

CORRECTIONS PRIVATIZATION GENERATES SAVINGS AND BETTER SERVICES

MARC C. DUFF

Liberals and conservatives finally agree on something in Wisconsin — that the spending spree on the state prison system must come to an end. In 1999, recognizing the problem, Governor Tommy Thompson vowed to stop constructing new prisons and began seeking policy alternatives to address the problem. Democrat legislators and liberal interest groups have long targeted the state's corrections budget for cuts. However, neither the liberals nor conservatives have forwarded an effective way to squeeze significant savings out of the state's corrections budget without generating concerns about how the cuts would affect public safety.

As predicted, the state now is facing a budget deficit that could exceed \$2 billion. Because newly elected Democrat Governor Jim Doyle and the Republican-controlled Legislature promised no tax increases, state corrections spending will be targeted for savings. During his campaign Doyle also rejected liberal proposals to seek savings by releasing thousands of non-violent inmates into treatment programs. He said: "You certainly don't want to balance the budget by sacrificing pub-



lic safety." The tough-on-crime Republican-controlled Legislature will demand no less. Thus the state is in a tough spot, leaving many to wonder how corrections spending can be reduced in an acceptable way.

In fact, however, there is a proven method of producing savings in corrections while protecting the public. The state's leaders

should expand Wisconsin's use of corrections privatization.

Skyrocketing Prison Budget

Between 1992 and 2000, Wisconsin's spending on the state corrections system skyrocketed, jumping from \$338 million to \$837 million. This increase of 247 percent correlated with a 254 percent increase in the prison population during the same period. Both trends followed from a ten-year trend of increases in the rate of violent crime (peaking in 1995), to which the Legislature responded by toughening criminal penalties and enacting a Truth-in-Sentencing law.

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More crime and tougher criminal penalties added up to prisons bursting at the seams. Wisconsin's prison system soon was filled to 135 percent over capacity, and the upsurge in inmate populations seemed likely to continue. This prompted a \$308 million building program that called for five new prisons, inmate workhouses, and expansions at existing correctional facilities. Also in response to the prison-space problem, the state in 1996 began contracting with out-of-state facilities to house Wisconsin inmates.

Despite this prison-building boom, Wisconsin's correctional facilities will remain overcrowded in the near future. The Department of Corrections (DOC) says its facilities will continue to operate at 120 percent of optimal capacity. Even so, according to a DOC needs assessment, correctional facilities will need 2,250 additional beds by 2005 and 4,500 by 2009. In its 2003-05 biennial budget request, the DOC has requested 500 additional beds. However, this increase will fall far short of projected needs, and the DOC plans to utilize more private contract beds in the future.

These statistics make it clear that Wisconsin has not resolved its prison problems. Continued efforts to resolve them by adding more state prison beds will demand millions more in taxpayer funding. As spending on corrections takes bigger and bigger bites out of the state budget pie, other spending priorities will be crowded out, prompting outcries from all those who depend upon the state to serve as their cash cow.

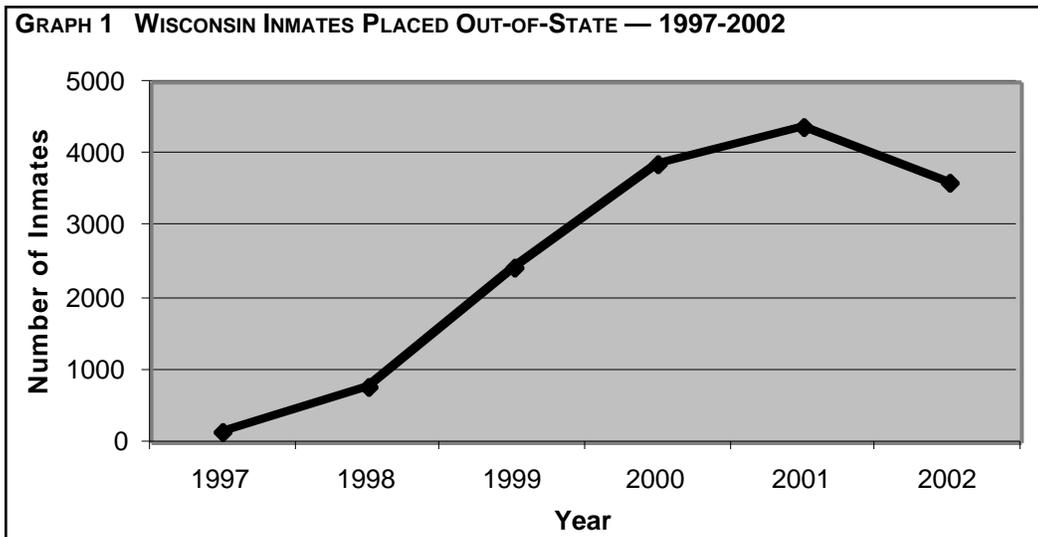
Despite this dilemma, few leaders will come forward to lead the charge for corrections privatization, since any move in that direction would generate strong opposition from labor unions and liberal interests. Ironically, liberal interests could benefit from corrections privatization. Funds freed up by privatization efficiencies would become available for spending in other areas, including education and social service programs.

