

Prison Privatization Turns Twenty-Five: The Evolution of a Mature  
Private Prison Industry in the United States

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Introduction

In a 1989 study of privatization policy, John Donahue made the case that without ongoing competition among service providers and diligent contract monitoring by public managers prison privatization would not generate any real cost savings or service quality improvements to the public. Absent healthy competition for contracts and well monitored performance, any cost savings realized through privatization would go toward private profits rather than public savings and quality of service would, at best, remain the same (Donahue, 1989). Donahue was writing in the waning days of the Reagan-Thatcher era, a time when market-based solutions to social problems and reducing the size of government were all the rage. The prison privatization idea was just taking off and little outcome research had been completed, though a few preliminary studies suggested that governments could possibly save money by privatizing correctional facilities. Donahue was skeptical that the lofty claims of privatization advocates – of lower cost and better quality – were truly possible and cautioned that preliminary results “may not be representative of what a fully developed private corrections market would look like” (p. 158). Noting that competition was “far easier to praise than to arrange,” Donahue posed a question that could only be answered in the future: “will the incarceration industry, once it matures, be competitive?” (p. 165).

A quarter century has now passed since the birth of the modern prison privatization industry, giving us the perspective of hindsight to help us in answering Donahue's question. Do we have a competitive private prison industry that helps to lower costs and improve quality? Is the industry more innovative than the public sector, and has it brought service improvements to the prisons it runs? Ultimately, has prison privatization been a good deal for the public? To help in answering these questions, we will take a look at the structure of the private prison industry that has evolved and the level of competition that exists in the marketplace for incarceration services. Placing the developing private prison business within an industrial life cycle framework, we will see that the realities of the mature prison privatization market do not match the promise of innovation and quality improvements voiced by privatization advocates twenty-five years ago. The private prison industry is dominated by a few large suppliers (an *oligopoly* of producers) and only a handful of buyers (an *oligopsony* of consumers) with the result that any real cost advantage of privatization is marginal at best, private prison programs have become virtually indistinguishable from public prisons, and the promise of innovation remains unfulfilled. We'll walk through each of these points in turn, beginning with a brief review of privatization philosophy and a discussion of outcome research. Next we'll look at the marketplace for incarceration services, examining how private incarceration services are becoming increasingly concentrated in fewer companies as time goes on. While the decrease in the number of viable incarceration companies limits the extent of competition (and cost and innovative advantage), it has also served to eliminate a number of incompetent providers. At the same time, few government agencies purchase

incarceration services, further reducing competition, while the industry as a whole has not proved to be innovative at all.

### Why Privatization?

The private prison “market” that emerged in the 1980’s was qualitatively different than the privatization model that existed in an earlier era. The “old” model of privatization was based on convict leasing, or selling the labor of inmates on the open market. It was commonplace in early American prisons to contract-out the labor of convicts to private entrepreneurs (Durham, 1989). While the practice extended well into the twentieth century, it became increasingly disreputable as incidents involving abusive treatment of inmates and insider contracting arrangements were brought to light (Durham, 1989; Schneider, 1999) and raised concerns about the appropriateness of private sector involvement in corrections. The notion of “market failure,” that the government must step in to provide essential services when the private sector fails to adequately provide them, gained influence in public administration in the U. S. during the 1920’s through the writings of Arthur C. Pigou. In Pigou’s (1920) view, correctional services are a “public good,” as opposed to a “private good” that can be produced in a free market. By definition, “public goods” are products or services that are characterized by non-rival and non-excludable consumption. Correctional services are “non-rival” in that “consumption” of incarceration services by one inmate does not preclude another offender’s “consumption” (non-rival consumption), while everyone in society (arguably) benefits from enhanced public safety whether they pay for it or not (non-excludable consumption). This being the case, there is no true market for these “goods” to be traded

and the government has the responsibility to allocate these goods administratively. And since everyone pays for public services (like corrections) through taxes, Pigou argued that tax revenue should be distributed to public employees and expended on facilities owned by the public.

The labor union movement also played a role in the demise of privatized prison labor. Organized labor lobbied against the practice, arguing that it unfairly depressed wages and cut into the private sector job market. The demise of private prisons and contract labor was sealed in 1929 when Congress passed the Hawes-Cooper Act and related legislation that banned prison-made goods from interstate commerce. By 1940, virtually every state had passed legislation banning the importation of prison-made goods from other states as well (Clear and Cole, 1997).

A variation on the old prison privatization idea resurfaced in the U.S. forty years later as part of a broader movement to downsize government and improve the efficiency of its operations. The idea that government should “steer and not row” – that it should oversee the delivery of services through contracts with third parties rather than deliver the services itself – was popularized in the New Public Management (NPM) (Kettl, 2000) and reinventing government (Osborne & Gaebler, 1992) philosophies. NPM sought to shrink the size of government and impose market-style discipline on its operations (Kettl, 2000). The term originated in the 1980s to describe governmental reforms in New Zealand but broadened to include many Thatcher-era government reforms in the UK and reforms in the US under the rubric of the “reinventing government movement” (Osborne & Gaebler, 1992). Both projects called for separating government’s role as purchaser of service (its policy function) from its role as a direct services provider (its service delivery

function). The idea was that privatization of service delivery would introduce greater competition, serving to contain costs while fostering innovation and higher quality in services delivered. Privatization advocates drew intellectual support from the public choice school of economics, arguing that government monopoly of service delivery leads to lower quality and higher cost (Girard, Mohr, Deller, & Halstead, 2009).

Advocates of the public choice perspective (Niskanen, 1971; Buchanan & Tullock, 1972; Downs & Steiner, 1990) argued that the old Pigovian view of the public sector was based on an erroneous assumption that public managers were motivated by public interest. They argued that all managers, whether public or private, were essentially motivated by self interest. Where private managers seek to maximize self interest through the generation of profits, public managers likewise pursue self interest in that they seek to maximize their authority, the number of staff under their control, and the size of their budgets. In the public choice view, inefficiency is the net effect of this self interest; infusing competition into the delivery of public goods and services is the antidote.

