

HUMAN RIGHTS DEFENSE CENTER

Dedicated to Protecting Human Rights

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January 31, 2013

Rep. Laura Pantelakos, Chair
House Criminal Justice and Public Safety Committee
RM 204 LOB
107 N. Main St.
Concord, NH 03301

RE: HB 443-FN

Dear Chairperson Pantelakos and Committee Members:

I serve as associate director of the Human Rights Defense Center (HRDC), a non-profit organization based in Brattleboro, Vermont dedicated to the protection of human rights of people incarcerated in U.S. detention facilities. I write in reference to HB 443-FN, which would bar the New Hampshire Department of Corrections from housing prisoners in privately-operated prisons.

The Human Rights Defense Center supports HB 443-FN.

I am recognized as a national expert on private prison-related issues. I've testified before the U.S. House Committee on the Judiciary's Subcommittee on Crime, Terrorism and Homeland Security concerning federal legislation related to private prisons; contributed chapters to three books about prison privatization; and spoken at numerous conferences and panel discussions about the private prison industry, including a Congressional briefing, a Congressional Correctional Officers Caucus meeting and a Pennsylvania legislative committee hearing. In addition to my position with HRDC, I serve in a voluntary, non-compensated capacity as president of the Private Corrections Institute (PCI), a non-profit citizen watchdog organization that informs policy makers and the public about the significant dangers of privately-operated prisons.

HRDC is aware of New Hampshire's recent interest in prison privatization, including the issuance of an RFP and a contract with MGT of America to help evaluate the RFP responses received from four private prison firms. We are supportive of HB 443-FN because we oppose the privatization of correctional services based on a number of public policy reasons; foremost, that depriving citizens of their liberty through incarceration is an inherently governmental function that should not be contracted out to the lowest private-sector bidder.

Further, there are serious issues related to transparency and public accountability with privatized prisons. Public prisons are operated by public officials with the goal of ensuring public safety, and are accountable to members of the public. Private prisons, on the other hand, are operated by for-profit companies with the goal of generating profit, and are accountable to their shareholders and executives. A good demonstration of the difference between the public and private sectors in the corrections context is the applicability of public records laws.

On the federal level, privately-operated prisons are not subject to the Freedom of Information Act; similarly, many states do not extend their public records laws to private prisons. Thus, while the public can file records requests to learn about conditions and issues related to government-operated prisons, in many cases they are unable to file similar records requests when prisoners are housed in privately-managed facilities. In 2008, I filed a public records suit against Corrections Corporation of America (CCA) in Tennessee. CCA argued that although it performed the governmental function of housing state prisoners, it should not have to comply with the public records act. The Tennessee Court of Appeals held otherwise in *Friedmann v. CCA*, 310 S.W.3d 366 (Tenn.Ct.App. 2009); upon remand, CCA continued to argue that it should not have to produce certain documents that public agencies would have to produce, and filed another appeal. After 4 years this case remains pending because CCA does not want to be held accountable under the state's public records law.

States that have decided to utilize private prisons have done so due to a variety of reasons, often related to the cost savings that private prison companies claim can be achieved. There is extensive research on the cost effectiveness of prison privatization, and most credible studies – those not financed by the private prison industry or allies such as the Reason Foundation – have concluded that the claimed cost savings are at best equivocal. This is due to several factors.

A common mistake is to compare per diem rates between public and privately-operated prisons. Typically, private prisons do have lower average per diem rates, which lead some to conclude they are less expensive to operate. Comparing average per diem rates is misleading, however, because state prison systems typically hold prisoners who are more expensive to incarcerate than those housed in private facilities; the result is an apples-to-oranges comparison.

For example, state prisons usually hold maximum-security prisoners, death row prisoners, female prisoners, juveniles convicted as adults, and prisoners with serious medical and mental health needs, all of whom are more costly to incarcerate, while privatized prisons typically do not have similar populations. Thus, the average per diem costs at state-run prisons are skewed upwards while the per diem costs for private prisons are artificially lowered. Other expenses that should be taken into consideration include DOC central office administrative expenses – such as prisoner classification, contract monitoring, sentence calculation, and review of disciplinary and grievance decisions.

