The Future of Private Prisons in Arizona Corrections

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A confluence of national and local factors has led some observers to question whether or not privately operated prisons should have an ongoing role in Arizona’s correctional system. These include good faith objections to private prisons on moral and ideological grounds, high-profile incidents like the 2010 inmate escape from the Kingman prison and the riot at that same facility in July 2015, concerns over the billion-plus dollar annual cost of corrections in the state budget, the growing bipartisan interest in criminal justice reform in Congress and in many statehouses, and recent calls by some presidential candidates to end the federal and state use of private prisons outright.

While it is beyond the scope of this paper to analyze each of these issues in depth, private prisons have a role in Arizona’s corrections system, albeit one that has room to evolve to better harness the power of performance-based contracting to improve results on offender rehabilitation and reduce recidivism. Private prisons are playing an important role in helping states like Arizona deliver correctional services and programming, and can continue to do so.

While some argue that private prison operations are incompatible with the broader movement toward criminal justice reform, even if we decide as a society to put more effort into sensible criminal justice reforms—e.g., sentencing reform, drug policy reform, increased use of alternatives to incarceration, etc.—there will continue to be a need for prisons, and the private sector can run them well and at lower cost. Practically speaking, if policies are enacted that dramatically reduce the prison population, it would decrease the need for prisons overall and shrink corrections spending. Further, it is far easier politically to close a private prison than a government-run facility.

Unfortunately, the current public debate over private prisons tends to lack nuance and is rife with overblown claims, which distorts the true role and potential of private prisons. For example, private prisons tend to receive outsized attention in the media and in policy debates, yet they hold only a small portion of the total federal and state prison population. In 2013, private prisons housed 141,921, or 9.0%, of the total 1.57 million federal and state inmates. Notably, the share remains in single digits today, even though the modern private prison industry has existed for approximately three decades and is relatively mature. This suggests that private prisons are generally playing a supporting role—not a dominant one—in corrections today, overall.
In Arizona, the total share of state inmates held in privately operated prisons is slightly higher at 15.6%, according to the Bureau of Justice Statistics. But given the prominent local media coverage of private prisons in recent years, many Arizonans might be surprised to learn that 84.4% of state inmates are held in government-run prisons, and that neighboring California currently has more state inmates held in private facilities than Arizona does.

Beyond the issue of scale is the long-running policy debate over the cost-effectiveness of private prisons in Arizona, with conflicting evidence on both sides. Such analysis is complicated by different budgeting and accounting practices in the public and private sectors, making “apples-to-apples” comparisons difficult.

For example, 2013 Reason Foundation analysis reviewed the Arizona Department of Corrections’ (ADOC) last biennial public/private cost comparison report from 2011—which to this day is still cited by media and opponents as definitive evidence that private prisons are more costly—and found a number of discrepancies, including:

- Though ADOC itself concluded that the per diem costs for both minimum and medium custody private prison contract beds were within the range of costs of comparable state-run facilities, its report cited average costs within each category that were used to suggest that private prisons were definitively costlier than public prisons.
- However, the averages cited ignored a high degree of variability among prison units and obscured major differences between the public and private sectors in terms of the numbers of units and inmates covered. For example, the average per diem for medium-security inmates held in public prisons ($48.42) represented the average of the costs for 16 different state-run prison units covering nearly 12,900 inmates, ranging from a low of $39.29 up to a high of $66.57. Yet, the average per diem reported for medium-security inmates held in private prisons ($53.02) was the average of the costs for just two prison units covering just under 2,700 inmates, and the costs spanned a narrow range from $52.09 to $54.59. Reducing the wide cost variability among state-run prison units down to simple averages presented a misleading view of the true costs associated with public and private operation.
- Further, the report underestimated or ignored a range of costs associated with retiree pensions and healthcare benefits, facility construction, and legal claims—which would generally favor the private sector—and it did not account for state and local tax payments made by prison operators.

