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Privatization of Correctional Facilities

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ABSTRACT

The topic of this research paper is the privatization of correctional facilities. The purpose is to provide an understanding as to the benefits that may be derived from the privatization of either a new or existing correctional facility as well as attempting to educate law enforcement and correctional agency managers on some of the finer points of the legal issues that will need to be addressed in such an undertaking. The importance of trying to understand this issue is that most governments do not have the financial means to fund for additional facilities that are to be used to incarcerate that government's inmate population. Therefore, the privatization of their existing facility or the building of a new facility that will be privately owned and operated may be a viable alternative. The methodology used for this research includes the review of textbooks, periodicals, newspaper articles and a telephonic survey of both private correctional facility management and county and federal agency management that utilize private correctional facilities. Without question, the findings determined that the privatization provides many benefits far outweighing any potential legal liability issues. In addition, it was determined that in some instances when the local government did not house local inmates, the speculation that it would be used to house other types of inmates proved to be a financial plus for the local government. Therefore, considering the fact that the local governments will continue to be under fiscal constraints, the privatization of correctional facilities is an extremely viable alternative.

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INTRODUCTION

A recent press release issued by the United States Department of Justice determined that as of December 31, 2003, state and federal authorities held 1,470,045 prisoners in custody. This was a 2.1 percent increase from the previous year. In comparing federal and state figures, the Federal Bureau of Prisons, which is the largest correctional system in the United States, had an increase of 5.8 percent while the state prison population had an increase of 1.6 percent. In addition, during 2003, the number of female inmates grew 3.6 percent, which was higher than the 2.0 percent increase in male population. According to U.S. Prison Population (2004), as of December 31, 2003, there were a total of 101,729 females under state or federal jurisdiction.

Other significant items presented in the news release revealed that as of the end of 2003, state prisons were operating at their capacity to as much as 16 percent above capacity. In comparison, the federal prison system was being operated at 39 percent above capacity. During the same time frame, privately operated correctional facilities incarcerated 95,522 inmates. These numbers accounted for 5.7 percent of the state inmate population and 12.6 percent of the federal inmate population. According to U.S. Prison Population (2004), since the end of 2000, the number of federal inmates incarcerated in private facilities increased more than 40 percent, while the state inmate population incarcerated in private facilities decreased 1.8 percent.

As most of the members of the criminal justice community are aware, the United States incarcerates more people than any other industrialized nation. Approximately 800,000 persons are arrested for violent offenses, and 2.5 million more are arrested for serious property crimes each year. It has been estimated that the need for prison beds

is growing at a rate of 1,000 per week (Pollack, 1997, p. 384). A significant number of individual States were previously under or are currently under court mandate to reduce their respective inmate populations and improve prison conditions. The United States spends in excess of \$20 billion a year to ensure that facilities are available for inmates. As the United States continues to provide the resources in support of prison expansion, the taxpayers will have spent \$10 billion dollars over the period of a few years to increase prison capacity by 170,000 new beds (Bryce, 1993, p. 7).

Over the course of the last fifteen years, private enterprise has made a tremendous impact in the area of privatizing correctional facilities. These enterprises have been very successful due to their ability to finance, build and operate facilities either for their own benefit or for the benefit of federal, state and local governments. This success, however, has not come easy and the public should not assume that privatization efforts have always been successful.

During the early stages of privatization, there were many questions that needed to be answered. Several of these attempts to privatize have failed due to either the lack of experience and/or the lack of financial resources. Bowman, Hakim & Siedenstat (1993) determined that in some of these instances, neither the private or government entities were able to meet the financial needs in order to be successful. There was also the need to answer questions related to the benefits of privatization. It was important to determine what the reaction of the taxpayer's would be if a government was considering privatization in any form and points as they related to the legal issues of the delegation of authority, civil liability and the use of force.

Therefore, the issues to be examined by this paper were whether or not privatization of correctional institutions was a viable alternative for many of government entities which of course will significantly benefit the associated law enforcement and correctional agencies. The purpose of this research was to identify the specific issues that originally concerned opponents of privatization and to show how, if at all, these issues were addressed.

