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Fiscal Management and the Challenge of Cost Containment

Introduction

One of the most significant challenges for correctional administrators and other officials responsible for public budgets is the ever-increasing cost of correctional operations. With the increasing number of offenders under correctional supervision and with many factors driving up the per capita costs of operations, the amount of public funds that must be directed toward corrections reduces the dollars available for other public purposes, and even the fiscal solvency of some state and local governments. The increased funding requirements for correctional agencies bring attention and pressures to elected officials to encourage correctional administrators to find ways to reduce budget requirements and brings into question many policies and practices that the public believes create unnecessary expenditures.

The economic downturn over the past few years has resulted in reduced tax receipts by states and the federal government. When the economy was strong and governments were experiencing budget surpluses, no one worried about expanding prison space and other correctional services to meet the burgeoning population under supervision. However, with the difficult budget challenges faced by governments, it is now a complicated decision as to whether to increase taxes, reduce the correctional population, or eliminate some services or supervision to meet budget shortfalls. Correctional administrators are being called on to find solutions to the budget dilemma. They are often given more offenders to manage, and these offenders may be higher risks to recidivate, have more program needs, and have a more serious history of violence and gang involvement. However, they still have to reduce overall budget costs, and the public and elected officials do not want to hear excuses of the challenges and demands placed on their agencies. They have to examine ways to "do more with less" and become more efficient in their operations. They look for ways to reduce demand for correctional services by finding alternatives to incarceration or by shortening supervision times. They look for ways to create revenue and to offset some of the increasing spending demands. And they look at nontraditional approaches to providing services, such as contracting with the private sector to reduce costs.

Over the past twenty years, the number of clients served by adult correctional agencies has grown significantly. At the end of 2008, over 7.3 million individuals were under correctional supervision of probation, prison, jail, or parole.¹ Correspondingly, expenditures for correctional agencies have also grown, as corrections budgets nationwide

increased by 529 percent from 1992 to 2006.² In fiscal year 1991, state and federal adult correctional agencies' budgets totaled \$18.1 billion.³ By fiscal year 2006, these budgets, with the inclusion of local jails, more than tripled to \$68.7 billion.⁴ As prison budgets have increased, so have budgets for probation and parole. The average budget for state probation and parole agencies more than doubled from \$34.3 million in 1992 to \$82.9 million in 2002, and it was estimated that over \$9 billion will be spent to supervise offenders in the community in 2007.⁵ In 2007, these state agencies supervised 5.12 million offenders on probation or parole⁶ at an average cost of \$3.42 per day of community supervision.⁷

And correctional agency spending is expected to continue to increase for the next several years. There were 41,368 new prison beds under construction in 1999, 47,476 in 2000, 58,422 in 2001, and 26,869 in 2002.⁸ From June 30, 2000, to December 30, 2005, there were 153 new state and federal prisons and 151 new private prisons constructed and opened.⁹ As these new beds were put to use at an average cost of over \$78.95 per inmate per day in 2008, the budget figures will continue to climb dramatically. State correctional agencies consumed 6.8 percent of state general funds in 2007,¹⁰ and by 2011, continued prison growth is expected to cost an additional \$25 billion.¹¹ State and local budgets have never had such a dire situation. In January 2009, states reported over \$50 billion shortfalls in revenue to fund their 2009 budgets; the gap widened in 2010 budgets to \$84.3 billion,¹² and while the drop in state revenues is beginning to subside, it is estimated there will be a cumulative state budget gap of \$89 billion in FY 2011, \$73.5 billion for FY 2012, and at least \$64.7 billion gap as far out as FY 2013.¹³

This chapter examines all of these as potential solutions to the increasing costs for corrections. First, the causes of increased correctional demands and budgets are examined. Second, the expenditures that are currently being committed to correctional agencies and the past trends in dollars for corrections are reviewed. Third, the methods by which agencies develop and monitor correctional budgets are investigated. Fourth, the alternatives available to correctional administrators to meet budget challenges are considered. Finally, the use of the private sector to provide correctional services and the potential for increased cost efficiency through this approach are examined.

