



© AP Photo/Charlie Litchfield, File

15

The Privatization of Corrections¹

LEARNING OBJECTIVES

- 1 To understand the scope and size of private correctional facilities in the United States.
- 2 To grasp the kinds of functions fulfilled by private correctional companies.
- 3 To be able to name at least three private corrections companies, including the two largest.
- 4 To gain a sense of the relationship between private corrections companies and local economies.

After their modern beginnings in the 1980s, private prisons came to hold over 8% of all U.S. state and federal prisoners by 2015, including two-thirds of federal immigration detainees. Proponents of **privatization** claim that private prisons can provide a quick response to facility overcrowding, higher-quality and more cost-effective services, improved conditions of confinement, and economic growth in the communities where new private facilities are built. These purported benefits are not typically supported by independent research. Scores of private facility incident reports across the country bring into question the safety and quality of these facilities. The primary ways private prisons sustain their profits, including low pay, limited staff training, and other cost-cutting measures, can lead to unmet inmate needs and security issues, heightening the inherent dangers to staff and inmates in secure settings. There are also significant issues with the government's ability to effectively monitor what goes on at private prisons. The expectation that competition for contracts among free-market players would lead to generally improved efficiency, quality, and cost savings has not proved reliable.

Nevertheless, proponents of privatization continue to use these claims as a basis for promoting expansion. Private prison companies spend millions of dollars on lobbying, political campaign contributions, support for legislation favorable to their profits, campaigns to shape public opinion, and research likely to support their practices. These activities lead many to question the prison industry's influence on criminal justice policymaking.

Although the desire for a quick solution to crowding is the most common reason jurisdictions contract for bed space in private prisons, secondary rationales include cost savings and improved services. Also, states and local jurisdictions seek partnerships with prison companies to establish private facilities as a way to boost their economies. There is a shortage of high-quality research to assess the success of these secondary aims.

Secure private facilities designed for adults are the major focus of this chapter, although many of the same issues and potential solutions apply to other types of privatization in corrections. Federal immigration detention and contracted services, such as in-custody health care and programming or postrelease supervision and services, are also part of this discussion.

History and Functioning of Private Prisons

During the “tough on crime” era that began in the 1980s, as incarceration rates rose in state and federal institutions, those rates also rose in private, for-profit facilities. Privatization of certain corrections functions, such as health care and other services, was common for some time prior to this, but larger-scale facilities wholly managed by for-profit companies got their start in the mid-1980s.

Privatization: The process of outsourcing traditionally state- or government-run services to private companies.

- 5 To be able to describe how private corrections and public corrections policy may be in conflict.
- 6 To grasp the basics of the government contracting process.
- 7 To know how difficult it is to monitor private facilities and why.



The term *private prison* typically refers to secure facilities where all or most of the inmates remain confined at all times, such as prisons, prison farms, penitentiaries, correctional centers, work camps, and reformatories. A large percentage of private facilities are community based, such as halfway houses, residential treatment centers, restitution centers, and prerelease centers, where at least some inmates come and go on a daily basis.

▲ Most of the more than 400 private correctional facilities are minimum or medium security and hold an average daily population of fewer than 500 inmates.

© Andrew Lichtenstein / Corbis Premium Historical / Getty Images

- Of 1.5 million state and federal inmates in 2015, 126,500 were held in private prison facilities (26,000 in private federal facilities, 9,200 in private community corrections centers, and 91,300 in private state facilities). These counts represent 18% of federal prisoners and 7% of state prisoners²; they do not include those held by U.S. immigration authorities.
- In 2017, U.S. Immigration and Customs Enforcement (ICE) had an average adult daily population of about 41,000.³ Over the course of a year, this represents over 400,000 ICE detainees. Two-thirds (65%)⁴ of these were housed in privately run detention facilities.⁵
- Six states held over 20% of their prisoners in private facilities: Hawaii, Mississippi, Montana, New Mexico, North Dakota, and Oklahoma. Nineteen states held no prisoners in private facilities.⁶
- Most of the more than 400 private correctional facilities are minimum or medium security and hold an average daily population of fewer than 500 inmates.⁷
- Some populations, such as women, the mentally ill, and serious offenders, are less likely to be held in private facilities because they are more expensive to house, making it difficult for prison companies to make profits. Almost one third (32% in 2013)⁸ of juveniles are held in private facilities.⁹

In August 2016, the U.S. Department of Justice (DOJ) under President Barack Obama announced that the federal Bureau of Prisons would move to end its use of private prisons. The argument for this change was that privately run prisons did not substantially reduce costs, did not provide the same level of services, and were less effective and less safe compared to those run by the government.¹⁰ The announcement would not apply to all federal correctional facilities, namely those run by ICE or the U.S. Marshals Service, or to the much larger state prison system, but federal policy has a tendency to gradually impact state policy, so the move was applauded by critics of privatization. However, in early 2017, the new administration of Donald Trump quickly reversed that decision. Furthermore, the new attorney general discontinued federal sentencing policies aimed at reducing the length of sentences for low-level offenders¹¹ and increased ICE enforcement efforts,¹² both of which would increase the federal incarceration population and thus business for private prisons. A brief decline in the federal imprisonment rates and in the stock of the leading private prison companies was thus halted.¹³

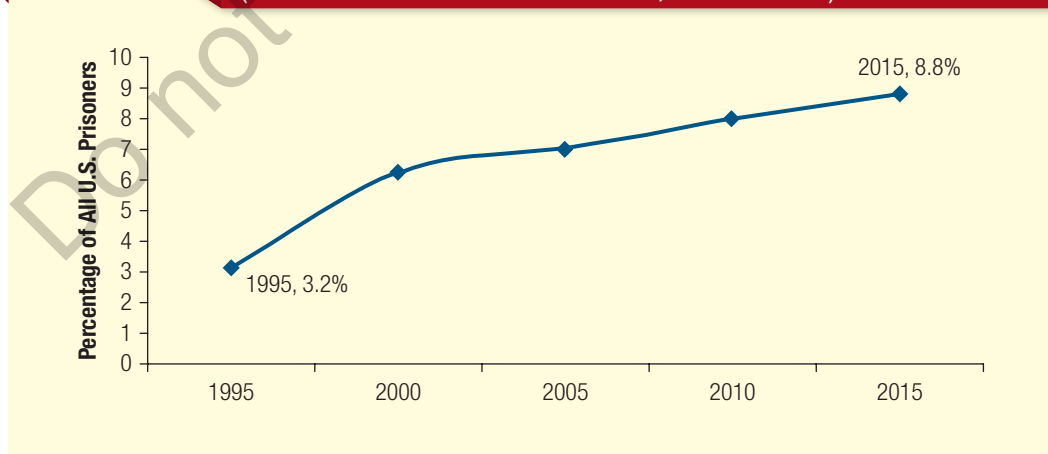
Major Private Prison Companies

Today, two private companies—CoreCivic and the GEO Group—hold the majority of private prison contracts in the country. At the end of 2016, CoreCivic (known as Corrections Corporation of America, or CCA, until it rebranded itself in 2016) owned and managed 66 facilities, managed 11 facilities owned by state or local government, and owned 8 other correctional facilities they leased to another party, usually another for-profit private company.¹⁴ These contracts mean CoreCivic owned or managed 89,700 correctional beds in 20 states and the District of Columbia. In the same year, the GEO Group (formerly known as Wackenhut Corrections Corporation) controlled 64 correctional facilities in 17 U.S. states accounting for 74,920 beds.¹⁵ GEO also has extensive international reach. Besides facilities construction, ownership, and management, these companies provide other correctional services such as transportation, mental health treatment, and electronic monitoring. In 2010, the combined revenue of CCA/CoreCivic and GEO was more than \$2.9 billion; by 2016, this figure had grown to \$4 billion.¹⁶ These are publicly traded companies, accountable to their boards of directors and shareholders over the needs of the prison inmates, the prison staff, and the general public. Contracts with federal (Bureau of Prisons, ICE, and the U.S. Marshals Service), state, and local jurisdictions account for all of their revenue, so an important part of their business plans is to influence public policies regarding corrections, law enforcement, the courts, and immigration. Other large private prison companies include Management & Training Corporation, Emerald Correctional Management, LCS Corrections Services, and CiviGenics/Community Education Centers.¹⁷

How Private Prisons Function

Federal, state, and local governments that seek to privatize correctional services enter into a contractual relationship with a private prison company—a public–private partnership. Governments seek private prison contracts primarily because of the ability of private

Figure 15.1 Percentage of U.S. Prisoners Held in Private Facilities (State and Federal Jurisdictions, 1995–2015)



The percentage of U.S. prisoners held in private facilities rose from just over 3% in 1995 to almost 9% in 2015.

