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Public-Private Partnerships for Corrections in California: Bridging the Gap Between Crisis and Reform

by Leonard C. Gilroy, Adam B. Summers, Anthony Randazzo and Harris Kenny



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**By Leonard C. Gilroy, Adam B. Summers, Anthony Randazzo and
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Executive Summary

With a correctional system strained by severe overcrowding, a state fiscal crisis and a recent federal order to reduce the prison population by over 40,000 inmates, there are no silver bullet solutions to California's prison crisis. Even if a combination of early releases, home detention of low-risk inmates and changes to sentencing and parole rules could allow the state to achieve compliance with the federal order in the short term, there would still be major capacity needs over the long term, as the state would still be operating at 137% of prison system design capacity. Further, the state's ongoing budget crisis demands immediate attention to reduce the unsustainable costs of existing operations; at over \$47,000, annual spending per inmate in California is currently over 50% higher than the national average.

Public-private partnerships (PPPs) offer a powerful policy option as part of a comprehensive strategy to address California's corrections crisis. Soliciting and implementing PPPs would give policymakers a powerful tool to lower prison operating costs and deliver additional inmate beds to address the severe overcrowding seen today in state prisons.

PPPs provide an effective, cost-saving alternative for governments seeking to address significant capacity needs while taking pressure off their corrections budgets. Studies have consistently shown that privately run correctional facilities typically save a conservative range of 5 to 15% over state-run prisons while offering the same level of security and service and easing overcrowding in state-run prisons. A 2009 survey of 30 state corrections agencies, many of which use privately operated correctional facilities, found that contracted prisons are 28% lower in cost than state-run facilities.

Until Governor Schwarzenegger proclaimed an emergency in corrections in 2006, California had only seen a limited use of PPPs in its corrections system. The state had primarily used PPPs for privately operated community corrections facilities (seven are in operation today) and various contracted services, including education, vocational training and substance abuse treatment. The state did not apply PPPs on a larger scale for contracted prison operations until the governor's proclamation, and the state's first contract in 2006 to house roughly 1,000 inmates in out-of-state, privately operated prisons has been expanded tenfold to cover over 10,000 inmates by 2010. Relocating these inmates to states with lower cost facilities has helped California take necessary steps to address overcrowding and house these inmates at a far lower cost—nearly half—than the state spends on housing inmates in its own in-state facilities. PPPs have already demonstrated, if even to a limited extent thus far, that they are an effective tool California can use to help address its corrections crisis, and the state needs to dramatically expand upon these efforts.

California's corrections costs are significantly higher than those in other states in the region, and more than twice as high as the neighboring states of Arizona and Nevada. These costs are even more excessive when one considers how much the state could save by contracting with corrections management companies to operate its correctional facilities. California's average in-state cost per inmate (calculated by the authors as \$162 per inmate per day) is more than double the amount it spends to house inmates in out-of-state, privately run facilities (the highest contract amount totals \$72 per inmate per day).

Texas, with the second largest state corrections system after California, spends approximately two-thirds less per inmate system-wide (\$162 per inmate per day in California vs. \$42 in Texas). The use of corrections PPPs in Texas has helped keep annual inmate costs relatively stable in recent decades, and state officials estimate that annual cost savings in PPP prisons has ranged between 3% and 15% since 2003, averaging 8.5% annually over that eight-year span.

PPPs in correctional operations would allow the state to rein in excessive personnel costs and take advantage of competition and business-sector incentives to maximize service quality and minimize costs in order to retain or renew contracts. These incentives are largely absent under the existing government monopoly.

Major Potential Savings for California through PPPs

1. Partial Outsourcing

While the large-scale outsourcing of the state's corrections operations may not be politically or practically feasible immediately, California can take an important, immediate step toward reducing its corrections costs by building upon its successful experience transferring inmates to lower-cost facilities out of state. Expanding this strategy by transferring an additional 25,000 low- to medium-security inmates to such facilities—5,000 per year for five years—would result in an estimated

savings of *between \$111 million and \$120 million for the first year of the prisoner transfer plan, and between \$1.7 billion and \$1.8 billion in savings by the end of year five.*

Estimated 5-Year Cost Savings from Transferring Additional Inmates to Out-of-State Facilities					
Year	Year 1	Year 2	Year 3	Year 4	Year 5
Cumulative Number of Prisoners Transferred	5,000	10,000	15,000	20,000	25,000
1-Year Savings	\$111 million - \$120 million	\$222 million - \$240 million	\$333 million - \$360 million	\$444 million - \$480 million	\$555 million - \$600 million
Total Savings	\$111 million - \$120 million	\$333 million - \$360 million	\$666 million - \$720 million	\$1.11 billion - \$1.20 billion	\$1.67 billion - \$1.80 billion

According to industry experts, there is currently not enough excess bed capacity in out-of-state privately operated prisons today to absorb that many prisoners. Increasing the number of transferred prisoners incrementally, however—such as 5,000 per year for five years—would allow time for private corrections management firms to finance, design and build new prison capacity—either through new prisons or expansions of existing facilities out of state—to accommodate the additional inmates. Though the financial markets are still in recovery in the wake of the 2008-2009 recession, it is very likely that if California were to demonstrate strong interest in PPPs to the marketplace, investors would capitalize the development of new prison capacity.

The savings estimates above are based on comparing California’s total costs to house and care for inmates in state-run facilities with private industry’s costs, as well as costs in other state correctional systems. It is difficult, if not impossible, to make more detailed estimates at the service level (such as for facilities maintenance or specific health and mental health services) due to a lack of basic spending and performance data at the CDCR, a problem that has been noted by various experts, including the State Auditor’s Office and the Legislative Analyst’s Office.

Finally, the above savings estimates assume that the state also embarks on an internal streamlining process, so that cost savings are actually realized, not used to cover waste shifted around to other sections of the CDCR’s budget. For example, any efficiency gains achieved through outsourcing or other reforms should be combined with hiring reductions, which could be achieved over time without layoffs by taking advantage of normal attrition rates.

2. Complete Outsourcing

Based on correctional partnership experiences across the nation and the globe, California could reasonably and conservatively expect to realize cost savings of between 5 and 15% from outsourcing its correctional services. Applying this savings range to the state’s current (Fiscal Year 2009-10) corrections operating budget of \$8,233,620,000 yields estimated savings of *between \$412 million and \$1.24 billion per year.* This is mitigated somewhat by the fact that the state already

does some contracting, although this contracting comprises only a small portion of the state's facilities and budget.

The potential savings may be even greater than this. First, California prison guards' salaries and benefits are higher than those of their counterparts in other states, so contracting should realize greater personnel cost savings (particularly from fringe benefits) than in other places.

Second, there is a large discrepancy in CDCR's self-reported average costs per inmate per day and other data the agency has reported on its operational budget and inmate population, suggesting that the state may be underreporting its true per diem costs. California's self-reported average cost per inmate per day is \$133, but the cost calculated by simply dividing the correctional operating budget by the number of inmates is \$162. By contrast, as noted above, the per diem rate received by private firms in recent contracts ranges from \$60 to \$75.

If these rates were applied to the entire California corrections budget, that would represent *savings of 44–55% over the state's self-reported per day costs, or savings of 53–63% over the implied per inmate costs* (operating budget divided by inmate population). While this is a generalized analysis that may not capture every cost borne by the state, even if half of this difference is not realized for one reason or another, that would still represent cost savings in the range of 20 to 30%, which, based on the current CDCR budget, translates to *savings between \$1.65 billion and \$2.47 billion per year*.

3. Facilities Design and Construction Outsourcing

In addition to realizing savings from outsourcing its correctional operations, California could achieve further savings by outsourcing the finance, design and construction of correctional facilities. Private companies can build prisons and jails for considerably less than government agencies. Firms in the industry often contend that they can cut between 10 and 40% off construction costs, with 30% being the most common savings estimate.¹ Independent estimates of the cost savings show a similar range of 15 to 25%.²

There is no single solution to California's prison capacity crisis, and policymakers will need to rely on a variety of short-, mid- and long-term solutions. PPPs can play a vital role in each case.

- In the short term, the state should dramatically expand contracting for out-of-state prison beds, as described above.
- In the near-term, the state should consider opportunities to partner with private corrections firms to finance and build new correctional facilities in other, lower-cost states to house larger swaths of California inmates.
- Over the long-term, the state should partner with private-sector providers to finance and develop most, if not all, new in-state correctional facilities under PPPs, and it should contract out the operations of existing facilities wherever possible.

However, numerous statutory obstacles prevent the private sector development and operation of in-state, adult secure prisons, and to effectuate the recommendations made above, policymakers will need to pass legislation granting such authority, waive current laws obstructing their development, or both. This is why California should initially send inmates out of state where such enabling legislation currently exists and private corrections management companies are able to build and operate prisons that offer bed space at lower costs.

Cost savings from outsourcing prison construction or other services related to infrastructure are inherently difficult to quantify and would depend upon the number, size, location and type of new facilities to be constructed and how much potential litigation related to overcrowding would be relieved through expanding capacity versus sentencing reform, early release policies and other corrections population reduction strategies.

4. Additional Partnership Opportunities

California can take additional steps to help address the state's severe prison capacity issues with limited public funds by leveraging PPPs. However, given the lack of detailed and transparent correctional budget and facility data at CDCR, this report is not able to offer more detailed estimates of the potential costs savings associated with each of the following approaches. Cost savings—whether from operations, infrastructure or future cost avoidance—can be maximized, however, by implementing performance-based contracts that specify outcome goals and allow contractors the flexibility to innovate and best determine how to achieve those goals.

- *PPPs in Correctional Health Care, Maintenance and Food Services:* For-profit and nonprofit private organizations also play an important role in providing many correctional support functions in many states, including health care, food services, facility management and maintenance, mental health services, substance-abuse counseling, educational and vocational programming, transportation services and the management of prison industries. Savings can be significant. For example, Louisiana corrections officials estimate that they will reduce the annual costs of providing prisoner medications by over 50% partnering with the private sector for correctional pharmacy services, and the Indiana Department of Correction has reduced the food services costs at dozens of facilities by approximately 30% since contracting out in 2005.
- *PPPs to Enhance the Performance and Capacity of Probation and Parole:* To achieve sustainable reductions in the prison population, California will need to expand and improve the performance of its probation and parole system to address the state's high recidivism rate. Opening the playing field to allow for greater participation of private and non-profit providers, in addition to existing public programs, would yield a more meaningful, robust system of community-based providers.

- *PPPs to Finance and Build Specialized Facilities:* Governments are increasingly recognizing the cost and efficiency benefits of using specialized facilities to house unique inmate populations, and more and more states are turning to the use of prisons specifically built and designed to house medical patients, inmates with mental health needs, sexually violent predators and more. Not only can specialized facilities help states better control costs by consolidating inmates with similar needs and care requirements, but the design of these facilities can be customized to the unique populations they serve.

PPPs have a proven track record in driving down costs and improving correctional service delivery, but they should not be viewed as a silver bullet for fixing the enormous corrections challenges California is facing. Truly “right-sizing” the system and putting California corrections on a sustainable path will demand a wide range of other actions and systemic reforms, including a system-wide CDCR performance audit, state sentencing reform, expansions in the use of evidence-based recidivism reduction strategies, nonviolent offender releases and reductions in the use of technical violations to re-incarcerate offenders on parole or probation.

Corrections PPPs are not a panacea, but they should certainly be part of the answer. The sooner the state acts to implement PPPs, the sooner it will begin to realize cost savings and begin addressing the state’s corrections crisis in earnest.

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Note: Sections of this report discussing comparative public and private sector per diem costs in Texas were revised in April 2011 to reflect updated data reported by the Texas Legislative Budget Board. In addition, those sections were revised to reflect a more robust LBB analysis comparing the estimated per diem costs of a 1,000-bed prototype public sector facility to those of a comparable privately operated facility. Earlier versions of this report cited systemwide average costs, as opposed to the more detailed facility-level cost comparison.

Part 1

Introduction

With a correctional system strained by severe overcrowding, a state fiscal crisis and a recent federal order to reduce the prison population by over 40,000 inmates, there are no silver bullet solutions to California's prison crisis. Even if a combination of early releases, home detention of low-risk inmates and changes to sentencing and parole rules could allow the state to achieve compliance with the federal order in the short term, there would still be major capacity needs over the long term, as the state would still be operating at over 137% of prison system design capacity.

In 2009, California held nearly 150,000 inmates in a system of state prisons designed for only 84,000 prisoners (over 178% of design capacity), far in excess of the national state average of 110%.³ Accordingly, the state's prison system is severely overcrowded, filled to nearly double the capacity it was designed for. Further, the state's ongoing budget crisis demands immediate attention to reduce the unsustainable costs of existing operations; annual spending per inmate in California is currently over 50% higher than the national average.

Public-private partnerships (PPPs) provide an effective, cost-saving alternative for governments seeking to address significant capacity needs while taking pressure off their corrections budgets. Studies have consistently shown that privately run correctional facilities typically save a conservative range of 5 to 15% over state-run prisons while offering the same or higher level of security and service while easing overcrowding in state-run prisons. A March 2009 Avondale Partners survey of 30 state correctional agencies, many of which use privately operated correctional facilities, found that contracted prisons are 28% lower in cost than state-run facilities.

A large body of academic and government research also validates the cost savings state governments can achieve through PPPs in corrections. Most recently, a study published by Vanderbilt University in December 2008 found that states that contracted with private corrections companies significantly reduced their overall prison costs compared to states that did not. In addition to saving money at privately operated prisons, the study found that public facilities that remain under state operation also had reduced costs, likely due to competition between public and privately operated facilities and exposure to private sector innovations in operating procedures that enable them to lower costs.

Corrections PPPs are not a panacea, but their expanded use in California can play an important role in driving down costs and improving service delivery and system performance. Until Governor Schwarzenegger proclaimed an emergency in corrections in 2006, California had only seen a limited use of PPPs in its corrections system. The state had primarily used PPPs for privately operated community corrections facilities (seven are in operation today) and various contracted services, including education, vocational training and substance abuse treatment.

The state did not apply PPPs on a larger scale for contracted prison operations until the governor's proclamation, and the state's first contract in 2006 to house roughly 1,000 inmates in out-of-state, privately operated prisons has been expanded tenfold to cover over 10,000 inmates by 2010. Relocating these inmates out-of-state, where costs are lower, has helped California take necessary steps to address overcrowding and house these inmates at nearly half the cost that California spends on housing inmates in its own in-state facilities. PPPs have already demonstrated, if even to a limited extent thus far, that they are an effective tool California can use to help address its corrections crisis, and the state needs to dramatically expand upon these efforts.

Part 2

California Corrections: A State of Crisis

“I believe immediate action is necessary to prevent death and harm caused by California’s severe prison overcrowding... (which) gets worse with each passing day, creating an emergency in the California prison system... This crisis spans the eastern, western, northern, and southern parts of the state and compromises the public’s safety, and I find that local authority is inadequate to cope with the emergency.”

—California Governor Arnold Schwarzenegger, State of Emergency proclamation on prison overcrowding, October 4, 2006 ⁴

California’s correctional system is in crisis. The state inmate population is nearly double what the state’s prison system was designed to hold. Since 1976, when the legislature declared “the purpose of imprisonment for crime is punishment” and enacted determinate sentencing, California has experimented with a reactionary and punitive model of criminal justice.⁵ The failings of that experiment have been evident for decades—the state’s high recidivism rate has held steady, even as the incarcerated population and total prison spending have skyrocketed over time—but the state’s severe fiscal challenges have brought renewed attention to the costs and performance of the corrections system.

The severity of the Golden State’s corrections crisis is overwhelming:

- The California Department of Corrections and Rehabilitation estimates that the state had approximately 167,000 people in prison in 2009 at a cost of approximately \$47,000 per inmate annually.⁶
- The state’s prison system is severely overcrowded, filled to nearly double the capacity it was designed for (84,000 prisoners). Instead of prison cells, it’s common to see California inmates double and triple-bunked in hastily converted open gymnasiums today.
- In August 2009, a three-judge federal panel ruled that conditions in the state’s prisons are so deplorable that the state must devise a plan to release over 40,000 prisoners to relieve overcrowding and maintain a basic quality of life for the prisoners behind bars.⁷ Even if

40,000 inmates are released, the state's prisons would still be at roughly 137% of design capacity.

- Helping drive overcrowding is the reality that once leaving, two out of three offenders are returning to the corrections system. California's 70% recidivism rate is among the highest in the country, an unsustainable trend driving spiraling corrections costs and a capacity crisis.⁸
- A federal Receiver has taken control of California's correctional health care services in the wake of a 2001 class action lawsuit over the dismal quality of medical care in the state prison system. In ruling for a federal takeover, U.S. District Court Judge Thelton E. Henderson wrote, "[t]he Court has given defendants (the State) every reasonable opportunity to bring its prison medical system up to constitutional standards, and it is beyond reasonable dispute that the State has failed. [...] It is clear to the Court that this unconscionable degree of suffering and death is sure to continue if the system is not dramatically overhauled."⁹
- It takes California an average of seven years to build a new state prison through traditional public-sector procurement methods laden with onerous rules and cost mandates. By contrast, private correctional providers can deliver an equivalent facility in an average of 12-18 months.¹⁰
- Correctional officers are California's single biggest personnel expense. According to the Legislative Analyst's Office (LAO), the state's politically powerful prison guards union—the California Correctional Peace Officers Association (CCPOA)—represents one of every seven state employees, but they account for a disproportionately high 40% of all state personnel costs paid from the state's General Fund.¹¹
- A 2006 analysis by the *San Diego Union-Tribune* found that nearly 2,400 correctional officers—one in 10—earned pay exceeding \$100,000 in 2005, up from 557 the previous year.¹² Prison guards' pay and benefits are so good that 130,000 people apply for correctional officer jobs every year, equivalent to one of every 140 persons in the entire California civilian labor force.¹³
- In fact, the California Department of Corrections and Rehabilitation (CDCR) has run advertisements claiming that, "you can earn more than \$73,000 a year wearing one of our uniforms" and "earn a retirement package you just can't find in private industry."¹⁴
- In a 2007 report to the governor, the Little Hoover Commission found that, "Despite the rhetoric, thirty years of 'tough on crime' politics has not made the state safer. Quite the opposite: today thousands of hardened, violent criminals are released without regard to the danger they present to an unsuspecting public [...] California's parole system remains a billion dollar failure."¹⁵

A. “Tough on Crime” Policies Bring Dramatic Increases in Incarceration

The late 1980s and early 1990s saw a wave of “tough on crime” policies enacted by federal, state and local governments that emphasized harsh penalties and punishment as a primary aim of the criminal justice system. Examples include mandatory sentencing, “Three Strikes” laws, “broken windows” strategies, zero tolerance initiatives and various other policies that tended to promote more arrests and longer and harsher penalties for offenders. “Tough on crime” policies were inherently interwoven into a parallel policy movement—the so-called “War on Drugs”—which has produced more punitive sentencing and dramatic increases in drug-related arrests and incarcerations nationwide over the last few decades.