The Budgetary Process for Corrections

Increased oversight by elected officials and a critical appraisal of how correctional agencies operate and spend their funds by the many interest groups that are affected by how much money is devoted to corrections or how much money is diverted from other public agencies can be expected from the dramatic increase in correctional agency budgets. Correctional agencies have operated and budgeted in very much the same manner throughout the entire history of corrections in the United States. Even with a number of different systems of public budgeting (line item budgeting, performance budgeting, planning-programming budgeting, and zero-based budgeting),¹⁴ correctional budget development has basically been expense based and incremental.

With **expense-based budgets**, corrections agencies calculate how much it costs them for salaries, programs, and services and develop a budget based on these expenses. It is not "outcome" based or "value" based, in that it does not question or propose what is to be accomplished nor does it put a value to society on the amount of dollars that are being

expended. Correctional agencies are merely asked to estimate the cost of their operations for the next or future fiscal years and ask the legislative body for that amount of money. If the correctional agency has 10 prisons to operate, 10,000 inmates to feed and clothe, supervises 15,000 offenders in the community, and employs 3,000 staff, administrators calculate the cost of these items, which becomes the budget request. The expectation is that they will continue to do business next year as they did in the past, and the budget provides for dollars required to conduct this business.

Correctional budgets are also **incremental**, in that the agency begins budget calculations by looking at the costs of operations last year and the increase in cost that new staff or new prison beds will create for the coming year. The budget process seldom is designed to take any major policy issues into consideration. Years ago when correctional budgets were relatively small, before they began to get so big that they required funds that elected officials would have liked to put into education, mental health, child care programs, or even tax cuts, elected officials paid little attention to them. Today, every budget process is a battle of politics, philosophy, and dollars. There are never enough dollars to do what everyone wants and to take the safest political position to not release prisoners early or fail to supervise them intensively in the community. However, we are reaching a point where economics may triumph over politics, and the dollars to continue to supervise the large number of offenders may force a reconsideration of correctional and sentencing policy.

Reasons for Increases in Correctional Budgets

Correctional budgets have increased tremendously over the past two decades, primarily because of toughening policies and attitudes about the need to get tough and punish criminal offenders. Elected officials have become tougher on crime, even where there is little evidence of their effectiveness and with the knowledge that they are extremely expensive in relation to community alternative sanctions. Perhaps the watershed political event regarding politics and criminal justice policy occurred during the 1988 presidential campaign, when Vice President George Bush successfully used the public's fear of crime as a campaign tool against his opponent, Governor Michael Dukakis of Massachusetts. Bush used campaign ads presenting Dukakis as soft on crime for allowing a Massachusetts **furlough** program and suggesting that it led to the commission of a tragic murder by Willie Horton, a furloughed inmate, while he lived in a halfway house.

Other candidates for public office saw the danger of being labeled "soft on crime," and campaigns everywhere promised to keep dangerous offenders in prison longer. Another example is the nation's war on drugs, in which President Ronald Reagan pushed through legislation to toughen drug laws and require mandatory prison terms for federal drug offenders. The dramatic increase in the federal prison population resulted in almost two-thirds of the federal prison population as drug offenders. Once politics forces correctional policy to move in this direction, it is difficult to turn back the clock, and increasing costs of corrections take money from other public services. The National Conference of State Legislatures reported that state spending on higher education experienced the highest reduction in its history during the 1990s, during which state correctional spending had its fastest growth.¹⁵ Addressing this dilemma, Irwin and Austin

argue that society must turn away from the excessive use of prisons, which is diverting money from education, child care, mental health, and medical services, all of which have a greater impact on reducing crime than does building more prisons.¹⁶