Riding the wave of public choice economics during the Reagan years and the NPM and reinventing government movements under the Clinton administration during the 1990's, the number of inmates housed in private prisons in the U.S. grew from 3,000 in 1987, to 15,000 in 1990, 50,000 in 1995, 90,000 in 2000, and 120,000 in 2007 (Thomas 1995, BJS, 2007). By 2000, there were of 158 private correctional facilities operating in the US (Austin & Coventry, 2001) and, collectively, private facilities held about 6% of all inmates in the country (BJS, 2008). In 2000, however, the growth of private prisons stagnated, with the percentage of inmates held in private custody remaining relatively constant – at between 6.5-7.5% (BJS, 2009). As of 2008, the federal

government and 27 states pursue the policy of contracting with private prison companies for placement of a portion of their inmates (BJS, 2009).

### Research Synopsis

Twenty-five years of research on prison privatization has failed to put to rest the question of which sector does a better job in managing inmates. Most early criminal justice studies of private and public prisons were designed to compare costs of operation (Logan & McGriff, 1989; Sellers, 1989; Texas Sunset Advisory Commission, 1991; Legislative Budget Committee, 1996; Tennessee Select Oversight Committee, 1995). Much of this research was sponsored by state-level agencies interested in finding out simply if states could save money by privatizing some of their prisons. While the studies generally found private prisons to be cheaper – in the neighborhood of 8% to 15% – the findings are suspect in that many jurisdictions stipulate up front that bids from the private sector must be lower than public sector costs in order for privatization to move forward. A Government Accountability Office (GAO) report noted the difficulty in making valid comparisons between public and private sector costs of running a prison and criticized the methodological validity of the body of existing privatization cost comparison research (GAO, 1996). McDonald et al. (1998) updated the GAO analysis of existing comparative studies and concluded that the jury is still out on whether private facilities are more cost effective than public ones. But factors other than what sector manages a facility probably exert greater influence on cost effectiveness: Pratt & Maahs (1999) conducted a meta-analysis of 33 cost studies of private and public prisons and found that facility size, age, and security level were more predictive of facility costs than private versus public ownership.

As not all government jurisdictions adopt a policy of prison privatization, researchers have tried to find characteristics that distinguish governments that do privatize from those that don't. The likelihood that a state will privatize prisons is positively correlated with the state's incarceration rate (Schneider, 1999) and with a conservative electorate (Price & Riccucci, 2005; Nicholson-Crotty, 2004). However, despite labor union opposition to privatization in general, the likelihood of prison privatization in a state does not seem to be correlated with union strength (Price & Riccucci, 2005; Nicholson-Crotty, 2004). Overall, it is likely that a convergence of historical factors, including the popularity of free market political ideology, federal court limits on prison overcrowding, and state government budgeting woes helped to move the policy forward (Culp, 2005).

Studies of the quality of services provided by private prisons have also not produced consistent results. The body of studies suggests that, system wide, private prisons provide a quality of inmate care on par with public facilities (Austin & Coventry, 2001; Lukemeyer & McCorkle, 2006). However, Perrone & Pratt (2003) found considerable variation in the methodological quality of studies of conditions of confinement in public vs. private facilities and questioned the wisdom of relying on the current body of work. As with the GAO (1996) meta analysis of cost effectiveness, no clear answer on which sector has the advantage in terms of program quality has emerged. As most of the service quality research relies on case studies of one or two facilities, it is not possible to generalize to the sector in general on the basis of the findings (Perrone & Pratt, 2003). Nonetheless, it is reasonably safe to say that where low performance has been observed in private prisons, studies suggest that it is a more a product of poorly

written contracts or inadequate contract monitoring than inherent differences between the public and private sectors (Austin & Coventry, 2001; Collins, 2001; Culp, 2005).

Within the field of public administration, some researchers have studied privatization policy in general and government contracting in particular, but only a few have focused attention on private prisons specifically (and only as a part of a broader public sector study – e.g., Donahue, 1989; Cooper, 2003; Savas, 2005). Using data from the 1998 American State Administrators Project, a large scale survey of agency heads from ninety-five different types of agencies in all fifty states, Brudney, Fernandez, Ryu, and Wright (2004) found that more than 70% of state government agencies contract out for the delivery of some types of services traditionally provided by the government. However, the goals of improved quality and lower costs—the key points that underpin the arguments in favor of privatization—are not being met across the board. Overall, only half of the state agencies surveyed acknowledged service delivery improvements and just one-third reported decreased service costs. At the local level, where as much as 17 percent of all public services are provided by private companies, governments report a “rather lukewarm response of savings from privatization” (Girard et al., 2009, p. 388). Research by Van Slyce (2003) suggests that, at least in the social services area, a lack of competition among contract providers may be responsible for the general failure of privatization to achieve more promising results.

Just as research has failed to definitively answer the questions of whether private prisons are really cheaper and whether they provide better services than the public sector, the ethical issues regarding prison privatization also remain unsettled. A loosely organized but vocal anti-prison privatization movement, drawing from the faith based



community, labor unions, and student groups, has advocated against the policy and has been effective in limiting the extent of privatization in many jurisdictions (Culp, 2005). Many of these critics argue that the very idea of making money off the punishment of offenders is inherently unethical and immoral (Culp, 2005). Some critics of prison privatization warn that the imperative for private companies to turn a profit will lead to diminished quality in conditions of confinement for prisoners as prison managers cut corners to maximize stockholder dividends (Robbins, 1988; Christie, 1994; Shichor, 1995; Lilly, 1996). Others contend that prison privatization is fundamentally inconsistent with liberal democratic theory (Resig and Pratt, 2000; Aman, 2007). Much of the prison privatization debate is ideologically charged, as supporters tend to place a high value on limited government and free market solutions to social problems while opponents tend to place greater value on the role of government in solving social problems. These are ideological positions that are not readily changed by empirical studies of costs and conditions. For now and probably for the foreseeable future, the ideological issues posed by the prison privatization debate will remain intractable.

