



POLICY BRIEF

Private Prisons: *A Sensible Solution*

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Executive Summary

The prison system in Washington state is being severely stretched by overcrowding, threatening the safety of the staff, the inmates and the surrounding communities. Without new prisons, law enforcement officials will be forced to make difficult decisions about which dangerous criminals should be incarcerated and which should be allowed back onto the street. Unfortunately, because of tight budgets and other pressing needs, building enough government run prisons to safely hold the increasing inmate population is not financially feasible.

A sensible solution to this problem is competitive contracting for prison construction and management. Throughout the nation and the world, vigorous competition among public and private prison firms is used to reduce the high cost of incarceration, while maintaining the high quality of service local communities expect. Market pressures and government oversight have combined to produce a responsive, efficient and effective private prison industry that can meet the demands of our state while encouraging existing government facilities to operate at an equally high level.

This study discusses the benefits derived from free-market competition, and the experiences of other states in their prison privatization efforts. The study also analyzes the barriers to privatization here in Washington state, including the state's own contradictory findings on private prisons.

Prison privatization does not mean giving over control of prisoners to big corporations. Sentencing and oversight are still managed by the state, but taxpayers benefit from the competitive pressures introduced by private competition. This study finds that a well-managed competitive contracting program can reduce the cost of prison services to the government, open up new markets for Washington businesses, and increase the quality and efficiency of existing government facilities.

I. Introduction - A Growing Problem

Washington state is faced with many urgent social, economic and governmental problems. The energy crisis continues to affect our communities, the state transportation system is in gridlock and the once vibrant dot-com economy has come to a screeching halt. There is a growing crisis that has not received nearly as much visibility, but which threatens to cause societal problems of similar severity. That crisis is the failure of our state prison system to maintain adequate jail space for a growing number of prisoners. The results of prison overcrowding can lead to problems both inside and outside prison walls.

Internally, the safety of prisoners and prison employees is threatened when too many people are packed inside the penitentiary walls. Violence and drug use among prisoners become more difficult to control, and efforts at rehabilitation are stifled because resources must be spread across an ever-expanding group of inmates.

In the surrounding community, over-crowding thwarts the efforts of law enforcement to crack down on hard criminals. Without room to incarcerate violent and dangerous offenders, police and the courts are forced to make the difficult decision of choosing which dangerous criminals will be less likely to re-offend if they are let free. Communities also suffer, because proven rehabilitation procedures cannot be adequately administered in overcrowded jail cells. As a result, prisoners who serve their time are often released without the professional and social skills necessary to become contributing members of society.

Over the past ten years, our overall crime rate has dropped significantly. Part of that success can be attributed to new sentencing laws that ensure serious criminals stay behind bars.¹ Those new laws, combined with a rapidly expanding population, have lead to a similar growth in prison population. Today, we are faced with a state corrections system that is stretched to the limit. Occupancy rates in the state prison system have skyrocketed to 141% of capacity, with the lowest occupancy rate of any facility, except for the McNeil Island Work Ethic Camp, being 98%.²

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Local municipalities are experiencing similar growth in their jail populations. For example, Pierce County was forced to contract with a Yakima jail to house up to 21 inmates for which the county did not have room.³ Similarly, as the state prison population grows, the Washington State Department of Corrections (DOC) has been forced to transfer some prisoners from state prisons to local jails, which are already overcrowded. As a result, the Thurston County jail has resorted to turning away most misdemeanor offenders

¹ "Three Strikes Law Works," by John Carlson, Washington Policy Center, March 1, 2001.

² "Offender Population," Washington State Department of Corrections at www.wa.gov/doc, updated as of March 15, 2001.

³ "Jail Inmates Going to Yakima," by Lavigne Sullivan *Tacoma News Tribune*, Tacoma, Washington, December 22, 2000.

in an effort to keep prisoners from having to sleep on the floor.⁴ An expansion of the Snohomish County Justice Center, which will cost taxpayers \$79 million, will only house 512 of the 1,400 new inmates projected through 2020.⁵

The over-crowding problem is not limited to jails in Pierce, Thurston and Snohomish counties. In the most recent analysis, county jail capacity throughout the state was at 110%.⁶ What are we to do about this problem? The obvious solution is to build more prisons. But from where will the money for those new facilities come? State and local governments can hardly support the basic infrastructure and welfare requirements to which they are already committed. State and local governments must identify a way to increase jail space, ensure the safe and humane management of our increasing prison population, and reduce the cost necessary to build and operate new prisons.

This is where privatization comes in. Throughout the world various forms of prison privatization have effectively reduced the cost, increased the quality, and improved the efficiency of correctional services. Here in the United States, prison privatization has been successfully implemented through contracting out and competitive contracting. The two methods differ slightly. When government services are contracted out, only private companies are allowed to bid. In competitive contracting, the government solicits bids from government employee groups along with qualified private sector businesses. Traditionally, contracting out is used for pilot programs, then competitive contracting is used when it has been determined that there is an adequate market in the private sector to continue with a privatization program.

In the following report, we discuss the privatization experiences of other states and the opportunities for our state to benefit from the quality and efficiency derived from competition. By implementing a competitive contracting program in Washington state, we can reduce the cost of constructing and operating correctional facilities, and spark the often dormant innovation of top quality government employees through competition for traditional services.

II. Washington State Prison System

Washington has one federal prison, an Immigration and Naturalization Service (INS) detention center, 17 state prisons, and 39 jails run by county governments. The SeaTac Federal Detention Center is used for people arrested by US Government agencies, and the INS detains people for immigration law violations. The local prison system houses low-level prisoners with sentences of less than one year. The state system is the primary

⁴ "State Mandate May Swamp Jail," by Liona Tannesen, *The Olympian*, Olympia, Washington, December 21, 2000.

⁵ "New Snohomish County Jail Proposed to Stem Overcrowding," by Larry Lange, *Seattle Post Intelligencer*, March 28, 2000, p B3.

⁶ "1999 Rated Capacity, Average Daily Population and Percent of Use," Washington Association of Sheriffs and Police Chiefs at www.waspc.org.

prison system in the state and is chartered as the “comprehensive system of corrections for convicted law violators within the state of Washington.”⁷

As the comprehensive prison system for our state, the Washington State DOC legally is required to accomplish the following nine objectives:⁸

- 1) Ensure the public safety.
- 2) Punish the offender for violating the law.
- 3) Stress personal responsibility and accountability to reduce recidivism.
- 4) Treat all offenders fairly and equitably.
- 5) Reflect the values of the community.
- 6) Provide for prudent management of resources.
- 7) Develop a system that provides restitution for victim’s damages.
- 8) Be accountable to the citizens.
- 9) Meet national standards.

These are lofty expectations for a system that has been allocated an ever-expanding budget, but is still faced by an increasing inability to meet the requirements of its charter. The Washington state inmate population has been expanding steadily for the past 10 years. In 1990, the daily average state prison population was 7,340. By 2000, that number had grown to 14,706, an increase of over 100%. Capacity at state prisons average 141% today, with many facilities far past their original design capacity. In total, the system houses over 4,800 more prisoners than it was originally designed to accommodate.⁹

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In an attempt to address the overcrowding situation the DOC’s budget has doubled, expanding from \$427 million in the 1989-91 biennium to \$843 million in the 1997-99 biennium.¹⁰ The growing prison population justified the budget increase, and the need to service the huge operational cost associated with our state-run system. Based on DOC estimates, operating and capital costs over the period 1999 to 2005 will grow by an additional 46%, requiring over \$1.4 billion in extra revenue to maintain prisoners. Much of this increase will be driven by construction of new facilities, with planned capacity for 1,500 additional prisoners.¹¹

But even with these budget increases and facility expansions, the system will still be overcrowded. Perhaps the increased budgets have not been able to keep up with the

⁷ Revised Code of Washington 72.09.010.