It is interesting to note that the public is not nearly as strongly in favor of "get tough" policies as elected officials believe. One change in sentencing policy has been the implementation of sentencing guidelines, determinate sentencing without parole, and mandatory sentencing. All these reduce discretion by judges and correctional professionals, and result in an inability to treat offenders by their risk and chance for successful rehabilitation. As Petersilia writes, "One of the most distinguishing characteristics of U.S. crime policy since the 1980s has been the gradual chipping away on individualized decision making and its replacement with one-size-fits-all laws and policies."¹⁷ The primary interest of the public is to be protected and they do not support sanctions perceived as merely punishing offenders without protecting society. In an Ohio survey, when informed that prison space is scarce and expensive, the public supported the use of community corrections instead of paying for new prison construction.¹⁸ A National Opinion Survey on Crime and Justice (NOSCJ) survey also found support for community correctional programs: Seventy-three percent of those surveyed indicated that intensive probation supervision was either "very effective" or "somewhat effective," 55 percent similarly supported house arrest, 73 percent supported electronic monitoring of offenders, and 78 percent supported the use of boot camps as alternatives to traditional prison sentences.¹⁹

Tight Budgets and Challenges to Corrections

In mid-2002, the population of the nation's prisons and jails for the first time reached 2 million, and as of June 30, 2008, there were 2,396,120 offenders incarcerated in the fifty states, the District of Columbia, federal prisons, and local jails. One-third of these were in jails (785,556) and two-thirds were in prisons (1,610,584).²⁰ Even though both prison and jail numbers have continued to grow over the past decade, there has been a declining rate of growth in the number of people incarcerated. During the 1990s, the inmate population grew an average of 8.7 percent per year,²¹ and from 2000 to 2006, the incarcerated population increased 2.6 percent per year. However, during the six months ending June 30, 2008, the prison population increased by only 0.8 percent compared to a 1.6 percent increase during the same six months in 2007, and the jail populations increased only 0.7 percent over twelve months ending June 30, 2008, the lowest growth in jail populations in twenty-seven years. Sixteen states actually had a decline in their prison population during the first half of 2008.²² While the slowdown of the increase has not been a result of a dramatic change in sentencing or incarceration policy, there are considerations for reducing the inmate population and save money.

Many jurisdictions now have to confront the expense of sentencing policies that mandate certain offenders go to prison and lengthen sentences for others. A recent report by the Pew Center notes that "Some policy makers are questioning the wisdom of devoting an increasingly large slice of the budget pie to incarceration, especially when recidivism rates have remained discouragingly high."²³ As a result, many policy makers are looking to lower correctional costs by considering both the opportunity to divert lawbreakers guilty of nonviolent or less serious crimes and to restructure sentencing to

reduce the overall length of stay for a large proportion of the prison population. In a recent report summarizing how states are dealing with the fiscal crisis they face, three areas of activity were highlighted:

1. **Operating Efficiencies:** States are trying to reduce budget expenditures through reducing healthcare services, joining purchasing coops to lower medical and other supplies, reducing the number of staff by instituting hiring freezes, reducing salaries and benefits, consolidating facilities, and reducing offender programs.
2. **Recidivism Reduction:** States are strengthening community corrections programs to reduce parole and probation violations and improving reentry services.
3. **Release Policies:** States are trying to reduce both the number of offenders entering prison and their length of stay in prison. Many states identify groups of people who can be safely released after serving shorter sentences.²⁴

As finding the money to fund increasing correctional budgets has become a serious dilemma, there are many considerations for ways to reduce the overall costs or at least slow down the increases in the future. The following sections describe many of these options that are being considered. Some seem to have promise, are politically attractive and supported, and may result in lowering correctional costs. Others may seem effective but have little political support. Or, they may be politically attractive but have little effect on reducing the cost of correctional operations in a jurisdiction. Some of the alternative policies include the following:

- Developing community alternatives and diverting offenders from prison.
- Restructuring sentencing to reduce the number of inmates.
- Reducing the cost of correctional operations.
- Reducing the cost of prison construction.
- Creating revenues in the correctional operations.
- Privatizing services or operations.

