

PRISONS

*A look at prison
privatization*

FOR PROFIT

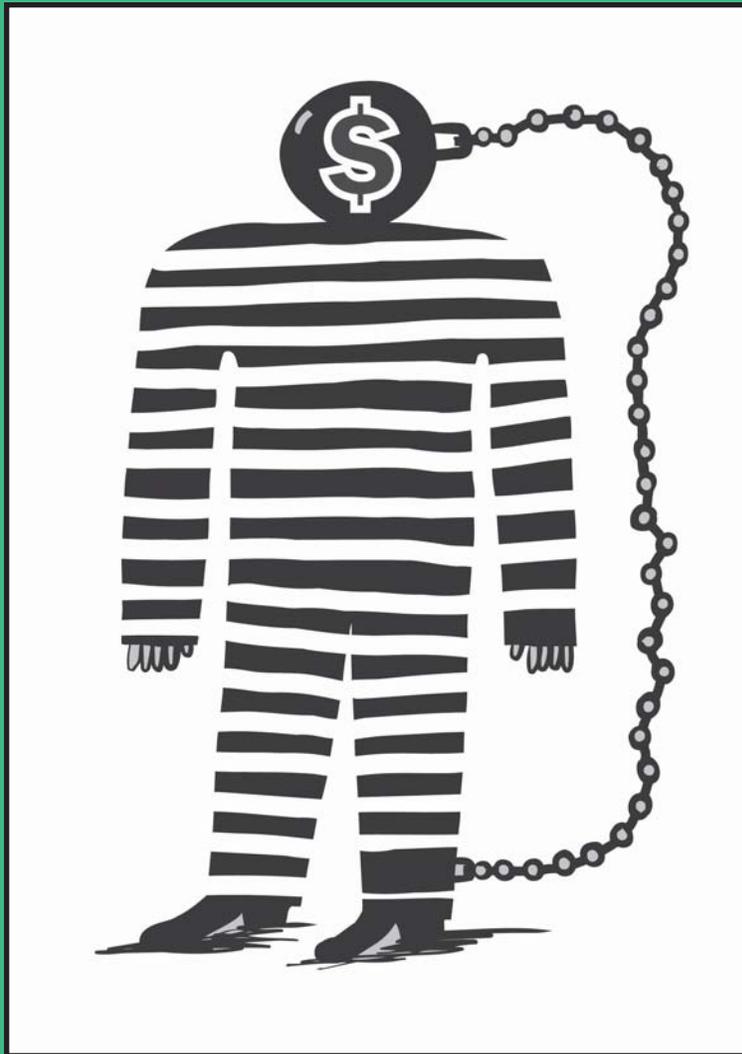




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The economic downturn has resulted in a budget crisis for Ohio, as it has for other states, and out-of-control prison costs have emerged as a key concern.

The ACLU of Ohio has been a forceful proponent of sentencing reform where policymakers may save taxpayer dollars and help create a more just society.

Governor John Kasich's new budget plan includes a sweeping overhaul of Ohio's **Department of Rehabilitation & Correction**. The proposal includes common-sense sentencing reforms that would help ease our overcrowded prison system. Unfortunately, the proposed budget also includes a plan to sell five state correctional facilities to "prison for profit" operators like **Corrections Corporation of America** and contract with those companies to house inmates in them.¹ **Privatizing state prisons may in fact undermine sentencing reform's goal to remove low-level offenders from the justice**

system.

Prisons for profit are different from public institutions because they must generate revenues for their shareholders. As a result, they have a direct interest in ensuring that Ohio's prison system stays full to maximize its profitability.

This is not the first time prison privatization has been proposed as a cost-saving measure for Ohio taxpayers. In the 1990s, Ohio experimented with a private penitentiary in Youngstown that resulted in serious safety and fiscal concerns. Currently, the state has

limited private facilities to Northcoast Correctional Facility and Lake Erie Correctional Facility, which hold inmates with minimal health and behavioral issues.

Legislators are taking steps to correct our broken prison system, but privatization will negate this important work. This report seeks to explore the many problems that plague prisons for profit, in the areas of fiscal efficiency, safety, contributions to the community, accountability and effect on recidivism.

This report was compiled and drafted by senior staff at the American Civil Liberties Union of Ohio. The ACLU of Ohio would especially like to thank the following staff and volunteers for their contributions to this report:

- Christine Link, executive director**
- James L. Hardiman, legal director**
- Mike Brickner, director of communications and public policy**
- Gary Daniels, associate director**
- Carrie L. Davis, staff counsel**
- Shakyra Diaz, policy director**
- Ann Rowlett, deputy director**
- Geoff Schotter, research assistant**



EXECUTIVE SUMMARY

Current State of Incarceration

- Between 1987 and 2007, the national prison population tripled to 1,596,127. **Nine percent of the national prison population is housed in a private prison.**
- Private prisons have evolved since the 1980s into a permanent American industry grossing billions of dollars in revenues every year. **Corrections Corporation of America (CCA), the nation's leading private prison operator, reported revenues of \$1.675 billion in 2010.**

Costs and Savings

- **Many states have recently begun ending their contractual relationships with private prison operators**, concluding that the costs and risks of privatization far outweigh any short-term benefits.
- Ohio's proposal of selling five prisons will only yield a short-term infusion of cash. The state will lose all future revenue.
- Studies conducted by the U.S. Department of Justice and the U.S. General Accounting Office have shown that private prisons yield **little or no long-term savings.**
- Cost comparison studies of state-run and privately-run

prisons are plagued not only by difficulties in controlling for variables like security level, gender, and age, **but also "hidden" costs associated with contract writing, financial liability, and monitoring.**

Community Costs

- **Privatization will undermine sentencing reform.** Prisons for profit have a different mission than public prisons: they must earn revenue. This means they have an inherent interest in ensuring prisons stay filled, even at the expense of taxpayers.
- When a state government enters into a contract with a private prison company, it legally binds the taxpayer to pay the company a certain dollar amount per inmate per day. This has led to over-incarceration and violence at private facilities in Ohio and nationwide.
- The profit motive drives private prison operators to pay as little of their fair share of state and federal taxes as possible, and they often get away with shifting the costs of their prisons' failures directly onto the backs of taxpayers. **In 2002, the IRS had to sue CCA to get it to pay \$54 million in back taxes.**

Safety

- **A 2004 report found that private prisons had 50 percent more inmate on inmate assaults and almost 50 percent more inmate on staff assaults.**
- Private prison companies cut costs by hiring cheaper, lower-skilled staff and fewer of them. The result is a vicious cycle where poorly trained and poorly disciplined corrections officers are incapable of adequately responding to prison emergencies. Prison safety conditions deteriorate, and more staff quit, increasing the turnover rate.

Rehabilitation

- Of the top five states in percentage of privatized prison beds, **each has a higher three-year recidivism rate than Ohio.**
- Ohio's two private prison facilities offer **fewer** rehabilitation and training courses than their public counterparts.