In fact, according to a 2010 report by the State Auditor's office in Arizona, when all relevant costs were considered, private prisons were actually *more* expensive to operate in that state. Whether private prisons achieve savings is addressed in more detail in the attached PCI policy brief.

Another factor that should be considered with respect to prison privatization is public safety. This is because the business model of the private prison industry, which has to cut costs (and thus corners) in order to generate profit, results in security deficiencies that lead to incidents such as escapes, riots, violence and assorted other problems. Private prisons tend to pay lower wages than in the public sector and provide fewer benefits and less training, which results in higher staff turnover – and, as a result, less experienced staff and greater institutional instability, which leads to adverse incidents such as violence and escapes. All four of the firms that submitted responses to New Hampshire’s RFP issued last year – CCA, GEO Group, MTC and Hunt Companies (which includes LaSalle Corrections) – have extensive records of problems in other jurisdictions.

For example, the escape of three dangerous prisoners from an MTC-operated facility in Arizona in 2010 that resulted in a double homicide and nationwide manhunt. Or a May 2012 riot at the CCA-operated Adams County Correctional Facility in Mississippi, during which prisoners set fires, took hostages and murdered a CCA employee. Or GEO Group’s April 2012 loss of three prison contracts in Mississippi, which occurred after a federal court issued a scathing order that cited systemic sexual abuse at the GEO-run Walnut Grove Youth Correctional Facility. LaSalle Corrections has been cited for failed inspections and a March 2012 escape at its Burnet County Jail in Texas. Just last week, 39 Ohio prisoners were returned to a state prison following multiple fights at the CCA-owned Lake Erie Correctional Institution that broke out on January 26 and 27.

Vermont has housed some of its prisoners in out-of-state private prisons for many years. Vermont prisoners protested and vandalized their housing unit at the CCA-run West Tennessee Detention Facility in May 2010, leading prison staff to use chemical agents to regain control. “The complaints we hear [are] that there is no programming, no counseling, no industry and no education” at the CCA prison, stated Vermont Defender General Matthew Valerio, according to a *Times Argus* article. In May 2009, the Vermont Department of Corrections removed all its prisoners from the privately-operated Perry County Detention Center, citing inadequately trained staff, poor security and inmate-on-inmate violence. Other prior incidents have included the sexual abuse of Vermont prisoners at the CCA-operated Marion Adjustment Center in Kentucky, and prisoners rioting at another CCA Kentucky facility; the latter incident resulted in a \$10,000 fine against the company.

As a result of Vermont’s experience with privately-operated prisons, Vermont State Rep. Suzi Wizowaty has introduced legislation, H.28, that would prohibit the state from housing prisoners in privatized facilities.

Given that cost savings through prison privatization are equivocal and subject to debate, that the goal of private prisons is to generate profit rather than ensure public safety, and that public safety may be placed at risk based on the past track records of private prison firms, there is no apparent need – or advantage to the state or taxpayers – to utilize private prisons in New Hampshire. Thus, HB 443-FN would benefit the state by ensuring that state and county prisoners are solely held in government-operated correctional facilities that serve the public interest and are accountable to the public, unlike prisons managed by private companies, which have the goal of generating profit and are accountable to their shareholders and corporate executives.

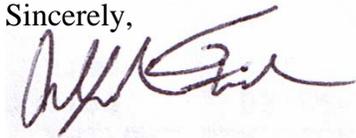
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In the interest of full disclosure, beyond my extensive research into prison privatization, which resulted in the book chapters and many other reports and articles I have authored, as well as my testimony before a Congressional subcommittee, etc., my knowledge about private prisons stems from empirical experience, as I was incarcerated at a CCA-operated facility myself in the 1990s prior to my release in 1999. I therefore know how private prisons operate both from an insider's perspective as well as that of an outside expert. Although some may question the messenger, the message concerning the risks posed by private prisons is clear.

