PRIVATE PRISONS:
Quality Corrections at a Lower Cost

BY ADRIAN T. MOORE

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 all 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.

Private prisons save money—10 to 15 percent average savings on operations costs, based on fourteen independent cost comparison studies.

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.

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.)

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.

¹ Camille Camp and George Camp, The Corrections Yearbook, 1997 (South Salem, N.Y.: Criminal Justice Institute, 1997), p. 11.
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. Nineteen state prison systems are 25 percent or more over capacity, and at least 10 more state systems, and federal prison systems, 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

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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 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?

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 or medical care, and juvenile and community correction centers.
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

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5 Camp and Camp, *Corrections Yearbook*, p. 69.
percent being the most common savings estimate. Independent estimates of the cost savings show a similar range of 15 to 25 percent. 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. 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.

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. 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.

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6 Industry annual reports; Alex Singal and Raymond Reed, “An Overview of the Private Corrections Industry,” Legg Mason Equity Research, 1997, p. 16.
10 For example, see the box on p. 14. 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 1997, 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 and operate 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 provides an accreditation program, which can assist officials to monitor the quality of contract 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.

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12 Ibid., p. 9; and Mahtesian, “Dungeons for Dollars,” p. 82.
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 post-release 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.

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**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.\(^{9}\) 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.


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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), 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 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 15 firms operating adult correctional facilities in the United States. Two large firms—Corrections Corporation of America and Wackenhut Corrections Corporation—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 a number of 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: Two Types of Private Management**

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

By making necessary 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.

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Table 3: Comparative Studies of Private Management Cost Savings

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<tr>
<th>Study Description</th>
<th>Estimated Savings</th>
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<tr>
<td>“Certification of Correctional Facility Actual Per Diem Costs Pursuant to Section 957.07, Florida Statutes,” Florida Office of the Auditor General, November 1993.</td>
<td>8% to 10%</td>
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<tr>
<td>“Comparative Evaluation of Privately-managed CCA Prison and State-managed Prototypical Prisons,” Select Oversight Committee on Corrections, Tennessee Legislature, 1995.</td>
<td>0%</td>
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<tr>
<td>“Department of Corrections Privatization Feasibility Study,” Legislative Budget Committee, Olympia, Washington, January 1996.</td>
<td>0% to 2%</td>
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<tr>
<td>“Costs to Incarcerate,” Kentucky Department of Corrections, FY 1996–</td>
<td>&gt; 12%</td>
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### Table 3: Comparative Studies of Private Management Cost Savings

<table>
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<tr>
<th>Study Description</th>
<th>Findings</th>
<th>Cost Savings</th>
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<tr>
<td>“Comparing the Cost and Performance of Public and Private Prisons in Arizona,” by Charles W. Thomas, Arizona Joint Legislative Committee, August 1997.</td>
<td>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.</td>
<td>17%</td>
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<td>“The Pros of Private Prisons,” by Monte Wynder, The Australian Accountant, November 1993, pp. 19–22. The article was financed by a research grant from the Australian Society of Certified Public Accountants.</td>
<td>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.</td>
<td>23%</td>
</tr>
<tr>
<td>“Economic and Qualitative Aspects of Prison Privatisation in Queensland (Australia),” by Allan Browne, in Private Prisons and Police: Recent Australian Trends (Annandale, New South Wales: Pluto Press, 1994).</td>
<td>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.</td>
<td>11% to 28%</td>
</tr>
<tr>
<td>Home Office Economic Unit, U.K., 1996</td>
<td>Audited private contract prison costs compared to costs at similar government prisons.</td>
<td>11% to 17%</td>
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<tr>
<td>HM Prison Service Research Report, no. 1, U.K., June 1996.</td>
<td>This report, commissioned from Coopers and Lybrand, compared 1994–95 costs, finding “significant savings . . . in the order of 13%–22%.”</td>
<td>13% to 22%</td>
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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.