Transparency

- Ohio case law is mixed as to whether private prisons are subject to public records requests and other important transparency measures. **Without these protections, private prisons are ripe for abuse.**

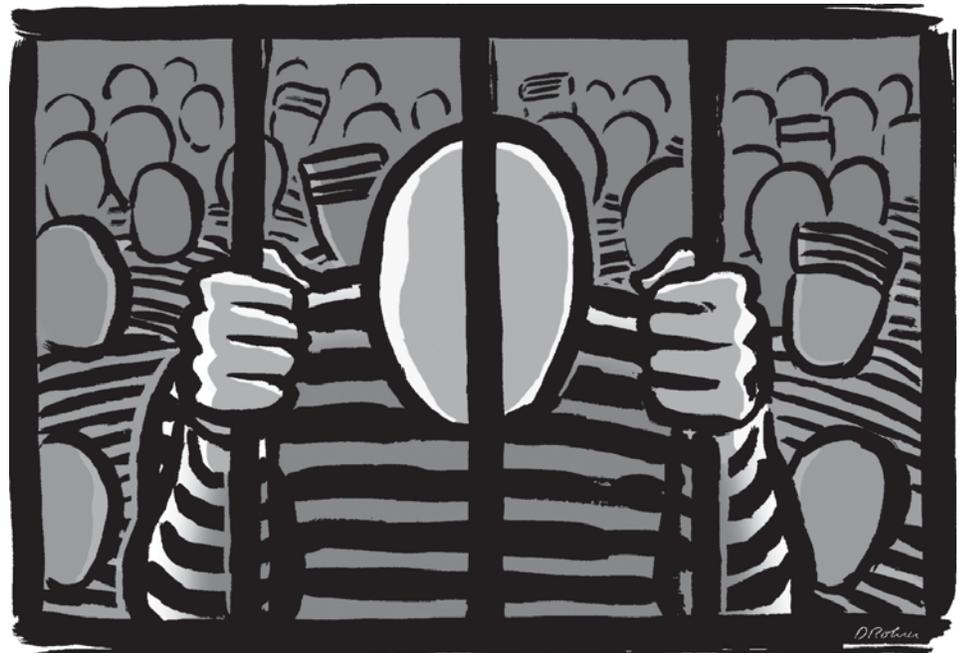


OVERVIEW OF PRISONS FOR PROFIT

Foundations of Prisons for Profit

Prison privatization has a long and troubled history in the United States — a history that offers a stark warning about the incentives motivating those who would turn punishment into a private, for-profit business. The Thirteenth Amendment to the U.S. Constitution was passed immediately after the end of the Civil War to formally abolish slavery throughout the country, but it contained an exception for “punishment for crime whereof the party shall have been duly convicted.”¹ In the following decades, many states, particularly in the south, contracted out prison inmates as cheap farm, railroad, and mining laborers under what was called the Convict Lease System. Growing political opposition to the Convict Lease System during the Progressive Era of the 1920s led to its demise. Beginning in the 1980s, the War on Drugs, the introduction of mandatory minimum sentencing, and a general political climate across the country that looked to incarceration as the one and only solution to all aspects of crime combined during that decade to turn incarceration into an investment opportunity for private speculators.²

States increasingly began to sell off their correctional facilities to private operators and then enter into contracts



with those operators to house their inmates as a means of coping with a suddenly skyrocketing prison population.

Since then, private prisons have evolved into a permanent American industry. Today, the overwhelming majority of the 264 private prisons in the United States are operated either by Corrections Corporation of America (CCA) or the GEO Group (formerly Wackenhut Securities, Inc.).³ **As of June 2010, 126,000 state and federal prisoners, 9 percent of the national inmate population, were housed in privately run prisons.**⁴

But state after state in recent years has ended its contracts with private operators, concluding that the costs and risks of privatization are just too high compared to any benefit privatization provides to taxpayers.⁵ Texas, Oklahoma, California, Idaho, and Nevada

are among the states that have terminated or seriously considered terminating their contractual relationships with private prison operators.⁶

Current Privatization in Ohio's Prisons

Ohio Department of Rehabilitation and Correction outsources various services in its many public prisons to private contractors. For example, inmates have collect-call telephone funds that are administered by Global Tel*Link, a private communications company that caters to prison inmates.⁶

In addition, a 1996 state law requires Ohio to contract for two private prisons as long as those prisons show annual cost savings of at least five percent in comparison to state-run prisons.

Ohio's two privately owned



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state prisons include the **North Coast Correctional Treatment Facility** in Grafton, which is owned by the **Management and Training Corporation (MTC)** and hosts 700 minimum-security inmates, and the **Lake Erie Correctional Institution** in Conneaut, which is also owned by MTC and hosts 1,509 minimum-to-medium-security inmates.⁷ In addition, Ohio hosts 2,016 out-of-state federal prisoners at the Northeast Ohio Correctional Center, a CCA-owned facility in Youngstown.⁸

The John Kasich administration, however, has indicated that it intends to pursue privatization as a major component of its correctional budget reforms. Kasich's appointment of private prison industry insider Gary C. Mohr as the new director of ODRC also signals a willingness to privatize the prisons. Mohr was CCA's managing director from 2007 to 2009, and "CCA was a client of Mohr's consulting firm before and after his employment with

the company."⁹

Kasich's biennial budget proposal would transfer ownership of the Lake Erie and North Coast facilities from MTC to another private company, sell the currently state-run Grafton and North Central facilities to a private company, and reopen the Marion juvenile facility as an adult prison and sell it to a private company.

Privatization versus reform

Governor Kasich says he is implementing both sentencing reform and privatizing prisons in order to save resources. While sentencing reform will lessen the overcrowding of Ohio's prisons, prison privatization may not have a substantial financial impact.

The budget crisis in Ohio is not trivial, and the cost of prisons is indeed out of control, but privatizing state-run prisons will not fix the gaping corrections-related hole in the state budget, and will more likely than not make it even

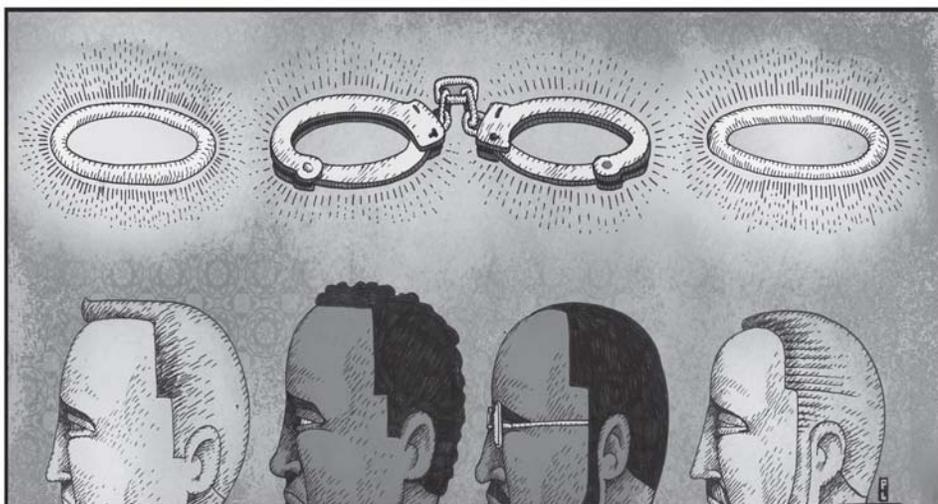
worse.

State prisons are public assets. Selling them off will only yield a one-time infusion of cash.

It is highly disputed whether the promised savings from a private prison's reduced operational costs will ever materialize, but even the most generous estimates of such savings are trivial in comparison to costs of housing an ever-expanding inmate population in the first place. **As of October 2009, Ohio taxpayers spent an average of \$25,254 per year for each inmate housed in Ohio prisons.** In June of that year, the Ohio prison system held a total of 51,113 inmates, and ODRC projects that the number will grow to 52,546 in 2011.¹⁰ The most generous estimates of operational cost savings at private prisons compared to public prisons range from 5 to 15 percent, and even these figures are highly disputed by impartial, reputable sources.¹¹ If Ohio's prison population continues to grow, neither of these dubious cost savings projections, nor the promised extra corporate tax revenue¹² will amount to anything more than a monetary drop in the bucket for Ohio's budget crisis.