### The Private Prison Market

Many of the services that have been privatized by government – custodial services, food preparation, medical care, etc. – are services that are provided by the private sector independently of government’s decision to privatize or not. There is a free market analogue for many of the kinds of services that governments typically provide. Incarceration services are fundamentally different in that you can’t purchase incarceration services as a private individual. The power to incarcerate someone – to hold a person against their will – is a defining characteristic of the state. The very identity of the

modern state is rooted in its monopoly over the legitimate use of physical force within a given territory (Weber, 1946). As a form of coercion, the power to incarcerate is reserved for the government only; no one but the state has the legitimate power to restrict a citizen's liberty. Individuals are prohibited by law from incarcerating another person under "false imprisonment" statutes. The government can delegate this power on a limited basis, for example, granting "merchant's privilege" to shopkeepers, allowing them to temporarily detain suspected shoplifters. But long term incarceration is a different matter; how can the government allow a private company to incarcerate an individual for the full term of a lengthy sentence? Prison privatization opponents have pressed this issue in challenging the practice in federal court, arguing that the state has no authority to delegate its punishment function to private contractors (McDonald, et. al., 1998). But the courts have held that the government can contract out for incarceration services unless there a prevailing law that specifically prohibits the practice (Bowman et al., 1994). The state delegates only the management of inmate daily affairs to private prison officials; it retains custody over them and keeps control over who is admitted and released by the private prison. At the same time, prisoners possess, at minimum, all rights extended to them in a public facility. In effect, contracting out of custody services is more properly defined as "partial privatization," (Benson, 1998) since the government really never abdicates its ultimate responsibility for the inmates, but only specific functions related to their daily care and management.

Contracting out of non-custody prison services such as medical care, food service, maintenance, education, and mental health services has been practiced for a long time and with little controversy. As noted earlier, the contracting out of the custody function

had essentially disappeared by the 1940s. However, the deinstitutionalization movement in juvenile corrections during the 1970's prompted a number of experiments in privatized services *and* custody. In 1975, the RCA Corporation won a contract to provide a twenty-bed, high security facility for juvenile delinquents in Weaversville, Pennsylvania (Sellers, 1989). In 1983, the U.S. Bureau of Prisons contracted with Eclectic Communications, Inc. to operate a prison for youthful offenders near San Francisco (Clear & Cole, 1997). And with the creation of the Job Corps in 1964, the Department of Labor began contracting with the private sector to operate residential centers with educational and job training services for at-risk youth, ages 16 through 24. Some of the early entrants into the private prison industry, including Management and Training Corporation (MTC) and Wackenhut Services, Inc. (the forerunner of Wackenhut Corrections Corporation and GEO Group) operated Job Corps centers before venturing into the adult prison business.

A major step toward contracted custody of adults occurred when the Immigration and Naturalization Service (or INS – the forerunner to today's Immigration and Customs Enforcement (ICE)) decided in 1983 to partially outsource the detention of illegal aliens in its custody (Knowlton, 1985). In the summer of 1993, the INS issued a request for proposals to build and operate a 350-bed detention facility for illegal aliens in Houston. The newly formed Corrections Corporation of America (CCA) submitted the winning bid and was awarded the contract in October. CCA purchased a site in Houston, hired a contractor, and had the new facility ready by April 1984 (Knowlton, 1985).

Likewise, the community corrections movement in the adult system involved contracting out of the custody function in many low-security adult facilities. Minnesota passed a Community Corrections Act in 1971 and 25 states followed suit with similar

legislation over the next twelve years. Community corrections legislation transferred funding from state level departments of correction to local governments who in turn used the funds for half-way house programs and other services for lower-level offenders (Shilton, 1995). Many jurisdictions turned to private contractors to operate these facilities. In 1986, MTC, secured a contract to operate a community correctional facility in Eagle Mountain, California. Also in 1986, the state of Kentucky contracted out the development and operation of a 200-bed minimum security facility in Marion County. Another newly formed company, the U.S. Corrections Corporation, was awarded the contract. The company purchased an old seminary and converted it into a correctional facility (Bowman, Hakim, & Sidenstat, 1994). Similarly, the U.S. Bureau of Prisons began contracting out the operation of low security halfway house programs to the private sector during this time. Another early private prison company, Correctional Services Corporation (CSC), began business in 1989 with two contracts from the BOP to operate halfway houses in Manhattan and Brooklyn in New York City (Sullivan & Purdy, 1995). The same year, CSC won a contract to manage an INS-owned detention center in Seattle.

These early entrants to the private prison business found a political climate supportive of privatization in several states. Along with Kentucky and Tennessee, the states of Texas, Florida, Arizona, New Mexico, and Louisiana all began experimenting with correctional privatization in the late 1980's. By 1994, there were approximately 20 companies actively seeking contracts to either build and manage company-owned prisons or manage existing facilities owned by federal, state, and local jurisdictions (Ramirez, 1994).

### Concentration in the Private Prison Industry

The traditional industrial life cycle model suggests that new markets move through a process marked by four stages: fragmentation, shakeout, maturity, and decline (Klepper & Graddy, 1990). The fragmentation period occurs when the industry is new, many entrepreneurs enter the market, and they operate at low volume and tend to serve narrow geographical areas. Eventually, a shakeout period occurs as some companies become more efficient and the less efficient ones fail to stay in business. Growth and competition are strongest during this period as are the profits of the largest companies. The industry reaches maturity when growth slows and surviving companies try to solidify their positions in the industry. At some later point in time, the industry moves into decline, as the demand for the product or service drops and companies seek new ways to recover profitability.

The decade of the 1990s witnessed the rapid growth of prison privatization, consolidation of the industry, and the cooling off of growth rates as the decade ended. The industry seems to have moved through the traditional life cycle stages of fragmentation to maturity during this period (growth rates for the private prison industry are depicted in Figure 1). The industry experienced tremendous growth during the years 1992 to 1998, averaging an increase in capacity of 36% each year. But between 1999 and 2007, growth declined to an average rate of under 4% per year. As market maturity is commonly defined as reaching a state of equilibrium marked by the absence of significant growth or innovation (Samuelson & Nordhaus, 1989) it would appear that the industry reached maturity as the new millennium began.

**Figure 1. Annual Growth Rate of Private Prison Capacity**

|      |       |
|------|-------|
| 1992 | 33.7% |
| 1993 | 57.4% |
| 1994 | 51.0% |
| 1995 | 29.4% |
| 1996 | 34.0% |
| 1997 | 25.5% |
| 1998 | 24.0% |
| 1999 | 9.5%  |
| 2000 | -2.4% |
| 2001 | 0.6%  |
| 2002 | 2.1%  |
| 2003 | 1.9%  |
| 2004 | 3.1%  |
| 2005 | 9.4%  |
| 2006 | 5.3%  |
| 2007 | 4.0%  |

Source: 1992-2001 data from Thomas, C. W., Private Adult Correctional Facility Census, 1997; 2002-2007 data from West, H.C. & Sabol, W.J. (2009), Prison Inmates at Midyear 2008 - Statistical Tables, Washington, DC: Bureau of Justice Statistics.BJS

The shakeout stage of the industry is reflected in the difference between the companies doing business in 1996 and in 2006. In 1996, there were fourteen companies holding private prison contracts in the US. Figure 2 depicts these companies, their rated capacity, and their market share of U.S. private prison business. A common measure of the dominance of companies in a given market is the market concentration ratio (CR), defined as “the percentage of total industry sales (or capacity, or employment, or value added, or physical output) contributed by the largest few firms, ranked in order of market shares” (Scherer & Ross, p. 71). The concentration ratio is typically reported in terms of the market share of the leading four firms. Generally, a market is considered to have a high concentration ratio when the four leading firms control over two-thirds of market

share, a moderate concentration when the ratio falls between one-third and two-thirds, and a low concentration when the top four firms control less than a third of total market share (Samuelson & Nordhaus, 1989).

