

Submission
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**INQUIRY INTO THE PRIVATISATION OF PRISONS AND
PRISON-RELATED SERVICES**

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INTRODUCTION

Australia has been getting tougher on lawbreakers. This is something that the public long has been demanding. The problem it creates, however, is a shortage of prison capacity to hold the increased numbers of convicted criminals. This has led to: prison overcrowding, sometimes prompting court actions against penal systems; rapidly rising operational outlays; and taxpayer resistance to the cost of new prisons.

A partial answer to the problems of prison overcrowding and high costs may be the "privatization" of prisons. By using the private sector to build or manage prisons, many states believe that they can reduce costs. So far, this state correction agencies have used the private sector only to manage minimum-security correction centers. Currently over half the United States have passed legislation to allow for this form of prison privatization. Nine states may be going beyond this; they have passed laws enabling private companies to operate adult "confinement" state prisons.¹ Other states, including Indiana, Kentucky, and Minnesota, considering similar legislation.

Court Ordered Relief

Costs and overcrowding problems are the driving force behind the privatization phenomenon. There are approximately 10,000 inmates in state prisons, double the number five years ago. This costs taxpayers each year. More than two thirds the United States prisons are facing serious overcrowding problems, and many are operating at least 50 percent over capacity. Some 41 states, including California, Connecticut, Massachusetts, and Texas are under court order to relieve the overcrowding.² If they do not do so, many convicts who have not served full sentences will have to be released. Cost comparisons between private and government operation of prisons show frequent cost savings under private management. While the national average cost to hold a prisoner in a government run prison is \$40 per inmate a day, many privately run prisons in the states charge the government significantly lower fees. U.S. Corrections Corporation, which operates the Marion Adjustment Center in St. Mary, Kentucky, charges Kentucky a daily fee of \$25 per inmate. In 1986, this private firm saved Kentucky an estimated \$400,000. Similarly, Corrections Corporation of America (CCA) charged Bay County in Florida \$29.81 per inmate per day to operate the Bay County Jail. Before privatization of the facility, the daily cost was \$38 per inmate. In 1985, CCA's first year to operate the jail, the corporation saved the county approximately \$700,000.³

Yet while prison privatization solves some problems, it raises serious issues. Among them:

- 1) Is the public ready to accept the private sector providing a service traditionally performed by the government?
- 2) Can the government maintain adequate supervision through careful monitoring and evaluation?
- 3) Should private security guards be given the right to use deadly weapons?
- 4) In the case of complaints by inmates or prison employees, is the government or the private contractor liable?

States and localities considering prison privatization thus need to review all aspects of the concept as they examine the privatization option. There is a wealth of experience and expertise upon which they can draw. This information suggests that privatization can solve an important part of the prison problem.

FORMS OF PRIVATIZATION

Prison privatization means the transfer of prison functions from the government sector to the private sector. This can take various forms in the case of prisons. Among them:

Contracting out services

This is the most common form of prison privatization. Currently, states hire government firms to provide such services as medical and mental health treatment, drug treatment, education, staff training, and vocational training and counseling.⁴

Ownership and operation of prisons

To date, private operation of correction centers has been limited to minimum security facilities, such as JUNEE. Several states are interested in extending private operation to secure or "confinement" adult prisons. One such facility already in operation is a minimum security prison in St. Mary, Kentucky, now owned and operated by U.S. Corrections Corporation, a private company headquartered in Louisville. The firm has existed since 1986, and is the first private company to own and operate an adult state prison. U.S. Corrections Corporation receives \$25.35 per them per inmate for running the Kentucky state prison. A recent survey by the National Institute of Corrections predicts that, by 1990, about a dozen secure prisons will be operated by private management.⁵

Contracting out prison labor

By putting prisoners to work and paying them competitive wages, many private companies are reducing prison costs for the government by withholding earnings for taxes, room and board, family support, and victim's compensation. Such employment also gives prisoners the skills and work experience that will prepare them for the job market when they are released.

Private business has become increasingly interested in prison labor during the past decade. Prompted by state and federal measures lifting restrictions to private sector use of prison labor, some eleven states contract out the work of an estimated 1,000 convicts. Over twenty firms, ranging from small businesses to multinational corporations, provide jobs for inmates. For instance, Best Western International, Inc, a major hotel chain, employs over thirty Arizona prison workers to operate the hotel's telephone reservation system. Since the Best Western program began in 1981, inmates have paid \$182,000 in taxes, contributed over \$187,000 to the state for room and board, and paid at least \$112,000 in family support. Similarly, Trans World Airlines, Inc. hires young offenders from the Ventura Center Training School in California to handle over the phone flight reservations. The inmates have paid a total of \$13,000 in taxes, \$15,000 for room and board, and \$11,000 to victims for restitution.