⁸ Ibid.

⁹ Washington prisons currently house 14,087 prisoners, while they were designed to house only 9,980. Washington state Department of Corrections at www.wa.gov/doc, March 31, 2001.

¹⁰ “Historical Budget Information,” Legislative Evaluation and Accountability Program Committee at leap.leg.wa.gov, January 2001.

¹¹ “Prison Statistics,” Washington State Department of Corrections at www.wa.gov/doc, September 2000; also see “Washington state 10 year capital plan,” Office of Financial Management, Department of Corrections section, January 2001.

expanding population because the cost of constructing each new bed in a medium security prison is now estimated at over \$100,000.¹² This does not include the labor and maintenance cost of managing that bed over a period of years as the prison population expands.¹³

Without competition, there is no incentive for corrections employees to develop innovative ways to “provide prudent management of resources,” as objective six in the DOC charter requires. This failure is not caused by corrupt government officials, inept agency employees or other possible abuses of the system, but is a product of the organizational structure in which they are forced to work.

III. Benefits of the Free Market

The question of how to pay for needed prison capacity has inspired a new breed of political leader who is beginning to ask some fundamental questions about the services government provides: What services should we provide? Are there services we currently offer that could be performed better by the private sector? How can we deliver a high level of quality for the lowest possible price to our citizens?

To address these and other questions, we have identified four primary goals that can be used to guide a competitive government program:¹⁴

- 1) Lower Cost -- Private companies are disciplined to seek efficiencies through the need to operate at a profit while providing superior service at a competitive price. By employing the techniques of competition, governments can find efficiencies within their operations and lower their costs of performing a service.
- 2) Higher Service Levels -- Monopolies - government or private - frequently lack the stimulus to innovate and improve service delivery. By availing themselves of the benefits of competition, governments can upgrade their services within existing budgets and simultaneously achieve cost savings.
- 3) Better Management -- Governments can streamline their operations by using the same accounting procedures and productivity measures that the private sector uses, which are more accurate and comprehensive than traditional government methods.
- 4) Changed Government Culture -- When a government chooses competition over monopoly its culture changes. Instead of performing more functions with less

¹² Ibid.

¹³ Average per bed cost for Washington prisons is \$44.52 per day and \$16,250 per year, “Department of Corrections Privatization Feasibility Study,” State of Washington Legislative Budget Committee, Olympia, Washington, January 10, 1996, p 19.

¹⁴ The Washington Policy Center developed these goals during its research on competitive contracting for Washington state’s highway maintenance program. The four goals were originally published in “Competing for Highway Maintenance: Lessons for Washington State,” by Dennis Lisk, January 1999, available at www.washingtonpolicy.org.

expertise, governments open to competition liberate themselves to perform a smaller set of core functions better than ever before.

Across the country, more state governments are privatizing or contracting out services that were once performed only by government agencies and employees. Washington state is not exempt from this trend. Taxpayers are no longer satisfied with governments that deliver low levels of service, with even lower levels of quality, while continuing to demand more tax revenue to pay for those sub-par services.

An excellent example of a government service ripe for competition is the state prison system.

As our elected leaders struggle with the inefficient service levels of state agencies, and the increasing constraints placed on available revenue, benefits from competitive contracting become more apparent. An excellent example of an industry ripe for competition is the prison industry.

IV. Case Studies in Prison Privatization

There are a number of states that have already embarked on major prison privatization programs in order to obtain the benefits inherent in competitive contracting. The first state to launch a privatization program was Tennessee, which authorized Hamilton County to contract for a private jail run by the Corrections Corporation of America (CCA) in 1984. In 1985, the initiative expanded, as Kentucky awarded a contract to another firm, US Corrections Corporation, for the first state level, secure adult correctional facility in the nation, run by a private company.¹⁵

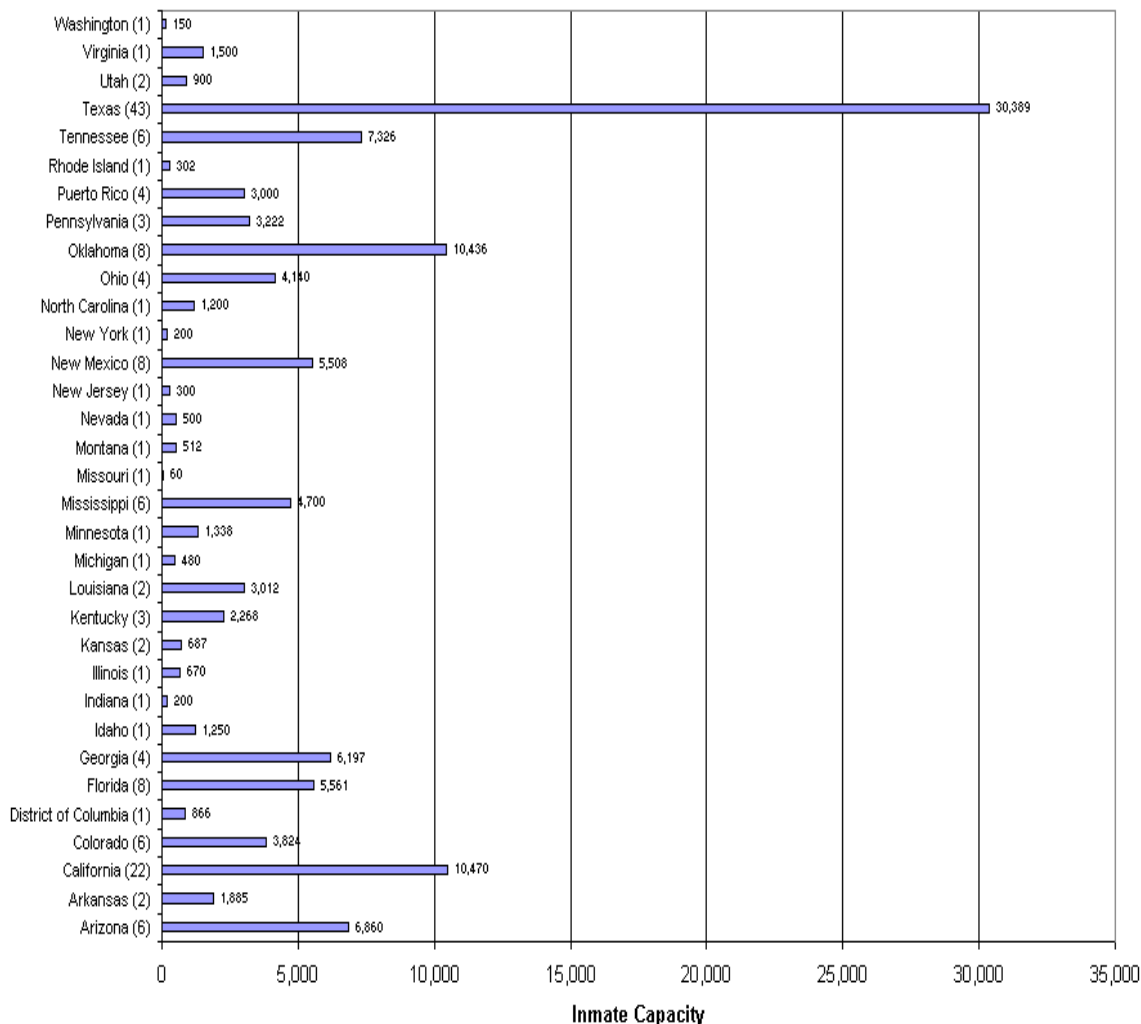
From that point forward, the number of privately built and operated correctional facilities expanded, as more elected officials and state agencies realized the quality and cost benefits that come with privatization. By 2000, 31 states, the District of Columbia and Puerto Rico were operating private adult secure correctional facilities. Of these, Texas has been the most prolific and the most successful, operating 43 facilities with a rated capacity of over 30,000 inmates.¹⁶

