



Office of Program Policy Analysis And Government Accountability

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REVIEW OF CORRECTIONAL PRIVATIZATION

CORRECTIONAL PRIVATIZATION

The Florida Legislature first authorized the construction and operation of private correctional institutions in 1989. The purposes of correctional privatization are to reduce the costs associated with the state's rising inmate population, and to identify innovative and effective approaches to corrections. The inclusion of private prisons within Florida's correctional system also provides a comparison for evaluations of the quality and cost of public corrections.

A number of other states have privatized some correctional facilities. We surveyed officials in 14 other states, including those in the Southeast, and identified 7 states that have privatized youthful offender facilities, boot camps, community work centers, and/or institutions for the adult male or female offender population. These officials indicated that the advantages of privatization include cost savings over the cost of public corrections and the ability to get facilities built faster than public means could provide.¹ Disadvantages cited include a lack of state control over private operations, unrealized cost savings, and law suits and grievances filed by inmates in private facilities.

¹ In Florida, the Department of Corrections reports that it has accelerated the construction of public facilities through the use of prototype institutions, pre-fab construction and inmate labor.

PURPOSE OF REVIEW

This review addresses three questions:

- What is the status and cost of correctional privatization in Florida?

- Have any factors facilitated or hindered Florida's efforts to achieve the purposes of privatization?
- How will correctional privatization be evaluated?

STATUS AND COST OF PRIVATIZATION

Seven Private Prisons Under Contract. Chapter 89-526, Laws of Florida, authorized the Department of Corrections to enter into contracts with private corrections firms for the construction and operation of private prisons. The state's first private prison, housing adult females, opened in March 1995 under a five year, \$80 million contract. (See Exhibit 1.)

Chapter 93-406, Laws of Florida, created the Correctional Privatization Commission for the purpose of entering into contracts for the construction and operation of private correctional facilities. The Correctional Privatization Commission, which is housed in the Department of Management Services and is independent from the Department of Corrections, has entered into three year contracts for six additional private prisons at a cost to the state of \$232 million. Three of these facilities will house adult males and three will house youthful offenders. The first of these prisons opened in July 1995, and all are scheduled to be operational by October 1996.

Projected Cost Savings Exceed Statutory Requirements. Florida law requires private prisons for adult offenders to be built and operated at a cost savings to the state. Section 957.07, F.S., requires the Commission to determine that a contract for a private facility will result in a cost savings to the state of at least 7% over similar public facility costs before the Commission enters into such a contract. By comparison, s. 944.714, F.S., sets no specified

Exhibit 1: Private Prisons in Florida

Location - Type	Opening Date	Number of Beds
Gretna - Adult	March 1995	768
Moorehaven - Adult	July 1995	750
Panama City - Adult	August 1995	750
South Bay - Adult	November 1996	1,318
Lake City - Youth	October 1996	350
Polk City - Youth	October 1996	350
Pahokee - Youth	October 1996	350

¹The Gretna facility was contracted by the Department of Corrections. All other facilities were contracted by the Correctional Privatization Commission.

Source: Department of Corrections and Correctional Privatization Commission records.

percentage, but requires facilities contracted by the Department of Corrections to be built and operated at a "substantial savings." Youthful offender facilities contracted by the Commission are exempted from cost-savings requirement by s. 957.125, F.S.

Comparisons between the projected costs of public and private facilities are based on public facility costs that have been determined by the Auditor General, in accordance with the requirements of s. 957.07, F.S. However, the calculation of the exact level of cost savings for the four adult prisons is hindered because of differences between public and private facilities, such as different levels of education and substance abuse programs. Noting differences in these programs, Auditor General Report No. 12192 (dated November 30, 1993) excluded program costs from the certification of public facility costs.

To determine whether projected vendor costs met the 7% cost savings requirement, the Commission adjusted the Auditor General's figures to include a program cost allowance. Based upon the Commission's adjusted calculation of state costs, the Commission determined that each of the three facilities had projected savings of 10%. Using the Commission's adjustment, we estimate that the facility contracted by the Department has a projected cost savings of approximately 14%. However, differences in programs provided by the Department and private prisons limit the reliability of these cost comparisons. Actual cost savings realized from privatization will not be measurable unless comparable public and private institutions and programs are identified and agreed upon by the Department and Commission.

