

**THE BILL BLACKWOOD
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**Privatization of Jail Facilities:
Should Bexar Count Privatize?**

A Policy Research Project
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ABSTRACT

The constitution of the State of Texas establishes the office of Sheriff and all legal power and authorization for the primary responsibilities of the office of Sheriff are cited throughout Vernon's Annotated Texas Statutes, including Civil Statutes, Penal Code, and Code of Criminal Procedures. One of the major duties of the Sheriff is keeper of the jail.

The following research project is investigation on whether contracting the detentions or corrections functions of the Bexar County Sheriff's Department to a private contractor is in the best interest of the citizens of Bexar County. It will examine a number of key issues and public concerns for safety.

In the final analysis, the project will suggest that it is in the best interest of the citizens of Bexar County not to privatize its jail facilities. This research may assist other agencies pondering the question of privatization.

Introduction

Between 1980 and 1997 the inmate population of jails, detention center, and prisons across the United States tripled in size and continues to grow. Currently, there are over 1.6 million people held in these facilities nationwide.(Beck) As pressure from the courts grows to reduce the overcrowded conditions of these facilities a financial nightmare for most government budgets has been created. Many governments have chosen to privatize their detention or correction facilities. This project is an investigation on whether contracting the detentions or corrections functions of the Bexar County Sheriff's Department to private contractor is feasible, with respect to the costs and savings to the county versus the safety of the public.

This project will investigate several areas of concern:

1. Costs and savings to the citizens of Bexar County by eliminating 900 employment positions and contract to a private company.
2. Legal issues of liability of lawsuits; who is responsible private contractor or government entity.
3. The reliability of the contractor to honor the contract.
4. Accountability of inmates rights.
5. The public safety of Bexar County citizens arising from security breaches or escapes.
6. Caliber of the officers entrusted with duties of Detention Officer.

The information gathered during this research was obtained from various sources including articles from criminal and justice journals, bulletins, and magazines. A survey was also conducted of agencies across the state of Texas of whether their facility is government or privately operated. Several interviews were conducted with persons in government and academics.

The information provided in this research should assist any local or county governing entities such as commissioners court or city council as well as the administrators of the respective law enforcement agencies tasked with operating jail or detention facilities in determining the decision to privatize their facilities.

Historical, Legal, or Theoretical Context

To research this project you must examine the history of both the Sheriff's Department as well as the history of the private sector in managing and operating jail or detention facilities. Let us first examine the office of the Sheriff and where his authority is granted.

The office of the Sheriff is a very ancient one dating back to the ninth century and can be found in the institution of the King's reeves of Great Britain. His duty was to watch over the royal interests in the towns or shires, what we commonly know today as counties. His title was thusly changed to that of "shire-reeve", eventually the words become the single word of "sheriff". The office of Sheriff was established by the constitution of the State of Texas, Article 5, Section 23 (Texas Constitution).

The first Sheriff of Bexar County was elected by the voters on May 1, 1837 (Manual Policy and Procedure 2-3) and commissioned by the President of the Republic, Sam Houston.

In accordance with Article 6869 of Vernon's Civil Statutes the Sheriff has the power to select and appoint one or more deputies to assist in executing his duties (Vernon's Civil Statutes). In addition, Article 5116 provides that the Sheriff is the keeper

of the jail in his county. The authority of additional deputy sheriffs' as detention officers is found Civil Statutes of Article 6871(Vernon's Civil Statutes) which provides that the Sheriff may employ such number of guards as is necessary for the safekeeping of prisoners and the security of jails.

The idea of privately operated prisons and jails is not a recent innovation. A review of penal history in America demonstrates that private sector involvement in prison management extends from 1840 to the present day (Zupan 1). However, early experiences with privatization often ended amid charges of brutality against and exploitation of inmates, corruption amongst private officials, public scandals, and lurid journalistic exposes.

In 1833, Alexis de Tocquevill and Gustave de Beaumont expressed grave reservations about the role of private contractors in the administration of penal facilities. With regard to the contracting system in their native France they wrote:

With us the same person contracts for the food, clothing, labour, and sanitary department of the convicts-a system equally injurious to the convict and the discipline of the prison; to the convict because the contractor, who sees nothing but a money affair in such a bargain, speculates on the victuals as he does upon the labour...and if the labour is less productive than he calculated upon, he tries to balance his loss by spending less for the support of the convicts, with which he is equally charged.... The contractor, regarding the convict as a labouring machine, thinks only how he can use him to the greatest advantage for himself ...and he cares little if the expenses of the convict are made to the injury of good order. (Monk 264)

For much of the nineteenth century and as late as the 1960's, prisons and jails were privately owned and operated in many parts of America. Texas leased its penitentiary

(which survives today as Huntsville "Walls" unit) to private contractors. The era of for-profit corrections, stretching roughly from 1840 to 1960, came to an end.

