

# Prison Bed Profiteers: How Corporations Are Reshaping Criminal Justice in the U.S.

Christopher Hartney & Caroline Glesmann



## **In Their Own Words**

### **An excerpt from Corrections Corporation of America (CCA), Letter to Shareholders, 2011:**

*We remain very positive about the outlook for CCA and the private corrections industry. We believe market dynamics continue to favor the clear value that partnership with CCA provides to local, state, and federal governments. Government budgets remain tight in the coming year. Funding new prisons is viewed by many lawmakers as diverting scarce capital resources from other critical infrastructure needs. . . CCA can help them meet their corrections needs efficiently, safely, and humanely.*

*Public prisons are overcrowded and inmate populations are growing, yet states did not allocate funding for new correctional facilities in 2011, and new budget appropriations for 2012 look equally challenging for funding new facilities. In contrast, CCA has made significant investments in adding new prison beds resulting in an ample supply of available beds, and we believe our ability to quickly address the demand for new prison beds, our reputation for providing safe and secure facilities, and our leadership position in the industry will provide us with continued opportunities to provide an essential service with earnings growth for investors. . .*

*We believe there is increased interest in privatizing existing prison beds to obtain cost savings and that future demand will likely be weighted toward beds owned and managed by the private sector.<sup>1</sup>*

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*NCCD promotes just and equitable social systems for individuals, families, and communities through research, public policy, and practice.*

# Overview



## Overview

Reported crime is at the lowest level in decades, safe alternatives to incarceration are an accepted part of the corrections system, and private prisons have not provided the cost savings and improved conditions of confinement that their proponents promise. Nevertheless, business is booming for prison companies.

Since their start in the 1980s, private prisons have come to hold 8% of all U.S. state and federal prisoners, including half of federal immigration detainees. A steady flow of inmates has meant huge profits for these companies. Just as steady have been the reports of abuse and neglect, poor management of inmate needs, and poor governmental oversight. Low pay, limited staff training, and other cost-cutting measures—the primary ways private prisons sustain their profits—can lead to unmet inmate needs and security issues, heightening the inherent dangers to staff and inmates in secure settings. Private prison companies spend millions of dollars on lobbying, political campaign contributions, support for legislation favorable to their profits, shaping public opinion, and research likely to support their practices, which leads many to question the prison industry's influence on criminal justice policymaking. There also are significant issues with the government's ability to effectively monitor what goes on at private prisons.

Proponents' claims that private prisons can provide higher-quality and more cost-effective service provisions, improved conditions of confinement, and economic growth in the communities where new facilities are built are neither borne out in research, nor seen in the scores of private facility incident reports across the country. The expectation that competition for contracts among free market players would lead to generally improved efficiency, quality, and cost savings has not been met. Nevertheless, proponents continue to use these claims widely as a basis for pursuing privatization.

## This Report

This report describes the findings of conversations with several experts in corrections privatization, a review of the academic and legal literature on private prisons, and a media review of newspaper and radio stories on private prisons. It also includes recommendations for responding to the expansion of private prisons.

Secure, locked facilities designed for adults are the major focus of this report, although many of the same issues and potential solutions apply to other types of privatization, in corrections and elsewhere. Federal immigration detention and contracted services, such as in-custody health care and programming or post-release supervision and services, are also briefly discussed.

# An Introduction to Private Prisons in the United States

## An Introduction to Private Prisons in the United States

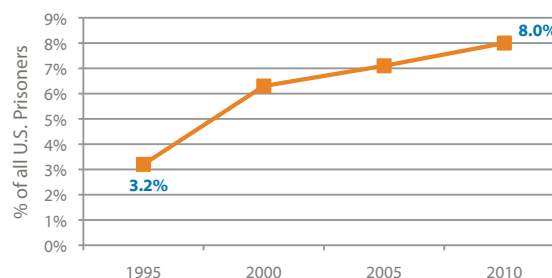
Along with the increased number of inmates incarcerated in the United States due to “tough on crime” laws and policies that began in the 1980s and continued into the 2000s came an increase in the number of inmates held in private, for-profit facilities. Privatization of certain corrections functions, such as health care and service provisions, had been common in the United States for some time, but larger scale facilities wholly managed by for-profit companies began in the mid-1980s.

The secure facilities focused on in this report are those where all or most of the inmates remain confined at all times, such as prisons, prison farms, penitentiaries, correctional centers, work camps, and reformatories. A large percentage of private facilities are community-based facilities, such as halfway houses, residential treatment centers, restitution centers, and pre-release centers, where at least some inmates come and go.

- The most recent federal data show that in 2010, of 1.6 million state and federal inmates, 128,195 were held in private prison facilities (33,830 in private federal facilities and 94,365 in private state facilities).<sup>2</sup>
- The percentage of U.S. prisoners held in private facilities rose from just over 3% in 1995 to 8% in 2010.<sup>3</sup>
- In 2009, U.S. Immigration and Customs Enforcement (ICE) had an average daily adult population of approximately 32,606; about half of these detainees were housed in privately run detention facilities.<sup>4</sup>
- Most of the more than 400 private facilities are minimum- or medium-security, with an average daily population of fewer than 500 inmates.<sup>5</sup>

- Some populations, such as women, the mentally ill, and serious offenders, are less likely to be held in private facilities because they are more expensive to house, making it difficult for prison companies to make profits. About one third of juveniles in residential placement are held in private facilities.<sup>6</sup>

**Figure 1. Percentage of U.S. Prisoners Held in Private Facilities**



Sources: Beck, A. J., & Mumola, C.J. (1999). *Prisoners in 1998*. Washington, DC: Bureau of Justice Statistics; Maguire, K., & Pastore, A.L. (1996). *Sourcebook of Criminal Justice Statistics – 1995*. Washington, DC: Bureau of Justice Statistics; Guerino, P., Harrison, P.M., & Sabol, W.J. (2011). *Prisoners in 2010*. Washington, DC: Bureau of Justice Statistics.

## Major Private Prison Companies

Today, two private companies—Corrections Corporation of America (CCA) and the GEO Group—hold the majority of private prison contracts in the United States, with each company operating about 65 facilities.<sup>7</sup> GEO, formerly known as Wackenhut Securities, merged with Cornell Companies in 2010. CCA and GEO are publicly traded companies beholden as much to their boards of directors and stakeholders as to the needs of the prison inmates, prison staff, and the general public. In 2011, the combined revenues of CCA and GEO totaled more than \$3 billion.<sup>8</sup> Other large private prison companies include Management & Training Corporation, Emerald Correctional Management, LCS Corrections Services, and Community Education Centers/CiviGenics.

## How Private Prisons Function

Federal, state, and local governments that seek to privatize correctional services enter into a contractual relationship—“a public-private partnership”—with a private prison company. The government typically announces a Request for Proposals (RFP) that describes the project they wish to pursue and all of the issues prison companies must address for their proposal to be considered. Governments seek these contracts primarily because of the ability of private prison companies to build or acquire facility space more quickly than government agencies, providing an easing of overcrowding and short-term time and cost savings compared to the government building its own facilities.