In most cases, the state correctional system provides the working facility for the private firm. The firm manages and trains the inmates and releases their earnings to the care of the state. The wage rates, in most instances, are negotiated between the state agency and the private firm.

Florida is Leader

Florida in 1981 became the first state to contract out the entire state prison industry to private management. Prison Rehabilitative Industries & Diversified Enterprises Inc. (PRIDE), a firm based in Clearwater, Florida, now manages all 53 Florida prison work programs as a for profit operation. PRIDE made a \$4 million profit last year. Many states considering privatization of prison industries are studying the PRIDE operation. PRIDE employs only inmates who want to work. As such, work is viewed as an opportunity rather than a punishment. PRIDE pays 60 percent of the workers' wages directly to the state government to defray the costs of imprisonment. PRIDE products, which range

from optical and dental items to modular office systems, are sold to the local and state government agencies.

Construction and lease/purchasing

Many states see private construction as a promising solution to the prison overcrowding crisis. States normally finance construction by cash appropriations (a "pay-as-you-go" approach) or by issuing general obligation bonds. The former puts the whole financial burden of construction on the state's annual budget. Bonds create problems by requiring voter approval and are restricted by debt limitations. An alternative is private financing through lease contracts or lease purchasing agreements. It does not place the cost on the annual budget and does not require voter approval. Under a lease/purchase agreement, a private firm agrees to build a prison if the state signs a long term lease for the prison. Early payments of rent by the State help the private firm fund the construction. When the government completes the payment obligations, the debt and finance charges, it takes title to the facility. The private firm benefits from tax advantages and cash flow from the lease payments. The state government often benefits from quicker construction because voter approval is not required and debt limit constraints do not apply. Lease/purchasing for state prisons must be approved by the state legislature. Legislation permitting construction by lease/purchase agreements has passed in 14 states.

6 PRIVATIZATION AT THE STATE LEVEL

To date, most prison privatization has been by states governments, with the federal government doing relatively little beyond using private firms to house inmates and sponsor pilot programs. The greatest strides in state prison privatization have been in operating "secondary housing facilities" (detention centers for illegal persons, and mental patients) and in contracting out services for prisons. A number of states are exploring whether private firms can operate "primary" security correctional facilities for adults. Colorado, Florida, Maine, Massachusetts, Montana, New Mexico, Tennessee, Texas, and Utah already have passed enabling legislation to privatize the operation of prisons. States considering legislation are Indiana, Kentucky, and Minnesota. Corrections Corporation of America (CCA), based in Nashville, Tennessee, and founded in 1983, is the largest private corrections organization in the country. A spin off of Hospital Corporation of America, CCA designs, constructs, finances, and manages both secure and non-secure facilities. In addition to operating two juvenile centers and a county prison in Hamilton County, Tennessee, CCA also contracts with Florida, New Mexico, and Texas.

In 1985, CCA proposed to operate the entire Tennessee state correctional system for 99 years. Governor Lamar Alexander supported the idea. It was blocked, however, by lobbying by some state officials and groups like the American Civil Liberties Union. Nevertheless, CCA continues to be the nation's leading innovator of private prison operations and is expanding its marketing activities in Iowa, New York, North Carolina, South Carolina, and Texas.

Also located in Tennessee is Prisor Corporation, a competitor of CCA. Prisor operates a juvenile detention center in Johnson City, Tennessee, a 144 bed prison in Alabama, and a county jail in Maine.

Texas Saves 10 Percent

Severe prison overcrowding problems in Texas prompted legislation last year authorizing privatization of minimum and medium-security prisons. Texas already has signed a contract with Becon-Wackenhut Inc. of Florida for the construction and private operation of two 500bed minimum-secure facilities. Wackenhut will charge the state a per them fee of \$34.79 per inmate, more than a 10 percent saving from what the operation would cost Texas. In addition, Texas is close to agreement with CCA for the construction of two 500bed pre-parole facilities in the cities of Venus and Cleveland.

New Mexico is the most recent state to have passed prison privatization legislation. This February, Governor Garrey Carruthers signed a bill permitting the state Corrections Department to contract out for private construction, renovation, and management of prisons. The state's first major contract is a lease agreement with a private firm to build and operate a women's prison.

In Florida, the Jack and Ruth Eckerd Foundation, an endowment of the Eckerd drug store chain, has managed and operated the secure Okeechoobee School for Boys since 1982. In addition, PRIDE, Inc. manages the state's prison industry or work program and CCA operates the Bay County Jail as a for-profit, 175 bed work camp. Another for profit firm operates a 171bed state prison, the Beckham Hall Community Correctional Center, with an unsupervised work release program.

