

# INDEPENDENCE ISSUE PAPER

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## PRIVATE PRISONS NOW Their Appeal Widens as Alternatives Narrow

By Steve Shwiff and Gale Norton

### Introduction

The prison problem in Colorado is reaching the boiling point. In brief, there are far more prisoners than room. Existing state facilities are bulging -- and another 575 state prisoners are housed in county jails, themselves approaching capacity while payment disputes continue.

If two new 500-bed prisons are not built soon, the overflow could number 1800 by 1991. The Colorado Department of Corrections, in its recent five-year plan, pre-a total of 2900 additional prison beds will be needed by 1991.

Causes mentioned for the crisis range from tougher sentencing laws that keep inmates in prison longer, to the failure of planners in past years to foresee the rising prison population. Whatever the cause, new prison capacity is needed now -- or the state will be forced to release some criminals back to the streets, plainly an unacceptable option.

Meeting this need will be expensive. Governor Romer's proposal for expanding the prison system, rejected by the 1988 legislature, carried a \$145 million price tag. But the state budget must also fund other pressing needs.

Now it seems there is an answer to Colorado's prison problem from an unexpected source -- the private sector. As Colorado Corrections Director Walter "Kip" Kautzky has suggested, "If the legislature decides against allocating the money for building new prisons, then maybe the state needs to look at the private sector to put up the money."

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### AT A GLANCE

Colorado is reeling from a triple collision between the public demand to keep criminals behind bars, judicial scrutiny of prison overcrowding, and tight state budgets.

One answer may be to contract with private firms for prison support services or for constructing and operating entire facilities. Economist Steve Shwiff and attorney Gale Norton analyze the concept this way:

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There is a growing nationwide movement for private enterprise to provide prisons and correctional services by contract with various government entities. Usually cheaper, private prisons might well ease the budget crunch. The quality of services and facilities should also be an improvement over the horrendous conditions in many prisons.

Colorado Springs businessman Steve Schuck, who has studied the privatization movement intensively in the course of two campaigns for Governor, probably spoke for many Coloradans when he wrote in a recent article: "Private corrections facilities can relieve our short- and long-term prison needs. And they can do so cost-effectively, and with greater flexibility, and in a timely fashion."

### Mismatch of Demand and Supply

Throughout the United States, as of 1986, 141 new state correctional facilities were under construction or renovation at a cost of more than \$2.6 billion (1). The average state prison operates at 114% of its capacity (2). The rate of incarceration in state and federal prisons doubled from 93 per 100,000 population in 1974 to 187 per 100,000 in 1985. Prisoner population at the state and county levels now exceeds 800,000, with major increases projected into the 1990s. The crisis in corrections is real.

Prison populations have grown in response to public pressure. Getting tough on crime and criminals plays very well politically. The reality, however, is that state and local governments have limited financial resources they can apply to criminal justice problems. Prison construction must compete for tax dollars against sewers, highways, public schools, higher education, and a host of other demands.

Today's taxpayer is also less willing to pay for service expansions across the board (3). Taxpayers expect government to get more out of shrinking budgets. In an effort to do this, public officials have turned to alternative approaches for service delivery. One alternative is privatization.

### Privatization: What Is It?

Privatization involves the transfer of a function currently done by government to a for-profit or non-profit firm. The actual method by which the government function is privatized may take several forms.

Sale of government enterprises directly to for-profit or non-profit firms has been very popular in Great Britain. Since 1979 the Thatcher government has sold over a dozen major government-operated firms (Jaguar, British National Oil, British Aerospace, and others) to the private sector. These sales have returned some 400,000 government employees to the private sector with proportionate budget reductions (4). Over here, Reagan Administration has proposed selling Amtrak, airports, regional power administrations, and other government enterprises to the private sector.

Contracting out is an approach more popular in the United States thus far. The government entity retains control over funding, goals, and specifications, but a private-sector firm does the actual production. Street repair,

refuse collection, and park maintenance are examples of the kinds of functions routinely contracted out by municipal governments. The Denver City Council is looking at such options to ease its current budget shortfall.

Government purchasing from the private sector has long been common. Privatization simply means broadening the definition of that practice. It grows from the conviction that the private sector has an important role to play in public service delivery. Therefore a wide menu of functions are now being considered for transfer to private firms.

The assumption is that the higher costs often associated with government-run operations will be reduced by private firms which must stay lean enough to operate profitably and which charge prices that are more closely related to actual costs of production -- that more closely represent the value consumers/taxpayers place on the service or function. As a result, it is hoped, taxpayer subsidies of the service will be reduced or eliminated. Service quality can also be expected to improve, because of the competition inherent in the private sector (5).

