

PRIVATE PRISONS: Quality Corrections at a Lower Cost

BY ADRIAN T. MOORE AND TOM ROSE.

EXECUTIVE SUMMARY

Why are U.S. federal agencies and state and local governments turning to the private sector for correctional services? Because tougher crime policies and budget constraints have combined to create a problem, if not a crisis, in the nation's prisons and jails. Governments are incarcerating more criminals, but they have recently become unwilling to spend sufficient tax dollars for new prisons to house them. The prison system is increasingly characterized by overcrowding, lawsuits, and court orders.

With taxpayers clearly demanding that criminals be put in prison and kept in longer, there seems to be no choice but to increase the capacity of the prison system. But with popular pressure to cut government spending, funding the increase will be difficult. Legislators face a lot of pressure to hold the line on corrections spending, and fewer than half of referendums to approve bond financing of new prisons are being approved by voters.

This has led federal, state, and local officials to consider how the private sector can become involved in corrections, to lower costs while maintaining or even improving the quality of services, and help cope with the growing number of prisoners without busting the budget. This study surveys the evidence on what private prisons have to offer and the evidence on how they have performed.

Extent of Private Prisons: Contracting with private prisons is widely practiced—there are over 120 private facilities in 27 states, and around 120,000 inmates in their keeping. Private firms operate several maximum security facilities, and dozens of medium security ones.

Cost Savings: Private prisons save money—10 to 15 percent average savings on operations costs, based on fourteen independent cost comparison studies. Other evidence of cost savings is examined as well. Cost savings are achieved through innovation and efficient management practices.

Quality Services: Private prisons provide at least the same quality services that government prisons do—based on six independent quality comparison studies, rates of American Correctional Association accreditation, recidivism comparison studies, contract terminations, and prisoner and correctional officer lawsuits.

The evidence is overwhelming that the private sector delivers quality correctional services at lower cost, to the benefit of taxpayers. Moreover, public official’s experiences with contracting for correctional services, through contract terms, legislation, and best practices, has resolved many of the thorny questions that come up when privatizing corrections is suggested. This study examines the answers to such questions as: Can private correctional officers use deadly force? Can they manage riots?, How can we be sure private prisons do not violate prisoners' rights?, Do private correctional officers receive lower-quality training than government correctional officers?, Have private prisons been “skimming the cream”—taking only low-security and less-expensive inmates?, and many others.

Part 1

Background: Not Enough Space or Money

Why are U.S. federal agencies and state and local governments turning to the private sector for correctional services? Because tougher crime policies and budget constraints have combined to create a problem, if not a crisis, in the nation's prisons and jails. Governments are incarcerating more criminals, but they have recently become unwilling to spend sufficient tax dollars for new prisons to house them. The prison system is increasingly characterized by overcrowding, lawsuits, and court orders. Therein lies the problem for federal, state, and local officials—expenditures on corrections have grown rapidly, but the prison population has grown faster.

As it is, corrections is one of the fastest-growing state budget items. In the last 15 years, state spending on corrections grew more than 350 percent—compared to 250 percent growth for spending on public welfare and 140 percent growth for spending on education. More than one-third of the states devote 5 percent or more of their spending to corrections. (See Table 1.)

State	% of Budget to Corrections	Total Annual Corrections Expenditures (in millions)
TX	10	\$2,046
CA*	9	\$4,042
VA	9	\$651
OK	8	\$274
RI	8	\$130
SC	8	\$299
MD	7	\$509
NY	7	\$2,430
OR	7	\$220
TN	7	\$372
WY	7	\$33
KS	6	\$200
NJ	6	\$941
CT	5	\$392
FL	5	\$1,457
ID	5	\$60
NM	5	\$136
SD	5	\$34

Sources: American Correctional Association; California Department of Corrections.
figures

*1996

A. The Numbers Tell the Story

State spending on corrections has gone up because the number of inmates in the system has skyrocketed. Since 1984 the number of inmates has risen 100 percent in local jails, 213 percent in state prisons, and 290 percent in federal facilities. Incarceration rates are well over double what they were in 1980.¹

Some states have embarked upon unprecedented prison building programs. Texas and California have led the pack, spending billions of dollars in the last decade building new facilities. According to the Bureau of Justice Statistics, the capacity of state and federal prisons grew 41 percent in the first half of this decade. Local jurisdictions have felt similar pressure: over 800 jurisdictions have identified the need for new construction in the next few years.

But all the building to date has not met the need. Today many state and federal prisons are holding over 20 percent more prisoners than their capacity, and a great number of facilities—even entire state and county systems—are under court order to limit or reduce their inmate populations.² Nineteen state prison systems are more than 25 percent over capacity, as is the federal prison system, and at least 10 could be considered very overcrowded. (See Table 2.) In most of these states, the situation is not getting better. Crowding in California's prison system worsened between 1994 and 1996, going from 84 percent over capacity to 96 percent over capacity.

With taxpayers clearly demanding that criminals be put in prison and kept in longer, there seems to be no choice but to increase the capacity of the prison system. But with popular pressure to cut government spending, funding the increase will be difficult. Legislators face a lot of pressure to hold the line on corrections spending, and fewer than half of referendums to approve bond financing of new prisons are being approved by voters.³

Table 2: Most Overcrowded Prison Systems (1996)

State	% of Capacity*
CA	196
IA	171
OH	171
DE	163
WA	150
MA	148
MI	146
VA	145
NJ	142
NH	140
IL	138
PA	138
OK	133
WI	133
WY	132
NE	131
NY	131
ND	127
HI	125
FEDERAL	124

Sources: U.S. Department of Justice; Camille Camp and George Camp, *The Corrections Yearbook, 1997* (South Salem, N.Y.: Criminal Justice Institute, 1997), p. 62.

*These figures are rough; different states calculate capacity in different ways.

B. Alternatives

There are alternatives to incarceration. Many states are starting to look at alternative sentencing, including community-based institutions, home confinement, and other programs. But there is

¹ Camille Camp and George Camp, *The Corrections Yearbook, 1997* (South Salem, N.Y.: Criminal Justice Institute, 1997), p. 11.

² Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 1995* (Washington, D.C.: U.S. Department of Justice, 1996), at www.ojp.usdoj.gov/bjs/abstract/csf95.htm. For general BJS corrections statistics see <http://www.ojp.usdoj.gov/bjs/correct.htm>.

³ Dana C. Joel, "The Privatization of Secure Adult Prisons: Issues and Evidence," in *Privatizing Correctional Institutions*, edited by Gary W. Bowman, Simon Hakim, and Paul Seidenstat (New Brunswick, N.J.: Transaction, 1993), p. 58.

a limit to how many criminals such methods can cope with. California's nonpartisan legislative analyst calculates that alternative punishments will be appropriate or possible for only a small share of future convicted criminals.⁴ The need for additional prisons and jails will not disappear, and policy makers must look in new directions for corrections policy.

This has led federal, state, and local officials to consider how the private sector can become involved in corrections. The private sector's lower costs and quality services can help cope with the growing number of prisoners without busting the budget. But what do private prisons have to offer? And what evidence is there on how they have performed?

⁴ Elizabeth G. Hill (California legislative analyst), "Joint Ventures: Private Prisons Could Benefit State and Business," *Comstock's*, July 1997, p. 19, (Also see http://www.lao.ca.gov/pb052097_addressing_inmate_pop.html).

Part 2

Correctional Services Offered by the Private Sector

There are three basic types of correctional services offered by the private sector:

1. Design and construction of jails and prisons.
2. Services for offenders, such as food service, medical care, or other specialized services.
3. Contract management of major detention facilities.

Local, state, and federal governments have contracted with the private sector for each of these types of services. The first two services have been used widely, with little controversy, for decades. The last has grown rapidly, amidst controversy, since the early 1980s.

A. Design and Construction

Private contractors have long designed and built jails and prisons. In a relatively new development, some governments have accelerated completion of projects by delegating more authority to, and reducing regulatory requirements on, private design-build teams. Even more recent is the appearance of prisons wholly financed and built by the private sector, which offer their bed space on a per-diem contract basis to jurisdictions experiencing an overflow of prisoners.

The per-bed cost of prison space is influenced by many factors, including the security level, location, and jurisdiction of the facility. Coming up with useful average costs for government construction is difficult. However, the Criminal Justice Institute has calculated that the average cost of government construction is \$80,562 for a maximum-security cell, \$50,376 for a medium-security cell, and \$31,189 for a minimum-security cell.⁵

1. Cost Savings

Private companies can build prisons and jails for considerably less than these figures, and in less time. Firms in the industry often contend that they can cut between 10 percent and 40 percent off construction costs, with 30 percent being the most common savings estimate.⁶ Independent estimates of the cost savings show a

⁵ Camp and Camp, *Corrections Yearbook*, p. 69.

⁶ Industry annual reports; Alex Singal and Raymond Reed, "An Overview of the Private Corrections Industry," Legg Mason Equity Research, 1997, p.16.

Sources of Design and Construction Cost Savings

1. Faster construction.
2. Freedom from government procurement processes and restrictions.
3. Flexibility in adapting to change.
4. Efficiency of combined design-build.

similar range of 15 to 25 percent.⁷ In addition, private construction can shift a number of risks, including that of cost overruns, to the private sector.

2. Sources of Cost Savings

Since the final payment does not come until project completion, private firms have an incentive to complete construction more quickly. Construction of a prison or jail takes governments an average of two and one-half years—private firms complete the same type of project in about half the time.⁸ One company may have set a record, constructing a new facility in less than 90 days. The firm purchased land, got zoning clearance, lined up financing, and designed, built, and opened a 100-bed maximum-security juvenile facility in just three months.⁹

When a private firm is asked to build a new facility or expand an existing one, only one person has to approve the request—the CEO. This is in sharp contrast to the often laborious approval process and multiple contract requirements a government construction project must go through. The speediness of private construction gives public officials more flexibility in making corrections policy than does the slower-moving government construction process.

Speed of construction is only one way private firms cut building costs. They also save money because they are free of many costly rules imposed on government projects, such as purchasing restrictions and subcontracting quotas. The most extensive savings are reaped when the private firm is allowed to both design and build a facility. Public-works projects all over the world have used design-build contracts and achieved greater efficiency and cost savings—design-build contracts for corrections projects can do so as well.

Allowing private operating firms to design facilities can lead to considerable long-term operating-cost savings as well. Operating costs are 75 to 85 percent of the overall cost of a prison, and about 60 percent of the operating costs are for personnel.¹⁰ This means that designing a facility to require less staff, while providing the necessary security, can dramatically reduce operating costs. Innovative designs that require fewer personnel are a specialty of private corrections firms, but they have been very slow to catch on with government corrections projects.

⁷ Charles W. Thomas, “Private Adult Correctional Facility Census, 1994,” University of Florida, Gainesville, 1994, p. 2. The United Kingdom’s National Audit Office reports that the first two privately built prisons there were built 45 percent faster than usual (National Audit Office, “The PFI Contracts for Bridgend and Fazakerley Prisons,” Comptroller and Auditor General, London, 1997, p. 5).

⁸ Samuel J. Brakel, “Privatization and Corrections,” Reason Foundation Policy Insight No. 107, 1989; and Charles H. Logan, *Private Prisons: Cons and Pros* (New York: Oxford University Press, 1990), p. 79, (See <http://www.ucc.uconn.edu/~wwwsoci/proscons.html> for an excerpt.)

⁹ Cathy Lazere, “Privatizing Prisons,” *CFO: The Magazine for Senior Financial Executives*, February 1997, p. 41.

¹⁰ For example, see the box on p. X.[**box -Local cost comparison**] See also Charles Mahtesian, “Dungeons for Dollars,” *Florida Trend*, October 1996, p. 80, highlighting the differences between the personnel and maintenance costs of a private medium-security prison and state prisons.