Corrections Privatization: Wisconsin and the United States

Interest in corrections privatization is widespread. Prison systems in Australia, the United Kingdom, and South Africa have used private correctional facilities. In the United States, 30 states now use private facilities to some degree, and it is estimated that private prisons and jails receive \$1 billion in revenues annually. Still, privatization remains a relatively small-scale initiative. About 52,370 (less than 5 percent) of all U.S. prison inmates (1.2 million) are currently housed in the nation's approximately 158 private correctional facilities.

At least initially, the turn toward privatized corrections was not driven primarily by budgetary concerns. Instead, according to a 1997 survey conducted by Abt Associates, Inc., federal and state officials sought privatization primarily to reduce overcrowding in the public prison systems and to obtain additional prison beds quickly. This is not surprising, given that 23 of the 28 correctional departments contracting with private firms at the time of the survey had prison systems housing inmate populations that exceeded their design capacity. As a third priority, officials said they sought to gain "operational flexibility" through privatization. Realizing cost savings — in operations and construction — ranked fourth and fifth, respectively, in the reasons officials gave for their interest in privatization.

Wisconsin began to make substantial use of out-of-state private prisons in 1998. Authorized to place as many as 5,157 inmates in out-of-state facilities, the DOC contracted with a private, for-profit firm called Corrections Corporation of America (CCA) to house inmates in Tennessee, Oklahoma, Minnesota, and Mississippi. By 2000-01 Wisconsin had spent over \$108 million to house more than 20 percent of the state's inmates in private facilities out-of-state. It was a movement driven, here as it had been elsewhere, primarily by overcrowding in the



state's prisons. The potential for significant cost-savings was not recognized until later, when pressure from various sources caused the state to begin bringing more prisoners back to Wisconsin.

Since 2001, Wisconsin's out-of-state placement rates have fallen (see Graph 1). While Wisconsin still ranks high among the states in the percentage of inmates placed in privately run prisons, it has taken steps recently to bring inmates back into the state system. One consequence of this is that some prisoners will be housed closer to home, so that their families may visit them more easily. Another is that pressure will continue to build on the state's prison system.

As a result, several new prisons will open soon. The Stanley Prison with 1500 beds will open in January 2003. Four other facilities will open in 2004, the largest being New Lisbon, adding 1590 beds. This will cause a significant jump in state corrections spending at a time when the state faces a huge budget deficit.

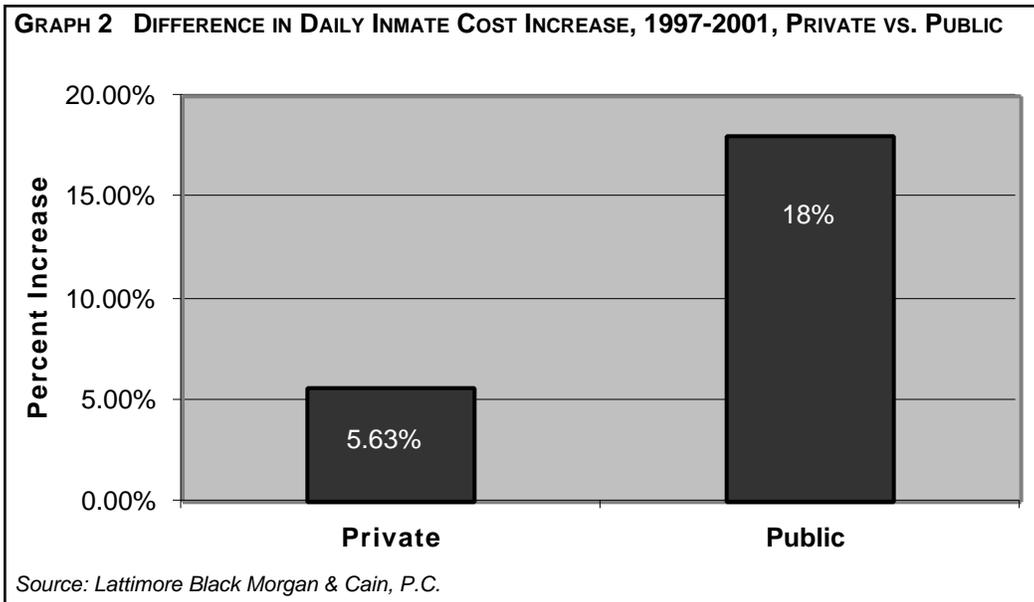
Corrections Privatization and Fiscal Effectiveness