The Legacy of California’s “Three Strikes” Law

California’s current corrections crisis is the culmination of years of policy decisions made on all levels of government, but two driving factors stand out. First, the dramatic escalation of the “War on Drugs” since the 1970s has been a significant factor in driving the long-term increase in the prison population both nationally and at the state level. Currently, drug-related offenses account for approximately 18% of California’s male inmate population and over 27% of its female population, according to CDCR.¹⁶ There is abundant evidence in the research literature suggesting that alternatives to prison—including drug courts, rehabilitation and treatment programs and other evidence-based practices—are a more effective and appropriate approach than incarceration for many drug crimes, and their implementation in other states suggests that they can bring significant decreases in prison spending and inmate populations (see discussion in Section IV.E of this report).

Another key factor driving the state’s corrections crisis was the state’s passage of the “Three Strikes and You’re Out” law in 1994. Under the Three Strikes law, individuals who have two prior “serious or violent” felonies—and then commit any felony, even a nonviolent one—face an indeterminate sentence of 25 years to life (eligible for parole after 25 years), which is in effect life imprisonment. The underlying assumption of this “tough on crime” law is that an individual with two felonies (“strikes”) will either be on his best behavior in order to avoid a third “strike” and lifetime sentence, or he is beyond rehabilitation and deserves to be put in prison for life because he cannot function in society.

According to Galit Lipa, supervising attorney at Stanford Law School’s Mills Criminal Defense Clinic, about 25% of the prison population in California is serving a sentence affected by the Three Strikes law, and a majority of those sentenced under the law are convicted for nonviolent drug offenses and property crimes.¹⁷ While Lipa identified only 145 inmates serving life for rape under this law, she found that over 1,300 inmates are doing life for drug crimes. Adding in those offenders with two “strikes,” Lipa finds a similar pattern—an additional 300

inmates are serving enhanced sentences for rape, while an additional 6,830 people are serving enhanced sentences for drug crimes. Similarly, 113 inmates are serving life sentences under the Three Strikes law for second-degree murder and manslaughter, but 732 are doing so for theft crimes.

There has been a mild softening of the Three Strikes law over time. In 2000, California voters passed Proposition 36—the Substance Abuse and Crime Prevention Act of 2000—a ballot measure that amended state statutes to allow qualified defendants convicted of nonviolent drug possession offenses to receive probation, rather than incarceration. Participants are required to complete a licensed and/or certified community drug treatment program, and the failure to complete a treatment program could prompt an additional sentence that includes incarceration. However, Proposition 36 was not retroactive, and those nonviolent offenders already serving time before it went into effect were not afforded the opportunity to have their cases reheard in court.

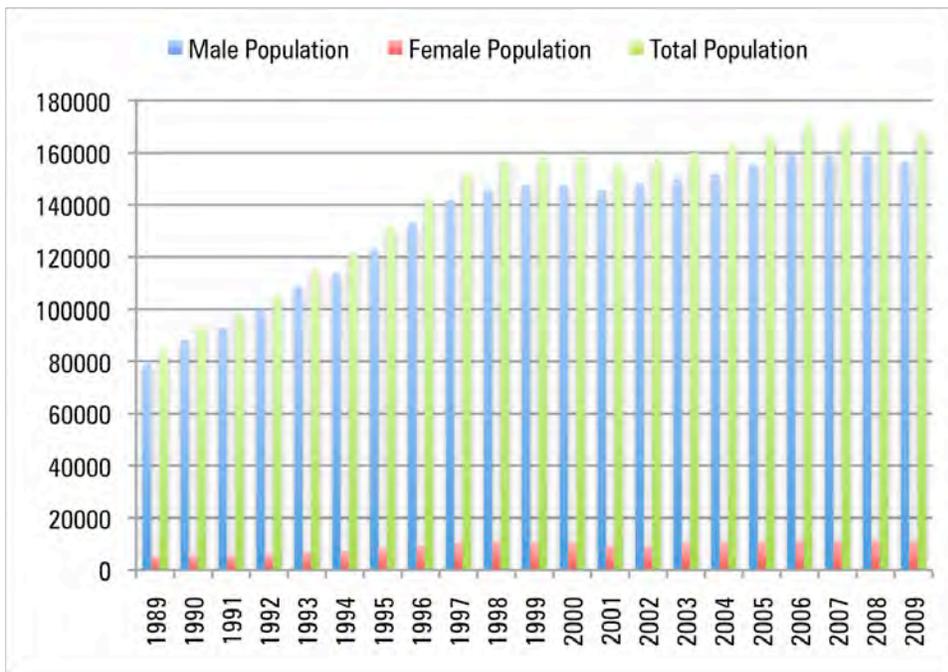
Given the history of the Three Strikes law in California, the central question for state policymakers is not whether or not its targets are criminals. Rather, the central question should be: is the Three Strikes law effectively curbing criminal behavior? California’s consistently high recidivism rates suggest that it is not.

Researchers from the American University and Urban Institute identified three core beliefs underlying the “tough on crime” reforms:¹⁸

First, that punishments for serious crimes needed to be increased, as they were far too lenient; second, that the criminals targeted by the reforms were “dangerous” people who must be incarcerated because lesser sanctions would not be effective in curtailing the proscribed behaviors; and third, that mandatory prison sentences would reduce crime by incapacitating or deterring the dangerous offenders who were targets of the reform.

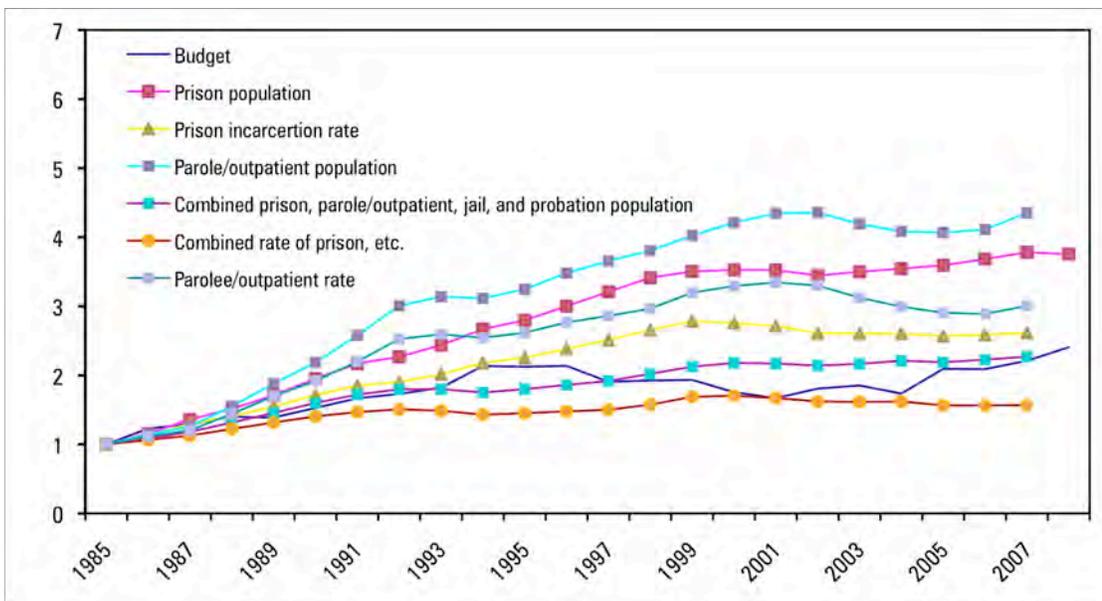
While the social outcomes of these policies have been subject to much academic and public policy debate, one clear impact of “tough on crime” policies was dramatic expansion of prison and jail populations nationwide, and California was no exception. As shown in Figure 1, California’s prison population has risen dramatically over the last two decades, more than doubling since 1989. Figure 2 shows that over the same time period, the rate of growth in the state’s prison and parole/outpatient population has exceeded growth rates along several other critical correctional metrics, including the corrections budget.

Figure 1: Total Population of California State Prisons (1989-2009)



Source: 1989-2008 data—California Department of Corrections and Rehabilitation, *2009 Annual Report*, p 11; 2009 data—California Department of Corrections and Rehabilitation, *Fall 2009 Adult Population Projections: 2010 – 2015*, p.6.

Figure 2: Rapid Growth in California’s Correctional System



Source: Reason Foundation analysis of CDCR data.

A correctional population increasing at a faster rate than the corrections budget might conceivably be less alarming if California were simultaneously delivering enough new prison capacity—e.g., additional beds in new prisons or facility expansions—to accommodate the higher populations. However, this has not been the case. Today, the state inmate population is nearly double what the state’s prison system was designed to hold. Put differently, while the prison population has nearly doubled since 1989—a time at which the prison population roughly matched the design capacity of 84,000 inmates—the state’s prison capacity has remained flat. Hence, the state’s response to a rapidly growing inmate population has been to severely overcrowd state prisons, filling them to nearly twice the capacity they were designed for.

California’s prison overcrowding was thrust prominently into public view in August 2009, when a three-judge U.S. district court issued an opinion in the case *Coleman v. Schwarzenegger* that imposed a population cap on California’s prisons to address long-standing constitutional violations with regard to the provision of correctional medical and mental health care. The court found overcrowding to be the primary cause of these violations, and the judges ruled that the state must devise a plan to reduce its prison population by 40,000 inmates to relieve overcrowding and maintain a basic quality of life for the inmates.¹⁹ The state is appealing the ruling in the U.S. Supreme Court.

The court found that the overcrowding in the prisons led to “criminogenic” conditions, resulting in more crimes being committed by former prisoners and, thus, high recidivism rates. Further, the court said that action was necessary to prevent “death and harm” to inmates.²⁰ By ordering the state to reduce the in-state prison population by 40,000 inmates, the panel effectively approved a population limit of 137.5% of the prison system’s design capacity; even with proposed reductions of that scale, under the panel’s plan California’s in-state inmate population would still exceed design capacity by over 37%. The panel ordered the state to achieve the reductions over a two-year period through a combination of various measures previously recommended by numerous state commissions and committees, including the early release of nonviolent offenders and the diversion of certain classes of inmates to other forms of custody or supervision (such as technical parole violators who are currently returned to prison for short periods).

B. California Correctional Spending and Labor Costs

As the population in California’s prison system has skyrocketed since 1990, so too have the costs of corrections. Table 1 illustrates the dramatic increase in corrections spending this decade—more than doubling since 2000—despite the fact that the prison population has generally hovered between 155,000 to 170,000 inmates during that same span.

Table 1: California's Prison System: Spending, Population and Parolees

FY	1990	1995	2000	2005	2007	2008	2009
Spending / % of General Fund	\$2.5 B 6.2%	\$3.6 B 8.6%	\$4.7 B 7.1%	\$7.0 B 8.5%	\$9.1 B 9.0%	\$10.1 B 9.8%	\$9.6 B 10.6%
Prison Population	89,171	127,784	161,100	164,169	172,774	171,444	171,085
State Parolees	61,211	90,913	117,935	113,899	121,849	126,906	123,597

Sources: California Legislative Analyst's Office, *State of California Expenditures*, 1984–85 to 2010–11 (Sacramento, May 2008); California Department of Justice, Division of California Justice Information Services, Bureau of Criminal Information and Analysis, Criminal Justice Statistics Center, *Crime in California*, 2006 (Sacramento, 2007); California Department of Corrections and Rehabilitation Offender Information Services Branch Estimates and Statistical Analysis Section Data Analysis Unit, *California Prisoners and Parolees*, 2008 (Sacramento, 2009) pp. 9, 60. Spending expressed in billions of nominal dollars budgeted to the California Department of Corrections and Rehabilitation (CDCR) and its predecessors.

The high costs of California corrections become even starker when viewed in the context of correctional costs in other states. Table 2 shows the average daily costs per offender in the 10 states with the highest inmate populations in 2008. Among the largest state corrections systems, California's daily cost per inmate of \$133 was dramatically higher than any of its peers, save New York (\$152). Notably, Texas—with an inmate population second only to California's and of comparable scale—spends less than one-third the amount per inmate than the Golden State, in part due to Texas's use of PPPs in corrections (discussed in detail in Part 3.)

Table 2: Top 10 State Correctional Systems and Costs, 2008

State	Adult Inmate Population	Population Rank	2008 Average Daily Cost per Offender
California	174,291	1	\$132.98
Texas	155,459	2	\$42.54
Florida	99,057	3	\$52.90
New York	61,276	4	\$152.38
Georgia	52,775	5	\$47.96
Ohio	50,371	6	\$64.17
Michigan	49,635	7	\$89.02
Illinois	45,675	8	n/a
North Carolina	40,406	9	\$74.77
Pennsylvania	38,270	10	\$91.40

Source: American Correctional Association, *2009 Directory of Adult and Juvenile Correctional Departments, Institutions, Agencies, and Probation and Parole Authorities*.

Correctional staff is the primary driver of spending in state prison systems, and prison guards are California's single biggest personnel expense. The Legislative Auditor's Office estimates that it costs roughly \$47,000 per year to house an inmate (though, as discussed later in Part 5, a precise figure of annual per inmate costs is impossible to calculate given CDCR's records, and evidence suggests that the state's true costs may be significantly higher than \$47,000 per year).²¹ More than two thirds of that cost is attributed to security and inmate health care.

According to the Legislative Analyst's Office (LAO), the California Correctional Peace Officers Association (CCPOA)—the public sector union representing state correctional officers—represents one out of every seven state employees, but they account for 40% of all state personnel costs paid from the state's General Fund.²² Further, a 2006 analysis by the *San Diego Union-Tribune* found that nearly 2,400 correctional officers—approximately one in 10 given the nearly 23,000 CDCR correctional officers employed that year—earned pay exceeding \$100,000 in 2005, up from 557 the previous year.²³ The attractive pay and benefits received by prison guards prompt 130,000 people to apply for correctional officer jobs every year, equivalent to one out of every 140 persons in the entire California civilian labor force.²⁴

In recent decades, CCPOA has become a powerful political voice—and a well-funded lobby—in Sacramento, and they have been successful over the past few decades at simultaneously promoting “tough on crime” laws while also advocating for higher pay and benefits for their members. At the same time, they have had a tenuous relationship with the CDCR itself over time. An August 2009 segment in the National Public Radio (NPR) show *All Things Considered* shed light on the often contentious relationship between correctional administrators and CCPOA. Former State Corrections Secretary Jeanne Woodford told NPR that she stepped down when she realized that the union was making deals behind the scenes with the governor without consulting her whatsoever, and former Secretary Roderick Hickman resigned in 2006 complaining, “the biggest problem...was the relationship [with] the union.”²⁵

C. Despite More Spending, State’s High Recidivism Rates Hold Steady

One could reasonably argue that California’s high corrections costs would be less problematic if the correctional system and its employees were actually rehabilitating criminals in an effective manner, but unfortunately the state is failing in this regard. The difficulty of compiling robust, longitudinal outcome data for released inmates makes it a challenge to precisely analyze and compare recidivism rates within and across states, but one of the more comprehensive studies in this regard shows California’s recidivism rates to be among the highest in the nation.

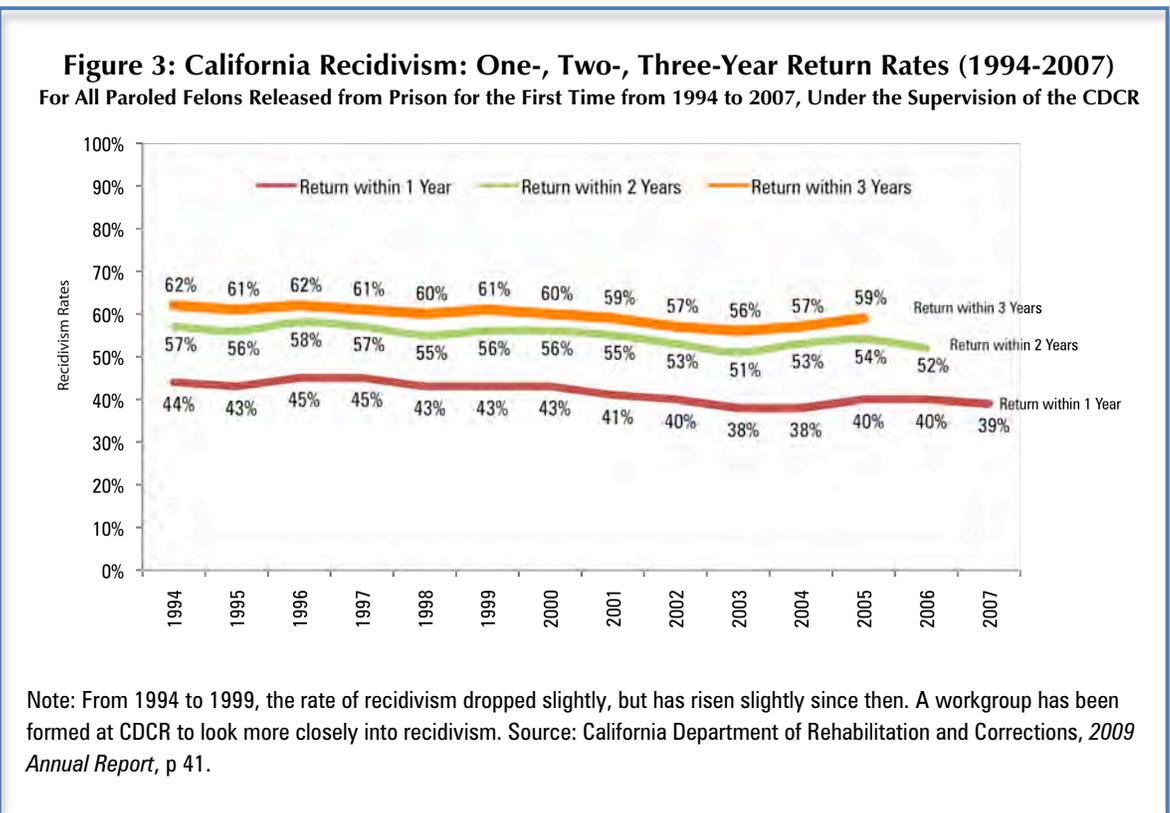
Table 3 presents the results of a 2005 University of California-Irvine comparison of state-by-state recidivism rates based on data for inmates released in 1994. On certain measures, such as rearrest and reconviction rates, California appears to be on par with peer states like New York, Florida and Illinois. However, California is clearly sending a higher percentage of repeat offenders back to jails and prisons than any of the peer states reviewed in the analysis. By contrast, Texas is sending repeat offenders back to jails or prisons at nearly half the rate as California. The data also show that in California, technical violations are playing a comparable or even greater role than prosecutions for new crimes with regard to sending offenders back to jails and prisons. California prosecutors are clearly using technical violations to send offenders back to prison rather than prosecuting them for new crimes, and they are doing so at rates that far exceed those in any other peer state. For example, 32% of released offenders were returned to California jails and prisons as

a result of technical violations, in contrast with less than 9% in Texas, Florida, Illinois and North Carolina.