Then in the early 1980's the private sector began to emerge again. The specific of private companies in business to operate prisons and jails is difficult to identify. There are 15 major independent security companies and numerous "mom and pop" facilities which are established to bid on specific jurisdiction (Zupan Chapter 7). Texas legislative action in 1989 gave authority to contract with private company corrections responsibilities (government code sec 351.101). Presently there are 40 states that have statutes that authorize contracts for full scale management of correctional facilities (Badalmenti). As of April 1997, 27 states had one or more private adult secure correctional facilities operating or planned totaling 127 facilities (Poole Table 1). Texas had 39 of those facilities, with a capacity of 24,467 (Poole Table 1). A trend in prison privatization in a ten year period showed a growth in 1987 of 3122 to 85,201 in 1996 (Poole graph-2). However there is no breakdown of where the majority lies between state prisons or local jails, both having a distinct difference in operating functions.

Review of Literature or Practice

There is no denying that privatization is clearly becoming a method to remedy overcrowded facilities and the cost of operating them. However, all levels of government, local, county, state, or federal must be extremely cautious when approaching and undertaking this endeavor.

Monroe County, Florida

Monroe County's experiment with jail privatization ended at midnight on March 1, 1990, twelve months and fourteen days after it began. Sheriff's deputies, led by their SWAT team and backed up by local and state law enforcement officers reasserted control over their aging and troubled jail. The intentional display of force served unmistakable notice to the inmates that the county deputies had replaced private guards. There was nothing subtle about the end of jail privatization in Monroe County. By most accounts corporate corrections failed miserably and everyone knew it.

Six years later, the issue of who will run this Florida jail seems settled for the citizens of Monroe County which built a new jail and employed, state certified deputies to insure the proper care and custody of inmates. Wackenhut, who had previously taken over the jail on February 14, 1990, on a contract that paid \$47 dollars a day for each inmate. The company promised to comply with the training standards of the state and the staffing required by Florida Administrative Code. Wackenhut also promised to conduct background investigations on new employee's. Understaffing continued to be a problem. Wackenhut's plan to use t.v. cameras and structure changes to increase the ratio of inmates to officers (therefore reducing staff) did not meet state requirements. As a result of threatened State action, January 1991, Wackenhut requested additional money for staffing claiming the County withheld critical information pertaining to staffing. The County refused to pay and the parties agreed to terminate the contract. The jail reverted back the Sheriff, who consequently operated the facility at a cost of just over \$48.00 per inmate per day. (Hanson 1)

Tuscaloosa County, Alabama

After 10 years and four separate jail management companies, the Tuscaloosa County, Alabama Sheriff's Office regained operational control of its jail. Let's start with security. Escapes were not uncommon at the privately operated facility. In one case an inmate used hack saw blades over a three-night period to saw through the bars which were visible from a security observation point. The inmates escaped about 4:00 a.m. but were not known to be missing until 7:00 a.m., when the employee noticed the hole in the perimeter window. After a delay of an additional 30 minutes the Sheriff's office was notified.

Another escape during inmate visitation. The private contractor, despite request from the Sheriff's office did not require that a visitor produce a photo identification. Nor did the contractor hold the photo ID while the visitor was in the facility (for contact visit) to prevent the inmate from exiting the facility, posing as the visitor. In this case, the inmate collected winter outer wear from the visitor and exited through four controlled doors and release by contracted employees. When the Sheriff assumed charge of the search, photographs and fingerprints were requested. The sheriff's office was notified that photographs were not available because the private contractor did not print or photograph inmates

until their release. Lax security resulted in a facility that appeared to be run by the inmates rather than by facility administrators. Complaints about the private guards ranged from assaults, theft, extortion, promoting prostitution, and sale of contraband. Besides lax security, incorrect booking information caused numerous problems throughout our court system, even an accurate list of who was detained in the jail was not available (Sexton 13).