The arrangement can take many forms. Some private facilities hold inmates from one or predominantly one jurisdiction, while others hold inmates from several jurisdictions, including out-of-state and the federal government. Inmates may be held in a facility owned and operated by the company or in a facility owned by the government and operated by the company. As an example, approximately 70% of the facilities CCA manages are company-owned and 30% are government-owned.

The company may manage the entire facility, providing for all inmate needs, or the government may still manage some aspects of the prison, such as medical services or programming. The company may only run certain elements of correctional services, such as inmate health care or probation supervision, although that is not a focus of this report.

Some facilities are built “on spec,” where typically a small, rural town partners with a private prison company to build a facility that will house inmates from other jurisdictions. In this form, the private prison contracts with the locality for the physical facility and related services, and contracts with other jurisdictions to fill beds.

The contract usually stipulates that the government will pay the prison company a daily dollar amount, as low as \$30 and up to \$80 or higher, for each inmate they hold. These amounts are negotiated in the contracting process and can vary according to many factors, including the security level of the inmates; the size and type of facility; the local costs of inmate services and programming provided, such as food service, mental and physical health care provision, recreation, education, and vocational training; and the terms of the deals that prison companies are able to negotiate.

The development, implementation, and monitoring of private prison agreements represent a complicated and fairly unwieldy process—a fact that contributes to difficulty regulating and monitoring these contracts. In a facility operated in one jurisdiction but holding inmates from several others, the laws and regulations of any number of federal, state, and local jurisdictions may be in play. Arizona alone has three sets of corrections regulations and policies: one for Arizona state prisons, one for private facilities inside and outside Arizona borders contracted with the state to hold Arizona inmates, and another for private prisons in Arizona not contracted to hold Arizona inmates. The third of these is the least restrictive and specific.

The number and variety of organizations and individuals involved can be extensive. In the state or local context, the process is usually led by a chief executive (governor or mayor) or members of the state legislature, county commission, or city council. State or local justice system officials such as attorneys general, judges, and heads of corrections agencies or law enforcement do not typically spearhead the move toward privatization—they may not even support the move—but they and various public employees play some role in the process. Financiers, attorneys, construction companies, engineers, public utilities, and others are also involved, especially when a new facility is being constructed.

## Immigration

Private prison companies have pursued the area of immigration both in the United States and internationally, with huge monetary success. Accompanying that success are numerous documented cases of abuse and neglect and poor conditions of confinement,<sup>9</sup> exacerbated by long stays awaiting immigration proceedings. On any given day in 2009, U.S. Immigration and Customs Enforcement (ICE) held an average of 32,606 adults in a total of 178 facilities. Just under half of these detainees, 15,942, were housed in 30 private facilities.<sup>10</sup> Although ICE has developed standards for immigration detention facilities, the standards may not adequately address the conditions and treatment experienced by many immigrant detainees and, in any case, they are not implemented in all facilities.<sup>11</sup>

One example of immigration detention neglect is the case of Hiu Lui “Jason” Ng, who died in 2008 while being detained in the privately run Wyatt Detention Facility in Central Falls, Rhode Island. Ng suffered from liver cancer that was not diagnosed until just days before his death. A lawsuit filed by the Rhode Island ACLU, which names officials and employees of both the Wyatt facility and ICE, noted that prison officials not only consistently claimed that Ng was faking his illness but also prevented him from receiving adequate medical care.<sup>12</sup>

Prison company executives and staff play a major role as well, not only in representing the prison companies’ interests, but in assisting governments in the complicated process of contracting and implementation. Prison companies often offer to handle much of the paperwork and hoop-jumping on behalf of government entities; they are likely to have more experience with the process and they, of course, have a clear interest in the process moving as quickly and smoothly as possible. They also take part

in securing project buy-in from other government representatives and community stakeholders.

Development, maintenance, and oversight of ongoing contracts also involve a variety of public employees. Sometimes private prisons are these employees’ primary responsibility; other times private prisons are just one of several responsibilities. In the federal arena, responsibilities are spread across several wings of the Bureau of Prisons.<sup>13</sup> In the state context, the task is likely spread across more disparate departments. For example, in Arizona, the Private Prisons subprogram of the state Department of Corrections’ Prison Operations Program develops and manages private prison contracts; the Engineering and Facilities Bureau oversees construction and compliance monitoring; the Contract Beds Bureau monitors, evaluates, and supports private prisons; and the Business Administration tracks expenditures.<sup>14</sup>

# Private Prison Performance:

## A Discussion of the Key Claims Made by Private Prison Proponents

### Private Prison Performance

While finding quick solutions to crowding is the most common reason jurisdictions contract for bed space in private prisons, secondary rationales include cost savings and improved services. Also, state and local jurisdictions seek partnerships with prison companies to establish private facilities as a way to boost their economies. While there is a shortage of high-quality research assessing the success of these secondary aims, what is known does not provide a justification for these decisions.

### Standards of Care

*Do Private Prisons Provide Improved Conditions of Confinement and Inmate Services and Meet Basic Standards of Human Treatment?*

Those concerned about private prisons not only question if private prisons provide better care and services than public facilities, but if they consistently meet basic standards. Individual studies have found that, compared to publicly managed prisons, private prisons experience a higher proportion of inmate-on-inmate assaults;<sup>15</sup> greater likelihood of inmate misconduct, drug abuse, and escapes;<sup>16</sup> lower or unmet standards of care; and “systemic problems in maintaining secure facilities.”<sup>18</sup> A review of several previous studies showed that the quality of confinement in public and private prison facilities is often comparable, but with public facilities providing slightly better skills training for inmates and reporting slightly fewer inmate grievances.<sup>19</sup>

Media accounts have documented numerous incidents of abuse, neglect, violence, escapes, poor conditions, and other alarming events in private facilities. (For a sampling of private prison facilities around the country and their associated media reports, please see Grassroots Leadership’s resource packet<sup>20</sup> and the Private Corrections Working Group

online resource listings.<sup>21</sup>) Whether private prisons have more or fewer scandals than their public counterparts is difficult to assess from media reports, but it is clear that private prisons do not provide a consistently improved experience for inmates or staff compared to public facilities, and, in many cases, the experience can be worse. Immigration detention centers, where different laws and standards often apply, are of particular concern. (See inset, page 7.)