Sources: Guerino, Harrison, and Sabol 2011; Justice Policy Institute 1995; Kaeble and Glaze 2016.

Private companies all have profit motive in common.

"The headquarters of the GEO Group in Boca Raton, Florida" (https://commons.wikimedia.org/wiki/File:GEO_Headquarters.jpg#/media/File:GEO_Headquarters.jpg) by Eflatmajor7th, licensed under CC BY-SA 3.0 (<https://creativecommons.org/licenses/by-sa/3.0/>)



prison companies to build or acquire facility space more quickly than government agencies, easing overcrowding and creating a short-term, time- and cost-saving solution compared to the government building its own facilities.

The arrangement can take many forms. Some private facilities hold inmates from a single jurisdiction, while others hold inmates from other states and the federal government. Inmates may be held in a facility owned and operated by the company or in a private facility owned by the government and operated by the private company.

The company may manage the entire facility, providing for all of the needs of the inmates, or the government may still manage some aspects of the prison, such as medical services or programming. The company may run only certain elements of correctional services such as inmate health care or probation supervision.

The government typically announces a request for proposals (RFP), which describes the project it wishes to pursue and all of the issues a prison company will have to address for its proposal to be considered. Once a proposal is accepted, contract negotiations begin. The contract usually stipulates that the government will pay the prison company a daily dollar amount, as low as \$30 and up to \$80 (or higher), for each inmate. These amounts can vary according to the security level of the inmates, the size and type of facility, and the local costs of services and programming. Local costs include food service, mental and physical health care, recreation, education, vocational training, and the relevant contracting and negotiating experience of state representatives.

The development, implementation, and monitoring of private prison agreements is a complicated and unwieldy process—a fact that contributes to the difficulty of regulating and monitoring these contracts and facilities. In a facility operated in one jurisdiction but holding inmates from several others, the laws and regulations of several federal, state, and local jurisdictions may be applicable. For example, Arizona has three sets of corrections regulations and policies, one for Arizona state prisons, one for private facilities in any state contracted to hold Arizona inmates, and a third for private prisons in Arizona not contracted to hold Arizona inmates. The third of these is the least restrictive.

Numerous organizations and individuals are involved in these negotiations. At the state or local level, a chief executive (governor or mayor) or members of the state legislature, county commission, or city council usually lead the process. State or local justice system officials such as attorneys general, judges, heads of corrections agencies, and law enforcement officers are not typically spearheading the move toward privatization. They may not even support the move. But they and various public employees will play some role in the process. Financiers, attorneys, construction companies, engineers, public utilities, and others will also be involved, especially when construction of a new facility is proposed.

Prison company executives and staff play a major role as well, not only in representing the prison companies' interests but also in assisting governments in the complicated processes of contracting and implementation. Prison companies often offer to handle much of the paperwork and hoop jumping on behalf of government entities. They are likely to have more experience with the process, and they have a clear interest in the process moving as quickly and smoothly as possible. They also take part in securing project buy-in from other government representatives and community stakeholders.

Administration and oversight of ongoing private prison contracts also involves a variety of public employees. In the federal arena, responsibilities are spread across several wings of the Federal Bureau of Prisons (BOP).¹⁸ In the state context, the task is likely spread across more disparate departments. For example, in Arizona, the Private Prisons subprogram of the state Department of Corrections' Prison Operations Program develops and manages private prison contracts; the Engineering and Facilities Bureau oversees construction and compliance monitoring; the Contract Beds Bureau monitors, evaluates, and supports private prisons; and the Business Administration tracks expenditures.¹⁹

Other Forms of Corrections Privatization

The privatization of various correctional elements, apart from whole facilities, also continues to grow, although by exactly what rate is poorly reported.²⁰ In these cases, a government agency will contract with a provider to supply a service. In-custody services may include health care, mental health and substance abuse treatment, other programming, jail operations, food service, or transportation. In the community, private companies provide probation or parole supervision, programming and services, electronic monitoring, fine and fee collection, or court operations. Organizations that provide health care and programming services may be for-profit or nonprofit. Those providing more technical services like operations, monitoring, transportation, or collections are usually for-profit. The reasons governments pursue these contractual relationships are typically cost savings and improvements in the quality and effective delivery of service through the specialization that private groups can develop.

Privatization of Health Care

A 2005 survey of state corrections departments found that 32 states contracted with private companies for some or all of their prison health care services.²¹ By 2016, it was estimated that half of all state prisons and local jails used some level of private health care.²² Prominent players in the \$3 billion private correctional health care industry include Corizon Health and Wexford Health Sources, which serve 571 U.S. correctional facilities between them.²³ Opponents of privatized health care cite concerns that this profit-driven approach may result in insufficient staffing levels; a lack of appropriate treatment

for prisoners, such as delays in sending inmates to the emergency room; and oversight issues.²⁴ Lawsuits charging prisons of inadequate provision of health services are common,²⁵ and a report by the U.S. DOJ Office of the Inspector General found the cost-savings motive is not supported.²⁶ One problem exacerbated by privatization of prison health care is that the fees inmates are commonly required to pay for services—ostensibly to discourage abuse of the privilege—are higher when they are used as compensation to the private company.

Privatization of Probation

Despite declines in the overall U.S. community corrections population in recent years, many states still have increases, and due to state and local budget issues, many jurisdictions continue to explore privatization for probation as well as parole. One reason for this shift is strained caseloads for probation officers and limited budgets to address this burden. Since the early 1990s, for-profit companies have been taking on comprehensive probation functions on behalf of government agencies. With what is called “private probation,” private companies fill the role of the probation agency—monitoring clients for meeting the terms of their probation, referring them to services, testing them for drugs, investigating, and imposing sanctions as necessary. Probation violations are reported to the regular probation department or courts, but in some states private probation companies have the authority to impose tougher terms, raise fees, and file arrest warrants. Not all states use private probation, and not all private probation providers are for-profit. For example, the Salvation Army has been providing high-quality probation services for decades, as has Delancey Street, a nonprofit based in San Francisco. But most are for-profit, and questionable practices by these companies—practices often facilitated by state and local governments—have led many to question whether they are successfully and legally serving their intended purpose (see Chapter 5 Spotlight “Profiting From Probation”).

The first state to legalize private probation was Florida in 1975. Federal data do not yet disaggregate private versus public probation, but it is estimated that hundreds of thousands of probationers are now supervised by private, for-profit companies. A 2007 report found that about 10 states contracted with private agencies to provide supervision of an estimated 300,000 clients on court-ordered probation, typically for misdemeanor, low-risk offenses.²⁷ A 2014 report found jurisdictions in at least 12 states (especially in the Southeast, but also in the Midwest and West) had turned over supervision of some or all of their low-level probationers to private probation firms. It is not clear whether these trends will continue, but it is apparent that prison companies recognize re-entry and supervision services as a growth area.²⁸ Prominent players in this field include Judicial Correction Services (JCS), Sentinel Offender Services, and Providence Service Corporation. JCS provides probation services to 185 court jurisdictions, mainly in the Southeast. Like JCS, Sentinel Offender Services is not publicly traded so has even fewer transparency requirements than shareholder-driven companies.²⁹ It has contracts in jurisdictions in 48 states for various specialized services related to pretrial, in-custody, and postrelease supervision.³⁰ Providence is a large holding company whose businesses include corrections services and other companies unrelated to corrections.³¹

Private probation companies most often serve low-risk clients, while the traditional government-run probation agencies are responsible for more serious offenders. Jurisdictions may have contracts with and pay private probation firms, but most often private probation firms earn their money from fees paid to them by the probationer. In this way, they offer the government a cost-free way to monitor probationers and collect fines. These fees can include a monthly fee of perhaps \$30 to \$45 and additional service-related fees, such as for drug testing or GPS monitoring. Fees can easily double



◀ Private prisons tend to be far from the homes of prisoners, making in-person visits difficult for family members.

