals, and relevant cost elements.

Sellers concluded that the three private facilities operated at a lower cost per inmate than the three comparable public facilities (\$46.75 per day in the private facilities versus \$73.76 in the public facilities)¹² even though the private facilities had more programs available than their public counterparts. In two of the three private facilities, the overall prison conditions were notably better than the comparable public facilities. With such compelling information, Sellers concluded that public prison facilities do not operate with the same motives and incentives as private prison facilities. Sellers further argued that the public sector operates its facilities less efficiently than the private sector. His findings support the argument for government to seriously consider private prisons as an alternative to public operation of correctional services. However, Sellers' failure to control for key factors that directly affected costs, such as facility design and inmate characteristics, severely limits his pro-privatization conclusions.

Texas Sunset Advisory Commission Study

In 1987, the 70th Texas Legislature enacted legislation authorizing the Texas Department of Corrections to contract with private vendors to finance, construct, operate, maintain, and manage correctional facilities (Texas Sunset Advisory Commission, 1991). One legislative mandate was that the state could not enter into a private contract unless the contract provided a savings of 10 percent or more over an equivalent state-run program. The Texas legislation directed the Legislative Budget Board (LBB) to establish an estimate of the financial costs for a state-run facility that would be equivalent to those proposed by the private vendor. LBB developed costs based on a hypothetical prison facility that complied with the conditions set forth by the state senate bill, existing prison operation policies, and other relevant court requirements.

The Texas Sunset Advisory Commission report calculated the total cost to the state of operating four private prisons (contract costs plus indirect costs)¹³ and compared this figure with the costs the Texas Department of Criminal Justice would incur if it took over operation of the four private units. The report concluded that at the end of fiscal year 1990, the price of operating the private prisons was close to 10 percent less than if the state were to operate equivalent facilities. In addition to operating at a cost savings, the private prisons contributed to state and local economies by paying an estimated \$400,000 per prison in state and local sales taxes, franchise taxes, and payments in lieu of property taxes.

The results of this study have received some criticism. A U.S. General Accounting Office (GAO) report places little faith in these hypothetical comparisons, which do not allow for unanticipated changes in components such as staffing levels, rate of occupied bed space, or other factors that

could affect actual costs (U.S. General Accounting Office, 1996a). The GAO report also noted that any changes in any assumption, or set of assumptions, for the hypothetical institution could change the size, or even the direction, of the difference in comparative operational costs. The GAO report is discussed in greater detail later in this chapter.

California Community Correctional Facilities

Sechrest and Shichor (1993) attempted a different type of public/private evaluation. Their preliminary study examined two types of correctional facilities in California: a facility operated by a private, for-profit corporation (private proprietary) and two facilities operated by municipal governments for profit (public proprietary). Public proprietary facilities are a relatively new concept in corrections. In California, these types of facilities are generally located in small cities that do not have strong economic bases. These public proprietary community correctional facilities (CCFs) have the potential to generate income and employment opportunities.

The three facilities were chosen based on their progress in establishing programs for inmates (e.g., work, education, drug/alcohol counseling, family and individual counseling, vocational evaluation and training). The study demonstrated that private proprietary CCFs cost less when considering startup costs but appear to cost about the same as public proprietary facilities in the second year. Both types of CCFs cost about \$16 less per inmate per day than the California Department of Corrections (CDC) prisons.

The results of the study, however, were inconclusive due to methodological problems. Costs could not be compared with any precision because of a lack of data on capital construction for CDC facilities. The inclusion of capital costs in proprietary facility estimates, in addition to the lack of uniformity in overhead cost figures, also made comparisons between public and private facilities difficult. Nevertheless, the study is instructive for its examination of the public proprietary concept and for highlighting the problems related to gathering incomparable data elements for analysis.

The U.S. General Accounting Office Review

One of the more comprehensive reviews of comparative studies was completed by the U.S. General Accounting Office (1996a). GAO reviewed five studies completed since 1991 on correctional facilities in California, New Mexico, Tennessee, Texas, and Washington. The preliminary results of the California and Texas studies in the GAO analysis are cited previously. Four of the five studies (with the exception of New Mexico) assessed the operational costs of private versus public facilities. In their assessment of the studies, GAO researchers concluded that the “studies reported little difference and/or mixed results in comparing private and public facilities” (U.S. Government Accounting Office, 1996a: 7). On the basis of this appraisal, GAO “could not conclude whether privatization saved money.”

Three of the studies (California, Tennessee, and Washington) made comparisons of costs between reasonably matched private and public facilities. In Sechrest and Shichor's (1994) California study, the private facility's average annual cost per inmate was \$15,578. This amount was higher than comparable costs for one of the government-run facilities but lower than the other government-run facility (\$16,627). With respect to cost efficiency, the study was inconclusive. The Tennessee study found little difference in the average daily operational costs per inmate between the one private and two state-run prisons (Logan and McGriff, 1989). The daily operational costs were \$35.39 for the private facility versus \$34.90 and \$35.45 for the two public facilities.

Thomas and Logan (1993) disagree with the GAO 1997 report. They level the following criticisms of the report:

- ❑ The authors of the GAO report knew that the statutes of several jurisdictions defined contracting as unlawful (such as with the Texas study).
- ❑ The authors of the GAO report disregarded the cost benefits that have justified more than a decade of federal-level contracting experience.
- ❑ The authors chose to ignore recent reports from Australia, Florida, Texas, and the United Kingdom concerning the cost benefits of privatization.
- ❑ The authors shielded the draft version of the report they were circulating around the country from prepublication comments by well-established experts in the area of privatizing prisons.

The Washington State Review of the Tennessee, Texas, and Louisiana Studies

Similar to the GAO review, the Washington State Legislative Budget Committee analyzed information from the Tennessee and Louisiana studies to help the state determine the feasibility and benefits of privatization (State of Washington, 1996). Operational costs for the three Tennessee facilities mentioned previously, as well as operational costs of three multicustody facilities in Louisiana (two private and one state-run), were reexamined. For Tennessee, the private facility's average daily operational cost per inmate (\$33.61) was approximately 7 percent lower than comparable costs per inmate for the two public facilities studied (\$35.82 and \$35.28).

For Louisiana, the average inmate costs per day for the two private facilities studied were \$23.75 and \$23.74, and the comparable daily operational cost for the public facility was \$23.55 per inmate.

Similar to the GAO review, the Washington state review also found very little difference in the costs of private and public facilities.

Only the Texas study, whose preliminary findings are previously cited, reported findings of substantially lower (14 to 15 percent) operational costs for private versus public correctional facilities. The results of the Texas study, however, raise skepticism because the results were based on estimates rather than actual costs.

The Arizona Study

Thomas (1997b) conducted a cost analysis of a minimum-security private prison in Arizona with several publicly operated minimum-security prisons. During fiscal year 1995–1996, the privately run Marana Community Correctional Treatment Facility, managed by Management and Training Corporation, housed both male and female inmates. Although it was not possible to find a similar state-run prison in the state with respect to architectural design and inmate population, Thomas aggregated the costs of all public/state-run minimum-security prisons in the state and compared the average of these costs with the costs of the Marana facility. He found that the Marana operating costs were 13 to 17 percent less than the average for the state-operated facilities. However, some of the public facilities had costs equal to or below those of the Marana unit. It is not clear whether the lower costs of the Marana facility were more a function of its facility/architectural design and inmate population attributes than a result of privatization.

Disclosed Corporate Financial Reports

In addition to examining these individual reports, it is possible to assess the earnings of the private correctional corporations, most of which are publicly traded. By far the most detailed and favorable information on finances has been provided by Corrections Corporation of America. For example, CCA (1997) reports that the average cost per day of incarceration was \$30.51 per inmate. In fact, since the organization has been in existence, it has kept its per diem operating cost per inmate near the \$30 to \$32 level while its level of compensation has increased from \$32.71 per inmate in 1987 to \$42.72 in 1997. CCA was compensated by its clients per inmate in 1997 for \$42.72. With 10.5 million billable man-days in 1997, the corporation had revenues of more than \$460 million and a net profit of well over \$400 million using the cost figures shown in table 7.

Despite this positive financial picture, there may be problems ahead. For example, CCA announced on October 10, 1998, that it would not be renewing four contracts in Texas because the terms of the proposed new contracts had become less profitable (*Wall Street Journal*, October 10, 1998). Furthermore, the average share value for all private corrections companies had declined sharply since April 1998. Wackenhut's stock had dropped by more than 25 percent from its high to its close in April 1998 due to lower than expected revenue growth rates.

Table 7 Financial Data for Corrections Corporation of America, 1987 and 1997

| Financial Item | 1987 | 1997 |
|----------------------|---|---|
| Revenues | \$17,011,000 | \$462,249,000 |
| Beds under contract | 1,715 | 52,890 |
| Compensated man-days | 520,101 | 10,524,537 |
| Available man-days | 614,098 | 11,293,228 |
| Percentage capacity | 84.7 | 93.2% |
| Revenue per man-day | \$32.17 | \$42.72 |
| Cost per man-day | \$28.18 | \$30.51 |
| Stock price range | \$3 ¹ / ₂ – 3 ³ / ₄ | \$45 ⁷ / ₈ – \$28 ¹ / ₂ |

Source: Corrections Corporation of America (1997).

Much of the disillusion with these stocks involves concern over the lack of future growth. Few announcements have been made of major new contracts; most of the “added capacity” has occurred when larger firms merged with smaller firms. For example, CCA bought U.S. Corrections Corporation and the facilities and contracts formally managed by the Bobby Ross Group. Correctional Services Corporation has announced it will merge with Youth Services International. All of these transactions suggest a consolidation of private-sector firms and, more significantly, little growth in overall bed capacity as the public sector becomes more wary about the benefits of privatization.

In summary, the cost benefits of privatization have not materialized to the extent promised by the private sector. Although there are examples of cost savings, there are other examples in which such benefits have not been realized. Moreover, it is probably too early to determine if the initial cost savings can be sustained over a long time period. It only takes one major disturbance for such costs to greatly accelerate.

Inmate Services, Quality of Confinement, and Public Safety

A central issue raised by critics of privatization is that firms motivated by financial gain might make decisions that enhance profits at the expense of the rights and well-being of inmates (Durham, 1993). Privatization opponents are concerned about possible deterioration in the quality of inmate

services. History shows that privately operated facilities are often plagued by problems associated with the quest for higher earnings. Proponents argue that abusive behavior and poor service would defeat the long-term interests of private contractors and can be avoided with careful monitoring and legislation to hold the contractor accountable.

Studies comparing the quality of inmate confinement are less common than studies comparing costs, although a number of studies attempt both. To date, the limited experience with privately managed prisons does not allow a thorough evaluation of inmate services provided by public and private prisons. However, the limited number of studies that systematically evaluate the performance of private and public facilities regarding the quality of confinement yield insight into methods of improving future research in this area.

The Silverdale Study

One of the first of its kind, the Silverdale Study (Brakel, 1988) surveyed inmates at the Silverdale Detention Center in Chattanooga, Tennessee. This facility has been under contract with CCA since fall 1984. The study used a series of interviews with prison inmates and staff and close observation of institutional conditions and procedures to provide documentary evidence of various aspects of prison life. A questionnaire was given to a sample of 20 inmates. The 16 questions on the questionnaire covered topics such as conditions of confinement, programs and services, due process procedures, and opportunities for inmate contact with outside community groups. For each primary question the inmates were also asked two subsidiary comparative questions. One question asked inmates to compare a specific area of CCA's private management with the county's management. The second question was included because relatively few inmate respondents had experienced living conditions at Silverdale under county management and therefore could not properly evaluate the difference between the two. Inmates were asked to compare the operation of the Silverdale facility with any other prison facility in which they had served time (typically the county jail in downtown Chattanooga).