### Correctional Trends and Options

The private sector has been involved to some degree in both youth and adult corrections for many years. Specific services such as transportation, food preparation, medical and dental services, job training, and facility maintenance and construction have routinely been supplied by private firms.

Private firms operate juvenile correctional facilities, halfway houses, and substance abuse centers. Extending this experience to the management of adult correctional facilities seems appropriate.

A study by the University of Tennessee concluded that there are six major options open to state and local government in facing the corrections overload. They are:

- \* Raise taxes
- \* Divert funds from other budget categories
- \* Issue general obligation bonds or some other form of long-term debt
- \* Back off on tough sentencing laws
- \* Implement community-based sentencing alternatives
- \* Privatize

The policy mix ultimately chosen by Colorado or any other state is hard to predict. However, there seems to be little room for maneuvering. The courts have made it clear that prison overcrowding will not be tolerated. Voters seem in no mood to compromise on getting tough with criminals, nor to support a return to free-spending, high-tax policies of the past. If only by elimination, privatization gains appeal almost daily (6).

## Advantages of Privatization

Policy analysts Judy Grant and Diane Carol Bast of the Heartland Institute have suggested that private prisons have several advantages over public correctional facilities.

1. Construction costs for private facilities are cheaper.
  - a. Construction costs in the public sector average \$26,000 to \$58,000 per bed compared to \$14,000 to \$21,000 per bed for facilities built by private companies.
  - b. The private sector offers savings of 46% for minimum security facilities, and 64% for maximum security facilities.
2. Private companies can usually bring facilities on-line faster than is possible with the cumbersome procedures in the public sector.
3. Operating costs are usually cheaper and the service is better in the private sector. When corrections administrators were surveyed to name the advantages of prisons under private management, the following were their responses:
  - a. Improved efficiency of operations was cited by 58% of those surveyed.
  - b. Better quality of service to inmates was cited by 62%.
  - c. Delivery of some type of unique service not previously available was cited by 24%.
4. Cost control by the private sector does not result in poor quality service since it is not ultimately cost-effective or profitable to house inmates in crowded, substandard conditions.
5. Competition and cost comparisons with privately operated corrections facilities also become a lever to raise the standards of those prisons which remain in the now-less-monopolistic environment of the public sector.
6. Private corrections corporations hire the highest quality corrections professionals. They can create incentives for employees to keep performance high, since their personnel policies allow managers more leeway to reward good performance and punish poor performance.

## OBSTACLES TO PRIVATE CORRECTIONS

There are currently few minimum- to maximum-security adult correctional facilities operated at the state level by private firms. However several county facilities, providing the full range of services, are operated by private firms. Examples are listed on page 11.

Why isn't more happening at the state level? Because of five major obstacles, which we discuss in the following sections beginning with the most serious.

### Legal Concerns

The most serious legal problem facing prison privatization appears to be the monitoring of the relationship between the private contractor and the inmates, to protect the rights of the latter. Can that relationship be arranged so as to satisfy legislators of its constitutionality and to withstand the inevitable court tests that will follow?

The traditional practice of courts in relation to the operation of prisons has been a hands-off approach. Under this approach the courts were very reluctant to interfere in the operation of prisons. Judges tended to defer to the expertise of corrections officials who are performing a very complex and specialized task. In the words of the U.S. Supreme Court:

Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex... they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government.... Courts are ill equipped to deal with the increasingly urgent problems of prison administration... Procunier v. Martinez, 416 U.S. 396, 404 (1974).

In recent years however, the courts have abandoned the hands-off approach in addressing prisoners' problems in the area of discrimination, First Amendment rights, and inhumane treatment. Indeed, it is judicial activism on prison conditions, coupled with tight budgets, which is a major impetus for privatization. Colorado has had its share of such court decrees. Yet this new judicial activism remains narrowly focused. Hands-off is still the general rule for most managerial issues. Therefore, in general, corrections officials still have enormous discretion over inmates. This discretion extends not only to the terms of the incarceration but also, because of administrative influence over a prisoner's release date, to the length of incarceration as well.

Many legal commentators believe that placing this much discretion, unsupervised by the courts or the state, in the hands of self-interested private operators could represent an unacceptable risk to the rights of prisoners. "One must therefore inquire," noted the Yale Law Journal last year, "whether the deference paid

prison officials is compatible with the rules which courts have applied in assessing the validity of delegations to private parties with potential financial biases"(7).