© Marmaduke St. John/Alamy

or triple the cost of the original fine. Nonpayment of fines and fees can lead to additional monetary penalties, additional fines from the court, or restrictions on a driver's license. These sanctions make it hard for a probationer to earn the money to pay fines and fees and avoid revocation.

In many cases, the individual sentenced to probation can pay a fine and avoid probation altogether. An indigent person on probation stands to remain so for months or years as his or her ability to pay the multiplying fees decreases and as the likelihood of incarceration increases. Being unable to attend work, school, treatment services, doctor's appointments, and other commitments makes paying fees even more difficult and increases the likelihood that the probationer will break other terms of probation and end up behind bars.

Georgia uses private probation perhaps more than any other state. There, the effort by county courts to collect unpaid fines was a primary motivator for legalizing private probation for misdemeanors in 2000. For county governments, the potential costs of pursuing payment were often higher than the value of the fines. So those guilty of public drunkenness, DUI, and traffic violations who are unable to pay fines find themselves on a sort of installment plan, where they have to pay not only the original fine but monthly fees as well. These companies are not required to report on their own finances, but it is estimated that, in 2012, about 40 private probation firms collected almost \$100 million in fines, restitution, and court costs as well as \$40 million in additional charges on behalf of Georgia's county courts.³²

Supporters of private probation hope it expands to include felony offenders. However, critics point out the enormous extra burden, financial and otherwise, that private probation clients endure. They argue that the emphasis by private corrections companies on heavy-handed fee collection rather than supervision, service referral, and general assistance increases the likelihood that probationers will end up behind bars, thereby increasing rather than reducing state correctional costs. There is also concern that states do not adequately regulate and monitor these companies, leading to scores of documented instances of abuse.³³ In lawsuits in Georgia, Alabama, and other states, courts

have found that some private probation companies illegally increase fees, extend probation, and land their clients behind bars for nothing more than inability to pay. For instance, in Colorado, large caseloads prompted the use of private probation in 1996 for low-risk offenders, such as those convicted of DUI. There is a clear conflict of interest when the same private, for-profit probation firms responsible for monitoring DUI individuals, including referring them to services and reporting them to the state when they fail drug tests, also provide substance abuse treatment for additional fees to those same individuals.³⁴

Many jurisdictions across the nation have increased the use of both fines and fees to help cover justice system costs, whether those fees are collected directly by the government or by private firms. It is important to note that, while fines are instituted as a means of serving the purposes of corrections, including punishment and deterrence, correctional fees are put in place for a different, essentially administrative, purpose. Fees are a way to defray the costs of the judicial system incurred by the state or, in the case of private probation companies, a way to reap profits. Several states continue the practice of incarcerating those who cannot afford to pay fines and fees despite it being ruled unconstitutional by the U.S. Supreme Court in 1983.³⁵ Some county and local jurisdictions have been found to abuse their authority to levy fees and to sanction those unable to pay. For example, a judge was suspended from the Montgomery, Alabama, municipal court in 2017 for ordering offenders to pay fines without first assessing their ability to pay or offering alternatives; he assigned many of these cases to the for-profit Judicial Correction Services.³⁶ It is, therefore, not only for-profit companies that face a conflict of interest when revenues are linked to correctional practice.³⁷

Furthermore, standards are lacking in many aspects of the industry, which can allow probation officers' compensation to be directly connected to the fees they collect.³⁸ Recommendations for improving the selection, performance, and accountability of private probation officers include developing more rigorous statewide requirements for the private supervision of probationers, increasing training and educational standards for private agency staff, instituting more stringent agency reporting obligations, and evaluating whether private probation providers have achieved their stated performance goals.³⁹

Private Prison Performance

Meeting Basic Standards of Humane Treatment

Observers question whether private prisons provide better care and services than public prisons and whether they consistently meet basic standards. Individual studies have found that, compared to publicly managed prisons, private prisons have a higher proportion of inmate-on-inmate assaults, greater likelihood of inmate misconduct, greater likelihood of drug abuse, higher rate of escapes, lower or unmet standards of care, and “systemic problems in maintaining secure facilities.”⁴⁰ A review of several previous studies showed that the quality of confinement in public and private prison facilities is often comparable, but with public facilities providing slightly better skills training for inmates and reporting slightly fewer inmate grievances.⁴¹ One of the strongest studies to date on the basic question of reoffending found no difference between the recidivism rates of former inmates of public prisons and of private prisons.⁴²

Media accounts have documented numerous incidents of abuse, neglect, violence, escapes, poor conditions, and other alarming events in private facilities.⁴³ Inmates of these facilities have also made their complaints known through hunger strikes and even

riots.⁴⁴ Privately run immigration detention centers, where different laws and standards often apply, are of particular concern.⁴⁵ Whether private prisons have more or fewer scandals or more or less corruption than their public counterparts is difficult to assess from media reports. However, private prisons do not provide a consistently improved experience for inmates or staff compared to public facilities, and in many cases, the experience can be worse. A 2016 report from the DOJ Office of the Inspector General found that private prisons in the federal system did not meet the promises of reduced costs or improved services and that those facilities had more safety and security incidents and other problems with conditions of confinement compared to facilities run by the Bureau of Prisons. Federal monitoring of those facilities was also subpar. As mentioned at the start of this chapter, these findings contributed to the short-lived BOP decision to discontinue the use of private prisons.

Cost-Effectiveness of Private Prisons

The cost-effectiveness of private prisons is widely debated, and research on the topic has produced varied results. The verdict is, at best, a draw. Arizona is one of the few states with a law that requires regular and intensive assessment of private prison performance. The state's study found that private prisons resulted in higher costs compared to public facilities.⁴⁶ The U.S. DOJ study mentioned above found high costs for privatized prison health care.⁴⁷ Other studies have found that privatizing facilities has resulted in minimal or no savings.⁴⁸ Some studies, including those by groups affiliated with prison companies or their proponents, have found that privatization can yield modest savings.⁴⁹ These findings echo what studies of privatization in other industries have shown: The promise of savings touted by proponents of privatization is elusive at best.⁵⁰

Research funded by prison companies tends to find that private prisons generate improvements in cost and other factors.⁵¹ However, other researchers caution that costs of public and private prisons cannot be easily evaluated side by side, due to numerous factors such as security level and health conditions of inmates, physical characteristics of facilities, indirect costs, and the large number of parties typically involved in maintaining and paying for both types of prison.⁵² Most contracts allow private facilities to house lower-risk and healthier (less costly) inmates than similar public facilities.

Additionally, there are many less obvious costs that arise with private prison practices, such as holding out-of-state prisoners. Two issues that are often overlooked when prisoners are held out of state are the costs of prisoners who commit crimes while incarcerated and inmate visitation and its impact on recidivism. An inmate who commits a serious crime while incarcerated, or who escapes from prison and then commits a crime, will typically be tried and serve time in the state where he or she was incarcerated, rather than the state of the original conviction, which can result in the host state assuming a significant, long-term financial burden.

Although empirical studies on this subject are rare, the information available does show a positive relationship between inmates who receive visitors while incarcerated and reduced recidivism.⁵³ Due to the time and costs associated with traveling to visit a friend or family member confined in another state (which are exacerbated by the fact that many prisons are located in rural areas far from airports and with limited public transportation), inmates sent to out-of-state facilities will generally not have many visitors and, upon release, will not have benefited from this rehabilitative influence.