The intended method of inquiry for this research project included: textbooks, periodicals, newspaper articles and a telephonic survey of both private correctional facility management and county and federal agency management that utilize a private correctional facility. The intended outcome of this research paper is to provide an understanding of some of the benefits of privatization of correctional facilities and to educate the law enforcement and correctional agency managers on how some of the legal issues have been addressed. The field of law enforcement that will most be affected by this research are law enforcement and correctional agency management who have an interest in understanding the benefits of the privatization of either their current or possible future correctional facility.

REVIEW OF LITERATURE

Currently, only a few of the States are keeping pace with the demand for prison beds. Other States are struggling with their efforts in dealing with the issue of their growing inmate populations. As for the legislative entities, they continue to deal with the most violent offenders by passing laws requiring mandatory sentences or sentences that are administered without the possibility of parole as a response to the fear expressed by their citizens. As previously identified, the States are operating over

capacity but are not dealing with the associated costs of the mandatory sentencing legislation.

On the federal government side of the issue, the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 generated similar problems as those of the various State governments. This federal legislation, along with other sentencing policies that were implemented, resulted in the placing of over 40,000 inmates in federal pre-trial detention. Half of the 98 federal judicial districts were operating under “serious to critical space-availability” conditions, while 16 percent were operating under “emergency” conditions. The United States Marshals Service is the federal agency that is responsible for assuming custody of defendants who are arrested by all other federal law enforcement agencies. According to the Publication of the United States Marshals Service (2001), the Marshals Service assumes the responsibility for the housing and transportation of these individuals from the time they enter federal custody until their release or designation to the Federal Bureau of Prisons.

The Marshals Service receives approximately 140,000 prisoners on a yearly basis. Each day the Marshals Service houses more than 35,000 of these prisoners in federal, state and local jails throughout the country. Bryce (1993) reports that in order to house approximately 60 percent of this population, the Service contracts with approximately 2,000 state and local governments to rent space. A number of these correctional facilities are privately owned and/or operated (US Marshal Publication, 2000, p. 1).

In the Western District of Texas, which consists of 69 counties located from the western end of the state to central Texas, the Marshals Service averages a daily

prisoner population of 4,500 inmates. Approximately 40 percent of this population is being housed in a facility which is either privately owned and/or operated (US Marshal Publication, 2004, p.1).

The history of other federal agencies turning to private facilities for the incarceration of adults actually began with federal initiatives back in 1979. At that time, the United States Immigration and Naturalization Service (INS) contracted out some of its housing for illegal aliens prior to their deportation. By 1986, one-fourth of the INS detainee population was being housed in private facilities. In 1981, the Federal Bureau of Prisons (FBOP) began contracting out the housing of their pre-release detainee population to private operators. As of 1986, the FBOP was contracting out the housing of over 3,000 inmates at 330 community treatment centers located throughout the country (McDonald, 1990, p. 25).

In the midst of this inmate population explosion is private industry, ready to take its business philosophies and accommodate the various governments. Many governmental entities now turn to the private sector to obtain the needed assistance in obtaining housing services for the increased inmate population and to avoid any additional court orders that are mandating compliance to certain standards.

The opponents, however, see the influences of private industry as a process which will freely violate individual constitutional rights and obstruct due process and equal protections under the law. Based on these opposing views, it is important to remember that private enterprise would not be in the business of operating prisons if it was not profitable to do so. These private businesses would not consider large

investments of capital unless there was going to be a return on that investment (Pollack, 1997, p. 385).

These opponents are extremely concerned that the constitutional rights of inmates may be outweighed by the profit motive philosophy of the business. It is believed that this will lead to financial shortcuts at the expense of inmates. Some of the concerns that have been expressed against allowing the private sector to take over correctional duties include the government's constitutional responsibility being delegated to a private enterprise; the State's reluctance to accept liability in cases in which employees of a private corporation violate and deprive an inmate of his constitutional rights while the inmate is in custody in a privately operated facility; and the use of force used by employees of a private corporation against inmates (Pollack, 1997, p. 385).

For the most part, the managers of these private correctional facilities were extremely cooperative at providing detailed information as to the relationship between the companies they represent and the local governments. Unfortunately, that was not necessarily the case with the response received from the local governments. Some of the local government representatives did not return telephone calls. The information obtained from the method of inquiry was used to supplement the information obtained from the other materials that were used in this research.