The inmates rated the Silverdale facility under the management of CCA highly on most issues (e.g., physical improvements, upkeep and cleanliness, staff competence and fairness, work assignments, request and grievance procedures, counseling and religious services, visitation and telephone privileges, and outside contacts). In other areas there was an equal balance of positive and negative responses (e.g., safety, security, classification, medical care, food, education, and legal access). Recreation and release procedures received mostly negative ratings.

Brakel (1988) concluded that "the evidence is overwhelming that the private takeover of Silverdale has resulted in substantial improvements in the institution's physical conditions and upkeep, as well as several critical areas of inmate service and institutional procedure."

Thomas and Logan (1993), however, asserted that, although some may argue that Silverdale was a case of a poorly managed county operation that CCA could not fail to improve, prisoners with relevant experience favorably compared the private operation with a local jail or the state penitentiary. In this regard, the results of the study could not be considered conclusive.

The New Mexico Study

Logan (1991) compared the quality of confinement in a state-operated women's prison in 1988 with a privately operated version of the same prison in 1989 and a federal women's prison in New Mexico. Defined along eight dimensions, quality of confinement is measured using 333 indicators (131 of which were available also for the federal prison). The sample consisted of 132 inmates and 112 staff members at the state prison, 134 inmates and 76 staff members at the private facility, and 78 staff members at the federal institution. Results of all possible pairing comparisons between prisons were summarized (for each prison on each dimension) in a comparative score called the Prison Quality Index. The quantitative data were supplemented with qualitative information from survey comments and site visits.

Logan concluded that the private prison outperformed its state and federal counterparts on all dimensions except care (where the state scored slightly higher) and justice (where the federal prison matched the private).¹⁴ Logan found that both the state and private prisons were good-quality institutions, using the federal prison as a standard of good quality. Although each prison had different strengths and weaknesses, on most dimensions the state had improved the quality of confinement for its female felons by contracting with a private operator.

The U.S. General Accounting Office Review

The U.S. General Accounting Office (1996a: 9) also examined measures of confinement quality. With regard to comparisons of quality, the report stated:

Of the five studies reviewed, two (New Mexico and Tennessee) assessed the comparative quality of service between private and public institutions in great detail. Both studies used structured data-collection instruments to cover a variety of quality related topics, including safety and security, management, personnel, health care, discipline reports, escapes, and inmate programs and activities. The New Mexico study reported equivocal findings, and the Tennessee study reported no difference between the private and public institution.

On the basis of correctional staff surveys and reviews of institutional records, the New Mexico study reported that the private prison

“outperformed the public facility on most of the measured quality dimensions.” On the other hand, inmate surveys showed the public facility outperforming the private facility on every dimension except inmate work and training program activities.

The Tennessee study of one private and two public facilities reported that “all three facilities were operated at essentially the same level of performance.” The results were based upon an operational audit of the facilities by a team of inspectors.

Florida Correctional Privatization Commission Recidivism Study

A study conducted by the Florida Correctional Privatization Commission implemented a different approach to comparing public and private prisons (Lanza-Kaduce, et al., 1998). The study matched 198 inmates from both private and public prisons in several categories and compared their rates of recidivism. The study compared inmates in the areas of rearrest, technical violations of terms of release, resentencing on a new offense, and reincarceration. In virtually every category the private prison outperformed the public facility. The major findings of the study include:

- ❑ Ten percent of the private prison inmates were rearrested during the 12 months following release versus 19 percent of the public prison inmates.
- ❑ Six percent of the private releases were resentenced for a new offense versus 10 percent of the public inmates.
- ❑ Ten percent of private inmates were reincarcerated within 12 months compared with 14 percent of public inmates.
- ❑ Overall the indicators revealed that 17 percent of the private releases have an indication of recidivism versus 24 percent of public releases.

The only area in which public prisons outperformed private prisons was in technical violations. The study found that technical violations of the terms of release were lower for public releases than for private ones.

The study has come under criticism by researchers at the Florida Department of Corrections (FDOC). The study was criticized for its small sample size (396 total); equivalencies based on racial identity, age, and prior incarceration and offenses that did not provide true matches of inmates; and the fact that many of the inmates in private prisons also spent time in public prisons, thus tainting the comparison group. Other areas FDOC would have liked to see factored into the results were sentence length, time served, custody level, and true matches of prior records, all of which would influence recidivism.

Logan (1991), however, earlier suggested that, although such a study cannot definitively conclude that recidivism rates are lower at private prisons

because of the problems with the equivalency of matches, the results do show that private facilities had more of an incentive to develop antirecidivism programs because they could lose support from the legislature if they performed poorly.

Health Care

Although not comparative in nature, the issue of privatized health care for correctional institutions was the focal point of two additional studies—one conducted by the Joint Legislative Audit and Review Commission (JLARC) of the Virginia General Assembly and the other by KPMG Peat Marwick, a private management consulting firm. Both studies examined the potential benefits of a shift to private health providers in the District of Columbia. In both Virginia and Washington, D.C., the state of correctional health care was in crisis, due primarily to budgetary constraints. Not surprisingly, the two agencies reached different conclusions concerning the feasibility of privatized health care.

The Virginia study concluded that the Virginia Department of Correction's (VDOC's) experiment with privatization of inmate health-care delivery at the Greensville Correctional Center was a failure at the time the study was conducted (Joint Legislative Audit Review Commission, 1994). Among the problems cited were:

- ❑ Documentation of health-care services was poor, including medical records, sick-call logs, and tuberculosis testing documentation and followup.
- ❑ Physician coverage was uneven and medical segregation units at Greensville had problems obtaining adequate physician coverage.
- ❑ Respiratory isolation rooms and x-ray equipment problems were not addressed in a timely manner.
- ❑ The contractor at Greensville had not complied with the contract requirements for implementing quality improvement activities.
- ❑ Costs of the contract exceeded appropriated amounts by 50 percent in fiscal year 1992; communications on contract modifications were poor; and contract compliance issues remained unresolved during the contract period.

JLARC indicated that although VDOC had contracted with a vendor to provide services at Greensville, the department was still responsible for ensuring inmate access to adequate care, monitoring the provision of services at the facility, documenting services rendered, and ensuring adequate monitoring of contract costs.

The second private health-care study was conducted by management consultants KPMG Peat Marwick (1994) in response to deficiencies found in

the mental and medical care that the District of Columbia’s Department of Corrections (DOC) provided at the District’s jail and at the Lorton Correctional Facility. Four privatized health-care delivery options were analyzed using three criteria identified by the District as goals for privatization. The options by type of services covered were:

- Option 1: Contractor covers medical outpatient, dental, medical inpatient, and mental health services.
- Option 2: Contractor covers medical outpatient, dental, and medical inpatient services.
- Option 3: Contractor covers medical outpatient and dental services.
- Option 4: Contractor covers medical outpatient services.

The criteria used to analyze these options were:

1. Cost: Does the option reduce costs?
2. Incentives: Does the option avoid cost shifting to other health-care providers?
3. Accreditation and quality of care: Does the option ensure high-quality care and the best chance for accreditation at all DOC health-care facilities?

Each option carried with it the assumption that one contractor would provide services at all DOC facilities and the District would continue to cover any services that the contractor does not cover.

KPMG Peat Marwick (1994: v) recommended that a “comprehensive contract for all services—medical, mental, and dental—at all DOC facilities is the best privatization option for the District.” Option 1 was considered the best alternative, for it met all three criteria mentioned above.

Option 1 meets the costs, incentive, and accreditation criteria. Using the average cost for privatization, Option 1 reduces District costs by 7.3 percent annually (this excludes one-time severance costs). One bid shows savings that exceed 10 percent over the life of the contract. Option 1 avoids the costs shifting that occurs when one party is responsible for outpatient care and another is responsible for inpatient care. Finally, because Option 1 covers all services, including mental health, the District’s chances for achieving accreditation for all facilities is greater.

KPMG’s analysis of privatization alternatives failed to address the disadvantages and potential problems that may arise during the process of privatization because privatized health care was viewed as the best solution to the legal requirements mandated by District law. Yet, given the experiences in Virginia, adequate monitoring mechanisms must be in place to ensure that the advantages of privatized services are achieved.

Additional Literature

Additional sources on privatization are worth noting. These studies are primarily informative in nature but do not offer a comparative analysis of public versus private services on the issues relating to costs and quality of services.

An often cited seminal study in the field of privatization was conducted by Camp and Camp (1984). This study reviewed literature on private-sector involvement in corrections and gathered data from interviews with correctional administrators, researchers, and private vendors. Interviews with correctional administrators focused on the benefits and liabilities of privatization, as well as their concerns about monitoring, accountability, and control. The study also based its findings on information collected from various state adult and juvenile correctional systems in the District and in the federal prison system. Among the information gathered was which agencies do the most contracting (juvenile agencies), the variety of contracts reported, and how much is spent on contracted services.

GAO produced a study on lessons learned from privatization experiences of state governments in Georgia, Massachusetts, Michigan, New York, and Virginia, as well as the city of Indianapolis, Indiana (U.S. General Accounting Office, 1997). The study did not specifically address the topic of correctional privatization, although many guidelines were proposed for successful privatization in the field of corrections. On the basis of their review of the literature, interviews with privatization experts, and the combined practical experiences with privatization efforts in each jurisdiction, GAO made the following observations:

- ❑ Privatization requires a political champion. When introducing and sustaining privatization initiatives, political and administrative leaders should anticipate the need to develop and communicate a privatization philosophy and attempt to garner outside support.
- ❑ Once privatization has been introduced, a formal structure to ensure effective implementation must be designed. Such a structure can include a commission to identify privatization opportunities and set privatization policy, a staff office that can support agencies in their privatization efforts and oversee implementation, and a framework for making privatization decisions.
- ❑ Government agencies may need to enact resource changes to encourage or facilitate the use of privatization. These changes are necessary to signal to managers and employees that privatization efforts are resolute.
- ❑ Reliable and complete cost data on government activities are needed to ensure a sound competitive process and to assess overall performance. Reliable data can simplify the privatization decisions and make these decisions easier to implement and justify.

- ❑ Strategies are needed to manage workforce transitions. These include, but are not limited to, encouraging employee involvement in the privatization process, providing skills training for either competing against the private sector or monitoring contract performance, and creating a safety net for displaced employees.
- ❑ Monitoring and oversight that not only evaluate compliance with the terms of the privatization agreement but also evaluate compliance with the private firm's performance in delivering services are needed when the government's direct role in the delivery of the service is reduced through privatization. This is necessary to ensure that the government's interests are protected and that accountability of both government and the private party is maintained.

One other report should be noted, although it is not a traditional research report (Clark, 1998). This report takes a look at the troubled CCA facility in Youngstown, Ohio, referred to as the Northeast Ohio Correctional Center. This facility was constructed in 1996 as a "spec prison." Soon after it opened, it was largely filled with sentenced felons from the District's DOC. Under the terms of the contract between CCA and the District, all inmates transferred to the facility were to be classified no higher than medium security. However, according to the Clark report, maximum-custody inmates were transferred to the facility with the knowledge and approval of both the District and CCA. The Clark report listed the following major incidents that had occurred within the first 15 months of operation (Clark, 1998: 7):

- ❑ Six inmates escaped.
- ❑ Two homicides occurred, including one between known enemies in the high-security unit, involving breakdowns in a number of critical procedures.
- ❑ Seventeen inmates were stabbed and numerous other serious assaults against staff and inmates occurred.
- ❑ Homemade weapons were discovered.
- ❑ For long periods of time the facility was forced to operate under full or partial lockdown to prevent further incidents of unrest.