¹⁵ "Privatization of Prisons in Alabama," by Patrick S. Poole, Alabama Family Alliance, Birmingham, Alabama, 1998, p 3.

¹⁶ "Private Adult Correctional Facility Census," by Charles W. Thomas, Private Corrections Project, Center for Studies in Criminology and Law, University of Florida, Gainesville, Florida, April 2000.

Figure 1¹⁷

Rated Private Prison Capacity of 31 States, Washington DC and Puerto Rico
 Number of private prisons in each state shown in parenthesis



Competitive contracting for prison services increased significantly since 1984. The question many policy leaders are now asking is, “Does it work?” To address that question, we reviewed three real-world examples in Texas, Louisiana and New Mexico, comparing the performance of public and private prisons. The results have been overwhelmingly positive. While the private prison system is not perfect, the high quality, low cost and management innovations that have resulted from introducing competitive pressures to this government service have been largely beneficial.

¹⁷ Ibid.

A. Texas

With capacity for over 30,000 prisoners in 43 facilities, the state of Texas has privatized more of its prison system than any state in the nation. The program was launched in 1987 with authorization from the state Department of Criminal Justice to contract for 2,000 beds in four privately-constructed and operated pre-release prison facilities. Initially, the program was designed as a pilot project to determine the effectiveness of private prisons in comparison to public facilities, but the success of the program has resulted in significant expansion.¹⁸

In the Texas pilot, Corrections Corporation of America contracted for two of the facilities, and Wackenhut Corrections Corporation contracted for the other two. By authorizing this program, the state of Texas was able to perform a real-world evaluation of the cost, performance, quality of service and economic effects of the four private prisons. The results were then compared to existing performance standards for existing state-run facilities, and those of other state and private prisons around the country. In nearly all categories, the private prisons performed at or above the level of comparable public facilities.

The evaluation of the Texas private prisons, conducted by the Texas Sunset Advisory Commission (SAC) in 1991, focused on nine primary performance and quality categories:¹⁹

- 1) Security
- 2) Safety
- 3) Medical care
- 4) Education
- 5) Substance abuse programs
- 6) Staff treatment
- 7) Disciplinary process
- 8) Living conditions
- 9) Activities

Combining the results of inmate interviews with those of prison employees and a review of studies from four other states, private prisons performed as well or better than public facilities in nearly every category of analysis. The only exception for the Texas prisons was the quality of food, which was rated better at state prisons than private prisons. In the Texas prisons, inmates who had been housed in public prisons and later transferred into the new private prisons, were interviewed about their experience in both, which made comparisons easy.

¹⁸ Homepage of Dr. Charles W. Thomas, retired professor of criminology at the University of Florida, at <http://web.crim.ufl.edu/pcp/index.html>, April 2000.

¹⁹ "Breaking the Mold: New Ways to Govern Texas," Texas Sunset Review Commission Agency Performance Review, July 1991, Austin, Texas.

In addition to their consistently high quality, private prisons in Texas achieved a contractually guaranteed 10% savings over the cost of a state run facility. When the additional tax revenue generated by the private prison is factored in, the savings rise to 14%.²⁰

Figure 2²¹

Texas - Private versus Public Prison Cost Comparison

Type of Prison	Unit Cost Per Day
Public	\$42.47
Private	\$35.25

Savings were particularly evident when evaluating the specialized facilities, such as psychiatric and medical wards, for which the private companies were able to use innovative facility design to increase the safety of the prisoners, while reducing the number of security staff required.²²

The Texas private prisons also benefited the surrounding community. Included in many contracts is a stipulation that prison firms must hire and buy locally whenever possible. Increases in property and business tax revenue also benefit communities that site private prisons. In contrast, public prisons have no similar restrictions on their hiring practices, and the surrounding communities do not gain additional property or business tax revenue from their existence.

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State agencies and law enforcement officials were generally impressed with the management flexibility and cost effectiveness of the four private prisons. In their own words, “Private prisons are cost effective, saving governmental entities from 5% to 15% based on cited studies. These private entities are capable of expanding and constructing new facilities faster than the state prisons based upon experiences in other states. A mix of public and private prisons is healthy for competition and experimentation of new programs. Local communities will realize additional benefits from private prisons, including community service projects, sales tax revenue and local property taxes.”²³ The Texas program shows that well managed competitive contracting for prison services is good for the inmates, prison staff and the surrounding community.

²⁰ “Breaking the Mold,” p 2.

²¹ Private prisons pay property and business taxes back to the government, thus reducing their overall cost to taxpayers and reducing their real daily cost per inmate. Similarly, the cost for public prisons does not incorporate debt service costs, which are factored into the per diem for private prisons. When debt service fees are included in the cost of the public prison, costs rise by \$1 to \$2 per inmate per day.

²² “Breaking the Mold,” p 2.

²³ “Breaking the Mold,” p 6

B. Louisiana

In the mid 1980s the state of Louisiana faced a situation similar to the one Washington state confronts today. The prison system was overcrowded, funds for new prisons were limited, and political pressure for finding new solutions was growing. In response, the Louisiana Department of Public Safety and Corrections (DPSC) authorized a field test to evaluate the effectiveness of privately constructed and operated prisons.²⁴

The DPSC designed three medium security prisons. The state of Louisiana managed the first, Avoyelles Correctional Center in Cottonport. Wackenhut Corrections Corporation managed the second, Allen Correctional Center in Kinder. Corrections Corporation of America (CCA) managed the third, Winn Correctional Center in Winnfield.

To compare public and private performance, all three prisons were built with identical layouts. Each prison had an inmate capacity of 1,474 and was designed to house medium security convicts.

The two private prisons in Louisiana significantly outperformed the similar public, state-operated prison.

After six years of full operation, the results of this field test were thoroughly evaluated. As evaluators pointed out, “The three prisons essentially constitute a field experiment setting in which the issues of privatization of public prisons can be studied.”²⁵

The results of the Louisiana field test are telling. Private prisons, “significantly outperformed the public, state-operated prison.” In many areas, private prisons performed equally with the public prison, and in seven major categories private prisons performed significantly better:

1) Cost -- Operating costs at the private prisons were 11% to 13% lower than at the comparable public facility, as shown in figure 3.

²⁴ “Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers,” by William G. Archambeault, Ph.D., and Donald R. Deis, Jr., Ph.D., Louisiana State University, Baton Rouge, Louisiana, December 10, 1996, p 9.