Prison Health Care Outsourcing

Contracting with the private sector to provide prison health care is a proven money and life saver. The practice is not new: At the beginning of 1997, 12 states had contracts with private firms to provide health care to their entire prison system, and another 20 states had contracted health care for part of their systems—a total of 498 prisons in the 32 states. The largest company that provides these services has contracts for facilities in 28 states and is responsible for over 162,000 inmates.

Private health care for prisoners is likely to become even more widespread. Recent activity includes the 1996 sale by the District of Columbia of its Correctional Treatment Facility to a private firm. The District then leased it back and contracted with the firm to run it. In early 1997 New Jersey hired a private company to provide health care for its 26,000 inmates. State officials estimate that this will save taxpayers \$14 million in the first year alone. At the end of the year, Indiana signed a four-year contract with a private firm to provide health care for all state inmates; state officials anticipate saving \$3.8 million each year. At almost the same time, Mississippi contracted with another firm to build a 500-bed mental-health correctional facility.

Some critics have expressed concern over this trend, fearing that lack of public visibility means private companies have little incentive to provide quality care. Indeed, in at least one case, prison officials terminated a contract with a private company because of poor care. But this appears to be the exception rather than the rule. In fact, several cases of government medical care were so bad that courts found they violated inmates' rights and ordered jails to hire a private company. Many officials claim that medical treatment in prison is far better than most inmates could expect to get outside of prison. Also, the National Commission on Correctional Health Care has recently instituted an accreditation program, and the first jails to be accredited were West Virginia's five regional jails, all of which contract for medical care. Some states are making achieving accreditation part of the contract—all private prison contracts in Puerto Rico include such requirements.

Some people object that private prisons are authorized and built so fast that the public has little chance to weigh in on the decision.¹¹ They say that although public hearings and procurement procedures take time, they are part of the democratic process that many jurisdictions have established. They accuse local officials of avoiding public debate over facility financing by entering into a lease-purchase agreement or by allowing a private firm to build a prison on its own and then contracting on a per-diem basis for each inmate it sends to the facility.¹² Since the capital cost of the facility is embedded in the lease payment or the per-diem rate paid to the private firm, the taxpayers still pay the cost—but the structure of the deal sometimes avoids democratically established review procedures for capital expenditures. This is clearly a problem that local governments have to resolve with their citizens. Some officials that have failed to do so have found themselves facing challenges in court from local citizen groups.

Whichever way the courts come to decide this issue, public officials will continue to find that private construction cuts the cost of new facilities. This will be increasingly important not only to provide space for new prisoners, but also to replace existing aged facilities as needed. Nearly 300 prisons in the United States are over 50 years old, and more than 50 are over 100 years old.¹³ These facilities will need replacement or thorough renovation as they decay or become obsolete and inefficient to operate.

¹¹ David N. Ammons, Richard W. Campbell, and Sandra L. Somoza, "The Option of Prison Privatization: A Guide for Community Deliberations," University of Georgia, Atlanta, 1992, p. 9.

¹² *Ibid.*, p. 9; and Mahtesian, "Dungeons for Dollars," p. 82.

¹³ Singal and Reed, "Overview of the Private Corrections Industry," p. 24, citing Bureau of Justice Statistics figures.

B. Services for Offenders

For-profit and nonprofit private organizations play a major role in providing services to correctional agencies. Most correctional institutions use some form of privatization in such areas as medical services, mental-health services, substance-abuse counseling, educational programs, food services, and management of prison industries.¹⁴

The use of private services by correctional agencies is most extensive outside institution walls. This reflects the fact that more than 80 percent of convicted offenders in most states are in community supervision, either on parole or on probation.

Private involvement in community corrections (low-security work-release or halfway-house facilities) is a long-standing tradition in most states. In addition, state governments have traditionally let contracts for services such as counseling on abuse of alcohol and other drugs; assessment and treatment of sexual offenders; and job training and placement.

Private involvement in providing services to inmates during detention and after release has brought a new wave of innovation. Florida legislators found the private prisons in their state to be miles ahead of the state prisons in providing effective rehabilitation, education, and other services.¹⁵ Private firms are developing efficient and effective postrelease programs aimed at reintegrating inmates into the community and reducing recidivism rates.¹⁶

Providing these kinds of services does cost money. Inmates will receive these services only if the services are included in the terms of the contract. However, given that a contract with a private firm to house inmates saves money, more funds may be available to pay for specialized services that can reduce recidivism rates.

Private Success: Juvenile Corrections

Public concern over rising crime among juveniles has led to renewed efforts to find effective treatment and incarceration facilities for young offenders. Many states are turning to private providers for help.

At the end of 1995, nearly 40,000 adjudicated juveniles were housed in over 2,000 privately operated facilities, including training centers, ranches, shelters, halfway houses, and group homes.* This amounts to more than one-third of all adjudicated youths.

The goal of contracts with private firms is to change dramatically the thinking and behavior of troubled youths, preparing them to become self-sufficient. This involves teaching students not just educational and vocational skills, but also behavior-management skills.

The cornerstone of most programs is education—with state-accredited education programs that offer a high-school diploma or GED and allow students to earn credits that are transferable to regular schools.

Program success is usually measured in terms of reduced recidivism and completion of school. The best private juvenile programs report recidivism rates about one-third of the national average for juvenile offenders—and for about 20 percent less than it costs the state to run similar programs.

- Office of Juvenile Justice and Delinquency Prevention, "Juveniles in Private Facilities, 1991–1995," Washington, D.C., 1997, at www.ncjrs.org/txtfiles/fs-9764.txt.

¹⁴ Michael Welch, *Corrections: A Critical Approach* (New York: McGraw-Hill, 1996), p. 443.

¹⁵ David Sedore, "Private Prisons Don't Lock in Savings," *Broward Daily Business Review*, May 16, 1997, p. A8.

¹⁶ "Correctional Services Corporation and New York's Community Corrections Forging Concrete Partnerships," *Nation's Cities Weekly*, January 20, 1997, p. 8; and Joseph Johnson, chairman of National Corrections and Rehabilitation Corporation, on National Public Radio's *Talk of the Nation*, January 9, 1997.

C. Management of Detention Facilities

A decade ago, private management of jails and prisons was almost unheard of. The first county, state, and federal prison management contracts were awarded in 1984 and 1985. In 1986, only a fraction of 1 percent of the nation's adult jail and prison population was privately managed.

This has changed. According to the 1997 “Private Adult Correctional Facility Census” (PACFC),¹⁷ at the end of 1996 private firms operated 132 adult facilities in the United States, holding 85,201 inmates. (See Figure 1.) This amounts to around 4 percent of the total U.S. adult prison population and reflects a 25 percent annual growth rate. Experts anticipate that this rate of growth will continue for some time. The PACFC predicts that the capacity of private adult prisons in the United States will exceed 275,000 inmates by the year 2002. Other nations are turning to private prisons as well—the United Kingdom has four in operation and several more under construction, Australia has four in operation, and Canada and South Africa are expected to move forward soon with planned projects.

More states than ever are making use of private corrections—25 states, as well as the District of Columbia and Puerto Rico, have a private facility in operation or under construction. The federal government is also turning to the private sector for corrections services. The Immigration and Naturalization Service and the U.S. Marshals have long contracted with private firms to manage detention centers and other very-low-security facilities. And in mid-1997, the federal Bureau of Prisons turned a prison over to a private operator for the first time. Just a few weeks after that contract was signed, Congress passed legislation directing the Bureau of Prisons to take control of most District of Columbia correctional facilities and to place 50 percent of the District's inmates in privately operated facilities by 2003.

There are currently at least 16 firms operating adult correctional facilities in the United States. Two large firms—Corrections Corporation of America and Wackenhut Corrections—manage the majority of private prisons. Four midsize firms—Correctional Services Corporation, Cornell Correction, Management and Training Corporation, and U.S. Corrections Corporation—each manage several facilities and have developed a breadth of experience. Other firms in the industry manage just a few facilities each. Two British firms—Securicor and Group 4 Prison Services—operate prisons in the United Kingdom and Australia and now have subsidiaries in the United States. A key point: the size of the smaller firms belies their experience. Most of the private firms' management personnel come from careers in government prison systems, so even small private companies can draw upon a wealth of experience and expertise.

Managing major facilities has been the most controversial form of private-sector involvement, but it also has the most potential to help public officials cope with their correctional needs. The rest of this study is devoted to helping public officials and others understand the issues and controversies that surround this use of private-sector corrections—in particular the evidence that private prisons save money, yet still provide quality service.

Key Facts:

Private management of prisons takes two forms. One is standard contract operation, where a private

¹⁷ Charles W. Thomas, “Private Adult Correctional Facility Census, 1997,” University of Florida, Gainesville, 1997.

management firm is hired to run a government prison. The other is contracting to house prisoners, where private firms own their own prisons or lease excess space in local jails and house prisoners from many different jurisdictions in return for per-diem payments. States such as Oregon, Hawaii, and Wisconsin have no privately operated prisons within their borders but contract with out-of-state private prisons to house overflow inmates.

Part 3

Cost Savings of Private Prisons

There is a growing body of evidence that private prison operating costs are around 10 to 15 percent less than typical government prison operating costs. The number of detailed academic cost comparisons continues to grow, as does the first-hand experience of local officials with tangible cost savings.

A. Cost Comparison Studies

Any discussion of cost savings must compare private and government facilities. But it is hard to find two facilities that are exactly alike in design, age, personnel, inmate population, and other factors. So adjustments have to be made to data from different facilities to make them comparable.

Government agencies and private firms use different budgeting and accounting methods. Adjustments can help correct for most differences, but the result is a comparison of estimates, not specific expenditure data. Also, there are hidden costs that are hard to account for. A government institution's budget normally does not include various central administrative and support expenses. For example, some state prison budgets do not include the cost of some medical services, legal services, or personnel administration services, many of which are handled on a central accounting basis by other state agencies. On the other hand, a private facility's budget will include administrative and support costs but will not include the government's costs of preparing and monitoring contracts.¹⁸

By making required adjustments, reasonable estimates and approximations can be used to compare government and private costs. The professionals who conduct comparison studies are versed in the difficulties and the adjustments needed to overcome them. They are familiar with the sometimes subjective nature of comparative analysis and point out assumptions and qualifications that readers need to understand. In most cases the authors make it clear that potential savings could be somewhat more or less than identified.

Table 3 summarizes the conclusions of a comprehensive list of independent studies comparing public and private prison costs. Of the 14 studies, 12 found private prison costs to be lower than government prison costs—5 percent to 28 percent lower.

¹⁸ Several sources discuss the indirect or hidden costs of both private and public operation of prisons. See Charles H. Logan and Bill W. McGriff, "Comparing Costs of Public and Private Prisons: A Case Study," *NIJ Reports*, September/October 1989, pp. 385–86; James T. Gentry, "The Panopticon Revisited: The Problem of Monitoring Private Prisons," *Yale Law Journal*, vol. 96 (1986): 355–57; and Martin E. Gold, "The Privatization of Prisons," *Urban Lawyer*, vol. 28, no. 3 (1996): 353.

