PRIVATE PRISONS ADVANTAGES AND MISCONCEPTIONS
FROM AN ARIZONA DIRECTOR’S PERSPECTIVE

Introduction

This paper has been prepared from the perspective of a former Arizona corrections director who currently represents a private prison company. So the paper should represent both an agency perspective as well as a perspective from the private prison operator. The paper will discuss the advantages that private prisons offer to their governmental clients, as well as misconceptions that are commonly used by opponents of the private prison.

Advantages

Generally, private prisons are thought to have three major advantages. They are: 1) allow the governmental entity to avoid large capital expenditures necessary to construct a prison; 2) produce a reduced operational cost which reduces the overall budget requirements to support the prison; and, 3) allow quicker availability for situations where overcrowding may be a concern.

Misconceptions

Opponents of private prisons often cite several major concerns about the operation of private prison beds. They include: 1) that private prisons ARE NOT less expensive than their publicly operated counterparts; 2) that private prison operators cut staffing and other corners to enhance or increase their profit; 3) that private prisons have less effective programming and as a consequence have higher recidivism rates than public prisons; and, 4) they are less safe for staff and inmates.

Discussion of Advantages

Prison construction is a massive investment. Normally states have three methods to finance this construction.

The first financing method is a “pay as you go” approach and requires the state to set aside the necessary cash to build the prison. The last major prison complex constructed in Arizona cost $192 million, which included a juvenile facility. Arizona like many other states faced great difficulty in accumulating those amounts of cash, given the other funding demands placed upon them. Accordingly, most states look for an alternative to the “pay as you go” approach.

One of the most common financing alternatives to avoid the cash accumulation dilemma is to use government bonds or some similar loan instrument to finance the construction over time. While borrowing the required funds and paying them back over time reduces the “sting” of accumulating the necessary cash, the method also creates other issues for state governments. Many states have over extended themselves as the result of a wide range of bonding programs. These over extensions go well beyond
those related to building correctional capacity. Obviously, when a state becomes overextended, that situation affects the credit worthiness and cost of money which in turn increases taxpayer costs of government.

A third alternative is to utilize private prisons. In this case, the massive construction cost is financed by the private prison company or a third-party financial entity. Then, the costs of the facility construction can be amortized over a number of years. The amortization of the facility can also be structured such that the facility becomes the property of the state at the end of amortization. Additionally, because the private prison company or a third-party financing entity is responsible for the construction costs, the State’s credit capacity and credit worthiness are not affected.

**Prison Operating Costs**

Another advantage of private prisons is a reduced daily operating cost. These reduced costs accrue for a number of reasons. In most cases private prison salaries and benefit packages are less rich than those of their public sector counterparts. In particular, the pension package is one that more closely approaches other pension options in the private sector (401(k)s) and are much less expensive than the richer pension systems offered to public employees. In addition, economies of scale, procurement and other business economies allow the private prison operator to offer reduced daily operating costs.

**More Efficient Construction and Activation Schedule**

Private prisons generally can construct and activate prison beds in a more timely manner than public prisons. This is because they are not burdened by the procurement, human resource regulation, and other factors that limit the timeliness of state government projects. The most recent Requests for Proposal (RFP) from the Arizona Department of Corrections for additional beds, for example, have extremely aggressive schedules for construction and activation.

**Private Prisons are a Taxpaying Entity rather than a Tax Consuming One**

When a publicly operated prison is constructed in or near a community, the state operation is not subject to most local taxes. However, a private prison is typically subject to all of them. Even when using financing options that are exempt from certain taxes, private operators often choose to pay in lieu payments to the entities that would normally receive the tax revenue.

**Local Commerce**

Private prisons improve the local economy of a community through its purchases the goods and services necessary to operate the institution. However, for public prisons, many of the purchases necessary are legally controlled by centralized state procurement processes which may bypass the local vendors and require purchases from large centralized vendors who have qualified through state procurement and contracting. Typically, these suppliers are in the major metropolitan centers of the state.
Some Common Misconceptions about Private Prisons

The first and largest misconception that opponents articulate about private prisons is that they ARE NOT less expensive than prison beds operated in the public sector. However, that misconception exists only because many of the cost comparison studies, both locally and nationally, are not an “apples to apples” analysis of the actual costs, or the studies have used flawed assumptions to make the comparison.

There are significant differences in the accounting processes that are used in the public sector versus those employed in the private sector. Generally speaking, public sector accounting does not use depreciation and financing costs. These concepts are expenses that have significant tax implications that do not apply to government accounting.

An example of the impact of these two different accounting processes is evident in the Arizona Department of Corrections (ADC) “Biennial Comparison of Private versus Public Provision of Services.” This report is often cited by critics as proving there ARE NOT significant savings in using private prisons. ADC went to some lengths to match prisons to try to achieve a fair and accurate “apples to apples” comparison. However, the Department used depreciation data from the Arizona Department of Administration (ADOA) as an analogous cost measure for the private prison’s construction and financing costs. That depreciation (which does not include financing costs only facility costs) was a $1.41 per day. That compares with actual private prison costs that range from $4.48 to $19.46. The ADOA report was not included in the addendum so it is not clear what methodology was used to calculate the prison depreciation number.