Table 3: Three-Year Recidivism Rates, Selected States (in percent)

State	Rearrested	Reconvicted	Returned to Jail or Prison			Returned to Prison		
			New Crime	Technical Violation	Total	New Crime	Technical Violation	Total
CA	70%	49%	37%	32%	69%	27%	39%	66%
FL	79%	45%	32%	8%	40%	27%	26%	53%
IL	77%	46%	40%	4%	44%	32%	6%	38%
NY	67%	57%	49%	14%	63%	27%	29%	56%
NC	61%	47%	45%	8%	53%	34%	14%	48%
TX	58%	32%	31%	7%	38%	15%	11%	26%

Source: Ryan Fischer, *Are California's Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use*, UCI Irvine Center for Evidence-Based Corrections: Bulletin 1 (September 2005). Based on inmates released in 1994. Note: The recidivism rate for California differs for each chart due to the research criteria used to determine the rate. *California Department of Rehabilitation and Corrections, 2009 Annual Report*, p 41.



While the UC-Irvine report offers a snapshot in time, data tracked by CDCR show that recidivism rates have held fairly steady in California since 1994. CDCR tracks recidivism data covering the period of one to three years after an inmate leaves prison, and Figure 3 presents the state's historical recidivism data from 1994 through 2007. Clearly, the state's dramatic increase in corrections spending over that time has not produced a discernable impact on recidivism rates.

California is by no means alone among its peers in facing a challenge with recidivism. Table 4 shows the results of a 2002 Bureau of Justice Statistics study that estimated national recidivism rates using data from 15 states, and the rates after one, two and three years were comparable with those reported by CDCR in California.

Table 4: Recidivism Rates of Prisoners Released in 1994 in 15 States			
Time after release	Cumulative % of Released Prisoners Who Were...		
	Rearrested	Reconvicted*	Returned to prison with a new sentence**
6 months	29.9%	10.6%	5.0%
1 year	44.1%	21.5%	10.4%
2 years	59.2%	36.4%	18.8%
3 years	67.5%	46.9%	25.4%

* Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. ** "New prison sentence" includes new sentences to state or federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of "Percent returned to prison with a new prison sentence." Source: Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, June 2002, p. 3. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1134>, (accessed February 26, 2010).

In the end, roughly two-thirds of inmates that leave California jails and prisons are virtually guaranteed to return today, leading many observers to wonder why policymakers would continue to spend lavishly on corrections given such poor outcomes in offender rehabilitation. In fact, the state's high recidivism rates are an example of a failure of the state's criminal justice system to perform its core mission of rehabilitating criminals. In the private sector, a company experiencing a 60-70% failure rate would likely not survive very long. By contrast, in California government, this scale of failure is not only tolerated but, in effect, *has been rewarded* though higher spending—to the point that it now jeopardizes the credibility of the state's entire criminal justice system, as well as its financial solvency.

D. Private Sector Solutions Can Help Solve Crisis

One silver lining to California's correctional crisis is that, as the adage goes, necessity is the mother of invention. And while there is no single panacea for California's enormous challenges, many federal, state and local corrections agencies that have faced similar (if less acute) challenges in recent decades have embraced the proven power of public-private partnerships (PPPs) to drive down costs, bring efficiencies to public systems and improve offender outcomes. PPPs—also known as "partnership corrections" or "competitive corrections"—are simply government contracts with private sector prison operators or service vendors to provide a range of different correctional services—from financing, building and operating prisons to delivering a range of inmate services (e.g., health care, food, rehabilitation services) and administrative/operational support functions (e.g., facility maintenance, transportation and information technology).

Since the introduction of corrections PPPs in the United States in the 1980s, governments at all levels have found that they can play a critical role in driving down corrections costs (5-15% on average, though sometimes far more), stretching limited tax dollars and improving the quality of prison services—and thus, of offender outcomes in terms of behavioral changes through rehabilitation.

Until Gov. Schwarzenegger proclaimed an emergency in corrections in 2006, California had only seen a limited use of PPPs in its corrections system. The state had primarily used PPPs for privately operated community corrections facilities (seven are in operation today) and various contracted services, including education, vocational training and substance abuse treatment.

Ironically, at the same time California has been slow to embrace PPPs, the federal government has several privately operated correctional facilities in successful operation *in California*, including the Taft Correctional Institution (U.S. Marshals Service), California City Correctional Center (Federal Bureau of Prisons), the San Diego Correctional Facility (U.S. Immigration and Customs Enforcement and U.S. Marshals Service) and the Western Region Detention Facility at San Diego (U.S. Marshals Service).

Given the CCPOA's powerful and consistent opposition to PPPs and public service contracts, the state did not apply PPPs on a larger scale for contracted prison operations until Schwarzenegger's proclamation. It literally took an "emergency" to break the CCPOA's political grip, and the state's first contract to house roughly 1,000 inmates in out-of-state privately operated prisons has been expanded tenfold to cover over 10,000 inmates by 2010. Relocating these inmates out of state has helped California take necessary steps to address overcrowding and house these inmates at nearly half the cost the state spends on housing inmates in its own facilities. In addition to expanding the use of contracted out-of-state beds, Gov. Schwarzenegger's fiscal year 2010-2011 budget proposal contemplates expanding the use of PPPs in correctional health care (similar to PPP models used in Pennsylvania and Indiana) and other areas, though legislative support for those ideas is likely to be tepid at best.

PPPs are already helping California address its corrections crisis, and the state needs to build on its recent initiatives and dramatically expand upon its use of corrections PPPs. PPPs have a long and successful track record at helping correctional agencies control costs, deliver high-quality inmate rehabilitation services, safely operate correctional institutions and—ultimately—curb recidivism and improve correctional outcomes.

Part 3

National Overview of Public-Private Partnerships in Corrections

“We work very closely with (the private prisons). They’ve been very good partners for us, quite frankly.”

—Colorado Department of Corrections Executive Director Ari Zavaras, February 2010²⁶

Since the emergence of corrections PPPs in the early 1980s, governments at all levels have increasingly partnered with private sector correctional services providers to finance, design, build, and/or operate correctional facilities and deliver a wide array of correctional services. Private management of prisons generally takes two forms. One is standard contract operation, whereby a private management firm is hired to run a government prison. The other is contracting for bed space to house prisoners, either at in-state or out-of-state private correctional facilities. For example, states like Alaska and Hawaii have no privately operated prisons within their borders but contract with out-of-state private prisons to house overflow inmates, an approach replicated in recent years in California.

Similar to public-private partnerships (PPPs) in other areas of government-provided services, partnerships in corrections can be used in a variety of ways, including the financing and construction of new correctional facilities, contracts for private prison beds to relieve inmate overcrowding and the delivery of an array of services (e.g., health care, food services, transportation, etc.) that reduces corrections costs for struggling budgets.

The use of corrections PPPs has grown significantly over the past 25 years. According to the most recent census of state and local correctional facilities undertaken by the U.S. Department of Justice’s Bureau of Justice Statistics taken in 2005 (and published in 2008), the number of privately operated prisons and community corrections facilities rose from 264 in 2000 to 415 in 2005, an increase of 51%. The number of prisoners in private facilities has also increased significantly. While the overall prison population has risen by around 15% since 2000, the number of prisoners in private facilities has risen by 47%. In 2000, there were approximately 87,369

prisoners in private facilities; by the end of 2008 that number had jumped to 128,524, outpacing the growth rate of government-run facilities (see Table 5).

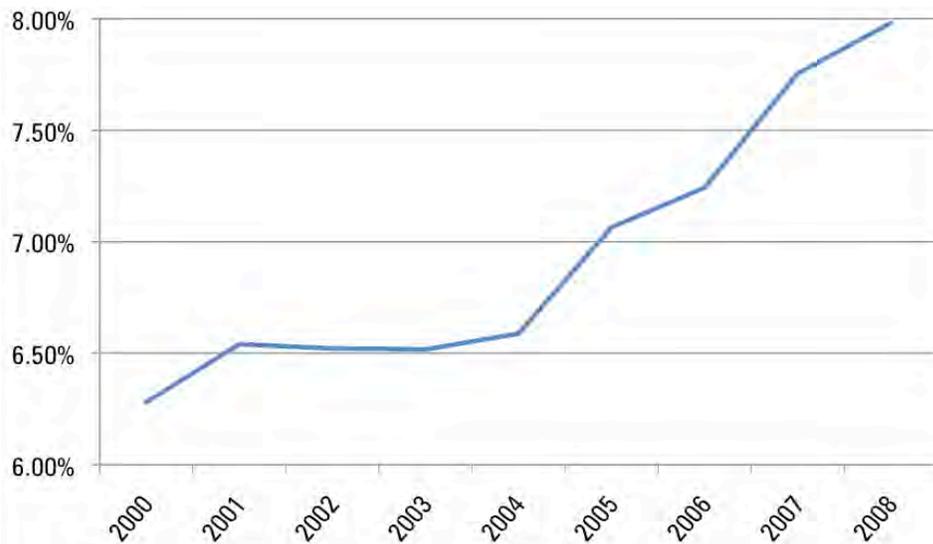
Table 5: U.S. Prison Population for All Jurisdictions, Public and Private (as of December 31, 2000-2008)

Year	Federal	Private Federal	State	Private State	Government Total (in federal, state and local jurisdictions)	Private Total	Grand Total (of federal, state and local prisoners)
2000	129,892	15,524	1,174,000	71,845	1,303,892	87,369	1,391,261
2001	137,742	19,251	1,174,462	72,577	1,312,204	91,828	1,404,032
2002	143,254	20,274	1,202,978	73,638	1,346,232	93,912	1,440,144
2003	151,194	21,865	1,221,700	73,842	1,372,894	95,707	1,468,601
2004	155,560	24,768	1,242,912	73,860	1,398,472	98,628	1,497,100
2005	160,572	27,046	1,259,417	80,894	1,419,989	107,940	1,527,929
2006	165,320	27,726	1,290,928	85,971	1,456,248	113,697	1,569,945
2007	168,308	31,310	1,305,995	92,632	1,474,303	123,942	1,598,245
2008	168,118	33,162	1,313,804	95,362	1,481,922	128,524	1,610,446

Source: Bureau of Justice Statistics.

Along with the growth in the number of privately operated prisons, the percentage of the national prison population housed in private correctional facilities has grown relative to the rest of the correctional system. In 2000, private correctional facilities imprisoned 6.3% of the inmate population. That number grew to nearly 8% of America's 1.6 million prisoners by 2008 (see Figure 4).

Figure 4: Percentage of Inmates in Private Custody (Federal, State, Local)



Source: Bureau of Justice Statistics.

Table 6: State Private Correctional Population			
State	Dec. 31, 2000	Dec. 31, 2008	% of 2008 State Population Total
Alabama	0	101	0.3%
Alaska	1,383	1,450	8.8%
Arizona	1,430	8,369	21.1%
Arkansas	1,540	0	0%
California	4,547	3,019	1.7%
Colorado	0	5,274	22.7%
Florida	3,912	9,158	8.9%
Georgia	3,746	5,138	9.7%
Hawaii	1,187	2,108	35.4%
Idaho	1,162	2,114	29%
Indiana	991	2,642	9.3%
Kentucky	1,268	2,209	10.2%
Louisiana	3,068	2,928	7.6%
Maine	11	0	0%
Maryland	127	186	0.8%
Michigan	449	0	0%
Minnesota	0	612	6.5%
Mississippi	3,230	5,497	24.2%
Montana	986	1,314	36.4%
Nevada	508	0	0%
New Jersey	2,498	2,641	10.2%
New Mexico	2,155	2,935	45.8%
North Carolina	330	217	0.5%
North Dakota	96	0	0%
Ohio	1,918	2,133	4.1%
Oklahoma	6,931	5,711	22.1%
Pennsylvania	0	819	1.6%
South Carolina	0	12	1% >
South Dakota	45	15	0.4%
Tennessee	3,510	5,155	18.9%
Texas	13,985	20,041	11.6%
Utah	208	0	0%
Vermont	0	726	34.3%
Virginia	1,571	1,535	4%
Washington	0	863	4.8%
Wisconsin	4,337	13	0.1%
Wyoming	275	427	20.5%
U.S. total	87,369	128,524	7.9%

*BJS has no relevant numbers reported from Colorado in 2000

**DC had 2,342 inmates in private facilities, but the DC system has since been transferred to the jurisdiction of the Federal Bureau of Prisons

Source: Bureau of Justice Statistics

Corrections PPPs are used in all jurisdictions in the United States, including the Federal Bureau of Prisons, U.S. Immigration and Customs Enforcement, and 31 states. Federal usage of partnership prisons has increased 53.2% since 2000. As of 2008, the federal government has 19.7% of its prison population (33,162 inmates) in private facilities.

State usage of competitive corrections varies (see Table 6). Some states have large numbers of their inmate populations in privately operated facilities—including New Mexico (45.8%), Hawaii (35.4%), and Vermont (34.3%)—while other states only have minimal inmates in private facilities, including Alabama (0.3%), Wisconsin (0.1%) and South Carolina (less than 0.1%). Most states increased their usage of partnership prisons from 2000 to 2008. California, however, was out of step with the national trend until very recently. In 2000, the Golden State had 4,547 inmates in privately operated prisons, which dropped 33.6% by 2008 to just over 3,000. However, it should be noted that the correctional population figures shown in Table 6 do not reflect the full population of California inmates transferred to out-of-state privately operated prisons since early 2009. Adding those several thousand transfer inmates to the 2008 population total would reveal a significant increase in California’s private correctional population—likely more than doubling since 2000. Still, even accounting for the additional out-of-state transfers since 2009, less than 5% of the state’s prison population is currently housed in privately operated correctional facilities, a far lower percentage than many peer states that have embraced corrections PPPs.

A. The Benefits of Partnerships in Corrections

Among the factors contributing to the growth in corrections PPPs in recent decades are cost savings, alleviation of prison overcrowding, enhanced risk management, the use of state-of-the-art security and inmate management techniques, innovative rehabilitation programs and decreased recidivism rates. These and other benefits discussed in this section offer compelling reasons for California policymakers to consider expanding the state’s use of corrections PPPs.

The driving force behind successful PPPs is competition. The private sector competes for the best price, the highest quality and most effective service. Competition drives costs down, encourages efficiency, inspires innovation and rewards quality in the delivery of services. In fact, efficiency, innovation and quality—in addition to cost savings—have been leading reasons why public corrections agencies have partnered with private providers to help improve system operations and address capacity needs.

Contracts should be performance-based (focusing on outputs or outcomes) and include quality assurances or quality control assurances. Quality outcomes arise from the appropriate safeguards and performance standards that governments write into contracts, creating a strong incentive for the contractor to deliver high-quality services and ensure proper performance. If written properly, a competitive corrections contract gives policymakers more control and flexibility. PPPs allow governments to shift the risks to the contractors, which both achieves the most efficient risk allocations and allows risk to be used as a management tool.

Cost Savings

Getting control over growing costs is a primary reason that public officials turn to PPPs. Corrections budgets are frequently the third largest category of state general fund spending after education and health care, and in 2008 annual state expenditures on corrections totaled over \$50 billion.²⁷ The average daily cost to house a state prisoner in 2008 was \$92.42 (or \$33,826 per inmate per year)²⁸, up 33% from \$62.05 per day (or \$22,650 per inmate per year) in 2001.²⁹ Federal spending on corrections has also increased significantly this decade. The Federal Bureau of Prisons spent \$5.42 billion in 2008, up 38% from \$3.37 billion in 2000, while detention spending by U.S. Immigration and Customs Enforcement has grown 95% since it began publishing budget data in 2005.

The economic recession of 2008/9 and ensuing fiscal crises at all levels of government have virtually ensured that these spending trends will not continue. Over 40 states face budget deficits in fiscal year 2010, with projections of a collective \$375 billion in aggregate state budget deficits by 2011.³⁰ Given the enormous scale of fiscal challenges most states are currently facing, policymakers are under increasing pressure to reduce spending across state government, including corrections. A July 2009 study by the nonpartisan Vera Institute of Justice, a New York-based research organization, found that at least 26 states had reduced corrections spending in their FY2010 budgets, and seven states—Georgia, Idaho, Illinois, Kansas, Montana, Nebraska and Washington—cut corrections spending by more than 10%.³¹

There is abundant academic and government research demonstrating that private corrections providers can operate correctional facilities at a lower cost than government-run facilities. For example:

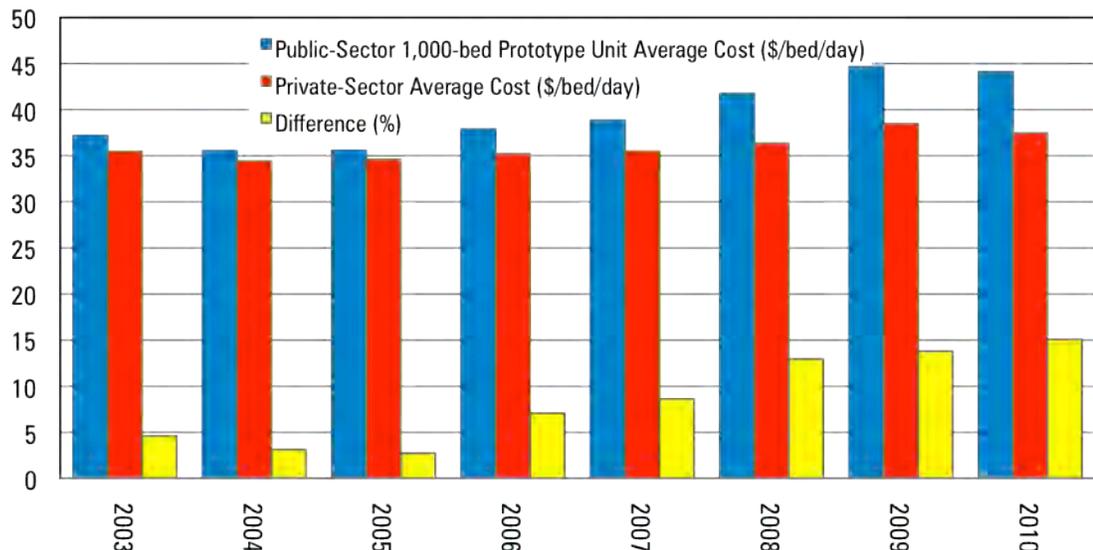
- Data compiled by the state of Texas show that the per diem costs in privately operated prisons have ranged between 3% to 15% lower than the per-diem costs in comparable state-run facilities since 2003, averaging an 8.5% annual cost savings over that eight-year period. (see text box)
- A 2002 Reason Foundation study reviewed 28 academic and government studies on the corrections PPPs and found that private corrections companies saved up to 23% in daily operating costs over comparable government-run systems.³² The studies reviewed support a conservative estimate that private facilities offer cost savings of between 10 and 15% over their public sector counterparts.
- A comprehensive 2003 study by the Rio Grande Foundation surveyed prison expenditures in 46 states, and found that states with significant private prison populations save considerable amounts over those with no private prisons. For example, the study found that public sector facilities in New Mexico—which contracted out 45% of its correctional system under the administration of former Gov. Gary Johnson—spent \$9,660 dollars per prisoner per year less than peer states that had no privately operated correctional facilities.³³
- A 2009 Avondale Partners survey of 30 state correctional agencies found that in states currently using private sector services, the average daily savings for partnership prisons was 28%.³⁴

Corrections PPPs Bring Long-Term Savings in Texas

The state of Texas offers compelling evidence for the cost savings possible through corrections public-private partnerships (PPPs). The Texas Legislative Budget Board's (LBB) biannual cost comparison study of public and private sector prison operations offers long-term trend data demonstrating that average per-diem costs in state-run prisons have ranged been between 7% to 26% higher than the average costs of private facility operation since 1997, or approximately 15% per year on average.³⁵

To move beyond simply reporting average public and private sector costs across the system, since 2003 the LBB reports have also included a more detailed cost breakdown comparing the average private prison per-diem cost with the benchmark per-diem cost of a 1,000-bed prototype, state-run facility, since this would be the most comparable comparator to private prisons based on facility size, structure, and the custody levels of housed offenders. At this more finely grained level of analysis, the LBB reports have shown that the per diem costs in privately operated prisons have ranged between 3% to 15% lower than the per-diem costs in comparable state-run facilities since 2003 (see Figure 5). In recent years, this differential has steadily increased from 7% in 2006 to over 15% in 2010, averaging an 11% annual cost savings over that five-year period. In 2010, operating costs per inmate per day in public and private sector prisons were \$44.12 and \$37.47, respectively, representing cost savings of over 15% that year in PPP facilities.³⁶

Figure 5: State of Texas Per-Diem Comparison: State-Operated 1,000-Bed Prototype Unit vs. Privately Operated Facilities (2003–2010)



Source: Texas Legislative Budget Board, Criminal Justice Uniform Cost Report, various editions.