Table 3: Comparative Studies of Private Management Cost Savings

Study	Description	Estimated Savings
"Comparing Costs of Public and Private Prisons: A Case Study," by Charles H. Logan and Bill W. McGriff, NIJ Reports, September/October 1989.	A comparison of the contract cost for operating the 350-bed Hamilton County Penal Farm, Chattanooga, Tennessee. Based on actual 1983–84 expenditures plus annual employee salary increases equal to those received by county employees and nonsalary cost increases based on CPI.	5%
"Breaking the Mold: New Ways to Govern Texas," by John Sharp, Texas Comptroller of Public Accounts, Texas Performance Review, July 1991.	A study to determine if private prison management in Texas was achieving the 10% savings required by statute. The Texas Sunset Advisory Commission was directed by legislation to conduct the study.	14%
"Certification of Correctional Facility Actual Per Diem Costs Pursuant to Section 957.07, Florida Statutes," Florida Office of the Auditor General, November 1993.	Florida state law requires that private firms managing state prisons attain savings of no less than 7%. This study compared per-diem costs per inmate in bids by two private firms (\$46.96 and \$47.05) with an estimate of state costs (\$52.40). A separate comparison, for operation of a larger facility with more potential economies of scale, showed a cost for a private firm of \$41.73, vs. \$45.64 for the state.	8% to 10%
"Privatization Review: Minimum Security Correctional Facilities," Auditor of Public Accounts, Commonwealth of Kentucky, 1994.	This study, ordered by the legislature, compared three facilities, two privately operated and one government run. Final adjusted per-diem costs: \$34.26 at the government-run facility; \$31.07 and \$31.30 at the private prisons.	9%
"Texas Correctional Cost Per Day, 1993–94," Texas Criminal Justice Policy Council, February 1995.	A more recent report than "Breaking the Mold," this report estimated the average cost per day per inmate (FY 1994) in government facilities to be \$44.40, vs. \$35.25 per day in privately managed facilities.	21%
"Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons," Select Oversight Committee on Corrections, Tennessee Legislature, 1995.	Compared one private and two government facilities. Daily costs per inmate were very close, with the private facility cost of \$35.39 slightly lower than one government facility, at \$35.45, and slightly higher than the other, at \$34.90. The circumstances of the study were unusual in that all the facilities knew they were being compared during the year the data were collected, so they were, in a sense, competing.	0%
"Department of Corrections Privatization Feasibility Study," Legislative Budget Committee, Olympia, Washington, January 1996.	Compared the same three Tennessee facilities as the study above and found a savings of less than \$1 per day (private was less expensive). Made a similar comparison of facilities in Louisiana and found "a virtual equivalence" in per-diem inmate costs.	0% to 2%
"Cost Effectiveness Comparison of Private Vs. Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers," by William G. Archambeault, Ph.D., and Donald R. Deis, Jr., Ph.D., Louisiana State University, Baton Rouge, October 15, 1996.	A very thorough study of the cost effectiveness of private prisons. It found: "It is clear from the data analyzed and presented in this study that the two private prisons significantly out-performed the government operated prison. Both private prisons . . . were found to be significantly more cost effective." One private prison cost \$22.96 per inmate per day, the other \$23.51. The government prison cost was \$26.76.	14% to 16%
"Costs to Incarcerate," Kentucky Department of Corrections, FY 1996–97.	Lists the cost to the Kentucky DOC of incarcerating state prisoners in different facilities. Per-diem costs were \$35.22 for state minimum-security prisons, \$31.08 for private ones. And unlike the 1994 Kentucky comparison above, the government prison costs in this study do not include debt	> 12%

Table 3: Comparative Studies of Private Management Cost Savings

	costs, but the private prison costs do.	
"Comparing the Cost and Performance of Public and Private Prisons in Arizona," by Charles W. Thomas, Arizona Joint Legislative Committee, August 1997.	Compared the cost and performance of a 444-bed private prison to 15 government-run prisons in Arizona. Study does well at controlling for indirect costs. Average cost per inmate per day was \$43.08 in the government prisons and just \$35.90 in the private prison.	17%
"The Pros of Private Prisons," by Monte Wynder, <i>The Australian Accountant</i> , November 1993, pp. 19–22. The article was financed by a research grant from the Australian Society of Certified Public Accountants.	This study's findings are similar to independent findings reported a year later in a separate study (see next item). The author found that average costs were about 23% less in the privately managed Borallon Correctional Centre vs. the government Lotus Glen Correctional Centre. Major factors were 63% more staff for each 100 inmates and substantially more overtime and sick leave at the government facility.	23%
"Economic and Qualitative Aspects of Prison Privatisation in Queensland (Australia)," by Allan Browne, in <i>Private Prisons and Police: Recent Australian Trends</i> (Annandale, New South Wales: Pluto Press, 1994).	A two-year comparison of government and private prison operations and cost found that the private facility "provides the highest programme content of any correctional centre in Queensland." Annual per inmate costs (Australian currency) in 1991–92 were \$39,240 at the private facility and \$54,560 at the government facility; the next year the comparison was \$44,200 and \$49,880, respectively.	11% to 28%
Home Office Economic Unit, U.K., 1996	Audited private contract prison costs compared to costs at similar government prisons.	11% to 17%
HM Prison Service Research Report, no. 1, U.K., June 1996.	This report, commissioned from Coopers and Lybrand, compared 1994–95 costs, finding "significant savings . . . in the order of 13%–22%."	13% to 22%

Two of the studies in Table 3 deserve particular attention. The study by researchers from Louisiana State University (LSU)¹⁹ has been widely acclaimed for overcoming the problem of comparing "apples to oranges." It compared three facilities, two privately operated (by different firms) and one operated by the state of Louisiana. The facilities were built from the same plans and had very similar populations—as much "apples and apples" as one could reasonably hope to find. This study found both private prisons to be about 15 percent more cost-effective than their government counterpart.

While not able to directly compare identical facilities, the Arizona study²⁰ went to considerable lengths to adjust and compensate for differences between the privately run prison and the government-run prisons. Careful steps were taken to account for indirect costs. The state's first private prison, a 444-bed facility, was compared to all 15 government-run prisons in the state. Some government prisons performed better than the private prison, and some performed worse, but the private prison's costs were 17 percent less than the average cost of the state prisons.

In stark contrast to these two studies is a report issued in 1996 by the General Accounting Office (GAO).²¹ The GAO examined five studies comparing government and private prison costs and concluded that it "could

¹⁹ William G. Archambeault and Donald R. Deis, Jr., "Cost Effectiveness Comparison of Private Vs. Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers," Louisiana State University, Baton Rouge, 1996, at <http://www.ucc.uconn.edu/~wwwsoci/exsumla.html>.

²⁰ Charles W. Thomas, "Comparing the Cost and Performance of Public and Private Prisons in Arizona," Arizona Joint Legislative Committee, Phoenix, August 1997.

²¹ U.S. General Accounting Office (GAO), "Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service," Washington, D.C., August 1996.

not draw any conclusions about cost savings or quality of service.” Four of the studies the GAO examined are the first, second, sixth, and seventh in Table 3; the fifth study it examined is not included in Table 3 because it compares halfway houses, not major facilities.

The GAO report is important because it is widely cited by privatization opponents, but its methods and conclusions are odd. Of the four studies it examined that are listed in Table 3, two found the private facilities to have significantly lower costs. The GAO argued that the results of those two studies should be ignored because they suffered from limitations, specifically: (1) the fact that some comparisons involve actual costs and “hypothetical” costs; and (2) the fact that facilities being compared might be designed differently or operated differently.

The GAO report has been widely criticized for a number of shortcomings,²² including:

The GAO, without explaining why, chose to ignore a number of cost comparisons (listed in Table 3) and focus on only five studies. Among those overlooked were studies from Australia and the United Kingdom, which are not as useful in the United States (although they are certainly relevant). But why ignore the studies by the Texas Criminal Justice Policy Council, the Kentucky Auditor of Public Accounts, and the Florida Office of the Auditor General? The GAO also left out the prominent LSU study. It had not yet been published, but the GAO investigators had been made aware of it by several of the sources they contacted. Ignoring the Louisiana study was particularly egregious because it compared identical facilities—exactly the type of comparison the GAO report said was needed.

The GAO's insistence that cost comparisons must look at identical facilities, besides being belied by their ignoring the LSU study, misses a crucial point. One of the principal advantages that private firms bring to corrections is that they do things differently. It is precisely the innovative practices of private firms—their breaking away from “the way things have always been done”—that bring about cost savings.

The GAO report discounts the results of the Texas Comptroller's study because it compared the cost of existing private facilities to the cost of “hypothetical government facilities.”²³ Actually, the Texas study compared the cost of the private facilities to the “cost that the TDCJ [Texas Department of Criminal Justice] would incur if it *took over the operation of the four private facilities*”²⁴ (emphasis added). Moreover, the GAO chose to ignore a subsequent report by the Texas Criminal Justice Policy Council (a state agency) that found the cost advantage of the private facilities to be even greater (21 percent).

Two of the studies the GAO gave credence are in fact flawed or at least limited. The Washington report²⁵ was similar to the GAO report in that it reanalyzed earlier data rather than collecting new data—so it is not surprising that it reiterated the results of the Tennessee Legislature's study.²⁶ The GAO also included a report

²² For example, see testimony to the House Subcommittee on Crime by Prof. Charles H. Logan, of the University of Connecticut, on September 2, 1996, at <http://www.ucc.uconn.edu/~wwwsoci/gaochl.html>, and by Prof. Charles W. Thomas, of the University of Florida, on September 1, 1996, at <http://www.ucc.uconn.edu/~wwwsoci/gaocwt.html>.

²³ GAO, “Private and Public Prisons,” p. 7.

²⁴ John Sharp, “Breaking the Mold: New Ways to Govern Texas,” Texas Comptroller of Public Accounts, Texas Performance Review, July 1991, p. 8.

²⁵ Legislative Budget Committee, “Department of Corrections Privatization Feasibility Study,” Olympia, Washington, January 1996.

²⁶ Select Oversight Committee on Corrections, “Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons,” Tennessee Legislature, 1995.

that compared community corrections facilities in California.²⁷ This study should not have been included, because it compares halfway-house facilities, not real prisons, and the two “government” facilities were in fact for-profit facilities operated by special agencies of local governments to house state prisoners.

Finally, the GAO report was not an objective survey of available information, as was requested by the House of Representatives when it asked the GAO to undertake the study. Rather, according to Dr. Charles Logan, it is “so consistently one-sided and negative that it reaches the point of dishonesty.”²⁸

Local Cost Comparison: An Example

A study on Wisconsin prisons compared the costs of a private prison in Minnesota, Prairie Correctional Facility, to a similar Wisconsin state prison, Jackson Correctional Institution. The two prisons are about the same age, have similar inmate populations, and are geographically close. The study found that the daily cost per inmate in the private facility was 23 percent lower than in the government facility. A summary of the comparison is presented in the table below. For more details, see George Mitchell, “Controlling Prison Costs in Wisconsin,” Wisconsin Policy Research Institute, December 1996.

Staffing and Operating-Cost Comparison: Prairie Correctional Facility (PCF) and Jackson Correctional Institution (JCI) (1995)		
	Private (PCF)	Public (JCI)
Inmates	516	663
• Inmates as % of capacity	100%	108%
Staff		
• Correctional officers (C.O.s)	103	163
• Other staff	63	110
• Staff per 100 inmates	32.2	41.2
• C.O.s per 100 inmates	20.0	24.6
Estimated 1995 spending	\$7,200,000	\$12,000,000
1995 per diem/inmate	\$38.23	\$49.59
1995 spending/inmate/year	\$13,953	\$18,100

B. Other Evidence

To buttress the copious empirical evidence that the private operation of prisons saves money, there are simple commonsense observations. For one thing, why would so many states and federal agencies enter into contracts with private prison firms if not to save money? Kentucky state senator Jim Kyle points out that only the potential cost savings that private prisons offer will entice a politician to take on the battle to contract for correctional services.²⁹ Indeed, the most frequent reason given for privatization is to save money. Unless we assume that the decision makers in all the governments that contract with private prison firms are willfully stupid, we have to believe that cost savings are being achieved.

This observation is buttressed by the legislation many states have passed to ensure cost savings from prison privatization. For example, Texas and Mississippi both require contracts with private prisons to cost at least 10 percent less than using the state system, Florida requires 7 percent savings, and Tennessee requires payments to private firms to be less than government facility costs. States are refining their methods of assuring savings. Several of the studies in Table 3 were commissioned by state governments checking to see that cost savings were achieved. The Arizona Department of Corrections, in cooperation with the state Office of Excellence, is developing a new and sophisticated cost comparison model.³⁰

²⁷ Dale K. Sechrest and David Shicor, “Final Report: Exploratory Study of California’s Community Corrections Facilities,” California State University, San Bernardino, 1994.