In closing, I am attaching a PCI Fact Sheet on private prisons that summarizes some of the points that should be considered with respect to the private prison industry, including those mentioned above as well as the fact that several studies have found that prisoners released from privately-operated facilities have higher recidivism rates.

Please contact me should you require any additional information that I may be able to provide.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Alex Friedmann', is written over a light-colored rectangular background.

Alex Friedmann
Associate Director, HRDC

Enclosures

Private Corrections Institute, Inc.

January 2012

POLICY BRIEF

DO PRIVATE PRISONS SAVE MONEY?

Summary:

The research on cost savings through prison privatization, dating back to a 1996 report by the U.S. Government Accountability Office, is equivocal. Some studies have shown savings while others indicate that private prisons are actually more expensive when all relevant cost factors are considered. Many of the studies that have found savings through privatization were funded by the private prison industry or organizations that receive funding from private prison companies. Most independent studies have determined that cost savings are inconclusive at best and illusory at worst. Even assuming that private prisons save money for taxpayers (e.g., that such savings do not go toward corporate profits), we get what we pay. Do we really want to be outsourcing the incarceration and supervision of dangerous prisoners to the *lowest bidder*?

Best Studies:

A Sept. 2010 report by Arizona's Office of the Auditor General found that privately-operated prisons housing minimum-security state prisoners actually cost \$.33 per diem *more* than state prisons (\$46.81 per diem in state prisons vs. \$47.14 in private prisons), while private prisons that house medium-security state prisoners cost \$7.76 per diem *more* than state facilities (\$48.13 per diem in state prisons vs. \$55.89 in private prisons), after adjusting for comparable costs. See: http://www.azauditor.gov/Reports/State_Agencies/Agencies/Corrections_Department_of/Performance/10-08/10-08.pdf

An April 2010 policy brief by the Florida Center for Fiscal and Economic Policy found "the process implemented to gauge compliance with these policy objectives in Florida is flawed and as a result the evidence to show that private prisons cost less to operate or are more effective at reducing recidivism than public prisons is questionable." Further, the policy brief noted there were a number of factors that made cost comparisons between public and privately-run prisons difficult, and that apparent cost savings were the result of an "inappropriate comparison." For example, "There are differences between inmates in private and public prisons: those who are more costly to handle are usually incarcerated in public prisons, such as those who are the highest security risks and those with extensive medical issues." See: www.fcfe.org/attachments/20100409--Private%20Prisons

A 2007 meta-analysis study by the University of Utah, Utah Criminal Justice Center, College of Social Work found that private prisons provide no particular benefit as opposed to publicly-operated prisons, and that cost savings are not guaranteed and “appear minimal.” See: <http://ucjc.law.utah.edu/wp-content/uploads/86.pdf>

Questionable Studies:

Any research conducted by the Reason Foundation, a libertarian think-tank that is strongly in favor of privatization of government services, including prison privatization. The Reason Foundation has received funding from private prison companies since at least the mid-1990s. More recently, according to the Reason Foundation’s “Carrying the Torch of Freedom” list of donors, private prison firm GEO Group was listed as a Platinum Level supporter while CCA was listed as a Gold Level supporter. Reason Foundation studies are not peer-reviewed, and Reason does not disclose in its research that it accepts money from private prison companies. See: http://privateci.org/private_pics/Reason2009.pdf

Any studies that rely on research by disgraced former University of Florida professor Charles Thomas, who was fined \$20,000 by the Florida Commission on Ethics in 1999 because he was conducting private prison research at the same time he owned stock in private prison companies, sat on the board of Prison Realty Trust (a CCA spin-off), and was paid \$3 million by Prison Realty Trust/CCA. *Private Capitol Punishment: The Florida Model*, by Ken Kopczynski (2004). See: <http://privateci.org/book.htm>

A December 2007 Vanderbilt University study titled “Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons,” which was funded by both CCA and the Association for Private Correctional and Treatment Organizations (APTCTO), a trade group for private companies that provide prison services.

Cost Comparison Issues:

It is often difficult to ensure an apples-to-apples comparison of public vs. private prisons due to a number of factors. These factors include the number of prisoners housed at each type of facility who have comparable security levels, sentence lengths, medical and mental health conditions, institutional disciplinary records and other relevant characteristics.