The U.S. District Court in the District on March 1, 1999, granted preliminary approval of a \$1.6 million settlement on behalf of the District inmates who claimed that they were abused, denied adequate medical care, and not properly separated from other inmates. CCA has been ordered to pay \$756,000 in legal fees toward this judgment. These costs do not include the costs incurred by CCA and the District to defend themselves in the lawsuit. Furthermore, families of the inmates who were killed or died at the correction center from other causes can sue CCA and the District separately. One family has already filed a multimillion-dollar lawsuit against the former District Director of Corrections, CCA, and the District for the

death of a family member. The Federal Bureau of Investigation has opened an investigation into allegations of abuse of inmates by CCA staff.

The Youngstown situation is a sobering illustration of how badly things can go in a contract. There have been other recent examples of private prisons having major operational difficulties. In a recent article in *The Atlantic Monthly*, Schosser notes a number of major scandals and examples of bad management in private prisons (Schosser, 1998). This is not to say that situations like those in Youngstown are typical of most private prisons. Indeed, the national survey results reported in chapter 4 suggest that the functions of private prisons are similar to those of public prisons. However, if the basic management structures are not in place, serious problems can quickly erupt that will have severe litigation, public safety, protection-from-harm, and cost consequences.

Summary

Only a few studies can be relied upon in a debate over cost efficiency of prisons. It is generally accepted that the best research conducted to date was the Tennessee study that showed no or very minimal differences with respect to costs. The remaining studies had serious methodological flaws that limit their ability to reach firm conclusions. In general, these flaws pertain to an inability to control for factors known to be associated with inmate conduct and costs in making comparisons between public and privately operated facilities. For example, facilities chosen for comparisons often had inmates that differed on key attributes such as inmate age and classification level—factors known to be associated with inmate conduct.

In some studies impact or outcome data used for analysis either were flawed or may have been contaminated by staff because they knew the results would be used to reach unflattering conclusions by the researchers studying the facility. Information on measures such as inmate assaults and even escapes can be easily manipulated by staff unless rigorous controls are applied to ensure inmate behavior is being measured in a standard and reliable manner.

Studies of public and private facilities must include comparable facility types, institutional capacity, and inmate demographics. In addition, the dimension of time must be considered. The studies thus far are essentially one-time studies that measure the attributes of private and public facilities at a given time. To date, no long-term studies have been conducted to determine whether privately operated facilities can sustain their cost savings or quality of confinement over an extended period of time, especially if staff salaries and fringe benefits increase as their service tenure lengthens.

As pointed out by Gaes and colleagues (1998), a coherent theory of why privately operated prisons would outperform public facilities has yet to

emerge. Instead, one could argue that the private sector has simply drawn upon the methods used by the public sector with respect to inmate management and staffing and only attempted to reduce the costs associated with that model. In effect, the private sector may be applying a more efficient model that is essentially mimicking the public sector. This is most obvious in facilities at which former public-sector managers have been recruited by the private sector to manage the private facilities. Should this approach be considered by policymakers, the future of privatization may be very limited as the public sector in turn copies the private sector's methods.

For these reasons it may be concluded that there are no data to support the contention that privately operated facilities offer cost savings over publicly managed facilities. Similarly, no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities. It is clear that private prisons can function as well as public-sector prisons for certain types of inmates (such as minimum security) and that they are aggressively pursuing a share of the multibillion-dollar prison and jail industrial complex.

The National Survey of State Prison Privatization

Background

A major conclusion one can draw from the research review is that limited information exists on the performance of most privately operated facilities. The National Council on Crime and Delinquency (1998) estimates that only 13 privately operated facilities have undergone contemporary evaluations of their performance in comparison to public facilities. This is less than 1 percent of all prisons now operating in the United States and about 20 percent of the private prisons. To secure a more comprehensive overview of all privately operated prisons, a national survey was funded by the Bureau of Justice Assistance (BJA), U.S. Department of Justice, to develop a more comprehensive review of the private prisons. The methodology and results of the survey are presented in this chapter.

Survey of Public and Private State Facilities

Methodology

In late 1997, private correctional management firms were asked to participate in the national survey of state prison privatization. The firms received copies of the survey instrument for distribution at their facilities.¹⁵ The survey was based on a format used by the Bureau of Justice Statistics (BJS) in its *Census of State and Federal Correctional Facilities, 1995* (Bureau of Justice Statistics, 1997b).¹⁶ By using the BJS survey, comparisons could be made directly between the public prison population for midyear 1995 and the private prison population as of December 31, 1997.

Information from privately operated state facilities was gathered during the first quarter of 1998. Survey respondents were asked to provide information from calendar year 1997 and, in many instances, details specifically for December 31, 1997. Ten private companies were identified as managing at least one operational state prison. Three of the ten firms chose not to participate in the survey.¹⁷ These three firms operated five state facilities. The seven remaining management firms were identified as managing 76 state facilities either in operation or under construction. Of those 76 state prison facilities, 4 were not open during the timeframe covered by the survey instrument and 7 of the facilities did not return questionnaires before data collection and analysis began. Three international facilities were originally identified as juvenile confinement facilities in the data analysis,

bringing the final tally to 7 operators of 65 private prisons. The Corrections Corporation of America and Wackenhut Corrections Corporation manage 49 of the 65 private state facilities identified.

Inmate and Facility Characteristics

Table 8 summarizes inmate characteristics for the 65 private facilities included in the survey. A total of 46,120 inmates were housed in privately operated state prisons on December 31, 1997. More than 90 percent were male, a percentage comparable to the inmate population at federal and state public facilities at midyear 1995. As in public facilities, a total of more than 60 percent of all persons held in private state facilities were black or Hispanic.

Data provided in table 8 and table 9 also indicate that the private sector has yet to penetrate the market for housing maximum/close-custody prisoners. More than 93 percent of incarcerated inmates at private state prisons were medium- and medium/low-custody inmates (table 8). Only 2 facilities out of 65 were identified as maximum-security institutions, with 1 located outside of the United States (table 9).¹⁸ Medium-security institutions accounted for the largest number of private state facilities sampled: 38 of 62 were medium security, and 25 were minimum or low-level security. Approximately three out of four facilities housed exclusively male inmates—not surprising given the composition of public prison populations. Seventeen percent of the private state facilities housed both sexes; 8 percent housed females only. Approximately 75 percent of the male inmate population was housed in exclusively male facilities; the other approximately 25 percent was housed in facilities for both sexes. The female private prison population was split evenly between females-only institutions (50.6 percent) and mixed housing (49.4 percent).

The two maximum-security facilities were large institutions, housing 1,000 inmates or more. Minimum-security facilities tend to be much smaller, with 72 percent housing fewer than 500 inmates. The average daily populations of medium-security prisons ranged from as low as 106 inmates to as high as 1,600. About 50 percent of all inmates in private facilities (22,674) were housed in medium-security institutions; 44.2 percent (20,379) were detained in minimum-security institutions. Only 4.6 percent of the inmates (2,111) were confined in maximum-security prisons and all were male.

Table 9 provides information about the age, average daily population, and function of private state facilities. The majority of institutions (83.1 percent) were confinement institutions that manage general adult populations. Substance abuse treatment and work release/prerelease were named in 21.5 percent of the cases as the primary facility function; persons returned to custody was a primary facility function in 18.5 percent of cases. Data on the ages of the facilities attest to the recent emergence of the private corrections industry; for example, nearly 90 percent of state facilities sampled were constructed within the last 10 years.

Table 8 Inmate Characteristics at Public Facilities at Midyear 1995 and Private Facilities as of December 31, 1997

| Inmate Characteristics | Public Facilities* | | Private Facilities | |
|-------------------------------|--------------------|------------|--------------------|------------|
| | Number of Inmates | Percentage | Number of Inmates | Percentage |
| Number of inmates | 1,023,572 | | 46,120 | |
| Gender | | | | |
| Males | 961,210 | 94.0% | 42,215 | 91.5% |
| Females | 62,362 | 6.0 | 3,905 | 8.5 |
| Under age 18 | 5,309 | 0.5 | 180 | 0.4 |
| Custody level | | | | |
| Maximum/close/high | 202,174 | 19.8 | 2,111 | 4.6 |
| Medium | 415,688 | 40.6 | 22,674 | 49.2 |
| Minimum/low | 366,277 | 35.8 | 20,379 | 44.2 |
| Not classified | 39,433 | 3.8 | 956 | 2.1 |
| Racial or ethnic identity† | | | | |
| White | 363,918 | 35.5 | 14,620 | 31.7 |
| Black | 488,222 | 47.7 | 20,268 | 43.9 |
| Hispanic | 147,365 | 14.4 | 9,550 | 20.7 |
| American Indian/Alaska Native | 10,519 | 1.0 | 494 | 1.1 |
| Asian/Pacific Islander | 8,436 | 0.8 | 291 | 0.6 |
| Not reported | 5,112 | 0.5 | 897 | 1.9 |

* Data for midyear 1995 include federal and state correctional facilities.

† The number of inmates of Hispanic origin is underreported for public facilities. In 28 federal facilities, racial identity but not ethnic identity was reported for 21,563 inmates.

‡ Discrepancies in totals are due to rounding.

Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Table 9 Characteristics of Private Facilities by Level of Security as of December 31, 1997

| Facility Characteristic | Total | | Maximum | | Medium | | Minimum | |
|---------------------------------------|-------|--------|---------|------|--------|-------|---------|-------|
| | N | % | N | % | N | % | N | % |
| All Facilities | 62 | 100.0% | 2 | 3.1% | 38 | 58.5% | 25 | 38.0% |
| Sex of Inmates Housed | | | | | | | | |
| Males only | 49 | 75.4 | 2 | 3.1 | 29 | 44.6 | 18 | 27.7 |
| Females only | 5 | 7.7 | 0 | 0 | 3 | 4.6 | 2 | 3.1 |
| Both sexes | 11 | 16.9 | 0 | 0 | 6 | 9.2 | 5 | 7.7 |
| Function* | | | | | | | | |
| General adult population | 54 | 83.1 | 1 | 1.5 | 37 | 56.9 | 16 | 24.6 |
| Boot camp | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Reception/ diagnosis | 5 | 7.7 | 0 | 0 | 3 | 4.6 | 2 | 3.1 |
| Medical treatment/hospital | 3 | 4.6 | 0 | 0 | 2 | 3.1 | 1 | 1.5 |
| Alcohol/drug treatment | 14 | 21.5 | 1 | 1.5 | 6 | 9.2 | 7 | 10.8 |
| Youthful offenders | 2 | 3.1 | 1 | 1.5 | 1 | 1.5 | 0 | 0 |
| Work release/ prerelease | 14 | 21.5 | 0 | 0 | 6 | 9.2 | 8 | 12.3 |
| Returned to custody | 12 | 18.5 | 0 | 0 | 6 | 9.2 | 7 | 10.8 |
| Other | 5 | 7.7 | 1 | 1.5 | 3 | 4.6 | 1 | 1.5 |
| Age of Facility (in yrs) [§] | | | | | | | | |
| < 10 | 58 | 89.2 | 2 | 3.1 | 36 | 55.4 | 20 | 30.8 |
| 10–19 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 20–49 | 5 | 7.7 | 0 | 0 | 1 | 1.5 | 4 | 6.2 |
| 50–99 | 1 | 1.5 | 0 | 0 | 0 | 0 | 1 | 1.5 |
| ≥ 100 [†] | 1 | 1.5 | 0 | 0 | 0 | 0 | 1 | 1.5 |

Table 9 Characteristics of Private Facilities by Level of Security as of December 31, 1997 (Cont.)

| Facility Characteristic | Total | | Maximum | | Medium | | Minimum | |
|--|-------|------|---------|-----|--------|------|---------|------|
| | N | % | N | % | N | % | N | % |
| Average daily pop. (number of inmates) | | | | | | | | |
| < 500 | 28 | 43.1 | 0 | 0 | 10 | 15.4 | 18 | 27.7 |
| 500–999 | 27 | 41.5 | 0 | 0 | 22 | 33.8 | 5 | 7.7 |
| 1,000–2,499 | 10 | 15.4 | 2 | 3.1 | 6 | 9.2 | 2 | 3.1 |
| ≥ 2,500 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

* Figures may add to more than the total number of facilities because some facilities may have more than one function.