²⁵ Ibid, p 26.

Figure 3 ²⁶

Louisiana - Private versus Public Cost Per Inmate Day

Fiscal Year	Avoyelles (public)	Allen (private)	Winn (private)
1991-92	\$29.37	\$24.12	\$24.47
1992-93	\$25.62	\$22.16	\$22.50
1993-94	\$24.72	\$22.09	\$22.84
1994-95	\$26.24	\$22.64	\$23.77
1995-96	\$27.05	\$23.66	\$23.88
Average	\$26.60	\$22.93	\$23.49
% Difference	--	-13.80%	-11.69%

2) Critical Incidents -- Private prisons were consistently better at maintaining an orderly facility and avoiding major disturbances.

Figure 4 ²⁷

Louisiana - Critical Incidents per Year

Prison	Number of Incidents
Allen (private)	7.93
Winn (private)	7.47
Avoyelles (public)	15.13

3) Safety -- Incidents of assault on inmates and staff were much lower in the private prisons. Allen and Winn, the two private prisons, were rated “Safe to Very Safe,” while Avoyelles, the public prison, was rated “Unsafe to Moderately Safe.”²⁸

4) Discipline -- Privately operated prisons are ranked better by the inmates and staff on their swift and fair disciplinary measures.

²⁶ When business and property taxes paid by the private company to the state government are factored into the comparison, private prison savings increase.

²⁷ Critical incidents include escapes, apprehensions, assaults on staff involving serious injury, Class I aggravated sex offense, major disturbances, inmate deaths by suicides, inmate deaths by violence, gunshots, assaults on inmates involving serious injury and total assaults on inmates with weapons.

²⁸ Safety ratings are determined by evaluating incident reports relating to staff, inmate and public safety along with formal disciplinary actions and medical records.

- 5) Staffing -- Because of flexible working conditions, private prisons employed fewer security personnel, while maintaining higher safety levels.
- 6) Education -- More prisoners completed education programs and the total number of programs offered was consistently higher at the private facilities.
- 7) Community Placement -- The private and state prisons achieved equal post-incarceration job placement success.

As in Texas, the Louisiana experience indicates the cost and quality of private prisons compare favorably with similar publicly operated facilities. In many areas, the benefits of private prisons provide ample evidence that competition in the corrections market leads to increases in quality and efficiency while reducing cost.

C. New Mexico

Facing considerable budget constraints and an expanding female inmate population, New Mexico in 1988 turned to Corrections Corporation of America for construction and management of the first private prison in the state, a full security women's facility in the town of Grants. The new facility took over management of the 200 female inmates who had been temporarily housed at the Western New Mexico Correctional Facility in the same town.

The results of New Mexico's contract with CCA reflect the positive experiences of other states.

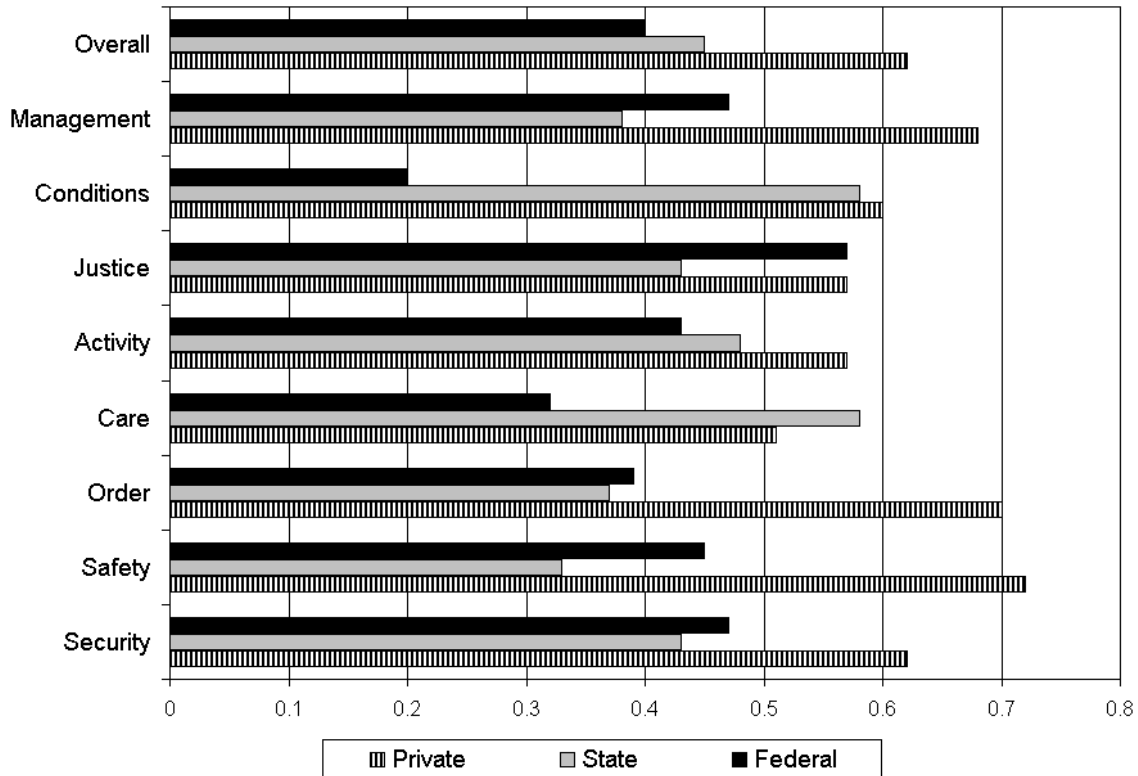
The results of New Mexico's contract with CCA reflect the positive experiences of other states. Extensive review of prison records, interviews with inmates and staff at the new private prison and at the state prison where the inmates were previously held, combined with similar reviews at a federal prison in the local area, confirm the quality of service provided by the private prison contractor.²⁹

The three New Mexico prisons were evaluated on eight primary categories: security, activity, safety, justice, order, conditions, care and management. In all but one of these categories, care, the private prison consistently outperformed both the state and federal prison.

²⁹ "Well Kept: Comparing Quality of Confinement in a Public and Private Prison," by Charles H. Logan, University of Connecticut, Storrs, Connecticut, 1992, pp 1-5.

Figure 5³⁰

Quality Index Scores for Private, State and Federal Prisons



The private prison's poor care rating can be attributed to more structured inmate regulations, which many inmates did not like. Although care was ranked well in the staff survey, the inmate survey tilted the overall rating for the category. The more structured environment helped to ensure an across-the-board approval of the Security, Safety and Order categories. In this case some inmate discontent is warranted in exchange for a safer, more orderly prison.

As a result of the early success with private prisons, New Mexico has significantly expanded its use of competitive contracting to reduce cost and increase quality.

³⁰ Ibid, p. 4

Figure 6 ³¹

New Mexico Private Prisons		
Number of private correctional facilities	-----	8
Rated capacity of private correctional facilities	-----	5,508
Private correctional facilities added since 1988	-----	7
Increase in rated capacity since 1988	-----	5,308

Specific factors cited by New Mexico which contribute to these cost and quality improvements include:³²

- A well-designed facility;
- Greater operational and administrative flexibility;
- Decentralized authority;
- Higher morale, enthusiasm, and a sense of ownership among line staff;
- Greater experience and leadership among the top administrators;
- Stricter, “by the book” governance of inmates.

