

## Prison Privatization and the Use of Incarceration

**Overview:** Private sector involvement in prisons is not new — federal and state governments have had a long history of contracting out specific services to private firms, including medical services, food preparation, vocational training, and inmate transportation. The 1980s, though, ushered in a new era of prison privatization. With a burgeoning prison population resulting from the “war on drugs” and increased use of incarceration, prison overcrowding and rising costs became increasingly problematic for local, state, and federal governments. In response to this expanding criminal justice system, private business interests saw an opportunity for expansion, and consequently, private-sector involvement in prisons moved from the simple contracting of services to contracting for the complete management and operation of entire prisons.

Today, the privatization of prisons refers both to the takeover of existing public facilities by private operators and to the building and operation of new and additional prisons by for-profit prison companies. (Many of the new prisons, additionally, are built to house out-of-state inmates.) Depending on the jurisdiction, the local, state, or federal government is then charged a per diem or monthly rate for each prisoner.

The modern private prison business first emerged and established itself publicly in 1984 when the Corrections Corporation of America (CCA) was awarded a contract to take over a facility in Hamilton County, Tennessee. This marked the first time that any government in the country had contracted out the complete operation of a jail to a private operator.<sup>1</sup> The following year, CCA gained further public attention when it offered to take over the entire state prison system of Tennessee for \$200 million. The bid was ultimately defeated due to strong opposition from public employees and the skepticism of the state legislature.<sup>2</sup> Despite that initial defeat, CCA since then has successfully expanded, as have other for-profit prison companies. As of December 2000, there were 153 private correctional facilities (prisons, jails and detention centers) operating in the United States<sup>3</sup> with a capacity of over 119,000.<sup>4</sup>

**Proponents’ Arguments:** Proponents contend that cost-savings and efficiency of operation place private prisons at an advantage over public prisons and support the argument for privatization. Research to date, however, casts doubt on the validity of these arguments.

**Fiscal Savings--** Private prisons have proliferated mostly under the argument of cost containment. Advocates for privatization maintain that private sector management and operation of prisons can cut costs by as much as 20%.<sup>5</sup> Central to the argument in favor of privatization is the perceived inefficiency of labor costs in the operation of prisons. In using mostly nonunion

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<sup>1</sup> Good Jobs First, “Jail Breaks: Economic Development Subsidies Given to Private Prisons,” October 2001, p. 2.

<sup>2</sup> Eric Bates, “Private Prisons,” *The Nation*, Jan. 5, 1998, p. 13.

<sup>3</sup> Number of Private Facilities by Geographical Location, 09/04/2001, Dr. Charles W. Thomas, Private Corrections Project.

<sup>4</sup> Rated Capacities of Private Facilities by Geographical Location, United States, 09/04/2001, Dr. Charles W. Thomas, Private Corrections Project.

<sup>5</sup> Bill Carey, “Prison Plan: Is it Practical or Political,” *The Tennessean*, April 21, 1997.

labor and by controlling wages and fringe benefits, private prison companies maintain that they can efficiently reduce the costs of labor and thereby net substantial savings for the government.<sup>6</sup>

The promise of meaningful savings, however, is specious at best. Research to date has concluded that there is little evidence that privatization of prisons results in significant public savings. In a 1996 General Accounting Office (GAO) review of several comparative studies on private versus public prisons, researchers acknowledged, “because the studies reported little difference and/or mixed results in comparing private and public facilities, we could not conclude whether privatization saved money.”<sup>7</sup> A study by the Bureau of Justice Assistance (BJA) released in 2001 had similar conclusions, stating that “rather than the projected 20-percent savings, the average saving from privatization was only 1 percent”<sup>8</sup> and “the promises of 20-percent savings in operational costs have simply not materialized.”<sup>9</sup> These modest savings, furthermore, “will not revolutionize modern correctional practices.”<sup>10</sup>

***Efficiency of Operation--*** Proponents of privatization argue that besides cost-saving benefits, private prisons operate more efficiently and at a higher quality than publicly administered ones. Recent research, though, suggests that privatization advocates’ claims of vastly improved efficiency are dubious and that at best, private prisons are equal in performance to public prisons. A 1998 report conducted by Abt Associates concluded “only a few of the more than a hundred privately operated facilities in existence have been studied, and these studies do not offer compelling evidence of superiority.”<sup>11</sup> Likewise, the BJA study acknowledged “no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities.”<sup>12</sup> More problematic is the BJA study’s further assertion that “the rate of major incidents is higher at private facilities than at public facilities.”<sup>13</sup> A survey of the prison industry conducted by analyst James Austin also found 49% more inmate on staff assaults and 65% more inmate on inmate assaults occurred in private minimum and medium security facilities than in comparable publicly run facilities.<sup>14</sup>

Recent events in the news seem to support these findings. Among some of the most egregious and troubling events of the past years:

- In 1996, two convicted sex offenders escaped from a CCA-run medium-security detention center in Texas for illegal immigrants awaiting deportation. The escapees were part of a group of over 200 sex offenders shipped in from Oregon. Learning of the escape, local authorities were shocked, since CCA officials had not informed them of the presence of the

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<sup>6</sup> Bureau of Justice Assistance, “Emerging Issues on Privatized Prisons,” February 2001, p. 16.