§ Refers to the number of years between the date of original construction and the survey year.

† The oldest privately operated facility is operated by CiviGenics, which originally opened as a hospital in 1896.

‡‡ Discrepancies in totals due to rounding.

Source: Bureau of Justice Statistics (1997b).

Programming

The 65 private state facilities surveyed produced an impressive record of programming activities (table 10). All of these facilities maintain some type of work, education, and counseling program for inmates. Facility support projects such as office work, food service, laundry, and building repair engaged inmates at all institutions surveyed. In addition, public works assignments were reported for 43 percent of the facilities. Nearly 22 percent of the private facilities reported other types of work programs, most notably work in education and community service. A number of facilities support private industry joint ventures or free world industry projects that have the potential to aid inmates in postrelease transition. About 64 percent of all inmates at private facilities participated in one or more work programs as of December 31, 1997, a similar percentage to those who participated in work programs in public institutions at midyear 1995.

More than 96 percent of the private facilities provide both secondary educational programs (including the general equivalency diploma) and basic adult education. A large percentage (81.5 percent) also provide some type of vocational training. Special educational programs for inmates with learning disabilities were available at 47.7 percent of the private facilities, and 43.1 percent offer college-level coursework. Overall, 38.3 percent of private facility inmates were participating in some form of educational programming on December 31, 1997. This finding indicates a higher private facility participation rate on December 31, 1997, than that at public facilities (23 percent) in midyear 1995 (table 10).

Drug and alcohol awareness programs were available at almost every private institution surveyed, as were life skills/community adjustment

Table 10 Types and Rates of Participation in Institutional Programs at Public Facilities at Midyear 1995 and at Private Facilities as of December 31, 1997*

| Facility Characteristics | Public | | Private | |
|--|---------|--------|---------|--------|
| | N | % | N | % |
| All Facilities | 1,500 | 100.0% | 65 | 100.0% |
| With Work Programs | 1,404 | 93.6 | 65 | 100.0 |
| Prison industries | 560 | 37.3 | 8 | 12.3 |
| Facility support services | 1,348 | 89.9 | 65 | 100.0 |
| Farming/agriculture | 371 | 24.7 | 9 | 13.8 |
| Public works assignments | 781 | 52.1 | 28 | 43.1 |
| Other work programs | 149 | 9.9 | 14 | 21.5 |
| With education programs | 1,311 | 87.4 | 65 | 100.0 |
| Basic adult education | 1,118 | 74.5 | 63 | 96.9 |
| Secondary education† | 1,115 | 74.3 | 64 | 98.5 |
| Special education | 496 | 33.1 | 31 | 47.7 |
| Vocational training | 806 | 53.7 | 53 | 81.5 |
| College courses | 498 | 33.2 | 28 | 43.1 |
| Study releases | 161 | 10.7 | 5 | 7.7 |
| With counseling programs | 1,451 | 96.7 | 65 | 100.0 |
| Drug counseling | 1,327 | 88.5 | 64 | 98.5 |
| Alcohol counseling | 1,345 | 89.7 | 65 | 100.0 |
| Psychological counseling | 1,028 | 68.5 | 46 | 70.8 |
| Employment counseling | 897 | 59.8 | 53 | 81.5 |
| Life skills, community adjustment counseling | 999 | 66.6 | 64 | 98.5 |
| Parenting | 576 | 38.4 | 35 | 53.8 |
| Other | 296 | 19.7 | 13 | 20.0 |
| Inmates participating in | | | | |
| Work programs | 662,807 | 64.8 | 29,668 | 64.3 |
| Educational programs | 234,966 | 23.0 | 17,685 | 38.3 |

* Inmate participation numbers are based on reporting from 95 percent or more of the facilities. Totals for public facilities include federal and state confinement institutions.

† Includes general equivalency diploma (GED).

Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

counseling. A high percentage of the private institutions also provide employment consultation (81.5 percent), psychological or psychiatric counseling (70.8 percent), and parenting and child-rearing skills (53.8 percent). Data from public facilities also reveal a high percentage of facilities that maintain a variety of counseling programs. Corresponding completion or attrition rates were not available; thus the participation figures can be misleading about the positive influence of such programs.

Staffing and Employment

Private facilities reported a total of 13,344 regular and nonpayroll support staff (table 11). The number of full-time, or regular, staff ranged from as low as 19 at the smallest institution to 532 at the largest. Correctional officers accounted for 63.2 percent of employees at private facilities in 1997; a similar percentage were employed as security staff at public correctional facilities. Professional treatment staff accounted for 12 percent of private correctional employees, followed by clerical (7.9 percent), educational (5.8 percent), and maintenance and food service (5.5 percent).

Private state prisons have higher proportions of minority employees compared with public prisons. Fifty-three percent of the staff at private facilities were white (table 11), whereas 31.7 percent (table 8) of the inmate population was white. At public facilities, the corresponding figures in 1995 were 71.3 percent (table 11) and 35.5 percent (table 8), respectively. The racial composition of staff to inmates was similar for blacks at both types of facilities. Blacks comprise 22.4 percent of the staff and 43.9 percent of inmates at private state prisons versus 20 percent of staff and 47.7 percent of inmates at public facilities.

Hispanics, on the other hand, comprise 14.4 percent of the inmate population at federal and state public facilities but only 6.3 percent of the correctional staff. Among the 65 private state facilities surveyed, Hispanics made up 20.7 percent of the inmate population and 18 percent of the staff. When the three facilities located in Puerto Rico were excluded from the analysis, the private facilities still had a larger percentage of Hispanic staff (13 percent staff and 17 percent inmate population) than those employed at public facilities.¹⁹

Table 12 displays, by private state facility, basic salary information and the number of employees hired, terminated, tested for drugs, and unionized. The average starting salary for correctional officers in 1997 was \$17,514.²⁰ U.S. Corrections Corporation reported the lowest average starting salary at \$14,824; Wackenhut Corrections Corporation had the highest at \$18,785. The number of staff hired and terminated is largely driven by the number of facilities in operation and facility size—large and medium-sized institutions tend to have higher staff turnover rates. Only one private facility in the United States is unionized. In contrast, three of the four unionized facilities were international prisons operated by Wackenhut Corrections

Table 11 Persons Employed in Public State Facilities at Midyear 1995 and at Private State Facilities as of December 31, 1997

| Personnel Characteristics | Public | | Private | |
|--|---------|--------|---------|--------|
| | N | % | N | % |
| All facilities | 247,320 | 100.0% | 13,344 | 100.0% |
| Administrative | 9,509 | 2.8 | 554 | 4.2 |
| Correctional/security | 220,892 | 65.4 | 8,427 | 63.2 |
| Clerical support | 27,383 | 8.1 | 1,060 | 7.9 |
| Educational | 11,020 | 3.3 | 774 | 5.8 |
| Professional treatment | 45,291 | 13.4 | 1,604 | 12.0 |
| Maintenance and food service | 23,605 | 7.0 | 735 | 5.5 |
| Other | 0 | 0 | 190 | 1.4 |
| Racial or ethnic identity [†] | | | | |
| White | 232,382 | 71.3 | 6,954 | 53.0 |
| Black | 65,513 | 20.0 | 2,964 | 18.0 |
| Hispanic | 20,702 | 6.3 | 2,364 | 18.0 |
| Native American/Other [‡] | 6,576 | 2.0 | 131 | 1.0 |
| Asian/Pacific Islander | NA | NA | 60 | 0.5 |
| Not reported | 974 | 0.3 | 669 | 5.1 |

* A total of 241 employees were not designated by employment category at 20 of the facilities.

[†] Includes only payroll staff for public facilities. Private facilities data include nonpayroll staff when given by private operator: 21 private facilities included 200 nonpayroll staff in their racial breakdowns. Two private facilities with 669 payroll staff could not provide a racial breakdown of staff.

[‡] Figures for public facilities include Alaska Natives, Asians, Native American, and Pacific Islanders.

Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Corporation and located in Australia and the United Kingdom. CiviGenics is the only operator that does not have an employee drug testing policy.

Inmate Violations and Deaths

Table 13 compares the number of major infractions at public and private institutions per 1,000 inmates, including staff assaults, riots, fires, and other disturbances. The table reveals a greater number of inmate-on-inmate assaults per 1,000 inmates at private prisons (35.1 percent) than at public facilities (25.4 percent). Assaults resulting in inmate deaths were

Table 12 Characteristics of Employment in Private Facilities, January 1–December 31, 1997

| Contractor | Facilities | Co-Starting Salary | Staff Hired | Staff Terminated | Facilities That Test for Drugs | Employees Tested for Drugs | Unionized Facilities |
|------------------------------------|------------|---|--------------------|--------------------|--------------------------------|----------------------------|----------------------|
| Cornell Corrections | 3 | Min: \$14,580 Max: \$16,598 Avg: \$15,537 | 58 | 33 | 1 | 125 | 0 |
| Correctional Services Corporation | 3 | Min: \$14,040 Max: \$20,800 Avg: \$17,333 | 224 | 132 | 3 | 150* | 0 |
| Corrections Corporation of America | 27 | Min: \$13,200 Max: \$24,600 Avg: \$17,246 | 4,454 [†] | 1,327 [‡] | 24 | 3,029 [§] | (U.S.) 1 |
| CiviGenics | 2 | Min: \$16,000 Max: \$16,000 Avg: \$16,000 | 9 | 0 | 0 | 0 | 0 |
| Management Training Corporation | 3 | Min: \$16,640 Max: \$22,425 Avg: \$18,665 | 111 | 89 | 3 | 223 | 0 |
| U.S. Corrections Corporation | 5 | Min: \$14,040 Max: \$17,200 Avg: \$14,824 | 271 | 257 | 4 | 342 | 0 |
| Wackenhut Corrections Corporation | 22 | Min: \$12,958 Max: \$35,173 Avg: \$18,785 ^{**} | 3,022 | 1,750 | 20 | 2,735 ^{††} | (Aus.) 2 (U.K.) 1 |

* Based on 2 facilities reporting.

† Based on 25 facilities reporting.

‡ Based on 24 facilities reporting.

§ Based on 17 facilities reporting. Three facilities do not test, and 7 facilities were missing data.

**Based on 21 facilities reporting. One international facility reported data in British pounds.

†† Based on 19 facilities reporting. Two facilities do not test, and 1 facility was missing data.