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**Private firms are developing efficient and effective post-release programs aimed at reducing recidivism.**

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While not able to directly compare identical facilities, the Arizona study\textsuperscript{20} 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).\textsuperscript{21} The GAO examined five studies comparing government and private prison costs and concluded that it “could 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.

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\textbf{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.}

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The GAO report has been widely criticized for a number of shortcomings,\textsuperscript{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

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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.”\(^\text{23}\) 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”\(^\text{24}\) (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 report\(^\text{25}\) 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.\(^\text{26}\) The GAO also included a report that compared community corrections facilities in California.\(^\text{27}\) 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

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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.”

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? Tennessee 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. 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.

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

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28 Logan, testimony.
30 Carl Nink, Assistant Director, Prison Operations, Arizona Department of Corrections, in an interview with the author, December 1997.
efficiencies—in a word, innovation. 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, 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.

- Reducing administrative levels. Private operating firms tend to have fewer administrative personnel than the often bureaucratic structures of government correctional departments. 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.

- 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. Overtime also increases when employees call in sick. In the public sector, sick time is considered an entitlement, not a privilege, and it is almost rebellious not to use it. With considerable success, private firms use incentives to reduce sick time and the consequent overtime expenditures. While overtime helps raise the take-home pay of existing employees, it

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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.


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.
can significantly raise operating costs. By using full staffing and more efficient personnel management, private prison firms use less overtime.  

Exercise 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. 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.

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. 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.

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. 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. Several studies have shown that privately operated facilities tend to have fewer incidents than comparable government facilities. In Florida, “get tough” policies in the state-run prisons have been accompanied by a 62 percent increase in inmate

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38 Logan, Private Prisons, p. 82; Lazere, “Privatizing Prisons,” p. 45.
39 Logan, Private Prisons, pp. 82–83.
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. 36 for more on benefits.)
44 Logan, Private Prisons, p. 55.
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.\textsuperscript{46}

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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{46} National Public Radio, \textit{All Things Considered}, report on private prisons, October 18, 1997.
\textsuperscript{47} Joel, “Privatization of Secure Adult Prisons,” p. 64.
\textsuperscript{49} Joel, “Privatization of Secure Adult Prisons,” p. 64.
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. 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.

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 firms 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 and 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 that are 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 adopting 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.

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50 Select Oversight Committee, “Comparative Evaluation.”

• 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 management practices. The next section considers whether these savings are accompanied by adequate quality.
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. 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 Rico 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.

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Any sweeping statements about the quality of either government or private prisons would be on thin ice. Experiments with benchmarking, as in Australia, should eventually help us move to firmer ground.

**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.


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. 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.

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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 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.

Key Fact: Comparative Recidivism Rates in Florida

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<td>17 percent (1 percent for violent crimes)</td>
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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.

Meanwhile, a sensible approach to comparing private and government prisons 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, 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.

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.

57 Logan, *Well Kept*.
58 Archambeault and Deis, “Cost Effectiveness Comparison,” sec. 2.
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 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

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60 Thomas, “Comparing the Cost.”
63 Select Oversight Committee, “Comparative Evaluation.”
that they rate private prisons better than government-run ones, especially inmates who have been in both types of prison (see box). As one private prison 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.”

What the Inmates Say

♦ A 1988 survey of inmates showed that inmates rated conditions and programs in private prisons higher than in government prisons, especially in terms of cleanliness, staff competence, work assignments, and requests and grievances. More significant, those inmates who had been in both public and private prisons rated private prisons better six to one.*

♦ A similar survey in 1989 found nearly identical results: inmates rated private prisons superior to government ones overall, especially with respect to health care, victimization and violence, staff use of force, and counseling.**


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—in the spring of 1997, the Gasden Correctional Facility earned an ACA rating of 99.8 percent, the highest rating ever given a Florida correctional facility. And last fall, private firms got an additional incentive to pursue and maintain ACA accreditation—a large U.S. underwriter began offering a 10 percent discount on liability insurance. In many cases the savings on premiums are greater than the cost of achieving compliance with ACA standards.