### Economic Claims

*Do Private Prisons Provide Cost Savings to Governments?*

While local and state governments still turn to prison privatization as a cost-saving measure, the cost effectiveness of private prisons is widely debated, and research on the topic has produced varied results. The verdict is, at best, a draw. Arizona is one of the few states with a state law that requires the regular and intensive assessment of private prison performance. Arizona’s most recent study found that private prisons resulted in higher costs to the state compared to public facilities.<sup>22</sup> Other studies have found that privatizing facilities has resulted in minimal or no savings.<sup>23</sup> Some studies, including those by groups affiliated with prison companies or their proponents, have found that privatization can yield modest savings.<sup>24</sup> These findings echo what studies of privatization in other industries have shown: The promise of savings touted by proponents of privatization is quite limited, or, in fact, “elusive.”<sup>25</sup>

Researchers caution that costs of public and private prisons cannot be easily evaluated side by side due to numerous factors such as security level and health conditions of inmates, physical characteristics of facilities, indirect costs, and the large number of parties typically involved in maintaining and paying for either type of prison.<sup>26</sup> Most contracts allow private



facilities to house lower risk and healthier—less costly—inmates than similar public facilities. Prison companies fund much research into cost and other factors; these studies tend to find improvement with private prisons.<sup>27</sup>

### *Do Private Prisons Improve the Economic Health of States and Localities?*

For a number of years, state, county, and municipal jurisdictions have pursued private prison opportunities as a means to generate economic growth and job creation in their communities. Prison companies foreseeing increased need for bed space, but hoping to avoid owning expensive facilities, look for local governments who will agree to fund new facility construction through bond sales to be paid back from the proceeds of the prison company's future contracts with other jurisdictions. These partnerships can appeal to smaller jurisdictions, especially when their traditional local industries have fallen off. Private prison companies espouse their potential benefits through campaigns to persuade key leaders and policymakers; they then help those key leaders sell the idea to other government representatives and the public. Much of the early discussion on investment in private prisons takes place behind closed doors, away from opposing viewpoints and the public.<sup>28</sup>

Recent studies have found that growth and expansion of prisons in general (whether public or private) have had limited positive impact on economic development at the local level.<sup>29</sup> In fact, communities in which private prisons are located can experience unfavorable economic effects, especially in already depressed economies. A common dynamic is that a small town or county commits most of its limited resources and infrastructure—labor force, emergency response services, trade services (electricians, plumbers, sanitation, etc.)—to supporting the prison, leaving the locality dependent on the success of the prison and unable to support other businesses that might want to locate there.<sup>30</sup> Further, local governments that sell bonds to fund construction can find themselves on the hook if the prison company

fails to secure sufficient contracts to fill beds. At the least, the bond rating for the locality is likely to be lowered if it has trouble repaying the debt, resulting in a worsened local economy.<sup>31</sup> When the lease is up or abandoned, the aging plant is owned by the government.

Even a healthy state or local government exposes itself to risk if all or part of the public prison structure is dismantled and reliance placed on private structures. Significant challenges may be experienced if the government or contractor then chooses to end the contractual relationship at a later point and the government is left to scramble to redevelop a public system or seek one of the other essentially similar private contractors.<sup>32</sup>

Texas, which experienced an immense prison building boom in the 1990s, especially related to immigration detention, has experienced several examples of public-private partnerships that have led to challenges for local jurisdictions. In July 2011, a west Texas 373-bed prison was auctioned off due to a dearth of prisoners, a 424-bed facility in Fort Worth (managed by GEO) has been empty since February 2011, and a recently constructed 1,100-bed facility located near Abilene has never housed inmates.<sup>33</sup>



Montana has dealt with similar economic woes tied to private prison construction. Corplan Corrections worked with local officials to build a 464-bed facility in the small town of Hardin, Montana. Although the facility was completed in 2007, as of 2010 it had held no inmates due to a lack of in- or out-of-state prisoners suitable for the minimum security jail; in fact, Montana prohibits the incarceration of offenders convicted outside Montana. This project has left Hardin to cope with millions of dollars in debt.<sup>34</sup> Ultimately, any financial savings gained from privatization leave the local area and benefit the prison corporation's executives, board of directors, and shareholders, as well as the innumerable lobbyists, marketers, politicians, and government officials benefitting from the broader private prison industry.<sup>35</sup>

Perhaps more importantly from an ethical perspective, jurisdictions that invest in speculative private prison projects can come to be a party to the same conflict of interest as prison companies when they find themselves in the contradictory situation of supporting increased incarceration in order to pay off bonds or bolster their local economy even if crime and arrests drop and effective and safe alternatives to incarceration are available.

#### *Hidden Costs of Housing Prisoners Out of State*

Two issues often overlooked when prisoners are held out of state are the costs of prisoners who commit crimes while incarcerated, and inmate visitation and its impact on recidivism. An inmate who commits a serious crime while incarcerated, or who escapes from prison and then commits a crime, will typically be tried and serve time in the state where he or she is incarcerated, rather than the state where the original conviction occurred. This circumstance can result in the host state assuming a significant, long-term financial burden.

Although empirical studies on this subject are rare, data show a positive relationship between inmates who receive visitors while incarcerated and reduced recidivism.<sup>36</sup> Due to the time and costs associated with

traveling to visit a friend or family member confined in another state—including the fact that many prisons are located in rural areas far from airports—inmates sent to out-of-state facilities generally will not have visitors and, upon release, will not have benefited from this protective factor. (Privately run jails not locally situated introduce another travel issue: Detainees not yet sentenced need to make appearances in local court.<sup>37</sup>)

#### *Selling Public Assets*

Some states try to shore up budget gaps by selling public prison facilities to private companies. Some argue this approach is a short-sighted remedy, as it will only reap limited and short-term financial benefits, decrease future options, and reduce public assets.<sup>38</sup> On the other hand, holding on to the asset may leave the government with the progressively higher costs of maintenance and insurance and, ultimately, the burden of aging facilities that the private prison company will eventually abandon. While prison companies have historically tried to avoid this liability by leasing facilities from city, county, or state governments, in 2011 CCA purchased a 1,798-bed facility from the state of Ohio.<sup>39</sup>

In 2012, CCA launched a controversial initiative to buy existing prison facilities across the nation. This included contacting officials in 48 states about this proposal. While the company is marketing this approach as an opportunity to positively impact troubled state budgets, it clearly benefits CCA and perpetuates pro-incarceration policies. For example, any prison CCA buys under this agreement must house at least 1,000 beds and be managed by CCA for a minimum of 20 years, with a guaranteed inmate occupancy rate of at least 90%.<sup>40</sup>

#### **Does Free Market Competition Encourage System Improvement?**

Early proponents of privatization argued that the competition inherent in the private market would spawn innovative processes and practices that would lower costs while improving conditions. It was also

thought that public prison officials would themselves pursue innovations, or at least pick up on the techniques of their for-profit counterparts and thereby improve the public system.