Source: National Council on Crime and Delinquency (1998).

extremely rare at both types of institutions. Rates of assaults on staff, riots, fires, and other disturbances are comparable for private and public facilities. A total of 45 escapes occurred at 14 private facilities between January 1, 1997, and December 31, 1997. The rate of escapes per 1,000 inmates for the 62 private facilities is 1.06 percent. BJS's *Census of State and Federal Correctional Facilities, 1995* reported that the number of inmate deaths rose from 2.4 per 1,000 state inmates in 1990 to 2.7 in 1995. The death rate at privately operated prisons is considerably lower at 0.7 per 1,000 inmates for the same time period. However, as with all of these comparisons, they cannot be used to conclude that either a private or a public prison is superior to the other as this analysis cannot control for all factors that influence

Table 13 Major Incidents in Public Facilities (July 1, 1994–June 30, 1995) and in Private Facilities (January 1–December 31, 1997)*

| Inmate Violation | Number of Violations | | Number of Violations per 1,000 Inmates [†] | |
|----------------------------|----------------------|---------|---|---------|
| | Public | Private | Public | Private |
| Assaults on inmates | 25,948 | 1,617 | 25.4 | 35.1 |
| Resulting inmate deaths | 82 | 1 | 0.1 | 0.0 |
| Assaults on staff | 14,165 | 584 | 13.8 | 12.7 |
| Resulting staff deaths | 14 | 0 | 0.0 | 0.0 |
| Riots [‡] | 317 | 12 | 0.3 | 0.3 |
| Fires | 816 | 29 | 0.8 | 1.2 |
| Other disturbances | 1,808 | 56 | 1.8 | 1.2 |
| Total | 43,054 | 2,298 | 42.3 | 50.5 |
| Inmate Deaths | Number of Deaths | | Number of Deaths per 1,000 Inmates [†] | |
| | Public | Private | Public | Private |
| Homicides by other inmates | 82 | 1 | 0.1 | 0.0 |
| Suicides | 169 | 1 | 0.2 | 0.0 |
| AIDS | 1,111 | 4 | 1.1 | 0.1 |
| Natural causes | 1,186 | 21 | 1.2 | 0.5 |
| Other causes [§] | 113 | 3 | 0.1 | 0.1 |
| Total deaths | 2,661 | 30 | 2.9 | 0.7 |

* Excludes tickets, official warnings, and other minor incidents.

[†] Based on average daily population.

[‡] Includes only incidents that had five or more inmates participating, that required the intervention of additional or outside assistance, and that resulted in serious injury or significant property damage.

[§] Other causes include accidents and other deaths.

Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

these performance measures. However, later in this chapter a reanalysis of private and public facilities is conducted controlling only for medium- and minimum-security facilities.

Disciplinary Resources

Data on disciplinary resources are limited due to the absence of automated data collection systems at the facilities. Only 23 facilities maintained an

automated data collection system to count the number of assaults, escapes, deaths, disturbances, staff turnover, inmate participation in programs, and so on. Twenty of those 23 facilities had performance monitoring capabilities. Two private management firms, CiviGenics and Management Training Corporation, operated minimum-security, specialty-function prisons that did not maintain disciplinary, protective custody, or administrative segregation units (table 14). Most Corrections Corporation of America facilities operate disciplinary and administrative segregation units, as do the majority of Wackenhut Corrections Corporation facilities. On December 31, 1997, 95 percent of the inmates consigned to disciplinary action units and 90 percent held in administrative segregation were housed in either a CCA or Wackenhut Corrections Corporation institution. A smaller number of facilities (20) operated a distinct protective custody unit. All inmates within protective custody were housed in a CCA or Wackenhut Corrections Corporation institution.

Lockdowns were not a primary means of discipline or control at the majority of privately operated institutions surveyed. The 65 facilities together reported 67 lockdowns for a total of 394.5 days between January 1 and December 31, 1997. However, the majority of the days in lockdown (282) occurred at only three medium-security facilities. One Corrections Corporation of America institution reported three facility lockdowns for 50 days each and two Wackenhut institutions reported nine facility lockdowns for a total of 232 days. The remaining facilities together averaged about 1.8 days in lockdowns over the course of the year.

Court Orders and Consent Decrees

As of December 31, 1997, five private facilities were under a state or federal court order or consent decree to limit the number of inmates they could house; one was a women's medium-security prison. Seven facilities were reported to be under court order or consent decree for the totality of conditions at their facilities,²¹ with an additional two facilities under court order or consent decree for specific conditions (table 15).

Education was the most frequently cited specific consent decree condition, affecting seven private facilities, followed by medical facilities (6), administrative segregation (6), staffing policies (6), inmate classification (6), and grievance policies (6). At public state facilities, crowding was the most often cited condition (213), followed by medical facilities (139), library services (129), and staffing (118).

Table 14 Disciplinary Resources at Private Facilities, January 1–December 31, 1997

| Contractor | Facilities | DAU | Inmates in DAU | PCU | Inmates in PCU | ASU | Inmates in ASU | Lockdowns Jan. 1, 1997–Dec. 31, 1997 | Days Locked Down |
|------------------------------------|------------|-----------|-------------------|-----------|-------------------|-----------|-------------------|--------------------------------------|--------------------|
| Cornell Corrections | 3 | 1 | 21 | 0 | 0 | 2 | 17 | 7 | 3 |
| Correctional Services Corporation | 0 | 3 | 2 | 13 | 1 | 0 | 2 | 21 | 7* |
| Corrections Corporation of America | 27 | 25 | 374 [†] | 12 | 182 [‡] | 25 | 199 [§] | 23 | 102.5** |
| CiviGenics | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Management Training Corporation | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 9 |
| U.S. Corrections Corporation | 5 | 2 | 4 | 0 | 0 | 3 | 20 | 0 | 0 |
| Wackenhut Corrections Corporation | 22 | 14 | 367 ^{††} | 7 | 614 ^{‡‡} | 15 | 306 ^{§§} | 25 | 280 ^{***} |
| Total | 65 | 44 | 779 | 20 | 796 | 47 | 563 | 67 | 394.5 |

Note: DAU=Disciplinary Action Unit; PCU=Protective Custody Unit; ASU=Administrative Segregation Unit.

* One facility reported 7 lockdowns, each of short duration.

[†] Based on 22 facilities reporting; 2 facilities do not have a disciplinary unit; 3 facilities have disciplinary units but did not provide the number of inmates.

[‡] Based on 11 facilities reporting; 15 facilities do not have a protective custody unit; 1 facility has a protective unit but did not provide number of inmates.

[§] Based on 22 facilities reporting; 2 facilities do not have an administrative segregation unit; 3 facilities have administrative segregation units but did not provide number of inmates.

**One facility reported 3 lockdowns for a total of 50 days.

^{††} Based on 12 facilities reporting; 8 facilities do not have a disciplinary action unit; 2 facilities had disciplinary action units but did not provide the number of inmates.

^{‡‡} Based on 6 facilities reporting; 1 facility is considered a protective custody prison and reports 438 protective custody inmates; 15 facilities do not have a protective custody unit; 1 has a protective custody unit but did not provide the number of inmates.

^{§§} Based on 14 facilities reporting; 7 do not have an administrative segregation unit; 1 facility has an administrative unit but did not provide the number of inmates.

^{***} One facility reported 6 lockdowns for a total of 154 days; another reported 3 lockdowns for a total of 78 days.

Source: National Council on Crime and Delinquency (1998).

Table 15 State Facilities Under Court Order or Consent Decree: Public Facilities at Midyear 1995 and Private Facilities on December 31, 1997*

| Court Order Status of Facilities | Public | | Private | |
|---|--------|-------|---------|-------|
| | N | % | N | % |
| Not under court order | 1,054 | 76.7% | 56 | 86.2% |
| Under court order for specific conditions | 378 | 27.5 | 9 | 13.8 |
| Overcrowding | 213 | 15.5 | 5 | 7.7 |
| Medical facilities | 139 | 10.1 | 6 | 9.2 |
| Administrative segregation | 76 | 5.5 | 6 | 9.2 |
| Staffing | 118 | 8.6 | 6 | 9.2 |
| Food service/nutrition | 83 | 6.0 | 5 | 7.7 |
| Education | 96 | 7.0 | 7 | 10.8 |
| Disciplinary policies | 78 | 5.7 | 5 | 7.7 |
| Recreation | 100 | 7.3 | 5 | 7.7 |
| Visiting/mail | 88 | 6.4 | 4 | 6.2 |
| Fire hazards | 78 | 5.7 | 3 | 4.6 |
| Counseling programs | 69 | 5.0 | 4 | 6.2 |
| Inmate classification | 76 | 5.5 | 6 | 9.2 |
| Library services | 129 | 9.4 | 4 | 6.2 |
| Grievance policies | 74 | 5.4 | 6 | 9.2 |
| Religion policies | 74 | 5.4 | 5 | 7.7 |
| Search policies | 30 | 2.2 | 4 | 6.2 |
| Other | 88 | 6.4 | 5 | 7.7 |

* A total of 238 state public and private facilities were under court order or consent decree to limit population, for specific conditions, or for both reasons in 1995. These reasons are not mutually exclusive and therefore do not sum to 100 percent.

Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Reanalysis of Survey Data Controlling for Facility Security Level

The previous analysis suggests that private facilities do not differ substantially from publicly operated facilities, with three possible exceptions. First, the number of staff assigned to private facilities is approximately 15 percent lower than the number of staff assigned to public facilities (28 per 100 inmates in private facilities versus 32 per 100 inmates in public). Second, management information system (MIS) capabilities appear to be lacking in private facilities. Third, the rate of major incidents is higher at private facilities than at public facilities.

Recognizing that the 1995 public facility survey includes all types of facilities and that the private facilities are primarily medium- and minimum-security facilities, a better analysis would be to attempt to make direct comparisons between medium-security and minimum-security public facilities with the same type of private facilities.

Tables 16–20 reinforce the earlier analyses and show that it cannot be concluded that a private or a public prison is superior to the other. In these tables, responses from public and private facilities that identified themselves as maximum or higher custody levels have been eliminated. The results are similar to the original analysis with one major exception: in this comparison, the privately operated facilities have a much higher rate of inmate-on-inmate and inmate-on-staff assaults and other disturbances. These differences may be related to other factors such as reporting standards or the fact that correctional facilities often experience management difficulties when they are newly opened. The CCA Youngstown facility is a good example of such difficulties (Clark, 1998). However, insufficient training for and lack of qualified staff in key positions may also be a valid explanation for these differences. This would be consistent with the claims of critics of privatization who charge that private prisons are inadequately staffed by inexperienced and poorly trained correctional officers. Coupled with a lack of programs and work assignments, higher rates of misconduct from inmates predictably occur. Nevertheless, the notion that privately operated prisons are safer or better managed than public facilities is not supported by these results.

Table 16 Characteristics of Inmates at Public Medium- and Minimum-Security Facilities at Midyear 1995 and Private Medium- and Minimum-Security Facilities on December 31, 1997

| Inmate Characteristics | Public* | | Private | |
|-------------------------------|---------|--------|---------|--------|
| | N | % | N | % |
| Number of inmates | 654,891 | 100.0% | 43,828 | 100.0% |
| Gender | | | | |
| Males | 607,547 | 92.8 | 39,933 | 91.1 |
| Female | 47,344 | 7.2 | 3,895 | 8.9 |
| Custody level | | | | |
| Maximum/close/high | 0 | 0 | 1,225 | 2.8 |
| Medium | 463 | 39.1 | 21,942 | 50.1 |
| Minimum/low | 721 | 60.9 | 20,262 | 46.2 |
| Not classified | 0 | 0 | 399 | 0.9 |
| Racial or ethnic identity† | | | | |
| White | 234,894 | 35.9 | 13,235 | 30.2 |
| Black | 300,339 | 45.9 | 19,454 | 44.4 |
| Hispanic | 106,062 | 16.2 | 9,504 | 21.7 |
| American Indian/Alaska Native | 6,871 | 1.0 | 494 | 1.1 |
| Asian/Pacific Islander | 6,532 | 1.0 | 254 | 0.6 |
| Not reported | 193 | 0 | 887 | 2.0 |

* Data for midyear 1995 include federal and state correctional facilities.

† The number of inmates of Hispanic origin is underreported for public facilities. In 28 federal facilities, racial identity but not ethnic identity was reported for 21,563 inmates.

Sources: Bureau of Justice Statistics (1997b) and National Council on Crime and Delinquency (1998).