**Figure 2. Private Prison Market Concentration in 1996**

|                                    | Capacity | <u>1996*</u><br>Market Share | CR    |
|------------------------------------|----------|------------------------------|-------|
| Corrections Corporation of America | 40,365   | 52.3%                        | 52.3% |
| Wackenhut Corrections Corporation  | 19,479   | 25.2%                        | 77.5% |
| U.S. Corrections Corporation       | 4,038    | 5.2%                         | 82.7% |
| Management & Training Corporation  | 2,978    | 3.9%                         | 86.1% |
| Cornell Corrections, Inc.          | 2,611    | 3.4%                         |       |
| The Bobby Ross Group               | 2,164    | 2.8%                         |       |
| Correctional Services Corporation  | 2,150    | 2.8%                         |       |
| Capital Correctional Resources     | 1,908    | 2.5%                         |       |
| Maranatha Production Company, LLC  | 500      | 0.7%                         |       |
| The GRW Corporation                | 302      | 0.4%                         |       |
| Dove Development Corporation       | 295      | 0.4%                         |       |
| Fenton Security, Inc.              | 228      | 0.3%                         |       |
| Avalon Community Services, Inc.    | 144      | 0.2%                         |       |
| Correctional Systems, Inc.         | 82       | <u>0.1%</u>                  |       |
|                                    |          | 100.0%                       |       |

Source: Charles W. Thomas, Private Adult Correctional Facility Census, 1997  
(formerly available at: <http://www.crim.ufl.edu/pcp/>)

If we total the market share of the top four companies, we obtain a four-firm market Concentration Ratio ( $CR_4$ ) of 86% in 1986, a very high level of concentration. According to economic theory, when production is highly concentrated in very few companies, the market is an oligopoly and is inherently less competitive and innovative than a market with more broad-based representation (Samuelson & Nordhaus, 1989). As a market form, an oligopoly is characterized by interdependence, avoidance of competition, and a rigid attachment to the status quo among the leading firms (Brock, 2006). By the end of 2006, only six companies remained in the private prison business and the market share of the top four firms increased to 99.0% (Figure 2). In addition to

becoming more oligopolistic, this suggests that the market has moved into the mature stage of its lifecycle.

**Figure 3. Private Prison Industry Market Concentration in 2006**

|                                    | <u>2006**</u> |              |       |
|------------------------------------|---------------|--------------|-------|
|                                    | Capacity      | Market Share | CR    |
| Corrections Corporation of America | 58978         | 59.0%        | 59.0% |
| GEO Group (Wackenhut)              | 26385         | 26.4%        | 85.4% |
| Cornell Corrections, Inc.          | 8002          | 8.0%         | 93.4% |
| Management & Training Corporation  | 5596          | 5.6%         | 99.0% |
| Community Education Centers        | 500           | 0.5%         |       |
| The GRW Corporation                | 493           | <u>0.5%</u>  |       |
|                                    |               | 100.0%       |       |

\* Source: American Correctional Association (2007). The 2006 Directory of juvenile and adult Correctional departments, institutions, agencies, and paroling authorities. Lanham, MD: American Correctional Association

Another way of looking at the growth in concentration is by using the Herfindahl-Hirschman Index (HHI) (Rhoades, 1993). A problem with the CR<sub>4</sub> measure is that it does not take into account the relative size of all the firms involved in a market. The HHI resolves this problem. It is calculated by including the market shares of all firms in the market, squaring the market share of each competing firm, and then summing the resulting numbers. The HHI approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is excess of 1800 points are considered to be concentrated. Horizontal mergers that that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice, Federal Trade Commission (Federal Trade Commission, 1997). A comparison of the HHI of the private prison market in 1996 and 2006 is presented in Figure 3.



**Figure 4. Estimated Change in Herfindahl-Hirschman Index (HHI) 1996-2006**

|                                    | <b>1996*</b> |                 |                 |
|------------------------------------|--------------|-----------------|-----------------|
|                                    | Capacity     | Market Share    | MS <sup>2</sup> |
| Corrections Corporation of America | 40,365       | 52.3%           | 2731.1          |
| Wackenhut Corrections Corporation  | 19,479       | 25.2%           | 636.0           |
| U.S. Corrections Corporation       | 4,038        | 5.2%            | 27.4            |
| Management & Training Corporation  | 2,978        | 3.9%            | 14.9            |
| Cornell Corrections, Inc.          | 2,611        | 3.4%            | 11.4            |
| The Bobby Ross Group               | 2,164        | 2.8%            | 7.8             |
| Correctional Services Corporation  | 2,150        | 2.8%            | 7.7             |
| Capital Correctional Resources     | 1,908        | 2.5%            | 6.1             |
| Maranatha Production Company, LLC  | 500          | 0.7%            | 0.4             |
| The GRW Corporation                | 302          | 0.4%            | 0.2             |
| Dove Development Corporation       | 295          | 0.4%            | 0.1             |
| Fenton Security, Inc.              | 228          | 0.3%            | 0.1             |
| Avalon Community Services, Inc.    | 144          | 0.2%            | 0.0             |
| Correctional Systems, Inc.         | 82           | <u>0.1%</u>     | <u>0.0</u>      |
|                                    |              | 100.0%          |                 |
|                                    |              | <b>1996 HHI</b> | <b>3443.4</b>   |
|                                    |              | <b>2006**</b>   |                 |
|                                    |              | Market Share    | MS <sup>2</sup> |
| Corrections Corporation of America | 58978        | 59.0%           | 3481.0          |
| GEO Group (Wackenhut)              | 26385        | 26.4%           | 697.0           |
| Cornell Corrections, Inc.          | 8002         | 8.0%            | 64.0            |
| Management & Training Corporation  | 5596         | 5.6%            | 31.4            |
| Community Education Centers        | 500          | 0.5%            | 0.3             |
| The GRW Corporation                | 493          | <u>0.5%</u>     | <u>0.3</u>      |
|                                    |              | 100.0%          |                 |
|                                    |              | <b>2006 HHI</b> | <b>4273.8</b>   |

\* Source: Charles W. Thomas, Private Adult Correctional Facility Census, 1997 (formerly available at: <http://www.crim.ufl.edu/pcp/>)

\*\* Source: American Correctional Association (2007). The 2006 Directory of juvenile and adult Correctional departments, institutions, agencies, and paroling authorities. Lanham, MD: American Correctional Association.