Short-Term Savings and Long-Term Costs

While taxpayers have an interest in saving funds and rehabilitating inmates, prison-for-profit companies like CCA





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only have an interest in their bottom line. It is in their best interests to charge taxpayers as much as they can per inmate per day and cut programming. It is the profit motive that drives private prison operators to engage in cost-cutting measures. Since a company's profit is the difference between its costs and revenues, those measures will always benefit the shareholder when it comes time to pay out the dividends. But any cost savings that the taxpayer might realize as a result of such measures can quickly be eaten up by an increase in the number of inmate-occupied private prison beds within the state. Thus, even if we assumed the most generous cost-comparison figures to be the most accurate, it wouldn't change the fact that, the interests of a private prison company's shareholders and the interests of taxpayers in states that have contracts with that company are fundamentally opposed.



Private prison firms have a natural incentive to maximize both the number of inmates they imprison and the amount of time for which they imprison each inmate, because the state pays them for their service of housing convicts on a per-inmate per-day basis.

The prison population continues to swell both in Ohio¹³ and nationally.¹⁴ However, crime rates have also decreased substantially over the past several years. Prisons for profit will only exacerbate this problem as they have a vested interest in more people remaining incarcerated.¹⁵

Governor Kasich is not doing the taxpayers of Ohio any favors by selling off state prisons to a private prison company like CCA. Doing so will not only worsen the strain on Ohio's budget; it will also work strongly against the rehabilitation of low-level offenders and jeopardize the safety of ordinary Ohioans.

Only sentencing reforms and guidelines that systematically identify and invest in the rehabilitation of such inmates can reverse Ohio's hemorrhaging corrections budget because only these types of reforms will actually reduce the number of inmates incarcerated in Ohio. Rather than rewarding private prison operators like CCA with contracts that bind Ohio taxpayers, Ohio's corrections policy ought to try as hard as possible to end the cycle of

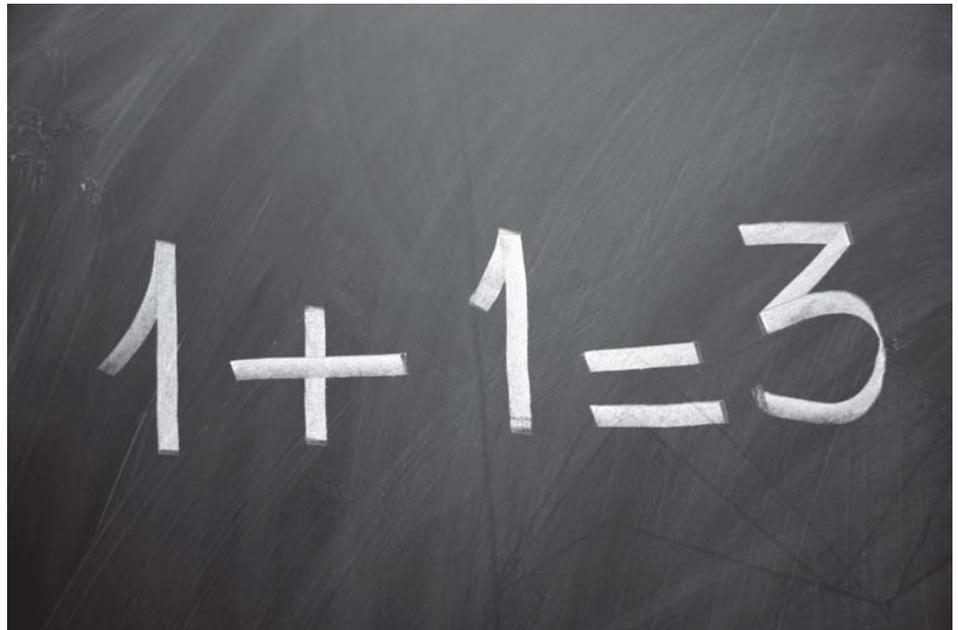
incarceration by enacting sentencing reforms that reverse the mushrooming of the prison population that has continued unabated for decades.



Cost Comparisons

The idea that outsourcing traditional public-sector functions will lead to those functions being carried out more efficiently and less expensively is rooted in the philosophy that “the government which governs best is that which governs least.” Those who support prison privatization believe that opening up the operation of prisons to the competitive free market will result not only in those prisons being run at a lower cost than public prisons but also in those prisons showing improved “quality, flexibility, and innovation.”¹⁶ This is the position of the conservative **Reason Institute**, one of the country’s leading voices for privatization.

Even if one were to assume this argument to be true, the sheer number of inmates who are currently locked up in Ohio calls into question the wisdom of incarcerating many of them in the first place. **73.5 percent of males and 85 percent of females in the Ohio prison system were classified as low-to-medium-security in 2009**, and the majority of Ohio prisoners were incarcerated for low-level, nonviolent offenses.¹⁷ Taxpayer money could be better spent providing addiction treatment, job training, and job development programs outside of prison for many of these inmates than keeping them locked up. Paying a private contractor to house them in a



more “flexible” or “innovative” way than the state is capable of doing is hardly the best deal for the taxpayer.

Countless studies by independent agencies, state governments, and the federal government have compared the cost-effectiveness of public and private prisons since the modern era of prison privatization began in the 1980s.¹⁸ Each of them seriously calls into question the argument that privatizing a correctional facility makes it significantly cheaper or more efficient to run.

One recent study of note was a performance audit of the **Arizona Department of Corrections** conducted by the state’s Office of the Auditor General in 2010.¹⁹ The audit noted that “Arizona’s prison population has grown faster than most states’ prison populations” and that the state

“has expanded [its] prison system to accommodate growth,” relying heavily on privatization in order to contain costs.²⁰ In particular, the Department has:

- contracted for services (such as food, health, and work-based education) with private organizations and community colleges;
- downsized administrative office staff;
- placed responsibility for more costs on the inmates;
- taken advantage of volunteer support;
- replaced typical mattresses with ones made from recycled materials; and,
- used inmate labor and inmate-produced products



whenever feasible, among numerous other efficiencies.²¹

Yet the audit cautions that even though the Department of Corrections “has taken steps to keep the per-inmate daily cost (per capita rate) low,” “State spending on the Department’s operations has increased significantly” and “continued expansion will require significant spending.”²² **The Department’s Operating Per Capita Cost Report found that “the state paid private prisons a higher per inmate rate than it spent on equivalent services at state-operated facilities in fiscal year 2009.”**²³

The Arizona audit only confirms decades of studies inquiring into wisdom and cost-effectiveness of prison privatization. Back in 1988, **John Donahue** of **Harvard’s Kennedy School of Government** conducted a study of the benefits and drawbacks of prison privatization for the **Economic Policy Institute**. He concluded that “the evidence on potential cost savings is too weak and too questionable to warrant so radical and risky an experiment.”²⁴ Since then, the evidence has not gotten any stronger or more certain.

A 1996 review by the **U.S. General Accounting Office** surveyed studies conducted between 1991 and 1995 in five states — Texas, California, Tennessee, New Mexico, and Washington — comparing



operational costs at public and private facilities.²⁵ It found that each study “reported little difference” and “could not conclude whether privatization saved money.”²⁶

In 2001, the **U.S. Department of Justice’s Bureau of Justice Statistics** published an even more comprehensive survey of cost-comparison studies and concluded that private prisons offered only modest cost savings. “[R]ather than the projected 20 percent savings,” the survey concluded, the average savings from privatization was only about one percent, and most of that was achieved through lower labor costs.”²⁷ The minimal cost savings that were achieved through lower staffing levels did not come without a price — they were accompanied by “a significantly higher rate of assaults” on inmates and staff.²⁸

The credibility of studies which do show cost savings at

private prisons is complicated by the less-than-scientific conditions in which they were conducted. Two analysts from the **Federal Bureau of Prisons** published a paper in 1999 which concluded that “**proponents of privatization make global, unsubstantiated, speculative claims which are rarely addressed with concrete evidence.**”²⁹ In order to control properly for such studies, the researcher ideally would be able to look at two prisons that were identical in their design, inmate population, and inmate characteristics.³⁰ It is typically very hard to find such a perfect comparison, and many of the cost-comparative studies that have yielded pro-privatization results have suffered from this problem.