Table 17 Characteristics of Public Medium- and Minimum-Security Facilities at Midyear 1995 and Private Medium- and Minimum-Security Facilities on December 31, 1997

| Facility Characteristics | Public | | Private | |
|--|--------|--------|---------|--------|
| | N | % | N | % |
| All facilities | 1,184 | 100.0% | 63* | 100.0% |
| Function** | | | | |
| General adult population | 864 | 73.0 | 53 | 84.1 |
| Boot camp | 44 | 3.7 | 0 | 0 |
| Reception/diagnosis | 91 | 7.7 | 5 | 7.9 |
| Medical treatment/hospital | 111 | 9.4 | 3 | 4.8 |
| Alcohol/drug treatment | 194 | 16.4 | 13 | 20.6 |
| Youthful offenders | 30 | 2.5 | 1 | 1.6 |
| Work release/prerelease | 420 | 35.5 | 14 | 22.2 |
| Returned to custody | 83 | 7.0 | 13 | 20.6 |
| Other† | 208 | 17.6 | 4 | 6.3 |
| Age of facility (in years)‡ | | | | |
| < 10 | 327 | 27.6 | 56 | 88.9 |
| 10–19 | 239 | 20.2 | 0 | 0 |
| 20–49 | 336 | 28.4 | 5 | 7.9 |
| 50–99 | 245 | 20.7 | 1 | 1.6 |
| ≥ 100§ | 28 | 2.4 | 1 | 1.6 |
| Average daily population (number of inmates) | | | | |
| < 500 | 778 | 65.7 | 28 | 44.4 |
| 500–999 | 200 | 16.9 | 27 | 42.9 |
| 1,000–2,499 | 180 | 15.2 | 8 | 12.7 |
| ≥ 2,500 | 26 | 2.2 | 0 | 0 |

* Two facilities failed to provide sufficient data for inclusion in this table.

** Figures may add to more than the total number of facilities because some facilities may have more than one function.

† Includes U.S. Marshals Service, pretrial/posttrial federal offenders, prearrestment, and community service.

‡ Refers to the number of years between the date of original construction and the survey year.

§ The oldest privately operated facility is operated by CiviGenics, which originally opened as a hospital in 1896.

Source: National Council on Crime and Delinquency (1998).

Table 18 Types and Rates of Participation in Institutional Programs at Public and Private Medium- and Minimum-Security Facilities

| Facility Characteristics | Public* | | Private | |
|--|---------|--------|---------|--------|
| | N | % | N | % |
| All facilities | 1,184 | 100.0% | 63** | 100.0% |
| With work programs | | | | |
| Prison industries | 368 | 31.1 | 8 | 12.7 |
| Facility support services | 1,049 | 88.6 | 63 | 100.0 |
| Farming/agriculture | 267 | 22.6 | 9 | 14.3 |
| Public works assignment | 661 | 55.8 | 28 | 44.4 |
| Other work programs | 128 | 10.8 | 13 | 20.6 |
| With education programs | | | | |
| Basic adult education | 839 | 70.9 | 61 | 96.8 |
| Secondary education* | 906 | 76.5 | 62 | 98.4 |
| Special education | 342 | 28.9 | 29 | 46.0 |
| Vocational training | 582 | 49.2 | 51 | 81.0 |
| College courses | 363 | 30.7 | 26 | 41.3 |
| Study releases | 150 | 12.7 | 5 | 7.9 |
| With counseling programs | | | | |
| Drug counseling | 1,039 | 87.8 | 62 | 98.4 |
| Alcohol counseling | 1,053 | 88.9 | 63 | 100.0 |
| Psychological counseling | 746 | 63.0 | 44 | 69.8 |
| Employment counseling | 720 | 60.8 | 51 | 81.0 |
| Life skills, community adjustment counseling | 783 | 66.1 | 62 | 98.4 |
| Parenting | 462 | 39.0 | 33 | 52.4 |
| Other programs | 205 | 17.3 | 13 | 20.6 |
| Inmates participating in | | | | |
| Work programs | 438,016 | 66.9 | 28,856 | 65.8 |
| Educational programs | 161,877 | 24.7 | 16,760 | 38.2 |

* Includes GED.

** Two facilities failed to provide sufficient data for inclusion in this table.

Source: Bureau of Justice Statistics (1997b).

Table 19 Characteristics of Persons Employed in Public Medium- and Minimum-Security Facilities at Midyear 1995 and Private Medium- and Minimum-Security Facilities on December 31, 1997

| Characteristics | Public | | Private | |
|------------------------------|---------|--------|---------|--------|
| | N | % | N | % |
| All facilities | 206,126 | 100.0% | 12,420 | 100.0% |
| All staff | | | | |
| Administrative | 6,015 | 2.9 | 530 | 4.3 |
| Correctional/security | 127,395 | 61.7 | 7,912 | 63.7 |
| Clerical support | 17,147 | 8.3 | 894 | 7.2 |
| Educational | 7,147 | 3.7 | 717 | 5.8 |
| Professional treatment | 27,042 | 13.0 | 1,514 | 12.2 |
| Maintenance and food service | 15,395 | 7.5 | 686 | 5.5 |
| Other | 5,985 | 2.9 | 167 | 1.3 |
| Racial or ethnic identity | | | | |
| White | 137,831 | 66.9 | 6,315 | 50.8 |
| Black | 37,206 | 18.1 | 2,683 | 21.6 |
| Hispanic | 13,698 | 6.6 | 2,344 | 18.9 |
| Native American/other | 1,654 | 0.8 | 131 | 1.1 |
| Asian/Pacific Islander | 3,063 | 1.5 | 57 | 0.4 |
| Not reported | 12,674 | 6.2 | 890 | 7.2 |

Source: Bureau of Justice Statistics (1997b).

Table 20 Major Incidents in Public Medium- and Minimum-Security Facilities (July 1, 1994–June 30, 1995) and Private Medium- and Minimum-Security Facilities (January 1, 1997–December 31, 1997)*

| Inmate Violations | Number of Violations* | | Number of Violations per 1,000 Inmates† | |
|--------------------------------------|-----------------------|--------------|---|--------------|
| | Public 1995 | Private 1997 | Public 1995 | Private 1997 |
| Assaults on inmates | 12,721 | 1,469 | 20.2 | 33.5 |
| Resulting inmate deaths | 29 | 1 | 0.6 | 0 |
| Assaults on staff | 5,182 | 537 | 8.2 | 12.2 |
| Resulting staff deaths | 12 | 0 | 0.3 | 0 |
| Riots‡ | 172 | 12 | 3.7 | 0.3 |
| Fires | 444 | 29 | 0.7 | 0.7 |
| Other disturbances | 150 | 56 | 0.2 | 1.3 |
| Total deaths | 1,711 | 29 | 2.7 | 0.7 |
| Homicides committed by other inmates | 31 | 1 | 0.7 | 0 |
| Suicides | 65 | 1 | 0.1 | 0 |
| AIDS | 565 | 4 | 0.9 | 0.1 |
| Natural causes | 1,001 | 20 | 1.7 | 0.5 |
| Other causes§ | 49 | 3 | 1.1 | 0.1 |

* Excludes tickets, official warnings, and other minor incidents.

† Based on average daily population.

‡ Includes only incidents that had five or more inmates participating, that required the intervention of additional or outside assistance, and that resulted in serious injury or significant property damage.

§ Other causes includes accidents, homicides, and other deaths.

Source: Bureau of Justice Statistics (1997b).

Summary

The Diminishing Returns on Privatization

This report supports the basic premise that private facilities appear to perform at the same level of efficiency as public facilities. Although they tend to house a higher proportion of minimum-custody inmates in relatively new facilities, private facilities tend to have the same staffing patterns; provide the same levels of work, education, and counseling programs for inmates; and have the same rates of serious inmate misconduct as public facilities. The few credible impact studies show more similarities and fewer differences between the two methods of operation.

What seems to have evolved in the United States is a privatization model that essentially mimics the public model but achieves modest cost savings, at least initially, by making modest reductions in staffing patterns, fringe benefits, and other labor-related costs. There is no evidence showing that private prisons will have a dramatic impact on how prisons operate. The promises of 20-percent savings in operational costs have simply not materialized. Even if they had, the limited market share of less than 5 percent for private prisons would have had a limited impact on prison budgets. For example, assume that 10 percent of a state's prison system becomes privatized and that each private prison produced a 10-percent savings in operational costs. Even at this level, the overall impact on a state prison budget would be only 1 percent (10 percent of 10 percent=1 percent). This amount of savings will not revolutionize modern correctional practices.

Today it appears that achieving even a 10-percent market share will prove to be increasingly difficult for several reasons. The growing number of well-publicized stories of poor performance in private prisons is growing (e.g., Colorado, Louisiana, Oregon, South Carolina, and Texas). The problems associated with the CCA-operated Northeast Ohio Correction Center in Youngstown, Ohio, have dramatized how badly a privatized prison can be operated. In this facility, 17 inmates were stabbed, 2 were murdered, and 6 escaped in the first 15 months of operation. Operational flaws were linked to inexperienced staff, inadequate training, and a willingness on the part of prison authorities to accept inmates who should not have been transferred to the facility (Clark, 1998). If nothing else, the private sector has shown that it is as equally capable of mismanaging prisons as the public sector.

These problems suggest that the sales division of the private sector may well be outperforming the production division. It may well be that the difficulties private prisons are experiencing may increase simply because they, like prisons in the public sector, are finding it increasingly difficult to recruit competent staff.

The Future of Privatization

Despite these criticisms, privatization still provides a vital function within the correctional system. Although the private sector has been unable to keep its promise of greatly improving prison operations, its mere presence has had a significant impact on traditional prison operations. Gaes and colleagues (1998) acknowledge that privatization has forced the public sector to reexamine how it conducts business. Certainly in those markets where correctional officer salaries and fringe benefits have been excessive, privatization has fostered a reexamination of those costs, which has led to cost savings. In this sense, privatization has served as a catalyst for change by demonstrating other means for doing the business of corrections. As limited as they are, however, these cost-saving innovations should not be the only items on the privatization agenda.

It would be extremely interesting and productive for the private sector, in partnership with the public sector, to become the vehicle for testing far more substantive changes in correctional policy in a number of areas—not just prisons and jails. For example, an extremely promising strategy would be for the private sector to test the long-term effects of state-of-the-art correctional programming in reducing recidivism in the areas of education, vocational training, and various forms of counseling, both in prison and after release. One could also test the effects of reducing prison terms and other correctional policies using the flexibility of the private sector. Finally, new management techniques, staff training, and facility designs could be tested by the private sector under controlled conditions. All such innovations should be directed at reducing the current ineffective correctional practices rather than producing a system that is less expensive but as ineffective as the public-sector system.

Notes

1. The term “correctional facilities” refers to jails and detention centers that do not house state or federal prisoners.
2. During the North American phase of transportation, some 50,000 convicts were shipped across the Atlantic and sold as agricultural laborers.
3. The modern “penitentiary,” based on the ideas of Jeremy Bentham, 18th-century English philosopher, was first established in Philadelphia and New York in the United States. It became the prototype of prison reform efforts in the late 18th and early 19th centuries. Solitary confinement for personal reflection, combined with hard labor, became the cornerstones of this new approach.
4. Ethridge and Marquart (1993) identify other forms of private inmate labor such as the piece-rate system and public account system. Under the piece-rate system, inmates worked inside prison walls under the supervision of state employees. In the public account system, prisoners worked under state supervision and produced goods for state institutions. However, the convict lease system was considered the most profitable and the most brutal and corrupt of all inmate labor systems.
5. McCrie (1993) refers to the case of the privatized prison in Huntsville, Texas, which was the subject of a legislative investigation into prison conditions. The investigation resulted in modifications to the leasing system in which the state maintained control of the penitentiary and convicts but continued contracting arrangements with private interests beginning in 1883.
6. Health-care services were the exceptions. Smaller jails and prisons could not economically provide the full range of specialized care by competing for staff in the health-care market. These services were usually contracted out to local hospitals.
7. In addition to juvenile and INS detention centers, since the late 1960s private firms have established sites with various low-security facilities and in the “less visible” regions of the adult and juvenile penal systems, such as community treatment centers and halfway houses (McDonald, 1994: 30).
8. For instance, privately operated facilities for juveniles tend to be small and residential with flexible programming catering to individual needs (McCrie, 1992).