²⁸ Logan, testimony.

²⁹ Sen. Kyle, in an interview with the author, September 1997.

³⁰ Carl Nink, Assistant Director, Prison Operations, Arizona Department of Corrections, in an interview with the author, December 1997.

C. How the Private Sector Cuts Costs

Undeniably, the key to the lower costs of the private sector is competition. In order to win contracts—and keep them—a firm must be efficient. Rising costs, or cuts that lead to poor quality, would soon take a firm to where it could win no more contracts.

The private sector saves money by doing a number of things differently from government. Since their success hinges on delivering the same product as the government but at lower cost, or a better product at a cost-effective price, they turn to new management approaches, new monitoring techniques, and administrative efficiencies—in a word, innovation.³¹ Moving beyond “the way it has always been done” allows them to reduce labor costs, reduce tension between correctional officers and inmates, make full use of a facility's capacity, and make more efficient purchases.

1. Reducing Labor Costs

About two-thirds of correctional departments' operating budgets are devoted to personnel,³² so naturally that is where most of the opportunity for savings lies. Private operating firms strive to reduce personnel costs without understaffing a facility. They do this by:

Using more efficient facility design. If a private firm has a role in designing a facility, it is likely to use innovative new design techniques, with sight lines and technology that allow inmates to be monitored with fewer correctional personnel.³³

Reducing administrative levels. Private operating firms tend to have fewer administrative personnel than the often bureaucratic structures of government correctional departments.³⁴ One private prison administrator, with 14 years of experience in government corrections, says that private prisons use roughly one-third the administrative personnel government prisons use.³⁵

Minimizing the use of overtime. Many correctional departments are understaffed, leading to the use of overtime to ensure sufficient correctional officers for each shift in each facility. Sometimes it is less expensive to use overtime than to hire more employees, but only up to a point. Another cause of using overtime is when another employee calls in sick. In the public sector, sick time is considered an entitlement, not a privilege, and it is almost rebellious not to use it.³⁶ With considerable success, private firms use

³¹ Daniel W. Okada, “Maybe This Will Work,” *Infrastructure Finance*, October 1996; emphasizes how innovative private-sector practices change the very static world of corrections.

³² American Correctional Association (ACA), *Vital Statistics* (Washington, D.C.: American Correctional Association, 1994), p. 43.

³³ Logan, *Private Prisons*, p. 81; Gold, “Privatization of Prisons,” pp. 382–3; Randy Gragg, “A High-Security, Low-Risk Investment,” *Harper's Magazine*, August 1996, p. 50. The United Kingdom's first prison to be designed, financed, built, and operated entirely by the private sector is also its first “smart prison,” using innovative new technology to track and monitor prisoners, assuring direct observation of inmates but using fewer personnel.

³⁴ Public prisons spend about 29 percent of their operating budgets on administrative costs (ACA, *Vital Statistics*, p. 43), while annual reports of private operating firms indicate average administrative expenditures of around 6 to 8 percent.

³⁵ Mahtesian, “Dungeons for Dollars,” p.83. This ratio is similar to that experienced with administrative staff in the privatization of many services and industries.

³⁶ Richard W. Harding, *Private Prisons and Public Accountability* (New Brunswick, N.J.: Transaction, 1997), p. 20.

incentives to reduce sick time and the consequent overtime expenditures.³⁷ While overtime helps raise the take-home pay of existing employees, it can significantly raise operating costs. By using full staffing and more efficient personnel management, private prison firms use less overtime.³⁸

Exercising greater freedom to manage personnel. Private operating firms are not bound by civil-service rules in managing their personnel; this significantly reduces personnel management costs.³⁹ Private operating firms can use both positive and negative incentives to induce employees to perform. Civil-service rules and terms of public-employee union contracts tend to increase costs.⁴⁰

As a rule, private operating firms do not cut costs by cutting personnel quality. Pay for correctional officers at private firms tends to be nearly the same, or only slightly lower, than for government correctional officers.⁴¹ Where compensation is lower, private operating firms make up for it in part by offering opportunity for advancement based on merit rather than civil-service rules. Also, many private operating companies offer employee incentive packages that can be very lucrative. For instance, employee stock ownership plans have reaped tremendous rewards for many employees.⁴²

2. Reducing Incidents

Almost every incident between inmates, or between inmates and correctional officers, costs a prison money. These incidents lead to lawsuits, which also increase personnel costs.⁴³ Private operating firms respond to these incentives by managing facilities in ways that minimize incidents. This means maintaining tight control of inmates and keeping them well-fed and occupied with work, education, or recreation—in short, establishing in the inmates' eyes the legitimacy of the private correctional officers' authority.⁴⁴ Several studies have shown that privately operated facilities tend to have fewer incidents than comparable government facilities.⁴⁵ In Florida, “get tough” policies in the state-run prisons have been accompanied by a 62 percent increase in inmate assaults on other inmates and a 250 percent increase in inmate assaults on correctional officers. In the state's private prisons, where the new policies did not apply, there has been no such increase in incidents.⁴⁶

³⁷ Federal employees use two-thirds more sick time than private employees, according to Peter Samuel, “Battling the Budget—Gracefully,” *Reason*, May 1984, p. 36.

³⁸ Logan, *Private Prisons*, p. 82; Lazere, “Privatizing Prisons,” p. 45.

³⁹ Logan, *Private Prisons*, pp. 82–83.

⁴⁰ Harding, *Private Prisons*, pp. 19–20.

⁴¹ Logan, *Private Prisons*, p. 82; Singal and Reed, “Overview of the Private Corrections Industry,” pp. 14, 22. Private correctional officers are usually paid less only in areas where the salaries of public correctional officers are disproportionately high. For example, in California government correctional officers are paid 50 percent more than the national average, and \$10,000 a year more than the average teacher in California. It requires only a high-school diploma to be a correctional officer.

⁴² Charles Logan, on National Public Radio's *Talk of the Nation*, January 9, 1997, tells the story of a man who worked for a private operating firm for five years; when he left, his employee-benefit stock options were worth \$35,000. In the state system, he would not even have been vested in five years. (See p. X for more on benefits.)

⁴³ Robin M. Gragal, “With a Captive Audience, Private Prisons Propagate,” *Investors' Business Daily*, May 21, 1996. Investment analysts say that private prisons maintain less-crowded and better conditions than many government prisons, meaning fewer inmate fights, happier correctional officers, and less employee absenteeism and turnover.

⁴⁴ Logan, *Private Prisons*, p.55.

⁴⁵ See Archambeault and Deis, “Cost Effectiveness Comparison”; Thomas, “Comparing the Cost”; and Charles H. Logan, *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison* (Washington, D.C.: National Institute of Justice, 1991), also at <http://www.ucc.uconn.edu/~wwwsoci/nmexsum.html>.

⁴⁶ National Public Radio, *All Things Considered*, report on private prisons, October 18, 1997.

3. Fully Using Facility Capacity

If a jurisdiction does not use all of the beds in its facility, private operating firms can often lower the per-inmate costs by contracting to hold prisoners from other jurisdictions in the excess space. This allows the local jurisdiction to reduce its share of covering the fixed costs of operating the facility.

4. Efficient Purchasing and Maintenance

Freedom from bureaucratic purchasing rules and procedures lets private operating firms shop locally for the lowest-cost necessary supplies and services.⁴⁷ This saves both time and money. One private prison warden explains that if he needs some item, such as camera film, he doesn't have to order it through a complex state purchasing process or wait for it to be shipped from a distant supplier—he just goes to a store and buys it.⁴⁸

The story is similar for facility maintenance. Private operators and owners of prisons have incentives to make maintenance decisions that save long-run capital costs as well as current operating costs. Private firms can invest today in ways that generate savings over time, while the public sector often has difficulty getting approval or funds for such investments. For example, in one prison a private company that took over operations switched all lighting over to fluorescent bulbs and refitted the plumbing to stop rampant leaks, generating considerable savings in utility costs.⁴⁹

D. Competition, Not Private-Sector “Magic,” Creates Efficiency and Innovation

When governments contract with the private sector, efficiency and innovation do not come about because private firms have some magic pixie dust, unobtainable by the public sector, to sprinkle about. It is competition that creates efficiency and innovation, because competition punishes inefficiency and inertia. That means two things: first, that the contracting process needs to be competitive in the long run for efficiency to remain, and second, that competition from the private sector makes the public sector more efficient as well. This is the great uncounted benefit of private-sector provision of correctional services. Contracts usually save money not only directly, but also indirectly, by forcing the government corrections departments to tighten up their ships.

There has been little success at quantifying the indirect benefits competition brings to the overall provision of correctional services. Perhaps the best attempt was part of the 1995 cost comparison study in Tennessee.⁵⁰ The study compared costs at two government prisons and one private prison at the beginning and at the end of the year of study. When the facilities knew they were being compared, they strove for their best efficiency, and the cost at all three prisons declined over the year—5 and 8 percent at the two government prisons and 15 percent at the private prison.

⁴⁷ Joel, “Privatization of Secure Adult Prisons,” p.64.

⁴⁸ Kevin McKenzie, “Tennessee Considers the Pros and Cons of Prisons for Profit,” *The Commercial Appeal*, May 25, 1997, p. A1.

⁴⁹ Joel, “Privatization of Secure Adult Prisons,” p.64.

⁵⁰ Select Oversight Committee, “Comparative Evaluation.”

Anecdotal evidence of competitive pressures and “cross-fertilization” abounds as well. Russ Boraas, Private Prison Administrator for the Virginia Department of Corrections, believes the cross-fertilization benefits of contracting with private firms to run some prisons may be the greatest benefits of contracting. Virginia has two new prisons designed, built, and operated by private firms. Both prisons dramatically reduced capital and operating costs of the facilities by replacing expensive external guard towers with high-tech sensors and a roving patrol and by eliminating a 30-day food storage warehouse, storing just enough food for a week.

For no reason that anyone can remember, Virginia prisons keep 30 days of food on hand in warehouses expensive to build, maintain, and operate. Boraas believes it is a practice going back to when prisons were remote and supplied by mule train. No one had ever bothered to question the practice until the private companies came in and did something different. He says that the rest of the state prisons are now adapting the private firms' food storage practices and that only maximum-security prisons are likely to have external guard towers in the future.

There are plenty of similar stories:

Responding to a perceived threat from the growth of private prison operation, the Connecticut Department of Corrections (DOC) adopted a philosophy of running its prisons more like businesses and dramatically cut annual spending. At the end of 1996, the department returned \$46 million to the state treasury. Savings were realized by cutting staff and increasing revenue generated by inmates. Despite this, Connecticut still spends \$65 a day for each inmate, one of the highest per-inmate cost rates in the nation.⁵¹

Carl Nink, of the Arizona DOC, explains how the state's prison wardens had never defined the measures that constitute successful performance of a prison until they had to write a contract with the operator of the state's first private prison. The result forced a lot of wardens to go back and reevaluate their own policies and practices to ensure they meet the same standards being asked of the private firm.

According to Tim Wilson, Head of Contracts for Her Majesty's Prison Service, in the years since the lower costs at new private prisons have become public, costs at government prisons in the United Kingdom have been falling.

The existence of private prisons, and the threat of privatization, changes the incentives for government corrections officials. As long as there is a credible threat of privatization, these incentives to reduce costs and improve quality will remain. It remains to be seen what amount of competition is necessary to maintain these incentives for the public sector.

E. Conclusion

The evidence from comparative cost studies strongly supports the conclusion that private prisons save an average of 10 to 15 percent on operating costs. The conclusion is also supported by the experience of public officials in many states that use private prisons. Competitive pressure provides the incentive to be efficient that helps drive private-sector costs down, and the firms achieve cost savings through innovative design and

⁵¹ Mike McIntire, “State Prison Costs Down, Clouding Privatization Issue,” *Hartford Courant*, January 12, 1997, p. A1.

management practices. The next section considers whether these savings are accompanied by improvements in quality.