The key to the lower costs of the private sector is competition. Competitive pressure provides the incentive to be efficient that helps drive private sector costs down, and firms can also achieve cost savings through innovative design and management practices. The private sector saves money by doing a number of things differently from government. Since their success hinges on delivering the same product as the government but at lower cost, or a better product at a cost effective price, they turn to new management approaches, new monitoring techniques, and administrative efficiencies and other innovations.³⁷ Moving beyond “the way things have 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.

Since approximately two-thirds of correctional departments' operating budgets are devoted to personnel, naturally that is where most of the opportunity for savings lies. Private operating firms strive to reduce personnel costs without understaffing a facility by using more efficient facility design, reducing administrative personnel, minimizing the use of overtime and exercising greater freedom to manage personnel.

Corrections PPPs yield cost savings in indirect ways as well. The use of PPPs promotes competition between public and private facilities and exposes public sector managers to more efficient and cost-effective business sector operating methods. A study published by Vanderbilt University in December 2008 found that states that contracted with private corrections companies significantly reduced their overall prison expenditures compared to states that did not. The study, “*Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons,*” focused on public and private prison data from 1999 to 2004.³⁸

According to study author James Blumstein, “The fundamental conclusion is that, over that six-year period, states that had some of their prisoners in privately owned or operated prisons experienced lower rates of growth in the cost of housing their public prisoners—savings in addition to direct cost savings from using the private sector.” In addition to saving money at privately operated prisons, the study found that public facilities that remain under state operation also had reduced costs. In fact, the study suggests that state corrections departments could save an average of \$13 to \$15 million a year (based on an average of \$493 million in state corrections expenditures) through the introduction of private prisons—savings the state would receive in addition to those already earned by using private prisons alone.

The study speculates that cost savings likely occurred due to competition between public and private facilities and the introduction of public facilities to private sector operating procedures that enable them to lower costs. The study notes that cost savings appear to be more significant in states that have privately managed inmates in-state than those that send their prisoners to privately managed out-of-state facilities. The study suggests that this could be because public prisons can learn from in-state private prison practices. According to the authors, the study’s findings “should provide policy makers with an additional reason to favor privatization of some portion of a state’s prisons.”

Service Quality

In addition to reducing costs, there is clear and significant evidence that privately operated facilities provide at least the same level of service that government-run facilities do. Service quality considerations cut across all dimensions and variables involved in correctional operations, including facilities, safety, recidivism, educational and vocational training, inmate programming (e.g., substance abuse, etc.), health care delivery and food quality.

Private correctional facilities have measured well against government-run facilities across a wide range of quality-comparison studies. A 2002 Reason Foundation report examined two groups of quality-comparison studies—rigorous academic studies and less methodologically rigorous analyses—that offer clear and significant evidence that privately operated prisons actually improve quality (see Table 7).

Table 7: Comparative Studies of Private Facility Quality	
Study	Findings
Rigorous Academic Studies	
Urban Institute: KY and MA, 1989	Quality advantage to private facilities; staff and inmate ratings are higher; fewer escapes and disturbances.
National Institute of Justice—Well Kept, 1991	Private facility outperforms state facility in 7 of 8 dimensions.
Louisiana State University, 1996	Private outperformed government in 5 categories; government outperformed private in 5 categories.
Arizona Department of Corrections, 1997	Private facilities showed superior performance in public safety issues, protecting staff and inmates and compliance with professional standards.
Juvenile Facilities in United States, 1998	Private facilities outperformed in 23 of 30 indicators.
Florida Recidivism, 1998	Private facilities outperformed in 4 of 5 measures.
Dallas County Judicial Treatment Center, 1997, 1999	Private-program treatment recidivism rate is almost 50% lower than non-participants.
OPPAGA, 2000	Private facilities showed satisfactory management with three noteworthy examples of performance.
Arizona Department of Corrections, 2000	Private facilities outperformed public facilities on 7 of 10 measures in 1998; 5 of 10 measures in 1999.
Bureau of Justice Assistance, 2001	Rates of assault on both inmates and staff are higher at private prisons. Rates of riots and inmate death are higher at government prisons. Private prisons produced “an impressive record of programming activities.”
Less Rigorous Studies	
National Institute of Corrections: Okeechobee, 1985	No fundamental differences; noted improvements in private operation.
Silverdale Study, 1988	Private facilities ranked high on most issues; other areas had equal positive and negative responses.
Sellers, 1989	Private facilities showed enhanced level of programming and better conditions in 2 of 3 private facilities.
Tennessee Fiscal Review, 1995	Private facilities showed higher overall performance rating.
United Kingdom, 1996, 1997	Private facilities overall outperformed government prisons.
Minnesota Inmate Interviews, 1999	Services at government facilities rate higher.

Source: Reason Foundation. Note: For details on each study, see: Geoffrey F Segal and Adrian T. Moore, *Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services*, Policy Study 289, Reason Foundation (January 2002).

As important as cost savings are in considering the potential use of corrections PPPs, it is just as important for policymakers to consider *how* firms would provide services or deliver projects. Enhancing accountability and performance are prime considerations for many public officials in their role of protecting the public interest. Performance-based PPP contracts are a key means of capturing the broad range of service delivery goals that go beyond simple cost savings.

The contractual mechanism in PPPs increases the incentive to produce high-quality work and ensure high performance. Indeed, the level of performance is firmly established in the contract. Generally, contracts should be performance-based (focusing on outputs or outcomes) and include quality control assurances. They allow governments to purchase results, not just process, rewarding the private firm only if specified quality and performance goals are met. This makes privatization even more dramatically a case of purchasing something fundamentally different from in-house services.

Service quality considerations generally fall into two categories:

Facility quality: Corrections management companies have greater incentives to build high-quality, cost-effective facilities because their future business depends on successful projects. Government-run projects have little incentive (other than overcrowding) to finish building by a specific date. If a company fails to complete a contracted correctional facility on time or doesn't build a quality prison, the governing entity can simply fire them, or not hire them again. The same cannot be said if the government fails in building its own facility.

Privately operated correctional facilities employ state-of-the-art technology and design techniques—such as sight lines and technology to allow inmates to be monitored with fewer correctional personnel—as they compete to stay a step ahead of their competitors. Any given firm may be constructing multiple facilities each year, allowing for continuous improvement in facility design that tends to be unmatched in the public sector, whereas an individual agency may only be responsible for delivering one or two new correctional facilities *each decade*.

Operations quality: Most concerns about quality are related to prison operations. Because corrections management companies seek to maximize profit, critics argue they will cut corners and create unsafe conditions for both correctional officers and inmates. However, because these correctional operators have to compete to win the right to manage a facility, they have a strong incentive to run efficient operations. They also have a greater incentive to meet quality standards for fear of losing their contract. These twin concerns give private firms the incentive to provide the same level or better service and security that public prisons do while saving considerable taxpayer funds.

Private prisons often hire former corrections officers at prisons that they step in to manage, but all have their own training programs. Because privately operated prisons have a different way of achieving quality and cost-savings, their hiring practices can be different than at public facilities.

This has led to a concern that the correctional officers at private facilities are not trained as well as state or federal corrections officers. However, if this is a concern of public officials, the governing entity that is contracting out the corrections service can simply mandate that its private partners adhere to minimum training standards.

Most contracts now stipulate adherence to American Correctional Association accreditation standards that include training at a more stringent level than many state corrections departments require. Some corrections management companies, seeking competitive advantage in the quality of their staff, train their staff above ACA accreditation standards. For example, Corrections Corporation of America (CCA) requires 160 hours of training for its corrections officers, 25% above the ACA requirement. Other firms have established specialized teams to react to specific emergency or disturbance situations.

ACA accreditation audits are a three-day, on-site visit once every three years. ACA officials—a mix of current and former correctional services experts, review documentation, observe facility operations, and require facilities be 100% in compliance on over 60 mandatory standards and in at least 90% compliance with about 480 non-mandatory standards. In 2009, CCA facilities undergoing re-accreditation earned an average ACA accreditation score of 99.4%.³⁹

Private prisons improve efficiency by controlling legal liabilities, reducing use of overtime, managing to prevent injuries and workers' compensation liabilities, and improving labor productivity. Moreover, competition and the fear of privatization drives efficiency in the public sector corrections marketplace, because government facilities are pressured to become more efficient and to provide better services to compete with private corrections management companies.

The desire to reduce recidivism also drives companies to offer innovative drug and alcohol rehabilitation therapy, behavioral programs, and educational and vocational training. These programs not only make the prisons themselves more safe but also save even more taxpayer dollars by lowering crime rates, judicial costs and further incarceration—and the private sector is often faster to embrace innovations in evidence-based service delivery methods.

Overcrowding and Capacity Needs

PPPs can be used to address overcrowding and capacity needs in several ways: out-of-state contracts for open beds in existing prisons, tapping PPPs to deliver an out-of-state prison to house state inmates, or perhaps to build a brand new, in-state prison. Regardless of the mechanism chosen, corrections PPPs can be particularly effective in solving overcrowding issues by adding additional beds at cost-effective rates, as California has already seen through its limited use of contracting for out-of-state beds in privately operated prisons.

Private corrections providers can design and build new facilities with their own money to help public corrections agencies meet their capacity needs, and states can also contract with correctional

management firms to transfer inmates out of crowded, in-state public sector prisons to open beds in privately operated, out-of-state correctional facilities. The La Palma Correctional Center, a newly opened prison built in Arizona to house California inmates, was delivered through this type of approach and is described in a case study on p. 25.

The public sector is already paying for these inmates at their facilities anyway, so if a contract is designed effectively, the public sector may wind up saving money while solving its overcrowding problem at the same time. The additional facility will also add new jobs and provide an economic boost to a community.

Risk Transfer

One of the most important benefits of PPPs—whether in corrections or most other types of government services—is that they offer governments a means of shifting major risks to contractors (and *away* from taxpayers)—which both achieves the most efficient risk allocations and allows risk to be used as a management tool, rather than just something to fear.

The power of a strong, performance-based contract should not be overlooked by public officials, who can incorporate quality assurances into service delivery—or incorporate quality controls into project delivery, in the case of new or expanded prison capacity built through PPPs—as ways of managing risk. Further, significant operational risks—perhaps most importantly, the risk of future service quality declines—can be minimized by incorporating financial penalties for underperformance into the contract. PPP contracts for building new correctional facilities should also transfer project delivery risks—including the risk of cost overruns and schedule slips—to the private partner, creating strong incentives for efficiency and performance in project delivery.

An increasing trend in PPPs is the employment of warranty concepts, whereby the contractor places a long-term guarantee on his work. Many successful PPPs have used performance bonds to assure performance of one or more of the partners and their subcontractors. A performance bond of up to 25% of the annual contract value will usually provide adequate protection without the extra costs of a greater percentage.⁴⁰ Both of these strategies are examples of additional ways PPPs can shield taxpayers from risk.

B. Effective Outcomes from Corrections PPPs: Case Studies

Partnerships in corrections can take many forms. Government partners with a shortage of capacity can contract with a private firm to build a new facility and operate it afterwards. Sometimes government partners send their inmates to a privately operated prison in another state. Other times a private firm can be brought in to manage aspects of a government-owned facility.

Private corrections providers offer a range of services that can be specialized to meet government partner needs. Certain companies offer special rehabilitation programs aimed at reducing

recidivism or specialized education and treatment programs. In other cases, private companies may provide just the food service or the health care at individual correctional facilities (or across the entire correctional system at multiple facilities).

The MTC Institute—a research center affiliated with the Management & Training Corporation, a private provider of correctional services, employment training and workforce development services—has defined successful partnership corrections as: “the provision of a safe and secure environment where offender quality of life meets basic welfare needs. Additionally, the successful prison must have programs that prepare the offenders for reentry into society, thus protecting the public from further effects of crime upon the release of the offenders from custody.”⁴¹

Effective measurement of partnership outcomes is critical to the success of competitive corrections. Main areas of measurement include safety and security, quality of life, management, and the provision of reentry services such as education and vocational programs.⁴² Looking at case studies of effective partnerships has been one of the most critical means of advancing competitive corrections. Here are three examples of effective outcomes from corrections PPPs.

Building New Facilities—La Palma Correctional Center

The La Palma Correction Center in Eloy, Arizona offers a powerful example of how corrections partnerships are currently delivering benefits to California, serving as a model for state officials to replicate in the future. In response to Gov. Schwarzenegger's authorization of out-of-state inmate transfers in May 2007 (following his declaration of a state of emergency in prison overcrowding), the Corrections Corporation of America (CCA) financed and built the 3,060-bed La Palma prison for the purpose of housing transferred California inmates—and they did so in record time to ensure they would meet the state's timelines.

The contractor employed a phased-opening plan and a method of modular construction to accelerate the schedule, delivering the first phase of the project in time to allow the first inmates to transfer in July 2008—just one year after the prison was sketched on a napkin, record time by any analysis.⁴³ The prison's remaining two phases were operational by December 2008, three months ahead of the targeted completion date of March 2009.

In all, La Palma took a mere 15 months to finance, design and build, from concept to full operations, and it was the largest project thus far in CCA's quarter-century history. It is important to note that while La Palma was built and financed privately, the prison was built for and on behalf of California, which is effectively granted right of first refusal to the beds in La Palma per the terms of the contract.

And even though the prison is located in Arizona, CCA is required under contract to adhere to California correctional operating standards, and CDCR sends on-site contract monitors to La Palma to ensure that CCA is living up to the performance standards outlined in its contract. These contract monitors are California state employees whose job is essentially to look for problems in

contracted prisons and ensure that the terms of the contract are being met—or in other words, ensuring that the private partner is living up to its end of the bargain.

Building New Facilities—South Bay Correctional Facility

In February 1997, South Bay Correctional Facility opened under a contract with the state of Florida and Wackenhut Corrections Corporation (now the GEO Group). The state required that any private correctional facility meet a cost-savings requirement of 7% as compared to the state's public counterparts. The results, however, were much more striking.

South Bay was built around the same time as Okeechobee Prison, but was constructed at a significantly lower price. Okeechobee was completed for \$85.7 million, while South Bay cost \$69.9 million, a 24% savings in design and construction costs. The South Bay facility was nonetheless able to include 4.2% more square footage than Okeechobee.

Although Okeechobee was designed to house a similar number of inmates, the state has never authorized the full use of that capacity. As a result, the construction costs at the public prison were 60% higher per inmate than at South Bay. Operating costs are also considerably lower at South Bay. In 1997, South Bay saved Florida 3.5% per inmate, while it was able to save 10.6% in 1998.

The use of a private contractor for the South Bay facility not only allowed Florida to save money; it also offered more flexibility in meeting performance goals. The private facility was able to become fully operational within six months (much more quickly than its public counterpart), has received more positive reviews from the Correctional Medical Authority than Okeechobee and has implemented an innovative method for management of high-security inmates. Three months after opening, the prison was operating at capacity, and offered programs to its inmates. These included academic and vocational training, and substance abuse treatment. Okeechobee, on the other hand, took 17 months to fully open, phasing inmates in slowly. It was unable to offer academic programs until three years after its opening.

The facility at South Bay garnered a substantially more favorable review by the CMA than did the Okeechobee prison. In one review, CMA's health reviewer found 9 level-one (high-risk) and 19 level-two (low-risk) problems. South Bay, meanwhile, had only 3 level-one and 2 level-two issues. It is important to note that South Bay maintained these considerably lower numbers, despite having a significantly higher inmate population.

Finally, South Bay has successfully implemented innovative security techniques by utilizing annual assessments to continually refine its inmate management. These techniques have allowed South Bay staff to offer educational and other programs even to the facility's most violent and closely watched inmates.

Rehabilitation—Cheyenne Mountain Re-Entry Center

Recent research from Drexel University indicates that private rehabilitation programs can be significantly more effective than public sector services.⁴⁴ The Drexel study compared the recidivism rates of a control group from the New Jersey Department of Corrections with a group of inmates who had completed treatment in a Community Education Centers (CEC) Assessment Center. The study found that six months after release, the CEC group had a significantly lower re-arrest rate than the DOC group.

The study also compared recidivism rates of CEC inmates with re-arrest rates compiled by the Bureau of Justice. After six months, the recidivism rates of the CEC group were significantly lower than that of the BJS sample as well. The CEC re-arrest rates after one year were also significantly lower, as were the six-month and one-year reconviction rates.

CEC's value is in its innovative approach to rehabilitation. One CEC facility, Cheyenne Mountain Re-Entry Center (CMRC), focuses intensely on drug and alcohol treatment programs, education, job search and computer skills, and "lifestyle change" classes that have established a unique prison culture.