Private business has not only invested in the build-to-operate-transfer agreement process, but they have also been paid over \$200 million a year by state agencies for other services. Many of these state agencies not only stated that the services received were extremely cost effective, but also that the agencies would not have been able to

provide them at a comparable cost. Therefore, not only would these state agencies continue to use the contracting services, but they would look at expanding those services (Pollack, 1997, p. 389). These types of experiences with private contracting have strongly suggested that governments can obtain the same level of services at a lower cost when provided by a private company.

Other forms of privatization for correctional services exist and are offered as three separate components which are construction, finance and operations. In the beginning of any new construction project, there is a process of design and construction that takes place. During this process, it will be very important that representatives from both the government and private sector coordinate their efforts. The second component will ultimately determine ownership. While traditionally, jails are owned by governments, correctional facilities have remained under the ownership of private enterprise. As part of the third component, no matter who ultimately has ownership, either public or private employees can staff, manage and operate the facility (McDonald, 1990, p. 68).

As previously identified, prisons, jails, and detention centers have been built and owned by private firms and leased to governments in a number of different states. It is possible to have on one side, the entire process of site and acquisition, design and construction being conducted by a private entity under a letter of intent from a government entity with the understanding that the government will be involved in the decision making process at every stage. On the other side, the entire process can be conducted strictly by the private entity on speculation that a facility will be needed and

that the government will eventually sign an agreement to use the facility (McDonald, 1990, p. 68).

Various services such as medical and dental care, school programs, counseling, nursing homes, halfway houses, juvenile facilities, drug treatment facilities and alcohol treatment programs are currently being provided to state governments by private industry. Many of these services are being provided within a prison environment. Local, state and federal governments have been using privately operated correctional facilities extensively since 1985. Sixteen states have private facilities operating within their borders. In Texas alone, there are approximately 28 privately run facilities (Pollack, 1997, p. 390).

From other research conducted, the privatization planning process was described in six different stages which consisted of the agency's decision whether to privatize; the establishment of specific goals; the organization of the system; analysis of the legal/liability issues; the preparation of the request for proposal (RFP); and the evaluation and control (Bowman, Hakim & Seidenstat, 1993, p. 3).

According to the source of information, one of the main motivations for a local government to privatize was to reduce costs while maintaining the quality of service. A local government would need to consider the existing system's cost estimates that include any direct costs of operating the agency, identify any hidden costs carried by other governmental agencies, and determine opportunity costs of the fixed inputs (e.g. land and physical facilities).

All of these costs should then be compared with the computation approach that is being used by the private sector. The result of all this information should provide a

maximum cost per each bed that the government would be willing to pay if it were to consider shifting financing, construction and management to the private sector.

In order to be successful at privatization, it will be very important to establish explicit goals and objectives and assign these issues relative weights. The goals should reflect what the legislators and government officials wish the private company to attain and need and make it a part of the request for proposal (Bowman, Hakim & Seidenstat, 1993, p. 3).

The supporters of privatization have long held that private contractors have the advantage of being able to build facilities faster than any type of government construction. This is definitely supported after a review of the bidding process that local governments are required to go through. In addition, as part of these general procedures, the local government entities will be relying on the taxpayers to initially approve some type of bond action that will support payment of a specific project.

During the planning stage, contractors will be requested to submit bids and a budget is then developed. The bond will be voted upon when after all the issues about the bond are agreed to. Since the process of reaching agreements on the bond and placing the project out to bid and starting construction on the project does not occur overnight, the cost of building will likely increase (Logan & Rausch, 1985, p. 313).

In contrast, private corporations will generally have an identified list of contractors and are very familiar with the current costs of building a facility. Instead of a bond issue, the private entity can enter into an agreement in which the costs of construction are deferred through a lease purchase agreement. This agreement uses private financing to build and operate a correctional facility. The government agency will then be

required to lease the prison and the private corporation will enter into a fee for service arrangement. When the lease period ends, the government has the option of buying the facility from the builder at a reduced amount of the original costs, and will then be responsible to pay only existing operating costs (Logan & Rausch, 1985, p. 315).