In Kentucky, the Marion Adjustment Center, a prerelease, minimum-security 200bed, is the U.S.'s only secure adult state prison owned and operated by a private firm, the U.S. Corrections Corporation.

In Minnesota, the nonprofit Volunteers of America manages and operates the Roseville Detention Center, a county jail for women.

Union Pressure

In Pennsylvania, Buckingham Security Ltd. manages and operates the medium-secure Butler County jail. Buckingham Security proposed in 1985 to design, construct, and operate a 720 bed penitentiary in Beaver County near Pittsburgh. The company intended the facility to house special protective custody prisoners from prisons outside the state. Many states, including Connecticut, Indiana, Maryland, New Jersey, and West Virginia, as well as the District of Columbia, responded with letters of intent to send prisoners to the facility. The project was scrapped, however, when the Pennsylvania legislature refused to approve it. In 1986, the American Federation of State, County, and Municipal Employees (AFSCME), a union that represents many state prison employees, successfully lobbied the Pennsylvania legislature for a moratorium on all future prison privatization projects. The moratorium expired recently, but projects such as the Buckingham Security plan have been delayed.

Prison Management by National Corporations

Recent developments in corporate prison management could advance prison privatization significantly. An example is General Electric Government Services, a subsidiary of General Electric Company, which took over RCA Service Company two years ago. General Electric Government Services now runs the Weaversville Intensive Treatment Unit, a juvenile institution in Pennsylvania established by RCA Service Company in 1975. Responding to Pennsylvania's urgent request for a high-security juvenile facility, RCA converted an empty state-owned building into a correction center in just ten days and positioned its staff to run the operation. In addition to the Weaversville

center, General Electric Government Services runs the Evaluation and Treatment Center in Rhode Island and the Bensalem Youth Development Center in Pennsylvania.

Another significant development is the growth of joint venture agreements between local firms and national corporations. Example: A \$40 million medium-security prison in Colorado is being built as a joint venture between American Correctional Systems, Inc. (design and management), the huge Bechtel Group, Inc. (construction), South Korea's Daewoo International Corporation (finance), and the international finance company Shearson Lehman Brothers, Inc. (underwriting). Under another arrangement, Corrections Development Corporation will design, construct, finance, and lease a prison facility in Missouri on a 30-year lease/purchase basis; Kidder Peabody & Company, Inc. will underwrite the project.

KEY QUESTIONS AND CONTROVERSIES

Prison privatization raises a number of complex questions. They must be answered by any jurisdiction considering privatization.

Question #1. Does Privatization Mean Government Abrogates Its Responsibility?
Should the private sector be responsible for a function traditionally performed by the government sector? Or is it possible for the government to delegate certain areas of responsibility to the private sector while continuing to maintain full authority? Experience shows that prison privatization does not mean that the government relinquishes its responsibility. The government still would select the inmates to be placed in private prisons, choose the type of facility to be contracted out, oversee the contractor's disciplinary practices and, most important, evaluate the contractor's performance.

Question #2. Is "Creaming" a Problem?
Does privatization mean the private sector will take the more "favorable" prisoners leaving more difficult inmates for the government?

Question #3. Does Profit Conflict with Good Practice?
Can the economic objectives of running a prison be met without conflicting with the operational objectives? Critics of privatization claim that contractors will cut corners at the expense of the prisoner's welfare.

The contracting process significantly reduces such dangers. Contractors must abide by state laws, regulations, and policies and are held accountable for fulfilling these obligations. If the state is dissatisfied, it can refuse to renew the contract. Some states, such as New Mexico and Tennessee, also include termination clauses within contracts in the event a contractor provides inadequate service. In addition, contractors are watched very closely by the courts, the press, civil-rights groups, and prison-reform groups. Such close scrutiny forces the contractor to maintain adequate standards.

Question #4. Are Current Prison Employees Threatened by Privatization?
The unions representing public sector prison workers, such as the P.S.A. fear that extensive privatization will reduce salary and fringe benefits for prison workers. Private contracting poses much less of a threat than the unions claim. In common with most contracting practices at the state and local levels, state employees usually receive first refusal for jobs with the private contractor. And because the correctional system is highly labor-intensive, prison operation requires a large work force. Studies also suggest

that wage rates in privately run prisons are the same or are higher than in government-run prisons.

Question #5. Are Private Prison Guards Permitted to Strike?

Critics argue that while public guards can strike, private guards cannot strike under the protection of the National Labor Relations Act. However, many contracts can contain provisions denying these private employees the right to strike.