Detainees who are not yet sentenced but are held in distant, privately run jails often must travel to appear in court, which is another issue that impacts safety and costs.⁵⁴

Payment Structures

Many contracts between states and private companies are based on “guaranteed payments.” Though the daily population of a prison will vary, such contracts guarantee a minimum occupancy rate, usually 90% or more, and allow private prison operators to overstate costs and maximize revenue. Fees may escalate when the rate is exceeded.⁵⁵ There are several kinds of payment structures that may be incorporated into a contract besides the per-bed approach, including a fixed-price, “indefinite delivery/indefinite quantity” approach, which allows contractors to provide prison beds on an as-needed basis.⁵⁶

Performance-based contracting options are relatively new in the public sector and have been encouraged through guidelines such as the Federal Acquisition Regulation. Performance-based contracting allows governments to identify specific outcomes—such as data reporting or successful prisoner rehabilitation—that private prison contractors should achieve and to link compensation to meeting these goals.⁵⁷ One such approach gaining popularity involves guarantees on the part of the contractor that the government will achieve set levels of cost savings, such as a 7% improvement over the costs in public facilities. This particular approach may have its benefits, but it also risks placing still greater emphasis on more cost savings. Other performance-based approaches would link payment or incentives to meeting standards for conditions of confinement, successful completion of programming and services on the part of inmates, or a reduction in reoffending after release.

Impact of Privatization on Local Economies

For a number of years, state, county, and municipal jurisdictions have pursued private prison opportunities as a means to generate economic growth and job creation in their communities. Prison companies foreseeing increased need for bed space, but hoping to avoid owning expensive facilities, look for local governments who will agree to fund new facility construction through bond sales. These partnerships can appeal to smaller jurisdictions, especially when their traditional local industries have fallen off. Private prison companies often campaign to persuade key leaders and policymakers to help them sell the idea to other government representatives and the public. Much of the early discussion on investment in private prisons takes place behind closed doors, away from opposing viewpoints and the public.⁵⁸

Recent studies have found that growth and expansion of prisons in general (both public and private) have had limited positive impact on economic development at the local level.⁵⁹ In fact, communities in which private prisons are located can experience unfavorable economic effects, especially in already depressed economies. A common dynamic is that a small town or county commits most of its limited resources and infrastructure—labor force, emergency response services, trade services (electricians, plumbers, sanitation)—to supporting the prison, leaving the community dependent on the success of the prison and unable to support other businesses that might want to locate there. Further, local governments that sell bonds to fund construction can find themselves on the hook if the prison company fails to secure sufficient contracts to fill beds. Moreover, the bond rating for the locality is likely to be lowered if it does have trouble repaying the debt, leaving the local economy in worse shape.⁶⁰ When the lease is up or abandoned, the aging plant is owned by the government.

Texas, which experienced an immense prison-building boom in the 1990s (much of it related to increases in immigration-related detention), has several examples of public-private partnerships that led to challenges for local jurisdictions. In July 2011, a West



◀ Private prisons often have more modern infrastructure than aging public facilities, but shortcomings in prisoner services and in staff experience and training can still lead to difficult conditions of confinement.

© iStockphoto.com/Powerofforever;
© iStockphoto.com/PaulFleet



Texas 373-bed prison was auctioned off due to a lack of prisoners, a 424-bed facility in Fort Worth (managed by the GEO Group) has been empty since February 2011, and a new 1,100-bed facility located near Abilene has never housed inmates.⁶¹

Montana has dealt with similar economic woes tied to private prison construction. Corplan Corrections worked with local officials to build a 464-bed facility in the small town of Hardin. Although the facility was completed in 2007, as of 2016, it held no inmates, due to a lack of in-state or out-of-state prisoners suitable for the minimum-security jail; in fact, Montana prohibits the incarceration of offenders convicted outside Montana. This project left Hardin to cope with millions of dollars of debt.⁶²

Rural communities can become too dependent on jobs and commercial services associated with rural prisons; when the prison is underutilized or shut down, local economies suffer.

© Aerial Archives/Alamy



Perhaps more importantly from an ethical perspective, jurisdictions that invest in speculative private prison projects can come to the same conflict of interest as prison companies when they find themselves in the contradictory situation of supporting increased incarceration to pay off bonds or bolster their local economy, even if crime and arrests drop and effective and safe alternatives to incarceration are available.

Privatization, Innovation, and Reform

Early proponents of privatization argued that the competition inherent in the private market would spawn innovative processes and practices that would lower costs while improving conditions. It was also thought that public prison officials would themselves pursue innovations, or at least pick up on the techniques of their for-profit counterparts and thereby improve the public system.

Dominated as it is by CCA/CoreCivic and the GEO Group, competition in the privatized corrections market really does not exist. The relative lack of competition in the private prison industry makes it difficult for governments to assemble a pool of qualified candidates and contributes to the likelihood of inadequate performance once a contract is executed. If a particular industry has only a few providers, the government's ability to realize cost savings is considerably lessened, and it is difficult to effectively replace one provider with another, if necessary.⁶³

Early on, the rise of private prisons also promised to encourage public prison officials to make improvements in cost efficiencies and to be more open to other reforms.⁶⁴ However, it is more likely that the opposite has occurred. When states relieve overcrowding in public facilities through private contracting, state officials, prosecutors, judges, and corrections agencies lose the impetus to seek innovative ways of reducing the reliance on incarceration and to save taxpayer money without threatening public safety. Thus, the prison population continues to grow, as do corrections budgets, at least until the newly contracted beds are themselves full.⁶⁵ The speed and flexibility with which private prison companies can acquire bed space provides, in essence, a permanent pressure release valve that squashes what might otherwise be an opportunity for long-term reform.

Importantly (and ironically), the very reforms that are overlooked can serve the same purpose as private prisons, including the quick easing of crowding, cost savings, and improved outcomes. These include alternatives to detention for those awaiting trial or immigration procedures, and alternatives to incarceration such as community corrections, electronic monitoring, day and evening reporting centers, home custody, restorative justice, and intensive supervision. All of these can be used to reduce the demand for new bed space quickly, permanently, and without jeopardizing public safety.⁶⁶ These strategies are gaining a foothold in some places. In 2010, legislatures in at least 23 states and the District of Columbia passed laws that have the potential to reduce the prison population while protecting public safety. In fact, some observers suggest that the fortunes of the private prison companies already may be starting to shift because of these reforms and a continuing drop in crime.⁶⁷

Parallel Inadequate Systems

Another key issue in having two parallel approaches to corrections—the public and the private—is that the focus becomes a comparison of the two systems, creating a very narrow perspective from which to assess what works, what doesn't work, and how the overall system can be improved. Certainly, as some state laws specify, private prisons should be held to at least public prison levels of health and safety, conditions of confinement, service delivery, cost, transparency and accountability, and other factors. However, with this being the limit of expectations, we are simply left with two systems in need of reform. In a sense, the two systems begin to “play down” to each other's level of competence rather than both striving for a truly appropriate and effective response to crime and solutions to the problems that plague both systems.⁶⁸

The Profit Motive and Conflict of Interest

As previously stated, for-profit corrections companies are beholden to their boards of directors, shareholders and, ultimately, profit margins. Entrusting prisoner care to companies with such interests is a cause for many concerns.⁶⁹ The profit motive encourages prison companies to use their significant resources to influence corrections laws and policies in ways that increase their profits. The state transfer of power to manage a prison to a private, profit-making corporation violates basic human rights of inmates. The public pact that legitimizes imprisonment is undermined. The inmates become a means to generate profits. More prisoners are held for more types of crimes and for longer sentences, which may be unrelated to improving public safety or the outcomes for inmates.

These are basic ethical questions that arise with private prisons.⁷⁰

Staffing and Services

A critical part of the debate regarding cost savings focuses on staffing and personnel. Because private prisons are generally expected to serve the same

▼ A correctional officer attends to the tasks of daily life at the T. Don Hutto facility, a private prison owned and operated by the for-profit Corrections Corporation of America, in Taylor, Texas. The prison used to house prisoners from four different states.

Andrew Lichtenstein/Corbis via Getty Images





SPOTLIGHT

IN THEIR OWN WORDS: THE CORPORATION PERSPECTIVE

Excerpts from the Corrections Corporation of America (now CoreCivic) 2010 Annual Report and 2010 Letter to Shareholders.