From the federal perspective, when the FBOP and INS first began using private contractors, their ventures had some common factors. Since the original scope of the contracting was kept to a small number of detainees, the private facilities were only housing a small fraction of the total population for which each agency was responsible for. In addition, these agencies ensured that oversight was provided in the form of monitoring.

The federal government decided to incorporate the ability to open and close these private facilities more quickly than if it had been a traditional institution because the respective federal populations increased and decreased frequently. Based on the ability of the private sector to accommodate this, federal officials at both agencies reported that private operators offer many advantages such as speed and flexibility (McDonald, 1990, p. 26).

As previously identified, those opposed to privatization have an issue with allowing the government to delegate certain responsibilities to a private entity. If one were to review the history of corrections, it will indicate that these governments at one time had no problem delegating some responsibilities to privately run correctional facilities such as contract labor in the form of chain gangs. Many of these delegated responsibilities are no longer allowed because of lawsuits and court decisions, as well as the opinions that discourage state and private competition (Pollack, 1997, p. 391).

However, because governments in most cases do not have the necessary capital to continue to provide the entire realm of correctional services, the government has found itself in a position that it has no choice but to delegate these authorities over to the private sector. In reviewing the specific services that have been delegated to the private contractors over the course of the last 50 years, there has not been one contract that has been found invalid by either the United States Supreme Court or any state Supreme Court. Ironically, it was found that there is both statutory and case law in support of this delegation (Pollack, 1997, p. 392).

In order to ensure that privatization of correctional facilities does not become a significant issue, many governments are making sure that laws are passed that grant the statutory authority needed that will allow the state to contract out for private bidding. The specific statutes that allow the government to delegate authority in the correctional area are known as enabling statutes. As of the late 1990s, twenty-five states passed legislation that approved enabling statutes (Pollack, 1997, p. 392).

Other sources reviewed during this research identified additional concerns as they relate to inmate's constitutional rights. Specifically, the question being asked is which entity is responsible for the civil liability when the private entity is operating a correctional facility.

Individual rights and constitutional guarantees for due process contained in the Fifth and Fourteenth Amendments apply only to the acts of the government agency, not private industry. The federal courts have applied one of three tests in determining if state action exists: 1) the public function test, 2) the close nexus test; and 3) the state

compulsion test. It has been determined that the legal community has applied all three to a private prison scenario (Pollack, 1997, p. 393).

When a state government delegates a power that is *traditionally and exclusively reserved for the State* to a private entity, this is known as the public function test. The close nexus-courts concept is more concerned with the type of relationship between the state and action that is being challenged and as to whether these actions can be distinguished from one another. The state compulsion test requires a determination as to whether it is ultimately the obligation of the state.

There is a valid concern that states will try to avoid civil liability by the delegation of their authority to private entities. The courts, however, have found that the “private entity must be considered to have acted under color of law, and its acts and omissions must be considered actions of the state” (Pollack, 1997, p. 394). It is suggested that in order to avoid this scenario, any contract between the state and the private entity should include an indemnification agreement. This agreement will require that the private business pay all costs associated with lawsuits arising out of the operation of the facility (Pollack, 1997, p. 395).

Other questions being asked was whether the private operator should be in the business of adjudicating charges against an inmate. These charges would not be related to the charges the inmate would be in custody for, but related to any new violations that occur while the inmate is in the custody of the private operator. Additionally, will employees of the private corporation abuse the process of disciplinary hearings for violations that occur while in the facility and create charges in order to keep the inmates in custody for longer periods of time (McDonald, 1990, p. 34).

In looking at both these questions, it was determined that there was more of a concern regarding the first issue. While it is understood that maintaining discipline in a correctional institution is of vital importance, the task of allowing private employees to pass judgment on inmates is part of that process. Obviously, if the violation is a serious one, the matter will need to be turned over to the judicial system that has jurisdiction over the matter (McDonald, 1990, p. 34).

The state will have a vested interest in retaining exclusive control over the power to order punishment. It is felt that any delegation of this authority is an act of abdication that the state should not enter into. In reviewing the response as to the second question, it was determined that this issue would be less problematic. While it is possible that a private operator will abuse the disciplinary system in order to keep its inmate head count high, if the states are providing the necessary oversight and retains the power of judgment, the private operator's ability to keep an inmate for a longer period of time will be limited (McDonald, 1990, p. 35).