In cases where no such provision exists, private guards nevertheless are likely to be discouraged from striking. Correction agencies can threaten to terminate a contract, which would mean the loss of their jobs.

Question #6. Will Service Quality and Flexibility be Maintained?

Some policy makers maintain that the quality of management in private prisons will tend to be high at first, because of competition and the desire to win contracts. However, they question the private sector's ability to sustain high-quality standards. They reason that, with the contract securely in their hands, private managers in the long-run are unlikely to maintain high standards. Moreover, they claim, once a long-term contract is signed, government lose its flexibility in practice it is not able to use or discard private services as needs change.

Contracting standards, however, are likely to improve over time as more firms enter the market and competition increases. Periodic rebidding, as the National Institute of Justice recommends, will create incentives for firms to improve constantly the quality and cost-efficiency of their performance. Studies on the contracting out of other federal and municipal services show significant cost savings over the long term. Between 1981 and 1984, for example, municipal janitorial services contracting with the Department of Housing and Urban Development showed cost savings of 73 percent. Similarly, municipal overlay construction showed a 96 percent cost saving.¹³ Frequent government review of contracts and careful monitoring of performance will ensure long-range efficiency.

Question #7. Can Public and Private Costs be Compared?

Given the difficulties inherent in measuring the true "cost" of a prison inmate, can government really be sure it saves with privatization?

Comparing costs in the private and public sectors admittedly is not easy. Accounting procedures differ and quality is difficult to compare. Routine monitoring of private contractors may be a hidden cost of privatization, just as taxes paid by the contractor may be a hidden additional benefit.

Despite accounting difficulties, the evidence to date shows strong cost advantages of private operation over government operation due to such factors as the absence of civil service regulation, lower private-sector pension and benefit costs, and improved productivity. But to measure these savings accurately, agencies need to review their accounting procedures. Many states and counties are doing this, just as cities have done so to gauge the savings of contracting out municipal services.

Question #8. How Can Liability Concerns be Resolved?

Who is legally responsible for the violation of a prisoner's rights? Who is liable if a private prison employee is injured? If a prisoner escapes and injures a private citizen, is the

state or the private operator held accountable? And assuming the government is liable, will liability costs to the government be higher or lower with private prison operation?

Such questions are important in the debate on prison privatization. Yet the matter of liability has not slowed privatization significantly. Critics and proponents of privatization agree that while the contractor has accepted responsibility to operate or manage a prison facility, government still retains overall authority and liability. In fact, the Civil Rights Act specifies that while the private sector may manage "places of confinement," the government is to have ultimate custody over prisoners. A contract, of course, can contain indemnification clauses absolving the agency from certain legal damages. In many cases, the contractor is required to carry large insurance policies for the government agency's protection.

The 1988 Report by the President's Commission on Privatization notes that the liability issue depends very much on the nature of state tort laws and specific provisions within the contract. According to the report, the American Bar Association, with support from the National Institute of Justice, is completing a model prison contract to deal with liability and other issues.

Question #9. What About the Use of Force?

Should private security guards carry guns? When is the use of deadly force by a private guard justified? Should guards use force only for self-protection, or under the same conditions as state officials? What about emergency situations, such as a prison escape?

While these are understandable concerns, most states have resolved the issue by defining in statute the right of private officials to use reasonable force. Lawmakers believe it is necessary that contractors have the same standards for establishing security as correction agencies, and that inmates view private prison officials as holding the same authority as government officials. Massachusetts, for instance, allows private guards to use deadly force with discretion. However, the state Commissioner of Corrections enforces regulations to ensure security and order. Similarly, New Mexico allows prison contractors to designate "peace officers," who are armed within the prison facility, outside the facility when transporting inmates, and may use deadly force in the event of an escape.

Nevertheless, the right to use force, especially deadly force, is seen as a last resort. Private guards normally are unarmed. In some privately operated prisons, such as the Bay County Jail in Florida, most guards are licensed to carry guns but only do so if there is a crisis, such as an attempted escape. Moreover, if an escape is successful, private prison officials normally would rely on the police force to apprehend the prisoner.

CONCLUSION

Privatization is a practical and innovative solution to the problems of overcrowding and high costs facing the Australian prison system. Many states are recognizing this, contracting out services, contracting out inmates' labor to private firms, and seeking private financing for prison construction. An increasing number of states are contracting out the entire operation of prison facilities.

Many people are unsure of prison privatization, fearing a loss in service, problems with liability, and threats to the jobs of prison personnel. As more and more jurisdictions

experiment successfully with privatization, however, their experience should demonstrate privatization's value.