In 2008, the **National Institute of Justice** found that **private prisons tend to underestimate the cost of oversight, health care, and**



background checks in their proposals and that states end up paying more than they were told they would be paying. One of the key reasons for such errors, the study found, was the inherent differences in the way prison performance in the public and private sectors is measured. Private prisons' performance is measured by their compliance with the terms of their particular contracts (which, of course, may vary). Publicly-run prisons, by contrast, measure performance through auditing procedures.³¹

A 2009 "meta-analysis" of cost-comparative studies by five **University of Utah** researchers consciously took into account these methodological issues and surveyed only "high-quality"

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cost-comparison studies—studies that "directly compared . . . specific, identifiable, private prison[s] with . . . closely matched, identifiable public prison[s]."³² **'Cost savings from privatizing prisons,' the study concluded, "are not guaranteed and appear minimal."**³³

In addition to control difficulties, there are often "'hidden' or indirect costs associated with contract writing,

financial liability, and monitoring that may or may not be included in the cost analysis."³⁴ Whenever a state contracts with a for-profit corrections company, it puts the responsibility of living up to state operational standards in private hands. While the contract may state that the private company has to meet those standards, doing so puts pressure on the company's bottom line that the company will naturally be compelled to resist.

One telling example of this problem happened at Ohio's own North Coast Correctional Treatment Facility in 2000. Two months after it opened, a judge cited contract violations at the facility.³⁵ Over the following year, "[a] pattern of contract violations, safety problems, and other issues continued to plague the institution." Four consecutive wardens resigned, "one of whom had to serve at two different points to substitute for sudden departures."³⁶

Sometimes, the language of the contract itself ends up costing more money for the state than it saves. The North Coast facility was designed only to house drunk-driving offenders, but the ODRC's contract with CiviGenics, then the private company operating the facility, contained a clause committing ODRC to pay CiviGenics for 95 percent inmate capacity regardless of the actual number of inmates being held at

the facility. When the state found it was unable to fill North Coast solely with DUI offenders, however, it sent prisoners to the

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facility who had been convicted of serious felony offenses such as sexual battery, assault, arson, manslaughter, and robbery. In December 2000, ODRC withheld \$74,499 from its monthly payment to the company to recover part of its cost and then declined to renew the contract when it came up for renewal. After Ohio failed to receive bids from other companies that were five percent below the state's estimated costs for North Coast, ODRC raised the per-prisoner per-day rate it allowed private companies to charge from \$53.11 to \$62.88.³⁷

It is little wonder, then, that the 2010 Arizona audit suggested repealing the state's harsh mandatory sentencing laws and expanding community corrections as "fiscally sound" compared to building new prisons.³⁸



COMMUNITY COSTS & PRISONS FOR PROFIT

Two Ways of Looking at Cost

As taxpayers we all want our government to provide us with the best possible prisons to effectively rehabilitate and reform those who will one day re-enter our communities. We also want our government to use our tax dollars efficiently and effectively.

The private prison industry promises taxpayers that privately owned, for-profit prisons will both save on prison operating costs and generate public revenue from corporate taxes the industry pays to the states in which it operates.³⁹ Both of these promises, however, are empty.

CCA and other major private prison operators are publicly traded corporations. As such, their primary responsibility by law is not to the states who contract with them but to their shareholders. Since investors can sell their shares at any time, the managers and executives of private prison companies have immense pressure on them to consistently turn a profit. The argument that privately run prisons are more efficient and competitive than state-run prisons fails to take account of the very peculiar type of “competition” that exists within the private incarceration business.

Competition in most private-sector industries means the consumer gets to choose among competing providers of goods and services. Inmates in

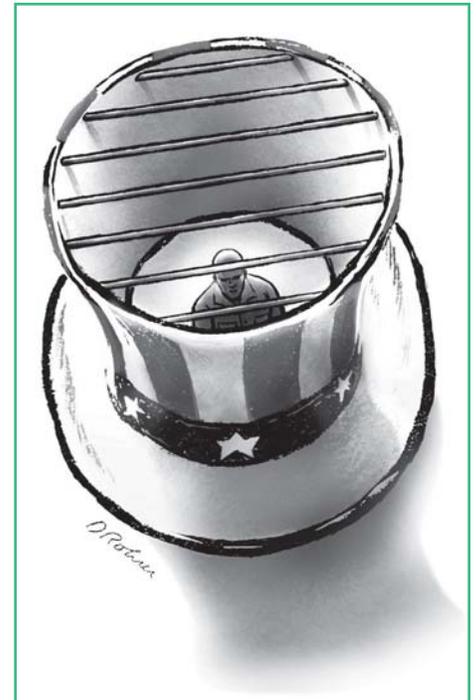
privately run facilities, however, are no more able to choose a different prison if they are dissatisfied with the conditions of their confinement than are inmates at state-run facilities.

Like firms in any for-profit industry, private prison companies are compelled to expand and capture an ever greater market share. CCA's current near total domination of the U.S. private prison industry dates from the second half of the 1990s, a time when the acceleration of prison construction was at its historical peak.

Between 1987 and 2007, the national prison population tripled to 1,596,127. CCA capitalized on this trend by acquiring their smaller rivals and lobbying states — with mixed success — to take over increasing portions of their prison systems.

In 1990, CCA's reported annual revenues were \$50 million. By 1997, they had ballooned to \$462 million,⁴⁰ and by 2006 they had reached \$1.675 billion.⁴¹ The company's reported revenues and profits have been steadily growing ever since.⁴² In the words of one New Mexico county commissioner, “It's terrible to say, but prisoners and trash are big business.”⁴³

If companies in the private corrections industry seem to achieve greater success in the marketplace the more they fail at providing state taxpayers with



any substantial cost savings, the reason why is pretty straightforward. From the perspective of these companies' shareholders cost savings means something completely different than what it means from the perspective of the taxpaying citizens of the states in which private prisons operate.

The shareholder does not care whether the company's profits result from cutting costs in half while maintaining the same revenue inflow or from maintaining the same cost outflow but increasing revenues by expanding the number of occupied prison beds. As long as the value of his or her stock in the company continues to grow, it is not relevant to them how this is achieved.

But to the taxpayers of the state in which the company operates this prison, it is



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extremely important in which of these two ways the company maximizes its profit. All of the abstract, quantitative talk about cost savings obscures the basic fact that **the taxpayer does not stop paying for a prison's operation after it becomes privatized.** When the state government enters into a contract with a private prison company, it legally binds the taxpayer to pay that company a certain dollar amount per-inmate per-day. There is therefore a direct correlation between the company's revenues and the taxpayer's expenses. Privatized prisons are not intended to make a profit for taxpayers — they generate revenue for shareholders.

A privately-operated correctional facility is nothing more than a barbed-wire-enclosed building filled with cells and beds; it only becomes capital — that is, a source of real economic value to the company's shareholders — when its cells and beds are filled with human beings at the taxpayer's expense. It is this prison's status as capital that prison privatization supporters point to when trying to persuade the taxpayer of its superior cost-effectiveness in comparison to its supposedly bureaucratic and cumbersome state-run counterpart.⁴⁴ But in reality, this is a comparison of apples to oranges, because the taxpayer does not measure prisons and other public services by how

profitable they are to him or her personally but by how useful they are to his or her community.

