



## Are Florida's Private Prisons Keeping Their Promise?

### *Lack of Evidence to Show They Cost Less and Have Better Outcomes than Public Prisons*

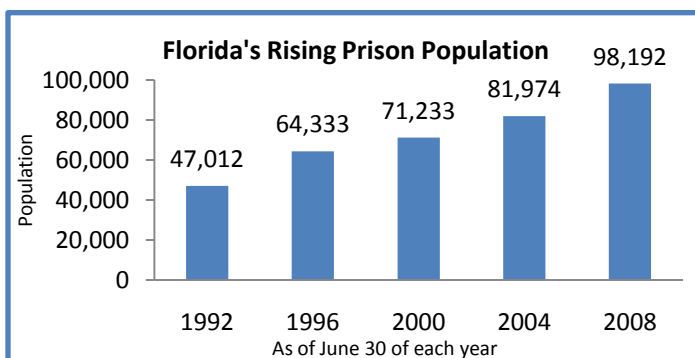
#### Introduction

Over the past 20 years, states have begun to contract with private companies to provide a number of services that had traditionally been government functions performed by public employees. For the most part, supporters of privatization have argued that subjecting various functions to market competition would result in lower costs to taxpayers and higher levels of effectiveness. Child welfare services, concessions in state parks, food services and student transportation in some school districts, and human resource management functions for state agencies are some functions that have been privatized in Florida.

Another area where privatization has taken place in Florida is the operation of adult prisons. The professed potential for cost savings and improved effectiveness when prisons are privatized had a strong appeal to policy-makers. However, the process implemented to gauge compliance with these policy objectives in Florida is flawed and as a result the evidence to show that private prisons cost less to operate or are more effective at reducing recidivism than public prisons is questionable.

#### Florida's Crime Rates, Rates of Incarceration, and Costs

Between 1989 and 2008, the rate of crime in Florida significantly decreased.<sup>1</sup> The rate of violent crime



dropped by 41%, property crime rate by 46%, and the total crime index by 46%.

During this period of declining crime rates, Florida (and the country) experienced higher rates of incarceration. The incarceration rate in the US increased substantially - by 80%.<sup>2</sup> More recently,

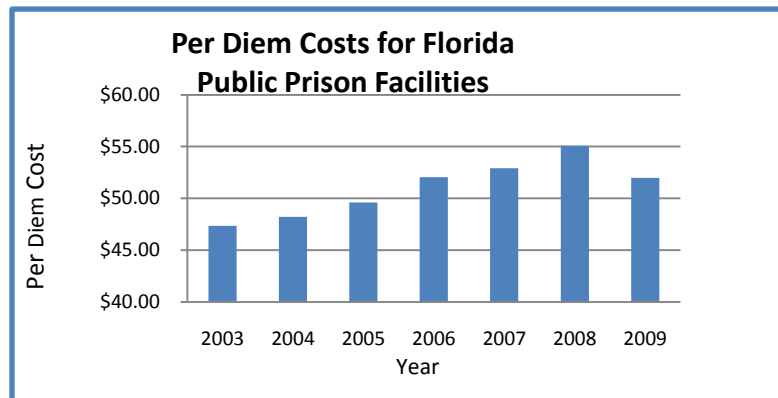
between 1992 and 2008, the number of individuals incarcerated in state prisons in the US rose by 78% in Florida by a much higher 109%.<sup>3</sup> Florida's rate of incarceration was 3.6 inmates per 1,000 state residents in 1992 and 5.4 per 1,000 in 2008.

A national study of the period 1992 to 2001 found higher rates of incarceration to be widespread among the states and concluded:

“...the entire increase was a result of changes in sentencing policy and practice. These include such measures as ‘three strikes,’ mandatory sentencing, and a widespread abandonment of parole in the state and federal system.”<sup>4</sup>

Tougher sentencing acted to keep criminals behind bars longer, preventing them from committing more crime in the community. Sentencing and incarceration data support this observation. In 1989, those released from state prisons in Florida had served less than 34% of their sentences. This increased to 65.4% of sentences completed among those released in 1996 and 86.8% among those released in 2008.<sup>5</sup>

However, higher rates of incarceration do not come without a price and result in substantially greater requirements for funding. National data indicate that the cost of corrections in the U.S. tripled from \$23 billion in 1989 to \$69 billion in 2006.<sup>6</sup> As illustrated in the graph the Florida Department of Corrections in 2009 spent \$52 per day, or \$18,980 per year, for those incarcerated in its prison facilities. Six years ago, the average daily cost for those incarcerated in state prison facilities was \$47.36 or \$17,286 per year with about 23,600 fewer inmates — making the Department's annual operating budget one-half the size it is currently.<sup>7</sup>



### Privatization of Prisons

In the early to mid 1990s, Florida lawmakers began to consider a number of public services as good candidates for privatization, as did a number of other states. Despite strong opposition from public employee unions, many states including Florida chose to privatize a number of functions such as the operation of toll roads, child welfare services, adoption services, school transportation and food services, inpatient care for the mentally ill, public employee human resource management, information technology and prisons.

