

Prisons for Profit Incarceration for Sale

By Michael Brickner and Shakyra Diaz

The July 30, 2010, escape of three inmates from an Arizona medium-security private prison was a series of worst-case scenarios come to life, not only for the public, but for the private companies that operate and profit from state prison facilities. While two of the escapees were captured quickly, John McCluskey and his accomplice Casslyn Welch avoided capture for nearly three weeks. Their time on the lam was not without incident—they were linked to the murder of Gary and Linda Haas, an Oklahoma couple whose burned bodies were found in their camper parked in New Mexico.

In the weeks authorities searched for McCluskey and Welch, Arizona officials began an investigation into the Management & Training Company (MTC)-operated prison. They found several glaring security oversights that contributed to the maelstrom, including a faulty perimeter alarm, inadequate maintenance on the alarm system, no security guards posted at the perimeter when the escape occurred, a sluggish response to the reported escape, and nonoperational flood lights at the perimeter.

The report left the Haas family and many across the country to conclude that this tragedy simply did not have to happen if MTC had done its due diligence. McCluskey and Welch were apprehended on August 20, 2010, but the damage was done. The Haas family filed a wrongful death lawsuit against MTC and the State of Arizona. Subsequent media reports on the close relationships between private prison lobbyists, Arizona Governor Jan Brewer, and state lawmakers exposed a “pay-to-play” system that

allowed private prisons to flourish in Arizona at the detriment of taxpayer resources and public safety.

The negative press could not have come at a worse time for MTC and other private prison operators. After the 2010 midterm elections, a new crop of legislators in states such as Florida, Louisiana, and Ohio ushered in grand proposals for broad-scale prison privatization as a means to raise funds to counteract sharp budget cuts. Arizona’s cautionary tale set the tone for debates in other states where advocates questioned whether private prisons yield cost savings, provide adequate safety measures, and increase the state’s reliance on incarceration rather than rehabilitation.

The Rise of the Private Prison Industry

The rise of private prisons cannot be discussed without first recognizing that it was fueled by the explosion of “tough on crime” policies such as the failed War on Drugs that have left the United States with the largest prison population in the world. Policies such as mandatory minimum sentencing, three strikes laws, and a de-emphasis on diversion, probation, and parole meant that more people were incarcerated for crimes that would have led to rehabilitation or community control only a few years earlier.

As the number of Americans incarcerated for low-level, nonviolent offenses has increased, so has the number of private prisons. In 1990, only a few years after private prisons first began to proliferate, 7,000 prisoners were housed in private facilities nationwide. In June 2010, the number rose to 126,000 prisoners, or 9 percent of the nation’s total state and federal

prison population. In recent years, tremendous growth in private prisons has occurred on the federal level, particularly in the area of immigration detention. However, 2011 marked a renewed push toward expanding private prisons on the state level.

As the number of private prisons has grown, it has also led to banner profits for the companies. The largest private prison company, Corrections Corporation of America (CCA), reported revenues of \$1.675 billion in 2010 alone.

This is no coincidence. Across the country, states have struggled to maintain prison systems that are over capacity and over budget because of the large influx of inmates. In light of the May 2011 U.S. Supreme Court decision in *Brown v. Plata* ordering California to alleviate its overcrowded prisons, more states began to seek solutions to reduce costs and prison populations. *Brown v. Plata*, 131 S. Ct. 1910, 179 L. Ed. 2d 969 (2011). Private prison operators are often touted as savings magnets—playing into the conservative belief that private industry can operate more efficiently and eliminate wasteful bureaucracy that often characterizes government.

Numerous studies have called into question whether private prison companies actually produce any cost savings, and some raise the possibility that they may cost states more in the long term. In 2011, the Arizona Department of Corrections released its report on per capita operations costs for the 2010 fiscal year and found that private prisons offered no demonstrable cost savings—and in some cases cost more than state-

operated prisons. Another 2011 report issued by Policy Matters Ohio, a nonprofit research organization, also found Ohio private prisons' touted savings were nearly nonexistent and private prisons could be more costly than state prisons.

The growing crisis in U.S. prison overcrowding has contributed to private prisons' resurgence in recent years. While the prisons were *en vogue* in the mid- to late-1990s, several scandals set back the privatization movement. Most notable was CCA's Northeast Ohio Correctional Facility in Youngstown, Ohio, in 1999. Within its first fourteen months of operation, there were thirteen stabbings, two murders, and six escapes—eventually requiring the city of Youngstown to file a lawsuit to require CCA to uphold minimum security standards. The facility closed because it was no longer profitable, but it serves as a warning for other states that wish to pursue prison privatization.

The Power of the Private Prison Lobby

Another significant factor in private prisons' proliferation is the calculated lobbying strategy employed by the companies to ensure they have favorable policies in place to maximize their profits.

One of the most famous corruption scandals involving dubious activities by private prison operators erupted in February 2011, when Luzerne County, Pennsylvania, Juvenile Court Judge Mark Ciavarella was convicted of racketeering in a “cash for kids” jail scheme. For years, the judge was paid by private prison officials to sentence kids to harsher punishments in order to keep the company's private facility filled. The scandal led to the reversal of thousands of cases and the release of many of the juveniles, and Judge Ciavarella was sentenced to serve twenty-eight years in prison for his crime.