A 1992 study by the **New Mexico Corrections Department** showed that guards at a private CCA-run women's correctional facility were pressured to issue disciplinary infractions to inmates that resulted in prolonging their incarceration out of a desire on the part of CCA executives to maximize quarterly dividends

Alongside the rise of private prisons in America has been the growing practice of "interstate commerce" in prison inmates.

and satisfy shareholders. As a result, "inmates at the women's prison run by CCA lost good time at a rate nearly eight times higher than their male counterparts at a state-run lockup."⁴⁵

Yet private prison firms are hardly indifferent as to which inmates they house. All things being equal, there would be a one-to-one correlation between a correction firm's profits for a given time period and the number of inmates it houses during that time period.

However, inmates who are unusually violent and difficult to control or who have unusual medical needs cost prison operators more to house than inmates who are compliant and healthy. In addition to having a natural financial incentive to maximize inmate capacity and time incarcerated, private prison operators have a simultaneous incentive to "cherry pick" those inmates who are the least costly for them to house.⁴⁶

A 2001 report by **Policy Matters Ohio** found that **Lake Erie Correctional Facility** artificially inflated its cost savings by receiving only healthy, well-behaved inmates, and thereby demonstrated the 5 percent cost savings required of it by Ohio law.⁴⁷ This demonstrates one way that private prisons remain profitable to their shareholders. After cutting their operational costs, they aim to fill as many beds as possible with the most docile, healthy, and therefore inexpensive inmates they can find.

Alongside the rise of private prisons in America has been the growing practice of "interstate commerce" in prison inmates. On the eve of the mid-1980s birth of modern prison privatization, the U.S. Supreme Court held that "[j]ust as an inmate has no justifiable expectation that he will be incarcerated in any particular prison within a State, he has no justifiable expectation that he



will be incarcerated in any particular State.”⁴⁸

Private prison operators have therefore benefitted since the industry’s very beginning from a national market in inmates, enabling them to compensate for convict “shortages” in the states in which they operate prisons by siphoning inmates from other states with convict “gluts” into those prisons and thereby fill them to capacity.

A 1972 study by the **California Department of Corrections** found “a strong and consistent positive relationship... between parole success and maintaining strong family ties while in prison.”⁴⁹ In this context, private prison firms have a doubly perverse incentive. The compulsion of these firms to “import” prisoners from far away localities to fill empty prison beds imposes the “external” cost on society of more unrehabilitated offenders. This social cost ultimately falls on the state’s taxpayers. It provides at the same time, however, yet another benefit to the private prison industry, because rehabilitated offenders do not fill private prison beds and therefore do not generate profits.

Prisons for Profit and Taxes

When it comes to the question of private prison corporations paying taxes for the privilege of operating in that state, the interests of taxpayers

“Cash for Kids” Scandal Rocks Pennsylvania

Sometimes private prison operators are so greedy for revenue-generating human beings to fill their cells that they bribe judges to sentence children to serious jail time for the most minor and trivial of offenses. In February 2011, a juvenile court judge in Luzerne County, Pennsylvania was convicted of racketeering in connection with a “kids for cash” scheme. The judge accepted money from a private prison operator in exchange for handing down ridiculously harsh sentences that would guarantee prisons were full to profit-maximizing capacity.⁵⁰

This scandal led to the reversal of thousands of juvenile convictions and brought national embarrassment to the county. The conspiracy “lasted from 2003 to 2008” and involved as many as 6,500 juvenile cases and 4,000 individual children, over 50 percent of whom did not have an attorney.⁵¹ One

youth was “sent to a boot camp for five months in 2004 for being a lookout for a friend who was stealing DVDs from a Wal-Mart.” Another was “sent to a detention center for several days in 2006 for failing to appear at a hearing as a witness to a fight, even though his family had never been notified about the hearing and he had already told school officials that he had not seen anything.” A state audit of the Pennsylvania juvenile facilities involved in the “cash for kids” scandal found that those facilities “were systematically overbilling the county and . . . had fallen behind in their bills and begun receiving shut-off notices from utility companies.”⁵² In his closing argument at the disgraced judge’s trial, the prosecutor said he had “turned his office into a cash-cow, into a money-making machine.”⁵³

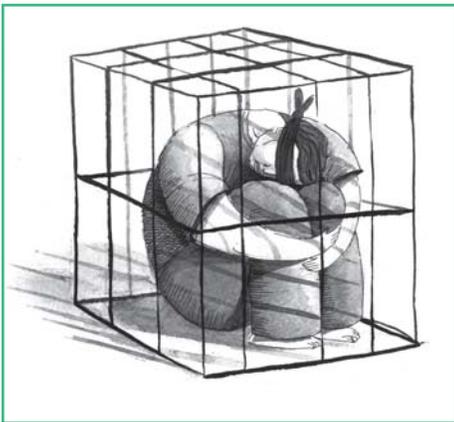
and private prison shareholders are similarly opposed. Taxes are an expense to private corporations that cut into their profits, and the managers and directors of private prison companies therefore owe a duty to their shareholders to minimize the company’s tax liability as much as possible.

The taxpayers of the state

where these companies operate their prisons, however, naturally want these companies to pay their state governments as much as possible in corporate taxes, because taxing outside corporations relieves the taxpayers of the burden of funding basic government services. **While private prison**



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companies publicly promise taxpayers that their presence in the state will generate revenue, they lobby behind the scenes and otherwise do everything they can to minimize the taxes they actually pay.

CCA, for example, pulled out of its contract at a Cleveland facility it operated in the 1990s because it refused to pay its share of local taxes.⁵⁴ In 1998 the industry even persuaded Arizona to pass a law retroactively prohibiting the state from taxing income derived from the detention or incarceration of prisoners by private companies.⁵⁵

Real estate tax shelters are another way private prison companies avoid paying their share. A federal tax loophole allows such shelters to avoid taxation at the company level. Although this exemption “was established for legitimate real estate companies,” CCA tried to funnel revenue generated by its prison operations into the loophole shelter in order to avoid paying taxes on it.⁵⁶ The loophole, while part of the

federal tax code, shields companies from tax liability at both the state and federal levels.⁵⁷ The IRS sued CCA in 2002 after its audit of the company suggested it was abusing tax loopholes to avoid paying its share of federal taxes.⁵⁸ CCA settled with the IRS in 2002, agreeing to pay \$54 million in back taxes.⁵⁹ While CCA’s lawyers “continue[d] to appeal the IRS’ findings,” the IRS “questioned the validity of a previous tax avoidance structure, and CCA was forced to pay delinquent taxes.”⁶⁰

Tax-exempt bonds issued through partnerships with local governments and municipalities are another way private prison companies avoid tax liability. These “backdoor taxpayer subsidies” can cost the taxpayer more than public financing would because the local government might issue higher-interest securities than would be the case with ordinary public financing.

Tax-exempt bonds can also shift the responsibility of economic failure from the private prison company to the taxpayer, leaving the taxpayer and the government completely liable for the company’s failure.

This happened in Texas in 1988 when Dallas-based **Detention Services, Inc.** convinced the government of Zavala County to finance one of its facilities with county bonds. The company was supposed to repay its debt to the county from

its prison revenues. But after it cancelled another contract it had with the District of Columbia on account of excessive prisoner violence and staff corruption, the company had no revenue, and the Zavala County government had no choice but to make bond payments out of its operating fund, which sent it into deficit and default on the bonds.⁶¹

When private prison companies market their “services” to state governments, they often promise to “fully indemnify” those governments from liability for their failures. In other words, the companies promise to take total responsibility for all of the debts and other obligations that the state’s taxpayers would ordinarily be stuck with in the event of failure.