The central legal problem is what is called the "delegation doctrine." This doctrine prohibits Congress or a legislature from delegating its essential sovereign functions to any other institution or party. In the public area, where Congress and legislatures frequently delegate to administrative agencies, the doctrine of delegation is largely moribund. However, in the context of delegations to private entities, both federal and state courts have preserved the nondelegation principle. The roots of this principle lie in the courts' traditional hostility, based on the common law, toward giving private parties the power to control or coerce the actions of others. The courts have advanced three criteria for scrutinizing the vesting of discretionary governmental powers in private, profit-making entities. These criteria are based on a due process analysis of the situation.

First, there is a general hostility to delegation of discretionary power to financially interested parties. This hostility leads the court to invalidate delegations if there is any threat of abuse. In these cases, it is the abdication of state supervisory power which concerns the courts.

The second criterion the courts have used is the sufficiency of standards. The courts almost always require any delegation of state power to private persons to be according to sharply drawn rules and standards.

The third criterion the courts have used in examining delegations of discretionary power to private groups is whether such delegation threatens fundamental rights. Thus the U.S. Supreme Court has refused to permit exploitation of convicts by private employers.

However, if privatization is properly constructed it can remain valid even under the most rigid application of the delegation doctrine. The steps that can be taken to avoid legal problems are:

1. The state must retain a sufficient role in supervising the private prisons to prevent abuse.
2. The contract between the state and the private provider must have carefully drafted standards and performance criteria. The institutional arrangements should provide incentives to the private operator to operate the prison according to public standards. These could include performance-based bonuses and penalties for the private operator; public access, particularly for the press; and prisoner grievance procedures.
3. The contractual standards should be designed to fully protect prisoners' fundamental rights.

In addition to legal protections for prisoners that are incorporated into the state's contracting process, a mechanism also exists for prisoners to assert their rights directly. A federal law (42 U.S.C. Section 1983) allows an individual to file suit if his rights are violated by any person "acting under color of law." Presumably, this provision would be applied to private prisons. There would be tremendous incentives for a private prison operator to avoid such lawsuits.

There have been no court decisions directly addressing whether governments can delegate to private parties the authority to operate prisons. However, at least two federal courts have impliedly endorsed the concept (8). In the event this issue reaches the U.S. Supreme Court, it is extremely doubtful, in our judgment, that the Court would hold that the operation of a correctional facility is a function that cannot be delegated by the state to a private operator.

To rule otherwise would require the Court to adopt a line of reasoning that distinguished between "operational" functions that could be delegated and those that could not be delegated. David Folz and his colleagues at the University of Tennessee suggest it is far more likely that the Court would hold that the administration per se of correctional facilities is not an essential government function (9).

Thus only the decision to punish remains what cannot be delegated. Therefore, control of the facility remains with the state, while ministerial functions can be privatized.

### Political Opposition

The political forces on both sides of the privatization issue are increasingly combative. Opposition is being led by the American Federation of State, County, and Municipal Employees Union (AFSCME), the American Civil Liberties Union, some State Bar Associations, and Sheriffs Associations. These groups offer a variety of arguments which center around philosophical questions and (more or less candidly) protection of their own self-interest.

Philosophically they contend that certain functions should remain outside the pale of private influences and that incarceration is such a function. In addition, state employee unions and sheriffs associations see private prisons as treading on their turf, and they oppose the loss of political influence that would result. These are powerful and influential groups who will not easily be swayed by the rationality of any privatization argument.

On the other side, support comes from cost-conscious legislators and from private firms wishing to enter into the business of private corrections. Thus far the private firms have not formed a lobby, preferring to fight opponents on a case-by-case, firm-by-firm basis. As opposition grows and becomes more heated, private correctional firms may be forced to change their strategy.

Corrections Corporation of America has been the most vocal of the private operators pushing for policy changes. The private firms contend they can build and operate facilities more cheaply than the public sector and still adhere to court-ordered requirements for safety and security. While their actual experience operationally is limited, they have been able to attract respected former government correctional managers who have provided them with impressive credentials.

### Moral Arguments

There are a number of "moral" objections to private corrections. Perhaps the most compelling is the perceived incompatibility between the profit motive and the "value-driven" motives of the state. The *raison d'etre* of the state is to protect the public interest. Determination of what that interest is (so the argument goes) must not be "corrupted" by baser commercial interests.