Government Accounting Office (GAO)

On June 8, 1995, a Senate Subcommittee expressed interest and concerns in prison issues. The GAO addressed those issues and conducted an extensive study. The GAO reviewed several studies that compared privatized and public correctional facilities in terms of operational costs and quality of service. The GAO found that in the studies comparing facilities in California, Tennessee, Washington, Texas, and New Mexico it could not draw any conclusions about cost savings or quality of service, since the four studies that assessed operational costs indicated little difference or mixed results, and the two studies that addressed quality of life reported either equivocal findings or no differences between private and public facilities. The studies provided little information applicable to various correctional settings, since states may differ widely in terms of correctional philosophy, economic factors, and inmate population characteristics. The GAO also found that some of the studies were not based on actual facilities but upon hypothetical facilities (in Texas) because similar state-run facilities did not exist. In fiscal 1996 the Bureau of Prisons budget proposal reflected a commitment to increase the use of privatized correctional facilities that were projected to be operational that year. However in June 1996 the Justice Department reversed its plans for using private contractors to operate the facilities identified in the 1996 and 1997 budget proposals. In explaining its decision to staff these facilities with BOP employees, the Justice Department noted that it was "unable contractually to reduce the risk of a strike or walk out" of correctional officers employed by private firms. In none of the states studied, did the public correctional employee have the right to strike.(GAO/GGD)

Youngstown, Ohio

In Youngstown, Ohio a private corrections facility is owned and operated by Corrections Corporations of America. In the last 10 months this facility has been plagued by numerous problems. As reported by the Columbus Dispatch, it provides a good example of what can go wrong when states privatize corrections. Reported on 1/14/98, The Youngstown prison opened in May with complaints about lack of regulations. Reported 1/29/98, claims that Ohio taxpayers will save money if the state hires private companies to manage its prisons system may be debatable. Reported 2/25/98, the stabbing death of an inmate in a private Youngstown prison occurred two days after a

judge rejected a plea to move hundreds of prisoners from the facility and five days before lawmakers resumed work on a bill that would regulate it. Reported 3/14/98, two dead men and more than a dozen stabbings at a private Youngstown prison have inspired the mayor to seek a court order forcing outside oversight of the facility. Reported 5/8/98, two Members of the Correctional Institution Inspection Committee were denied access to the facility last week by the private contractor when they arrived to inspect Youngstown prison. Reported 7/26/98, six escapes, including four murders from the Youngstown prison provides a good indication that private prisons are not the way to go for Ohio, stated State Representative Bob Hagan. And last reported 7/30/98, Governor George Voinovich has asked U.S. Attorney General Janet Reno and federal officials to review the Youngstown prison situation in hopes of finding a way to close the embattled facility (Columbus Dispatch).

A survey was conducted of the top ten Counties in the State of Texas and it was determined that none of these counties including Bexar County uses private contract companies to perform security in their detention facilities (Survey).

Discussion of Relevant Issues

At the end of 1997 there was 1.6 million people held in local, state, and federal facilities with the population on the rise. The look toward private facilities will increase but there are numerous issue that should be taken seriously and closely examined. Private facilities have the appearance to be cheap but are they really.

*Why is it cheaper? About 85% of the costs of running a jail come from personnel. Private companies pay less and provide fewer benefits particularly retirement. This immediately and directly affects recruitment of staff and reflects in their commitment to training. In October 1990, complaints from experienced officers were made public (Hanson 5). They alleged Wackenhut replaced full time certified people with Uncertified, part-time earning \$7.50 per hour.

*When is cheaper more expensive? When problems arise. Shortly after Wackenhut took over a special response team had to be sent to the jail to move inmates and restore order. It is no longer cheaper when bids are adjusted upward or the contractor submits a bill to cover the cost of additional after they have been hired.

*When is cheaper more expensive? When it does not work. The commission allocated additional \$1 million dollars to resume jail operations. About \$300,000.00 went to

Wackenhut and \$305,000.00 for transition expenses. Five years after the contract ended Monroe County was still paying overtime to cover officers attending training that should have been paid by the contractor (Hanson 5)

*When is cheaper even more expensive? When you are named in a lawsuit. When the ACLU sues in federal court over strip searches of misdemeanants and the sheriff is named as a defendant even though Wackenhut employees were responsible, extra legal fees follow (Hanson 5).

The cost and savings to the citizens of Bexar County really cannot be predicted, as evident in Monroe County, Florida. The perception was that savings would occur. But after just 1 year, privatization was a flop and the county was in the red over \$1 million dollars (Hanson -5). A study by the Texas Public Foundation Policy in July of 1998 stated recommendation that the Sheriff should use public-private competition to minimize the cost of jail operations. It states that at current levels there would be a saving of \$8,100,000.00 for 1998 and 1999 (Cox 13-16). This study in its self is already obsolete. The study was conducted using the jail population which was at 3200 inmates in May 1998, with projections that the population would not drastically change (Cox 13-16). As of October 1st, 1998 the jail population soared to over 3700 inmates an increase of nearly 20% in just 4 months. Using their projected numbers the county would already be scrambling to meet the needs to stay with compliance of state guidelines.