### *No True Competition*

Dominated as it is by CCA and the GEO Group, the private prison industry enjoys a relative lack of competition that makes it difficult for governments to assemble a pool of qualified candidates, and also contributes to the likelihood of inadequate performance once a contract is executed.<sup>41</sup> If a particular industry only has a few providers, the government's ability to realize cost savings is considerably lessened and it is difficult to effectively replace one provider with another, if the need arises.<sup>42</sup>

### *Suppressing Reform*

Early on, the rise of private prisons promised to encourage public prison officials to make improvements in cost efficiencies and to be more open to other reforms.<sup>43</sup> However, it is more likely that the opposite has occurred, as a larger dynamic has taken hold that contributes to a suppression of innovative thinking and reform in the public sphere. When states relieve overcrowding in public facilities through private contracting, stakeholders—state officials, prosecutors, judges, and corrections agencies—lose the impetus to seek innovative ways of reducing reliance on incarceration and to save taxpayer money without threatening public safety. Thus, the prison population continues to grow, as do corrections budgets, at least until the newly contracted beds are themselves full.<sup>44</sup> The speed and flexibility with which private prison companies can acquire bed space provides, in essence, a permanent pressure release valve that quashes what might otherwise be an opportunity for permanent reform.

Importantly (and ironically), the very reforms that are not given enough consideration can serve the same purpose as private prisons, including the quick easing of crowding, cost savings, and improved outcomes. These include alternatives to detention

for those awaiting trial or immigration procedures;<sup>45</sup> and alternatives to incarceration such as community corrections, electronic monitoring, day and evening reporting centers, home custody, restorative justice, and intensive supervision, all of which can be used to reduce the demand for new bed space quickly, permanently, and without jeopardizing public safety.<sup>46</sup> These strategies are, in fact, gaining a foothold. In 2011, legislatures in at least 26 states passed legislation that has the potential to reduce the prison population while remaining focused on public safety.<sup>47</sup> Some observers suggest that the fortunes of the private prison companies already may be starting to shift because of these reforms and the continuing drop in crime.<sup>48</sup> Yet not everyone sees the advantages of these alternatives, as privatization is still a popular choice to ease crowding or provide short-term budget solutions, or both.

### *Parallel Inadequate Systems*

Another key issue in having two parallel approaches to corrections—the public and the private—is that the focus becomes a comparison of the two systems, creating a very narrow perspective from which to assess what works, what does not work, and how the overall system can be improved. Certainly, as some state laws specify, private prisons should be held to at least public prison levels of health and safety, conditions of confinement, service delivery, cost, transparency and accountability, and other factors, but with this being the limit of expectations, we are simply left with two systems in need of reform. In a sense, the two systems begin to “play down” to each other's level of competence (or incompetence) rather than both vying for a truly appropriate and effective response to crime and solutions to the problems that plague both approaches.<sup>49</sup>

# The Profit Motive:

## Conflict of Interest in Real Terms

### The Profit Motive

A major concern expressed by privatization opponents is the suitability of entrusting prisoner care to profit-motivated corporations.<sup>50</sup> Within facilities, this issue can play out in a number of ways, beginning with the core issue of staffing. Beyond facilities, the profit motive leads prison companies to use their significant resources to influence corrections laws and policies in ways that increase their profits through more prisoners being held for more types of crimes and for longer sentences.

### Staffing and Services

A critical part of the debate regarding cost savings, as well as conditions and quality of care, focuses on staffing and personnel costs. Since private prisons are generally expected to serve the same function as public prisons but also save public money, prison companies need to make their profit in the small window between their own costs and the costs of public prisons, minus some percentage of savings to taxpayers. (Some contracts stipulate that this savings will be at least a certain percentage, such as 7%.)

The most expensive part of running a prison is staffing; therefore any savings associated with privatization are primarily due to reduced personnel-related costs.<sup>51</sup> Private prisons tend to employ frontline staff who are non-unionized and low-paid, receive few fringe benefits, and lack sufficient training. These circumstances contribute to the high rate of staff turnover and the security issues with which privately managed facilities are often fraught.<sup>52</sup> In turn, the high rate of staff turnover results in a lack of mentoring for new employees.<sup>53</sup> Similarly, cost cutting with regard to services, programming, and facility conditions will increase inmate dissatisfaction and inmate-staff tension, and increase negative outcomes like grievances and behavioral issues. This suggests

that any cost savings achieved by privatization is at the expense of inmate, guard, and public safety.

When a public facility is replaced by a private prison, public facility staff are often unwilling to work for the private operator for a variety of reasons, including substantially lower pay, poor benefits, and safety concerns. This leads to a loss of seasoned, trained employees who can mentor new staff and establish a culture of professionalism and appropriate treatment of prisoners. Conversely, staff who had worked at a private prison may be ineligible for employment at publicly operated facilities based on factors such as the lack of training and experience mandated by state standards, or failed background checks.

### Influence on Length of Stay

The potential conflict of interest posed by private prisons being compensated per filled bed can also arise through the influence prison staff can have on the length of time inmates spend behind bars. As in public prisons, disciplinary action against an inmate is typically initiated by guards and verified by their supervisors. Marks on an inmate's record may lead to formal proceedings that can, ultimately, reduce the inmate's chances of early release or extend his or her initial sentence. Parole decisions also are influenced by inmates' in-custody record, and parole boards often ask for the opinion of prison officials. While individual prison staff are unlikely to have a direct personal financial incentive for pursuing disciplinary action, the private prison company and its shareholders directly benefit from longer lengths of stay. The seriousness of this risk is illustrated by the fact that several states have enacted laws and policies that address its likelihood.<sup>54</sup>

### The Policy End Run

Privatization opponents are concerned with the risk of policies and practices being defined by costs

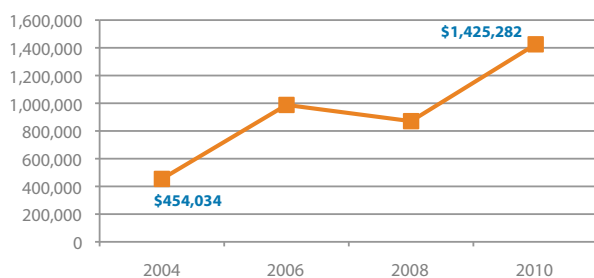
alone and put into place without the normal process of debate and approval. For instance, private prison companies perhaps reasonably argue that contracts need to give them flexibility to respond to unforeseen challenges or to develop creative practices.<sup>55</sup> In practice, this open-endedness may allow them to implement practices that go against the intentions of the contract or the best interest of the inmates or the public. There is a difference between flexibility and free license to interpret contracts and prioritize cost savings over other concerns.