By contracting for private operation of its women’s prison, New Mexico raised the quality of operation of that prison. The seven new private prisons built since 1988 are additional evidence of private prisons’ success.

The experiences of Texas, Louisiana, and New Mexico demonstrate that private prisons are a good alternative for states seeking to reduce cost and improve quality in their corrections services.

V. Objections to Prison Privatization

Many opponents of privatization site instances of mismanagement and corruption that have occurred in private prisons over time.³³ There have been problems at private prisons, but those problems are not a result of privatization, but a result of the complexity of the correctional industry in our nation, and the inherent hazards of dealing with convicted criminals every day. For every instance of private prison misconduct, there are multiple examples of similar problems occurring at public prisons.³⁴

³¹ Homepage of Dr. Charles W. Thomas, retired professor of criminology at the University of Florida at <http://web.crim.ufl.edu/pcp/index.html>, April 2000.

³² “Well Kept,” p 5.

³³ Two examples of anti-privatization opinions are, “Private Prisons,” by Eric Bates, *The Nation Magazine*, April 2001, pp 1-9; and “Prison Privatization: Recent Developments in the United States,” by Judith Greene, Center on Crime, *Communities and Culture*, May 12, 2000, Toronto, Canada, pp 2-8.

³⁴ A search of two major news agencies, *MSNBC.com* and *SeattleTimes.com*, on May 25, 2001 yielded stories about seven separate prisoner control and staff disciplinary incidents. Of those

In fact, when private prisons do have problems, owners and investors provide strong incentive to find and fix the root cause of the problem. Many private prison companies are publicly traded on the stock exchange. When performance problems arise, such as the 1998 escape from a Corrections Corporation of America prison in Youngstown, Ohio, investors send powerful signals to the company. In this case, CCA's stock dropped nearly 25% in the three months following the escape, signifying investors' displeasure with the performance of the prison. Without waiting for a review committee or investigation, CCA made immediate procedural and management changes to correct the problems that occurred, including adding a full-time checkpoint with metal detectors for all workers and doubling its perimeter patrol vehicles.

Because the performance and reputation of private prisons can so easily affect their future profitability, they have a very high incentive to maintain a safe, secure and healthy inmate population. Public prisons, on the other hand, have no similar incentive mechanism to ensure top quality performance and root cause analysis of any identified problems.³⁵

VI. Weighing the Pros and Cons: Barriers to Privatization in Washington State

Contracting out for new state prisons offers Washington policymakers a viable opportunity for providing quality correctional facilities within the tightening budget constraints of the correctional system. Before embarking on a privatization program, however, there are a number of issues that must be addressed. Those issues fall into three primary categories: legal, ethical, and administrative.

A. Legal Issues

In Washington state, privatization programs face a significant hurdle because of our state's civil service law. The law bans privatization of government services that currently are, or could be in the future, provided by government workers. Another potential legal barrier was recently outlined in an opinion by the state Attorney General, who found that local jails and prisons must be managed and operated by a governing unit, thus stifling the opportunity for local government agencies to implement competitive contracting programs.

The civil service restriction, which today is used to insulate civil service jobs from private competition, was upheld in the 1978 state court decision *Washington Federation of*

seven, only one, a prison riot in Torrance County Detention Facility of New Mexico, was in a private prison. All others were incidents involving publicly run facilities. In addition, in the Louisiana study, private prisons were found to have far fewer "critical incidents" and far better inmate and staff safety records than public prisons. "Louisiana" p 37, 57.

³⁵ "Youngstown and the Future of Private Prisons in Ohio," by Sam Staley and Adrian Moore, The Buckeye Institute Perspective on Current Issues, September 1998, Columbus, Ohio.

State Employees vs Spokane Community College.³⁶ In the *Spokane* case, the courts invalidated a janitorial service contract between the Spokane Community College and a private contractor, because the work was of the kind historically performed by civil service workers.³⁷ In the court's opinion, the essential purpose of the state's civil service law is to maintain merit as the overriding principle in employee selection and retention. By procuring services from an outside contractor, the state violated that principle.³⁸

The restrictions against the state government contracting out were extended to local public sector employees in the case *Joint Crafts Council v. King County*.³⁹ In this case, the court applied the *Spokane* reasoning to at least one local government, but also limited the civil service protection.⁴⁰ The limitation allows contracting out of local government services, when the government agency can show "that it is not practicable for civil servants to provide the necessary services."⁴¹

Adding to the civil service restrictions in late 2000, the Office of the Attorney General interpreted state law as requiring a "governing unit" to manage local correctional institutions. On the request of Cowlitz County Prosecutor Jim Stonier, Assistant Attorney General Robert J. Fallis explained the Attorney General's opinion that cities and counties are prohibited from contracting for privately managed correctional facilities, because only a "governing unit" may operate, supervise and maintain a jail.⁴² The opinion, roundly criticized by local authorities, has effectively blocked local governments from contracting for anything except non-secure facilities, like work release and substance abuse treatment centers.⁴³ While the Attorney General's opinion is not legally binding, local government's are less likely to pursue a privatization program without the state's support.

The communities of Longview, Kelso, Castle Rock, Kalama, and Woodland shelved a joint competitive contracting plan which would have opened up much needed jail space.

Reflecting this hesitancy, the communities of Longview, Kelso, Castle Rock, Kalama, and Woodland shelved a joint competitive contracting plan which would have opened up much needed jail space for their over-crowded facilities, while saving taxpayers

³⁶ *Washington Federation of State Employees v Spokane Community College*, 90 Wash. 2d 698, 585 P.2d 474 (1978).

³⁷ *Spokane*, 90 Wash. 2d 698, 585 P.2d 474 (1978).

³⁸ 72 Wash. L. Rev. 153 (1997).

³⁹ *Joint Crafts Council v. King County*, 76 Wash. App. at 18, 21, 881 P.2d 1059, 1061 (1994).

⁴⁰ For a more complete discussion of the civil service barriers to privatization in Washington state, see "Civil Service Barriers to Contracting Out: A Note on Legal Authorities," by Richard A. Derham, June 1999, available at www.washingtonpolicy.org.

⁴¹ *Joint Crafts*, 76 Wash. App. at 21, 881 P.2d at 1061.

⁴² The Attorney General's opinion cites three codified types of jail facilities: "Holding facility, Detention facility, and Correctional facility," all of which are primarily defined as "a facility operated by a governing unit." Within that definition, a governing unit is defined as "the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail." Laws of 1977, 1st Ex. Sess., ch. 316, §§ 2.

⁴³ "Attorney General Says No To Privately Run Jails," by Bonnie J. Yocum, *Daily News*, Longview, Washington, December 1, 2000, pp A1 and A12.

millions of dollars over conventional government built and maintained facilities. The Longview chief of police, Bob Burgreen, expressed the views of many residents, stating, “In these days of tight budgets and sky-rocketing prison populations, it makes no sense that lawmakers wouldn’t support a private prison. This prison would come at no additional expense to the taxpayer, and it would increase capacity. There’s no reason not to do it.”⁴⁴

The hurdles provided by Washington state law make it nearly impossible to realize the benefits of competitive contracting. No other state in the nation has similarly restrictive regulations on the performance of public services.