2010 ANNUAL REPORT

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. This possible growth depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions and acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.¹

Legislation has been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities.²

We are compensated for operating and managing prisons and correctional facilities at an inmate per diem rate based upon actual or minimum guaranteed occupancy levels. The significant expansion of the prison population in the United States has led to overcrowding in the federal and state prison systems, providing us with opportunities for growth. Federal, state, and local governments are constantly under budgetary constraints putting pressure on governments to control correctional budgets, including per diem rates our customers pay to us. These pressures have been compounded by the recent economic downturn. Economic conditions remain very challenging, putting continued pressure on state budgets. . . . We believe we have been successful in working with our government partners to help them manage their correctional costs while minimizing the financial impact to us, and will continue to provide

function as public prisons but also save public money, prison companies need to make their profit in the small window between their own costs and the costs of public prisons *minus* some percentage of savings to taxpayers. (Some contracts stipulate that this savings will be at least a certain rate, such as 7%.) The most expensive part of running a prison is staffing, therefore any savings associated with privatization are primarily due to reduced personnel costs.⁷¹ Private prisons tend to employ frontline staff who are nonunionized at low pay, who receive few fringe benefits, and who lack sufficient experience and training. These circumstances contribute to the high frequency of staff turnover and security issues and a lack of mentoring for new employees.⁷² Public prison guard unions and private prison companies may have some shared political and policy goals (they both spend millions on lobbying for new prisons and tougher sentencing laws). However, the public employee unions are typically opposed to privatization, as it represents a loss of staff positions, a loss of political influence, and (they argue) increased risk for prisoners due to the less qualified staff. Similarly, cost cutting with regard to services, programming, and facility conditions increases inmate–staff tension, grievances, and behavioral issues. This suggests that any cost savings from privatization are achieved at the expense of the safety of inmates, guards, and the public.

unique solutions to their correctional needs. We believe the long-term growth opportunities of our business remain very attractive as insufficient bed development by our partners should result in a return to the supply and demand imbalance that has been benefiting the private prison industry.³

2012 LETTER TO SHAREHOLDERS

CCA is the largest owner and operator of partnership correctional and detention facilities in the US, with only three states and the Federal Bureau of Prisons operating larger correctional systems. At yearend 2012, we had over 14 million square feet of correctional and detention facilities within 51 owned or controlled facilities. Our owned facilities accounted for about 90% of our \$3.6 billion in fixed assets and generated about 90% of our net operating income.⁴

We . . . received a favorable Private Letter Ruling in early 2013 from the IRS, upon which the Board of Directors unanimously approved CCA to elect REIT [Real Estate Investment Trust] status in 2013. Due to our advance planning, we expect to elect REIT status effective January 1, 2013. Since a REIT generally pays no income tax as long as its taxable earnings are distributed to shareholders as dividends, we have a significant tax advantage compared with a traditional “C” Corporation. We expect the

reduction in taxes to contribute to our double digit growth in net income and to enable us to increase the regular quarterly dividend to our investors by 165% in 2013.⁵

QUESTIONS

- 1 In what ways does the profit motive create potential conflicts of interest for private prison companies?
- 2 All companies seek to find or create favorable circumstances that increase their potential profits. Are private prison companies justified in finding politicians and laws that will increase the number of people in prison in order to increase company profits?
- 3 Discuss your vision of what a board meeting at this corporation would sound like.
- 4 Would you invest in a private corrections company? Why or why not?

Notes

1. Corrections Corporation of America CCA 2011, 19
2. Corrections Corporation of America 2011, 19–20
3. Corrections Corporation of America 2011, 34
4. Corrections Corporation of America 2013, 3 (para. 3)
5. Corrections Corporation of America 2013, 3 (para. 2)

When a public facility is replaced by a private prison, public facility staff are often unwilling to work for the private operator for a variety of reasons, including substantially lower pay, poor benefits, and safety concerns. This leads to a loss of seasoned, trained employees who can mentor new staff and establish a culture of professionalism and appropriate treatment of prisoners. Conversely, staff who have private prison experience may be ineligible for employment at publicly operated facilities based on a lack of training and experience mandated by state standards or failed background checks.

Influence on Length of Stay

Another conflict of interest is the influence prison staff can have on inmates’ length of stay. Corrections officers and administrators have discretion in what inmate behavior results in disciplinary action and in the awarding of good-time credits, both of which can affect eventual release dates. Also, parole boards routinely ask for the opinion of prison officials. Individual prison staff are unlikely to have a direct personal financial incentive for pursuing disciplinary action, whereas the private prison company and its shareholders directly

YOU DECIDE

Private Prison Liability for Health Care

While at a private prison, V. R.'s shoulder was injured during a work assignment. He asked to see a doctor but was escorted back to his cell and told to wait. He didn't see a doctor until two days later, by which time his shoulder was much worse. He needed surgery and physical therapy to regain mobility in his dominant arm. V. R. eventually demanded compensation for the injury and that the state cover further health care. The private prison had a history of violations of worker safety rules. State officials denied that they knew anything about the inmate's problems and that the private prison company signed a contract to provide all necessary health care services.

V. R. wants to apply federal civil rights laws against state officials, but the state argues that the prisoner has not exhausted all possible remedies and suggests that he attempt to sue the private prison staff in state courts. V. R.'s lawyer points out that inmates are almost never successful in these cases and says it is just a tactic by the state to prolong an expensive process in hopes the inmate will run out of resources and give up.

YOU DECIDE: *What legal safeguards should exist for inmates of private prisons? Should the state be liable for the actions of private prison companies with whom the state contracts?*

benefit from longer prison stays. Several states have enacted laws and policies that address this risk.⁷³

The Policy End Run

Privatization raises the risk that policies and practices may be steered by costs alone and put into place without an adequate process of debate and approval. For instance, private prison companies argue that contracts need to give them flexibility to respond to unforeseen challenges or to develop creative practices.⁷⁴ In reality, this open-endedness may allow them to implement practices that go against the intentions of the contract or the best interest of the inmates or the public.

Political Influence

Since the modern emergence of private prisons in the mid-1980s, an intricately connected web of political influence has developed alongside the growth of the private prison industry. Because private prisons rely on a steady stream of inmates to fill beds, it is perhaps not surprising that the private prison industry has been pivotal in helping to shape and promote criminal justice policies that favor incarceration as well as putting and keeping pro-privatization lawmakers in office.⁷⁵

Prison industry lobbyists also seek to influence sentencing policies as well as the rules and regulations included in government contracts. In 2010, CCA/CoreCivic, the GEO Group, and Cornell together spent more than \$1.5 million on federal lobbying.⁷⁶

Influence on Policy and Law

Private prison companies have influenced the development and passage of state legislation that increases incarceration, including "three strikes" and "truth in sentencing" laws in the mid-1990s. More recently, and as immigration detention has grown as a "market" for private prison corporations, the industry has been instrumental in the drafting and enacting of influential state immigration legislation. A key example of this influence is Arizona's SB 1070, which drastically increased law enforcement's options to detain any individual who is perceived to be an undocumented immigrant. This legislation was developed under the auspices of the nonprofit American Legislative Exchange Council (ALEC), whose membership includes lawmakers and powerful corporations such as (until recently) CCA/CoreCivic. An investigation found that the majority of the 36 cosponsors of SB 1070 subsequently received contributions from prison lobbyists or from CCA/CoreCivic, the GEO Group, and Management & Training Corporation.⁷⁷

Figure 15.2 Prison Company State Political Contributions



By making financial contributions to individual political campaigns, state political parties, and specific ballot measures, private prison companies exert influence over policymaking that helps ensure the demand for their services and helps to develop and maintain relationships that can aid in obtaining prison contracts. Between 2000 and 2010, CCA, the GEO Group, and Cornell Companies donated over \$800,000 to candidates for federal office and more than \$6 million to candidates for statewide office. Additionally, in 2010, these three companies donated more than \$1 million to state party committees.⁷⁸ *The New York Times* recently quoted a former chief prison inspector—who happens to favor privatization—in Australia as saying, “We have lost control. . . . These big global companies, in relation to specific activities, are more powerful than the governments they’re dealing with.”⁷⁹ Source: National Institute on Money in State Politics n.d.