As previously discussed, enabling statute legislation will be fundamental to the contracting process. The statute will need to specifically address rules, regulations, licensing, policies and procedures directly involving the operation of any facility as well as designate the staff, facilities, budgets and responsible agencies for the oversight of those rules, regulations, licensing, policies and procedures.

These statutes will need to allow judges the authority to sentence defendants to private institutions. Failure to do so would lead to a jurisdictional challenge of any sentence to a private prison. Legal expertise should also be provided in the negotiating,

drafting and executing of all contracts in support of the operation of these facilities (Pollack, 1997, p. 395).

Yet another significant issue that concerns the opponents of privatization is the use of force and the use of deadly force by employees of the private corporation. Legal opinions have expressed that the same statutory authority that gives state employees the right to use force and deadly force can be slightly modified to authorize private correctional employees to use that force. In order to facilitate this, it would be important to ensure that these private employees meet or exceed the same training requirements as those in a governmental facility (Pollack, 1997, p. 397).

As it directly relates to the use of deadly force, research reviewed reached the conclusion that while the use of deadly force is a very significant one, it is unlikely that it will become an issue due in large part to the fact that detention officers seldom have a need to use deadly force (McDonald, 1990, p. 34). According to the information presented, the idea of authorizing private employees to meet the same training requirements was taken a step further. It was felt that states should consider designating private detention officers as peace officers only within the confines of the facility, while transporting prisoners and while pursuing escapees. When considering peace officer status, this would require that these officers receive the same training as that provided to government detention officers (McDonald, 1990, p. 36).

As for the procedures regarding the training, hiring and firing of private employees, these issues would need to be addressed during the initial contract negotiations. If the private entities are to be liable for any constitutional violation, the failure of the private entity to provide the necessary training will be cause for them to be

liable. The best way to deal with the use of force and use of deadly force issue by private correctional officers is to require these officers to be trained to the same level as government employees (Pollack, 1997, p. 397).

METHODOLOGY

With the United States incarcerating more inmates than any other industrialized nation consisting of approximately 800,000 defendants being arrested for violent offenses, and 2.5 million others being arrested for serious property crimes each year, will the federal, state and local jurisdictions have a sufficient number of prison beds available for this increasing population? The hypothesis proposes to show that the privatization of existing facilities or the building of a new facility that will be privately owned and/or operated may be a viable alternative given that all potential concerns are addressed either through the solicitation process or the actual contract.

Considering that private enterprise has made a tremendous impact in the area of privatization of correctional facilities, will they continue to be a benefit to the federal, state and local governments? Of significant concern to the taxpayers was whether the government agencies were also considering transferring liabilities based on issues related to the delegation of authority, civil liability and the use of force.

By logic alone, it can be perceived that the United States and other local jurisdictions might not have a choice but to rely on these private corporations to continue to provide alternatives means to finance, build and operate correctional facilities.

As a means to determine what the latest information on this subject is, research conducted included textbooks, periodicals, newspaper articles. The specific method of

inquiry used was a telephonic survey. This survey included contacting not only operation managers working at existing private correctional facilities, but also contacting the respective county Sheriff or Chief Deputy of the county in which the private correctional facility was located. The size and nature of the survey was limited to private correctional facilities and sheriff departments located in various parts of Texas and Southern New Mexico. The response rate for the survey was high due to the fact that these representatives were continuously contacted until a response could be obtained.

FINDINGS

The significant arguments that have been raised in the continued debate over whether or not to privatize correctional facilities can be narrowed down to a few major areas of concern. The telephonic survey that was conducted asked questions with respect to propriety, costs, quality, flexibility, security, liability, accountability and integrity.

For the purposes of this survey, both private corporate managers and county managers (Sheriff's department personnel) were contacted and asked to describe their general concerns relative to the areas previously listed. These issues are being presented along with the most frequently encountered arguments which either oppose or favor privatization.