In the past ten years, market concentration as measured by the HHI has increased by 24%, from 3343 to 4274. The rise in concentration ratio means the market has become more tightly concentrated in the past decade and that the industry as a whole has become less competitive. Four of the companies that disappeared between 1996 and 2006 (U.S. Corrections Corporation, Correctional Services Corporation, Fenton Security, Inc.,

and Correctional Systems, Inc.) were acquired by larger companies. Collectively, these four firms held 8.4% of the private prison market in 1996, a share that added to the increase in industry concentration in 2006. Four other firms went out of business (Bobby Ross Group, Capital Correctional Resources, Dove Development Corporation, and Maranatha Production Company, LLC). These failed firms had controlled 6.3% of the private prison market in 1996. A brief review of the merged and failed companies is illustrative of the private prison industry's movement through the shake out life cycle stage during the late 1990's.

### The Big Get Bigger

The largest company Corrections Corporation of America increased its market share by 6% during the period, largely by acquiring the third place company, U.S. Corrections Corporation, in 1998. U.S. Corrections, based in Kentucky, had much in common with Tennessee-based CCA. Both companies were founded by entrepreneurs who were well connected with the political establishment in their state. One of CCA's founders, Thomas W. Beasley, was a former Chair of the state Republican Party and managed the successful 1978 gubernatorial campaign of Lamar Alexander (Knowlton, 1985). Honey Alexander, the governor's wife, was an early investor in CCA (Hallinan, 2001). U.S. Corrections Corporation, based in neighboring Louisville, did all of its business in Kentucky prior to 1995. Executives of the company contributed over \$77,000 to political campaigns in the state between 1987 and 1993, including \$23,000 to Governor Wallace G. Wilkinson and his wife, Martha., Clifford Todd, the CEO of U.S. Corrections, was implicated in a pay-off scandal involving the company's contract to run the county jail in Louisville. He was arrested by the FBI in 1994, pleaded guilty to mail

fraud, was sentenced to six months in jail and fined \$250,000. He sold his stake in the company for \$15 million in 1994 (Hallinan, 2001). At the time of the buy out by CCA, U.S. Corrections owned a total of four facilities in Kentucky, Ohio, and North Carolina, with a capacity of 5,275 beds, and contracts to manage publicly-owned facilities in Kentucky, Florida, and North Carolina with a capacity of 5,743 beds. The acquisition increased the number of facility beds owned by CCA by 43% (PRNewswire, 1998).

The second largest company in 1996, Wackenhut Corrections Corporation, was founded in 1954 by former FBI agent George Wackenhut, and over the ensuing years grew to become one of the largest private security companies in the world. As noted earlier, the company became involved in residential services for at risk juveniles and young adults under the Job Corps program. Wackenhut Corrections Corporation (WCC) was incorporated in 1999 as a wholly owned subsidiary of the Wackenhut Corporation and went public 1994 (with Wackenhut Corporation as the majority share holder). In 2002, the Danish company Group 4 Falck merged with the Wackenhut Corporation and, indirectly, became the owner of 57% of the WCC stock. In 2003 WCC bought out Group 4 Falck's interest in the company and changed its name to the GEO Group, Inc. (GEO Group, 2009). GEO helped to increase its market share by acquiring the number seven company, Correctional Services Corporation (CSC) in 2005.

Founded in 1989, CSC operated under several different names, including Esmor Correctional Services, Inc. The company was founded by the owners of a welfare hotel in New York City and began its prison business operating halfway houses under contract with the US Bureau of Prisons. CSC also managed the INS Detention Center in Elizabeth, New Jersey where detainees were involved in a high profile disturbance (and

subsequent lawsuit) in 1995, protesting conditions in the facility (Sullivan & Purdy, 1995). CSC has a checkered history of ethical and legal challenges: in February 2003 the New York State Lobbying Commission fined CSC \$300,000 for failing to report free transportation, meals, and gifts it gave to a dozen state legislators in Brooklyn and the Bronx in an effort to keep contracts for the placement of recently released prisoners. The fine was the largest that the state had ever imposed on a company for violating the state's lobbying laws (McKinley, 2003). In May, 2008, the Securities and Exchange Commission filed charges against three Fort Lauderdale doctors, alleging insider trading in GEO Group's 2005 acquisition of CSC. According to the complaint, the three illegally bought shares in CSC immediately before the company announced in July 2005 that it was being bought out by GEO. One of the brothers worked as a consultant to GEO and his son worked in GEO's finance department where he allegedly learned of the pending deal. The three doctors were charged with illegally purchasing \$390,000 in CSC stock before the acquisition (Rugaber, 2008).

Cornell Corrections, Inc. moved from fifth place in 1996 to third place in 2006 and increased its market share from 3.4% to 8%, due in part to acquiring Correctional Systems, Inc. in 2005. Cornell was incorporated in 1996 and built its business primarily with youth services and community-based rehabilitation programs for adults. At the time of its acquisition, Correctional Systems managed eight jails, six community corrections facilities and five alternative sentencing programs, in California, New Mexico, Texas and Kansas, with a combined total of 986 corrections beds (Business Wire, 2005). In 2004, the hedge fund firm Pirate Capital LLC acquired a 13% interest in Cornell, became the company's largest shareholder, and replaced several board members and the company's

CEO with financiers more focused on short-term growth (Fishman, 2004; Hansard, 2005). Pirate Capital unloaded its shares of Cornell in 2006 in the midst of an SEC investigation over its stock sales practices, several bad investment decisions, and company downsizing (Anderson, 2006).