P a r t 4

Quality of Private Prisons

The first step in seriously examining the performance of private prisons is to look deeper than lurid media reports and anecdotes. Incidents and investigations make the news, but the results of the investigations rarely do. The widely reported incident in Brazoria, Texas, is a good example. In September 1997, nearly every news show in the nation played a video of correctional officers treating inmates very roughly in a jail where a private firm housed inmates from other states. What the reports rarely pointed out was that it was sheriff's deputies, not private correctional officers, shown on the tape. No evidence of any wrongdoing by the private correctional officers or firm surfaced. Upon viewing the video, the judge in a brutality suit against the private firm threw out the case. That fact did not make many news reports. (Since the deputies are immune from such lawsuits, they were not sued in turn.)

In the issue of quality, as with cost, competition is the key. Private operators, knowing they could be replaced if they fail to deliver, have strong incentives to provide quality service. Moreover, being able to grow and acquire new contracts depends on successful performance of existing contracts.⁵² Very few contracts with private operators have been terminated, but for those that were, public officials were able to quickly bring in a competing firm to assume operations.

Competition can also help improve service quality by lowering costs. Let's say it costs a state \$50 a day to house a prisoner. If a private firm can operate the prison for 10 percent lower cost, \$5 per inmate per day could potentially be used to provide education, job training, rehabilitation, or other services for inmates. If cost savings free up dollars for programs that reduce recidivism, taxpayers get more of what they really want from the prison system. The more competition, the more public officials can expect to get from a contract. Even better, public officials can take advantage of the competition in the industry by tying contracts to a broader definition of performance—one that links payment to precise outcomes in service quality as well as cost savings. Such contracts have been developed in Australia (see box) and Puerto Rico⁵³ and hold real promise for the future in the United States.

Still, it is not easy to measure the quality of correctional services, because so many dimensions and variables can be included, from recidivism to access to phones, from health care to the variety of vegetables with meals. Any sweeping statements about the quality of either government or private prisons would be on thin ice.⁵⁴ Experiments with benchmarking, as in Australia, should eventually help us move to firmer ground.

⁵² Ammons et al., "Option of Prison Privatization," p. 14.

⁵³ Gold, "Privatization of Prisons," pp. 394–97.

⁵⁴ For one thing, we would have to come to more of an agreement about what standards for prison service quality we want. In Florida recent "get tough" legislation withdrew funding for all manner of "luxuries" for prisoners, such as televisions and weight-lifting equipment. To the consternation of some legislators, private prisons in Florida continue to

Linking Payment and Performance Aussies Show the Way

The Australian state of Victoria has signed 20-year contracts for three new private prisons. About 65 percent of Victoria's female prisoners and 40 percent of its male prisoners are in private correctional facilities. To facilitate competition, the government has separated corrections policy making from service delivery. The corrections department's contract administrator "purchases" correctional services from either private firms or the public Correctional Services Agency, then monitors and evaluates the performance of both from arm's length.

A crucial innovation brought about by Victoria's contracts with private prisons is the performance-based structure of payments. The private operators receive three revenue streams from the government.

- An *accommodation-service fee* pays for housing the prisoners; this essentially offsets the private debt incurred in constructing the facility.
- A *correction-service fee* covers specific services, such as correctional officers, health care, food, education, and rehabilitation programs.
- A *performance-linked fee* aligns the company's long-term interests with the government's goal of quality services. The fee is tied to a set of performance indicators, including escapes, deaths in custody, assaults on inmates, and assaults on staff. As long as the company meets standards in these areas, based on averages from government prisons, it receives the full fee.

This last fee is what makes the Aussie model innovative. It ties the private companies' return on equity to a set of performance goals, thus aligning their long-term interests in running profitable facilities with the government's interest in quality services.

Source: Victoria Department of Justice. See also William D. Eggers, "Prison Reform," *Infrastructure Finance*, December/January 1997, pp. 53–55.

Typical Performance Indicators for Corrections

1. Public safety (measured by frequency of escapes, major disturbances, and injury to visitors).
2. Protection of staff and inmates (measured by personal injury or death from arson, assault, battery, or homicide).
3. Compliance with professional standards (measured by audits, litigation initiated by prisoners or staff, inmate grievances, and in-service training for staff).
4. Quality of programs (education, counseling, and work).
5. Quality of health care and food.

Progress is also being made in comparing recidivism rates of inmates released from government and private prisons. This is especially important since what most people really want from the prison system is less crime. A study just released in January 1998 by the Center for Studies in Criminology and Law at the University of Florida may be the best recidivism comparison study yet.⁵⁵ It went farther than any study before in carefully matching pairs of inmates from government and private prisons, attempting to make them as much alike as possible in terms of age, race, crime committed, and other factors. The results are a resounding endorsement of the effectiveness of private prisons. The overall recidivism rates were 17 percent for releasees from private prisons and 24 percent for releasees from government prisons. Moreover, the gap in favor of private prisons was the largest with respect to violent offenses by releasees. Hopefully, future research will apply this effective methodology in other states to expand our understanding of comparative recidivism rates.

provide these things to inmates. In a rich irony, we now have some who complain of the "opulence" of private prisons, while others accuse them of being too harsh and cutting quality to increase profits.

⁵⁵ Lon Lanza-Kaduce and Karen F. Parker, "A Comparative Recidivism Analysis of Releasees from Private and Public Prisons in Florida," Center for Studies in Criminology and Law, University of Florida, 1998.

Key Fact:	Private Prisons	Government Prisons
Comparative Recidivism Rates in Florida	17 percent (1 percent for violent crimes)	24 percent (5 percent for violent crimes)

Meanwhile, a sensible approach considers the various factors that typical taxpayers might consider in judging what kinds of prisons their tax dollars are buying. Studies that compare private and government prison quality, independent accreditation, and amounts of litigation by prisoners are all fair indicators of the level of quality of correctional facilities. In each of these areas, private prisons do at least as well as government prisons. There is little reason to believe that private prisons cut service quality to improve their bottom line.

A. Quality Comparison Studies

A number of studies have examined the quality of private correctional services in the United States, Australia, and the United Kingdom,⁵⁶ comparing such measures as inmate and staff safety, escapes, health care, education and work programs, and counseling and rehabilitation programs. The research reveals a pattern of high-quality services in private facilities:

One U.S. study by Dr. Charles Logan, of the University of Connecticut, is notable for its depth and detail, examining 333 quality variables in comparing a private facility to state-run and federal facilities. He found that the private facility performed better than the government facilities across all but one of eight dimensions.⁵⁷

The LSU study discussed earlier also looked at quality variables, and it found that both of the privately run facilities performed better than the government facility in terms of safety of inmates, safety of correctional officers, number of incidents, use of discipline, and education programs, all the while using fewer personnel. The government facility had fewer escapes, less substance abuse, and more rehabilitation, social, and recreational services.⁵⁸

The Urban Institute compared government and private adult prisons in Kentucky and government and private juvenile facilities in Massachusetts. Using surveys of staff and inmates, as well as state data, they compared dozens of variables between the facilities, including health care, escapes, violence, counseling, and education programs. For most variables, the private facilities in both states scored better than the government facilities, especially with regard to programs, escapes, and violence.⁵⁹

Arizona commissioned a study comparing its first privately operated prison to the rest of its prison system. That study found that the performance of the private prisons was superior in public safety issues (measured by frequency of escapes, major disturbances, and injury to visitors), protecting staff and inmates (measured by personal injury or death from arson, assault, battery, or homicide), and compliance with professional

⁵⁶ For a partial list, see Harding, *Private Prisons*, pp. 110 ff.; and Charles W. Thomas, "Correctional Privatization: The Issues and the Evidence," paper presented at the Privatization of Correctional Services Conference, Toronto, Canada, July 1996, note 56.

⁵⁷ Logan, *Well Kept*.

⁵⁸ Archaibeault and Deis, "Cost Effectiveness Comparison," sec. 2.

⁵⁹ H. P. Hatry, P. J. Brounstein, R. Levinson, D. M. Altschuler, K. Chi, and P. Rosenberg, *Comparison of Privately and Publicly Operated Corrections Facilities in Kentucky and Massachusetts* (Washington, D.C.: Urban Institute, 1989).

standards (measured by DOC audits, litigation initiated by prisoners or staff, inmate grievances, and in-service training for staff).⁶⁰

In the United Kingdom, at least seven examinations of the quality of private prison operations have been conducted: three inspections by the Chief Inspector of Prisons, three independent research projects, and one independent government inquiry.⁶¹ Overall, the studies find that the private prisons outperform the government prisons. Prisoners in the private prisons enjoy more associative freedom, better staff-inmate relations, more and better work training, better meals, and more convenient visiting schedules. There are also fewer escapes and less violence in the private prisons. Assaults between inmates is the only measure where the private facilities have fallen short, and their performance in that area has been converging on that of government prisons. The Director General of Her Majesty's Prison Services has asserted that the private prisons are the “most progressive in the country at controlling bullying, health care, and suicide prevention.” He strongly urges the government prisons to emulate these progressive practices, and he has issued training circulars describing them to all wardens. He concludes that the private prisons create a “healthy competition” that is improving the quality of the entire prison system.⁶²

A Tennessee Legislature study compared one private facility to two government facilities over two years and gave the private facility a higher overall performance rating than the two government facilities.⁶³

Besides these detailed comparisons of specific facilities, commonsense observations provide considerable anecdotal evidence that private prisons provide quality correctional services.⁶⁴ Inmate surveys have revealed that they rate private prisons better than government-run ones, especially inmates who have been in both types of prison (see box). As one inmate told National Public Radio, “You have your fights. You have your arguments and stuff. But you know, you don't have no knifings and, you know, guys trying to rape you or you know, things like that. It's pretty . . . it's pretty well controlled.”⁶⁵

⁶⁰ Thomas, “Comparing the Cost.”

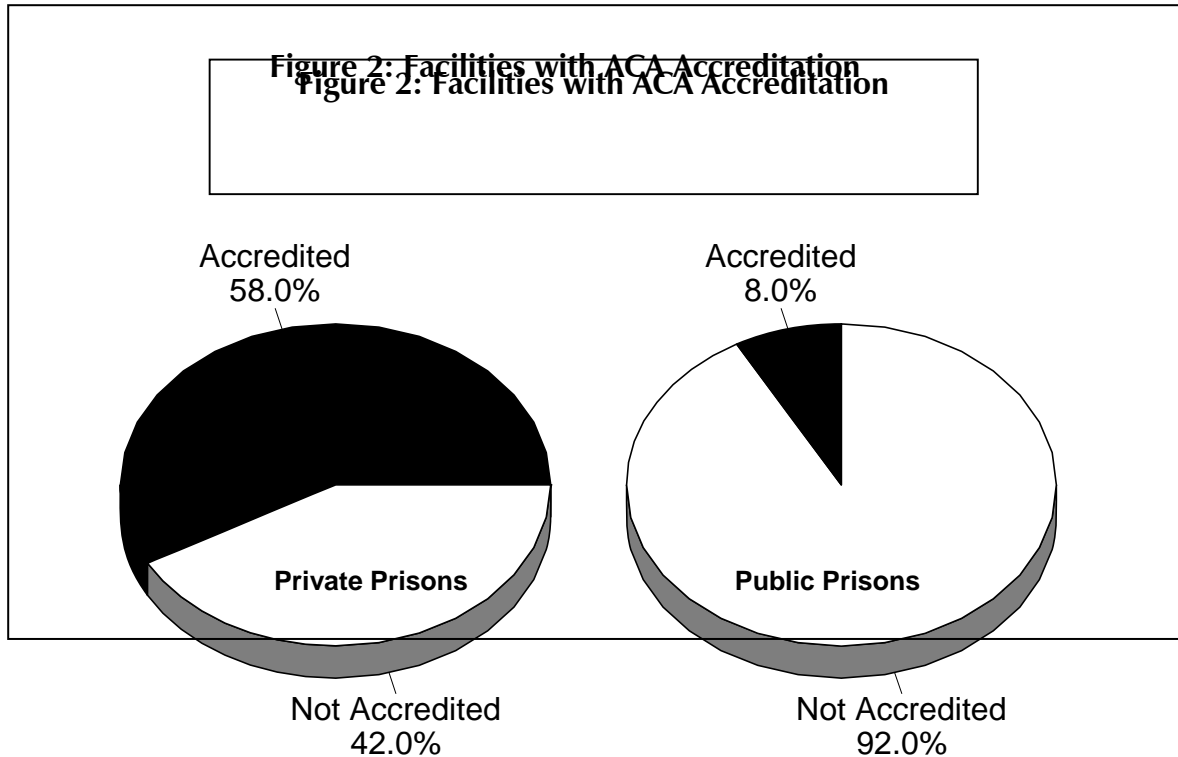
⁶¹ National Audit Office, “PFI Contracts”; Adrian James, A. Keith Bottomley, Alison Liebling, and Emma Clare, *Privatizing Prisons: Rhetoric and Reality* (London: Sage, 1997); HM Chief Inspector of Prisons, “HM Prison Doncaster: Report of a Full Inspection,” Home Office, London, October 1996; Prison Service Planning Group, “Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons: 1995–96,” Prison Research Service Report No. 2, London, October 1996; Home Affairs Committee, “The Management of the Prison Service (Public and Private),” House of Commons, London, March 1997; Harding, *Private Prisons*, pp. 139–42.