This view, while emotionally appealing, is flawed. Regardless of how nobly motivated public servants may be, they are still imperfect. Employment in government does not per se grant special discernment to that employee in terms of identifying the "public interest." The question should not turn on who can better determine the public interest, but on which sector will generate the greatest quality outcome for the least expenditure.

What's needed, then, is an appropriate methodology for determining who can deliver quality and cost-effective outcomes. Knee-jerk reactions insisting that government alone is fit to operate a particular function serve only narrow, and special interests.

In fact, private operators may actually have greater motivation to serve the public interest than government operators. When the "customer" is the state, the private operator must comply with the state's demands if it expects to continue in business. For a provider to tolerate policies and procedures which risk higher costs by exposing the private operator to lawsuits, bad publicity, or contract termination would be to threaten the firm's very survival. This is certainly a strong incentive to operate within the bounds of correctional standards and the law.

#### Competency and Costs

A number of technical issues have been raised concerning competencies of private sector firms in operating a correctional facility. The following list, not meant to be exhaustive, gives some of the key issues:

- \*Management oversight by the public sector
- \*Adherence to accepted correctional standards
- \*Responsibility for discipline and early release
- \*Contract enforcement and default
- \*Service quality
- \*Contract renegotiation
- \*Requests for proposals and the bidding process

#### MENU FOR PARTIAL PRIVATIZATION

Colorado Gov. Roy Romer has emphasized his receptivity to options for partially privatizing prisons. Here is a menu of functions which might be separately contracted out, with other services provided by the state or by different private contractors:

1. Construction of buildings and facilities.
2. Maintenance of facilities.
3. Other support functions such as food service, purchasing supplies, and accounting.
4. Pre-hiring screening of personnel.
5. Provision of guard services.
6. Operation of speciality areas in physical plant, such as monitoring equipment or health care facilities.
7. Counselling and testing.
8. Training, education, and prisoner work projects.
9. Overall prison management.



The evaluation of management and operational questions centers on empirical issues of comparability. Construction and operation of correctional facilities varies greatly. For example, there are significant regional differences in labor and capital costs. Within a region, urban or rural facility location can dramatically impact operational costs. These differences are then reflected in bottom-line cost comparisons.

Perhaps most importantly, private operators have always complained that public correctional facilities do not have to factor in the full costs of doing business. Government's figures for its own capital costs routinely do not consider architectural fees, construction supervision costs, agency fees, equipment costs, insurance and bid costs, finance charges, costs of furnishings, debt amortization or delays in site acquisition. Other costs like fringe benefits, time value of money, inmate transportation charges, and depreciation are often under-reported or ignored by public enterprises. Finally, failure to include transfer of revenue from other state and federal agencies understates the full costs of incarceration.

The Criminal Justice Institute has estimated that reported costs for public correctional facilities understate actual costs in the range of 15 to 50 percent. An average figure of 25% seemed a representative figure. Harris and Clear of Rutgers University suggest a figure of 30%.

Further, the public sector often tilts the playing field by imposing compliance standards on private operators which substantially exceed those required for the public sector. Such restrictions reduce the private firm's ability to manage costs as well as clouding the terms of comparison.

What can certainly be demonstrated at this time is that private sector firms are able to build facilities much more rapidly than can the public sector. These facilities meet or exceed recognized correctional standards. Operationally, private firms do no worse than public sector operators -- and there is real potential for significant cost savings and flexibility over time. Page \_\_\_\_ gives a list of some of the privately operated full-service facilities nationwide.

#### Lack of Operational Experience

No private firm has extensive experience with operating statewide correctional facilities. However, what experience they have gained in operating county facilities or specialized facilities indicates they can be very flexible in their approach to correctional management and operation. For example, the U.S. Immigration and Naturalization Service contracts out adult detention facilities. While these contractors do not incarcerate individuals for longer than 90 days, they have shown an ability to provide INS with needed additional capacity very quickly.

Other firms have contracted for the provision of community corrections programs, pre-release programs, and halfway houses which have greatly relieved the population stress on state facilities. These private facilities have experienced operational records at least as good as state-operated facilities of the same type.

Several firms are managing secure juvenile facilities with operational records that surpass similar state-operated facilities. The most notable is in Florida where a private, non-profit firm contracted for the management of a large state juvenile facility. After a shaky start, the firm has greatly improved the ability of that facility to meet American Correctional Association standards (10).

While the actual experience level of current private correctional firms is limited, that does not per se eliminate them as potential providers of correctional services. Certainly care will have to be taken in dealing with such firms. A gradual approach perhaps beginning with "specialized" or minimum security facilities would be appropriate. Clearly there is no empirical justification for flat rejection of the privatization option.