CMRC was built in connection with a 2004 contract between CEC and the Colorado Department of Corrections. Construction of the facility took place quickly. Construction on the center began in May of 2004; the prison officially opened in June 2005 and began receiving inmates in August 2005. CMRC now houses 750 inmates in a medium security setting. All of the inmates are soon to be eligible for release or parole, and CMRC's goal is to address the issues unique to pre-release offenders. The facility provides a safer, drug-free environment that focuses on treatment and educational programs for inmates just prior to their reintegration into society.

At CMRC, inmates call each other "mister" and confront each other about unacceptable behavior. The prison is full of signs declaring the special facility's primary axioms: "If you don't like yourself change," "Be right-sized," "Make better decisions," "Examine your motives," and "Anger is one letter away from danger." Residents at CEC are exposed to information about relapse prevention and behavior modification throughout their stay at the facility, both through lecture and small-group formats. Other programs aid residents in forming good relationships with their families.

The Centers also focus on education, and use classroom and small-group instruction to prepare residents for the GED. CEC facilities are certified GED test sites and do regular GED testing. Finally, an extensive alumni program helps residents procure employment, apply for college and financial aid programs, and find other services after they are released.⁴⁵

C. Common Concerns with Private Correctional Services

Accountability, Regulation and Oversight

Privately operated prisons have much more accountability than public sector facilities. In traditional public sector facilities, government plays the role of both regulator and operator, which tends to promote a lack of transparency and accountability. State officials are effectively placed in the position of being able to “grade themselves,” creating few incentives to perform better and seek innovative, cost-saving service delivery strategies. And while policymakers can certainly influence and oversee the activity of state agencies through various means (e.g., budgeting, rulemaking, legislation, hearings, etc.), there often tends to be an implicit deference by policymakers to the agency director and staff on matters of substance, which tends to limit the willingness and ability of policymakers to effectuate systemic reforms that radically overhaul existing public service delivery systems. In addition, public sector civil service rules tend to limit the ability of public sector managers to “right-size” systems by releasing or realigning staff, which by its very nature limits the ability of managers to hold public employees accountable for their on-the-job performance. In many ways, the government monopoly in corrections tends to experience the same phenomenon as any other monopoly—absent external pressures, accountability suffers.

By contrast, there are five key layers of accountability with corrections PPPs, far more than in the public sector facilities:

- ***Contractual requirements:*** Contracts with partnership prisons give government a great deal of control over the conditions and minimum operations standards of the facility. Corrections PPP contracts should be performance-based, clearly specifying the operating standards expected of the contractor, accreditation mandates, and any other aspect of service delivery that policymakers deem critical to include in the contractual standards. Further, payments to private contractors should be tied to the achievement of service standards specified in the contract—with penalties for underperformance—to create the proper incentives for high-quality service delivery. Last, private corrections firms are typically required by contract to comply with national correctional standards set by independent third-party accreditation agencies, such as the American Correctional Association, the National Commission on Correctional Healthcare, and the Joint Commission on the Accreditation of Healthcare Organizations. To become accredited, private correctional facilities undergo extensive third-party audits on a regular basis.
- ***Government contract monitoring:*** State and federal corrections agencies that engage in corrections PPPs often employ contract monitors to ensure compliance with contracts. These monitors are corrections agency employees whose job is to look for problems in privately operated prisons and report them to the contracting agency. In fact, privately operated prisons often have multiple full-time, on-site contract monitors who are physically at these facilities every day. There are also examples of prisons having a government appointed warden with other operational aspects run by a private firm. Regardless of the approach taken, ongoing contract monitoring is a critical component for a successful corrections PPP.

- ***Policymakers***: Elected officials exert control over the state corrections system through a variety of means, including lawmaking, budgeting, rulemaking and agency leadership appointments. Laws and rules can certainly be applied equally to publicly and privately operated facilities to ensure consistency in standards. Policymakers also have various means of providing direct oversight of privately operated prisons. For example, in the executive branch, corrections agencies conduct regular audits of private facilities, as well as the ongoing contract monitoring cited above. In the legislature, legislative committees provide ongoing oversight of prison system operations—including privately operated prisons—and they can additionally undertake their own internal audits of private corrections facilities and contracted services.
- ***Internal audits***: Private sector corrections providers have a vested financial interest in ensuring that the facilities and services they provide are of high quality and that they are delivering value to their clients. To that end—and like many companies—private corrections firms have internal auditing and review teams, as well as contract compliance departments, that oversee the operations and quality controls of the facilities they operate. These internal systems allow vendors to ensure they adhere to the terms and standards outlined in their contract, while compliance reviews offer outside accountability to meet the same end.
- ***Shareholders***: The three largest private corrections firms are also publicly traded companies and are held accountable to shareholders and creditors. These companies’ ability to attract investors and obtain credit is predicated on their overall business viability through their delivery of quality services. Private prison companies will only grow and be profitable if they deliver on quality and performance. If a company does a poor job running prisons, potential government clients are not going to want to hire them, and market investors are not going to invest their capital in them.

Legal Authority

Federal, state and local officials have all recognized the need for legal authority to delegate correctional responsibilities to nongovernmental entities. At the federal level, this is recognized in the language of 18 U.S.C. §4082(b), which allows confinement of any federal prisoner in “any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise.” The Bureau of Prisons has used this language to contract with partnership prisons.

Local and state governments deal with the legal authority to contract for correctional services in their own ways. The 31 states that currently have a partnership prison in operation or under construction have prescribed authority under state or local law that allows inmates to be placed in private custody; a number of states that do not yet have a private facility have similar allowances as well. States often pass enabling legislation to allow for private prisons, while others seek a determination by the state attorney general that there is no law or constitutional provision forbidding corrections contracting.

There is some concern that private prisons are unethical, or that they might violate inmates' rights. However, privately operated prisons are usually subject to more stringent regulation and oversight than are government-run facilities and have proven to be a continually effective part of the nation's corrections system for nearly three decades. Some watchdog groups are concerned about access to information about conduct within private prisons. Yet, privately operated prisons must disclose any non-proprietary information if they are operating on government contract. Also, contract terms can specify conditions for inspections or audits by outside groups or state agencies to make sure that important information is available to the public and that prisoners are being treated well.

Safety and Incidents

Riots and other violence occasionally occur in both public and private prisons. Corrections management companies are required to staff enough trained personnel to deal with an inmate uprising. Both state-run and private prisons usually can rely on help from local and state authorities to quell disturbances. Because private prisons generally have trained correctional staff and oftentimes more modern facilities with better safety features, the number of incidents at private facilities is lower than at state-run prisons, and roughly the same as at federal prisons.

As discussed earlier in this section (see service quality discussion on page 22), private correctional facilities have measured well against government-run facilities across a wide range of quality-comparison studies. A 2002 Reason Foundation report reviewed over a dozen academic and governmental quality-comparison studies that provide strong evidence that privately operated prisons actually improve safety and quality.⁴⁶

While there is limited comprehensive research on prison safety, recent data from the Bureau of Justice Statistics (see Table 8) shows privately operated facilities had a much lower rate of sexually violent incidents than state facilities in 2005 and 2006. The rate of allegations made against public sector prisons were roughly double that of the private sector, and after investigations, the rate of substantiated sexually violent incidents was found to be five times higher in state facilities than those operated under private management. It should be noted, however, that these data cover all security levels, represent a subset of all violent incidents and may not fully account for differences in inmate populations among public and private providers.*

Table 8: Sexual Violence in Public and Private Prisons, Allegations and Substantiated Incidents, 2005-6*								
	Allegations		Rate (per 1,000 inmates)		Substantiated Incidents		Rate (per 1,000 inmates)	
	2005	2006	2005	2006	2005	2006	2005	2006
Public-State	4,341	4,516	3.68	3.75	458	549	0.39	0.46
Public-Federal	268	242	1.71	1.5	41	5	0.26	0.03
Private	182	200	1.8	1.91	24	9	0.24	0.09
Total	6,241	6,528	2.83	2.91	885	967	0.4	0.43

Source: Bureau of Justice Statistics.

* On June 29, 2010 this report was corrected to accurately report the type of violent incidents and correct a typographical error in Table 8.

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 corrections management companies respond to these incentives by managing facilities in ways that minimize incidents.⁴⁷ This means maintaining tight control of inmates and keeping them well-fed and occupied with work, education or recreation.

The contract itself can be constructed to tie payment to the achievement of safety goals. For example, the state of Victoria, Australia has used an innovative performance-based fee to align the company's long-term interests with the government's goal of safe and high-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.

Given the vital importance of safety to private corrections providers—after all, firms with poor safety records will lose contracts to strong performers—market competition creates an ever-present incentive for firms to operate correctional facilities as securely and safely as public sector prisons—if not more so.

Use of Force

The use of force is an issue that all private corrections firms must face. There are judicially prescribed limitations on the used of deadly force by police and corrections officers in government-run prisons. Common law allows for the use of force by private citizens—including private correctional officers—for self-defense, defense of another, or to prevent the escape of a felon. Although there have been no cases dealing directly with the use of deadly force by private sector corrections personnel, some scholars anticipate that the same rules that apply to public prison guards will apply to private ones as well. That is, force is justified if it is needed to prevent escape, and there is cause to believe that the inmate poses a significant threat.

Additionally, state legislation and contract terms often give more specific guidelines on the use of force. Utah law 64-13d-104, for example, provides that an employee of a facility contractor's use of force is limited to the grounds of the facility, transport of a prisoner, and when pursuing a fleeing inmate. The law further specifies training standards for private employees that are at least equal to those of public prison guards.

Part 4

Policy Options for California: Public-Private Partnerships in Correctional Services

California is no stranger to tapping the private sector to solve corrections system capacity challenges. Most recently, Governor Schwarzenegger's 2006 emergency proclamation allowed the California Department of Corrections and Rehabilitation (CDCR) to contract with out-of-state private prisons to temporarily house state inmates, solving an immediate need to ease severe overcrowding, help the state avoid running out of inmate beds and improve safety conditions for both inmates and prison guards.⁴⁸

Since CDCR began partnering with Corrections Corporation of America (CCA) in 2006 to house 1,000 inmates out of state, the contract has been amended to accommodate a tenfold increase in out-of-state contracted beds. The California population housed in CCA facilities in Arizona, Mississippi and Oklahoma now stands at more than 10,000 under the most recent contract amendment from 2009.

In November 2009, CDCR spokesman Gordon Hinkle told Southern California Public Radio that the out-of-state contracts helped the agency eliminate thousands of overcrowded, makeshift prison "cells" set up in gymnasiums and day rooms. According to Hinkle, "One of the things we've been trying to do in California is to shut down any of the 'bad beds' or dorm-type living situations which creates a higher security risk not only for the inmates but for also for the correctional officers that are working to supervise them."⁴⁹

Even though these out-of-state contracts were small steps relative to the scale of California's capacity crisis, policymakers should recognize that the private sector delivered when California needed it most, suggesting a greater role for public-private partnerships (PPPs) moving forward.

The following recommendations outline further steps California can take to leverage PPPs to help address the state's severe prison capacity issues with limited public funds. However, given the lack of detailed and transparent correctional budget and facility data at CDCR, this report is not able to offer more detailed estimates of the potential cost savings to California associated with each of the

following approaches (though several examples of cost savings and service quality improvements are cited). Cost savings—whether from operations, infrastructure or future cost avoidance—can be maximized, however, by implementing performance-based contracts that specify outcome goals and allow contractors the flexibility to innovate and best determine how to achieve those goals.

While PPPs can play an important role in driving down costs and improving correctional service delivery, they should not be viewed as a panacea to the enormous corrections challenges California is facing. Truly “right-sizing” the system and putting California corrections on a sustainable path will demand a wide range of other actions and systemic reforms, some of which are discussed at the end of this section.

A. Solicit and Implement PPPs to Address System Capacity Needs

There is no one solution to California’s prison capacity crisis, and policymakers will need to rely on a variety of short-, mid- and long-term solutions. PPPs can play a vital role in each case:

- In the short term, the state should *dramatically expand contracting for out-of-state prison beds*. Sufficient capacity exists at privately operated out-of-state prisons to handle a large influx of California prisoners, and this would be the fastest and most cost-effective way to relieve overcrowding in state prisons. While the state has—and may choose to continue—to evaluate similar opportunities to transfer inmates to out-of-state *public* prisons to meet immediate short-term needs, an abundance of evidence suggests that per diem rates and operations and labor costs will be significantly higher in these facilities relative to private prisons.
- In the near-term, the state should consider opportunities to *partner with private corrections firms to finance and build new correctional facilities in other, lower-cost states* to house larger swaths of California inmates. A variety of California labor and regulatory mandates—and the higher associated costs they bring—make it unlikely that the state could quickly and cost-effectively deploy private firms to build and operate new in-state private prisons, while less burdensome rules in other states offer opportunities to drive down costs and ease pressure on the corrections budget.
- To proactively address long-term, in-state capacity and cost control issues, the state should partner with private-sector providers to finance and develop most, if not all, new in-state correctional facilities under PPPs, and it should contract out the operations of existing facilities wherever possible. Because PPPs can take an unlimited variety of forms—and because public bureaucracies tend to avoid “outside the box” thinking—the fastest and most effective way the state could solicit a set of innovative capacity expansion proposals would be to *issue a request for information (RFI)* so private service providers can respond with ideas for the state to consider.

The RFI should be specific in terms of outcomes desired (i.e., number of beds needed in prisons and specialized correctional facilities, cost savings, replacement of current facilities

with expanded ones, etc.), but it should remain open-ended on how capacity increases are achieved in order to spur innovation in proposals. Specifically, several types of options (and various combinations thereof) should be emphasized:

- *Outright sales of older state prisons:* Despite having a relatively young prison system relative to other states, California still has roughly a dozen older state prisons that were built in the days when the relationship between prison design and safety was less understood. Hence, these prisons naturally operate at less efficiency and with greater labor needs than more modern prisons designed to maximize safety and efficiency. Some aging facilities, like San Quentin, are obvious candidates for outright divestiture due to their high value on the real estate market, and the proceeds from divestiture could be used to supplement the corrections budget, construct replacement facilities on lower value land, or some combination thereof.
- *Long-term leases of existing state correctional facilities:* From a financial perspective, public prisons should be viewed as tremendous potential capital trapped within a “dead” asset. Long-term (15+ year) lease arrangements—through sale-leasebacks, leases with an option to purchase and similar innovative finance techniques offer a way to monetize these valuable assets and extract their trapped value to apply to other uses.
- *Developing new facilities through PPPs:* With the high costs of public sector infrastructure projects, limited bond funds and tightening corrections budgets, the state will need to increasingly rely on private companies to finance and develop new correctional facilities. No new corrections facility should be built in the state without being subject to competitive bidding to drive down costs and maximize value for money. Firms can often design facilities that require less staff than traditional prisons while still ensuring the proper level of security, allowing contractors to substantially reduce long-term operating costs.

The same thinking can also be applied to replacement of existing prisons. Private providers can in many cases take over operations of an existing prison *and* finance the construction of a replacement facility, all for the same annual budget that the facility receives today under public operation.

Notably, the Schwarzenegger administration and CDCR are already contemplating a path forward for the development of in-state, privately operated prisons. In its November 12, 2009 filing in response to the federal judge's ruling in *Coleman vs. Schwarzenegger*, CDCR wrote that, “An additional possible method to reduce the population to 137.5% of design capacity is to rapidly increase the number of available prison beds by expediting leasing, building, and/or operating new beds through establishment of private vendor contracts to house inmates and operate private correctional facilities in the State. [W]aivers of state law would help expedite the contracting process and make available private correctional facilities ready for operation by a private vendor by August 2011.”⁵⁰

Once the state has solicited RFIs from the private sector, it can then evaluate all received proposals, combining the best ideas into a package (or set of packages, if appropriate) that it can then advance to procurement via a formal Request for Proposals process.

However, some significant legal obstacles will need to be overcome before policymakers can consider the issuance of an RFI. Current state laws in California prevent the private sector development and operation of in-state, adult secure prisons, and to effectuate the recommendations made above, policymakers will need to pass legislation granting such authority. This could be accomplished via broad enabling legislation for corrections PPPs or legislation of a more limited scope authorizing a limited number of pilot projects (along similar lines to the legislation authorizing the state's early PPP toll road projects).

Alternatively, just as the state has now created the legislative framework and the implementation support structure for PPPs in transportation, it could also enact similar PPP-enabling legislation to facilitate a greater private sector role in delivering other types of state infrastructure, including correctional facilities. For example, recognizing the success of its long standing transportation PPP-enabling law, Virginia policymakers enacted the Public-Private Education and Infrastructure Act of 2002 (PPEA) to encourage PPPs across a variety of sectors, and it has used this process to advance both solicited and unsolicited proposals for new prisons, sexually violent predator facilities, psychiatric hospitals, higher education facilities, IT systems and a variety of other types of capital investment that the state couldn't otherwise afford.

Expediting the development of privately operated prisons would involve additional legal obstacles. In the November 12, 2009 filing discussed above, CDCR identified several state laws (or provisions thereof) that would need to be waived in order to expedite the construction of one or two new in-state, privately operated prisons by 2011, including the California Environmental Quality Act, sections of the Public Contract Code covering the approval and competitive bidding rules and requirements for state contracts, and several statutory and constitutional state civil service hiring requirements.⁵¹

An additional statutory change would also help facilitate the greater use of PPPs. In 2009 the budget bill SBX2 4 took a significant step toward advancing Governor Schwarzenegger's vision of "performance-based infrastructure" by modernizing the state's transportation PPP-enabling law and allowing three state agencies, including CDCR, to implement five design-build pilot projects, representing the first use of the design-build procurement method—a "dialed down" PPP model, of sorts—for correctional facilities in California. However, the limitation of five total projects limits the effectiveness of this valuable cost-cutting tool, and policymakers should remove this cap.

B. Pursue Partnerships in Correctional Health Care, Maintenance and Food Services

While the most visible types of corrections PPPs involve the operation and management of entire prisons, for-profit and nonprofit private organizations also play an important role in providing many correctional support functions in many states, including health care, food services, facility management and maintenance, mental health services, substance-abuse counseling, educational and vocational programming, transportation services and the management of prison industries.⁵²

Nearly every state corrections department has contracted out for one or more of these services at some point over the last few decades because administrators have realized that correctional support functions are just that—*support* functions—and are not often a core competency of government. And many governmental entities, including state and local agencies, school districts and public universities, routinely contract out for similar functions in their own operations, so the use of support-related PPPs is ubiquitous across a variety of public services.