Many public sector managers opposing privatization initially felt that the government did not have the legal ability to delegate their responsibility or authority to private sector entities as it related to the housing of inmates. There was also the feeling of distrust that these private operators would place the priority of making money over

providing to the needs of inmates they were now responsible to house. The local judicial system had a concern that they would lose authority over these inmates due to the fact that the inmates were now in the custody of a private contractor. The final major concern was the loss of public servant jobs especially in instances in which an existing facility was transferred to a private contractor.

The concern regarding the ability to delegate authority was quickly responded to by not only the courts, but also by numerous State Legislatures and Congress. These governmental bureaucracies overwhelmingly supported, through statutory laws, the contracting of correctional institutions as being an essential service that a private contractor could perform. In addressing another legal matter, it was further determined that private contractors have no authority for sentence computations, classification or discipline of inmates without government oversight. This would therefore eliminate the possibility that a contractor could regulate prison populations for profit gain.

Those in favor of privatization felt that by contracting out, there would be a quicker response to demands for beds. Contractors have the incentive to govern fairly and to lower costs. Legally, both the public and private entities would be accountable for constitutional standards. The need to monitor the contract would add an independent review.

Those factions that were opposed to privatization had concerns that profit margins would be automatically added into contract costs. There was also the potential for a contractor to submit a low-ball bid just to obtain the contract and then come back in and increase the costs of the original contract. Many governmental managers were initially concerned about whether the contract would become more costly in the long

term and whether or not there would be a requirement for additional follow-on contracts that would need to be added at a later date.

However, it was determined that the financing, site selections and construction could be done much quicker and at a lesser expensive by a private corporation than if the project was done by a government entity. This primarily was due to the fact that private corporations weren't encumbered by rigid procurement regulations. The private companies were also able to produce more efficient designs.

By allowing private contractors to bid, there was additional competition which helped not only to reduce the costs of construction, but also allowed for an increase in accountability by government workers and unions. The government participants were able to reach agreements that would provide for either fixed fees or in some cases fees that were adjusted by the CPI. It was also determined that a private contractor was able to hire a very effective personnel management team that would be able to offer incentive to its employees which would reduce not only sick leave but also overtime paid to those employees that would be covering those off sick.

The entities not favoring privatization as it relates to quality were concerned that the contractor's work would be inferior primarily due to under-paid and under-trained staff. In addition, they felt that the contractor would only agree to house non-problematic inmates.

By contracting out, it was determined that both the public and private sectors were motivated to compete. The issue regarding under-trained staff was negated with contract stipulations that required employees of the private contractor to be trained to at least the same standard as those required by government employees. In some cases,

studies demonstrated that the quality of the privately managed facilities were superior in selected areas. In addition, by having the type and custody of inmates specified in the solicitation and contract, the contractor was required to house all inmates.

Entities opposing privatization were concerned that a contractor would refuse any new elements in the statement of work without renegotiating the entire contract. There was also the potential for the contract services to be disrupted by adverse public reaction, legal challenges, partisan politics or union activities. This was believed to cause the contractor to refuse to cooperate with other public agencies.

As it is turning out, by contracting, the process is allowing for greater flexibility by promoting innovation, experimentation, changes in programs as well as expansion or contraction of services offered by the contractor. The governments have been able to avoid capital budget limits through leasing or by having the costs spread over time. It has also reduced the level of bureaucracy in management decisions. The process has also been able to circumvent civil service rules that may have otherwise interfered with good personnel management. The flexibility of these contracts also promoted specialization which has helped deal with special needs offenders.

Those against privatization felt that by using contractors, public and inmate safety would be jeopardized due to inadequate levels of staffing and training. Others believed that the government's ability to respond to emergencies at the facility would be limited. These opponents also felt that by using private employees, there was a risk of not only a high employee turnover during the transition but of the potential for these employees to go on strike.

As it turned out, these concerns were easily addressed by having the contract dictate response parameters, staffing and training levels. Clearly, the needs of that public organization in which private contractors may exceed what the public entity provides should be met. In addition, it was determined that private employees were less likely to participate in a labor dispute because the contractor then becomes vulnerable to termination. As the public sector has borne out, good security is the result of good management; therefore, as long as the private sector installed a responsible management, good security would occur.