Such promises, however, can be exceedingly difficult to enforce. CCA, for example, promised to indemnify the District of Columbia from liability arising from its operation of the Northeast Ohio Correctional Facility, a private facility for DC prisoners in Youngstown, Ohio. But when the District sued CCA to enforce its contract with the company, CCA “refused to indemnify District officials and failed to obtain the required insurance policy naming the District as insured.”⁶²



Safety & Training

The fundamental economic tension between the private prison company shareholder and the state taxpayer is further reflected in various social consequences of prison privatization that reverse the very public benefits that prisons are supposed to provide to the community. Chief among these benefits is public safety. A study by a professor at **George Washington University** found that private prisons had a 50 percent higher incidence of

inmate on staff assaults and two-thirds higher incidence of inmate on inmate assaults than state-run prisons.⁶³ **A 2004 report by the Federal Probation Journal that specifically controlled for prison security level found that private prisons had 50 percent more inmate on inmate assaults and almost 50 percent more inmate on staff assaults.**⁶⁴

These dangerous conditions create a difficult working environment for prison staff, resulting in a far higher staff

turnover rate at private prisons compared to public prisons. **The private prison industry's own statistics show that at private prisons the turn-over rate was 53 percent, while at public prisons it was a mere 16 percent.**

Prison safety depends on a stable workforce. The more frequently a larger number of employees quit, the more dangerous prisons become. High turnover rates mean existing staff are fewer in number and less experienced.

Inmates feel effects of less trained staff: Minnesota case study

In 1999 the University of Minnesota Law School's Institute of Criminal Justice interviewed 106 prisoners in Minnesota, 57 of whom were housed in a public prison run by the Minnesota Department of Corrections (DOC) and 49 of whom were housed at the private, CCA-owned Prairie Correctional Facility (PCF).⁶⁶ Each prisoner was interviewed about his opinion on the professionalism of the prison staff, and security and safety inside the facility. The experiences and perceptions of the prisoners confirmed previous studies that showed the problems of lower wages, higher turnover, and poorer staff training in private prisons.⁶⁷ The study found:

- Prison-for-profit inmates complained about the lack of professionalism of the staff. "The staff attitude here – they treat you like a commodity," one inmate reported, "its all about the money."⁶⁸
- Prison-for-profit inmates were more likely to report a lack of structure in their day. The difference stems from the fact that public prisons force its inmates to participate in rehabilitation activities while the prison-for-profit does little to promote these programs.
- Prison for profit inmates consistently reported living in a more dangerous and poorly supervised environment than public prison inmates. Many

inmates used words like "unstable" and "disorganized" when describing their living conditions.⁶⁹

Many of these inmates were highly aware of the two primary causes of this dangerous environment: the cost-cutting measure of hiring a low-paid, poorly-trained staff, many of whom quit after the first major disturbance, and the revenue-raising measure of "re-classifying" maximum-security inmates as minimum or medium-security in order to fill empty bed space.⁷⁰



Workforce instability at private prisons has resulted in riots, rapes, assaults and escapes.⁶⁵

The instability of private prison staffs is a direct consequence of the fierce cuts in labor costs that private prisons resort to in order to maintain short-term profitability. Containing labor costs “is the crux of the privatization movement.”⁷¹

Running a prison is an incredibly labor-intensive endeavor. Not only do you need enough adequately trained guards to keep order and prevent escapes, you also need a staff to provide a wide variety of inmate services, including meals, health care, counseling and vocational assistance, and law library services.⁷²

Private prison operators control their labor costs by reducing the number of staff, hiring low-wage, non-union labor, and eliminating fringe benefits.⁷³ Prison guards hired by private facilities often have little to no training or experience, and in some instances are barely out of high school.⁷⁴

The result is a labor force that is ill-prepared for the violent crises that may erupt at any moment. Cost-cutting on labor at private prisons perpetuates a vicious cycle: poorly trained and poorly disciplined staff are incapable of adequately responding to prison emergencies, which creates extremely dangerous conditions at the facility, which then forces

a good many employees to quit, and raises the turnover rate.

Youngstown Prison for Profit Threatened Community Safety

Vividly illustrating the consequences this combination of cost-cutting and revenue-generating measures is an incident that occurred in 1999 at the private Northeast Ohio Correctional Facility in Youngstown, Ohio. Upon opening the facility in 1997, CCA staffed it “with guards who had little or no

A 2004 report by the Federal Probation Journal found that private prisons had 50 percent more inmate on inmate assaults and almost 50 percent more inmate on staff assaults.

experience in corrections — and then imported 1,700 of the most violent inmates from Washington, DC, to fill what was supposed to be a medium-security prison.”⁷⁵

In its first 14 months of operation the facility experienced 13 stabbings, two murders, and six escapes.⁷⁶ When local residents complained to CCA about the dangers posed to their community, officials responded dismissively. “It’s nice if your community is happy with you — that’s an extra,” the company’s founder remarked, “[b]ut the

business is built around providing a valuable service to our customers.”⁷⁷

In March of 1998, the City of Youngstown sued CCA on behalf of the inmates at the prison, “alleging that prisoners were put at risk by being sheltered with maximum-security prisoners in a facility not designed for containing them.”⁷⁷ The court ordered the 113 “reclassified” maximum-security inmates be removed from the prison. The litigation, cost of reclassifying inmates, and changes in security procedures posed extra costs to the state.

What the Youngstown incident shows is that even where a private prison demonstrates short term cost savings, “[i]t only takes one major disturbance for such costs to greatly accelerate.”⁷⁸ More specifically, Youngstown offers a vivid example of how the very same short-term measures private prisons use to show cost savings — such as hiring cheap labor and cutting staff numbers — produce the conditions in which dangerous, violent incidents can occur. These incidents result in additional costs that could have been avoided had the facility been staffed with enough properly trained officers.



Rehabilitation and Conditions of Confinement

Another benefit prisons should provide the community is inmate rehabilitation. Not only does it cost the taxpayer directly to keep an inmate in prison, it also costs the taxpayer more indirectly when inmates are released back into society without any ability to survive and function as productive, law-abiding citizens.

Supporters of prison privatization sometimes claim that privately operated prisons have more of an incentive than state-run prisons to maintain the quality of the environment in which they keep their inmates and to develop rehabilitation programs that will reduce inmate recidivism. They reason this because private prisons risk losing the state contract to operate the facility if it fails to show results.⁸⁰ Studies comparing the recidivism rates of inmates in public and private prisons, have been inconclusive.

However, states with the most private prisons do not have the lowest recidivism rates.

Ohio's prisons are, with the exception of two facilities, entirely state-operated. Only 4.4% of Ohio inmates are in private beds.⁸¹ States with much higher percentages of inmates in private beds have significantly higher recorded recidivism rates.

The five states with the highest percentage of privatized prisons are New Mexico, Montana, Alaska, Vermont, and

Hawaii.⁸² According to 2005 statistics, four out of the five states had higher three-year recidivism rates than Ohio. 2005 data was not available from New Mexico, but its 2007 three-year recidivism rate of 43% was higher than Ohio's 2007 rate of 34%.

Privatizing more of Ohio's prisons will likely increase Ohio's comparatively low recidivism rates because privately run prisons have consistently proven not to invest in the types of programs and services that public prisons invest in order to enable their inmates to function in society upon their release. The same Minnesota study that interviewed inmates at public and private facilities about prison safety and staff training also interviewed them about the programs and services the facilities offered them. Seventy percent of the state-run DOC inmates reported having received HIV/AIDS education compared to zero of the private, CCA-run PCF inmates.⁹⁰ DOC inmates "were more likely [than PCF inmates] to report that participation in educational classes had proved very helpful to them, personally" and "gave significantly higher overall ratings to the educational programs available in their facilities" than PCF inmates.⁹¹ The drug and alcohol treatment programs at PCF consisted of 1-3 hour counseling sessions that occurred weekly, while most of the DOC prisoners reported benefitting from "full-time,

Percentage of prison beds that are privatized

New Mexico 43.4%
Montana 39.8%
Alaska 30.8%
Vermont 30.1%
Hawaii 28%
Ohio 4.4%

Three-Year Recidivism Rates, 2005

New Mexico 43%*⁸³
Montana 37.6%⁸⁴
Alaska 66%*⁸⁵
Vermont 50%⁸⁶
Hawaii 52.5%⁸⁷
Ohio 36.23%⁸⁸

*No 2005 data was available for New Mexico and Alaska, so 2007 data is provided. Ohio's 2007 recidivism rate was 34%.⁸⁹

highly structured 'therapeutic community' treatment programs."⁹² Typical of the DOC experience is one inmate's report that the DOC prison "taught me how to read, how to evaluate my anger, how to understand myself — it has made big changes and improvements in my life."⁹³ Typical of the PCF experience was one inmate's statement that "I have learned nothing here."