It is, accordingly, time for Wisconsin to revisit prison privatization with renewed emphasis. Evidence from several studies shows that private prisons can provide quality in correctional services at cost-effective rates,

thus helping states fiscally. In a recent issue of *The Harvard Law Review* (May 2002), for example, Alexander Volokh analyzed correctional services provided by public and private prisons, comparing them on the basis of cost, quality, and accountability. Results in all categories showed that privately run prisons usually matched or outperformed public prisons. Volokh concluded that, "despite all their possible faults, private prisons are a promising avenue for the future development of the prison system."

As to the more specific issue of corrections spending and state budgetary woes, findings from a recent (2002) study by the accounting firm Lattimore Black Morgan & Cain, P.C., are especially pertinent. The study found that utilizing private companies for the construction and operation of correctional facilities helped states control both correctional spending and overall state budgets

In arriving at this conclusion, the report's authors compared states that housed more than 20 percent of their inmates in privately operated prisons with those that used publicly run facilities almost exclusively. As shown in Graph 2, they determined that increases in daily inmate costs were kept much lower in the states that housed a significant portion of their inmates in facilities operated by private firms. Also, the states that used private opera-



tors experienced “slow-growth” corrections budgets, allowing many to meet other state spending priorities. Wisconsin is included among states that housed more than 20 percent of their inmates in privately operated prison facilities. The Lattimore study points out that using private prisons helped keep Wisconsin's daily spending on prisoners at \$93.33, compared to \$164.03 in neighboring Minnesota.

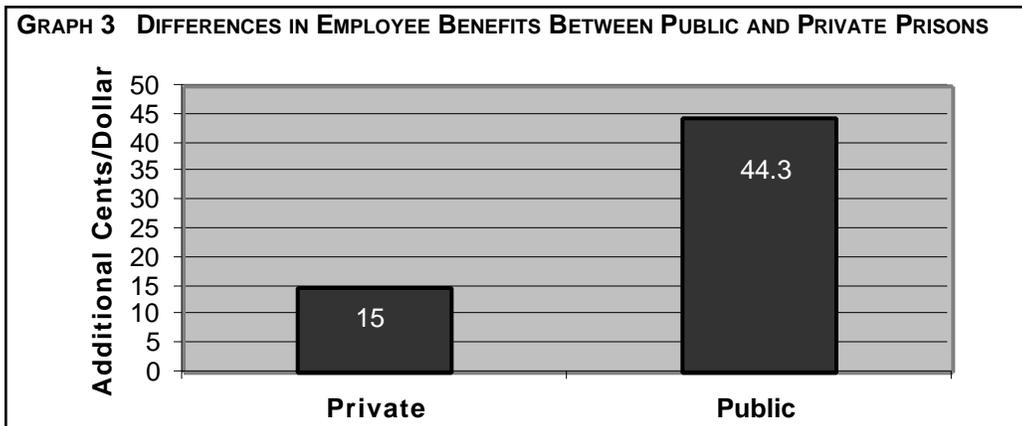
Cost Differences

It has generally been assumed that privately operated prisons cost less than public prisons. In Wisconsin's case, comparing DOC daily inmate costs with what the state pays CCA for out-of-state prison beds would seem to prove that point. CCA calculates that, in paying CCA \$42 per inmate-day for correctional services, as opposed to the state's average cost of more than \$58, Wisconsin saved \$44.7 million from 1998 to 2000. Future savings will be smaller, since CCA has increased its rates. It will now charge \$48.50 per day for housing inmates in 2003, and \$51.50 per day through 2005. These new CCA rates will still save the state money, as compared to average costs for Wisconsin prisons, although the DOC believes some new state facilities, especially the Stanley Prison, should be more cost competitive.