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.


C. Court Orders and Prisoner Litigation

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. 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.

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 achieve compliance with a 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.

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

Fewer lawsuits in private prison 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 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,

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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.
it quickly found a new company to take its prisoners and terminated the original contract.\textsuperscript{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.

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.”**


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.\textsuperscript{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

\textsuperscript{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.

\textsuperscript{72} Logan, *Private Prisons*, pp. 29–30, 129.
ACA, and their greater vulnerability to legal action by prisoners, and the evidence is overwhelming that private prisons provide quality services.
Frequently Asked Questions About Private Prisons

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

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.

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.

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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 in private prisons.\(^{76}\)

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

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\(^{76}\) 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.
employees of the private firm, so they have an incentive to monitor their conduct.\textsuperscript{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.\textsuperscript{79} Tying compensation to measurable outcomes in public safety and prisoner treatment puts 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.\textsuperscript{80} A number of studies have shown similar comparisons in other states.\textsuperscript{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


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

\textsuperscript{81} See Archambeault and Deis, “Cost Effectiveness Comparison”; Thomas, “Comparing the Cost”; and Logan, *Well Kept*. 
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. Moreover, most contracts now stipulate adherence to ACA standards, which include training standards more stringent than those of many correctional departments. 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.

Contracts with private prisons introduce an additional level of accountability through the monitoring process.

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.

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.” In every state save Hawaii, it is illegal for correctional officers to strike. 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. 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

82 Harding, Private Prisons, p. 85.
85 Logan, Private Prisons, p. 177.
86 Ibid., p. 177.
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. 5), 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.  

There is little evidence of this kind of lobbying. Do private garbage collectors lobby against recycling? Do daycare centers lobby against birth control? 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

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89 Joel, “Privatization of Secure Adult Prisons,” p.70.
to his 1994 reelection campaign. In contrast, the two largest private prison firms’ total political contributions nationwide in 1995–96 was less than $150,000.

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 without such effort.

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. The government retains control of parole decisions and the authority to take away good time, which accrues automatically unless revoked by proper authorities. 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.

It is competition that creates efficiency and innovation, because competition punishes inefficiency and inertia.

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


92 Logan, Private Prisons, p. 67.

experimenting with new techniques to improve matters, including establishing an Official Visit Program, an ombudsman, and stronger freedom-of-information rules.\textsuperscript{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-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.”\textsuperscript{95}

**Correctional policy should be aimed at providing the appropriate prisons and programs with as few taxpayer dollars as possible.**

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.\textsuperscript{96} They are not just taking the easy inmates.

For example, contracts typically do not allow private firms to refuse to take sick prisoners.\textsuperscript{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 to provide 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.


\textsuperscript{95} Logan, *Private Prisons*, p. 208.

\textsuperscript{96} Thomas, “Private Adult Correctional Facility Census, 1997.”

\textsuperscript{97} Harding, *Private Prisons*, p. 11.
Is prison privatization unfair to government correctional employees? Contracting with private prisons has not led to large-scale firing of government employees. 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, 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.

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. (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.

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

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


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.

![Figure 3: Employment Status of Affected Government Workers](image)

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, with great success. Although private prisons may not be a panacea, they are certainly part of the answer.
About the Author

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

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

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

CiviGenics  
100 Locke Dr.  
Marlboro, MA 01752  
(800) 525-9479 x122

Cornell Corrections  
4601 Woodway, Suite 400W  
Houston, TX 77056  
(713) 623-0790 (fax 2217)

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

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

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

Group 4 Prison Services  
Farncombe House, Broadway  
Worcestershire, England WR12 7LJ  
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GRW Corporation  
P.O. Box 1403  
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(615) 373-5703 (fax 0224)

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

Maranatha Production Company  
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(805) 633-9196 (fax 9198)

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