1. Correctional Health Care Services

The challenges facing correctional health care delivery in California are immense. As a result of a 2001 class action lawsuit (*Plata v. Schwarzenegger*) over the quality of medical care in the state prison system, U.S. District Court Judge Thelton E. Henderson took correctional health care in California prisons out of the state's hands, placing it under the jurisdiction of a federal Receiver (housed under The California Prison Health Care Receivership Corporation, a non-profit organization created to support the federal Receiver). Finding that health care in California prisons was a violation of the Eighth Amendment of the U.S. Constitution, which forbids cruel and unusual punishment of the incarcerated, Judge Henderson wrote:

*The Court has given defendants (the State) every reasonable opportunity to bring its prison medical system up to constitutional standards, and it is beyond reasonable dispute that the State has failed. Indeed, it is an uncontested fact that, on average, an inmate in one of California's prisons needlessly dies every six to seven days due to constitutional deficiencies in the CDCR's medical delivery system. It is clear to the Court that this unconscionable degree of suffering and death is sure to continue if the system is not dramatically overhauled.*⁵³

Despite the federal takeover, officials have struggled to reform the state's correctional health care system in the intervening years. In February 2010, Gov. Schwarzenegger released a proposed budget that included \$1.2 billion in cuts to the CDCR budget. Approximately \$800 million of the cuts would come from reductions to funding for correctional health care services, with a target of halving the annual medical costs per inmate from the current \$11,000 down to \$5,757. In the plan, Schwarzenegger lists several models under consideration to achieve these cost reductions and

specifically cites those of Pennsylvania and Indiana, both of which currently use PPPs to deliver statewide prison medical services.

This would be a smart approach for California. 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. One leading service provider estimates that approximately 42% of health care services in U.S. prisons and jails are delivered through PPPs today.⁵⁴

While these contracts are in some cases limited to specific services, such as mental health, it is more common to see public corrections authorities implementing PPPs to provide the full range of comprehensive health care services (e.g., examinations, trauma, lab tests, pharmacy services, dental, etc.). Private correctional health care providers are required under their contracts to fill their staff with licensed physicians, nurses and other professionals. Many of the contract physicians also are board-certified in a relevant specialty. Private providers are also much faster and more nimble than governments in managing risk, implementing innovative process improvements and treatment methods and embracing the power of technology to automate administrative processes, including electronic medical records.

The largest company that provides correctional health care services—Correctional Medical Services, Inc. (CMS)—holds contracts at over 300 facilities in 20 states and is responsible for delivering health care to over 260,000 inmates. CMS has also achieved a 100% success rate in receiving and maintaining national accreditation through either the National Commission on Correctional Healthcare or the American Correctional Association.

Private health care for prisoners is likely to become even more widespread as governments grapple with dramatic fiscal crises in the wake of the global recession of 2008/2009. Industry market analyst Avondale Partners cites approximately \$500 million in prison health contracts expected to be issued between October 2009 and October 2010, including state-level contracts in Delaware, Maryland, Idaho, Arizona, North Carolina and Georgia.⁵⁵ In addition, the Louisiana Department of Corrections (LDOC) announced in 2010 that it plans to partner with a private vendor to provide pharmacy services at all state-run prisons. According to LDOC Undersecretary Thomas Bickham, partnering with the private sector for correctional pharmacy services will reduce the annual costs of providing prisoner medications by over 50%, from \$2.5 million to \$1.2 million.⁵⁶

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.

When partnering for health care services, accreditation can be a powerful tool that public officials can use to ensure compliance with rigorous standards and monitor the quality of contracted correctional health care. For example, the National Commission on Correctional Health Care (NCCHC) is an independent organization that sets and updates standards and offers voluntary accreditation to prisons, jails and juvenile facilities in the public and private sectors. The American Correctional Association and the Joint Commission on Accreditation of Healthcare Organizations have since joined the NCCHC in offering accreditation. Best practices from other states involve making the achievement (or maintenance) of facility accreditation a key requirement of the contract; all private prison contracts in Puerto Rico include such requirements, for example.

It should be noted that in March 2010, Gov. Schwarzenegger announced a proposal to contract with the University of California in a “public-public partnership” of sorts to manage medical, dental and psychiatric care in the state’s 33 prisons, a plan the administration estimates could potentially save the state \$12 billion over the next ten years. However, given that the University of California is itself a public sector entity subject to civil service rules, state pay and benefits and the like, it may be the case that this proposal would not drive down costs to the same extent as true, market competition among private sector providers. One potential way to maximize the cost-saving benefits of competition would be to allow the University of California to bid alongside private providers to provide correctional health services.

2. Secure-Site Facility Maintenance

Governments at all levels—local, state and federal—have found that contracting out the operation and maintenance of facilities can lead to innovations, greater productivity and important cost savings. Facility management contracts are ubiquitous in government and can be applied in a variety of forms, from individual building maintenance and janitorial contracts to agency-wide facility maintenance management systems. Maintenance contracts typically cover a range of building services, including HVAC, electrical and mechanical systems, janitorial services, horticulture/landscaping and other services.

In addition to saving costs, contracting out maintenance functions can help governments address the chronic problem of deferred maintenance, which places strain on existing infrastructure, shortens the useful life of assets, and increases life-cycle asset costs. Traditionally, in times of financial crisis, preventative maintenance is among the first cuts agencies make. However, such a move may cause deterioration in infrastructure and result in higher long-term costs.

Typical building management/maintenance contracts emphasize inputs: procedures, processes, the wages to be paid, amount or type of equipment, or time and labor used. Contracting companies are paid for the amount of work they do, not on the quality of work that is provided. These contracts are usually limited to one year with two option years. While traditional contracting in building operations and maintenance offers significant cost savings over in-house government provision, there is little or no flexibility in determining work methods, as the contracting agency typically

defines the work processes. In effect, the private contractor mimics the agency's processes and thus, by definition, severely restricts innovation and limits the potential benefits.

Current best-practice techniques in outsourcing rely on longer-term (3+ year) performance-based maintenance contracts. Under this type of arrangement, the contracting agency defines an end outcome goal and the contractor decides how best to achieve the desired outcome. The contract creates clearly defined performance measures, clearly defined outcomes and timetables, and allows for new and innovative methods, opportunities for value engineering and improved efficiencies. A performance contract may tie at least a portion of a contractor's payment, as well as any contract extension or renewal, to his achievement. This allows governments to purchase results, not just process, rewarding the private firm only if specified quality and performance goals are met. With performance-based contracting, governments are purchasing something fundamentally different from in-house services.

This approach to performance-based, "total asset management" contracting emerged from the field of road and highway maintenance both in the United States and around the world, but the very same approach is starting to be used be applied to the maintenance of public buildings, including secure-site facilities like prisons and juvenile justice facilities.

Corrections agencies embracing this approach to contracted maintenance services are likely to realize greater cost savings, a predictable budget line item over a multi-year period, risk transfer and efficiency gains. Facility maintenance and management contracts could cover individual facilities, facilities in a common category, facilities within individual districts, facilities in bundles of districts, and even agency-wide facilities.

Georgia has been the leading state in applying the concept of performance-based secure-site facility maintenance. Georgia's Department of Juvenile Justice (DJJ) began outsourcing facility maintenance at 30 of its 35 facilities in 2001, contracting with CGL Engineering Inc. for a comprehensive maintenance solution, marking the first successful state correctional system maintenance outsourcing to a private firm.⁵⁷ The partnership was structured to provide a long-term maintenance solution without increasing the budget.

The results have been impressive. The DJJ found significant improvement in the condition of facilities after just one year. For the first six months of the contract, corrective maintenance work orders outnumbered preventive maintenance work orders as longstanding maintenance needs were addressed. After two full years of the contract, preventive maintenance work orders were almost double the corrective work orders (19,700 preventive, compared to 11,504 corrective). Significantly, the cost of preventive maintenance in the contract remained at 2000 labor costs (before maintenance was outsourced).

To date, this partnership has generated significant improvement in facility conditions and resolved lingering maintenance needs, all while holding the budget flat.⁵⁸ CGL also developed a computerized maintenance management system for all of the facilities as part of the initiative,

dramatically improving budget and facility conditions information management. Prior to this, the state did not collect this information.

The Georgia DJJ's successful secure-site facility maintenance contract was viewed as such a success that policymakers subsequently decided to apply the same model beyond just DJJ, issuing a new contract covering maintenance at multiple secure-site facilities across three agencies—DJJ, the Georgia Department of Corrections and the Georgia Bureau of Investigation.

California should explore similar opportunities for performance-based secure-site facility management and maintenance. If the state were to act quickly in contracting out its facility maintenance services, it should be able to realize substantial cost savings while helping the state tackle core facility maintenance challenges.

3. Correctional Food Services

The delivery of food services is a commonly outsourced function among correctional agencies, for two key reasons. First, it is widely accepted among industry professionals that food services are a “non-core” correctional enterprise, and there is nothing inherently governmental about providing food to inmates. In fact, schools, public hospitals, stadiums and many other types of government facilities routinely outsource food services. Second, private companies subject to competitive market pressures are typically better able than individual government agencies to leverage economies of scale and find better values buying food commodities in bulk.

Contracts with private food service vendors typically require vendors to be responsible for the preparation of all prisoner meals; the purchasing of food, cleaning supplies and paper products; and adherence to state-approved food lists and menu plans. Most state prison food service contracts do not cover the entire prison system; rather, state contracts generally cover food service delivery at specific facilities (or bundles thereof).

In addition, compliance with established dietary and nutritional standards is a component of the accreditation standards that privately operated correctional facilities are typically required (under contract) to meet, and public authorities can ensure contractor accountability by assigning contract monitors and assessing financial penalties for non-compliance with contractual performance standards.

Cost pressures and desired service improvements often prompt state-run prison systems to consider partnerships for correctional food services. For example, a 2008 performance audit by the Michigan Office of the Auditor General found that the Michigan Department of Corrections (MDOC) did not effectively monitor food production, did not obtain food commodities at the best price, and failed to adequately safeguard food inventory stored in its warehouses.⁵⁹ Finding that the MDOC “lacks assurance that its food service operations [...] is utilized effectively,” the audit suggests that outsourcing food services could save MDOC between \$10.2-\$38.0 million annually if it were able to negotiate the same rates seen in prison food contracts in Kansas and Florida.⁶⁰

The savings from food services partnerships can be significant. For instance, the Indiana Department of Correction has reduced the correctional food services costs at dozens of facilities by approximately 30% since contracting out in 2005. According to Indiana Governor Mitch Daniels:

Shortly after taking office, our new Corrections Commissioner asked me 'Did you know we're cooking our own food in 26 separate kitchens, and we're paying \$1.41 a meal to feed the offenders?' "No," I answered, "is that a lot?" "It only cost us 95 cents where I worked last," he said, so I authorized an immediate competition. [...] A well-established food service company won most of the business, at a cost of 98 cents per meal (nutritional quality and consistency improved, by the way, by the terms of the contract).⁶¹

The Indiana Department of Correction estimates that it is saving \$11.5 million a year on food service operations at 30 correctional facilities under its 10-year, \$258 million contract with Aramark Correctional Services.⁶² As an indicator of the extent of correctional food services outsourcing, Aramark alone provides food, facility and other support services to over 450 correctional facilities in North America.

C. Enhance the Performance and Capacity of the Probation and Parole System Through Public-Private Partnerships

The use of private services by correctional agencies is most extensive outside institution walls. This reflects the fact that more than 80% 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 the United States. In addition, state governments have traditionally let contracts for services such as substance abuse counseling, assessment and treatment of sexual offenders, and vocational training and placement.

Private involvement in providing services to inmates during detention and after release has brought a new wave of innovation. Florida policymakers have found the private prisons in their state to be superior to the state prisons in providing effective rehabilitation, education and other services.⁶³ Private firms are developing efficient and effective post-release programs aimed at reintegrating inmates into the community and reducing recidivism rates.⁶⁴

However, providing these kinds of services does cost money, and 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.

To achieve sustainable reductions in the prison population, California will need to expand and improve the performance of its probation and parole system to address the state's high recidivism rate and accommodate the potential early release of tens of thousands of California inmates. Community corrections will need to play an increasingly vital role in reducing recidivism and

avoiding future incarceration costs, but California’s current system is already strained and will be increasingly pressured to safely reintegrate growing numbers of offenders back into society on tighter budgets.

To meet this challenge, the state will need to develop a broader and more effective network of public, private and non-profit service providers to provide community corrections services. Opening the playing field to allow for greater participation of private and non-profit providers, in addition to existing public programs, would yield a more meaningful, robust system of community-based providers.

Almost every aspect of community corrections operations could be examined to determine whether it could be more efficiently run, and a process similar to that described in the previous section—issuing requests for information from private providers to solicit innovative capacity expansion proposals—could be used to evaluate and select potential projects.

Given the pressing need to dramatically reduce repeat offending, proposals and projects should be structured with an explicit focus on reducing recidivism. The United Kingdom can serve as a model in this regard, as it has shifted from a predominantly public system to one in which both public and private sector providers service the needs of community corrections. Notably, it relies on performance-based contracts with public and private providers alike that tie remuneration to precise benchmarks and outcome-based measures of recidivism and public safety. So far, the use of PPPs in community corrections is having a positive effect on rates of recidivism in the U.K.; one recent study found that the recidivism rate had dropped significantly, from 43.7% in 2000 to 39% in 2006.⁶⁵

This approach essentially “charterizes” community corrections facilities and gives the state a powerful tool—the contract—to hold public and private providers accountable for results. Additionally, exposing the probation and parole system to greater competition would raise the standard of services in both public and private operations and create openings to foster and disseminate innovation in service delivery.

A smarter, performance-based approach to community corrections would help ensure that only programs providing the best results at a competitive cost would be funded, and that ineffective programs, whether public, private or non-profit, would be discontinued. The field would be open to a diverse range of providers, advancing innovation and efficiency, and providing a means by which the system could be held accountable.

D. Finance and Build Specialized Facilities for Mental Health and Other Inmate Populations with Unique Service Needs Using PPPs

Reducing per-inmate correctional costs down to averages obscures a high-degree of variation among the costs of different inmate populations. For instance, it typically costs far more to house

an elderly inmate with a chronic illness or an inmate with mental health needs than a relatively healthy young adult. Yet, states have historically opted to separate inmates and facilities across their correctional systems on the basis of security level, as opposed to specialized service needs for distinct populations, raising the overall baseline costs of operation and missing out on economies of scale and other efficiencies possible through specialization.

This is starting to change as governments increasingly recognize the cost and efficiency benefits of using specialized facilities to house unique inmate populations, and more and more states are turning to the use of prisons specifically built and designed to house medical patients, inmates with mental health needs, sexually violent predators and more. Not only can specialized facilities help states better control costs by consolidating inmates with similar needs and care requirements, but the design of these facilities can be better tailored to the unique populations they serve.

And perhaps most importantly, PPPs are delivering these kinds of specialized facilities without the expenditure of state capital dollars and related public debt. Rather, private corrections providers are able to finance, build and operate these facilities themselves, being repaid for all capital and operating expenditures through a contract with capitated (capped) rates that set an upper limit on what states will spend on these contracts annually, offering certainty in the budgeting process over time (something rare for public-sector prisons).

Mental health services offer a good example of this approach. The private sector has played an increasing role in providing public mental health services in recent decades. South Florida State Hospital (SFSH)—the first state psychiatric hospital privatized in Florida in the late 1990s—offers an excellent example outside of the corrections sector. The aging Pembroke Pines facility had never been accredited in its 40-year history and was involved in a major class action lawsuit concerning patient abuse and abysmal conditions before policymakers decided to partner with the private sector. Within 10 months of receiving the contract, the private operator was able to get the existing facility accredited and the lawsuit dismissed, while at the same time financing and building a new, modern facility to replace it.

The annual cost to operate the new hospital plus the annual debt service on construction was less than the state was spending to simply operate the old facility. The private provider designed the new facility and facilitated tax-exempt financing on behalf of the state via a private, nonprofit corporation. No state capital dollars were involved and the financing did not involve the state pledging its full faith and credit. The private provider designed and constructed the new facility using construction funding from the bond proceeds. Ownership of the facility reverts from the bondholders to the state upon satisfaction of the debt.

The results have been impressive. Since implementing the PPP, the hospital has reached some significant operational milestones, such as dramatically increasing the bed utilization rate (enabling the hospital's catchment area to be increased to over half of the state's population, despite accounting for just 25% of the state's civil psychiatric hospital beds), reducing the average patient

stay from eight years to less than one year, and nearly eliminating the use of seclusion and restraint to manage patient behavior.

SFSH also recently rolled out the first electronic health records system in a Florida state psychiatric hospital—at its own expense. The system increases the accuracy of treatment at the hospital and has created a benchmark for every other hospital in the state to aspire to. Significantly, the contractor paid to develop this cutting-edge system himself—recognizing the operational improvements it would facilitate—even though this medical records system immediately became property of the state as soon as it was installed.

The Florida Statewide Advocacy Council, a human rights advocacy group that initially opposed the SFSH contract, noted the turnaround, unanimously passing a resolution in 2003 supporting the privatization of additional psychiatric facilities in Florida. Over the past decade, policymakers have also recognized the benefits of PPPs in mental health and privatized several forensic psychiatric hospitals, as well as prison mental health programs. Cost savings through privatization have also been impressive. The Florida Department of Children and Families told a legislative committee in 2007 that the average cost per bed in privately operated state psychiatric facilities was as much as 15% lower than at the state-run hospitals.

Mississippi applied the same model to correctional mental health services. In 1997, the Mississippi Department of Corrections contracted with The GEO Group to finance, design, build and operate the East Mississippi Correctional Facility, a new 500-bed prison built to serve minimum, medium and maximum security male inmates needing special programs to address their mental health needs. The financing model used was similar to that described above for South Florida State Hospital. By using a PPP to deliver this new prison, the state was able to avoid taking on new capital expenditures while ensuring high quality care for the psychiatric inmate population. The facility has been accredited by the American Correctional Association since 2000, and this contract was subsequently amended to facilitate the addition of 1,000 new beds at this facility, tripling its original design capacity. This partnership has been a clear success, according to Mississippi Corrections Commissioner Chris Epps:

East Mississippi Correctional Facility has been a valuable partner in addressing the mental health needs of offenders confined in the Mississippi Department of Corrections. I am excited the newly developed GEO Pre-Release Program for the mentally ill will enhance continuity of care after the offender's release and assist these individuals [to] successfully reintegrate into society. I am confident the mental health programs at East Mississippi Correctional Facility are reducing recidivism and improving public safety in the State of Mississippi.⁶⁶

In this sort of PPP arrangement, the state would negotiate a performance-based contract that would establish care standards and performance mandates (with appropriate financial penalties for non-compliance) to ensure a higher level of service than achieved under state operation. The state's role then shifts to contract monitoring and holding the operator accountable for results. In the case of

Florida's mental health contracts, the state retains the ability to terminate the contract without cause with a mere 30-days notice, a provision clearly aimed at ensuring contractor accountability. Further, Florida has also negotiated fixed-cost contracts, with rates capped by inflation, that keep facility costs predictable over multiple budget cycles, a far cry from the budget variability typically seen under state operation.