While scale, cost and other policy issues related to private prisons are certainly important areas of inquiry, current policy debates over private prisons tend to overlook some fundamental realities and opportunities. Elected officials and public
administrators have both a legal and moral responsibility to ensure the proper care and treatment of inmates. However, this can be achieved in different ways, generally either in-house through a public correctional agency, through an intergovernmental agreement with another jurisdiction, or through a contract with a private corrections management company.

In any of these cases, if the goal is to improve corrections and offender outcomes, the focus should shift away from simplistic public vs. private arguments and toward the issue of whether or not prisons are performing well and delivering good outcomes, regardless of who operates them. Underperforming programs and operations should be replaced with those that deliver the best outcomes, without regard to the public or private status of the operator.

Fundamentally, there is a major difference between privately run prisons and their government-run counterparts: the contract that forms the basis of a public-private partnership. The contract between government and a private prison operator ultimately provides a mechanism for accountability and sets a standard for performance. If framed properly, a public-private contract can provide a government agency the ability to hold a private operator to a higher performance standard than it even can with its own public employees, given civil service rules, bureaucratic inertia, and other institutional factors. If dissatisfied with performance, a government can ultimately cancel a prison contract with a private company, as has happened recently in Arizona at the Kingman facility. By contrast, government agencies that fail tend not to fire themselves, regardless of their performance.

That said, there is significant room for evolution in the current approach to correctional contracting. The contract model for private prisons since the 1980s has been rooted in a “version 1.0” approach in which government agencies generally ask private partners to mimic public sector operation and practices. This is understandable, given that public agencies tend to be risk averse and, all things being equal, generally prefer that private contractors replicate the public sector’s policies and procedures for consistency’s sake.

However, with growing concerns over current criminal justice policies, the high costs of corrections, and high incarceration and recidivism rates, a “version 2.0” approach to correctional contracting is emerging, rethinking how correctional contracts can be designed and harnessed to better target recidivism reduction and offender rehabilitation.

For example, the Commonwealth of Pennsylvania cancelled all of its contracts with private community corrections center (e.g., halfway house) operators in 2013 over performance concerns, and the state opted to redesign these contracts in such a way as to tie payments for private operators to their performance at reducing recidivism rates among the facility populations. Since redesigning and rebidding these contracts, the Pennsylvania Department of Corrections has seen two straight years of declining recidivism rates among this population, including an 11.3% reduction in
recidivism across its 42 contracted community corrections centers over the past year.

Separately, Pennsylvania revamped its state correctional mental health services contract in 2013 to significantly enhance performance standards. It offered financial incentives to its private provider to reduce the number of misconducts for mentally ill offenders, the number of inmates recommitted to prison mental health units, and the number of recommitments to prison residential treatment units. Accordingly, if the contractor fails to achieve pre-established performance outcomes in these areas, the contract allows the state to impose financial penalties.

Similarly, the United Kingdom has also piloted recidivism-based, pay-for-success contract models for prison operations in recent years. These models withhold some payments to private prison operators unless they reduce the recidivism rate among the inmates released from their facilities.

Each of these cases redirects the contract model from one primarily focused on service delivery to one tying payment structures to results aimed at reducing reoffending. This approach creates a financial incentive for a private operator to provide the types of inmate programming and services needed to improve rehabilitation. Further, it upends one of the most common critiques of current correctional contracting—namely, claims by opponents that private prison operators have an inherent incentive to keep prison beds full and incarceration rates high—by providing a financial reward to those private operators that deliver the support necessary to keep inmates leaving prison from reoffending and cycling back through the prison system.

To be sure, this “version 2.0” contract model is still in its infancy, with few examples domestically or internationally to draw from with regard to successful contract design and implementation. Years of experimentation will be needed to refine the pay-for-success model. Ultimately empirical failures and successes will inform the maturation process.

Still, Arizona has the opportunity to be an early leader on this front. Rather than debate private prisons’ future existence in Arizona, it would be more productive to acknowledge that the role already exists. A better path forward would drive its evolution toward a more performance-based approach. Using correctional contracting as a platform to experiment with new and innovative ways to improve offender rehabilitation and reduce recidivism, private prisons could provide a major opportunity to transform Arizona’s entire correctional system, while also benefitting taxpayers and public safety overall.

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