⁶² “Survey—Private Finance Initiative,” *Financial Times*, November 14, 1997, p. 5.

⁶³ Select Oversight Committee, “Comparative Evaluation.”

⁶⁴ In *Well Kept*, Logan devotes a full chapter to anecdotes of state inspections, local audits, etc., demonstrating private firms' success at meeting and, often, exceeding required standards.

⁶⁵ National Public Radio, *All Things Considered*, report on private prisons, October 18, 1997.



B. American Correctional Association (ACA) Accreditation

Independent accreditation by the ACA is designed to show that a facility meets nationally accepted professional standards for quality of operation, management, and maintenance. Of the 50 private correctional facilities that have been operating long enough to achieve accreditation, 29 have done so. In comparison, of the nearly 5,000 government correctional facilities, only 416 are ACA accredited. (See Figure 2.) ACA accreditation is important to the courts as an indicator of improved conditions for prisons under court order. Louisiana's state prisons were under court order for overcrowding and poor conditions for decades. A crucial step to getting the order lifted was achieving ACA accreditation for each facility. For years, little effort was expended to meet that goal and none of the facilities, including new ones, succeeded. But in 1990, when writing its first contract with a private firm to operate a prison, the state required the firm to achieve accreditation. It did. Encouraged, the new head of state corrections ordered the rest of the state system to seek accreditation. Serious improvements had to be made, but by 1996 every prison in the state save the one maximum-security facility had achieved the goal, and the court order was lifted.⁶⁶ A private prison has set the standard in Florida as well, earning in the spring of 1997 an ACA rating of 99.8 percent, the highest rating ever given a Florida correctional facility.

C. Court Orders and Prisoner Litigation

⁶⁶ Harding, *Private Prisons*, pp. 64, 139; "Louisiana DOC Collaborates with Wardens, Jails to End Consent Decree," *Corrections Professional*, July 11, 1997.

Court orders to improve conditions of confinement are one indicator of problems in an institution or a correctional system. By this measure, privately managed facilities compare very well to government-run prisons and jails.

In 1996, of the 50 state correctional departments, 15 entire departments were under a court order to relieve unsatisfactory conditions, and 25 states had at least one facility under court order.⁶⁷ The situation is worse in county jails: in 1996, 22 percent of jail systems had at least one facility under court order to improve unsatisfactory conditions, and 30 percent had at least one facility under court-mandated population caps.⁶⁸

In comparison, no privately operated facility has been placed under a court order, and on average, privately operated facilities do not suffer as many lawsuits as government-run facilities do. In fact, it is increasingly common for a state or county to bring in a private firm to turn a facility around and get it *out* from under a court order (see box). A perfect example is the District of Columbia, which included in the terms of its sale/leaseback and operating contract for its Correctional Treatment Facility a provision that the private firm must meet the requirements set by the court order long in place. Another example is the story of how Louisiana's first private prison set the example and led the whole state system out from under a court order.

Texas Cinderella Story

In 1989, the 28-year-old, 2,000-bed Bexar County jail was closed by a federal court for unsatisfactory conditions and severe overcrowding. The cost of bringing the jail into compliance with the court order was estimated at \$12 million. The inmates were moved to a new county jail.

Meanwhile, the state needed 2,000 beds for parole violators being returned to custody. A private firm leased the Bexar County jail to house the state prisoners. The firm financed the repair and remodeling of the jail and paid the county a percentage of its contract revenues from the state. Under county operation, the jail had never been able to achieve state certification. The private firm got the facility certified in 90 days after beginning operations.

The county gets about \$1 million each year in lease payments, and county officials are so pleased with how the jail is run that they house their overflow inmates there now. The private firm charges the county \$23.63 to house an inmate for a day. The new county jail costs \$45 per day per inmate.

Source: National Academy of Public Administration Foundation.

This is particularly notable since inmates have much more recourse to act on complaints against private prison operators than against government correctional officers, wardens, or correctional departments. For one thing, inmates can appeal to the contracting state or local agency: most government corrections agencies keep a contract monitor in the facility. If that doesn't work, they can sue private prison correctional officers and officials much more readily than they can government employees.⁶⁹ The Supreme Court recently

⁶⁷ American Correctional Association, *1997 Directory* (Washington, D.C.: American Correctional Association, 1997), p. xx.

⁶⁸ Camp and Camp, *Corrections Yearbook*, p. 219.

⁶⁹ Ammons et al., "Option of Prison Privatization," p. 14; Susan L. Kay, "The Implications of Prison Privatization on the Conduct of Prisoner Litigation Under 42 U.S.C. Section 1983," *Vanderbilt Law Review*, vol. 40 (1987): 871–88; Charles W. Thomas, "Prisoners' Rights and Correctional Privatization: A Legal and Ethical Analysis," *Business and Professional Ethics Journal*, vol. 10, no. 1 (1991): 3–45; Charles W. Thomas, "Resolving the Problems of Qualified Immunity for Private Defendants in Section 1983 and *Bivens* Damage Suits," *Louisiana Law Review*, vol. 53, no. 2 (1992): 449–93; and David N. Wecht, "Breaking the Code of Deference: Judicial Review of Private Prisons," *Yale Law Journal*, vol. 96 (1987): 815–37.

confirmed the widely held belief that private correctional officers do not have the “limited immunity” from lawsuits that government officials enjoy.⁷⁰ So, while prisoners in effect have more rights and recourse to sue in private prisons, they do so less often, per capita, than they do in government prisons. And private prison firms pay for insurance against such lawsuits, so they have extra incentives to train their staff to stay within legal bounds in managing prisoners.

D. Contract Termination

Since the first modern private prison opened in 1985, virtually every contract up for renewal has been renewed with the original firm or, in a few cases, with a competing firm. There have been only a handful of contract terminations. For example, the state of Montana was unable to resolve differences with the private firm housing several hundred of its prisoners. When the state decided it was not getting what it had contracted for, it quickly found a new company to take its prisoners and terminated the original contract.⁷¹ Once again, the pressure that competition exerts works to the public benefit. The threat of contract termination is a potent one for public officials to wield. A private firm that has had a contract terminated for poor performance will have great difficulty getting any more business when there are other competent firms waiting in the wings. No such threat is available for public officials to wield against their own correctional departments.

E. Conclusion

A simple story highlights the ability of private operators to turn around a facility that seemed to be hopelessly mired in incidents, court orders, and lawsuits. For years, a jail in Bay County, Florida, was a basket case. The facility was relatively new but falling apart rapidly. State inspectors cited the facility for over 75 violations and rated it one of the state's worst. Yet nothing seemed to change. Then, in 1985, the jail became one of the first facilities in the nation contracted to a private operator. Within three years, the private firm turned the jail around, obtaining ACA accreditation and saving the county hundreds of thousands of dollars.⁷²

As with cost savings, comparative studies and the experience of public officials with existing private prisons support the conclusion that private prisons offer at least the quality that government prisons do. Add to that the pressure to excel that we know competition puts on private prisons, their success at getting accredited by the ACA, and their greater vulnerability to legal action by prisoners, and the evidence is overwhelming that private prisons provide quality services.

⁷⁰ The case is *Richardson v. McKnight* (U.S. 96-318). Government officials have “limited immunity” from lawsuits—they cannot be sued if they believe their behavior is legal. Private prison officials have never assumed they had such immunity, and most firms insure against prisoner lawsuits.

⁷¹ Kathleen McLaughlin, “What the Market Will Bare,” *Missoulian*, November 9, 1997, p. A1. Contracts were also terminated in South Carolina and Georgia when public officials became unhappy with the service received, and in both cases they simply contracted with another firm.

⁷² Logan, *Private Prisons*, pp. 29–30, 129.

Public Officials Convert

Florida State Rep. Dick Locke

Despite the considerable savings private operation brought to the two jails in Bay County, Florida, the sheriff complained that the jails had been made too comfortable. He was particularly offended that the jails had become model facilities, with people coming from all over the world to look at them.

Soon after the privatization, Florida state representative Dick Locke responded to appeals from national and state sheriffs' associations and introduced a bill in the state legislature to outlaw all private prisons and jails in Florida. But when Rep. Locke visited a Bay County private facility, he declared it to be "the cleanest jail I've ever been in" and one of the best operated. He quietly withdrew the bill to prohibit private correctional facilities.

Delaware Co. Councilmember Wally Nunn

In 1996 Delaware County, Pennsylvania, decided to hire a private firm to run its 1,500-bed jail. County Council member Wally Nunn wound up spearheading the privatization. "I'm a strong law and order guy," he says. "I came into this not caring if the prison cells consisted of holes in the ground. But after visiting a privately run prison and talking with the facility's management, I came to understand that a well-managed facility which takes into account keeping prisoners in a relatively good mood will in the end save taxpayers dollars."

Source: Randall Fitzgerald, *When Government Goes Private: Successful Alternatives to Public Services* (New York: Universe Books, 1988), p. 111; and Interview with William Eggers, Reason Foundation, May 1996.

Part 5

Frequently Asked Questions About Private Prisons

The biggest questions about private prisons tend to be about cost savings and quality, but other serious questions also surface often. The answers to these questions should help policy makers determine whether private prisons should be part of their correctional toolbox.⁷³

Are private prisons ethical? Some people are concerned that “prisons for profit” are ethically inappropriate; they believe that a firm with a financial motive should not be put in control of prisoners' lives. But to an inmate who has had his freedom taken away, it makes little difference who guards his cell, a government or a private employee. Contracting with a private firm to run a prison does not relieve government officials of the ethical and legal responsibility to ensure proper treatment. They may achieve this with a properly run correctional department or through a well-written and well-monitored contract with a private firm. And, as the evidence indicates, the private operating firm can often ensure better treatment.

Is it legal to put prisoners in private prisons? Federal, state, and local officials have all recognized the need for legal authority to delegate correctional responsibilities to nongovernmental entities. It is possible to define imprisonment as a uniquely governmental function that cannot be delegated. However, this interpretation is rare. The responsibility for *sentencing* individuals to be confined is certainly a purely governmental function, but the mechanics of holding someone in confinement are not.

At the federal level, this is recognized in the language of 18 U.S.C. Sec. 4082(b), which remands all federal offenders to confinement in “any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise.” The Bureau of Prisons has interpreted this to mean there is authority to contract with private prisons.⁷⁴

State and local governments deal with the legal authority to contract for correctional services in their own ways. The 25 states that currently have a private prison in operation or under construction obviously have assured legal authority to do so, as have a number of states that do not yet have a private facility. One very common method state and local governments use to assure legal authority is to pass enabling legislation.