In general, private prisons do not house maximum-security prisoners, death row prisoners, juveniles sentenced to adult prisons, or prisoners who have serious mental health or medical conditions, all of whom are more expensive to incarcerate. As the state prison system must incarcerate all such offenders, the per-diem cost for public prisons is skewed upwards while the per diem rate for private prisons is kept artificially low.

For example, according to a December 2008 report by Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA), the state's private prison contracts do not "assure that private prisons serve inmates with comparable medical and mental health conditions as those housed in public prisons." The OPPAGA report found that "As special needs inmates are more expensive to serve than other inmates, the difference in the populations of public and private prisons results in the state shouldering a greater proportion of the cost of housing these inmates. As a result, the requirement that the private prisons operate at 7% lower cost than state facilities is undermined." According to the OPPAGA report, private prisons in Florida house a much lower percentage of special needs prisoners with medical or mental health conditions than state prisons, except at just one privately-operated facility. See: <http://www.oppaga.state.fl.us/reports/pdf/0871rpt.pdf>

Female prisoners are also more expensive to incarcerate, usually due to increased medical costs, and few women's prisons are privately operated (in Florida, only one of five main correctional institutions housing women is run by a private company – Gadsden CI).

Further, the Department of Correction's central office has overhead expenses that often are not factored in to public vs. private prison cost comparisons. For example, the central office must still provide certain services for prisoners at private prisons, such as sentence calculation and review of grievances and disciplinary decisions, with these overhead costs being part of the per diem rate calculated for state prisons but usually not for private prisons.

These factors, as well as other costs such as monitoring and oversight of private prisons by state corrections officials, and prisoner transportation expenses, make it hard to determine what cost savings, if any, are achieved through prison privatization.

Although a 2010 OPPAGA cost comparison study found that prison privatization in Florida had resulted in savings to the state, OPPAGA had previously said in an April 2009 research memorandum that, "While significant, these cost savings estimates are subject to caveats and should be evaluated cautiously. Cost comparisons between public and private prisons require a number of adjustments because prisons differ on several factors, including size and location; facility design and age; the physical and mental health of the inmates served; inmate custody level; and the educational, vocational, behavioral, and substance abuse programs provided. Adjustments used to 'equalize' Florida's public and private prisons historically have been controversial." Further, in a 2011 report to the Senate Criminal Justice Committee, OPPAGA noted that although the state had "achieved reductions in some costs" through private prisons, "comparability issues limit the conclusiveness of cost savings analyses." See: www.oppaga.state.fl.us/monitordocs/reports/pdf/2-8-11_FLCorrectional_Privatization.pdf

Quotes and Findings:

“There is a mixed bag of research out there. ... It’s not as black and white and cut and dried as we would like.” – *CCA spokesman Steve Owen, on cost savings, quoted in a New York Times article, May 18, 2011.*

www.nytimes.com/2011/05/19/us/19prisons.html?pagewanted=all

“There is no compelling evidence that the privatization of prisons has actually resulted in savings ... there is no definitive conclusion regarding the actual cost differences between prisons operated by [the Florida] DOC and those that are privately operated.” – *Florida Center for Fiscal and Economic Policy, “Are Florida’s Private Prisons Keeping Their Promise?” April 2010.*

www.fcfep.org/attachments/20100409--Private%20Prisons

“[A]ccording to the Department’s Fiscal Year 2009 Operating Per Capita Cost Report, the State paid private prisons a higher per inmate rate than it spent on equivalent services at state-operated facilities in fiscal year 2009. After adjusting state and private rates to make them more comparable, the Department’s study found that rates paid to private facilities were higher for both minimum- and medium-custody beds—the two categories of beds for which the Department contracts.” – *Arizona Office of the Auditor General, “Department of Corrections - Prison Population Growth,” September 2010, Report No. 10-08.*

http://www.azauditor.gov/Reports/State_Agencies/Agencies/Corrections_Department_of/Performance/10-08/10-08.pdf