California appears to be moving in the direction of accelerating development of specialized facilities for unique inmate populations. In November 2009, the CDCR and the federal Receiver for California Prison Health Care Services (CPHCS) J. Clark Kelso jointly approved the California Health Care Facility Project, a new 1,734-bed medical and mental health care facility to be built on the grounds of the Northern California Youth Correctional Center (NCYCC) in Stockton, California. But with an estimated project cost of \$1.1 billion (to be funded by bonds made available from the Public Safety and Offender Rehabilitation Act of 2007), it seems apparent the state will be unable to deliver the full set of seven health care prisons (totaling 10,000 beds)—and renovations at each of the state's 33 existing prisons—that the federal Receiver estimates is necessary to satisfy the state's future health care bed needs and address serious mental health service delivery concerns.⁶⁷

Instead of the \$8 billion in costs the Receiver asserts it would take to deliver those beds, California could likely deliver these and other types of facilities at a far lower expense to taxpayers and with limited need to tap state capital dollars or assume more bonded debt. Given the magnitude of the state's fiscal crisis, it's difficult to conceive of how either of those “traditional” delivery approaches is even feasible in the foreseeable future. In other words, PPPs and private financing may be the only realistic way to finance and deliver new specialized correctional facilities to help the state “right-size” the correctional system, getting them built now when the state most needs it, as opposed to decades from now—if ever—under traditional public sector financing approaches.

E. Tackle Necessary Systemic Reforms

Like California's corrections system itself, the challenges the system faces are large and complex, and there are no silver bullet solutions. It will take a variety of policy reforms to put the state on a sustainable path in corrections, including PPPs.

It is beyond the scope of this report to contemplate the full scope of needed reforms. However, policymakers do not need to reinvent the wheel. Numerous state-level studies and reports have already suggested many systemic changes and policy actions California officials could take to lower costs and improve the performance of the state's corrections system.⁶⁸ The problem in California up to this point has been the unwillingness of the state legislature to actually muster the political will to implement most of them, or to implement them at the scale necessary to make significant progress at addressing the state's corrections crisis.

Some of the major reforms include:

Sentencing Reform

According to the Stanford Criminal Justice Center, California has over 1,000 felony sentencing laws and over 100 felony sentencing enhancements across 21 sections of California law. For some crimes, lengthy prison sentences are the only just solution. Such incarceration is very expensive, however, which is another reason it should only be used for the most serious offenders. Too often, in an attempt to boost “tough on crime” credentials, strict sentencing laws have been imposed when more proportionate punishments—such as rehabilitation programs and drug courts—would have been more appropriate and cost effective.

This has certainly been the case with regard to the drug crimes that have swelled U.S. prisons in recent decades. In a shift from the trend toward “tough on crime” sentencing policies, the United States Sentencing Commission—an independent agency in the judicial branch responsible for establishing sentencing policies and practices for the federal courts—has recently advised Congress to reduce the severity of, and in some cases eliminate, mandatory minimum sentences for drug crimes, which would give judges more discretion to seek incarceration alternatives for drug possession and other nonviolent or lesser offenses.⁶⁹

Rather than adding more felony laws, California lawmakers should engage in sentencing reform that will bring clarity and consistency to sentences and promote the use of sensible and effective alternatives to incarceration. As a January 2007 Little Hoover Commission report concluded,

Despite the rhetoric, thirty years of “tough on crime” politics has not made the state safer. Quite the opposite: today thousands of hardened, violent criminals are released without regard to the danger they present to an unsuspecting public.

Years of political posturing have taken a good idea—determinate sentencing—and warped it beyond recognition with a series of laws passed with no thought to their cumulative impact. And these laws stripped away incentives for offenders to change or improve themselves while incarcerated.⁷⁰

This is consistent with the findings of an October 2009 report by the Pennsylvania Commission on Sentencing, which found that “neither length of sentence nor the imposition of a mandatory minimum sentence alone was related to recidivism.”⁷¹

Perhaps even more instructive is a Canadian view of domestic mandatory minimum sentencing policies for drug offenses. In response to the current debate in the Canadian Parliament over whether to increase mandatory minimum sentences for drug crimes—which would essentially replicate national and state policies in place in the U.S. for decades that have driven up drug-related incarceration rates—the Urban Health Research Initiative at the BC Centre for Excellence in HIV/AIDS (a unit of the University of British Columbia) released a report in March 2010 that reviewed 15 international, peer-reviewed scientific studies examining the impact of drug law enforcement on violence. The report found that contrary to the notion that drug law enforcement

reduces violence, 87% of the studies reviewed found that drug law enforcement was associated with *increasing* levels of drug market violence.⁷² Commenting on the findings in the context of the proposed, stiffer mandatory minimum sentences in Canada, UHRI finds that,

*The findings of this review are also relevant to the recently proposed Bill C-15, a federal bill that would impose mandatory minimum sentences on individuals convicted of drug crimes. In this regard, it should be noted that, in the United States, a massive tax burden has emerged as a result of the costs stemming from mandatory minimum sentencing policies, and evidence to suggest that these policies have been effective in reducing drug use, drug supply or drug crime remains lacking.*⁷³

According to Dr. Thomas Kerr, a co-author of the report,

*In the era of evidence-based public policy, it is remarkable that the federal government is proposing extremely costly interventions, such as mandatory minimum sentences, without any discussion of their costs or likely impacts on crime. [...] This review clearly demonstrates that while these interventions will place an enormous burden on the taxpayer, they are unlikely to reduce crime and may actually increase violence in our communities.*⁷⁴

The report recommends that alternate models of drug control be considered if drug supply and drug-related violence are to be meaningfully reduced.

Some states are already moving in the direction of sentencing reform and increased use of alternatives to incarceration. For example, Rhode Island—where the prison population fell 9.2 percent between 2000 and 2008, the largest decrease among all the states according to a March 2010 Pew Center on the States report⁷⁵—has in recent years eliminated mandatory minimum sentences for drug crimes to reduce the state prison population and correctional costs, increased sentence reductions for inmates' good behavior and granted judges more discretion when sentencing offenders.⁷⁶ According to Rhode Island State Representative Joseph Almeida:

*Getting an offender the treatment he or she needs is more effective at solving the problem, and a lot cheaper for the taxpayers than putting that person in jail. Judges should be able to do this, but their hands are tied by sentencing rules that are just too rigid.*⁷⁷

Texas has been able to avoid \$2 billion in prison construction costs and major prison population increases by investing \$241 million in a network of residential and community-based treatment and diversion programs. According to the Pew Center on the States, “[t]his strategy has greatly expanded sentencing options for new offenses and sanctioning options for probation violators [...] As a result, this strong law-and-order state not only prevented the large projected population increase but reduced its prison population over the three years since the reforms were passed.”⁷⁸

These examples demonstrate that prison sentences are not the only way to deal with violations of the law. California should continue to seek and implement more rehabilitation programs and

community-based punishments (see below) for drug possession and other lesser offenses. Prison space and longer sentences should be reserved for serious offenders.

Parole and Probation Reform

California's strict parole and probation system contributes to its overcrowding and high recidivism rate. The system is clogged with non-violent offenders sent back to prison for several months for technical violations of their parole—such as missing appointments, failing to take drug tests, failing to secure work and housing, or not registering a change of address—when intermediate community-based sanctions such as house arrest, more stringent conditions of supervision, or day-reporting centers would be more appropriate and cost effective.

Parole terms in California are determined by statute, with most prisoners serving a period of three years, regardless of the crime they were sentenced for. (Certain sex offenders are an exception, and serve five or more years on parole or are committed to state hospitals.) Almost every other state in the nation exercises discretion over at least one part of the prison-and-parole equation, adjusting prison or parole terms based on the evidence of the case rather than automatically applying statutory terms. California's parole resources are spread so thin as it is that most parolees have little contact with parole officers and many paroled felons abscond from supervision altogether.⁷⁹

The state has begun to address this problem by reducing the sentences of certain “low-risk” convicts in order to reduce the state's inmate population by 6,500 over the course of the year, saving the state \$100 million in the process.⁸⁰ In addition, the state has embarked upon a parolee revocation court pilot program, which establishes parolee reentry courts “designed to prevent parole revocation and return to prison for parolees who would benefit from community drug treatment or mental health treatment.”⁸¹ It is also beginning to make use of the Parole Violation Decision Making Instrument, which seeks to improve recidivism risk assessment and better determine appropriate and proportionate responses to parole violations. According to Joan Petersilia, professor of criminology at the University of California, Irvine, Center for Evidence-Based Corrections,

My research has shown that California's parole system is the major contributor to overcrowding in the prison population, sending about 70,000 parole violators back to prison each year. About 20 percent of those violators churn in and out of prisons because they commit technical parole violations, not new crimes. [...] [T]hey typically serve less than four months in prison and get no rehabilitation. On the other hand, some parolees commit quite serious crimes and they also serve just four or five months on a parole violation and then are released again to continue their criminal careers.

This new Parole Violation Decision Making Instrument is based on research, and is designed to help close the revolving door of repeat parole violators. We want to provide better programs for lower risk parolees who wish to go straight, and provide swift and

certain punishment for high risk parolees who continue to victimize California citizens. The end result should be lower recidivism, more successful parolees, and safer streets.⁸²

Addressing the parole revocations problem by changing parole terms and conditions, while concentrating supervision on those who need it most, is perhaps the simplest and most cost-effective way to improve the state's correctional system without adversely affecting public safety.

Recidivism Reduction Programs

California's recidivism rate of approximately 70% is one of the highest rates in the nation.⁸³ As a federal three-judge court found in August 2009, overcrowding and inadequate rehabilitation or re-entry programming in California's prison system has led to "criminogenic" conditions where crime is actually fostered and in which "high-risk inmates do not rehabilitate and low-risk inmates learn new criminal behavior," thus making the recidivism problem even worse.⁸⁴

Even the CCPOA, long an advocate of "tough on crime" policies, has recognized the need for evidence-based rehabilitation programs such as post-release job training and placement assistance, according to its 2010 "new direction" corrections recommendations.⁸⁵

There are currently 44 states that allow inmates to earn "good-time credits" for good behavior,⁸⁶ and at least 31 also provide some form of "earned-time credits" for those who participate in education, work assignments or other personal improvement programs.⁸⁷

California has embarked upon a new case management system which is intended to reduce recidivism, but the program is still in its infancy and the CDCR still lacks proper programming and prisoner information. According to a September 2009 State Auditor's report,

While Corrections' budget for its academic and vocational programs totaled more than \$208 million in fiscal year 2008–09, it confirmed that its system for accessing, processing, and tracking inmate educational data is extremely inadequate, and therefore it is unable to determine the success of its programs in reducing the chance that inmates will return to prison once they are released. Moreover, Corrections' lack of a plan for placing teachers in institutions and classes based on inmate needs limits the likelihood that education is being provided to eligible populations in an efficient manner. Further, a lack of information on inmates who have been on a waiting list, or previously participated in these programs, limits Corrections' ability to determine the efficacy of these programs, whether inmates were denied access by being paroled prior to enrolling in a program, and whether Corrections complied with state law requiring it to make literacy programs available to at least 60 percent of eligible inmates in the state prison system.⁸⁸

By helping prisoners become productive members of society upon their release, evidence-based rehabilitation programs provide the dual benefits of improved public safety and reduced corrections costs in the future. For example, a February 2003 study of inmate education programs

in Maryland, Minnesota and Ohio by the Correctional Education Association and the MTC Institute found that:

- Participants in correctional education programs had a 48% rate of re-arrest, compared to 57% for non-participants.
- Participants had a 27% rate of re-conviction, compared to 35% for non-participants.
- Participants had a 21% rate of re-incarceration, compared to 31% for non-participants.⁸⁹

These results can lead to significant cost savings. The State of New York’s Merit Time Program generated approximately \$372 million in operational savings and an additional \$15 million in facilities construction avoidance costs from 1997 to 2006.⁹⁰ Moreover, recidivism rates for program participants were lower than for non-participants for the first-year, two-year and three-year periods after release.⁹¹ The program allows inmates convicted of non-violent crimes to earn a possible one-sixth reduction of the minimum term by obtaining a GED, obtaining an alcohol and substance abuse treatment certificate, obtaining a vocational training certificate, or performing 400 hours of service as part of a community work crew.

Given the urgent need to reduce overcrowding and recidivism in California’s prisons, the state needs to accelerate and expand its rehabilitation and risk assessment/case management reform programs. The quickest and cheapest way to do this is likely to contract with professionals in the private sector who have a wealth of experience implementing such programs.

Revamping the Inmate Classification System

California’s prison capacity crisis is to a large extent driven by the state’s inmate classification scoring system, which a number of outside experts have criticized as being an ineffective indicator of inmate risk. For example, a significant percentage of Level III inmates score on the low end of the Level III range and, using better indicators of risk, would likely be more realistically of equivalent risk to Level II inmates housed in lower-security—and far less costly—facilities. Revamping the scoring system to better reflect inmate risk offers the potential of dramatically reducing costs by allowing the state to shift lower-risk inmates out of higher-cost facilities.

Performance Audit of the State Correctional System

Like many states, California’s correctional system lacks fundamental accountability and transparency. Because of the lack of a robust performance-based approach to measuring outcomes and results in the public sector, it is difficult—if not impossible—to get an accurate accounting of operational costs and performance at the individual facility level in California. This makes it difficult for state officials to answer even simple questions like, “how much does it cost to change a light bulb at State Prison X versus State Prison Y?”

The inability to answer these sorts of questions suggests that the officials and policymakers in charge of the corrections system may not have a clear sense of *what a good prison even is*, given that what is not measured cannot be known. Without a clear sense of what the goal is, it's no wonder that California is experiencing high recidivism rates and that the system is in crisis.

It is long past time for California to conduct an outside third-party, independent performance audit of the state corrections system. This audit should be designed to provide CDCR and state officials with an accurate cost accounting at the facility level and a clear sense of how each facility is performing at service delivery. This information would help policymakers better distinguish between successful prisons and failing ones, prioritize the use of limited tax dollars and identify opportunities to lower costs and improve services through PPPs.

Part 5

Budget Implications

While there are many potential benefits California could realize from public-private partnerships (PPPs) in correctional services—from expanding capacity more quickly, to enhancing service quality, to increasing accountability and better managing risk, to spurring innovation, to gaining access to certain expertise, to improving efficiency and flexibility—one of the greatest benefits, particularly given the state’s present fiscal condition, is cost savings. Cost savings estimates vary due to a number of factors—such as facility design and age, personnel, contract terms, inmate population and accounting methods—but real world experiences reveal that private corrections companies generally provide the same or better service quality as government agencies for significantly less cost.

A. State Corrections Costs

During the course of conducting our research on state corrections costs, one thing that quickly became clear is that government agencies’ calculations and reporting of their costs are not nearly as transparent as they should be. Moreover, different states may include—or hide—different costs in their calculations, making interstate comparisons difficult, if not impossible.

In order to provide the simplest and most direct apples-to-apples comparison possible, we have chosen to rely on data from the American Correctional Association (ACA), which collects corrections information from each of the states in the form of an annual survey. From this data, we could calculate the most reasonable metric for comparison by simply dividing the states’ self-reported operating budgets by the number of inmates they housed to determine the average annual or daily cost per inmate.

This analysis revealed that the corrections system in California, with an average daily cost per inmate of approximately \$162, is far more costly than any other Western state except Wyoming, which has per diem costs of \$160 (see Table 9).

Table 9: 2008 Adult Corrections Spending, Western States

State	Operating Budget	Number of Inmates	Average Annual Cost Per Inmate	Average Daily Cost Per Inmate*
Arizona	\$999,701,500	36,508	\$27,383.08	\$74.82
California	\$10,356,399,000	174,291	\$59,420.16	\$162.35
Colorado	\$643,453,602	23,066	\$27,896.19	\$76.22
Idaho	\$187,530,647	7,304	\$25,675.06	\$70.15
Montana	\$86,326,968	2,398	\$35,999.57	\$98.36
Nevada	\$328,710,244	12,681	\$25,921.48	\$70.82
New Mexico	\$320,515,100	6,385	\$50,198.14	\$137.15
Oregon	\$720,344,932	14,204	\$50,714.23	\$138.56
Utah	\$254,901,244	6,367	\$40,034.75	\$109.38
Washington	\$854,073,000	17,068	\$50,039.43	\$136.72
Wyoming	\$119,838,032	2,050	\$58,457.58	\$159.72

Source: Operating budget data and number of inmates from American Correctional Association, "Adult State Operating Budgets, Year 2008," *2009 Directory of Adult and Juvenile Correctional Departments, Institutions, Agencies, and Probation and Parole Authorities*, p. 27, 58. Average inmate costs calculated by authors.

* Note that the average daily cost per inmate is calculated by dividing the quotient of the state's operating budget and the number of inmates by 366 since 2008 was a leap year.

Interestingly, the ACA survey also includes states' self-reported per diem cost data, which differ substantially from the above analysis. With the exception of Colorado, all other Western states reported per diem costs well below the budget/inmates metric (see Table 10). California's actual costs were 22.1% higher than the \$133 per diem that the state reported. (In either case, its costs were more than twice those of neighboring Arizona and Nevada.) There is no obvious reason for this difference, and such a large discrepancy indicates that either California and other states lack an accurate handle on their actual costs, or that they are actively obfuscating certain costs. Regardless, the results invite skepticism as to the state's self-reported cost data.

We are not alone in our frustration over trying to determine actual corrections costs. During a January 2010 meeting of the Assembly Committee on Accountability and Administrative Review, committee members were unable to determine why in-state prisoner costs were more than twice as high as out-of-state prisoner costs. According to the Legislative Analyst's Office (LAO), in-state costs average approximately \$47,000 per year⁹² (which, according to Table 10 above, is likely understated), while out-of-state costs are reportedly only \$23,000 a year.⁹³ In addition, a September 2009 California State Auditor report estimated that out-of-state prisoner costs were \$3,200 to \$7,800 less per year than those for inmates housed in CDCR facilities.⁹⁴ The report, entitled, "California Department of Corrections and Rehabilitation: It Fails to Track and Use Data That Would Allow It to More Effectively Monitor and Manage Its Operations," repeatedly criticized the CDCR's lack of basic cost information.⁹⁵

Table 10: 2008 Average Daily Cost Per Inmate Comparison, Western States			
State	Average Daily Cost Per Inmate*	States' Self-Reported Average Daily Cost Per Inmate	Difference Between Actual and Self-Reported Costs
Arizona	\$74.82	\$60.35	24.0%
California	\$162.35	\$132.98	22.1%
Colorado	\$76.22	\$83.25	-8.4%
Idaho	\$70.15	\$58.30	20.3%
Montana	\$98.36	\$32.27	204.8%
Nevada	\$70.82	\$61.79	14.6%
New Mexico	\$137.15	\$90.88	50.9%
Oregon	\$138.56	\$77.78	78.1%
Utah	\$109.38	\$80.35	36.1%
Washington	\$136.72	\$97.30	40.5%
Wyoming	\$159.72	Do Not Know	N/A

Source: American Correctional Association, "Adult State Operating Budgets, Year 2008," 2009 Directory of Adult and Juvenile Correctional Departments, Institutions, Agencies, and Probation and Parole Authorities.