B. Ethical Issues

The debate over the role of government has raged continuously throughout our nation’s history. At the core of the debate is a fundamental question: What services does the government best provide and which are best left to the private sector? The concept of private contractors constructing and operating various types of criminal detention facilities has found itself at the center of the battle.

At issue is the government’s widely accepted responsibility to incarcerate criminals. Many who oppose competitive contracting for prison services feel the government has a fundamental responsibility to actively manage and control prisoners who are sentenced for punishment by the courts. This view discounts the equally important responsibility of the government to perform services as efficiently and cost effectively as possible, while providing for the general welfare. By realizing the competitive advantages of private prison management, state and local governments can provide safe incarceration of convicted prisoners without raising taxes.

As the controlling document of our government institutions, the United States Constitution contains no limitation on the performance of public services by private entities. In fact, it was the view of the founders that the responsibilities granted to government should be limited because, “in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused. They will see, therefore, that in all cases where power is to be conferred, the point first to be decided is, whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment.”⁴⁵

While reducing cost and providing quality service, private prisons can serve the public good. Through competitive contracting for detention services, the government can take full advantage of the competitive pressures inherent in the free market.

⁴⁴ Phone interview with Bob Burgreen, Longview Chief of Police, April 25, 2001.

⁴⁵ “Federalist Number 41,” by James Madison, delivered to the people of the state of New York, December 1787.

C. Administrative Issues

Opponents of private correctional facilities claim that private prison companies do not pay workers as much as the government so they cannot attract the same talent. Actually, as has been shown in other states, private companies must pay similar wages and offer similar benefits; otherwise their best workers are likely to seek out jobs at the state run facilities.

Even without private competition, we found evidence that Washington's DOC is having trouble maintaining an adequate workforce necessary for managing their perennially over-crowded facilities. According to employees of the Monroe Correctional Facility, state workers earn lower wages than employees of local city and county jails, but are typically better trained and educated. As a result, they often leave their state jobs for higher paying positions at local jails.⁴⁶ Were a private company faced with the same problem, their flexible labor practices would allow them to offer innovative compensation packages, combining wages and medical benefits with stock options and advancement opportunities, thereby providing ample incentive for employees to stay at their private jobs.

Dealing with misconduct is also more efficient in a private corporation. In cases where mismanagement has occurred in a private prison, company executives can re-organize their management structure and terminate employees as needed to address the problem.⁴⁷ In public prisons, attempts to resolve employee misconduct are hampered by antiquated and inadequate disciplinary procedures. More often than not, the problem employee is transferred, but the root cause of the problem is not addressed, leaving the door open for future infractions by other employees.

VII. Flaws in the State's 1995 Study on Prison Privatization

Adding to the barriers to privatization, collective bargaining agreements negotiated in 1999 and 2001 with Department of Corrections (DOC) employees bar the state from contracting out any DOC function that could reasonably affect employment of state workers.⁴⁸ As a result, competitive contracting for prison services is non-existent in Washington's state and local prison systems.

⁴⁶ Information obtained during tour of Monroe Correctional Facility provided by Community Relations Coordinator Charlotte Headley and interview with Associate Superintendent Mike Williams, May 04, 2001.

⁴⁷ "Private Prisons: Quality Corrections at a Lower Cost," by Adrian T. Moore, Reason Public Policy Institute, Los Angeles, California, April 1998, p 17; and "Who Will Correct the Corrections System," by Geoffrey Segal, Reason Public Policy Institute, Los Angeles, CA, January 22, 2001, at www.rppi.org/012201.html.

⁴⁸ "Collective Bargaining Agreement between State of Washington Department of Corrections and the General Teamsters Local #31," effective January 22, 1999 through January 21, 2002, pp 109,110; "Collective Bargaining Agreement between the State of Washington Department of Corrections and the Washington Federation of State Employees, AFSCME AFL-CIO," effective April 4, 2001 through April 3, 2004, pp 58, 59.

Action by the legislature would be needed to open prison services to competitive bidding. In 1995 the legislature asked for a study of the cost effectiveness of private prisons. The study, completed in 1996 by the Legislative Budget Committee (LBC), analyzes privatization results from Louisiana and Tennessee. In both cases, the state built three similar prisons that housed medium security inmates. As discussed earlier, Louisiana contracted out for two of their prisons, while Tennessee only contracted out for one, with the state running the other two.⁴⁹

The results from both states were similar. The private prisons were consistently less costly. The study attributes the lower cost of the private facilities to two primary factors:

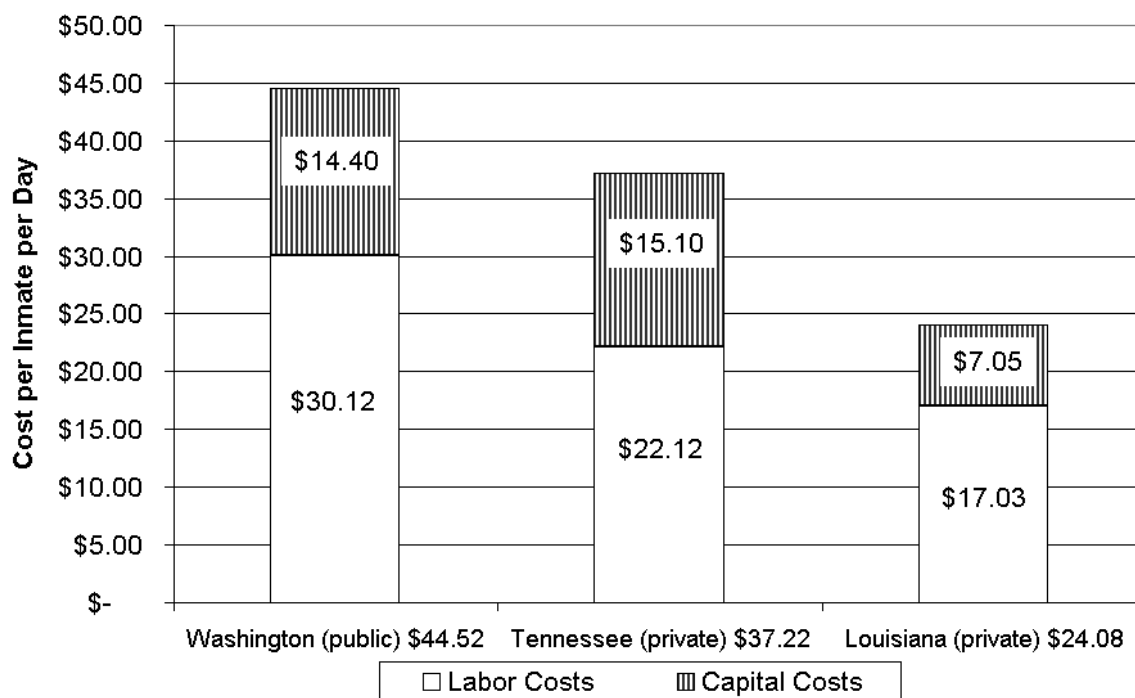
- 1) Purchasing Procedures -- Private firms are not bound by the strict purchasing guidelines imposed on state agencies. As a result, they aggressively pursue price reductions and quality improvements from their suppliers. A private firm's incentive to reduce the cost of general supplies is not present in a state agency.
- 2) Staffing Flexibility -- Because private firms typically do not employ unionized workers, their employees are allowed to take on multiple responsibilities. As a result, jobs that traditionally would be performed by two union personnel, but only require one person's total labor, can be performed by one employee of the private company. Private prison firms, not handcuffed by union labor restrictions, hire less people to do the same amount of work, without jeopardizing safety or quality.