“Results suggest privately managed prisons provide no clear benefit or detriment. Cost savings from privatizing prisons are not guaranteed and appear minimal. Quality of confinement is similar across privately and publicly managed systems, with publicly managed prisons delivering slightly better skills training and having slightly fewer inmate grievances.” – *University of Utah, Utah Criminal Justice Center, College of Social Work, “Prison Privatization: A Meta-Analysis of Cost Effectiveness and Quality of Confinement Indicators,” April 26, 2007.*

<http://ucjc.law.utah.edu/wp-content/uploads/86.pdf>

“Results vary somewhat, but when inconsistencies and research errors are adjusted the savings associated with investing in private prisons appear dubious. Even minimal savings are far from guaranteed, and many studies claiming otherwise have been criticized for their methodology. The available data belies the oft-claimed economic benefits of private contracting, and points to the practice being an unreliable approach toward financial stability.” – *The Sentencing Project, “Too Good to be True: Private Prisons in America,” January 2012.*

http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf

“[T]he state now budgets on average about \$56 per inmate per day for each *additional* prison inmate – often referred to as overcrowding costs per inmate. By comparison, the contracted rate for ... new out of state [private] prison beds is higher, about \$63 per inmate per day.”

– *California Legislative Analyst’s Office (LAO), in a 2007 letter to state Senator Gloria Romero. Cited in a Private Corrections Institute press release, May 21, 2010.*

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“Contrasting the inaccurate per diem rate in [a 2010 report by the Reason Foundation] with the cost of housing inmates in out-of-state private prisons cannot even be considered an apples-to-oranges comparison. It’s more like an apples-to-fish comparison.” – *Ken Kopczynski, Private Corrections Institute Director, in the same May 21, 2010 press release.*

<https://www.prisonlegalnews.org/%28S%28ou4tagii3nnjzx550fyx0p45%29%29/displayListServ.aspx?listid=5320&AspxAutoDetectCookieSupport=1>

“We’ve tried it and it did not work. In my opinion, they can’t do it better for less.”

– *Arkansas Dept. of Correction Director Larry Norris, on cost savings through prison privatization, quoted in Arkansas News, January 13, 2006.*

<http://www.privateci.org/quotes.html>

“I’ve seen so many different attempts to compare the two that I don’t know if there is a simple way to evaluate one versus the other.” – *ACA president and Davidson County (TN) Sheriff Daron Hall, who worked for CCA in the 1990s, on comparing private vs. public prison costs.*

<http://www.concordmonitor.com/article/322211/nh-officials-mull-private-prison-bids?page=0,2>



The Private Corrections Institute (PCI) is a non-profit citizen watchdog organization that works to educate the public about the significant dangers and pitfalls associated with the privatization of correctional services. PCI maintains an online collection of news reports and other resources related to the private prison industry, and holds the position that for-profit prisons have no place in a free and democratic society. For more information: www.privateci.org.

Private Corrections Institute, Inc.

QUICK FACTS ABOUT PRISON PRIVATIZATION

The private prison industry has a sordid past, dating from the turn of the 20th century when inmates were handed over to private businesses under the “convict lease” system, primarily in the South. Abuses by private prison companies that used inmates for forced labor, including a high rate of prisoner deaths, led government agencies to abandon the concept of for-profit incarceration.

The industry revived in the early 1980s due largely to tough-on-crime sentencing laws and the war on drugs, which resulted in an increase in the prison population. A number of companies were formed to capitalize on the developing market for housing inmates, including the industry leader, Corrections Corp. of America (CCA), the industry’s second-largest firm, GEO Group (previously known as Wackenhut Corrections), and Cornell Corrections, MTC, Civigenics and various other smaller companies. The industry expanded in the 1990s due to a crackdown on illegal immigration but has leveled off in more recent years.