In the midst of spending cuts that reduced educational and rehabilitative services in public prisons but maintained resources for security, the private prison industry's claim that it could provide as many, if not more, services to inmates at lower costs attracted support. Educational and rehabilitative programs

have been found to reduce recidivism – the return of fewer former inmates to prison after committing another crime.

In 1993, the state Correctional Privatization Commission was established to oversee and carry out privatization. By 2005, the Commission awarded four contracts for the construction and operation of private prisons.<sup>8</sup> In the years that followed, the Bureau of Private Prison Monitoring (the successor to the Correctional Privatization Commission) awarded contracts for two new private prisons. Today, all six contracts for the operation of prisons are with two companies – CCA and GEO.

CCA is responsible for about 75,000 inmates in 19 states and in the federal system. GEO is responsible for almost 50,000 inmates in 10 states, the federal system and in other countries.

As with any state-funded program it is important to review performance periodically. Privatization of prisons as reflected in state law is expected to operate at lower costs and produce lower recidivism rates compared to prisons operated by the state. But with over a decade of experience, there is no good evidence to conclude that Florida is getting the results that it expected and as the law requires, both in terms of cost and the rehabilitative impact on offenders.

### **Florida's Private Prisons**

Six of Florida's 62 prisons are run by private companies - Bay, Gadsden, Graceville, Lake City, Moore Haven and South Bay. South Bay houses the largest inmate population, with 1,861 adult males. Gadsden is the state's only private prison for female adult offenders, with 1,520 inmates. Lake City is the state's only private facility for male youth offenders, with 893 inmates.<sup>9</sup> As of October 1, 2008, 7,725 inmates were housed in Florida's six private prisons (approximately 8% of the total state inmate population of 99,570) at a cost of \$133 million per year, which averages to \$17,216 per inmate.<sup>10</sup>

In the public prison facilities, the annual cost per inmate is higher, at \$18,980. However, it is important to note that in many ways, this is an inappropriate comparison. There are differences between inmates in private and public prisons: those who are more costly to handle are usually incarcerated in public prisons, such as those who are the highest security risks and those with extensive medical issues. Also, most of the public prisons were constructed many years ago and do not offer the architectural advantages to supervision and custody that the newly constructed privately operated prisons have that lower operational costs.

In Florida, two state agencies are responsible for the procurement and contract management functions of the private prison system. According to the Office of Program Policy Analysis and Governmental Accountability (OPPAGA), only Florida has this dual system of oversight.<sup>11</sup> In all the other states, the state Department of Corrections handles the procurement and contract management functions. In Florida, the Department of Management Services (DMS) handles the procurement process and the contract management function, which includes a daily on-site presence. The Department of Corrections (DOC) randomly inspects private prisons to ensure that security standards are maintained.<sup>12</sup> Shared responsibilities among state agencies can be effective, but in many cases, it causes coordination and accountability problems.

## Statutory Requirements

Florida law addresses both the cost savings and rehabilitation goals of prison privatization. The law requires that the use of private contractors to operate prisons must:

“...result in a cost savings to the state of at least 7% over the public provision of a similar facility.”<sup>13</sup>

And the statutes go on to require that private prisons must have:

“...programs ... designed to reduce recidivism, and include opportunities to participate in such work programs as authorized ....”<sup>14</sup>

In addition, the law requires that OPPAGA must: “...develop and implement an evaluation of the costs and benefits of each contract entered into ... This evaluation must include a comparison of the costs and benefits of constructing and operating prisons by the state versus by private contractors... also evaluate the performance of the private contractor at the end of the term of each management contract and make recommendations ... on whether to continue the contract.”<sup>15</sup>

Finally, the law also establishes a Prison Per-Diem Workgroup to help set the 7% cost savings threshold:

“At the request of the Speaker of the House of Representatives or the President of the Senate, the Prison Per-Diem Workgroup shall develop consensus per diem rates for use by the Legislature... The workgroup may consult with other experts to assist in the development of the consensus per diem rates.”<sup>16</sup>

## The Issues

### 1. Is there a 7% savings?

There is no compelling evidence that the privatization of prisons has actually resulted in savings. The state’s efforts to comply with the cost-savings mandate involve a complex and problematic process with three state agencies involved; the departments of Management Services and Corrections, and the Auditor General.