A fourth company on the 1996 list, Fenton Security, Inc., was acquired by CiviGenics in 1996 and operated as a subsidiary, but under its original name. The company was founded by Charles Fenton, a former federal prison warden, and managed four correctional facilities when it was acquired in 1996. CiviGenics, in turn, was acquired by Community Educations Centers, Inc in 2007.

#### The Losers

Among the failed firms, The Bobby Ross Group exemplified some of the early entries into the privatization business in Texas – local entrepreneurs who capitalized on the prison building boom of the 1990s using local connections and business experience but lacking correctional expertise. Founded by a former local sheriff in Texas in 1993, the company landed several management contracts to run facilities built with public funds and at its peak operated seven prisons in Texas and a juvenile facility in Georgia, with contracts for the placement of out-of-state inmates from Colorado, Missouri, Montana, Oklahoma, Virginia and Hawaii (Kakesako, 1997). Former FBI Director William Sessions served as a company consultant, helping to secure contracts (Pierce, 1995). About the only legacy of the company is a record of being the defendant in numerous federal lawsuits filed by inmates. It encountered serious problems in several of its facilities in the late 1990s, including the escape of two sex offenders from a group of 500 Colorado inmates placed in the company's Karnes County facility and a major

disturbance between Hawaii and Montana inmates in the company's Dickens County Correctional Facility that left one Montana inmate dead and resulted in the state of Montana pulling its inmates from the facility. Also, eleven inmates escaped from the company's prison in Newton, Texas in 1998. In the Newton incident, the escaping inmates released another 300 inmates and set fire to one of the prison buildings. The company's contracts to operate the Karnes County and Dickens County facilities expired in early 1998 and were taken over by Wackenhut, now GEO. Later in the year, Corrections Corporation of America took over the company's contract to run a medium security prison in Webb County (Laredo). And after an influence buying scandal in Georgia, the company's contract juvenile prison was turned over to the adult parole department and eventually closed, in 2002 (Kakesako, 1997; Texas Prison Bid'ness, 2007).

The second failed company, Capital Correctional Resources, Inc. (CCRI), is enshrined as one of the most incompetent private prison upstarts. Like Bobby Ross Group, Capital Correctional Resources formed alliances with county sheriff's in Texas to use county jail development capital to expand local facilities, provide overall management of operations, and contract with other states willing to place their inmates out-of-state in order to relieve in state overcrowding. The Mississippi-based company secured county jail management contracts with Brazoria and Limestone Counties in Texas and contracts with the states of Missouri and Oklahoma to house their inmates in Texas. The interstate prisoner business also included public facilities, as the county-run Navarro County Jail in Corsicana also contracted for the placement of Missouri inmates. In 1997, Texas facilities were accommodating some 5,500 prisoners from 11 other states;

with several public facilities engaging in these income-generating contracts (Bell, 1997; Reason, 1997). In an incident foreshadowing the Abu Ghraib prison ignominy, a video tape came to light in 1997 that graphically recorded scenes from a September 1996 incident at CCRI's Brazoria County facility. The video depicted: "guards kicking seemingly compliant prisoners in the head and groin, swearing at them, beating them with riot sticks and electric prods, forcing them to crawl on their bellies, some with their pants down around their ankles, and a German shepherd biting the legs of at least one inmate" (Reason, 1997). Oddly enough, the video was recorded by CCRI staff for use as a training film. Not only were CCRI personnel involved in the abuse, but County Sheriff's officials as well. In response, Missouri immediately cancelled its contracts and removed its prisoners from the facility. The incident prompted considerable litigation against the company, including a federal district court case that, in ruling against the company, offered the opinion that "experience, training, and temperament may become expendable virtues when their associated costs threaten the bottom line." (Kesler et al., v. Brazoria County Sheriff King et al., ). The court used the term "quack" to describe CCRI's approach and "commodities" to describe how it treated inmates under its care (Blakely & Bumphus). The incident forced the company out of business.

Dove Development Corp, like Bobby Ross Group and CCRI, went into business in Texas and experienced similar problems dealing with mass transfers of inmates from other states. Dove was awarded a contract to manage the Frio County detention center in 1992 and secured another contract in Crystal City two years later. In 1995, the company was one of three companies that submitted a bid to operate the women's annex of the Bexar County Jail in San Antonio (the other two were CCA and Wackenhut), but county

officials rejected its bid due to its relative lack of experience. Dove contracted with the state of Utah for the placement of 100 inmates in 1995 but, within a year, the contract was in process of termination. The Frio County facility experienced numerous escapes by the Utah inmates, including four inmates serving time for murder. A violent disturbance in September 1996 required the intervention of local law enforcement. The state of Utah pulled its inmates and, in 1997, Frio County officials signed a contract with Correctional Services Corp. of Florida to take over operation of the 286-bed facility. According to news reports at the time, the company's corporate headquarters were located in a small office building on Interstate 30 on the outskirts of Greenville, about 60 miles northeast of Dallas. The telephone number for Dove headquarters was unlisted (Schlosser, 1998).

The fourth failed company was a small operation, with only one facility, the Maranatha Production Company, LLC. The company built and secured a contract with the California Department of Corrections for the 500-bed Victor Valley Modified Community Correctional Facility in Adelanto, California (Cate, 2004). The company struggled with financial problems from the start, beginning with a lawsuit over allegedly unpaid wages to construction workers (Private Corrections Institute, 2008) and ending with the loss of its contract with the State of California after a dispute over inmate telephone call revenues (Cate, 2004). In 1999, the company made a proposal to Hawaii officials to build a 2,300-bed prison on Kauai and in 2001 proposed to build and operate a prison in Wyoming. Neither plan came to fruition. The company went out of business in 2005 and sold the Adelanto facility to San Bernardino County (Private Corrections Institute, 2008).



### Competition and Innovation?

The total market share represented by these four failing companies accounted for 6.3% of the total which, along with the 8.4% market share of four merged companies, resulted in each of the remaining six companies increasing their individual share of the market. One indicator of the effect of this is an apparent decline in the number of firms responding to requests for proposals from contracting governments. In 1995, for example, a total of seven companies submitted bids in response to a 1995 Arkansas Department of Corrections request for proposals for two new privately operated prisons. CCA, Wackenhut, U.S. Corrections Corp, Bobby Ross Group, GRW Corporation, Management and Training Corporation, and Capital Correctional Resources all submitted bids, with Wackenhut winning out (Pierce, 1995). By contrast, a 2006 request for proposals to manage a private prison in Pennsylvania yielded only two responses.<sup>1</sup> With market maturation and increased concentration, it is increasingly more difficult for new companies to get into the business and for marginal performers to stay afloat. Given the record of incompetence, public safety consequences, and human rights abuses of the failed companies, the public is better off that these companies are no longer in business. At the same time, however, oligopoly theory and industry life cycle theory suggest that the remaining companies will be less competitive overall, seeking interdependent relationships with their competitors in order to help secure their position now that industry growth rates have cooled. As this comes to pass, we should expect to see that any cost savings from privatization will be marginal at best.