Of significant concern to opponents was whether the installation of a private entity would allow the government to evade liability. Now in analyzing this concern, the public government members can possibly see this as a benefit. But on the other hand, these opponents also were concerned about increased costs to the public by an increased exposure by acts of private employees which would obviously place the risk on the taxpayers.

It has been shown that by contracting with private corporations, privatization has actually decreased the risks for which government remains liable. The risks were decreased due to higher quality performance and indemnification by the contractor and contractually required insurance which was specified in the solicitation by the government.

Concerns in this area primarily dealt with the potential in reduction in accountability of the private contractor especially if the contractor was insulated from the public and was not being subjected to political controls. By contracting out it was felt that both the public and private entities would be able to diffuse responsibility for any

liability that has occurred and would potentially encourage the government to neglect or avoid its responsibility. Then once the contract was in effect, opponents felt that there would be additional difficulty in the writing and enforcing of other contracts.

As in other areas, it was determined that contracting actually has increased accountability because controls can easily be added to the entire process. It became an easier process for the government to monitor and control a contractor than it was to do the same for themselves because the contractor usually specifies for a dedicated staff to perform only oversight functions. The contractor also has the ability to promote and develop the use of objective performance measures for its employees. Due to their nature, a contract facility generally becomes more visible and accountable in contrast to public operated prisons. These contractors are forced to be more responsive to the attitudes and needs of local communities, especially when conducting site surveys for the location of a new prison.

For the most part, the opponents for privatization were concerned with the potential for corruption (i.e. political spoils, conflicts of interest, bribes and kickbacks) between those involved in the decisions to privatize.

However, it has been found that contracting gives managers more of a vested interest in the reputation of the institution. Contracting promotes good management and practices which support integrity and ethics and because company reputation is so important, many companies devote more personnel to specifically address and investigate potential problems.

In summary, privatization limits up front government costs; allows for faster design, construction, and start up; costs savings; increased operational monitoring;

increased flexibility; competition is good and allows for new approaches to business; decentralization; specialization when necessary; better accountability; and decreased liability exposure for the public entity.

DISCUSSION/CONCLUSIONS

The fact that many state and local governments are being faced with overcrowding facilities should not come as a surprise. With pressure from constituents, legislators continue to pass “get tough on crime” laws that are greatly contributing to the overcrowding. Unfortunately, these same legislators are not working on legislation that will provide the much needed resources to allow law enforcement officials to implement these laws. Correctional officials are being faced with the issue of releasing violent offenders prior to them having served a considerable portion of their sentences.

In the federal system, officials are being forced to review cases and release drug offenders that were not sentenced pursuant to the mandatory guidelines so that less serious offenders who were sentenced pursuant to the guidelines can be housed. Governments are looking favorably on these private enterprises that are willing to finance, design, build and operate correctional facilities because of similar issues in both the federal and state systems (Pollack, 1997, p. 404).

As long as the public, as taxpayers, are unwilling to pay for the building of additional correctional facilities or, through legislation, deal with the unacceptable living conditions that currently exists at many prisons, allowing private business to step in may be the best option. Especially when these private groups are able to finance, build and administer correctional facilities with continued success, there is also no room for the

public to place any pressures on legislators to investigate correctional policies, living conditions, and alternatives to incarceration (Pollack, 1997, p. 404).

With the options of allowing private correctional institutions to handle the day-to-day activities of operations, governments can feel a sense of accomplishment, especially when the operation is cost effective. However, the government cannot allow these private operators that much of a free-hand while operating a facility. The government needs to ensure that it stays involved by providing extensive accountability and oversight. Without any accountability and oversight, the private operation could revert to the oppressive ways of the early contracting processes.

Numerous criminologists feel that while the government may be in the position to delegate some of its correctional authority to private industry; it cannot delegate the responsibility for those that are incarcerated to anyone other than themselves. In order for inmates to continue to receive constitutionally mandated treatment, these governments must remain accountable. In addition, if inmates are to continue to have redress for any constitutional violations, the court system must remain accessible to them. In order for these rights to remain intact, the government's efforts at accountability and oversight must remain effective (Pollack, 1997, p. 405).