First, DOC provides a cost estimate for the per diem rate (essentially, the cost of inmate custody) based on expenditure data from a comparable facility. Second, the Auditor General reviews this estimate and certifies it for accuracy. Third, DMS makes adjustments to the certified per diem rate to account for variations in the facility under bid (e.g., the size of the facility or the characteristics of the inmate population). Fourth, DOC provides estimates for programming costs from historic data (e.g., educational programs, health services, and counseling services) as a guide for DMS to establish an add-on or supplement to the per diem rate to cover programming requirements in the solicitation. This estimate is not subject to certification by the Auditor General because there is no actual cost basis that is current due to public prisons operated today lacking a comparable level of program services. Finally, DMS estimates the program add-on and then applies a 7% reduction to the combined per diem and

programming rate and publishes the final per diem calculation as a maximum threshold in the Invitation to Bid document.

It is very difficult to ensure that a private prison is in fact 7% less costly to operate than a comparable public prison. This is partly due to the fact that finding a truly comparable public prison is a complex and ultimately impossible goal given the diversity of the inmate population and the nature of the facilities (e.g., size, age, and architecture) used to incarcerate them. Also, even though the Auditor General certifies the accuracy of the DOC costs, DMS makes adjustments to the certified per diem rate and other adjustments to cover the programming requirements in the procurement. These adjustments raise questions about the validity of any claim for a 7% savings.

OPPAGA has concerns about the feasibility of reaching conclusions regarding the 7% cost savings as illustrated by the following qualifying remarks:

“While significant, these cost savings estimates are subject to caveats and should be evaluated cautiously. Cost comparisons between public and private prisons require a number of adjustments because prisons differ on several factors, including size and location; facility design and age; the physical and mental health of the inmates served; inmate custody level; and the educational, vocational, behavioral, and substance abuse programs provided. Adjustments used to ‘equalize’ Florida’s public and private prisons historically have been controversial.”<sup>17</sup>

Also, due to the current limited process used for contract and financial audits, the accuracy of the actual cost experience under the original contracted programmatic and inmate population requirements compared to the payable rates and specifications in the contract are questionable.

Considering all these issues, there is no definitive conclusion regarding the actual cost differences between prisons operated by DOC and those that are privately operated.

## 2. Is recidivism less among those incarcerated in private prisons?

Private prisons are required to provide inmates with educational programs designed to reduce recidivism, or recurrent criminal behavior.<sup>18</sup> These include academic and vocational classes as well as sessions that target behavioral and substance abuse problems.

Although private prisons are required to provide these services, the contracts and contract monitoring are focused on inputs (e.g., inmate program participation requirements) and do not include any provisions to ensure the desired outcomes of reduced recidivism. As a 2008 OPPAGA report notes, their contracts lack outcome results and indicators by which a program may be evaluated, including the successful completion of a GED or vocational program, or graduation from treatment.<sup>19</sup>

In a 2003 report, *Recidivism of Public and Private State Prison Inmates in Florida*, DOC compared the recidivism rates of inmates from comparable public and private prisons. It discovered that

“... no statistically significant differences in recidivism rates were found between public and private inmate groups...” and that there was “...no empirical justification for the policy argument that private prisons reduce recidivism better than public prisons.”<sup>20</sup>

### 3. Are there criteria for deciding whether a new prison should be privatized?

OPPAGA has not conducted a comparison of the costs and benefits of constructing and operating prisons by the state versus private contractors as for consideration by the legislature before it decides to have a new prison operated publicly or by the private sector. The law suggests that this should happen, but perhaps greater clarity may be needed to ensure that it is done up front. Findings and criteria used in such an evaluation would prove useful to the legislature when it is making decisions about who should construct and operate a new prison.

## Conclusions

The manner by which Florida delegates responsibilities for overseeing privatized prisons among different state agencies is unlike the pattern in all other states. With its shared system of contract and operational control (DOC and DMS) Florida's private prisons may be susceptible to inefficiencies and lack of clear accountability for inmate custody and public safety as well as reduction of recidivism rates.

While Florida's inmate population growth has slowed, at some time in the near future new prisons will be needed as current facilities grow obsolete. But as things stand, the process for determining whether a new prison should be operated by the DOC or a private contractor and the process used for the procurement -- especially the procedure to establish a 7% cost savings is flawed. Upfront analysis by an objective research organization such as OPPAGA should be undertaken to help guide the decision about whether the public or private sector will operate a new prison and to make that process more transparent.