Cost savings generated by use of out-of-state prison beds came into sharp focus during consideration of Wisconsin's 2001-03 budget. The numbers available then showed that it was cheaper, by \$44 million, to keep inmates in private, out-of-state facilities than to open newly built state prisons and bring the inmates back to Wisconsin. In an effort to save money and reduce a budget deficit, the Legislature and the Governor agreed to mothball some of these prisons and delay their opening.

What explains cost differences of this magnitude? How do the privately run prisons attain cost savings? According to an analysis by the U.S. Department of Justice (Austin & Garry, 2001), private prison operators are able to generate savings because their labor costs are lower than labor costs in public prisons. While many private corrections companies offer competitive wages, their benefit levels are much lower, adding on average only 10 to 15 cents for every dollar paid in salary. The State of Wisconsin, on the other hand, provides far more generously for public employees' benefits — piling on, in the case of correctional officers, 44.3 cents in benefit costs for every dollar paid in salary.

These figures mean that, if all Wisconsin correctional facilities were operated by private



firms, fringe benefit expenses for correctional employees could be reduced by two-thirds, or more than \$57 million, given current state spending of more than \$86 million annually for corrections workers' fringe benefits. The political difficulty of attaining such savings can be gauged in part by recalling that earlier this year Wisconsin's unionized corrections workers labeled legislators as "public enemy #1" for suggesting a \$10 co-pay for health insurance benefits.

According to Volokh's analysis in *The Harvard Law Review*, private prison operators also generate savings in other ways. They often use fewer administrative personnel than public prisons do, and they devise and implement effective programs to reduce overtime payments and employee use of sick time. And innovative design features enable some private prisons to minimize the number of correctional officers needed to monitor inmates.

Research also shows that private firms are capable of constructing prisons faster and cheaper than public sector counterparts. According to Austin and Garry (2001), governments take five to six years to build a correctional facility while private firms claim they can build a comparable facility in two to three years. Contracting out prison design and construction can reduce costs by 15 to 25 percent (Volokh, May 2002). Wisconsin has already taken steps to achieve such savings by utilizing design-build contracts for a number of new prison facilities, in addition to purchasing the

privately built Stanley Prison from Dominion Asset Services.

Public vs. Private Prison Services

One myth about private prisons is that they generate savings by cutting back on services provided to prisoners, including medical and mental health care, counseling, education/vocational programs, recreation and food service. In fact, however, studies indicate that private prisons often provide better services than state prisons do.

Volokh compared the quality of service provided by private prisons with that of public prisons. He found that the "private prisons outscored public prisons on most quality indicators." Evidence for this conclusion was provided by studies from Louisiana, Arizona, and Florida, showing that overall service quality at private prisons in these states was equal to or better than service quality at public prisons. Volokh suggested that enhancing accountability and performance standards in contracts with private prison operators could improve quality even further.

A February 2001 report by the U.S. Department of Justice (Austin & Garry) referenced a 1988 study of the Silverdale Detention Center in Chattanooga, Tennessee. Once a county center, Silverdale had been taken over for management by CCA. Austin and Garry concluded: "the evidence is overwhelming that the private takeover of Silverdale has resulted in substantial improvements in the institu-

tion's physical conditions and upkeep, as well as several critical areas of inmate service and institutional procedure." Other studies done in New Mexico and Florida also have concluded that private prisons outperformed state and federally operated facilities.

Wisconsin has had mixed results with its use of private vendors to provide prison services. The Wisconsin Legislative Audit Bureau reviewed DOC private contracting in 1997 and in 2001; it found a need for several improvements in contracts for privatization and in vendors' management of services.

In the area of prison health services, DOC contracts with hundreds of vendors to provide supplementary health services and hospital care. In recent contracts with the national private firm Prison Health Services (PHS), however, the DOC ran into difficulties. PHS had agreed to provide services to three state prisons, but it pulled out of the contract after finding that it could not meet the contractual terms at the agreed-upon price. The upshot of this failure and of related audit recommendations is that prison health staff in Wisconsin will grow from 232 to over 350 in 2003. Unfortunately, 24-hour health care will no longer be available to inmates as had been previously provided under the PHS contract.

Meanwhile, other problems persist, suggesting a need for ongoing innovation. Prison health care costs continue to go up. Excluding staff costs, the DOC now spends more than \$27 million annually on prison health care. It recently requested an additional \$32 million in its 2003-05 biennial budget request.