### The Political Influence of Prison Companies

Since the modern emergence of private prisons in the mid-1980s, an intricately connected web of political influence has developed alongside the growth of the private prison industry. Because private prisons rely on a steady stream of inmates to fill beds, it is perhaps not surprising that the private prison industry has been pivotal in helping to shape and promote criminal justice policies that favor incarceration as well as putting and keeping pro-privatization lawmakers in office.<sup>56</sup>

By making financial contributions to political campaigns and related efforts, private prison companies exert influence over policymaking that helps assure the demand for their services as well as develop and maintain relationships that can assist them in obtaining prison contracts. Between 2004 and 2010, CCA, GEO, and Cornell Companies donated

**Figure 2. Private Prison Company Political Contributions**  
(Combined contributions by CCA, GEO, and Cornell, 2004–2010)



Source: National Institute on Money in State Politics (<http://www.followthemoney.org>).

over \$3.7 million to individual political candidates, party committees, and ballot measure committees.<sup>57</sup> The *New York Times* recently quoted a former chief prison inspector—who happens to favor privatization—in Australia as saying, “We have lost control... These big global companies, in relation to specific activities, are more powerful than the governments they’re dealing with.”<sup>58</sup>

### Prison Company Lobbying

Another key area of concern is the lobbying done on behalf of the private prison industry. Prison industry lobbyists seek to impact sentencing policies as well as the rules and regulations included in government contracts. In 2010, CCA, GEO, and Cornell Companies together spent more than \$1.5 million on federal lobbying.<sup>59</sup>

#### *Prison Company Influence on Criminal Justice Policymaking and Law*

Private prison companies have been influential in the development and passage of state legislation that increases incarceration, including “three strikes” and “truth in sentencing” laws in the mid-1990s.<sup>60</sup>

More recently, as immigration detention continues to represent a growing market for private prison corporations, the industry has been instrumental in the drafting and enacting of influential state legislation. A striking example of the industry’s influence is Arizona’s SB 1070, which substantially increased law enforcement’s options to detain any individual who is perceived to be an undocumented immigrant.<sup>61</sup> This legislation was developed under the auspices of the nonprofit American Legislative Exchange Council (ALEC), whose membership includes lawmakers and powerful corporations such as, until recently, CCA.<sup>62</sup> An investigation found that the majority of SB 1070’s 36 co-sponsors subsequently received contributions from prison lobbyists or from the major private prison companies.<sup>63</sup> Since SB 1070 was signed into law in 2010, the U.S. Department of Justice has sued the state of Arizona on the grounds that the law is unconstitutional, and an injunction

was issued to block enforcement of some of its key provisions. The U.S. Supreme Court began hearing arguments on SB 1070 in April 2012.<sup>64</sup>

Private prison corporations also mobilize against legislation that would have a negative impact on its industry. This includes the federal Private Prison Information Act, which has been introduced by lawmakers several times in the past decade, including during the 2011–12 legislative session. Reports indicate that CCA has spent millions of dollars to lobby against this legislation, which would require private facilities housing federal inmates to abide by the same Freedom of Information Act guidelines that apply to public federal prisons.<sup>65</sup>

### **Friends in High Places: Prison Company Relationship Building**

There are many examples of close connections between the major prison companies and current or former government officials who have the potential to assist these companies.<sup>66</sup> A prison company strategy is to add a corrections official—in a consultant role—to a prison company’s board of directors; the consultant advocates for privatization from his or her vantage point. When the conflict of interest is disclosed, the consultant is hired by the private firm at a generous salary.<sup>67</sup> A recent case in point is CCA’s 2011 hiring of Harley Lappin, the past director of the federal Bureau of Prisons, to serve as an executive vice president and chief corrections officer for the company.<sup>68</sup>

The profit incentive also has been known to spawn serious corruption. For instance, in Luzerne, Pennsylvania, agents of a private prison company were found to have paid bribes to local judges to encourage them to commit youth to their two local facilities.<sup>69</sup> In Willacy County, Texas, two county commissioners were found to have accepted bribes in exchange for favoring certain companies involved in building a new private facility.<sup>70</sup>

The previous sections show how private prisons are a pervasive but unnecessary part of the U.S. corrections system. In addition, it is clear that the

presence of private prisons makes true reform of the system less likely, and that prison companies use their influence to perpetuate and worsen the laws and policies that have led to the overuse of incarceration in this country. The next section describes how government oversight of private prisons has been inadequate, but shows that contracting (including strong oversight) can be used to curtail the growth of and deficiencies in private prisons.

# Contracting, Oversight, and Monitoring



## Contracting, Oversight, and Monitoring

Public-private partnerships hinge on contracts. Contracts are more than promises of future collaboration. A contract provides a jurisdiction with a mechanism to clearly identify the contractor's responsibilities and requirements; to prescribe how this work will be accomplished, compensated, and monitored; and to describe penalties that will be incurred if performance is substandard. A comprehensive, sound contracting procedure is a central and crucial feature of an effective prison privatization effort.<sup>71</sup> Within the contract should be detailed descriptions of how the contract and the functioning of the private prison will be overseen and monitored by the government. Lessons can be learned from all types of governmental privatization, not just in corrections.<sup>72</sup>

The experience of various jurisdictions has demonstrated that contracts executed with private

prison companies are often poorly drafted and may minimize or omit key provisions, which can lead to numerous problems including inadequate contractor performance, absence of transparency, abuse of prisoner rights, and an overall lack of accountability.<sup>73</sup> Oversight and monitoring has also proven to be difficult and tends to be lax and ineffective.

### Transparency Issues

The absence of consistently enforced controls and oversight mechanisms has resulted in the growth of an exceedingly powerful industry that "flourish[es] in the shadows."<sup>74</sup> One area of concern is a general lack of tracking, reporting, and accessibility of data on inmates. Private prison contractors, unlike government agencies, are not typically required to report on the inmates housed in privately run prisons, do not make these data easily accessible to monitors, or are even aware of the documentation and reporting requirements intrinsic to the operation of public agencies.<sup>75</sup> Further, from a financial perspective, it

is in the contractor's best interest to minimize the reporting of data that could provide important—though potentially negative—information about conditions of confinement, such as the number of assaults that take place in the facility, incident reports, and grievances filed.<sup>76</sup> Laws requiring full transparency and access to data, stronger contracts, and intensive oversight can help alleviate these concerns.

### **Guaranteed Payments**

The daily population of a prison will vary, but prison companies have negotiated for some very favorable terms regarding this fluctuation. Contracts often guarantee a minimum occupancy rate—usually 90% or more<sup>77</sup>—and allow private prison operators to overstate costs and maximize revenue. Fees may escalate when the rate is exceeded.<sup>78</sup> Several kinds of payment structures may be incorporated into a contract besides the per-bed method, including a fixed price, “indefinite delivery/indefinite quantity” approach, which allows that prison beds will be provided by the contractor on an as-needed basis.<sup>79</sup>

### **Monitoring**

“[E]ven carefully drafted contracts cannot prevent many decisions by private contractors that might yield inhumane conditions of confinement.”<sup>80</sup> In addition to—and part of—contracting, another critical feature of a private prison operation is designing, implementing, and maintaining a strong monitoring program.<sup>81</sup> Oversight and monitoring provide a way for the government to measure contract compliance, and must concentrate on the contractor's adherence to contract terms as well as its success in securing the safety of the public, inmates, and staff. Monitoring can and should address all parts of a contract, with key areas including security issues, legal and constitutional requirements, conditions of confinement, medical and mental health services, all aspects of staffing, records and reports, and inmate programming. Monitoring also provides a basis for contract renewals or terminations and for charging fees and other penalties.<sup>82</sup> Monitoring of conditions inside any

prison, public or private, is difficult, partly because of the necessarily closed and isolated setting of secure facilities. Privatization, however, adds another complicated layer to that isolation, often one where the private prison company has motivation to resist efforts toward transparency and accountability.