#### CONCLUSION AND RECOMMENDATIONS

As with any approach which threatens the vested interests of the status quo, privatization often evokes heated polar responses. On one extreme, some groups are concerned only with protecting their narrow parochial interests. On the other extreme, some proponents gloss over legitimate policy concerns. This leaves policymakers still looking for answers.

The time has come to get the debate off questions of philosophy and into questions of performance and accountability. In order to do this, we must have actual working experience with private correctional facilities and we must be able to compare those efforts with similar publicly run facilities. Thus an effective strategy for privatization is needed.

Stuart Butler of the Heritage Foundation has suggested the following checklist for developing an effective privatization strategy:

- \* Adopt an independent method of comparing public vs. private costs
- \* Develop a strong and diversified support network
- \* Deal effectively with anti-privatization groups
- \* Determine whether tax incentives can play an important role, as they frequently do in privatization
- \* If sale of a public enterprise is contemplated, spread ownership of that enterprise to a broad group

By tailoring the above elements to fit the specific situation in Colorado at present, the debate over private prisons can be pushed beyond abstract philosophic quibbling toward a workable policy compromise with tangible measurement criteria.

There are no perfect solutions to the current crisis in corrections. Colorado, like many other states, finds itself in a policy dilemma where the public expects criminals to be incarcerated while years of short-term political maneu-

vering have left correctional facilities woefully inadequate for the task. Correctional officials are concerned; the public is badly informed; abuses abound.

Privatization of correctional facilities offers a realistic answer to the dilemma. It too has problems, but these can be solved or mitigated in the ways we have described.

### Brush in 1988, Bidding in 1989

The \$1 million Colorado Division of Youth Services contract for 25 juvenile-custody beds with the Brush facility operated by Rebound Colorado Corporation -- reinstated by the legislature in August after a June veto, and taking effect about October 1, 1988 -- is a precedent-setting experiment that finally gives private corrections in this state the opportunity to begin proving their claims of efficiency and quality.

As results accumulate from this and other tests, a constructive partnership can be forged between legislators, public administrators, the courts, and the public, allowing Colorado to get on with making its streets safer and doing so without unnecessary additional expenditures.

Partisan politics, turf battles, and misinformation must still be overcome, and it will take time. But in the end everyone is after the same goal -- delivery of the highest quality public services in the most cost-effective and humane manner. Private sector firms seem destined to play a more and more essential role in that process.

In Colorado as elsewhere, it appears that the preliminaries have been played out sufficiently to make 1989 a year of real action on greater private involvement. If construction of new adult prison facilities is approved in the coming legislative session -- as now seems imperative -- there should be open competition between public and private providers to build and operate that space.

Why not aim to have a formal process of request-for-proposals and unrestricted bidding underway by this time next year? Our weary taxpayers and crime-ridden communities deserve no less.

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## APPENDIX: PRIVATE CORRECTIONS EXAMPLES AND PROVIDERS

### Where Are the Examples of Local Contracts Now Operational?

Bay County Jail and Annex, Panama City, FL, Corrections Corp. of America, 196 bed facility.

Butler County Prison, PA, Buckingham Security Ltd., 100 bed facility.

Marion Adjustment Center, KY, U.S. Correction Corporation, 200 bed minimum security.

Sante Fe County Detention Facility, NM, Corrections Corp. of America, 110 bed facility.

Silverdale, Hamilton County, Chattanooga, TN, Corrections Corp. of America, 360 bed facility.

### What Companies Are, or Seek to Be, Providers in Colorado?

Rebound Colorado Corp.  
(Brush Facility)  
999 18th Street, Suite 1260  
Denver, CO 80202  
Contact: Don Hughston  
or Jane O'Shaughnessy  
(303) 292-9719

American Corrections System  
(Ault Facility)  
1318 South College Ave.  
Fort Collins CO 80524  
Contact: Harvey M. Prickett  
(303) 484-3888

Community Corrections Inc.  
225 Lincoln St.  
Denver, CO 80203  
Contact: Gary Corbett  
(303) 722-0083

### What Other Providers Are in Business Nationally?

Behavioral Systems Southwest, Inc.  
300 South Park Avenue, Suite 750  
Pomona, CA 91766  
Contact: Ted Nissen, President  
(714) 623-0604  
Founded 1977

Canteen Corporation  
1430 Merchandise Mart  
Chicago, IL 60654  
Contact: Daniel R. Krpan  
(312) 661-7500