After reviewing the cost differences between public and private prisons in Louisiana and Tennessee, the LBC compared the operational cost of a new Washington state facility, Airway Heights, with the average cost of the three private facilities evaluated earlier. Even after adjusting for inflation and cost of living, the per-bed cost of private prisons in Tennessee and Louisiana was significantly lower than the Washington state facility.

⁴⁹ "Department of Corrections Privatization Feasibility Study," State of Washington Legislative Budget Committee, January 10, 1996, Olympia, Washington.

Figure 7 ⁵⁰

Cost Comparison for Comparable State Prisons Cost per Inmate per Day



The Washington study then takes a surprising turn by presenting remarkably similar data points as the Texas and Louisiana studies, but reaching a significantly different conclusion. Although the study cites consistent cost savings and very reasonable quality of service results at private facilities, it recommends a reorganization of state agency management, rather than increased contracting with private firms. This conclusion seems irresponsible, considering that the goal of competitive contracting is to gain the benefits of private innovation that cannot be realized in the public sector.

In reaching the reorganization conclusion, the state workers preparing the study reveal an inherent distrust of proven market principles. Instead of relying on the long-standing success of private industry to solve difficult problems, they try to make government act more like the private sector.

The benefits of privatization cannot be achieved by reorganizing a government agency.

While this effort is commendable absent other reforms, the benefits of privatization cannot be achieved without doing exactly that,

⁵⁰ Ibid, p 19.

privatizing. Free-market competition drives down cost, increases efficiency, and ensures high quality services in ways a government monopoly cannot, because they do not face the pressures of achieving a profit while maintaining their contract. When these pressures are applied to private companies, taxpayers benefit.

Although the study does not recommend contracting out for prison services, it does outline a well-structured Request for Proposal (RFP) process. In addition, the study provides guidelines for managing a private contract once it is awarded, and offers input on the necessary legislative actions that must take place before contracting out can occur.⁵¹

VIII. Private Prisons Can Work in Washington State

As with any new and innovative program, there are many factors to be considered when privatizing prisons, including the difficult political climate surrounding any type of privatization. Many powerful special interests will oppose any change to the prison system status quo, but this is true for any major shift in the approach to public problems. As we have outlined in this study, substantial cost and quality benefits make privatization and competitive contracting a sensible solution for many of the major problems our corrections system faces today.

When there is nowhere to incarcerate dangerous offenders, over-crowded prisons pose a safety risk to the local community. The staff and prisoners within are also at risk when facilities pack in prisoners far above their designed capacity. But without the innovation and cost savings derived from competition, state and local government will never be able to afford the new prisons that are absolutely necessary. The solution has been proven in many other states.

For support, we can look to a shining example in our own state for a public-private partnership that is working. In Whatcom County, Security Specialists Plus (SSP) has owned and operated a 50-bed work release facility since 1991. The small, family owned company forged a strong working relationship with the Whatcom County government, and can document millions of dollars in savings provided to the taxpayers of that county. SSP charges the county \$28 a day for each work-release inmate sent to the facility. The county's cost to house the same prisoner in the county jail is \$60 per day. By contracting with SSP, the county saves \$32 per day for each prisoner sent to the private facility. With an average of 38 inmates per day over 9 years, SSP has saved the taxpayers of Whatcom County over \$3.9 million.⁵²

In Whatcom County, our state's prohibition against competitive contracting for prison services will cost taxpayers at least \$5 million.

⁵¹ For a detailed look at how to craft a competitive contracting RFP and private prison contract see "Department of Corrections Privatization Feasibility Study," pp 26,27; also see "Privatizing Government Functions," by Deborah Ballati, Law Journal Press, New York, New York, January 2001, Sect. 10, pp 22 - 40.

⁵² Interview with Greg Rustand, owner of Security Specialists Plus, July 5, 2001, Bellingham, Washington

Unfortunately, because it will be a secure facility unlike the work release center, state law prohibits SSP from bidding for the planned minimum-security expansion that is desperately needed to alleviate overcrowding in the existing county jail. As a result, the same jail that SSP offered to build for less than \$7 million has been budgeted by the county at \$12 million. In this case alone, our state's prohibition against competitive contracting for prison services will cost taxpayers at least \$5 million, and this does not include the property tax revenue that would be generated by a privately owned facility -- property taxes that are not paid by government jails.

IX. Conclusion

Washington's state prison system houses more than 4,800 prisoners in excess of its designed capacity, but for the next 10 years the DOC budget only allows for construction of an additional 1,500 beds.⁵³ Approximately 60% of those beds will be medium and low security -- attractive candidates for competitive contracting. In 1996 the Legislative Budget Committee outlined the potential cost and efficiency benefits inherent in competitive contracting. Through simple, but perhaps politically difficult legislative actions, state lawmakers should consider private prisons as part of the solution to relieve our dire prison capacity crunch.

By specifically authorizing a pilot program, the legislature could address civil service restrictions by taking employment decisions out of the hands of DOC managers. By limiting the program to state-run facilities, local legal restrictions would not apply. Following successful completion of the pilot program, competitive contracting could be used to expand competition throughout the state and local corrections system, reducing costs and increasing the quality of corrections in Washington.

Without change, the state prison system will continue to struggle with overcrowded and under-funded prisons, and local law enforcement will be forced to send potentially dangerous criminals back onto the streets of the community. This is not the type of decision the public expects from our lawmakers. A well-structured privatization program can expand the options for state and local authorities, and put the benefits of competition to work for the taxpayers of this state.

⁵³ "Washington state 10 year capital plan," Office of Financial Management, the plan proposes adding the 1,500 beds to the Coyote Ridge Corrections Center.

Appendix I - Frequently Asked Questions about Private Prisons

1) Are private prisons ethical?⁵⁴

The primary ethical concern surrounding private prisons is protection of the public good. That protection requires the safe, efficient management of correctional facilities. To satisfy this requirement prisoner safety must be protected, breakouts must be avoided, workers must be treated well and public money must be used efficiently. There is no evidence to suggest that private firms cannot accomplish these goals with the same, or better, effectiveness of a public agency. In fact, many examples show that private firms ensure safety, serve employees, and manage operations with more efficiency and quality than the government.⁵⁵ With proper management, the ethical concerns of using private prisons can be sufficiently addressed.

2) Is it legal to put prisoners in private prisons?

At the federal level, private prisons are allowed under 18 United States Code Section 4082(b), which remands all federal offenders to confinement in “any available, suitable, and appropriate institution or facility, whether maintained by the Federal Government or otherwise.”⁵⁶

At the state level, it is legal to transfer prisoners to out-of-state private prisons, but there are two major legal hurdles to operation of private prisons within Washington state.⁵⁷ First is the court’s interpretation of the state civil service law that bars contracting out for any state services that have historically been provided by state personnel. Second is the limitation on local municipalities that restricts prison services to operation by government employees. According to the Attorney General, Washington state law requires a “governing unit” perform the operation, supervision and maintenance of municipal jails.

These limitations could be lifted by legislative action. By specifically authorizing a pilot program, the state legislature could address the civil service concerns by taking the

⁵⁴ Questions one through eight are adapted from the study “Private Prisons: Quality Corrections at a Lower Cost,” by Adrian T. Moore, Reason Public Policy Institute, Los Angeles, California, April 1998, pp 29 through 37.