Today, approximately 8% of state and federal prisoners are held in privately-operated facilities, totaling over 129,000 inmates. Government agencies contract with private prison companies for several reasons, primarily anticipated cost savings and a need for additional bed space. However, there are a number of negative factors related to private prisons that should be considered, including the following:

Staff Turnover Rate

Staffing costs account for about 80% of operational expenses for prisons whether they are public or private. Thus, one of the main ways that private prison companies reduce costs to increase their profit margins is by cutting staffing expenses. This is typically done by staffing private prisons with fewer employees than in the public sector, paying lower wages, offering fewer or less costly benefits, providing less training and leaving unfilled positions vacant for extended periods of time. Due to these factors, privatized prisons tend to have much higher staff turnover rates. According to the last self-reported industry statistics from 2000, the average private prison turnover rate was 53% while the public prison turnover rate was 16%. The FY 2008 turnover rate at seven state-contracted private prisons in Texas was 90% (60% at privately-run state jails), compared with a 24% turnover rate at public prisons. Higher turnover rates lead to understaffing and less experienced staff in private prisons, which has resulted in riots, hostage situations, assaults, sexual abuse and escapes.

Higher Rates of Violence

Several studies have shown that privately-operated prisons experience higher rates of inmate violence, including a 2004 article in the Federal Probation Journal that found private prisons had more than twice as many inmate-on-inmate assaults than in public prisons, and a 2001 Bureau of Justice Assistance report that found private prisons had 50% more inmate-on-inmate assaults and almost 50% more inmate-on-staff assaults than in public prisons with comparable security levels.

Lack of Public Accountability

Private prison firms are accountable to their shareholders, not the public, and add a layer of secrecy when citizens want to learn about problems or misconduct at privately-operated facilities. In 2008, CCA general counsel Gus Puryear admitted that CCA did not disclose detailed audit reports to contracting government agencies. In response to a question from U.S. Sen. Dianne Feinstein he stated, “we did not make customers aware of these documents.” A CCA whistleblower who worked in the company’s quality assurance office has accused CCA of keeping two sets of audit reports, and providing less detailed reports to government agencies (reported in *TIME*, March 13, 2008). Because private prison companies are private entities, they are not covered by the Freedom of Information Act (FOIA) or most state public records statutes.

Alleged Cost Savings

Although private prison companies claim they can save government agencies up to 30%, only minimal savings if any have been documented. It is difficult to obtain an “apples to apples” comparison of public and private facilities due to a number of factors. For example, public prison systems have higher costs because they house maximum security, death row and female prisoners, who are more expensive to incarcerate. Few private prisons house such inmates. Also, private prison firms have a record of “cherry picking” prisoners with few medical or mental health problems, which passes the costs associated with housing those inmates to the public prison system. Further, in some cases private prison companies have a cap on medical expenses they must pay for inmates, with medical costs above the cap paid by the public prison system. These factors, as well as other costs such as monitoring and oversight of private prisons by public corrections officials, make it hard to determine what costs savings, if any, are achieved through privatization. According to a 2010 report by the State Auditor’s Office in Arizona, private prisons housing minimum- and medium-security inmates actually cost the state more than publicly-run prisons.

Dubious Research

The private prison industry relies on a number of allies and research studies to justify its claims of cost savings and proficiency; however, most of these sources have industry connections or vested financial interests. For example, the Reason Foundation, a strong proponent of prison privatization, has received funding from private prison firms. The American Correctional Association (ACA) receives sponsorship money from CCA, GEO Group and other private prison companies for its bi-annual conferences. Former University of Florida Prof. Charles Thomas conducted supposedly impartial research on the private prison industry until it was learned that he owned private prison stock, had been paid \$3 million for consulting for a private prison firm, and served on the board of Prison Realty Trust (a CCA spin-off). Thomas was fined \$20,000 by the Florida Commission on Ethics and stepped down from his University position.

Recidivism

A 2003 study by the Florida Dept. of Corrections, Florida State University and Correctional Privatization Commission found that in “only one of thirty-six comparisons was there evidence that private prisons were more effective than public prisons in terms of reducing recidivism.” A research study published in *Crime and Delinquency* (2008), which tracked over 23,000 prison releasees, found that “private prison inmates had a greater hazard of recidivism in all eight models tested, six of which were statistically significant.”