# Other Forms of Corrections Privatization



## Other Forms of Corrections Privatization

The privatization of various correctional elements, apart from whole facilities, also continues to grow. In these cases, a government agency will contract with a provider to supply a service such as health care or programming for inmates. The reasons for pursuing these contractual relationships are typically cost savings and improvements in the quality and effective delivery of service through the specialization that private groups can develop.

### Privatization of Health Care

A 2005 survey of state corrections departments found that 32 states contracted with private companies for some or all of their prison health care services.<sup>83</sup> Opponents of privatized health care cite concerns that this profit-driven approach may result in insufficient staffing levels; a lack of appropriate treatment for prisoners, such as delays that are longer

than medically indicated in sending inmates to the emergency room;<sup>84</sup> and oversight issues.<sup>85</sup>

Recent developments in this area include one state moving forward to privatize correctional health care, while another is scrutinizing the private company that provides health care at most of its facilities. In 2012, the state of Florida is pursuing plans to privatize correctional health care statewide. This has led to a lawsuit brought by the Florida Nurses' Association challenging the state's authority on this issue.<sup>86</sup> In Maine, a 2011 state review found that Corizon, the company that provides health care at most of the state's correctional facilities, did not meet many of its contractual requirements; as a result, future contracts for correctional health care services in the state will be subject to a competitive bidding process, which has not previously been the case.<sup>87</sup>

### Privatization of Probation and Parole

Other correctional areas experiencing growth in



probation officers include developing more rigorous statewide requirements for the private supervision of probationers, increasing training and educational standards for private agency staff, toughening agency reporting obligations, and evaluating whether private probation providers have achieved stated performance goals. Other areas that could be included in a contract with a private probation provider include details about criminal background checks for individuals working as probation officers and procedures for working with indigent offenders.<sup>93</sup>

privatization include probation and parole. One reason for the shift from public to private supervision has been an increase in the number of probationers, leading to an expansion in state probation officers' caseloads; this growth has been accompanied by state budgets that have limited capacity to address this change. A 2007 report found that about 10 states contract with private agencies to provide supervision of an estimated 300,000 clients on court-ordered probation, typically for misdemeanor, low-risk offenses.<sup>88</sup> While the overall number of individuals on probation or parole in the United States increased during the last few decades, the national numbers have decreased slightly in recent years.<sup>89</sup> It is not clear if these trends will continue, but it is apparent that prison companies recognize supervision services as a growth area.<sup>90</sup>

Concerns about privatized probation include the focus on profitmaking through collection of fees and fines from the offender, with little or no attention paid to an individual's underlying issues such as substance use or unemployment,<sup>91</sup> as well as an absence of standards for many aspects of the industry, which, among other things, can allow parole or probation officers' compensation to be directly connected to the fees he or she collects.<sup>92</sup> Recommendations for improving the selection, performance, and accountability of private

# Recommendations for Responding to the Expansion of Private Prisons

## Recommendations for Responding to the Expansion of Private Prisons

The following recommendations arise from the growing understanding (and the need for still greater understanding) of the true impacts of private prisons; the shortcomings of the current processes for implementing and maintaining private facilities, including contracting and monitoring practices; and the experience of stakeholders across the country who have worked tirelessly to counteract the expansion of corrections privatization.

Beginning with the reduction of demand for private prisons through reduced dependence on incarceration as a response to crime, the recommendations range from major changes in corrections policy to local education and organizing activities. Private prison companies and their proponents have the resources and political clout necessary to affect public perceptions of privatization and corrections policy generally, and to perpetuate current growth trends. It is important that alternative perspectives be allowed to counter these powerful, profit-centered efforts.

### Sentencing Reform and New Legislation and Regulation

Private prison companies already enjoy a large influence in the corrections field. However, new, tougher, and more specific laws and regulations can improve how these companies are regulated, monitored, and allowed to operate. There are a number of legislative and regulative avenues to be pursued regarding private prisons: Limit power and influence; limit types and scopes of facilities; create standards regarding transparency of company policies and practices, what laws apply, and minimum levels and quality of care; and maximize accountability and responsiveness to issues that arise. Most of these apply to the private prisons, but elected officials also

need to be held to the same standard of transparency, accountability, and legality.

### *Reduce the Demand for Privatization Through Advocacy for Sentencing Reform and Other Laws and Policies Impacting Incarceration Rates*

A key argument made by private prison proponents is the industry's ability to respond relatively quickly to bed space needs. However, as described in this report, relying on private prisons to ease crowding comes at the detriment to reform in the public system. Even with the relative speed with which prison companies work, much effort goes into the development and implementation of a private prison—efforts that would be better spent on reducing the use of incarceration through the existing means described in this report.<sup>94</sup>

Detention and sentencing reform is a critical strategy by which the government can reduce its reliance on incarceration and thereby reduce the need—the demand—for private prisons. This strategy includes the revision of the policies and practices that hastened prisons' growth, including "tough on crime" statutes, detention decisions, mandatory minimums, truth in sentencing, sentence enhancements, reduced authority of judges vs. increased power of prosecutors, and mandatory time for parole and probation violations. Some states are already pursuing reforms; a continued emphasis on reduced use of incarceration, increased use of alternatives, and reduced returns to prison after release is a crucial way to downsize the perceived need for prison beds while simultaneously reducing reliance on the private prison industry.<sup>95</sup> Research shows that incarceration does not typically correlate with reduced recidivism; neither do longer prison sentences—an indication, again, that overuse of incarceration, whether in public or private facilities, does not serve the best interests of the inmates or the public.<sup>96</sup>

### *Reform of Parole and Probation Policies and Reentry Strategies*

The private prison industry relies on ex-inmates reoffending and returning to prison, and on sentences stemming from probation violations.<sup>97</sup> Offenders can avoid re-incarceration if there are more opportunities for skills training while individuals are incarcerated,<sup>98</sup> reentry plans, advocacy for state-level policies that will remove obstacles for former inmates to access supportive services and obtain employment,<sup>99</sup> and policy reform.

### *Support Legislation That Seeks to Increase Transparency and Improve Accountability of Private Prison Companies*

Proposed federal legislation, such as the Private Prison Information Act, would help to shed light on the finances and activities of private prison companies.<sup>100</sup> Another opportunity lies in the area of legislation and regulations regarding lobbying, conflicts of interest, and transparency in privatized activities. Also needed is better access to private prisons' financial data in order to track the true costs of running a private prison.

Individuals and organizations wanting to impact the private prison process can seek full disclosure of affiliations of those involved in private prison projects, establish watchdog groups with resources and authority for strong oversight and quick action, and pursue laws and regulations that define the ethics and legality of relationships and conflicts of interest. Another avenue to consider is providing expertise to help jurisdictions develop contracts that provide for strong, accountability-based monitoring and serious repercussions when ethics issues and other types of non-compliance arise.