Another issue is the caliber of officer. The Bexar County Sheriff's Office scrutinizes its applicants and has a rigid processing procedure used to weed out applicants to get the best of the best. All applicants go through testing both written and physical, oral board, a medical physical as well as a psychological testing, and last an extensive background investigation (Civil Service Rules). Sheriff's Officers have more of a since professional

esteem and take pride in their profession. Sheriff deputies training is extensive and ongoing. The new officer's initial training is approximately 8 weeks in the classroom (320 hours) and then on the job training (ojt) with a training officer for an additional 80 hours. This compared to just a 40 hour class that the private companies require. The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) as the official licensing agency of the State of Texas has issued a standard in the code of ethics and it has been adopted by the Bexar County Sheriff's Office for all deputy sheriffs' within the department to emulate and follow. It is set forth as follows:

**Bexar County Sheriff's Department
Code of Ethics**

As a Bexar County Sheriff's deputy my fundamental duty is to serve mankind; safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all persons to liberty, equality, and justice. (Manual Policy and Procedures 2-5).

The safety of the citizens of Bexar County is important when making decisions on operations of the jail facility. The jail is right in the middle of down town San Antonio in close proximity of a residential neighborhood. The new facility, now ten years old has had only one escape and that was in the first few weeks of operation enhanced by the use of sub-standard material, which since then has been replaced and the escapee's were recaptured swiftly. However, the old county facility, now leased and operated by Wackenhut Corporation for use as a privately operated parole facility has been plagued by numerous escapes, the latest being January 24, 1998 where the inmate cut a hole in the

fence and jumped to the ground. An EMS unit driving by observed a man in dirty white clothes limping, so they stopped and discovered he had a broken leg. This was the only only thing that impeded his escape (Express News 5B). Another incident several years ago from the same facility resulted in an escape of four inmates. One a federal prisoner, who was a high ranking drug lord in the Mexican Cartel, was awaiting trial and was never recaptured.

The accountability of inmates rights and liability of lawsuits is another key issue. The video footage is disturbing in the extreme, an apparent tableau of the worst sort of bullying prison guard violence; guards kicking seemingly compliant prisoners, swearing at them, beating them with riot sticks, and electric prods, and a German Shepard biting the legs of an inmate. The tape reportedly recorded by prison officials for use of training of all things-shows a September 1996 disturbance at a privately operated wing of Brazoria County, Texas (Gillespie 1). The results were cancellation of the contract and control of the facility returned to the Sheriff causing the county to scramble and hire new officers to run the facility. Also as a result a Federal lawsuit was filed by the inmates.

Who is responsible, federal law under title 42 usc, does not allow county government to give up its liability.

Conclusion

The purpose of this project has been to examine whether it is in the best interest of the Citizens of Bexar County to privatize its jail or detention facilities. With the inmate population on the rise and the need to reduce the overcrowd conditions, but also ensure

public safety and inmate rights, is this the way Bexar County wants to go!

A number of cases have been examined at all levels of government and numerous issues stated. The most important issues examined were public safety, caliber of officers, legal issues of liability of lawsuits, inmates rights, and the reliability of the contractor to honor the contract, and the savings to the county. There are many other concerns that should be examined such as strikes, bankruptcy, riots, rule enforcement punishment and parole. A reminder a county or government entity cannot delegate its liability, especially in civil rights areas to a private contractor.

The savings if any should not outweigh the safety and the responsibilities placed on the citizens and the government of Bexar County. History is our best teacher and the citizens and law makers should not be placed in another position where a lawsuit could be filed again, as was in the past in 1984, "Devonish vs Garza."

The recommendation would be to continue the public control and management of all the jail and detention facilities by trained and certified Sheriff deputies, including any future constructed facilities and taking control of the Laredo Street facility which is under lease to a private contractor. This will ensure the accountability of the duties, liabilities responsibilities, and to the public and the inmate rights. Sheriff Policy and Procedures are already in place with a well trained staff, dedicated to excellence.

It is the conclusion, to continue to be legitimate and morally significant, the authority to govern those behind bars, to deprive citizens of their liberty, to coerce (and even kill) them, must remain in the hands of government authorities.

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