There is preliminary evidence that this may already be occurring as existing private prison contracts are renewed. While a brand new private prison, with all new

staff, may be cheaper to operate than an existing public prison, personnel costs will move toward parity over time and the cost advantage begins to disappear. As personnel costs begin to level out over time, the cost advantage begins to disappear. For example, the average cost of operating three BOP prisons, based on two independent studies, increased from \$38 per day in 1999 to \$41.77 in 2002, an increase of 10%. A comparable private facility, with BOP inmates, increased from \$34.12 to \$38.50 over the same four years, an increase of 13%. Whereas the private prison was \$11.37 less to operate in 1999, the advantage dropped to \$8.49 in 2002.<sup>2</sup> Over time, this is likely to be the case with most private prison contracts.

The record of serious incidents involving the failing companies and the cloud of S.E.C. investigations and financial sector speculation involving some of the survivors remind us that the ethical objections to prison privatization are not going to go away, despite twenty-five years of correctional privatization experience and a body of research that has yet to suggest that either sector has an upper hand in running a good prison program.

The demand side of prison privatization, like the oligopoly of private prison companies, is also highly concentrated. The potential consumers in the private prison “market” are government agencies at the federal, state, and local level that operate jail and prison programs. At the federal level, the Bureau of Prisons, the U.S. Marshals Service, and the Bureau of Immigration and Customs Enforcement all manage a variety of custody facilities. The four branches of the military also operate facilities for military personnel sentenced under the Uniform Code of Military Justice. Of course, the fifty states and the District of Columbia each have departments of correction. According to the

BJS, there are some 1,821 state and federal correctional facilities, exclusive of facilities operated by the US Marshals Service and the ICE. At the local level, counties and cities operate about 2,875 jail facilities in the US (Jail Inmates at Midyear 2007). In sum, the potential consumer base of the private prison industry numbers somewhere in the area of 4,700 facilities.

But after twenty-five years of correctional privatization, there are fewer than 200 private correctional facilities in the US, accounting for only about 4% of all facilities. The federal government is the most actively involved in privatization, with 16.3% of federal inmates serving time in private facilities. State governments are next, with 6.6% of state inmates in private prisons (West & Sabol, 2009). But whereas 60% of all correctional facilities in the U.S. are at the local level, only about two dozen city and county jurisdictions or (1.7% of the total) contract with private companies to operate their prisons and jails (ICMA, 2007).

In practice, there are very few buyers of privatized incarceration services and the federal government is the largest single customer. Between 2000 and 2008, the number of state inmates placed in private prisons increased by about 25%, from 75,018 to 93,537. In the federal system, however, the number increased from 15,525 to 32,712 or about 110% (West & Sabol, 2009). During the same period, the number of states placing some portion of their prisoners in private facilities actually *declined* from 30 to 27. So, there are a total of only 54 “customers” who are buying incarceration services from the private prison industry – the three federal agencies, twenty-seven state level departments of correction, and twenty-four local jurisdictions. Within this small customer base, the federal government plus seven states (Texas, Florida, Arizona, Oklahoma, Colorado, Tennessee,

and Mississippi) collectively account for greater than 70% of all private prison business. In effect, the market of buyers constitutes an *oligopsony*, a market in which a few buyers are the only ones who buy a certain good and who possess the power to effect pricing (Meyer, 2009). The three largest publicly traded private prison companies all recognize this dependency on limited number of governmental customers as a threat to their profitability and include a warning to their stockholders to this effect in their annual reports. Cornell notes that 34.2% of their total revenue for 2008 came from contracts with the Bureau of Prisons; GEO Group states that while they have a total of 45 governmental clients (customers), four of these customers accounted for over 50% of their consolidated revenue (Bureau of Prisons, ICE, U.S. Marshals Service, the State of Florida). Among these, the three federal agencies combined are responsible for 27.7% of GEO Group's total revenue. For CCA, these three federal government agencies constitute 39% of the company's sources of revenue.<sup>3</sup>

This oligopsony of governmental consumers serves not only to limit competition but to discourage innovation as well. Indeed, prisons are not generally thought of as innovative places, and research suggests that a control-oriented management style produces greater order, amenity, and service in a prison than more progressive management styles, such as those derived from responsibility or consensus models (DiIulio, 1997). According to DiIulio, successful prison leaders rarely innovate, as innovation tends to erode correctional officer loyalty (DiIulio 1991). Genders (2003) observed how hiring new staff without prison experience – ostensibly in the interest of breaking free of the old way of doing things – can contribute to prison disturbances. In practice, governmental purchasers of incarceration services have sufficient power over

the sellers to require that private prison companies duplicate policies and procedures practiced in public prisons. Many jurisdictions have specifically done this, to the effect that the standard operating procedures of most private prison programs closely mirror those of public prisons in the same state (Culp, 2005). Private prison companies encourage the adoption of public prison practice, rather than the development of innovative practice, by actively recruiting for management level staff from within the public sector. As a case in point, a review of the background of CCA's management staff at the facility level suggests a widespread practice of mining the public corrections system for managers. CCA includes the names and background experience of the wardens of 63 of the company's correctional facilities around the U.S. Nearly two-thirds of all CCA wardens accumulated experience working in state departments of correction (36 wardens) or the federal Bureau of Prisons (5 wardens). The most warden-rich jurisdiction was the Texas Department of Criminal Justice, from whence 28% of all CCA wardens were recruited. These experienced staffers bring a degree of order and control to the private prisons, which was lacking in many of the failed companies, but they are not likely to be hired for their spirit of experimentation and innovation.