9. The leading case on this is *West v. Atkins*, 108 S. Ct. 2250 (1988). The case addresses whether private persons under contract with the state can be sued under § 1983 or whether only public employees can be sued under this federal law. By deciding that such persons can be held liable and are acting under the “color of the law” when performing services, the court expanded the number and categories of individuals who may be sued under § 1983. In 1997 the U.S. Supreme Court held that private prison guards employed by a private firm are not entitled to qualified immunity from suit by prisoners charging a § 1983 violation (*Richardson v. McKnight*).

10. The hidden costs of a public correctional facility typically include external administrative overhead, legal services, court-ordered judgments, property insurance, staff training, and other items not usually part of the direct budget.

11. The three private correctional facilities were: (1) RCA Services’ Weaversville Intensive Treatment Unit, Pennsylvania; (2) CCA’s Silverdale Detention Center, New Jersey; and (3) Buckingham Security Limited’s Butler County Prison, New Jersey. The three public prisons were: (1) Pennsylvania Department of Welfare’s North Central Secure Treatment Unit; (2) New Jersey’s Warren County Correctional Center; and (3) New Jersey’s Salem County Prison.

12. Weighted 3-year averages were calculated by dividing each facility’s 3-year average cost by the number of services available, then multiplying the cost-per-service figure for a particular facility by the number of services available at the facility with the largest number of services.

13. After the LBB report was released, the Texas Department of Criminal Justice negotiated contracts with CCA and Wackenhut Corrections Corporation to operate two prerelease facilities each. At the time of the Sunset report, the four private units had been in operation for over a year and actual cost data were available.

14. Care was defined as services of medical personnel: doctors, dentists, psychologists, and dietitians as they perform treatment consistent with a basic, minimum level of service. Justice referred to adherence to the rules by staff inside the prison—sanctions were to be clear, specified in advance, and applied consistently with due process.

15. Each firm was asked to categorize the type of facility in operation (e.g., state prison, jail, juvenile, detention, or community). This, combined with information from secondary sources such as Thomas (1997b) and Camp and Camp (1997), allowed NCCD researchers to distinguish state prisons from other types of facilities.

16. For comparative purposes, data from the BJS 1995 census are presented together with NCCD’s 1997 figures.

17. One operator did not participate because of pending litigation. The other two did not respond to requests for information.
18. Both maximum-security institutions are operated by Wackenhut Corrections Corporation. A number of other institutions, however, house maximum-custody inmates but identify themselves at lower security levels.
19. Data from the three privately operated state facilities in Puerto Rico were adjusted to eliminate potential bias. The three prisons consisted of 877 Hispanic staff and 2,267 Hispanic inmates. The results again indicate a higher staff-to-inmate ratio for Hispanics in private state prisons.
20. Based on 62 facilities reporting.
21. Four of the five facilities that reported being under court order or consent decree for overcrowding are also under order for other specified conditions.

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Guidelines for Contracting for a Private Prison

Public Strategies for Private Prisons*

Types of Privatization

- Option 1: State owns *existing* prison and hires private contractor to operate the publicly owned facility (often used for halfway houses and proposed for the District of Columbia).
- Option 2: State owns *existing* prison and sells facility to private vendor. Private vendor enters into contract with state to house inmates in the now privately owned and operated facility (CCA contract with the District of Columbia's Correctional Treatment Facility).
- Option 3: State constructs *new* prison according to its specifications and then hires private contractor to operate the publicly owned facility (Ohio and Michigan Departments of Corrections).
- Option 4: State funds construction of *new* prison and owns the facility. State awards contract to private vendor to build and operate the facility according to the vendor's specifications (often used for Texas Department of Criminal Justice State Prisons).
- Option 5: State funds construction for *all* facilities. State builds and operates a portion of the facilities funded. Local government selects private vendor to build and operate outstanding portion of facilities funded (Texas state jails).
- Option 6: Private contractor constructs *new* prison and enters into contract with state in which facility is located to house the state's inmates in the privately owned and operated facility.

*This Appendix was prepared by Dennis Cunningham, Private Prisons Administrator, Oklahoma Department of Corrections. It is based on a presentation by James Austin, Research Professor, Department of Sociology, The George Washington University, presented at the National Conference of Privatization, March 1998.

- Option 7: Private contractor constructs *new* prison and enters into contracts with states other than the one in which the facility is located to house inmates in the privately owned and operated facility (CCA's Northeast Ohio Correctional Facility in Youngstown, Ohio).
- Option 8: Local municipality funds construction of facility through the development of a not-for-profit corporation, which, after receiving state approval, sells tax-exempt bonds to fund the construction and equipping of a facility to house inmates from other jurisdictions (Texas).
- Option 9: Consortium of counties owns or has private facility and operates to house inmates from those counties (Tuscaloosa County, Alabama).
- Option 10: State contracts with a private vendor to build and operate a prison in another jurisdiction (proposed in Oregon).

Key Points

The National Institute of Justice (1987) report entitled *Issues in Contracting for the Private Operations of Prisons and Jails* provides an excellent early overview of facility privatization issues. Much has been learned about private corrections in the United States in the years since that report. In this section, key points of the NIJ report are updated to include recommendations and additional key points based on present-day practices and experiences.

Public Policy Considerations

1. Before contracting with a private service provider, a state should undertake a systematic, detailed analysis to determine if, and under what conditions, contracting is likely to be feasible for the correctional agency. This should include an examination of statutory authority, current state prison costs, crowding, performance standards, legal issues, availability of vendors, ways to reduce the likelihood and consequences of contractor defaults, and the attitudes of political stakeholders.
2. A public policy on privatization should be developed that provides guidance on key issues such as contract length, types of private services to be requested, private facility purchase options, performance standards, and reassurances to public employees.
3. If a government's goal in contracting is to obtain new beds quickly at a lower construction cost, the private sector offers an attractive option. However, if the government seeks a more economical operation, the evidence available to date suggests that private contracting does not necessarily save a significant amount of money.

4. The government should have a long-range plan that specifies how privatization fits into the agency's plans and to what degree privatization will be pursued, such as what percentage of agency facilities or services will be offered to private contractors.
5. Public employees should be given the opportunity to participate in the competitive process and to win a contract if it can be proved that the public offer is the most suitable and the most appropriate choice.
6. A key issue that must be addressed by the public sector is What is success and how do we determine if we are successful in the delivery of correctional services? The current public trend of determinate sentencing policies bears close watching to ensure that privatization does not lead to harsher sentencing policies, increased recidivism, and further increasing of the scale of imprisonment.

Protection of the State and the Inmates

1. Careful attention must be devoted to ensure that each contract provides adequate protection of inmates' rights and also protects the state from liability claims.
2. Speculative prisons, proposed by economic development proponents, jeopardize the government's debt-incurring ability because, if a speculative prison built with public trust bonds fails, the government ultimately becomes responsible for repayment of the debt.
3. Private prison contractors will not be able to escape liability under Section 1983 of the Civil Rights Act, and the contracting government entity will be unable to protect itself from lawsuits resulting from the wrongful acts of the selected operator (*Richardson v. McKnight*). The government can reduce, but not eliminate, its vulnerability to privatization-related lawsuits by specifying in law, and subsequently in the contract, that the government be indemnified against any damage award and for the cost of litigation.
4. The government may consider requiring that a significant performance bond be posted or a trust fund established to indemnify it in the event of a contractor's financial or other problems. The agency will need to determine whether the cost of the additional protection is necessary.

The Process of Privatization

1. When contracting, the use a competitive bidding process is highly recommended. This will help to avoid accusations of favoritism or impropriety. To improve the competitive climate the agency can:

- Develop and maintain a list of potential bidders.
 - Provide public policy and rules for procurement of private facilities and services.
 - Permit both private nonprofit and for-profit organizations to bid.
 - Assist with the financing of the design and construction.
 - Provide an ample window of opportunity for development of responses to the agency's request for proposal (RFP). The RFP is sent to potential bidders to solicit an offer.
2. The agency must identify all the cost components of the public operations and the oversight functions so that they can be adequately addressed in negotiations and during the agency's budget planning process.
 3. The agency may mandate additional certification or credentials in critical areas such as: firearms, chemical agents, self-defense, emergency response apparatus/weaponry, health care, and transportation.
 4. FBI felony background investigations of vendor employees and contractors must be required. Personnel standards and training should be comparable to the agency's standards or American Correctional Association (ACA) standards—whichever are higher.
 5. Information about the proposal evaluation process should be included in the RFP. Evaluation criteria include, but are not limited to:
 - Vendor's experience and past success in similar undertakings.
 - Design and construction details.
 - Timetable and availability.
 - Staff qualifications.
 - Qualitative review of operational plan details and program proposals.
 - Vendor's financial condition and references.
 - Cost proposal.
 6. The agency must specify and agree to a method for resolving any contractual differences that may emerge before the service commencement date.

Contract Provisions

1. RFPs and subsequent contracts should specifically state: (a) the responsibilities of each party and (b) what levels of performance are expected to ensure compliance with performance standard policies,

procedures, and practices. The use of nationally recognized standards like those from ACA and the National Commission on Correctional Health Care (NCCHC) is recommended.

2. Governments can control contract costs by stipulating that per diems may not rise above the urban consumer price index.
3. Contracts should include specific staffing pattern information, inmate activity plans, treatment plans, and detailed operational plans. For example, staffing levels are determined by calculating the minimum personnel required for three shifts, the number of days per week for each person, and a relief factor or ratio. In addition, mandatory posts or pull posts (which are not always needed, such as visiting room officers), support positions, and outside subcontractors should also be specified in contracts.
4. RFPs and contracts should also identify sanctions or penalties that will apply for inadequate performance. Liquidated damages may be tied to failure to meet ACA mandatory standards and NCCHC standards, failure to staff adequately, inmate idleness, failure to meet court orders, improper use of force, or failure to meet any other performance standard as defined in the contract.
5. A variable cost structure that is fair for all parties should be built into the contract so that no misunderstanding will arise regarding cost for vacant beds and/or additional inmates beyond the specified ceiling.
6. The payment structure should be based on a pricing system such as single fixed price, fixed unit-price award, or cost plus. A per diem for actual inmate days is often preferred by states, as it addresses only beds used. There should be a provision to contract for additional services required by the state, court order, or other reason. Performance incentives may be desirable to include in the payment section.
7. Prison contracts should be rebid on a relatively short basis, such as every 3 to 5 years. State laws may mandate a maximum contract length.
8. Governments should include provisions in the contracts requiring that the contractor provide advance notification of issues that may result in a major impact on the facility, such as the end of a union contract period, major worker grievances that could force a work stoppage or slowdown, change of ownership or in rating of the facility, loss of insurance coverage, and defaults by subcontractors.
9. The contractor should rely on community resources for operating the facility whenever possible by, for instance, hiring local people and buying supplies and services locally.