Effect of Rehabilitation on Recidivism

A comparison of the programs and services available to inmates at Ohio's two private facilities with



REHABILITATION & PRISONS FOR PROFIT



those available to inmates at its state-run facilities suggests a similar dynamic at play and underscores the importance of health care — both physical and mental — in providing inmates the treatment necessary for their successful reintegration into society.

Lake Erie Correctional Institute and North Coast Correctional Treatment Facility have no trauma recovery programs, no contract or grant-funded job-training programs, and no programs addressing mental illness, disease management, general health, or sex offender issues.⁹⁴

More troubling is the fact that, despite the many requests by inmates at these facilities for

medical attention by a licensed physician (as opposed to a nurse), none of them were sent off-site to the Ohio State University emergency room, whereas inmates in other, state-run facilities were.⁹⁵

It is possible that the two facilities have been seeking to cut costs by relying on “telemedicine,” a private technological service that public and private prisons alike in Ohio have been using since the 1990s. With telemedicine, inmates receive medical treatment from nurses or non-specialist doctors who receive treatment instructions from off-site specialists via a video teleconferencing device.⁹⁶

It is important to remember

the elemental fact that recidivism is good for private prisons. **The more people are returned to prison, the more business private prisons get.** A 2008 study published by *Crime and Delinquency* found that “private prison inmates had a greater hazard of recidivism in all eight models tested, six of which were statistically significant.”⁹⁷ A 2005 study of juvenile prisons published in the *Journal of Law and Economics* found that private prisons increased costs by promoting recidivism. Juveniles in private prisons were more likely to commit further crimes and be imprisoned again.

In purely financial terms — without giving any weight to the social harm caused by increased recidivism — the additional costs of increased future confinement alone exceeded any short-term savings offered by private prisons.⁹⁸ The study found that private prisons had “no contractual incentive to provide rehabilitation opportunities or educational/vocational training that might benefit inmates after release, except insofar as these services act to decrease the current cost of confinement.”⁹⁹



TRANSPARENCY & PRISONS FOR PROFIT

Public Accountability and the Taxpayer's Right to Know

Prisons for profit also weaken the public's right to know. Governors' have less executive authority over the prison's management when it is privatized. **The governor cannot, for example, fire a warden at a privately-run prison for poor management the way he could at a state-run prison.**¹⁰⁰ Where governors are ultimately accountable to the people of the state, private prison managers and executives are accountable only to their shareholders. **Privatizing prisons remove responsibility from the state's elected representatives and makes it more difficult for the facilities to be held accountable by the public.**

The public has far less oversight of the operation of private prisons. In many states, private prisons are exempt from public records laws. This adds a layer of secrecy to their operations and makes it more difficult to learn about misconduct.¹⁰¹

Some states are also granted only partial information on inmates held in private prisons in their state. In Arizona, for example, private prisons are not required to provide the state with escape data or details of the crimes inmates committed.¹⁰²

Because the operation of for-profit prisons is in private hands, states often face considerable legal hurdles when they try to

monitor the operation of those prisons.

For instance, in 1987 an Ohio state auditor tried to audit a Summit County correctional facility that was operated by the private contractor **Oriana House, Inc.**¹⁰³ Oriana House refused to cooperate with the

The public has far less oversight of the operation of private prisons. In many states, private prisons are exempt from public records laws.

audit, and when the state sued, it claimed "that it was not required to produce the requested records because it is not a public office as defined in" Ohio's Public Records Act.¹⁰⁴

The case reached the Ohio Supreme Court, which ruled against the state's right to access the records, reasoning that "[a] private business does not open its records to public scrutiny merely by performing services on behalf of the state or a municipal government."¹⁰⁵ While the courts have not ruled on prisons for profit specifically, the decision in the *Oriana House* case poses serious questions over whether private prisons will be accountable to the public.

Even the most strenuous



proponents of prisons for profit argue for full public transparency. Countless studies of the pros and cons of privatizing prisons — including many that favor privatization — mention the necessity of public monitoring and oversight of private prison operations.¹⁰⁶ But if privatization shields for-profit prison operators from comprehensive state oversight, then Ohio's system will lack even the low thresholds proponents claim is necessary for its success.



SENTENCING REFORM: THE REAL SOLUTION

Sentencing Reform: The Real Solution to Ohio's Ballooning Corrections Budget

Prison overcrowding is the underlying cause of Ohio's bloated corrections budget. The state's prison population has quintupled since 1975.¹⁰⁷ But while prison overcrowding is obviously bad news for the Ohio taxpayer, it is good news for MTC, CCA, and other private prison companies operating in the state. The idea that privatizing any more of Ohio's already overcrowded prisons will help reverse this overwhelming burden on the state treasury is contrary to the nature of prisons for profit.

The prospect of simply releasing massive numbers of prisoners back into society or changing sentencing laws so that fewer convicts are imprisoned raises legitimate public safety concerns. However, the current policy of harsh sentencing and prison overcrowding results in 60 percent of Ohio prisoners being incarcerated for low-level, nonviolent offenses. Sentencing reforms that are carefully designed and correctly implemented will save taxpayer dollars and improve public safety whereas increased privatization will do the opposite on both fronts.

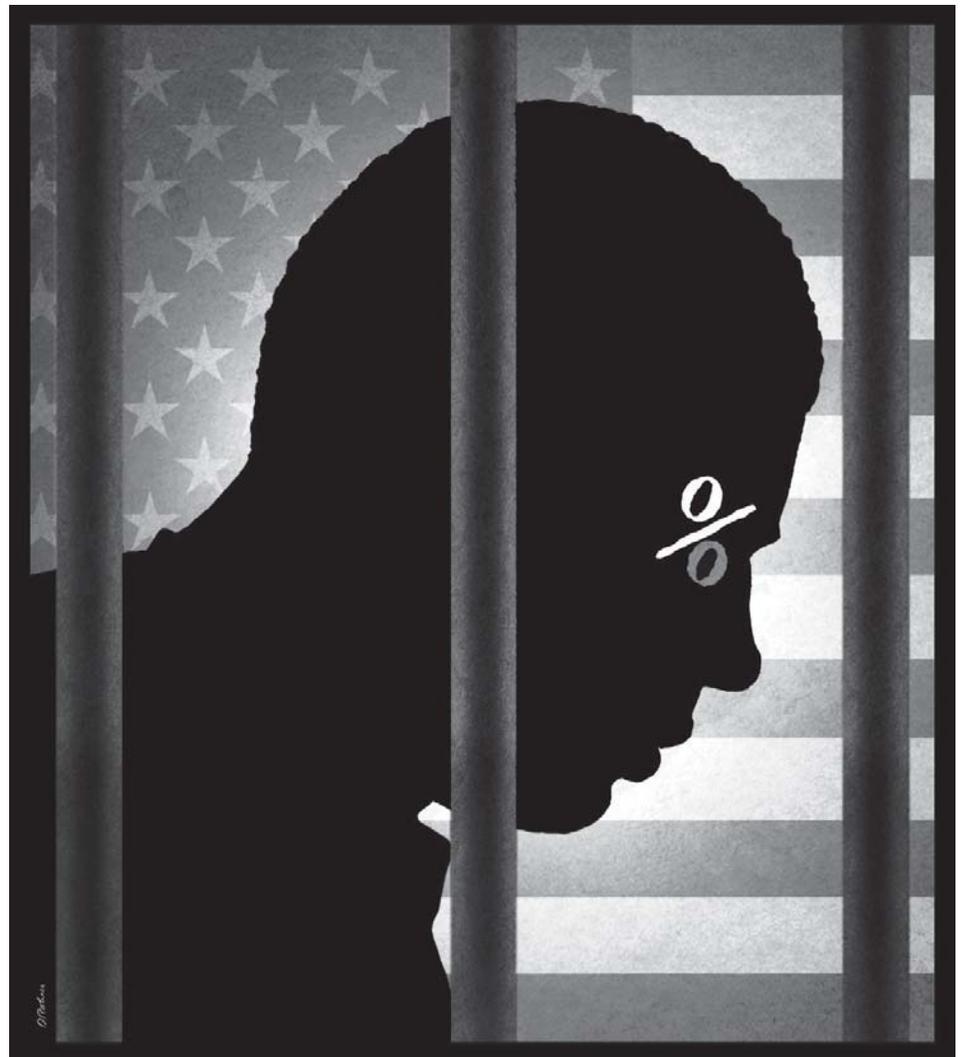
Legislation introduced during the 129th Ohio General Assembly presents a clear first step toward criminal justice