Private prison corporations also mobilize against legislation that would have a negative impact on the industry. This includes the federal Private Prison Information Act, which has been introduced by lawmakers several times in the past decade. Reports indicate that CCA spent millions of dollars to lobby against this legislation, which would require private facilities that house federal inmates to abide by the same Freedom of Information Act guidelines that apply to public federal prisons.⁸⁰

Friends in High Places

There are many examples of close connections between the major prison companies and current or former government officials. A prison company strategy is to add a corrections official—in a consultant role—to the company’s board of directors. Often, the private firm hires the consultant later at a generous salary. A recent case in point is CCA’s 2011 hiring of Harley Lappin, the past director of the BOP, to serve as an executive vice president and chief corrections officer for the company.⁸¹

The profit incentive has also been known to spawn serious corruption. For instance, in Luzerne, Pennsylvania, agents of a private prison company paid bribes to local judges to encourage them to commit youth to their two local facilities. In Willacy County, Texas, two county commissioners accepted bribes in exchange for favoring certain companies involved in building a new private facility.⁸²



SPOTLIGHT

IMMIGRATION DETENTION POLICY FEEDS PRIVATE PRISON GROWTH



© John Moore/Getty Images News/Getty Images

Private prison companies have pursued the area of immigration both in the United States and internationally, with huge monetary success. Accompanying that success are numerous documented cases of abuse and neglect and poor conditions of confinement for detainees, all of which is exacerbated by long stays while detainees await immigration proceedings.¹ On any given day in 2009, U.S. Immigration and Customs Enforcement (ICE) held an average of 32,606 adults in a total of 178 facilities. Just

under half of these detainees were housed in 30 private facilities.² Although ICE has developed standards for immigration detention facilities, the standards may not adequately address the conditions and treatment experienced by many immigrant detainees, and in any case these standards are not followed in all facilities.³

One example of immigration detention neglect is the case of Hiu Lui “Jason” Ng, who died in 2008 while being detained in the privately run Wyatt Detention Facility in Central Falls, Rhode Island. Ng suffered from liver cancer that was not diagnosed until just days before his death. A lawsuit filed by the American Civil Liberties Union of Rhode Island, which names officials and employees of both the Wyatt facility and ICE, noted that prison officials not only consistently claimed that Ng was faking his illness but also prevented him from receiving adequate medical care.⁴

QUESTIONS

- 1 What safeguards should there be to protect detainees in private facilities?
- 2 How should private facilities be held to those standards?

Notes

1. American Civil Liberties Union 2010
2. Detention Watch Network 2011
3. American Civil Liberties Union 2010
4. Bernstein 2008

Contracting, Oversight, and Monitoring

As stated earlier, public–private partnerships hinge on contracts. A contract is the mechanism to clearly identify the contractor’s responsibilities and requirements; to prescribe how this work will be accomplished, compensated, and monitored, and to describe penalties that will be incurred if performance is substandard. Contracts need to reflect a jurisdiction’s policy and values and need to foresee and forestall as many problems as possible. A comprehensive, sound contracting procedure is a central and crucial feature of an effective prison privatization effort. Lessons can be learned from all types of governmental privatization, not just those in corrections.⁸³ The experience of various jurisdictions has demonstrated that contracts executed with private prison companies are often poorly drafted and may minimize or omit key provisions, which can lead to numerous problems including inadequate contractor performance, absence of transparency, abuse of prisoner



rights, and an overall lack of accountability.⁸⁴ Oversight and monitoring processes have also proven to be difficult and tend to be lax and ineffective.

Penalties for Noncompliance

Contracts can include provisions for levying financial penalties against the contractor if contract terms are breached. In practice, however, these often fail to discourage private prison companies from overstepping. Fines are often set low, such that it may be more cost-effective for a prison contractor to cut corners and pay a fine than to comply with the contract terms. Additionally, the process by which fines may be levied is often poorly defined in contracts or consistently applied and audited.⁸⁵

Monitoring

Another critical feature of a private prison operation is designing, implementing, and maintaining a strong monitoring system. Oversight and monitoring provide a way for the government to measure contract compliance and its success in securing the safety of the public, inmates, and staff. Monitoring can and should address all parts of a contract. Monitoring also provides a basis for contract renewals or terminations and for charging fees and other penalties.⁸⁶ It is important to note that monitoring of conditions inside any prison, public or private, is difficult, partly because of the necessarily closed and isolated setting of secure facilities. Privatization, however, adds another level of resistance to transparency and accountability.

The monitors of private prison typically use several different methods to assess contract compliance. These include reviews of files, reports, logs, and other records (including spot-checking of records for accuracy); onsite observations; interviews with key stakeholders (managers, staff, and inmates); and statistical comparisons to an analogous publicly operated prison.⁸⁷ Monitoring is “a process requiring constant attention and vigilance. Effective oversight of a prison is thus necessarily a labor-intensive endeavor.”⁸⁸

Some monitoring plans fail to allow for what most would consider basic requirements, such as unannounced site visits.⁸⁹ The monitoring process should also take into account more intangible, unrecorded factors such as a prison’s cultural climate, guard-to-inmate communications, staff decision making, and so on, which are described as follows by

▲ Public officials are accountable to citizens for negotiating contracts and overseeing operations of private correctional facilities.

Calwatch



▲ Alabama Governor Bob Riley talks with an unidentified prisoner while touring Holman Correctional Facility in Atmore, Ala. Riley wanted to get a first hand look at the prison since issues of overcrowding and expenses are a big challenge facing his administration.

AP Photo/John David Mercer

to measure institutional effectiveness and recommend a close linkage between what is called “paper-based” accreditation (through ACA or other bodies such as the National Commission on Correctional Health Care) and regular, on-site monitoring of contract compliance, service quality, and outcomes.⁹¹

Expertise of the Monitor

The monitor’s training as well as his or her relationship to the facility is another important concern. The monitor may be a consultant or subcontractor and may be paid by the prison operator, creating a potential conflict of interest. In rural areas, the monitor may be an individual who lives in or is otherwise embedded in the community where the prison is situated, leading to possible tension or bias in pointing out problems that could affect many residents’ livelihoods.⁹² Also, monitors should have considerable expertise in the area(s) they are monitoring. In the case of prison health care services, monitors should be medical providers who work for the state or county and who can knowledgeable and fairly evaluate the quality of services that inmates receive.⁹³

Are Private Prisons Necessary?

Privatization is clearly a significant aspect of today’s correctional system. As with public corrections, much can be done to improve the current process for planning, implementing, and maintaining private facilities and the various privately run correctional services. Private prison companies and their proponents have the resources and political clout necessary to negotiate highly favorable contracts, influence public perceptions of privatization and corrections policy generally, and otherwise perpetuate current growth trends. It is important that alternative perspectives be allowed to counter these powerful, profit-centered efforts. Beginning with the reduction of demand for private prisons through reduced dependence on incarceration as a response to crime, recommendations range from major changes in corrections policy to local education and organizing activities.

Sentencing Reform and Regulation

New, tougher, and more specific laws and standards can improve how private prison companies are regulated, monitored, and operated. Some of these would restrict power and

Collins: “Experienced corrections officials know that a prison may comply chapter and verse with the specifics of a contract and still not be a safe and healthy facility.”⁹⁰

As part of the contract between a jurisdiction and a private prison company, the company is typically required to obtain and maintain accreditation from the American Correctional Association (ACA). An important distinction between ACA accreditation and outcome monitoring is that the former focuses on processes and procedures rather than on outcomes. Experts caution against relying too heavily on ACA accreditation

SPOTLIGHT



A PRISON BREAK IN ARIZONA LEADS TO REFORMS TO THE CONTRACTING PROCESS

The 2010 experience of a private prison in Kingman, Arizona, operated by Management & Training Corporation (MTC), illustrates the need for various improvements and additions to standard contracts, including planning related to occupancy and compensation, as well as provisions concerning security and monitoring. After several inmates escaped from Kingman in 2010 and allegedly killed two people, the state transferred more than 200 high-risk inmates from the Kingman facility to another prison and determined that additional prisoners would not be sent to Kingman until MTC complied with identified problems, including retraining of corrections officers. This meant that MTC's guaranteed minimum occupancy rate of 97% was not met for nearly a year. In response to the state's action, MTC filed a "notice of claim" against the state, seeking approximately \$10 million in revenue that was lost when the state stopped supplying Kingman with inmates. This series of events led the state department of corrections to revamp its request for proposal process to include stipulations that private prisons will have to provide additional security regardless of the security level of inmates; state monitors will have continuous,



© Arizona Department of Corrections via AP, File

unscheduled access to the facility, inmates, and records; and fines of \$25,000 can be levied for certain violations.¹

QUESTIONS

- 1 Describe and define public safety standards that private corrections companies should meet.
- 2 What would be a commitment on the part of the government to private companies regarding prisoner population that is fair to all parties?