⁵⁵ For specific studies analyzing the performance of private prisons see: “Private Prisons: Quality Corrections at a Lower Cost,” by Adrian T. Moore, Reason Public Policy Institute, April 1998, Los Angeles, California, p 23 through 28; “Breaking the Mold: New Ways to Govern Texas,” Texas Sunset Advisory Committee, July 1991, Austin, Texas, p 4; “Privatization of Prisons in Alabama: A Comparative Analysis,” by Patrick S. Poole, Alabama Family Alliance, January 1998, Birmingham, Alabama, p 13; “Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers,” by William G. Archambeault, Ph.D., and Donald R. Deis, Jr., Ph.D., Louisiana State University, Baton Rouge, Louisiana, December 1996, p 72.

⁵⁶ “Privatization and Corrections,” Samuel J. Brakel, Reason Foundation Policy Insight No. 107, 1989.

⁵⁷ RCW 72.68.010, .012 and .040 authorize the Secretary of the Department of Corrections to “transfer offenders out-of-state to private or governmental institutions if the secretary determines that the transfer is in the best interest of the state or the offender.”

employment decision out of the hands of DOC managers, and by limiting it to state run facilities, the local legal restrictions would not apply. Following successful completion of the pilot program, competitive contracting could be used to expand competition throughout the state corrections system.

3) Can private correctional officers use deadly force? Can they manage riots?

The nature of guarding prisoners means that private correctional officers will likely need to use deadly force in the administration of their official duties. While the courts sanction the use of deadly force for self-defense, there is some question about whether a private citizen can use deadly force in the administration of a prison management contract.

As other states have done, this concern can be addressed by crafting legislation granting explicit statutory authority for private prison employees to perform all of the functions performed by state corrections officers.⁵⁸ This legislation could allow the use of force in management of the prison, while also setting strict guidelines for the use of that force, similar to the guidelines used by government prison employees. By combining private prison authorization with the necessary guidelines, private operators can be given the tools necessary to perform their job, while the rights of prisoner are protected.

4) Do public officials have less control over private prisons than over government prisons?

No. A well-managed private prison contract gives the government even more control than it would have over a comparable government operated prison. In addition to control of the prison's budget and third party oversight, private prisons give the government an additional management tool: competition. If the private operator does not live up to the terms spelled out in the contract, the government can award the contract to another company, or move it back under direct government control. In contrast, the government has very little punitive recourse when public prisons fail to accomplish specific goals and objectives. Like any system, both public and private, failures can occur, but well-written contracts and thorough agency monitoring will ensure high quality, low cost private prison services.

5) What if a private prison has a strike?

Currently it is illegal for public prison workers to go on strike. Because of the public safety concerns raised by the prospect of striking prison workers, legislation authorizing prison privatization in Washington should include a similar prohibition of strikes for private prison employees.

6) What if a private prison goes bankrupt, or fails to meet contract terms?

To date, the solvency of the private prison sector has not been a problem. However, if a private prison faces threatening financial conditions, its contract obligations

⁵⁸ "Department of Corrections Privatization Feasibility Study," pp A1-50 - A1-56.

could easily be transferred to another private prison firm. Experienced correctional officers employed by the bankrupt firm would likely stay on with the new management team, rather than seek work elsewhere.

The possibility of a supplier going bankrupt is a problem most companies address up front when negotiating contract terms. As in the private sector, the government should include provisions in privatization contracts that allow swift transfer of management responsibilities to either another private firm, or back into the government's hands.

7) Will private prisons seek to increase incarceration and to keep inmates in prison longer?

Private prisons have a long history in the United States, and there have been no problems with attempts to increase incarceration rates or lengthen prison sentences. In fact, even in prisons owned and run by private companies, the courts still makes all decisions regarding sentencing and parole.

In most jurisdictions around the country, private prisons are used to address existing overcrowding problems. There is no incentive for prison companies to push for harsher incarceration guidelines because, in the areas they are constructed, private prisons do not have a problem with low capacity. Private prisons make up less than 5% of the prisons in the nation, and they are typically full because of pre-existing overcrowding.

8) What prevents a private prison from making “lowball” initial bids and then raising prices later?

Competitive pressures and wise contract management will ensure the government is not subject to unethical “bait and switch” tactics. There is no reason for the government to pay for things that are not specifically laid out in the contract. In addition, should a private company not perform up to the standards outlined in the contract, its performance will be taken into account when the contract is up for renewal and when new facilities are being considered for competitive contracting.

9) Isn't the state's fundamental responsibility to incarcerate convicted criminals one that should never be delegated to a non-government entity?⁵⁹

The key to this question is the judicial control government maintains in the incarceration of prisoners in private prisons. While the state does have a fundamental responsibility to incarcerate convicted criminals, the state does not need to directly provide the service. If private companies can safely and efficiently perform the service within the guidelines set by the state, then the state is satisfying its fundamental responsibility, while saving money for taxpayers at the same time.

⁵⁹ Questions nine and ten are adapted from the study “Privatization of Prisons in Alabama: A Comparative Analysis,” by Patrick S. Poole, Alabama Family Alliance, Birmingham, Alabama, January 1998, pp 14-16.

10) What happens to government liability in civil suits involving inmates confined in private facilities?

In many other states, private prisons offer two forms of indemnification for the state. First, their contracts include a hold-harmless clause protecting the state from legal action. Second, private prison operators can be required to carry a state approved insurance policy covering the state for any possible future liability.⁶⁰

In addition to these protections enjoyed by the government, statutes designed to limit the government's tort liability do not limit liability of a private company running a prison. As a result, inmates in private prisons enjoy broader protection of their legal rights and have more options for recourse than those housed in public correctional facilities.

11) How many jurisdictions are now contracting with private firms to house their prisoners?⁶¹

31 states have contracts with private firms to house prisoners in privately managed secure adult correctional facilities. In addition, the District of Columbia, Puerto Rico, Federal Bureau of Prison, Immigration and Naturalization Service, and the U.S. Marshals Service have all contracted with private firms to provide correctional services.

12) How many private jails and prisons are there?

There are approximately 158 private facilities in operation or under construction in the United States, with about 30 additional facilities around the world. In the United States, the rated capacity of the 158 private facilities in 31 states is about 123,000 inmates.

13) Are the companies that manage private jails and prisons allowed to determine what kinds of prisoners are transferred to them?

Whether dealing with public or private prisons, the government makes all inmate-housing decisions. Certain facilities are designed to house certain types of prisoners, and that is typically spelled out in the contract, but outside of the contractual restrictions put in place by the government, the private companies do not have control over the prisoners that are transferred into their facility.

Some opponents of private prisons claim that private prisons only accept the "cream of the crop," or the prisoners least likely to cause problems. This is not the case. There is no "first right of refusal" granted to private prisons in the selection of inmates.

⁶⁰ "Department of Corrections Privatization Feasibility Study," Sect. A1, pp 50 - 56.

⁶¹ Questions eleven through thirteen are adapted from "Private Prisons: Frequently Asked Questions," by Charles W. Thomas, Professor of Criminology (retired), Center for Studies in Criminology and Law, University of Florida, April 23, 2000, at <http://web.crim.ufl.edu/pcp/html/questions/html>.

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