In order to make sure that the governments are able to be in a position to provide this accountability and oversight, they need to make sure that these concerns are addressed in any contract between the government entity and private operator. By providing necessary clauses in these contracts, the government will be able to address issues related to indemnification agreements, performance bonds, review procedures and training criteria. These factors will give the government the ability to provide the

necessary accountability and oversight to the extent that exceeds what is occurring in other government entities (Pollack, 1997, p. 406).

Based on the information reviewed, it appears that the businesses that have ventured into the privatization of correctional facilities for the most part are very successful, due in large part to the way they have marketed themselves. Clearly, based on the politics of the local jurisdictions, they may not be wanted at all. However, in most cases, communities sometimes even compete in an attempt to ensure that a correctional facility will be build within that community.

The researcher discovered how the building of a private facility in a poor county can do wonders for the local economy. The number of additional jobs that are created and the number of persons that now have better paying jobs equates to more dollars being spent within the community. Not only is it positive from an employee's perspective, but many of these private corporations are making significant contributions to the community's social programs.

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Table 1

***Federal, State and private adult correctional facilities
(by characteristics, 1995 and 2000)***

	<u>Total</u>		<u>Federal</u>		<u>State</u>		<u>Private</u>	
Facility Characteristics	1995	2000	1995	2000	1995	2000	1995	2000
Number (a)	1,464	1,668	77	84	1,277	1,320	110	264
Confinement	1,160	1,208	75	84	1,056	1,023	29	101
Community-based	304	460	2	0	221	297	81	163
Rated Capacity	975,719	1,278,471	64,500	83,113	891,826	1,090,225	19,294	105,133
% of capacity occupied	105%	102%	125%	134%	104%	101%	86%	89%
<u>Security Level</u>								
Maximum (b)	298	332	9	11	286	317	3	4
Medium	463	522	25	29	432	428	6	665
Minimum/Low	703	814	43	44	559	575	101	195
<u>Size (c)</u>								
Fewer than 100 inmates	325	357	2	0	239	22	84	132
100 to 249	290	289	2	2	279	244	9	43
250 to 749	349	360	20	10	317	304	12	46
750 to 1,499	345	421	41	49	299	339	5	33
1,500 to 2,499	100	176	10	22	90	144	0	10
2,500 or more	55	65	2	1	53	64	0	0

Note: a) Classification of federal facilities changed between 1995 and 2000 with 38 camp facilities being administratively merged with 36 confinement facilities and the reclassification of 12 facilities as private; b) Includes facilities with the security designations super maximum, close and high; c) Based on average daily population , July 1, 1999 to June 30, 2000.

Source: U.S. Department of Justice
Bureau of Justice Statistics, 2000

Table 2

*Private adult correctional facility management firms
(by capacity of facilities under contract, 1997 and 2001)*

Management firm	Capacity of all facilities under contract (a)				
	1997	1998	1999	2000	2001
Alternative Programs, Inc.	340	340	340	340	340
Avalon Correctional Services, Inc. (b)	150	350	350	350	710
The Bobby Ross Group	2,825	464	464	464	464
CiviGenics, Inc.	3,563	3,563	2,791	2,795	2,243
Cornell Corrections, Inc.	3,882	5,916	7,138	8,464	8,424
Correctional Services Corporation	2,629	6,891	6,517	4,241	3,891
Correctional Systems, Inc.	170	272	272	272	272
Corrections Corporation of America	50,866	67,286	68,256	62,431	62,231
Dominion Correctional Services, Inc.	NA	NA	NA	2,064	2,064
The GRW Corporation	362	362	362	614	614
Management & Training Corporation	4,259	6,447	9,177	10,214	10,566
Maranatha Production Company	500	500	500	500	500
U.S. Corrections Corporation	5,259	NA	NA	NA	NA
Wackenhut Corrections Corporation (c)	22,257	24,541	26,704	26,704	26,704
Total	97,062	116,932	122,871	119,453	119,023

Note: a) Includes operation facilities, facilities under construction, and planned expansions of existing facilities; b) Formerly Avalon Community Services, Inc.; c) Wackenhut Corrections Corporation did not respond to the survey and the date was estimated by the Source.

Source: Private Adult Correctional Facility Census
Center for Studies in Criminology and Law, 2002