### *Legal Action*

Some groups and individuals have pursued legal actions to block prison privatization efforts. Recent legal actions have taken several forms, including the following:

- In 2011, the Florida Police Benevolent Association, representing unionized corrections officers, filed a lawsuit claiming that the legislature violated state law by inserting a directive regarding privatization of corrections department operations in budget language rather than proposing and passing it as legislation.<sup>101</sup> This claim was upheld in state court, with the judge concluding that private prison proponents had attempted an end run of the normal legislative process.<sup>102</sup>
- Also in Florida in 2011, an ethics complaint was filed by the Teamsters union against Governor Rick Scott, claiming his move to privatize prisons in part of the state is compromised due to the fact that he received campaign-related contributions from CCA and the GEO Group.<sup>103</sup>
- While they have, for the most part, not held up in court, suits have challenged the constitutionality of privatization of functions that are "inherently governmental;" that is, that leave the application





of U.S. laws and statutes to the discretion of a private contractor. (See Lucas Anderson's compilation of applicable laws in each state.<sup>104</sup>)

- Individual lawsuits regarding abuse or neglect of inmates in private facilities can target private prison companies' revenue, although the companies expect and are prepared for a certain number of these suits. While the costs of suing private prison companies can be returned to the state or local government in the form of higher contracting fees and overages, civil suits are an important means for individual restitution, spotlighting problems, and maintaining a check and balance on prison company practices.

### **Stronger Contracting, Oversight, and Monitoring**

Contracts provide an opportunity to address issues not dealt with in laws and regulations. An effective contract is essential to minimizing the potential for harm when a jurisdiction enters into a relationship with a private prison company. There is a growing understanding of what constitutes a solid contract, with high levels of specificity representing a key element. Contracts need to reflect a jurisdiction's policy and values, and need to foresee and forestall as many issues as possible, such as potential end runs around policy and increases in costs associated

with economic or justice trends. Each element of the contract should be linked to a specific method for monitoring and oversight, and to clearly defined ramifications for non-compliance.

### *Provide Technical Assistance to Local Government Entities to Draft Effective Requests for Proposals (RFPs) and Contracts*

Experts emphasize the importance of developing a well-constructed request for proposals (RFP) at the outset of the contracting process. An RFP provides a way for a government agency to state the services it wishes to contract for and solicit bids from vendors. A well-crafted and thorough RFP can ensure that proposals put forth by prison companies are thorough, detailed, responsive, and verifiable. An RFP that clearly articulates a jurisdiction's specific needs and provides guidelines for responsive proposals will, in turn, guide the evaluation of RFPs and ultimately help define the content of a contract between a jurisdiction and a private prison operator.<sup>105</sup>

Due to the vital role the RFP plays in shaping the contracting process, local government entities, such as counties, would benefit from receiving technical assistance on drafting effective RFPs. This could include examples of contracting issues (e.g., problems that typically crop up once a prison is being operated by a private company) and suggested language to address these issues.<sup>106</sup> Other kinds of recommended training and technical assistance could cover key elements to include in contracts, such as specific provisions related to data keeping, data reporting, and monitoring, as well as a requirement that contractors comply with federal and state law as well as any relevant departmental policies and procedures.<sup>107</sup> Training could be provided by individuals with experience in this field as well as through pro bono consultations with attorneys who specialize in contract law.

### *Explore Performance-based Contracting Options*

One way of requiring private prison contractors to achieve a jurisdiction's desired practices and

outcomes, such as data reporting or successful prisoner rehabilitation, is through the application of performance-based contracting. A relatively new trend in the public sector encouraged through federal guidelines such as the Fair Acquisition Regulations, performance-based contracting allows governments to identify specific outcomes that private prison contractors should achieve and to hinge compensation on meeting these goals.<sup>108</sup> One performance-based approach gaining popularity is guarantees on the part of the contractor that the government will achieve set levels of cost savings, such as a 7% improvement over the costs in public facilities. This particular tactic may have its benefits, but it also risks placing still greater emphasis on cost savings. Other performance-based approaches would link payment or incentives to meeting standards for conditions of confinement, successful completion of programming and services on the part of inmates, or a reduction in reoffending after release.

#### *Implement Meaningful Penalties for Non-compliance*

Contracts can include provisions for levying financial penalties against the contractor if contract terms are breached. In practice, however, these often fail to discourage private prison companies from overstepping. Fines are often set at a relatively low level, such that it may be more cost-effective for a prison contractor to cut corners and pay a fine than to comply with the contract terms. Additionally, the process by which fines may be levied is often not clearly spelled out in contracts or consistently applied and monitored.<sup>109</sup> Jurisdictions that enter into contracts with private prison companies should consider developing penalties that will have a measurable impact on private prison operators; these penalties, and their application, should be specified in the contract and subsequently followed.

#### *Other Important Elements of Contracts*

Contracts should include detailed and workable plans for monitoring. A monitoring plan should

include what will be monitored and how, by whom, how it will be paid for, and how issues uncovered will be addressed.

Contracts should also establish minimum qualifications for key staff positions, including guards and direct service personnel in facilities, and probation and parole caseworkers. These standards should meet or exceed all applicable federal and state guidelines.

### **Assess, Understand, Organize, Educate**

#### *Slow Down the Privatization Process*

A consistent element of efforts to establish or expand privatization of corrections is a sense of urgency. Proponents of privatization will stress this “time factor” as they push to move the complicated process forward at the risk of limiting important areas including due process for public comment; careful review of various factors contributing to the perceived need, potential impact, long-term costs of the change, and viable alternatives; careful consideration of applicable laws, regulations, and policies; and development of a strong and thorough contract. When behind-the-scenes negotiations finally come to light, stakeholders are often at a disadvantage as projects already have momentum. In the recent court ruling against private prison proponents in Florida, the judge said, “From the record, it appears that the rush to meet the deadlines



in the proviso has resulted in many shortcomings in the evaluation of whether privatization is in the best public interest as it relates to cost and effective service."<sup>110</sup>

### *Organize and Seek Partners*

Not all government representatives involved favor a move toward privatization. The decision to pursue privatization is usually made by a jurisdiction's chief executive or policymakers: the governor, mayor, county executive, city manager, legislature, city council, etc. Representatives of related county or city agencies—such as corrections, probation, law enforcement, and the court—are likely to have involvement, but are not necessarily supportive of the move to privatization. Community members and consultants, as well as local, county, state, and national advocacy groups, can also play a role. Legislative representatives are often in charge of the contracting process. Advocates can build alliances or coalitions with stakeholder individuals and organizations that have similar goals.

### *Educate Communities and Policymakers*

Communities do not necessarily understand the potential impact and various implications of having a private prison facility in their town or city. Community members may wish to educate themselves, their neighbors, and policymakers about the challenges and benefits that are typical of private prisons.