Note

1. Ortega 2011b

influence; limit types and scopes of facilities; create standards regarding what laws apply, minimum levels and quality of care, and transparency of company policies and practices; and maximize accountability and responsiveness to issues that arise.

Reducing Demand

A key argument made by private prison proponents is the industry's ability to respond relatively quickly to bed space needs. However, as described earlier, relying on private prisons to ease crowding comes at the expense of reform in the public system.

Detention and sentencing reform is a critical strategy by which the government can reduce its reliance on incarceration and thereby reduce the demand for private prisons. Some states are already pursuing reforms—a continued emphasis on the reduced use of incarceration, increased use of alternatives, and reduced returns to prison after release. These are crucial to reducing the need for prison beds and the reliance on the private prison industry.⁹⁴



IN THE COURTS

Minneeci et al. v. Pollard et al. Certiorari to the United States Court of Appeals for the Ninth Circuit

No. 10–1104. Argued November 1, 2011—Decided January 10, 2012

This case involved a federal prisoner being held in a private prison operated by Wackenhut Corrections Corporation, which was under contract with the Federal Bureau of Prisons (BOP). The prisoner, Richard Lee Pollard, had two broken elbows but was required by employees of Wackenhut to perform painful actions and was made to complete his prison job without receiving medical attention. He was later denied the splints that were ordered by the prison doctor. Pollard sued the individuals involved and the corporation for federal civil rights and Eighth Amendment violations.

The U.S. Supreme Court denied the claim 8–1 (only Justice Ginsburg dissenting) on the grounds that state tort laws were a sufficient remedy for these issues. Pollard’s lawyers argued that he was a federal prisoner being held by the BOP and would have been able to apply federal laws if he were in a government-run prison.

Minneeci v. Pollard was decided on fairly narrow legal grounds, but the result shows the reluctance of the Supreme Court to get involved in the regulation of private prisons. This becomes more important as more governments are outsourcing incarceration to private companies. Federal actions have been superior to state tort claims in protecting inmates from abuse.

Reform of Reentry Strategies

The private prison industry relies on ex-inmates reoffending and returning to prison and on sentences stemming from probation violations. Offenders can avoid reincarceration if there are more opportunities for skills training during incarceration, reentry plans, and removing obstacles to services and employment.⁹⁵

Increasing Transparency and Accountability

Private prison contractors, unlike government agencies, are not typically required to report on the inmates housed in privately run prisons, do not make their data easily accessible to monitors, and may not even be aware of the documentation and reporting requirements intrinsic to the operation of public agencies.⁹⁶ There is a general lack of tracking, reporting, and accessibility of data on inmates and on private facility operations. Being for-profit corporations, the private prison companies argue that revealing detailed information may give an advantage to their competitors. From a profits perspective, it is in the contractor’s best interest to minimize the reporting of data that could provide important information about conditions of confinement—such as the number of assaults that take place in the facility, incident reports, and grievances filed—and about exactly how public monies are being used.⁹⁷

Laws that require full transparency and access to data, stronger contracts, and intensive oversight are keys to improving private prison performance and can help alleviate these concerns. Proposed federal legislation, such as the Private Prison Information Act, would help to shed light on the finances and activities of private prison companies.⁹⁸ Another opportunity is in the area of legislation and regulation regarding lobbying, conflicts of interest, and transparency in privatized activities. Also needed is full disclosure of affiliations



SPOTLIGHT

LEGAL AND GRASSROOTS EFFORTS TO COUNTER PRIVATE PRISONS

Despite the power of privatization proponents, regional, state, and local organizing efforts can provide an effective check on their influence. Advocates can build alliances or coalitions with stakeholder individuals and organizations that have similar goals and work to educate and inform both the officeholders and policymakers making privatization decisions (and signing contracts on behalf of the public with private prison companies) and the community members whose lives will be impacted by these decisions.

Community Organizing. In 2011, Arizona, Florida, Louisiana, and Ohio considered privatizing prison facilities, either for the first time or as a continuing correctional approach. These proposals were met with resistance from community members. In Louisiana, members of the American Federation of State, County and Municipal Employees (AFSCME) protested a proposed plan by Governor Bobby Jindal to sell three state prison facilities to private prison operators. Jindal's proposal was also not supported by the state legislature and did not move forward.¹ In Ohio, a proposal by Governor John Kasich to sell five prisons, opposed by the AFSCME and the Ohio Civil Services Employee Association, was revised to selling one prison to the CCA and turning over operations of two other prisons to Management & Training Corporation.²

Legal Action. Some groups and individuals have pursued legal actions to block or influence prison privatization efforts. Legal actions have included the following:

- The Florida Police Benevolent Association, representing unionized corrections officers, filed a lawsuit claiming that the legislature violated state law by inserting a directive regarding privatization of corrections department operations in budget language rather than proposing and passing it as legislation.³ This claim was upheld in state court, with the judge concluding that private prison proponents had attempted an end run of the normal legislative process.⁴
- Also in Florida, an ethics complaint was filed by the Teamsters union against Governor Rick Scott, claiming his move to privatize prisons in part of the state is compromised due to the fact he received campaign-related contributions from the CCA and the GEO Group.⁵
- Although they have not held up in court, for the most part, lawsuits have challenged the constitutionality of privatization of functions that are “inherently governmental”—that is, that leave the application of U.S. laws and statutes to the discretion of a private contractor.⁶
- Individual lawsuits regarding abuse or neglect of inmates in private facilities can target private prison companies' revenue, although the companies expect and are prepared for a certain number of these suits. The costs of suing private prison companies can be returned to the state or local government in the form of higher contracting fees and overages; however, civil suits are an important means for individual restitution, spotlighting problems, and maintaining checks and balances on prison company practices.

QUESTIONS

- 1 Do these legal battles seem like fair fights?
- 2 Is the courtroom the most fitting arena for deciding private prison policy?
- 3 Are there any advocacy efforts opposing privatization of corrections functions in your state?

Notes

1. Moller 2011a, 2011b
2. Fields 2011
3. Kam 2011a
4. Kam 2011b
5. DeSlatte 2011
6. For a compilation of applicable laws in each state, see Anderson 2009.

of those involved in private prison projects, watchdog groups with resources and authority for strong oversight and quick action, and regulations that define the ethics and legality of relationships and conflicts of interest. Better access to private prisons' financial data to track the true costs of running a private prison is also important.

Further Research

Objective third-party research on corrections privatization is needed on some of the following areas:

- rates of abuse, neglect, or victimization and conditions of confinement in private prisons
- the ways the profit incentive impacts facility safety and security and the humane treatment of inmates
- the influence of prison companies on legislation and regulation regarding sentencing, parole and probation, and immigration policy
- the true costs of private prison operation, including indirect costs and costs likely to be borne by public agencies, such as procurement, insurance, emergency services, and case management⁹⁹
- monitoring efforts and practices in private prisons
- meaningful responses to contract noncompliance and privatized correctional services such as medical and mental health care, probation and parole, and programming
- the relative bias of the various sources of information and research on private prisons, including that funded by prison companies

SUMMARY

For the most part, the way private prison companies run their businesses—keeping costs down; pursuing favorable contracts; influencing laws, policies, and public opinion that most support them; maximizing profits—are not out of line with other for-profit enterprises. What sets them apart is their responsibility for a hugely important and difficult undertaking: ensuring the humane treatment of prisoners, carrying out the rule of law, and preserving safety in the facilities. They serve a crucial government function, yet they approach the task from a strikingly different perspective than the governments and the public they serve.

The presence of private prisons makes true reform of the system less likely. Private corrections companies use financial and political influence to support laws

and policies that have further entrenched the overuse of incarceration in this country. Government oversight of private prisons has been inadequate, but contracting can be used to counter the growth of this pervasive but arguably unnecessary part of the U.S. corrections system.