⁷³ This section draws in part upon Logan, *Private Prisons*, (see <http://www.ucc.uconn.edu/~wwwsoci/fraser.html>, for a summary); and Ira P. Robbins, “Privatization of Corrections: Defining the Issues,” *Vanderbilt Law Review*, vol. 40, no. 4 (1987): 813–28.

⁷⁴ Brakel, “Privatization and Corrections,” p. 13.

Others seek a determination by the state attorney general that there is no law forbidding contracts for private prisons.

Can private correctional officers use deadly force? Can they manage riots? If private firms are managing prisons of every security level, then use of deadly force is bound to come up. Common law allows private citizens to use deadly force in self-defense, defense of another, or to prevent the escape of a felon. Presumably, Supreme Court limitations on use of deadly force by police would apply to civilians as well: it is justified only if it is necessary to prevent escape and there is probable cause to believe the felon poses a significant threat of death or serious injury to someone.⁷⁵ Contract terms or state legislation often prescribe more specific guidelines on use of force.⁷⁶

There are concerns about private prisons' ability to bring to bear the force or manpower to quell a riot. There have been only a few riots in private prisons, and most were dealt with appropriately. But in at least one infamous case, at an INS facility in Elizabeth, New Jersey, the private operator was unable to cope with an uprising; local authorities moved in, and the contract was terminated. Since then, public authorities have been more careful to assure that contracts require private prisons to maintain enough personnel, with sufficient training, to manage disturbances. Ultimately, though, both government and private prisons rely on help from outside law enforcement to quell large riots. The difference is that private prisons may be asked to defray some or all of the costs of such aid.

How can we be sure private prisons do not violate prisoners' rights? Critics of private prisons legitimately wonder who will watch the watchmen. The government remains responsible for ensuring that prisoners' rights are protected even if they send them to a private prison. Exploiting or abusing prisoners can occur in both government and private prisons. We hear terrible stories all too frequently: of "gladiator" fights between inmates orchestrated by correctional officers, sexual assaults by correctional officers, and other individual and systematic abuses. Our goal should be to prevent this in any institutional setting.

Arguably, abuse and violations of rights should be easier to prevent in private prisons than in government prisons. Due process is not only implicit in the law of the land; it is usually explicit in private prison contracts.⁷⁷ Prisoners have more legal options against private prison officials than against government officials. Private prisons are monitored by state inspectors, and the state is liable for abuses committed by employees of the private firm, so they have an incentive to monitor their conduct.⁷⁸ Government correctional departments police themselves, with obvious conflict of interest.

In addition, private prisons offer public officials two powerful tools to ensure good conduct. First, a well-written, performance-based contract will reward the private firm for providing the kind of care public officials require.⁷⁹ Tying compensation to measurable outcomes in public safety and prisoner treatment puts

⁷⁵ Logan, *Private Prisons*, pp. 172–4.

⁷⁶ Concern about use of force in private prisons recently prompted the Texas government to propose statewide guidelines on use of force, only to withdraw in the face of intense opposition from *sheriffs and government correctional officers* (James Herrington, "Commission Must Curb Inmate Beatings," *Dallas Morning News*, January 5, 1998, p. 11A).

⁷⁷ Logan, *Private Prisons*, p. 64.

⁷⁸ Robert H. Chaires and Susan A. Lenz, "Some Legal Considerations in Prison Privatization," in *Privatization and the Provision of Correctional Services: Context and Consequences*, edited by G. Larry Mays and Tara Grey (Cincinnati: Academy of Criminal Justice Sciences/Anderson Publishing, 1996), pp. 44–45; Gold, "Privatization of Prisons," pp. 379–82.

⁷⁹ See William D. Eggers, "Performance-Based Contracting: Designing State-of-the-Art Contract Administration and Monitoring Systems," Reason Public Policy Institute How-to Guide No. 17, 1997.

the private operating firm in the business of serving the public interest. Second, private firms find that mistreating inmates only creates resentment and hostility, which makes managing the prison more difficult and costly. They find that a softer touch can make long-run management more effective, such as in Florida, where private prisons' management style has led to much lower levels of violence than in the state-run prisons.⁸⁰ A number of studies have shown similar comparisons in other states.⁸¹

Do public officials have less control over private prisons than over government prisons? No. Contracts with private prisons give public officials a great deal of control. Elected officials control government prisons through budgets, legislative requirements, and their power to appoint heads of correctional departments. With a private prison, public officials have these same tools of control, and more. The contract process lets them control the price paid for services and determine who is going to run the prison. And legislation regarding correctional policies can be applied to private prisons as well. In addition, contracts provide for termination for failure to perform, while no such measure can be used with a government prison. Finally, contracts with private prisons introduce an additional level of accountability through the monitoring process. Government corrections departments are largely self-policing, while private prisons are continuously monitored by an outside agency to assure compliance with the law and the terms of the contract.

Of course, this implies a greater responsibility on the part of public officials. If they enter into incomplete contracts, fail to monitor compliance, or allow contracts to become noncompetitive, then a private firm may take advantage. The history of private prisons is not without blemishes, and failure by public officials to practice due diligence can create problems. However, experience clearly shows that well-written contracts, proper monitoring, and a competitive industry can ensure successful public-private partnerships—where both sides get what they want from the relationship.

Do private correctional officers receive lower-quality training than government correctional officers? This is usually not the case. Many states require by law or in contracts that all staff be trained to the same level as government staff.⁸² Moreover, most contracts now stipulate adherence to ACA standards, which include training standards more stringent than those of many correctional departments.⁸³ Many private firms set very high training standards. The largest firm in the industry requires 160 hours of training for its correctional officers, while the ACA standard requires only 120 hours. Other firms have established innovative training programs in partnership with state universities, as well as specialized team training for disturbance control and other emergencies. Evidence from the United Kingdom paints a similar picture. There, private firms must train their staff to the government's training syllabus, and private prison staff measure up very well to government staff.⁸⁴

What if a private prison has a strike, goes bankrupt, or fails to meet contract terms? Some public officials may ask what their recourse would be if a private firm operating their jail or prison suddenly stopped operating due to a strike or bankruptcy. They may also ask how they could fire a firm for failure to perform. Who would run the prison in such circumstances? Once again, the key to protecting the public interest lies in the terms of the contract.

⁸⁰ National Public Radio, *All Things Considered*, report on private prisons, October 18, 1997.

⁸¹ See Archambeault and Deis, "Cost Effectiveness Comparison"; Thomas, "Comparing the Cost"; and Logan, *Well Kept*.

⁸² Harding, *Private Prisons*, p. 85.

⁸³ See American Correctional Association, *Standards for Adult Correctional Institutions*, 3rd ed. (Washington, D.C.: American Correctional Association, 1990), standards 3-4053 and 3-4081.

⁸⁴ James et al., *Privatizing Prisons*, pp. 178–79.

In more than 10 years of modern private prison operations, there has never been a strike at a private facility. Strikes do not occur at government prisons either, but correctional officers' unions do engage in “job actions.”⁸⁵ In every state save Hawaii, it is illegal for correctional officers to strike.⁸⁶ It seems likely that those laws would apply to private correctional officers as well as government ones, with the government asserting a right to step in as it did with air traffic controllers. In any event, contracts should ensure that the firm is financially liable for costs incurred by the government if private correctional officers do strike.

Bankruptcy is another event that has not occurred with a private prison operator. Should it happen, the law allows officials to require sufficient notice from the private operating firm and to terminate the contract.⁸⁷ Contract clauses to deal with bankruptcy contingencies are standard, with private operators required to have insurance or a performance bond. And in the event of a bankruptcy, a competing firm can take over fairly easily, likely needing only management staff—most correctional officers are hired locally and will probably be happy to hire on to the new firm rather than look for a new career.

Competition will protect the public from problems if a contract has to be terminated for cause. For one thing, competition puts tremendous pressure on firms not to violate the terms of their contracts in the first place. A breached contract would mean great difficulty getting any future contracts. Also, competition ensures that there are a number of firms waiting in the wings to step in and take over if asked. If a private firm can design, build, and open a facility in just 90 days (see p. X), then one can take over an existing facility on much shorter notice.

Will private prisons seek to increase incarceration and to keep inmates in prison longer? Critics of private prisons raise the specter of an evil “prison-industrial complex,” lobbying for “tough on crime” laws and creating more prisoners with longer sentences and little chance of parole.⁸⁸

There is little evidence of this kind of lobbying. Do private garbage collectors lobby against recycling? Do day-care centers lobby against birth control?⁸⁹ In fact, unions representing government prison correctional officers give vastly larger sums to politicians than do private prison operating companies. In California alone, correctional officers gave \$1 million to Pete Wilson when he ran for governor in 1990, and another \$500,000 to his 1994 reelection campaign.⁹⁰ In contrast, the two largest private prison firms' total political contributions nationwide in 1995–96 was less than \$150,000.⁹¹

⁸⁵ Logan, *Private Prisons*, p. 177.

⁸⁶ *Ibid.*, p. 177.

⁸⁷ Cathy E. Holley, “Privatization of Corrections: Is the State Out on a Limb When the Company Goes Bankrupt?” *Vanderbilt Law Review*, vol. 41 (1988): 317–41.

⁸⁸ For example, see Eric Lotke, “The Prison-Industrial Complex,” *Multinational Monitor*, November 1996, pp. 18–21; John DiIulio, *No Escape* (New York: Basic Books, 1991); Michael Janus, “Bars on the Iron Triangle: Public Policy Issues in the Privatization of Corrections,” in *Privatizing Correctional Institutions*, edited by Gary W. Bowman, Simon Hakim, and Paul Seidenstat (New Brunswick, N.J.: Transaction, 1993), p. 82; and JusticeNet at www.igc.apc.org/justice/prisons/crisis/.

⁸⁹ Joel, “Privatization of Secure Adult Prisons,” p.70.

⁹⁰ Noel Brinkerhoff, “Guardians of the Guards,” *California Journal*, March 1997, p. 46; Marc Lifschier, “Governor and Union Split on Fund Raising Issue,” *Wall Street Journal*, October 29, 1997, p. CA1; and “Guard Union Now Key Political Influence,” *Press Enterprise*, at www.pe.net/prison/html/union_guards.html.

⁹¹ Kristin Bloomer, “America’s Newest Growth Industry,” *In These Times*, March 17, 1997, p. 17.

It is unlikely that private prison firms are going to sway policy in favor of greater incarceration when such policies are obviously already very popular with the general population. Moreover, prisons these days are so crowded that the private operating firms almost always find their prisons full as it is.

This is not to say that private firms are not capable of the kind of lobbying critics fear. In the past, large industries have used their influence to sway the political process against the public interest. But the private prison industry is not large. It manages only 3 to 4 percent of the nation's prison population.

Concerns about private firms acting to prevent inmates from getting parole are equally unfounded. For one thing, revoking “good time” is a punishment used in only about 10 percent of cases.⁹² The government retains control of parole decisions and the authority to take away good time, which accrues automatically unless revoked by proper authorities.⁹³ It is true that the authorities have to rely to some extent on the information provided by the prison regarding an inmate's behavior. However, competent monitoring and inspections, as well as the threat of inmate lawsuits, minimize any temptation by private firms to abuse their power. Denying earned time would create costly hostility between inmates and staff, and for little gain: there are usually more inmates entering the system.

Meanwhile, there are ways to mitigate the potential problem before it begins. One method is for contracts to move toward a performance basis, basing a firm's payments on performance measures and not just on keeping a full house. We also must recognize that even if we decide as a society to put more effort into dealing with criminals by means other than incarceration, there will continue to be a need for some prisons, and the private sector can run them well and at lower cost.