* Note that the Average Daily Cost per Inmate is calculated by dividing the quotient of the state's operating budget and the number of inmates by 366 since 2008 was a leap year.

Even the LAO acknowledged that it could not figure out how to do a meaningful cost analysis of the state's correctional services. As LAO policy analyst Paul Golaszewski admitted at the same January 2010 Assembly Committee on Accountability and Administrative Review meeting, the LAO does not have a base number for calculating the cost of California's prisoners.⁹⁶

One reason for the difference in in-state and out-of-state prisoner costs is the exceptionally high personnel costs of prison guards in California. At the Assembly committee meeting, California Department of Corrections and Rehabilitation (CDCR) undersecretary for operations Scott Kernan explained that out-of-state staff/prisoner ratios are far below that of the CDCR.⁹⁷ Moreover, California's personnel costs are higher on a per-guard basis. As described in a February 2010 article in *The Economist*,

*California's [prison-guard union] happens to be the most powerful in the nation. About 70% of a prison's costs go to personnel, and California's guards not only have the highest wages but the most generous pension and health-care benefits.*⁹⁸

According to a February 2008 LAO report, correctional peace officer costs make up the largest share of General Fund personnel expenses.⁹⁹ The approximately 30,000¹⁰⁰ state correctional peace officers make up nearly 10% of all state employees.¹⁰¹ The report described correctional officers' overall compensation levels as "very attractive," particularly considering that the job requires only a high school or equivalent education, and noted that the CDCR boasts that the job "has been called 'the greatest entry level job in California'—and for good reason," and that "Along with the great salary, our peace officers earn a retirement package you just can't find in private industry."¹⁰²

Perhaps this, along with the CDCR's inability to control sick leave and overtime benefits,¹⁰³ is why the state receives roughly 130,000 applications to become a prison guard each year.¹⁰⁴

It is clear that the CDCR is in need of some additional oversight, and an audit should be conducted on the department's budget.

B. Private-Sector Corrections Costs

Comparing privatized and governmental corrections services is sometimes more of an art than a science. 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 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, risk management, 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.¹⁰⁵

Nevertheless, empirical evidence and numerous academic studies demonstrate that private corrections operations are cheaper than government agencies, as discussed in Part 3. California is already reaping the rewards of dabbling with corrections outsourcing following Gov. Schwarzenegger's 2006 declaration of a state of emergency that authorized the practice in response to overcrowding, inmates' lawsuits, and federal judges' demands that the state provide better health and mental health care to prisoners.

For example, the state's recent contracts to house state inmates in out-of-state Corrections Corporation of America (CCA) facilities spell out costs that vary from \$63-72 per bed per day, depending on inmate population and facility design.¹⁰⁶ According to CDCR undersecretary Kernan, "We couldn't be happier with their [CCA's] responsiveness and performance."¹⁰⁷

These per diem rates are consistent with the range of rates seen in correctional services contracts in recent years. A February 2010 Avondale Partners market research report on The GEO Group, Inc. notes a private corrections industry average per diem rate of \$56.77 and discusses several planned or ongoing state-level correctional contract opportunities with per diems ranging between \$60 and \$75 per inmate.¹⁰⁸

Though current contract per diem rates vary, even the upper bound of \$75 per inmate per day is over 40% lower than the state's self-reported average daily per inmate cost of \$133. Put simply, California is getting far better value for money through its use of PPPs than it is in the prisons the state runs itself.

C. Cost Savings Through Corrections Partnerships

A 2002 Reason Foundation study identified 28 studies that analyze costs data to measure the relative costs of correctional facilities managed by government versus private firms, 22 of which found significant savings from PPPs. While savings estimates varied they were generally in the range of 5–15%, though some studies found much higher cost savings (see Table 11).¹⁰⁹

Table 11: Comparative Studies of Private Facility Operational Cost Savings	
Study	Estimated Cost Savings
Hamilton County, Tennessee, 1989	4–8%
Sellers Study, 1989	37%
Urban Institute (KY and MA), 1989	0%
Texas Criminal Justice Policy Council, 1991	12.4–20.2%
Texas Sunset Advisory, 1991	14–15%
Australia, 1993	23%
California Community Corrections, 1993	0%
Florida Corrections Commission, 1993	8–10%
Texas Criminal Justice Policy Council, 1993	18.6–22.9%
Australia, 1994	11–28%
Kentucky Department of Corrections, 1994	9%
National Institute of Corrections (FL), 1995	0%
Tennessee Fiscal Review Committee, 1995	0%
Texas Criminal Justice Policy Council, 1995	20.5–20.6%
Louisiana State University, 1996	14–16%
United Kingdom (Coopers and Lybrand), 1996	13–22%
United Kingdom (Home Office Economic Unit), 1996	11–17%
Washington (TN and LA), 1996	0–2%
Wisconsin Task Force, 1996	11–14%
Arizona Department of Corrections, 1997	17%
Kentucky Department of Corrections, 1996-1997	12%
Texas Criminal Justice Policy Council, 1997	14.9–21%
Delaware County, Pennsylvania, 1999	14–16%
Texas Criminal Justice Policy Council, 1999	4.4–8.8%
University of Cincinnati, 1999	\$0–\$2.45 per inmate per day
Arizona Department of Corrections, 2000	12.23%
Florida OPPAGA, 2000	3.5–10.6%
Texas Criminal Justice Policy Council, 2001	10.7–11.3%

Source: Reason Foundation.

More recent studies support the use of a conservative cost savings range on the order of 5-15%. On the lower end, a 2005 study prepared for the U.S. Department of Justice estimated that the outsourcing of correctional operations at a low-security federal facility in Taft, California saved the government and taxpayers between \$9.6 million and \$16.5 million, or 6–10%, over a five-year period.¹¹⁰ The report noted that savings would have been even greater if not for the law requiring federal contractors to pay prevailing wages, and the private partner had little flexibility to deviate

from established practices in the federal prison system, which limited the extent to which the contractor could innovate to lower costs.¹¹¹ On the higher end, as discussed in Part 3, data from Texas show that the per diem costs in privately operated prisons have ranged between 3% to 15% less costly than state-run facilities since 2003 and has exceeded 13% each year since 2008.

D. Major Potential Savings for California through PPPs

1. Partial Outsourcing

While outsourcing the state's entire corrections operations may not be politically or practically feasible immediately, California should reduce its corrections costs by building upon its successful experience transferring inmates to lower-cost facilities out of state. Expanding this strategy by transferring an additional 25,000 low- to medium-security inmates to such facilities would result in significant savings.

According to private sector industry experts, there is currently not enough excess bed capacity in out-of-state privately operated prisons to absorb that many prisoners. Increasing the number of transferred prisoners incrementally, however, such as 5,000 per year for five years, would allow time for private corrections management firms to finance, design and build new prison capacity—either through new prisons or expansions of existing facilities—to accommodate the additional inmates.¹¹² Though the financial markets are still in recovery in the wake of the 2008-2009 recession, it is very likely that if California were to demonstrate strong interest in PPPs to the marketplace, investors would capitalize the development of new prison capacity.

As noted above, LAO estimates that it costs \$47,000 per year to house an inmate in-state (although real costs may be even higher) and \$23,000 to house one out-of-state.¹¹³ Given these costs, the \$24,000 difference per year multiplied by the 5,000 inmates we are assuming would be transferred out of state each year would yield savings of \$135 million during the first year, and a cumulative total of \$1.8 billion over five years.

Similarly, using the state's self-reported per diem costs from the ACA survey data, which, again, are likely significantly understated, California's average daily cost per inmate is about \$133, or \$48,545 per year. We can then compare this to out-of-state costs. As mentioned previously, the Legislative Analyst's Office has said that out-of-state costs are \$63 per bed, per day at four facilities and \$72 at one additional facility.¹¹⁴ Even if we assume that the highest rate (\$72/day for the La Palma facility, which includes facility construction costs) was applied to all facilities, this would translate to \$26,280 per year. Multiplying the difference of \$22,265 per year by 5,000 inmates yields estimated savings of roughly \$111 million during the first year, and a cumulative total of nearly \$1.7 billion over five years.

Combining these two approaches gives us an estimated savings range of \$111 million to \$120 million for year one of the prisoner transfer plan, and approximately \$1.7 billion to \$1.8 billion by the end of year five (see Table 12).

Table 12: Estimated Cost Savings from Transferring Additional Inmates to Out-of-State Facilities					
Year	Year 1	Year 2	Year 3	Year 4	Year 5
Cumulative Number of Prisoners Transferred	5,000	10,000	15,000	20,000	25,000
1-Year Savings	\$111 million - \$120 million	\$222 million - \$240 million	\$333 million - \$360 million	\$444 million - \$480 million	\$555 million - \$600 million
Total Savings	\$111 million - \$120 million	\$333 million - \$360 million	\$666 million - \$720 million	\$1.11 billion - \$1.20 billion	\$1.67 billion - \$1.80 billion

The savings estimates above are based on the total costs to house and care for inmates. It is difficult, if not impossible, to make more detailed estimates at the service level (such as for facilities maintenance or specific health and mental health services) due to a lack of information at the CDCR. As the aforementioned State Auditor’s report observed,

Despite rising costs for incarcerating inmates, Corrections does not have sufficient information to identify how much specific inmate or institution characteristics contribute to these costs and how changes in Corrections’ operations would influence expenditures. Further, due to a lack of basic data regarding education and vocational programs provided to inmates, Corrections does not have information that could help it identify opportunities to evaluate effectiveness in reducing the chance that inmates will return to prison once they are released. Corrections is in the process of developing an automated system that will, if successful, allow for statewide data analysis.

Using the data available in Corrections’ accounting records, we were able to associate expenditures with specific institutions. However, because Corrections fails to maintain certain basic management information, we were unable to determine the number of custody officers associated with specific populations, such as high-security inmates, violent offenders, and specialized units, and thus were unable to determine what causes the significant cost fluctuations among institutions.¹¹⁵

Finally, the above savings estimates assume that the state also embarks on an internal streamlining process, so that cost savings are actually realized, not used to cover waste shifted around to other sections of the CDCR’s budget. For example, any efficiency gains achieved through outsourcing or other reforms should be combined with hiring reductions, which could be obtained without layoffs over time by taking advantage of normal attrition rates. A 2006 report found that the attrition rate in California corrections is 3.6% per year, significantly lower than the typical state average of 20%.¹¹⁶ This is slightly higher than the approximately 3% reduction in the annual prison population represented by our recommendation to transfer 5,000 inmates per year for the next five years to out-of-state privately operated prisons. Given the comparable scale of attrition rates and our

recommended state inmate population reductions, a combination of smart personnel management and staff right-sizing and realignment over that five-year period could allow the state to reduce its correctional staff through attrition without layoffs.

2. Complete Outsourcing

Based on correctional partnership experiences across the nation and the globe, California could reasonably and conservatively expect to realize cost savings of between 5 and 15% from outsourcing its correctional services. Applying this savings range to the state's current (fiscal year 2009-10) corrections operating budget of \$8,233,620,000 yields estimated savings of between \$412 million and \$1.24 billion per year. This is mitigated somewhat by the fact that the state already does some contracting, although this contracting comprises only a small portion of the state's facilities and budget.

There are several reasons that savings may be even greater than this, however. First, California prison guards' salaries and benefits are higher than those of their counterparts in other states, so contracting should realize greater personnel cost savings (particularly from fringe benefits) than in other places.

Second, the large discrepancy in self-reported average costs per inmate per day versus the operational budget/number of inmates metric suggests that the state is understating costs, so there may be even more room for savings to be realized from contracting out.

As noted in Table 10, California's self-reported average cost per inmate per day is \$133, and the cost calculated by using the operating budget and the number of inmates is \$162. By contrast, as noted above, the per diem rate received by private firms in recent contracts ranges from \$60 to \$75.

If these rates were applied to the entire budget, that would represent savings of 44–55% over the state's self-reported per day costs, or 53–63% over the per inmate costs calculated by the authors. While this is a generalized analysis that may not capture every cost borne by the state, even if half of this difference is not realized for one reason or another, that would still represent cost savings in the range of 20–30%, which, based on the current CDCR budget, translates to between \$1.65 billion and \$2.47 billion per year.

3. Facilities Design and Construction Outsourcing

In addition to realizing savings from outsourcing its correctional operations, California could achieve further savings by outsourcing the finance, design and construction of correctional facilities. Private companies can build prisons and jails for considerably less than government agencies. Firms in the industry often contend that they can cut between 10-40% off construction costs, with 30% being the most common savings estimate.¹¹⁷ Independent estimates of the cost savings show a similar range of 15-25%.¹¹⁸

This is especially important now, when CDCR cost estimates for the construction of additional celled beds in existing facilities—which will allow them to quit using gymnasiums and day rooms that were never designed to house inmates—are rising rapidly. The cost per bed in the department’s current infill bed plan is estimated at \$306,000, up from an already high \$222,000 per bed estimate made just a year ago. By comparison, the entire 4,600-bed Kern Valley State Prison (KVSP) facility was built just a few years ago at a cost of \$82,000 per bed.¹¹⁹ As a May 2009 LAO report concluded,

Our analysis suggests that these higher cost estimates for the infill beds are unjustified and cannot be explained by the increases in labor and material costs that occurred since KVSP was built. While the department indicates that market factors have driven up the cost of the infill bed projects, it has not been able to explain in detail how such factors contributed to an almost quadrupling of costs in seven years.¹²⁰

Rather than throwing excessive, ever-increasing, unjustified amounts of money—during a severe budget crisis, no less—toward CDCR correctional facilities construction plans, California should competitively bid this and any other construction projects in order to maximize the value of its scarce dollars and get the best facilities for the least amount of money.

In addition to building correctional facilities cheaper than the government, private companies also tend to build them much quicker. Private firms cannot realize a profit until the facility is in operation and so they have every incentive to build on or before schedule and within budget. The public sector has no such incentive and cannot be fired if its construction is poor, past schedule, or over budget. According to Joan Petersilia of Stanford Law School, it takes seven years to build a new state prison in California, but only one year to open an equivalent private facility through leasing, converting or building.¹²¹ Another source asserted that it takes about three years to complete a government-built prison, but noted that CCA financed and opened the first phase of the 3,060-bed La Palma Correctional Center in Eloy, Arizona, in a mere nine months and had it operational in one year.¹²² This speed of construction is important for a state whose prisons are operating at over 178% of design capacity, and which has been ordered by federal judges to relieve overcrowding in order to address unconstitutional conditions that have been found to exist there.¹²³ Outsourcing prison construction could thus also help the state avoid costs such as future litigation resulting from overcrowding and facility construction cost overruns.

Furthermore, improved services such as education and other rehabilitation programs may reduce the number of crimes committed after prisoners’ release, thereby preventing the state from incurring additional court system and incarceration costs in the future. Savings from improved services can be maximized by implementing performance-based contracts that specify outcome goals and allow contractors the flexibility to innovate and best determine how to achieve those goals.¹²⁴

E. Conclusion

Public-private partnerships (PPPs) offer a powerful policy option as part of a comprehensive strategy to address California's corrections crisis. Corrections PPPs may not be a panacea, but they should certainly be part of the answer. Soliciting and implementing PPP proposals to address the state's needs for more prison beds, lower operating costs in state prisons and expanded capacity in community corrections would give policymakers a powerful tool to help address severe prison overcrowding, reduce future operational costs, and deliver needed new correctional system capacity.

California's corrections costs are significantly higher than those in other states in the region, and more than twice as high as the neighboring states of Arizona and Nevada. Further, California's average in-state cost per inmate is more than double the amount *it spends itself* to house its inmates in out-of-state, privately run facilities. Texas, the second largest state corrections system after California, spends less than half as much per inmate per year system-wide as California does, and Texas officials estimate that annual cost savings in PPP prisons (relative to their public sector peers) has ranged 3 to 15% between 2003 and 2010, averaging 8.5% annually. A range of other government and academic studies have made similar findings.

There is abundant evidence that private corrections providers can offer the same or better services for significantly less cost. With contracts that specify outcomes but leave processes up to contractors, PPPs in correctional operations would allow the state to rein in excessive personnel costs and take advantage of competition and private sector incentives to maximize service quality and minimize costs in order to retain or renew contracts. These incentives are largely absent under the existing government monopoly.

While the large-scale outsourcing of the state's corrections operations may not be politically or practically feasible immediately, California can take an important, immediate step toward reducing its corrections costs by building upon its successful experience transferring inmates to lower-cost, privately operated facilities out of state. Transferring an additional 25,000 low- to medium-security inmates to such facilities—5,000 per year for five years—would result in an estimated savings of between \$111 million and \$120 million for the first year of the prisoner transfer plan, and between \$1.7 billion and \$1.8 billion in aggregate savings by the end of year five. This could be accomplished without laying off current personnel, but rather down-sizing the state labor force using attrition.

If applied system-wide, the expanded use of corrections partnerships could save California between \$412 million and \$1.24 billion annually (or, 5-15% of its current operating budget) as a conservative estimate, though it is possible that actual savings could be even higher.

California can also seek cost savings and quality improvements through PPPs for correctional health care, maintenance and food services, probation and parole services and the development of new, specialized facilities to house unique inmate populations (including medical and mental

health facilities). However, given the lack of detailed and transparent correctional budget and facility data at CDCR, this report is not able to offer more detailed estimates of the potential costs savings associated with each of the following approaches. Cost savings—whether from operations, infrastructure or future cost avoidance—can be maximized, however, by implementing performance-based contracts that specify outcome goals and allow contractors the flexibility to innovate and best determine how to achieve those goals.

PPPs have a proven track record in driving down costs and improving correctional service delivery, but they should not be viewed as a silver bullet for the enormous corrections challenges California is facing; PPPs are just one policy tool among many needed to address the corrections crisis. Truly “right-sizing” the system and putting California corrections on a sustainable path will demand a wide range of other actions and systemic reforms, including a system-wide CDCR performance audit and review, state sentencing reform, expansions in the use of evidence-based recidivism reduction strategies, and reductions in the use of technical violations to re-incarcerate offenders on parole or probation.

Given the state’s dire fiscal straits, corrections PPPs represent a common-sense reform that can provide significant budgetary relief and dramatic service quality improvements. The sooner the state acts to implement PPPs, the sooner it will begin to realize cost savings and begin addressing the state’s corrections crisis in earnest.

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