Questions regarding the methodology include: 1) was the depreciation based on current market value of the public prisons; the depreciated remaining book value, or some other value? Typically, depreciation does not include financing costs so the simple use of just the depreciation cost systematically understates the cost Arizona paid on the money used to construct the prison. Also relevant to the depreciation number is the depreciation schedule. Did the ADOA report reflect a straight line depreciation schedule or some accelerated one? In spite of the ADC effort to ensure a fair and accurate comparison, a key component of the analysis (construction and finance costs) was not an “apples to apples” comparison.

An example of the use of flawed assumptions in the ADC report relates to adjusting private prison daily cost by costs of functions that are either statutorily restricted from being accomplished by private operators or are statutorily mandated for all inmates in the system and are not statutorily required of private prisons. A cost adjustment was made to reduce the “Daily Per Capita” cost of the public prisons. The services that were used in the cost reduction are listed below:

- Inmate classification and sentenced time computation
- Inmate discharge payments
- Inter-prison inmate transportation
- Kennels - security dogs
- Reception other (not ASPC-Phoenix)
- Wildland fire crews
- WIPP inmate wages

However, ARS 41-1609.01 (M) specifically prohibits private prisons from accomplishing these services:

A contract for correctional services shall not authorize, allow or imply a delegation of authority or responsibility to a prison contractor for any of the following:

1. Developing and implementing procedures for calculating inmate release dates.
2. Developing and implementing procedures for calculating and awarding sentence credits.

As the result of the specific legislative intent in the statute, it is hard to argue that the Legislature intended to attribute this cost to private prisons. In addition, the private prison does pay the cost of the onsite monitors that assist the units in these activities.

Second, in the case of Work Incentive Pay Plan (WIPP) payments, the payment isn’t required in the private prison contract, and because the WIPP payment funds are appropriated to the Department by the Legislature, it is difficult to understand on what basis such an adjustment is appropriate.

**Cutting Staff or Cutting Corners to Enhance Profitability**

Critics of private prisons often assert that these companies maintain high vacancy percentages or cut staff to enhance their profit margin. In Arizona, however, the staffing plan for every position in the private prison becomes part of the contract. When vacancies occur the funding for that post must be returned to the state. When recruiting is difficult and vacancy rates increase, the funding normally referred to as “vacancy savings” do not accrue to the private prison company, but must be returned to the state of Arizona. In addition, when vacancy rates remain unaddressed or become aggravated, the private prison company can be further sanctioned by the state applying “liquidated damages.” These liquidated damages are a further monetary sanction for contract noncompliance. So the issue of not filling vacant positions not only does not enhance the profitability of the private prison, it in fact decreases the profitability of the private operation.

**Private versus Public Prison Recidivism**

Critics also assert that private prisons have higher recidivism rates than public prisons. They attribute this outcome to a belief that the programming and counseling in a private prison is not as robust or effective as it is in public prisons.

Recidivism in private prisons has three dimensions. First, in Arizona the private prison contract specifically articulates the required programming for inmates in the
private institutions. So while a private prison may supplement the basic program requirements, it cannot supplant or reduce the programming requirements.

Secondly, in Arizona a private prison is the functional equivalent of any one of the than sixty prison units of the entire correctional system. Each unit receives inmates based on the classification and needs of the inmates that will be assigned there. The individual unit’s role is defined by the department and considers the following elements including but not limited to: 1) classification level; 2) medical and mental health requirements/resources; 3) educational programming; 4) vocational training; and a number of other dimensions. No individual unit offers all services an inmate may require. As a result, inmates regularly move from unit to unit as they progress through their sentence.

The third dimension of recidivism as it relates to private prisons has to do with the length of time an inmate is exposed to the specific programming within the private prison unit. Since it is likely that most inmates will change custody levels and complete programming requirements available in one unit, it is highly likely that the time spent in a given unit in the Arizona State system, including private prisons, is relatively short. Therefore, it is literally impossible to correlate specific programming from a private prison to that of the overall recidivism rate for Arizona State inmates.

Private Prisons are Less Safe for Staff and Inmates Than Public Prisons.

Critics often cite the ADC biennial cost report because they feel comfortable with the cost information contained in the report. However, the report also covers the quality of service safety and security. To compare the quality of services, the ADC used nine service level components which are required in the private prison authorizing statute A.R.S. 41-1609.

The three services that most directly impact the safety of staff and inmates are: “Security,” Inmate Management and Control,” and “Safety and Sanitation.” A review of the scoring in these three areas reveal that of the eighteen possible scores (three for each of the six private prisons), private prisons exceeded the public operated prison standard six times, achieved comparable score ten times, and failed to achieve the expected standard two times. In essence, more public prisons were scored below private prisons than private prisons were scored below public prisons on these three safety-related dimensions.

Summary

Private prisons provide governmental entities flexibility in financing and operating prisons. Unfortunately, the complexity of the corrections function, inconsistency in accounting systems, and a lack of agreement on which costs are appropriately utilized for cost comparison mean that both opponents and advocates can argue their case about whether private prisons are cost effective.

Until there is a recognition of what data is required, what assumptions provide a level playing field for evaluation, and, finally, how differing accounting systems can be
reconciled to resolve facility and financing differences in the public and private sectors, the private prison debate will continue.

The author of this White Paper is Terry L. Stewart, a retired Director of the Arizona Department of Corrections (1995-2002). He currently is a partner in the Dunn Stewart Group, L.L.C., a consulting and lobbying firm in Arizona. The opinions in this paper do not necessarily represent opinions of the clients of the Dunn Stewart Group.