This report cannot provide a comprehensive picture of the contracting, monitoring, and oversight practices, as well as the challenges created by private prisons, nor of the numerous players and stakeholders in the process, the variations in the level of privatization, inmate populations, services provided, and state and local law and regulation. However, efforts to impact privatization strategies will require a strong understanding of these and other elements as they apply to individual jurisdictions.

### *Further Research on Corrections Privatization*

Reliable information is crucial to informing a response

to the private prison industry. Further research is needed in numerous areas such as rates of incidents of abuse or neglect, rates of victimization, and conditions of confinement; the ways the profit incentive impacts facility safety and security, and the humane treatment of inmates; the influence of prison companies on legislation, regulation, and policies regarding sentencing, parole and probation, immigration policy, and the individuals involved; cost savings and the true costs of private prison operation, including indirect costs and costs likely to be borne by public agencies, such as procurement, insurance, emergency services, and case management;<sup>111</sup> monitoring efforts and

## **Efforts to Curb Expansion at the State Level**

In 2011, states that considered privatizing correctional facilities included Florida, Louisiana, and Ohio. These proposals were met with resistance by community members, and, in some cases, by lawmakers. In Louisiana, Association of Federal, State, County, and Municipal Employees (AFSCME) members protested a proposed plan by Governor Bobby Jindal to sell three state prison facilities to private prison operators; Jindal's proposal was also not supported by the state legislature and did not move forward.<sup>112</sup> In Ohio, a proposal by Governor John Kasich to sell five prisons, opposed by AFSCME and the Ohio Civil Service Employees Association, was revised to the sale of one prison to CCA and the turnover of operations of two other prisons to Management & Training Corporation.<sup>113</sup> Finally, Florida governor Rick Scott's effort to privatize prisons in south Florida, which would have impacted more than 25 prisons and work camps in that region, was voted down by the state senate in early 2012—the culmination of an extremely contentious debate on privatization in the state where the GEO Group is headquartered.<sup>114</sup>

practices in private prisons; meaningful responses to contract non-compliance; and privatized correctional services such as medical and mental health care, probation and parole, and programming.<sup>115</sup> Also needed are studies of the relative bias of the various sources of information and research on private prisons, including those funded by prison companies.

### *Approaches to Monitoring: More Than Just Accreditation*

Monitoring is “a process, requiring constant attention and vigilance. Effective oversight of a prison is thus necessarily a labor-intensive endeavor.”<sup>116</sup> Private prison monitors typically use several different methods to assess contract compliance, such as reviews of files, reports, logs, and other records (including spot-checking of records for accuracy); onsite observations; interviews with key stakeholders (managers, staff, and inmates); and statistical comparisons to an analogous publicly operated prison.<sup>117</sup> However, some monitoring plans fail to allow for what most would consider basic requirements, such as unannounced site visits.<sup>118</sup> The monitoring process should also take into account more intangible, unrecorded factors including a prison’s climate, guard-to-inmate communications, and staff decision making, an approach that is described as follows

by Collins: “Experienced corrections officials know that a prison may comply chapter and verse with the specifics of a contract and still not be a safe and healthy facility.”<sup>119</sup>

As part of the contract between a jurisdiction and a private prison company, the company is typically required to obtain and maintain accreditation from the American Correctional Association (ACA). An important distinction between ACA accreditation and outcome monitoring is that ACA accreditation focuses on processes and procedures, rather than on outcomes. Experts caution against relying too heavily on ACA accreditation to measure institutional effectiveness and recommend a close linkage between what is called “paper-based” accreditation and regular, onsite monitoring of contract compliance, service quality, and outcomes.<sup>120</sup>

Another strategy, as part of an overall monitoring plan, is to convene a citizen oversight committee that augments the functions performed by the professional and government monitors and monitoring consultants.<sup>121</sup>

### *Affiliation and Expertise of the Monitor*

The monitor’s training as well as his or her relationship to the facility is an important concern. While the

## **A Prison Break in Arizona and Subsequent Reforms**

The recent experience of a private prison in Kingman, Arizona, operated by Management & Training Corporation (MTC), illustrates the need for various improvements and additions to standard contracts, including planning related to occupancy and compensation, as well as provisions concerning security and monitoring. After several inmates escaped from Kingman in 2010—which resulted in the murders of two people—the state transferred more than 200 high risk inmates from the Kingman facility to another prison and determined that additional prisoners would not be sent to Kingman until MTC complied with identified problems, including retraining of corrections officers. This meant that MTC’s guaranteed minimum occupancy rate of 97% was not met for nearly a year. In response to the state’s action, MTC filed a “notice of claim” against the state, seeking approximately \$10 million in revenue that was lost when the state stopped supplying Kingman with inmates. This series of events led the state department of corrections to revamp its RFP process to include stipulations that private prisons will have to provide additional security regardless of the security level of inmates; state monitors will have continuous, unscheduled access to the facility, inmates, and records; and fines of \$25,000 can be levied for certain violations.<sup>122</sup>



monitor may be a consultant or subcontractor, this person may be paid by the prison operator, creating a potential conflict of interest. In rural areas, the monitor may be an individual who lives in or is otherwise embedded in the community where the prison is situated, leading to possible tension or bias in pointing out problems that could affect many residents' livelihoods.<sup>123</sup> Also, monitors should have considerable expertise in the area(s) they are monitoring. In the case of prison health care services, monitors should be medical providers who work for the state or county and who can knowledgeably evaluate the quality of services that inmates receive.<sup>124</sup>

### *Improve Transparency Through Data Keeping and Reporting and Access to Data*

Private prisons are generally not required to report data to the local or state government with which they contract, or to any oversight body. Information is a powerful tool for advocacy; the lack of useful data reduces the accountability of prison companies, thus putting inmates and guards at risk. Data keeping and reporting practices that make information readily accessible will help facilitate monitoring. It is necessary to build specific requirements for data collection and reporting into the contract.<sup>125</sup> These steps could help to correct the transparency and accountability issues that often appear endemic to the private prison industry.

# Conclusion



## Conclusion

For the most part, the way private prison companies run their businesses—keeping costs down; pursuing favorable contracts; influencing laws, policies, and public opinion that most support them; maximizing profits—is not out of line with other for-profit enterprises. What sets them apart, however, is their responsibility for a hugely important and difficult undertaking: ensuring the humane treatment of prisoners, carrying out the rule of law, and preserving safety in the facilities. They serve a crucial government function, yet they approach the task from a strikingly different perspective than the governments and the public they serve.

While it is important not to oversimplify the many factors that contribute to crime and the corrections populations, even the strongest supporters of “tough on crime” policies would agree that the best-case scenario is fewer inmates in custody as long as public safety is not diminished. The public supports efforts to reduce the use of incarceration when those efforts are shown to be practical and effective.<sup>126</sup> Ultimately, this leaves only those with a financial interest in private prisons supporting the filling of more beds in secure facilities.

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