PRIVATIZATION EFFORTS

Department of Corrections Efforts. According to the vendor, the Department has facilitated privatization efforts by providing vendor officials with technical assistance on Florida law and other correctional issues. However, we identified factors that have hindered privatization:

- The Department has generally required the vendor to mirror its own operations, which may limit cost savings and the identification of innovative approaches to corrections;
- The Department's request for proposals (RFP) was perceived by vendors as overly demanding and highly restrictive, and thus may have limited the state's choice of vendors. Only two vendors submitted bids in response to the Department's RFP; and
- The Department changed its mission for the private facility nine days before the opening date, deciding to use the facility to house female rather than male inmates. This decision necessitated changes in the physical plant and in the vendor's management plans.

Correctional Privatization Commission Efforts. The Commission has facilitated privatization by conducting open meetings to develop its RFPs, by publishing RFPs which clearly delineated vendor requirements and selection criteria, and by meeting with vendors who had submitted losing bids. According to vendors who submitted bids, these factors, coupled with clear legislative authorization for correctional privatization, encouraged vendors to submit bids and helped maximize the state's choices in selecting vendors.

Factors we identified as hindering privatization are:

- The Commission's contract award procedure may not optimize the cost savings of correctional privatization. Because s. 957.04, F.S., requires the Commission to select the "most qualified" vendor, the best and most cost-efficient proposals may not be selected. For four of its six contracts, the "most qualified" vendor was also the highest bidder, even though lower bids were submitted by highly qualified vendors. The Commission could have achieved an additional three-year cost savings of \$26 million. This could have been done by

selecting the lowest bid from the three highest qualifying vendors for each of the six contracts; and

- The Commission, which is prohibited by s. 957.03, F.S., from including an employee of the Department, has executed vendor contracts obligating the Department of Corrections without the Department's review or agreement, and has assumed powers and duties that are ordinarily reserved for the Department. Furthermore, the role of the Department with respect to the institutions contracted through the Commission has not been clarified.

EVALUATION OF PRIVATIZATION

Florida law requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate private vendors' performance in operating private prisons.² For those vendors contracted by the Correctional Privatization Commission, s. 957.11, F.S., requires the Auditor General (OPPAGA) to develop and implement an evaluation of the costs and benefits of each contract, assess the performance of the private contractor at the end of the contract, and to make recommendations to the Legislature on whether to continue the contract. Similarly, for those vendors contracted by the Department of Corrections, s. 944.719, F.S., requires the Auditor General (OPPAGA) to conduct a performance audit of the private vendor and deliver a report to the Legislature by April 1 of the first year following the contract award.

Evaluation Criteria. In order to identify those factors that should be used in evaluating private vendor performance, we obtained comments from the Correctional Privatization Commission's executive director, and from representatives of the Department of Corrections and the private vendors who submitted bids to operate private prisons in Florida. We concluded that vendors should be evaluated on cost, facility and inmate management, delivery of inmate programs, and the extent to which inmates participating in vendor programs are successful upon returning to society. Specifically, vendor performance should be evaluated on the following:

- Cost: construction, operating, and any other costs incurred during the contract period;
- Management Performance: compliance with American Correctional Association standards; monitoring plans, monitoring reports, and reports

of corrective actions taken; and results of grievances, investigations, and litigation;

- Intermediate Outcomes: educational measures such as the percentage of General Education Diplomas (GEDs) awarded per capita, the percentage of grade advancements per capita; substance abuse treatment measures such as the percentage of inmates graduated from treatment programs; and vocational measures such as the percentage of inmates achieving proficiency in a marketable occupation; and
- Final Outcomes: reincarceration rates (as a measure of recidivism) and rates of post-release employment.

Public/Private Cost Comparisons and Inmate Transfers May Hinder Evaluation:

As discussed earlier, differences in programs provided by the Department and the private prisons hinder the measurement of cost savings resulting from privatization. In addition, differences in factors such as size and mission could affect comparisons of the costs and outcomes of public and private facilities.