reform in Ohio. One of the central innovations of this proposed legislation is to increase earned credit programs.

Unlike traditional "time off for good behavior," where inmates' sentences are reduced simply because they did not misbehave while serving their time, earned credit allows the inmate to shave time off of his or her sentence by "successful[ly] participat[ing] in education, vocational training, penal industries employment, or

substance abuse treatment."¹⁰⁸ The maximum time off the inmate can earn under the legislation would be 8 percent of the sentence.¹⁰⁹

Inmates would therefore have the incentive to participate in rehabilitative programming that will help them reintegrate into society while holding them accountable. Ohio's **Buckeye Institute** estimates that the earned credit provision, would "eliminate the need for 1,270 beds, resulting in annual savings of \$5.48 million."¹¹⁰





SENTENCING REFORM: THE REAL SOLUTION



Thirty-three states have earned credit laws on the books.

An increase in the use of community-based corrections is another feature of the bill that would save Ohio taxpayers money. In 1979, Ohio passed the **Community Corrections Act**, which established a system of prisoner diversion programs. In 2008, “more than 5,500 offenders were diverted into community-based corrections facilities (CBCF),” which are dormitory-style residential facilities “that receive capital and operations funding from the state.”¹¹¹

CBCFs offer such rehabilitative programming as drug treatment, education, and job training. The typical length of stay at these facilities is six months. The **Ohio Criminal Sentencing Commission** “has determined that CBCFs save taxpayers money because of shorter periods of confinement

and reduced recidivism rates when compared with prison.”¹¹²

Other notable features of the bill include a provision that revises marijuana penalties and eliminates the sentencing disparity between crack and powder cocaine and a provision that narrows the definition of “escape” as it applies to prisoners on supervised release.¹¹³

Privatizing state prisons may in fact undermine sentencing reform’s goal to remove low-level offenders from the justice system.

Both of these reforms correct the excesses of failed “tough-on-crime” policies that have fueled the costly explosion in prison population in Ohio and nationwide over the past generation. The majority of Ohio prisoners are incarcerated for low-level, nonviolent offenses,¹¹⁴ and if only a fraction of those prisoners were diverted into treatment programs, Ohio taxpayers would already be saving millions. But mandatory drug sentencing laws prevent this from happening.

Likewise, many probationers and parolees are re-incarcerated for the crime of “escape” simply because of

honest mistakes or misunderstandings that they have “absconded” supervision. The new escape provision “would allow the Adult Parole Authority to utilize various sanctions at their disposal, thus avoiding new felony charges” and would “eliminate the need for more beds, thus creating additional incarceration cost savings.”¹¹⁵

Finally, the bill would expand eligibility for medical parole among geriatric inmates. Elderly prisoners with serious medical conditions rarely if ever pose a serious threat to public safety. The provision would give parole boards the option of committing these inmates to nursing homes in lieu of releasing them.

Geriatric inmates “consume a disproportionate share of Ohio’s growing correctional medical costs.”¹¹⁶ An April 2010 study by the **Vera Institute of Justice** found that “between 1999 and 2007 the number of people 55 or older in state and federal prisons grew 76.9 percent” and that “prisons spend about two to three times more to incarcerate geriatric individuals than younger inmates.”¹¹⁷ Removing these inmates from the prison system “could significantly reduce inmate health care costs”¹¹⁸ without posing any substantial risk to public safety.

Studies on parolee recidivism find the probability of parole violations also decreases with age, with older parolees the



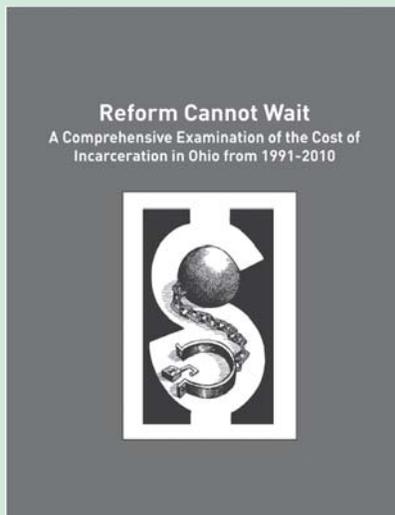
SENTENCING REFORM: THE REAL SOLUTION

ACLU leads the call for sentencing reform

In August 2010, the ACLU of Ohio released “**Reform Cannot Wait**”, an analysis of over 20 years of studies of Ohio’s criminal justice system. The ACLU concluded the state needs to implement common sense sentencing reforms in order to alleviate overcrowded prisons, save resources, and create a more just society.

Leaders across the state have cited the ACLU’s report as the calls for reform have continued.

If you would like to download a free electronic copy of the report, go to www.acluohio.org.



sentencing reform requires statewide coordination and a common set of central guidelines about inmate classification that private prison operators would have a natural economic incentive to resist.

It is troubling enough that the profit motive compels private prison companies to cut their costs by eliminating the very programs that would allow inmates to participate, for example, in earned credit activities. But the fact that such cost-cutting provides a further economic windfall for these companies by ensuring that inmates stay incarcerated (and generating revenue) as long as possible is obscene.

Privatization, therefore, is not a sensible component of a “package” of cost-saving reforms to address a budget crisis; it will likely offset any savings derived from sentencing reforms and other budget-balancing measures.

least likely group to be re-incarcerated.”¹¹⁹

In fiscal year 2010, ODRC spent \$225,829,929 in medical costs. Thirty-nine states have laws providing for medical parole.

Reforms like these will only work if they are implemented correctly. Ohio will have to put forth clear criteria to guide the selection of inmates who will participate, provide adequate post-release supervision of those inmates who do participate, and establish a coordinated statewide system of administering these alternative sentencing programs.¹²¹ By doing so, Ohio will be able to “focus supervision resources on

those people who pose the greatest danger to the community” and “systematize how people are assigned to services in the community, which maximizes the value of these scarce program slots.”¹²²

All of these sentencing reforms save the taxpayer money by reducing the number of inmates occupying prison beds in Ohio at any given time. Prisons for profit undermine these reforms, because the reforms directly cut into their profit margins and threaten to put them out of business. The more a state privatizes its prison system, the less control and authority it will have to implement these reforms. True



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American Civil Liberties Union of Ohio
4506 Chester Ave.
Cleveland, OH 44103
P: (216)472-2200
F: (216)472-2210
contact@acluohio.org
www.acluohio.org

Published April 2011