In the wake of the Arizona scandal, Governor Jan Brewer's relationship with private prison companies

came under intense scrutiny. According to the American Civil Liberties Union's (ACLU) November 2011 report, *Banking on Bondage*, several of her key staff, including her chief of staff and campaign manager, were connected with lobbyists for private prisons. She also accepted nearly \$60,000 in campaign contributions from people associated with private prisons. Brewer

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came under fire after signing S.1070, which would have increased enforcement of immigration laws and likely would have allowed private companies to increase detention of undocumented immigrants in the state.

Florida-based GEO Group, formerly known as Wackenhut Industries, is the second largest private prison operator. The Justice Policy Center found in its June 2011 report *Gaming the System* that GEO Group has made nearly \$1.5 million in state campaign contributions from 2003 to 2010. Florida law requires a minimum number of beds be operated by a private company, and is attempting to privatize twenty-nine additional state prisons.

Justice Police Institute's report also outlined the connections between private prison operators and Ohio officials. Governor John Kasich appointed Gary Mohr, a former

employee of CCA, as director of the state's Department of Corrections. Kasich's former chief of staff was hired by CCA in January 2011 as a lobbyist. Finally, Kasich himself is a former executive with Lehman Brothers, which has a long-standing relationship with CCA, underwriting bonds during the 1990s to keep the company out of bankruptcy. In 2011, Kasich announced a plan to sell and privatize five state facilities to a private prison operator.

In each of these cases, the private prison company uses its relationships and resources to create the most favorable environment for it to earn a profit. The result is a culture of corruption where state officials support and enact policies that will enhance the profits of the private prisons. While this is beneficial for the company, it often comes at the expense of the taxpayer, who must pay more for an expanding prison system and to incarcerate people who would be better served in a less expensive community corrections setting.

A Price for Liberty?

The success of any private company is measured by the profit it generates for shareholders. Just as Nike or Apple seeks to maximize their revenues on sneakers or iPods, private prisons' mission is to earn the maximum profit on the inmates housed in its facilities. This is demonstrably different from the state's interest in incarcerating criminals. Traditionally, the purpose of imprisoning a person falls into three distinct areas: protection for the public, rehabilitation for the offender, and punishment for the criminal. In all three of these areas, private prisons perform no better than public prisons—and may actually perform worse.

As outlined in the Arizona scandal, private prisons often fail to keep the public safe. Many of the problems were caused by the private prison cutting corners on maintenance and training in order to maximize their profit. Private prisons nationwide suffer from

untrained and undisciplined staff that are ill-equipped to cope with the problems that occur in most prisons. In order to increase profits, private prisons pay staff less than public workers, with little or no benefits. As a result, those who work at private prisons do not have the level of experience that state prison workers have.

Private prison staff also tend not to stay for long: The staff turnover rate at private facilities is 53 percent, while the public facilities' rate was only 16 percent. With such an unstable, inexperienced workforce, it is difficult for private prison facilities to maintain safety and good staffing protocols. This also results in a dangerous environment for both the prisoner and the employee. According to a 2004 *Federal Probation Journal* report, inmate-on-staff and inmate-on-inmate assaults were 50 percent higher at private prisons than at their public counterparts. As the environment in the private facility becomes more dangerous, employees are less likely to stay, leading to more turnover and even more dire circumstances.

Taxpayers also have an interest in rehabilitating offenders to ensure they do not commit future crimes and to assist them in becoming contributing members of society. The failure of states to stop the cycle of incarceration has led to the current overcrowding of our prison system and budgetary crisis. Punishment alone cannot reverse this trend; it must include reforms that will direct more people into community corrections and rehabilitation. Unfortunately, this goal is in direct opposition to the mission of private prisons.

Companies like CCA earn their profits by incarcerating the maximum amount of people for the minimum amount of money. Programs such as drug counseling, mental health care, and job training diminish their profits. Private prisons have no incentive to rehabilitate individuals either, as their livelihood depends on more people being incarcerated, not less. In

most cases, private prisons offer little or no rehabilitative programming. When they do, it is often poorly implemented with little oversight. States such as New Mexico, Alaska, Hawaii, and Vermont, which have some of the highest percentages of privatized prison beds, also have some of the highest three-year recidivism rates.

The lack of effective programming also affects the private prisons' duty to protect the public. If offenders are emerging from prison with few tools to reintegrate successfully back into society, they are more likely to commit future crimes and pose a danger to public safety. In addition, the growing number of unemployed ex-offenders has diminished the tax base, in turn decreasing funds available for education, social services, and other important programs. This has sped the urban decay that has plagued many cities with high populations of formerly incarcerated people.

While private prisons may not be demonstrably worse than public prisons in punishing those who are incarcerated, their failures in public safety and rehabilitation should be enough for taxpayers to question whether investing in these for-profit companies is wise. Public prisons also have their shortcomings, but the very nature of private prisons will lead to instability in prison facilities and further over-incarceration.