Another hindrance to the evaluation of program outcomes will occur if inmates are transferred out of private prisons before completing vendor programs. The Department of Corrections currently transfers inmates between institutions, on average, twice a year for population control purposes. Such routine transfers limit comparisons between Department and vendor programs in reducing reincarceration. Section 957.06(1), F.S., requires the Commission, the contractor, and a representative of the Department of Corrections to develop and implement a cooperative agreement for transferring inmates between private and public prisons. Because the transfer agreement had not been executed as of September 22, 1995, it is unclear whether inmates will remain in private prisons for the duration of their sentences.

² The Office of Program Policy Analysis and Government Accountability is a unit of the Office of the Auditor General but operates independently and reports directly to the Legislature.

RECOMMENDATIONS

Florida has made a significant commitment to correctional privatization through the establishment of seven private prisons within the state. However, several factors should be addressed to enhance these efforts:

Recommendations to the Legislature. To assist the Commission in developing contract award procedures that would increase price competition among vendors and optimize both vendor quality and cost savings to the State, we recommend the Legislature amend s. 957.04, F.S., to direct the Commission to select the qualified vendor with the best and most cost-efficient proposal.

To facilitate the evaluation of private prisons, we recommend the Legislature direct the Department of Corrections to assign inmates to private prisons for the duration of their sentences and direct the Correctional Privatization Commission to transfer inmates out of private prisons if, and only if, the inmate requires excessive medical treatment or is a threat to public safety, institution staff, or other inmates. This policy would impede the vendor from arbitrarily transferring unmanageable inmates; hold the vendor accountable for the effectiveness of inmate programs; and allow for post-release comparisons between inmates from public and private prisons.

To improve the working relationship between the Department and the Commission, we recommend that the Legislature amend s. 957.03, F.S., to allow an employee of the Department to be appointed to the Commission. This would allow the Governor to appoint the Secretary of the Department or his designee as a member of the Commission.

Recommendations for the Department and the Commission. We recommend that the Department and Commission develop an agreement that clarifies their respective roles related to correctional privatization. While the Department needs to retain the ultimate responsibility for the state's correctional system, the Commission must have the freedom to allow vendors to use innovative and effective approaches that will benefit the state.

We recommend that the Department and the Commission work together to identify comparable institutions and programs so that cost comparisons between public and private institutions can be made. To facilitate vendor evaluations, we also recommend that the Commission and the Department maintain data pertaining to facility costs, inmate and facility management performance, education and substance abuse outcomes and final outcomes as described

earlier, and results of grievances, investigations, and litigation. Such information will assist efforts to evaluate the results of privatization.

AGENCY RESPONSE

The Commission's Executive Director concurred with our report recommendations with the exception that the Commission would recommend that "the appointment of a Department employee as a Commission member be an additional non-voting advisory position and not one of the current five (5) Commission positions."

The Secretary of the Department explained that the perceived restrictiveness of the Department's request for proposals resulted from its adherence to statutory requirements. As for the change in the mission of Gadsden Correctional Institution nine days before it opened, the Secretary indicated that this action was done in full cooperation with the vendor, and was the result of changing population demands. The Secretary also disagreed with the projected privatization cost savings assessment used by the Commission and the Auditor General's certified cost calculations. The Secretary argues that determinations of cost efficiency should be based on the disbursement of appropriated funds without the use of adjustments and/or allowances. Adjustments to costs questioned by the Secretary included vendor's costs for site acquisition, payment of state and local taxes, and a maintenance reserve allowance.

Interim Director's Comment:

The calculation of actual cost savings realized from privatization cannot be accurately determined until the Department and the Commission identify and agree upon comparable public and private institutions and programs. The Florida State Council on Competitive Government recently issued procedures and guidelines for use in determining the cost benefits of privatization. The Legislature may want to direct the Council to review and/or determine what allowances and adjustments, if any, should be included in the calculation of projected cost savings of proposed correctional privatization contracts.

This review was conducted in accordance with generally accepted government auditing standards and included appropriate performance auditing and evaluation methods. Copies of this report in alternate accessible format may be obtained by contacting Report Production at (904) 488-0021 or FAX (904) 487-3804.

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