Also, even OPPAGA strongly qualifies its analysis regarding whether a 7% cost savings actually is experienced when a prison is operated by the private sector. Comparable cost information is lacking, the certified cost experience provided by DOC is adjusted or changed, and follow-up audits of actual expenditures do not occur.

The procurement process should also be examined and modified. Publishing the maximum per diem rate representative of a 7% savings might not generate the best savings for the state. Adjustments for program requirements further constrain the process. As an example, knowing the maximum bid amount may encourage a private company to reduce its profits from 30% to 23% when a much lower profit margin could be realized as savings in a more competitive bidding arrangement.

Florida's experience with privatized prisons raises serious questions about whether the taxpayers are getting their money's worth. In order for a proper evaluation to be made, several steps should be taken.

- The Department of Corrections should have primary responsibility for procurement and contract management functions. DOC has the expertise and capability to manage prisons, including those operated by the private sector and could collaborate with DMS for support in procurement.
- Rather than being informed of a per diem rate, bidders should be required to make their best and final offer as part of a competitive market and based upon their corporate capabilities and

cost experience with operating prisons within parameters specified in the procurement. The state should continue to make every effort to calculate a rate that is in fact 7% less than the cost would be if the prison was operated by DOC. Bids that exceed that figure should be considered nonresponsive and either DOC should operate the new prison or new bids should be solicited.

- The Office of Program Policy Analysis and Government Accountability should conduct studies to determine if there are cost benefits in the construction and operation of new prisons by the private sector. Criteria should be developed to help the legislature decide who should operate a new prison – the state or a private company.
- The Auditor General should conduct annual performance and financial audits of private prison contractors to help ensure compliance with the 7% savings requirement.
- The Prison Per-Diem Workgroup should meet on a regular basis. A more open and deliberate process that includes specifying standards and procedures to adjust the AG-certified rates for a comparable public prison as well as the programming cost supplement would also improve the reliability of assessments regarding compliance with the cost savings mandate.

This report was co-authored by John Hall, Executive Director, and Kelly Walsh, Research Assistant, with assistance from Mike Walsh, Director of Research.

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## Endnotes

<sup>1</sup> Florida Statistical Analysis Center: FDLE (1989-2008), Crime in Florida, Florida Uniform Crime Report (Computer program) Tallahassee, FL.

<sup>2</sup> US Department of Justice, Bureau of Justice Statistics, Corrections Population, 2010, Washington, DC.

<sup>3</sup> Florida Department of Corrections, Bureau of Research and Statistics, population statistics as of June 30 of each year in all prison facilities.

<sup>4</sup> Jennifer C. Karberg and Allen J. Beck, "Trends in U.S. Correctional Populations: Findings from the Bureau of Justice Statistics," presented at the National Committee on Community Corrections, Washington, D.C., April 16, 2004.

<sup>5</sup> Florida Department of Corrections, Bureau of Research and Statistics, Sentencing Reports.

<sup>6</sup> US Department of Justice, Bureau of Justice Statistics, Corrections Expenditures by Level of Government, 2010, Washington, DC.

<sup>7</sup> Florida Department of Corrections, Bureau of Research and Statistics, Annual Report Budget Summary – includes all public prisons facilities (e.g. prisons, work camps, work release centers, etc.).

<sup>8</sup> OPPAGA, 2008. "While DMS has Improved Monitoring, it Needs to Strengthen Private Prison Oversight and Contracts." *Office of Program Policy Analysis and Government Accountability, Report No. 08-71:1*.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Office of Program Policy Analysis and Government Accountability.

<sup>12</sup> Ibid.

<sup>13</sup> 957.07(1), Florida Statutes.

<sup>14</sup> 957.04 (3)(f) , Florida Statutes.

<sup>15</sup> 957.11 Florida Statutes

<sup>16</sup> 957.07(5)(a) Florida statutes.

<sup>17</sup> Research Memorandum, Office of Program Policy Analysis and Government Accountability, April 2009.

<sup>18</sup> OPPAGA. 2008. "While DMS has Improved Monitoring, it Needs to Strengthen Private Prison Oversight and Contracts." *Office of Program Policy Analysis and Government Accountability, Report No. 08-71:6*.

<sup>19</sup> Ibid.

<sup>20</sup> Bales, William, Bedard, Laura, Quinn, Susan. Florida State University and Ensley, David T. and Holley, Glenn P., Florida Department of Corrections. 2003. Recidivism of Public and Private State Prison Inmates in Florida.