Buckingham Security, Ltd.  
P.O. Box 631  
Lewisburg, PA 17837  
Contact: Joseph Fenton  
(717) 523-3210

Corrections Associates, Inc.  
446 Metroplex Drive, Suite 226  
Nashville, TN 37211  
Contact: Hubert L. McCullough  
(615) 834-3030  
Organized July 1985

Corrections Corporation of America  
28 White Bridge Road, Suite 206  
Nashville, TN 37205  
Contact: Tom Beasley  
(615) 356-1885  
Incorporated January 1983

Correctional Medical Systems, Inc.  
999 Executive Parkway  
St. Louis, MO 63141  
(314) 878-1810  
Contact: Walter S. Schrivvers, President  
Founded 1979

Correctional Services Group, Inc.  
410 Archibald Avenue, Suite 105  
Kansas City, MO 64111  
(816) 753-6570  
Contact: Robert Buchanan

Eclectic Communications, Inc.  
1823 Knoll Drive  
Ventura, CA 93003  
(805) 644-8700  
Contact: Arthur McDonald

International Corrections Corporation  
One Northshore Center  
Pittsburgh, PA 15212  
(412) 323-4789  
Contact: Charles R. Zappala, President

The Jack and Ruth Eckerd Foundation  
100 Starcrest Drive N.  
Clearwater, FL 33575

Marzell Corporation  
5781 Biscayne Blvd.  
Miami, FL 33137  
(305) 751-7044  
Contact: J. R. Llanes

Metro Support Services  
5960 S.W. 57th Avenue  
Miami, FL 33143  
(305) 666-5474  
Contact: David Wolfberg

National Corrections Corporation  
P.O. Box 1556  
4877 National Western Drive, Suite 200  
Denver, CO 80201  
(303) 296-6606  
1-800-222-JAIL  
Contact: O. Wesley Box, President  
Founded 1972

Ogden Allied Services Corporation  
Two Pennsylvania Plaza  
New York, NY 10121  
(212) 868-6111  
Contact: Ed Heinen

Palo Duro Private Detention Services, Inc.  
Amarillo, TX  
Contact: T. L. Baker, CEO

RCA Service Company  
Building 202-1 Route 38  
Cherry Hill, NJ 08358  
(609) 486-5038  
Contact: Dr. Becker

U.S. Corrections Corporation  
P.O. Box 1485  
Frankfort, KY 40601  
(502) 692-9622  
Contact: J. Clifford Todd

Wackenhut Services, Inc.  
1500 San Remo Avenue  
Coral Gables, FL 33046  
(305) 666-5656  
1-800-922-6488  
Contact: Mike Norris  
Founded 1960

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## FOOTNOTES

1. 1986 Corrections Yearbook.
2. Ibid.
3. There have been exceptions, however: California residents have voted tax increases to pay for prison construction.
4. Madsen Pirie, Privatization: The Facts and Fallacies, Fund for an American Renaissance and the Adam Smith Institute.
5. The lack of empirical data on private prison operation makes it difficult to develop an appropriate hypothesis that could then be empirically tested. A weaker version of the statement might involve testing the relationship between current tax expenditures and quality improvements. This entire area represents fertile ground for future research.
6. Overall taxpayer subsidy of prison operations may not be reduced in the near term. Primary benefit, therefore, would be derived from quality improvements and reduced costs associated with construction. With nationwide minimum security adult per bed costs at \$28,000, Corrections Corporation of America built its minimum security facility in Houston at \$14,000. While such direct comparisons are problematical, the reader gains some sense of construction savings involved. Longer term benefits from operation remain to be demonstrated, but private facilities do seem more willing to create value with inmate labor time and thus reduce the need for direct taxpayer subsidy. While this is a modern variation of prison industry schemes, American Correctional Systems of Fort Collins, Colorado, has added a new twist that promises real long term savings for the taxpayer.
7. David N. Wecht, "Breaking the Code of Deference: Judicial Review of Private Prisons," Yale Law Journal, 96:787, 1987, p. 822.
8. See Richard Crane, "A Business Like Any Other," ABA Journal, April 1, 1987, p. 39.
9. See David H. Folz et al., Privatization as a State Fiscal Austerity Strategy, Department of Political Science, University of Tennessee, Knoxville.
10. The Eckerd Foundation operated the Eckerd Youth Development Center, Okeechobee, Florida. This facility was converted from state operation to non-profit operation. Initial studies indicated a shaky start (see American Correctional Association 1984 study), but subsequent reviews have been positive and favorable.

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