<sup>7</sup> GAO/GGD-96-158, “Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service,” August 1996, p. 7.

<sup>8</sup> Bureau of Justice Assistance, “Emerging Issues on Privatized Prisons,” February 2001, iii.

<sup>9</sup> *Ibid*, p. 59.

<sup>10</sup> *Ibid*

<sup>11</sup> Abt Associates Inc., “Private Prisons in the United States: An Assessment of Current Practice,” July 16, 1998, p. 56.

<sup>12</sup> Bureau of Justice Assistance, “Emerging Issues on Privatized Prisons,” February 2001, p. 36.

<sup>13</sup> *Ibid*, p. 52.

<sup>14</sup> Judith Greene, “Bailing Out Private Jails,” *American Prospect*, September 10, 2001.

Oregon inmates. CCA contended that as private proprietors of the facility, they had no legal obligation to tell Texas officials about the Oregon prisoners.<sup>15</sup>

- In 14 months of operation, the Northeast Ohio Correction Center in Youngstown, Ohio experienced 13 stabbings, 2 murders and 6 escaped inmates. In reference to the Youngstown facility, Peter Davis, director of the Ohio Correctional Institution Inspection Committee said, “There is nothing in Ohio’s history like the violence at that prison.”<sup>16</sup> Reviews of the correctional facility determined that the problems occurred due to inadequately trained staff and the improper acceptance of maximum-security offenders to the medium-security facility. In March 1998, Youngstown filed suit against CCA on behalf of all the prisoners alleging that prisoners were put at risk by being sheltered with maximum-security prisoners in a facility not designed for containing them. The court ultimately ordered the removal of 113 inmates deemed maximum-security offenders by an independent consultant.
- In March 2000, the U.S. Department of Justice filed a federal lawsuit against the Jena Juvenile Justice Center in Jena, Louisiana. The suit alleged that the facility operated by Wackenhut Corrections Corporation, the largest domestic private prison firm after CCA, provided inadequate care for its juvenile prisoners. The suit also charged that guards at the Jena facility used inappropriately harsh and brutal methods of behavior control, including physical beatings, verbal abuse, and indiscriminate use of mace and pepper-spray.<sup>17</sup> In April 2000, Wackenhut surrendered its contract to run the Jena facility.

**Current Situation:** The spate of widely publicized problems at private correctional facilities has led to increased public scrutiny of the private prison business, contributing to the slowing growth of CCA and Wackenhut, as well as other smaller firms. Since 2000, no states have negotiated new private prison contracts, and several states have curtailed their relationship with the private prison industry. North Carolina, citing insufficient staff and mismanagement, canceled its two contracts with CCA and also passed legislation prohibiting the import of out-of-state inmates, as did Montana and California. In February 2001, Arkansas announced it was taking back operations of two of its prisons from Wackenhut. In response to these developments, neither CCA nor Wackenhut have emerged financially unscathed. CCA, especially, has taken a financial nose-dive, with its stock trading as low as 18 cents per share in December 2000 compared to a high of \$44 in 1998.<sup>18</sup> Most recently, though, CCA shares have recovered to about \$18 in early 2002, though this actually represented a value of \$1.80 following a 1 to 10 reverse stock split.

While it is clear that there has been a slowdown in the states towards prison privatization, federal expansion has been a source of salvation for the industry. Traditionally, the federal government has been more cautious in experimenting with privatization, and it was not until 1997 that the Federal Bureau of Prisons (FBOP) established its first private prison contract with Wackenhut to operate a facility in Taft, California. But since then, federal interest in the privatization of prisons

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<sup>15</sup> Greg Jaffe and Rick Brooks, “Violence at Prison Run by Corrections Corp. Irks Youngstown, Ohio,” *Wall Street Journal*, August 5, 1998.

<sup>16</sup> *Ibid.*

<sup>17</sup> Ron Young, “Wackenhut Wracked by Sexual Abuse Scandals,” *Prison Legal News*, August 2000.

<sup>18</sup> Peter Slevin, “Prison Firms Seek Inmates and Profits,” *The Washington Post*, Feb. 18, 2001, A03.

has boomed, due in part to mandatory minimums and harsh drug sentencing laws, and consequent overcrowding in prisons. By mid-2001, federal prisons were operating at 33% over capacity.