Will there be access to information for the public with private prisons? Watchdog groups, family members, and others are sometimes concerned about access to information about conduct within private prisons. Of course, this is not a problem unique to private operations. Recent scandals regarding the FBI crime lab and IRS file tampering show that abuse of information can occur in government agencies as well. Private prisons must disclose any information not of a proprietary nature if they are operating on government contract, and proprietary information is of little public interest. Again, contract terms can specify conditions for inspections or audits by outside groups or state agencies to ensure that relevant information is freely available to the public. Likewise, rules regarding policy for visits with prisoners can be specified in the contract. Victoria, Australia, after experiencing problems with public access and information in private prisons, is experimenting with new techniques to improve matters, including establishing an Official Visit Program, an ombudsman, and stronger freedom-of-information rules.⁹⁴

How are private prisons regulated? The contract provides the primary regulatory oversight of private prisons. It can stipulate conditions on crowding, handling escapes, prisoner complaints, incidents, and so on. Moreover, performance in private prisons is monitored by an outside party; the same cannot be said for government prisons.

T. Don Hutto, a former corrections commissioner in two states and now an executive for a private prison company, observes: “As a director of corrections, I did a better job of monitoring and evaluating private-

⁹² Logan, *Private Prisons*, p. 67.

⁹³ Harding, *Private Prisons*, pp. 89–97.

⁹⁴ Victoria Department of Justice, “Innovations in the Victorian Corrections System,” 1997.

sector contracts than I did of monitoring and evaluating my own operations. Through the contracting process, government can be more objective about the goals it wants to reach.”⁹⁵

In addition, some states have recently passed legislation requiring private prisons to inform local officials about prisoners brought in from other jurisdictions, to notify them of escapes, and to compensate local law enforcement agencies for the cost of recapturing escapees.

What prevents a private prison from making “lowball” initial bids and then raising prices later? Good contracting practices and competition can easily prevent this kind of problem. The government has little incentive to give in to price increases that are not specified in the contract—especially when there are plenty of other firms willing to take over for the original price. The more competitive the market, the more recourse the government has in contract terms. It is incumbent upon public officials to look after the public interest by crafting contracts that provide incentives to lower costs, rather than raise them.

Have private prisons been “skimming the cream”—taking only low-security and less-expensive inmates? Private prisons do not just hold minimum-security prisoners. There are currently three maximum-security, 16 all-level, and 53 medium-security private facilities, as well as many minimum-security private facilities.⁹⁶ They are not just taking the easy inmates.

For example, contracts typically do not allow private firms to refuse to take sick prisoners.⁹⁷ But the higher costs of ill inmates are passed on to the public in the form of reduced savings. Older inmates are also more expensive to care for, and the private prison industry is developing a niche specialty providing facilities just for elderly inmates. They charge more than for younger inmates but still cost considerably less than keeping the older inmates in government prisons. Similarly, in 1997 Mississippi awarded the nation's first contract for a private firm to run a mental-health correctional facility.

Is prison privatization unfair to government correctional employees? Contracting with private prisons has not led to large-scale firing of government employees.⁹⁸ Despite this fact, correctional employees' unions are the most vocal and organized opponents of privatization. Since they are usually well-organized, well-funded, and quite vocal, it is difficult for policy makers to put their concerns in perspective.

There are two reasons why the unions' concerns should not dominate the policy debate. First, while we can all sympathize with workers who do not want to lose their jobs, correctional policy should be aimed at providing the appropriate prisons and programs with as few taxpayer dollars as possible. This has to take precedence over the desire of government employees to keep their jobs.

When public servants put their own interests ahead of the public interest, bad policy can result. Government correctional officers have threatened to burn down prisons if they are privatized,⁹⁹ and the Corrections and Criminal Justice Coalition, a group speaking for government correctional officers nationwide, is advocating that federal funds be denied to correctional departments pursuing privatization projects.

⁹⁵ Logan, *Private Prisons*, p. 208.

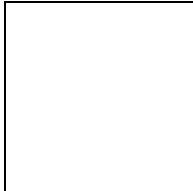
⁹⁶ Thomas, “Private Adult Correctional Facility Census, 1997.”

⁹⁷ Harding, *Private Prisons*, p. 11.

⁹⁸ At some point, privatization may mean a reduction in government jobs: for example, when Tennessee completes its plans to privatize two-thirds of its entire prison system.

⁹⁹ Jennifer Gonnerman, “On Guard: Correction Officers Fight Privatization by Storming Conference,” *Village Voice*, September 30, 1997, p. 53.

This leads us to the second point—there should not be such hostility. Privatization need not mean layoffs. On average, privatization leads to only 7 percent of employees being laid off.¹⁰⁰ (See Figure 3.) A number of techniques have been developed as part of privatization programs for managing the transition of displaced government employees in as fair a way as possible. These include: requiring contractors to hire displaced workers (but not requiring them to replace workers who resign), offering early retirement, and shifting workers to other vacancies within the system.¹⁰¹



Neither should privatization mean a dramatic loss of benefits. In fact, it can mean an increase. Employees should look at their own retirement plans and compare them to private plans before they decide. A typical government retirement plan deducts 3 to 5 percent of the employee's earnings each year to pay into a pension plan, requires 10 years of employment in order to vest, and pays \$3,000 to \$7,000 a year in benefits after age 55 (or from the date of retirement if the employee serves 25 years or more).

The typical retirement plan of a private prison firm is an employee stock ownership plan (ESOP) in which employees may buy as many shares in the company as they want to each year, and the company will match them. The shares are immediately owned by the employees, who may sell or reinvest the shares as they choose. There is no wait to vest, so employees who retire early or move to other careers get all of their accrued benefits, regardless of length of employment. Suppose an employee invested 5 percent of each paycheck in the ESOP and at the end of each year sold some of the stock and rolled it into a medium-risk mutual fund. Assuming an average annual return on the stock and the mutual fund of 15 percent, after just 10 years of employment, the employee would be able to draw about \$3,200 a year from age 55 to age 72. After 25 years of employment, the employee would have an income of \$38,538 a year from age 55 to age 72.

¹⁰⁰ National Commission on Employment Policy, “The Long-Term Employment Implications of Privatization,” U.S. Department of Labor, Washington, D.C., 1989.

¹⁰¹ A comprehensive survey is provided in John O’Leary and William D. Eggers, “Privatization and Public Employees: Guidelines for Fair Treatment,” Reason Foundation How-to Guide No. 9, 1993.

Part 6

Conclusion

Federal, state, and local officials across the nation are facing a real crisis in their prisons and jails: too many prisoners and not enough money. Crime rates may be falling, but inmates are on average serving more time, so the problem is only going to get worse.

Private prisons can be a big part of the answer to this problem. The evidence is very strong that private prisons are comparable to government prisons in quality, and significantly less costly. State and local officials in 25 states, as well as several federal agencies, have turned to private prison operators to cope with growing prison needs, and with great success. Although private prisons may not be a panacea, they are certainly part of the answer.

P a r t 7

About the Author

Adrian T. Moore is the Director of Economic Studies at the Reason Public Policy Institute, where he does research on public safety and other policy issues. He is an analyst for the RPPI Privatization Center, and he edits its monthly newsletter, *Privatization Watch*, and the influential *Annual Privatization Report*. He has written extensively on public policy and privatization, including co-authoring *Curb Rights: A Foundation for Free Enterprise in Urban Transit* and writing about private prisons in *The American Enterprise* and *Correctional Building News*.

Acknowledgments

Iwould like to thank George Mitchell, whose early study on the potential of private prisons for Wisconsin was helpful in starting my own research, as were his comments on a draft of this study. Also, I would like to thank the many public- and private-sector corrections officials, academics, and others who assisted my research and/or provided helpful comments on early drafts of this study, including Charles Thomas (first and foremost), Carl Nink, Mark Hodges, Russ Boraas, Gwynnae Byrd, John Rees, George Zoley, Diane McClure, Bob Babbage, Durwood Sigrest, Larry Smith, Martin Gold, Richard Harding, and Alex Singal. However, responsibility for the content of this study rests solely upon me.

**Coming Soon: Contracting for Correctional Services:
A "How-to" Guide**

Part 8

Appendix: Resources

Experts

Russ Boraas

Private Prison Administrator
Virginia Department of Corrections
6900 Atmore Dr., Room 2083
Richmond, VA 23225
(804) 674-3300 (fax 3587)

Martin Gold

Brown & Wood
One World Trade Center
New York, NY 10048
(212) 839-5300 (fax 5599)

James Macdonald

First Analysis Corporation
Sears Tower, Suite 9500
233 South Wacker Dr.
Chicago, IL 60606
(312) 258-1400 (fax 0334)

Adrian Moore

Director of Economic Studies
Reason Public Policy Institute
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
(310) 391-2245 (fax 4395)

Brian Ruttenbur

SunTrust Equitable Securities
800 Nashville City Center
Nashville, TN 37219
(615) 780-4185 (fax 9400)

Gwynnae L. Byrd

Principal Consultant, Joint Committee on Prison
Construction and Operations
California State Senate
1020 N St., Room 586
Sacramento, CA 95814
(916) 324-6175 (fax 6177)

Charles Logan

Department of Sociology
University of Connecticut
Storrs, CT 06269
(860) 486-3477

George Mitchell

Partner
The Mitchell Company
2025 N. Summit Ave.
Milwaukee WI 53202
(414) 765-0443 (fax 0220)

Carl Nink

Assistant Director, Prison Operations
Support Services Division
Arizona Department of Corrections
1601 W. Jefferson St.
Phoenix, AZ 85007
(602) 542-3894 (fax 1728)

Alex Singal

Research Analyst
Legg Mason Equity Research
1735 Market St., Suite 1100
Philadelphia, PA 19103
(215) 496-8375 (fax 8378)

Charles Thomas
 Director, Private Corrections Project
 University of Florida
 P.O. Box 115950
 Gainesville, FL 32611
 (352) 392-1025 (fax 3974)

Tim Wilson
 Head of Contracts
 HM Prison Service
 Horseferry House, Denn Rule St.
 London, England SW1P 2AW
 (44)-1712-178584 (fax 178171)

Service Providers

Alternative Programs
 425 Golden State Ave.
 Bakersfield, CA 93301
 (805) 326-0411 (fax 1168)

Bobby Ross Group
 1021 Ranch Road 620 S., Suite D
 Austin, TX 78734
 (512) 263-9480 (fax 9481)

Cornell Corrections
 4801 Woodway, Suite 400W
 Houston, TX 77056
 (713) 623-0790 (fax 2217)

Correctional Systems
 209 Camaro Way
 San Marcos, TX 78666
 (512) 396-7583 (fax 353-2910)

Group 4 Prison Services
 Farncombe House, Broadway
 Worcestershire, England WR12 7LJ
 (44) 1-38685-8585

Management and Training Corporation
 P.O. Box 9935
 Ogden, UT 84403
 (801) 626-2000 (fax 2685)

Securicor New Century
 9609 Gayton Road, Suite 100
 Richmond, VA 23233
 (804) 754-1100 (fax 741-9515)

Wackenhut Corrections
 P.O. Box 10963
 Palm Beach Gardens, FL 33410
 (561) 622-5656 (fax 6659)

Avalon Community Services
 13401 Railway Dr.
 Oklahoma City, OK 73157
 (405) 752-8802 (fax 8552)

Capital Correctional Resources
 P.O. Box 10681
 Jackson, MS 39289
 (601) 922-4333 (fax 4371)

Correctional Services Corporation
 1819 Main St., Suite 1000
 Sarasota, FL 34236
 (941) 953-9199 (fax 9198)

Corrections Corporation of America
 10 Burton Hills Blvd.
 Nashville, TN 37215
 (615) 263-3000 (fax 3140)

GRW Corporation
 P.O. Box 1403
 Brentwood, TN 37204
 (615) 373-5703 (fax 0224)

Maranatha Production Company
 4540 California Ave., Suite 510
 Bakersfield, CA 93309
 (805) 633-9196 (fax 9198)

U.S. Corrections Corporation
 2500 7th Street Rd
 Louisville, KY 40208
 (502) 635-5444 (fax 6002)

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