Although it is important not to oversimplify the many factors that contribute to crime and the corrections populations, even the strongest supporters of tough-on-crime policies would agree that the best-case scenario is fewer inmates in custody, as long as public safety is not diminished. The public supports efforts to reduce the use of incarceration when those efforts are shown to be practical and effective. This ultimately leaves only those with a financial interest in private prisons supporting filling more beds in secure facilities.

DISCUSSION QUESTIONS

1. What forms does privatization take in today's corrections system? What areas have been subject to for-profit privatization?
2. What are the primary reasons governments seek out privatization of corrections functions?
3. What are the economic advantages and risks when local jurisdictions invest in speculative private prisons?
4. What are ways private prison companies attempt to influence corrections laws, policies, and decision making? How might these raise ethical challenges?
5. What are the potential advantages and what are the risks when for-profit companies are involved in the policies and politics of public corrections?
6. How are already difficult aspects of public corrections, such as the training of staff, conditions of confinement, inmate discipline, transparency, and holding inmates in out-of-state facilities, exacerbated by privatization?
7. How might serving a term of confinement differ in a public versus a private facility?
8. What is the role of contracting in privatization of corrections, and how can it be used to improve government oversight and monitoring?
9. What avenues for improvement and reform exist in the public corrections system that can help governments avoid privatization?
10. How might the profit motive impact the execution of objective corrections research?

KEY TERMS

Privatization, 365

NOTES

1. This chapter is adapted from Hartney and Glesmann 2012
2. Kaeble and Glaze 2016
3. Alvarez 2017
4. Nelson 2016
5. Detention Watch Network 2011
6. Kaeble and Glaze 2016
7. Stephan 2008
8. Sickmund et al. 2015
9. Ibid.
10. Zapotosky and Harlan 2016
11. Ford 2017
12. Nakamura 2017
13. Sommer 2017
14. CoreCivic 2016
15. Geo Group 2016
16. CoreCivic 2016; Geo Group 2016
17. Ashton and Petteruti 2011
18. McCain 2001
19. Davenport 2001
20. Lindsey, Mears, and Cochran 2016
21. LaFaive 2005
22. Neate 2016
23. Andrews 2017
24. Bedard and Frech 2007; Joe Goldenson, personal communication, May 5, 2011; Office of Program Policy Analysis and Government Accountability 2009
25. DeBolt 2016; McLaughlin 2016; Monterey County Office of the Sheriff 2015; Phillips 2016; Walsh 2017
26. Office of the Inspector General 2016
27. Schloss and Alarid 2007
28. Benzina Staff 2010
29. Judicial Correctional Services n.d.
30. Human Rights Watch 2014
31. Providence Service Corporation n.d.
32. Human Rights Watch 2014
33. Ibid.; Schloss and Alarid 2007
34. Asmar 2012
35. *Bearden v. Georgia* 1983
36. Faulk 2017
37. American Civil Liberties Union 2010
38. Southern Center for Human Rights 2008
39. Schloss and Alarid 2007
40. American Civil Liberties Union of Ohio 2011; Camp and Daggett 2005; Camp and Gaes 2001, 16; Davenport 2001; Hiaasen 2011; McDonald and Carlson 2005; Oppel 2011
41. Lundahl et al. 2009
42. Bales et al. 2005
43. Grassroots Leadership 2009; Private Corrections Working Group 2013
44. Harris 2015; Juozapavicius 2017
45. Knight 2017
46. Arizona Department of Corrections 2011; State of Arizona, Office of the Auditor General 2010

47. Office of the Inspector General 2016
48. Austin and Coventry 2001; Lundahl et al. 2009; Nelson 2005; Pratt and Maahs 1999
49. Blumstein, Cohen, and Seth 2007; Segal and Moore 2002
50. In the Public Interest 2011
51. Corrections Corporation of America 2012b
52. Gaes 2008; Hall and Walsh 2010; U.S. Government Accountability Office 2007
53. Bales and Mears 2008; Holt and Miller 1972
54. Brown 2002
55. Collins 2000; Joint Legislative Committee on Performance Evaluation and Expenditure Review 2001; Paul Leighton, personal communication, May 17, 2011; Office of Program Policy Analysis and Government Accountability 2000; Pranis n.d.
56. McDonald and Patten 2003
57. Ibid.; Segal and Moore 2002
58. Gail Tyree, personal communication, September 21, 2011; Frank Smith, personal communication, November 15, 2011
59. Besser and Hanson 2004; Glasmeier and Farrigan 2007; Hooks et al. 2004; Whitfield 2008
60. Chadwell 2009
61. Mitchell 2011; Pinkerton 2005
62. Dawson 2009; Ferguson 2014; Hodai 2010c
63. McDonald and Patten 2003; Mendelson 2009
64. Austin and Coventry 2001
65. Anderson 2009
66. American Civil Liberties Union of Georgia and Georgia Detention Watch 2011; Mendel 2011
67. Ashton and Petteruti 2011; Mitchell 2011; Porter 2011
68. Dolovich 2009; Robert Weiss, personal communication, May 12, 2011
69. Austin and Coventry 2001
70. Cardozo School of Law 2009; Lipton 2016; Takei 2017; Weiss 2012
71. Austin and Coventry 2001
72. American Civil Liberties Union of Ohio 2011; Sharon Dolovich, personal communication, May 17, 2011; Grassroots Leadership 2009; Frank Smith, personal communication, November 15, 2011; Robert Weiss, personal communication, May 12, 2011
73. Dolovich 2005
74. Segal and Moore 2002; Robert Weiss, personal communication, May 12, 2011
75. American Federation of State, County, and Municipal Employees 2011; Ashton and Petteruti 2011
76. Ashton and Petteruti 2011
77. Archibold 2010; Ashton and Petteruti 2011; Hodai 2010a; Ortega 2011b; Sullivan 2010
78. Bernstein 2011
79. Ashton and Petteruti 2011
80. Hodai 2010b
81. Ashton and Petteruti 2011; Paul Leighton, personal communication, May 17, 2011
82. Associated Press 2011; Pinkerton 2005
83. Collins 2000; Freeman and Minow 2009; Minow 2005; Selman and Leighton 2010
84. Collins 2000; Sharon Dolovich, personal communication, May 17, 2011; Ortega 2011b
85. Jennings 2011; Paul Leighton, personal communication, May 17, 2011; Ortega 2011b
86. Collins 2000; Crane 2000; Deitch 2006; Pace Law Review 2010
87. Sharon Dolovich, personal communication, May 17, 2011
88. Crane 2000; Dolovich 2005, 494
89. Sharon Dolovich, personal communication, May 17, 2011
90. Collins 2000, 36
91. Sharon Dolovich, personal communication, May 17, 2011
92. Dolovich 2005; Paul Leighton, personal communication, May 17, 2011
93. Joe Goldenson, personal communication, May 5, 2011; McDonald and Patten 2003
94. Clear and Austin 2009
95. Kirchhoff 2010; Porter 2011; Solomon et al. 2004
96. Camp and Camp 1987; Mendelson 2009
97. Dolovich 2005
98. Mendelson 2009
99. McDonald and Patten 2003






DIGITAL RESOURCES



Sharpen your skills with SAGE edge at edge.sagepub.com/krisberg2e

SAGE edge for students provides a personalized approach to help you accomplish your coursework goals in an easy-to-use learning environment. This site includes mobile-friendly eFlashcards and web quizzes as well as web, audio, and video resources and links to SAGE journal articles.

FOR FURTHER EXPLORATION AND APPLICATION, TAKE A LOOK AT THE INTERACTIVE EBOOK FOR THESE PREMIUM RESOURCES:

-  **Career Video 15.1: Attorney/Defense Consultant**
-  **Journal Article 15.1: Revisiting prison privatization: An examination of the magnitude of prison privatization**
-  **Journal Article 15.2: The effects of private prison confinement on offender recidivism: Evidence from Minnesota**
-  **SAGE News Clip 15.1: Idaho Prison Abuse**
-  **SAGE News Clip 15.2: Denver Detainees**

Do not copy, post, or distribute