Federal expansion in the use of private prisons, furthermore, is only expected to increase in coming years as a result of the 1996 Immigration Reform Act. The act expanded the list of deportable offenses, called “aggravated felonies”, for noncitizens— both legal permanent residents, and undocumented immigrants. Under the statutory definition, a noncitizen can be convicted of an aggravated felony under federal immigration law even if the offense charged in the criminal case was only a misdemeanor. The new statutes, furthermore, are retroactive. Criminal justice policy analyst Judith Greene suggests that this reform has had the practical effect of pressuring law-enforcement personnel to fetter out crime-committing immigrants even for the most minor of offenses. As of June 2001, 35,629 noncitizens were serving criminal sentences in federal prisons, almost double that of 18,929 in 1994.<sup>19</sup>

Figures for the whole federal inmate population are similarly daunting; from 1995 to 1999, the federal prison population has grown 31%, outpacing the nationwide incarceration increase rate of 16%.<sup>20</sup> As the federal prison population swells, so has the momentum for private prisons and additional bed space. In the fall of 2000, the FBOP awarded CCA a contract for over 3,300 beds with an estimated value of \$760 million over 10 years.<sup>21</sup> Additionally, in May 2001, the Immigration and Naturalization Service and the U.S. Marshals Service renewed a total of five contracts with CCA estimated at over \$50 million each.

**Issues for Policymakers:** Evidence has shown that private prisons are neither demonstrably more cost-effective, nor efficient than public prisons. Prison privatization, moreover, has several serious implications for the pursuit of rational sentencing policies and sentencing reform.

***Profit Motive and Prisoners--***As an industry, private prison companies are beholden to the bottom line and maximization of profits. In a March 1997 Securities and Exchange Commission filing, CCA acknowledged that “the rate of construction of new facilities and the Company's potential for growth will depend on a number of factors, including crime rates and sentencing patterns in the United States.”<sup>22</sup> Thus, higher profits require more inmates. And because most private prisons operate on a per diem rate for each bed filled, there is a financial incentive not only to detain more inmates but also to detain them for a longer period of time. The profit motive of private prison companies inherently creates a problematic entanglement between interest in profit and public policy.

***Corporate Contributions and Sentencing Policy--*** Private prison companies deny that they are motivated to take proactive steps in pursuing legislation to keep their private facilities filled. Yet, both CCA and Wackenhut are major contributors to the American Legislative Exchange Council (ALEC), a Washington, D.C. based public policy organization that supports conservative legislators. ALEC's members include over 40% of all state legislators—representing a serious

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<sup>19</sup> Judith Greene, “Bailing Out Private Jails,” *American Prospect*, September 10, 2001.

<sup>20</sup> *Ibid.*

<sup>21</sup> Good Jobs First, “Jail Breaks: Economic Development Subsidies Given to Private Prisons,” October 2001, p. 7.

<sup>22</sup> Securities & Exchange Commission, Corrections Corporation of America 10-k, March 31, 1997

force in state politics. One of ALEC's primary functions is the development of model legislation that advances conservative principles, such as privatization. Under their Criminal Justice Task Force, ALEC has developed and helped to successfully implement in many states "tough on crime" initiatives including "Truth in Sentencing" and "Three Strikes" laws.

Corporations provide most of the funding for ALEC's operating budget and influence its political agenda through participation in policy task forces. ALEC's corporate funders include CCA and Wackenhut. In 1999, CCA made the President's List for contributions to ALEC's States and National Policy Summit; Wackenhut also sponsored the conference. Also, past co-chairs of the Criminal Justice Task Force have included Brad Wiggins, then Director of Business Development at CCA and now a Director of Customer Relations, and John Rees, a CCA vice president.<sup>23</sup> By funding and participating in ALEC's Criminal Justice Task Forces, private prison companies can directly influence legislation related to sentencing; in this case, harsh sentencing laws sending more people to prison for longer.

***Limits in Public Oversight--*** State prisons and local jails have traditionally been financed through tax-exempt general-obligation bonds that are backed by the tax revenues of the issuing governmental body. These bonds require voter approval. For-profit prison companies, however, can finance the construction and maintenance of their organizations from private revenue, thereby circumventing the need for voter approval on bond issues. Taxpayers are denied the opportunity to approve or disapprove the building of new facilities while remaining liable for the expenses incurred by the government through their contract with private prison companies.

**Conclusion:** While there is a clear slowdown in states' use of private prisons, the expansion of the federal government's interest in privately operated facilities is a growing issue. In response, Representative Ted Strickland (D-OH) introduced in May 2001 the Public Safety Act into the House of Representatives. Senator Russell Feingold (D-WI) introduced a companion bill into the Senate. With endorsements by members of both political parties, the Public Safety Act would prohibit the placement of federal prisoners in private prisons, as well as deny funding to states that contract with for-profit prison companies.

Claims of significant cost-savings and improved efficiency from private prisons have not proven true. Furthermore, private profit interests in sentencing policy and limited public oversight of private facilities complicate the debate over expansion of private prisons. The public and policymakers would be well served by a broad discussion of the complex set of issues raised by prison privatization.

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<sup>23</sup> Western Prison Project, "The Prison Payoff," Nov. 2000, p. 4.