Wisconsin offers extensive employment and vocational programming to help inmates acquire skills so they can obtain employment upon their release. The state's work programs include the Adult Correctional Farm system, Badger State Industries, and the Private Business/Prison Employment program. The Private Business/Prison Employment program has been operating with a \$1.6 million deficit, and the Adult Correctional Farm has carried a deficit of over \$4.8 million for more than 15 years. While both programs have reduced their

operating deficits and have begun to generate profits, many consider them to be struggling programs.

Against this background of chronic cost-related problems on the public side of the system, it seems an apt time for the state to continue pursuing service delivery partnerships with private firms, notwithstanding the lack of success with PHS. The potential for future benefits remains clear, and there is an ample supply of firms that have extensive experience in effectively providing specialized services to corrections departments.

Competition and Accountability

In the debate over private vs. public prisons, most attention is focused on how privatized facilities fare. Unfortunately, serious problems exist in public prisons, and several studies have identified the positive impact private prisons can have on promoting reforms and improvements in public prisons. A 1996 U.S. General Accounting Office report to Congress concluded that "over time, public prisons could become more cost efficient in response to competition from the private sector." Other studies reach the same conclusion, including the U.S. Department of Justice report indicating that the mere presence of private prison operations "has had a significant impact on traditional prison operations" and has "forced the public sector to reexamine how it conducts business."

Research also suggests that privately operated prisons are more accountable. Volokh's (May 2002) analysis concluded that because of legal and market forces, "there are many reasons to believe that private prisons are more accountable than public prisons." Experience shows that it is difficult to hold public prisons accountable. Legislators have limited capabilities to scrutinize corrections operations closely, since state budgeting is rarely based on goals and performance. The Abt Associates report (McDonald et al., 1998) stated that "Superintendents of public facilities do not contract with their superiors to deliver institutional performance specified in legally binding terms." Properly written contracts with private

firms can provide legally binding performance for prison services.

Policy Options for Wisconsin

Wisconsin leaders should not ignore the positive overall effects prison privatization can have on the state's correctional system. It holds potential for helping the state fiscally, in the short and long term; for enhancing service quality; and for improving accountability. Corrections privatization has a proven track record, and Wisconsin has already benefited from the use of privatized services and facilities. The effort should be sustained and expanded. Some options for Wisconsin policy-makers to consider are as follows:

Authorize privatization with provisions for guaranteed savings.

Laws now in force in Tennessee, Texas, and Florida authorize the use of private vendors to finance, construct, operate, maintain, and manage correctional facilities as long as the contract provides for a savings of 5 to 10 percent or more over an equivalent state-run program. Wisconsin should enact similar legislation. Policy of this sort sets up a no-lose situation for the taxpayers.

Sell prison assets to private firms. A more radical and controversial approach, as mentioned in the U.S. Department of Justice Bureau of Justice Assistance report (Austin & Garry, 2001), could generate a significant amount of funds for Wisconsin. The state could sell some its current prisons — valued at hundreds of millions of dollars — to private companies and then contract with them for their services, possibly at a cost savings. The funds from the asset sales could be used to pay off state debt, helping to ameliorate the state's fiscal problems.

Authorize a Wisconsin private prison. Prison population projections indicate that the DOC will need to contract for 2,250 prison beds in 2005 and 4,500 in 2009. Rather than sending a new batch of inmates to a private prison out-of-state, Wisconsin should authorize a privately operated prison of its own. Inmates then could be incarcerated closer to home, and the economic benefits spun off from establishing and operating the prison facility would benefit Wisconsin rather than another state. The Legislature could resurrect 1999 AB 176, then authored by Scott Walker, which would implement this policy.

Privatize other prison services.

The state should aggressively pursue the privatization of other prison services, especially in the area of health care. A prime candidate for privatization could be the Highview nursing home prison that will open in 2004. (First, however, the DOC should significantly improve its policies on contracting with private firms and vendors, as recommended by the Legislative Audit Bureau.)

Pursuing these prison privatization policies appears to be a common-sense move. However, any significant effort to implement these policy ideas in Wisconsin could be very controversial, owing to labor union opposition. Governor Thompson once promised the state employee labor union that no privately operated prison would be allowed in Wisconsin; it is unlikely that Governor Doyle would promise anything different. Nevertheless, when legislators and governors face big deficits and no easy ways of resolving them, they will certainly need to consider ways to cut spending on the corrections system. They can do that through more extensive use of privatization.

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