Facility Concerns

1. Contracting for new or reoccupied facilities may entail fewer problems (e.g., personnel problems) than turning over an existing facility to a private firm. An important exception may be the case of trying to convert a jail into a prison. The experiences of several states (especially Texas) clearly demonstrated the problems with trying to manage long-term state prison incarcerates in former county jail lockups, often with poorly trained personnel.
2. Governments contracting to replace existing facilities should take steps to resolve personnel problems, including:
 - Requiring contractor to give employment preference to displaced staff.
 - Providing transfer, retraining, and outplacement services to employees not choosing to work for the contractor.
 - Carefully calculating and making provisions for disposition of benefits (e.g., retirement benefits and vacation and sick leave accrual).
3. Governments establishing any contract facility should develop a public relations plan, because good public relations are crucial for community education. The government should fully inform community leaders and should also keep correctional employees fully informed of contract deliberations. The media should be made aware of the contracting initiative at an early stage.

Selection of Inmates

1. The RFP and contract should explicitly describe the type and level of offender and the main construction and security features the agency deems necessary to confine the prisoners appropriately. The contract should be based on the state's inmate classification policy and its operational definitions of the privileges and level of supervision required by the custody level of the inmate population. This will include a section on special populations such as inmates with AIDS, the mentally ill, inmates under protective custody, and pregnant inmates.
2. The state should contractually require the vendor to accept all prisoners in certain categories (e.g., medium security) for the duration of the contract period up to the agreed maximum number of inmates to be incarcerated at any given time. The state should also mandate classification parity among public and private facility inmate populations. This will protect the state against "cherry picking," or the selection of only the best inmates by the private operator.

3. Selection of inmates for placement in a contract facility, and decisions about their movement, is the government's responsibility as described in the contract. Criteria should be mutually agreed upon to avoid misunderstandings. The contract should include the provision that the state makes the decisions about inmate reassignment, reclassification, and transfer to and from the facility. Public officials should make the decisions, based on vendor input, whether to award sentence credit and whether to release an inmate.
4. Minimum and maximum inmate population levels should be stated in the contract to facilitate planning and cost estimates.
5. States contracting for large institutions should specify in the RFP and the contract that the selected private vendor should use unit management—a system of smaller population subunits within a facility.

Level of Authority

1. Government officials must ensure that disciplinary hearings conducted by the contractor follow legally required practices when discipline problems occur. A private firm should adopt the policies and procedures used by the agency. Major disciplinary actions should be formally approved by the contract monitor.
2. Private companies should closely adhere to the same type of procedures used by the government agency. Where necessary, contractor discretionary actions involving inmate rights and discipline should be made in the form of a recommendation to the agency or official for approval.
3. In the event of an escape attempt, private prison employees should use reasonable and appropriate apprehension measures according to state law. Generally, once an inmate has left the facility's property, law enforcement officials should become responsible for the ultimate capture and return of the escapee.
4. Private operators should be required to obtain an agreement with local law enforcement or other government entities to provide assistance in the event of an emergency. Private operators are responsible for the associated costs of such an emergency response.

Contract Monitoring

1. The state should assign a full-time contract monitor to work onsite at the private facility.
2. The state should plan for this critical task and implement an effective system for continuous contract monitoring. Planning

occurs prior to the issuance of an RFP and is written in the contract. This should include:

- Regular timely reports showing tabulations, analyses of performance standards, and the results of inspections.
 - Regular onsite inspections using a detailed checklist based on the contract performance standards, rating categories, and guidelines on how to complete the inspection.
 - Periodic documented fire, safety, health, medical, and sanitation inspections.
 - Participation in disciplinary hearings concerning major rule infractions, approval of inmate classification actions, and sentence and time credit issues.
 - Provision for regular interviews with inmates to obtain feedback on such performance standards as treatment of prisoners; amount of internal security; drug use; and helpfulness and adequacy of educational, work, treatment, and recreational programs.
 - Annual indepth, onsite inspections by a team of experts, covering the various procedures used and the results of periodic reports on the facility's quality of services based on performance standards.
 - Provision for prompt review by government officials of the written inspections, identification of a corrective action plan with due dates, and followup to determine compliance.
 - Provision for relating information from the monitoring process for consideration during contract renewals.
3. The same monitoring procedures should be applied to publicly operated and contractor-operator facilities. Governments can then use the information as a basis for comparisons and making future privatization decisions.

Contract Evaluation

1. The government and the private operator should cooperate on systematic, comprehensive evaluations of the cost and operational effectiveness of the contract. The government should require that a comprehensive evaluation be made of the degree of success of the contract within a few years of the contract award. If possible, the contracted facility should be compared with publicly operated facilities.
2. Agreement on the success of prison privatization is important. Although the most discussed comparison usually involves cost of services, other variables may have greater bearing on the overall degree of success of the privatization efforts. Quality-of-service analyses and studies of recidivism and public safety could become critical review

components. One researcher's classification of important dimensions of prison services and quality of confinement was defined by Logan (1991) as:

Security: With respect to inmates, staff, and community.

Activity: Assurance that inmates are not idle; promote rehabilitation.

Safety: Environmental hazards, sanitation, freedom from disease.

Justice: Rule of law inside prison; fairness.

Order: Enforcement of inmate compliance; assurance of orderly running of the institution.

Care: Medical, dental, psychological.

Conditions: Crowding, health risk.

Management: Staff capability, efficiency.

Summary

Success in privatizing prisons is highly dependent on the care taken in developing a public policy that includes a long-range plan, a management procurement process, identification of all of the state's costs, an RFP, a contract that includes performance standards, guidelines for choosing a contractor, details on executing the contract, and standards for monitoring the contract.

Sample Contract Performance Standards

1. **Health and Safety:** The facility is in compliance with all local, state, and federal fire and health codes. The facility retains on file completed inspection forms from these authorities that are available for review.
2. **ACA Accreditation:** Owner/operator will become a candidate for ACA accreditation within 9 months of the initial contract and achieve accreditation within 36 months of the services commencement date.
3. **Emergency Procedures:** The facility has in place procedures to follow in the case of an emergency and has provided a copy of such procedures to the department.
4. **Sanitation and Hygiene:** The facility provides equipment and supplies to ensure the maintenance of a clean and healthy

environment. Hygiene items are provided to inmates for their personal use through the commissary or through indigent services as necessary.

5. **Health Services:** Medical, mental health, and dental services provided are comparable to those of the department in compliance with contractual obligations and ACA standards.
6. **Food Services:** Food services provided for inmates include a master menu schedule, special diets meeting medical or religious requirements, and three meals served daily at regular times during each 24-hour period with no more than 14 hours between the evening and morning meals.
7. **Property:** The property matrix of the Department of Corrections (DOC) is utilized. The facility will provide for the secure storage of inmate property. If the property is lost or damaged while under the care of the facility, inmates can use the facility's grievance process to seek reimbursement for the lost or damaged property.
8. **Inmate Services:** Laundry services are available to inmates and the facility provides a commissary for inmates comparable in goods and prices to DOC facilities. Inmates are allowed correspondence and mail delivery services in accordance with policy; telecommunication costs for inmates are comparable to those in DOC-operated facilities; and visiting policies and practices enable inmates to maintain ties with families.
9. **Grievance Procedures:** Inmates are afforded access to a reasonable, impartial, and nondiscriminatory procedure, which includes a final level of appeal to the state. The facility is responsible for responding to grievances on matters occurring during the inmates' incarceration in the facility except during sentence administration and classification to a higher or lower security facility.
10. **Disciplinary Procedures:** The facility follows DOC's disciplinary policy, or one comparable with disciplinary action and reasonable sanctions proportionate in relation to the violation. The facility provides complete, accurate, and detailed reports to the contract monitor within 7 working days of the finalized disciplinary action.
11. **Inmate Activity:** A minimum of 80 percent of eligible inmates are productively occupied outside their cells for at least 6 hours per day or 30 hours a week in work, educational, vocational, or rehabilitative programs. Inmate labor may be used for facility operations and maintenance but not for the personal benefit of any employee.
12. **Inmate Programs:** The facility offers at least basic literacy education, adult basic education, and general educational development; substance abuse programs with cognitive approaches and self-help programs; opportunities for vocational program participation; and other programs as specified in the contract.

13. **Security and Control:** The facility provides security and control in accordance with accepted operating standards. Security measures are reviewed on a monthly basis to include tool and key control, internal and external security, search and seizure practices, and emergency procedures.
14. **Use of Force:** The facility follows DOC's use-of-force policy, reports all incidents according to policy, and provides written reports in a timely manner as followup through the contract monitor.
15. **Access to Courts:** Inmates are afforded access to the courts through the use of legal materials or a person trained in law or a combination of both. The law library, where applicable, contains the required legal materials.
16. **Case Management:** Inmates receive orientation services and meet with their case managers within the first 10 days to be assigned an earned credit level and are reviewed every 120 days for adjustment of the level of earned credit. Case managers have regular contact with inmates and handle requests for staff and grievances when possible.
17. **Inmate Records and Reports:** The facility maintains records on individual inmates. A case manager maintains individual files documenting each inmate's program goals, employment, earned credit, disciplinary records, programmatic involvement, and other significant information. Inmate records and time calculations are monitored/audited by a sentence administration unit.
18. **Racial Balance:** Racial balance is maintained in accordance with DOC policy in housing, programs, and job assignments.
19. **Urinalysis Testing:** Five percent of the inmates are randomly tested for drug use monthly.

Resources for Appendix

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U.S. General Accounting Office (1996). *Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Services*. Washington, DC.

Washington State Joint Legislative Audit and Review Committee (1996). *Legislative Budget Committee, State of Washington Department of Corrections*

Privatization Feasibility Study, Report 96-2. Olympia, WA: Legislative Budget Committee.

Wilson, Tim (July 1996). "The United Kingdom Experience." Unpublished paper presented at the Privatization of Correctional Services Conference, Toronto, Canada.

Sources for Further Information

For more information on privatized prisons, contact:

Oklahoma Office of the Attorney General, Oklahoma Public Legal Research System

World Wide Web: www.oklegal.onenet.net/statutes.basic.html

Oklahoma Department of Corrections

3400 Martin Luther King Avenue

Oklahoma City, OK 73111

405-962-6080

American Law Sources

World Wide Web: www.lawsources.com

For more information on correctional services and issues, contact:

Bureau of Justice Assistance

810 Seventh Street NW.

Washington, DC 20531

202-514-6278

World Wide Web: www.ojp.usdoj.gov/BJA

Bureau of Justice Assistance Clearinghouse

P.O. Box 6000

Rockville, MD 20849-6000

1-800-688-4252

World Wide Web: www.ncjrs.org

Clearinghouse staff are available Monday through Friday, 8:30 a.m. to 7 p.m. eastern time. Ask to be placed on the BJA mailing list.

U.S. Department of Justice Response Center

1-800-421-6770 or 202-307-1480

Response Center staff are available Monday through Friday, 9 a.m. to 5 p.m. eastern time.

Bureau of Justice Assistance Information

General Information

Callers may contact the U.S. Department of Justice Response Center for general information or specific needs, such as assistance in submitting grant applications and information on training. To contact the Response Center, call 1-800-421-6770 or write to 1100 Vermont Avenue NW., Washington, DC 20005.

Indepth Information

For more indepth information about BJA, its programs, and its funding opportunities, requesters can call the BJA Clearinghouse. The BJA Clearinghouse, a component of the National Criminal Justice Reference Service (NCJRS), shares BJA program information with state and local agencies and community groups across the country. Information specialists are available to provide reference and referral services, publication distribution, participation and support for conferences, and other networking and outreach activities. The Clearinghouse can be reached by:

- Mail**
P.O. Box 6000
Rockville, MD 20849-6000
- Visit**
2277 Research Boulevard
Rockville, MD 20850
- Telephone**
1-800-688-4252
Monday through Friday
8:30 a.m. to 7 p.m.
eastern time
- Fax**
301-519-5212
- Fax on Demand**
1-800-688-4252
- BJA Home Page**
www.ojp.usdoj.gov/BJA
- NCJRS World Wide Web**
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