Arguably, private prisons are not looking to be innovative, unless it is a way of cutting costs. As the most common way in which for-profit firms are able to make money from government contracts is by reducing personnel costs (Cooper, 2003), and since labor represents approximately 80% of the operating cost of a prison (Genders, 2003), much of the cost savings in private prisons is a result of paying private correctional officers less than comparable public correctional officers receive (Camp & Gaes, 2001). But as we have noted, this advantage begins to erode in a market where private

companies are dependent upon contract renewals (with more experienced staff) rather than new facilities (with new, entry level staff). Even as labor rates vary among the states, public sector correctional officer starting salaries average \$28,000 across all states with a (one standard deviation) range between \$23,000 and \$34,200 (Corrections Compendium, 2007). By comparison, the Bureau of Labor Statistics reports a mean annual salary of \$42,270 for all occupations in the US (in May 2008). Although comparable figures are not available for private sector correctional officers, public sector prison staff salaries are very low already, suggesting that it is not that easy for the private sector to undercut the government in personnel costs.

One of the more “innovative” ideas to help cut correctional officer wages even more was advanced in 2005. Post-September 11 concern with illegal immigration temporarily raised the business prospects of the private prison companies as ICE increased its reliance on contracts with the private sector. In Arizona and California, concern over the cost of incarcerating illegal aliens convicted of crimes in the U.S. prompted legislators to float the novel idea of creating a “Foreign Private Prison Commission” that could contract with a private company to build and staff a prison in Mexico for placement of Mexican nationals convicted and sentenced for crimes committed in the U.S.<sup>4</sup> The idea raised the interesting prospect of building prisons in other countries, where labor is cheaper, to incarcerate inmates convicted in the US. The legislation failed to pass in either state, due in major part to the daunting task of first securing a treaty between the U.S. and Mexico that would legitimize the international relations necessary for such a plan to move forward. But given the history of prison privatization in the U.S., which began with and continues to receive major funding from

federal immigration agencies and is most popular in southern and western states, such an offshore prison may become a reality some day.

### Policy Implications

Despite the promises of less cost and better services made by private prison advocates in the 1980's, a quarter century of privatization experience has not brought those promises to fulfillment. The private prison industry that has emerged over the years exists in a market with a limited number of government consumers and an even smaller number of private company producers. This oligopsony of buyers serves to stifle innovation while the oligopoly of sellers functions to limit competition. Balkanized in southern and western states, dependent upon federal government agencies, and with little competition and no reason to innovate, the mature private prison industry of today is assuredly a disappointment to New Public Management advocates who thought that creating a free market for incarceration services would help foster a more efficient and effective prison system. It just hasn't happened that way. At the same time, the worries of privatization critics, of wholesale violations of prisoner rights and dangerous lapses in prison security and safety, have not come to fruition either. The companies that survived the shake-out of the 1990's rely on staff who gained prison management experience in the public sector and who operate facilities that essentially mimic the policies and procedures of public prisons. Even though we have highlighted some cases where incompetent private companies have endangered prison inmates, staff, and the public, we could just as easily offer as many anecdotes of incompetent practice in public sector prisons; when it comes to running good prisons, the public sector certainly has no monopoly on virtue.

A new twist on the old argument that greater competition can improve the quality of prison services has recently emerged with calls for increasing the role played by the nonprofit sector in the operation of secure custody facilities for adults (Moran, 1997; Low, 2003). The idea is that nonprofit agencies can “maximize the advantages of public and private prisons, while minimizing their disadvantages” (Low, 2003, p. 4). According to this view, a major disadvantage of the private prison business is that profits are paid out to stockholders rather than reinvested in service improvements and program innovations. Private companies make reinvestments only to the extent that they will enhance profitability. As mission-driven and “non-owned” organizations (Mintzberg, 1996), donors and volunteers would direct surplus revenue into furthering the reform-oriented goals of nonprofit organizations. In juvenile corrections, where a majority of private juvenile correctional facilities are operated by nonprofit organizations rather than for profit companies (Culp, 1998), research suggests that nonprofits are providing a high level of service quality. For example, Bayer & Pozen (2005) followed the case records of over 5,000 released juvenile offenders who were placed in juvenile correctional facilities in Florida. Over half of the juveniles were placed in facilities operated by nonprofit agencies, some 1,000 were placed in for-profit facilities, and another 1,500 were placed in programs operated by state and county governments. They found that youths placed in the public and nonprofit facilities were less likely to be charged with a criminal offense within a year of release than were juveniles released from programs operated by for profit companies. Although the for-profit facilities initially operated at a lower cost to the government (in the year that the juveniles were placed with them), cost benefit analysis found that nonprofit agencies had the most favorable cost outcome in the long run due to



reduced recidivism rates for juveniles released from nonprofit programs. Perhaps such promising outcomes might be replicated in the adult system by encouraging the nonprofit sector to become more involved in the delivery of adult custody services. The government could help facilitate the entry of nonprofits into the private prison market by making available loan guarantees or tax-exempt bonds to help in raising the capital required for building secure correctional facilities.

Notwithstanding the promising advantages of greater nonprofit agency involvement in adult prison operation, there is a possibility that a nonprofit oligopoly would also emerge in the adult system, and that it would serve to counterbalance the competitive and innovative forces we would hope to encourage. In studying the admittedly limited scope of private juvenile providers in Massachusetts, Armstrong (2002) found that the small, public-spirited and innovative nonprofits that responded to the 1970's deinstitutionalization movement subsequently evolved into an oligopoly of five or six multi-million dollar nonprofit corporations managed by risk-averse "entrepreneurial bureaucrats." Unfortunately, greater involvement by the nonprofit sector is unlikely to be a panacea for our incarceration problem.

Our problem is one of over-reliance on incarceration and it won't be solved through policies that simply redistribute the number of inmates serving time in public, for profit, or nonprofit prisons. The U.S. has the highest incarceration rate in the world (Walmsley, 2009), due in large part to our penchant for the custodial sentence as the first choice among sanctioning alternatives. As incarceration is it is the most expensive of sentencing options, the smarter policy would be to invest in research and development of non custody alternatives.

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<sup>1</sup> Based on the author's consultant experience with a county government in Pennsylvania.

<sup>2</sup> Findings are based on secondary analysis of cost data presented in: Gaes, G. (2008). Cost, performance studies look at prison privatization. NIJ Journal, 259, p.32-36.

<sup>3</sup> Sources of revenue for the three largest companies are based on company statements provided in each company's Form 10-K, filed with the Securities and Exchange Commission for the fiscal year ended December 31, 2009.

<sup>4</sup> AZ House Bill 2709, Forty-seventh Legislature, 2005; and CA Assembly Bill 1686, Introduced Feb 22, 2005.

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