Operating in the Shadows

States that wish to provide oversight to private prisons are at a significant disadvantage, as the normal transparency and accountability tools are rarely effective. It is highly disputed whether private prisons are required to abide by state public records laws. Federal private prisons have also resisted Freedom of Information Act requests on several occasions, leading to a culture of secrecy in many of the private facilities. This leaves watchdog organizations and the press with little ability to root out corruption and other problems.

While private prison companies and state officials point to auditors

and compliance officers who may monitor their private prisons, they rarely have enforcement ability and can do little to punish companies that do not adhere to state guidelines. In public facilities, the governor typically has the ability to fire a warden who is not performing adequately. However, the governor has no such right in private facilities. Officials do have the power to terminate their contract with private prisons, but this rarely happens. The close relationship elected officials have with companies coupled with the inconvenience of scrambling to find a new company or find alternative facilities to house their inmates discourages states from switching operators.

As with any government function, there must be accountability to ensure nothing unethical or illegal occurs. Given the distinct profit motive of these private corporations, as well as the reality that their business involves depriving some Americans of their liberty, these companies should be subject to the same expectations of transparency as any public prison.

Activists Fight Move Toward Privatization

In 2011, three states considered radical privatization plans that would drastically increase these states' reliance on private prisons. Officials in Florida, Louisiana, and Ohio proposed legislation, but civil rights groups, public workers, and public interest watchdogs met each with opposition.

Florida officials responded to rising incarceration costs by including plans in the state's budget to privatize nearly thirty prisons. Union officials responded by filing *Baiardi v. Tucker*, claiming that the move violated the state constitution's prohibition against enacting major policy changes in legislation that include appropriation. On September 30, 2011, Judge Jackie L. Fulford ruled that the state did violate the constitution by not passing the privatization legislation in

a separate bill. The ruling halted the state's plans to open the private prisons at the beginning of 2012; however, state officials pledged to appeal the decision.

Officials in Louisiana also considered privatization as a means of overcoming budget shortfalls. Notably, this proposal would have privatized and sold three state prisons to private companies. Typically, privatization only includes the state leasing the property to the private prison. However, Governor Bobby Jindal and others wanted to sell state property so they could obtain short-term funds to supplement the budget. State legislators narrowly rejected the proposal by one vote, after several officials raised concerns over the long-term wisdom of selling state assets.

Like Louisiana, officials in Ohio proposed selling and privatizing state prisons as part of its biennial budget. Governor John Kasich originally included five prisons, but state lawmakers expanded the number to six. A coalition led by the Ohio Civil Service Employees Association, public research agency Policy Matters Ohio, and the American Civil Liberties Union (ACLU) of Ohio launched a campaign to halt the move toward privatization. In April 2011, the ACLU of Ohio released *Prisons for Profit: A Look at Prison Privatization*, a report that explored many of the shortcomings of privatization and how it may counteract positive criminal sentencing reforms. Policy Matters Ohio followed suit a few weeks later with *Cells for Sale: Understanding Prison Costs & Savings*, which specifically addressed whether private prisons

delivered their promised cost savings. The three organizations toured the state speaking to local communities about the effect prison privatization may have on public safety and the local economy.

State legislators eventually passed the biennial budget with prison privatization included, allowing the Ohio Department of Rehabilitation and Correction (ODRC) to issue a request for proposals for the facilities. On September 1, 2011, the department stunned many by announcing that it would only sell one of the six facilities. In its announcement, ODRC officials said they did not sell more of the facilities because they did not pose an economic benefit for taxpayers. Ohio is the first state to sell a prison to a private company.

A constitutional challenge filed by state prison workers is still pending in *Progress Ohio v. State of Ohio*. The lawsuit alleges that the state violated the constitution's rule prohibiting more than one subject in legislation, as well as the prohibition against joining public and private property rights.

While each of these plans sought to greatly expand the role of private prisons in each of these states, officials were met with strong opposition by a wide coalition of groups utilizing the courts, legislatures, and public education. Despite the continuing push toward privatization in these states, they provide a blueprint for other activists who wish to counteract dangerous private prison proposals.

Sentencing Reform: The Only Reasonable Solution

Prison privatization is gaining traction in some states because officials

and the public are concerned about the rising cost of incarceration. However, privatization will not improve the long-term budget problems that overcrowded prisons pose, but will likely exacerbate them.

If legislators truly wish to alleviate the growing prison problem, they must enact sentencing reforms that will channel more low-level, nonviolent offenders into community corrections settings; promote rehabilitation through programs such as earned credit; correct unfair and draconian sentencing disparities; and implement release programs for geriatric and chronically ill people who no longer pose a danger to society. States like Ohio have recently enacted such proposals, but their movement toward privatization may impede whatever progress may be achieved. If officials continue to allow the "tough on crime" mentality to dictate public policy, the public can expect more private prisons and less funds for other critical state programs that must be budgeted.

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Web links:

ACLU of Ohio Web site:
www.acluohio.org

ACLU of Ohio report:
www.acluohio.org/issues/CriminalJustice/PrisonsForProfit2011_04.pdf