Diverting Offenders From Prison

There are two ways to divert offenders from prison. The first is to reduce the number of prisoners on the "front end of sentencing" by using more community diversion programs to keep offenders in the community rather than in prisons. The second approach is "on the back end" by reducing the revocation rate of offenders on parole or supervision after serving their prison terms. The following examples are what many states are doing to create community alternatives to prison so that offenders can stay in the community rather than being sentenced to prison.

Texas plans to divert thousands of inmates from prison to rehabilitation facilities designed to help them reenter society and has funded new treatment facilities for offenders sentenced for driving while intoxicated (DWI) at which they are provided substance abuse treatment. They have also expanded drug treatment diversion beds in lieu of sending offenders to prison. The goal of this is to reduce the need for construction of costly new prisons. "We have changed the course of the ship substantially in the state of Texas," said

Representative Jerry Madden, chairman of the House Corrections Committee and an engineer of the prison plan.²⁵ Texas estimates they have avoided spending \$523 million in building more prison beds by expanding drug treatment and diversion beds, many of them in secure facilities.

An accepted target for diversion is nonviolent offenders with drug addictions. Since 2004, at least thirteen states have adopted legislation creating or expanding community corrections options for nonviolent offenders, including the use of drug courts.²⁶ In 2009, New York repealed the 1970s Rockefeller drug laws that required mandatory prison terms for low-level drug felons, and gave judges more authority to send nonviolent drug offenders to community treatment instead of prison. This is seen as an opportunity "to focus on treatment rather than punishment to end the cycle of addiction."²⁷ Although the treatment programs will cost \$80 million per year, in the long run, the repeal is expected to save money as it will be less expensive than the \$45,000 it costs per year to confine a prisoner in New York.

Kansas has also enhanced their efforts to save money by diverting offenders from prisons to less expensive community alternatives. The governor for Kansas, Kathleen Sebelius, signed into law a plan to reduce prison admissions by providing counties with financial incentives to create community correctional systems and to provide opportunities for low-risk inmates to reduce their sentences by participating in prison programs. If counties reduce their recidivism rates of probationers and parolees by 20 percent or more, they qualify for grants from the state. The law also allows early release of up to sixty days for qualified offenders who successfully complete education and counseling programs that are expected to decrease their chances of returning to prison.²⁸

Instead of increasing the cost of its prison system, Hawaii decided to deal with its offenders on probation, as judges were sentencing inmates to ten years in prison because they missed appointments with their probation officers. Judge Steven Alm has created a new approach and sends probation violators from his court immediately to jail, but only for a few days. As they comply with their probation expectations, they get more freedom and have fewer check-ins with their probation officer. A four-year study of the program found that there are more than 80 percent fewer violations, and more importantly, the number of new crimes committed by the people on probation has been cut in half.²⁹ And Wisconsin is using dollars from the 2009 Recovery Act funds (the stimulus bill passed by the Obama administration) to divert offenders from prison, keeping the most serious offenders in prison while increasing supervision for nonviolent and lower-risk offenders in the community. Governor Doyle believes that additional focus on reentry, community treatment, and diversion programs will reduce recidivism and the number of offenders that must be held in prisons.³⁰

Keeping Offenders Out of Prison

On the "back end," some states are considering changing how to deal with those who violate rules of probation and parole. In 2005, parole violators accounted for more than one-third of all prison admissions.³¹ And in 2006, 44 percent of parolees were successfully terminated from supervision, whereas 39 percent were returned to incarceration.³² The success rate among those discharged from parole dropped from 50 percent in 1990.³³ During 2006, 179,259 parole violators were returned to prison, however, only

about 5 percent were returned as a result of a new offense, a figure unchanged since 1998.³⁴ In 2007, 248,923 admissions to prison were parole violators, representing about 36 percent of all admissions.³⁵

Over the past decade, there has been less tolerance for technical violations of parole (such as failing a drug test or missing an appointment with their parole officer), and parole failures now constitute a growing proportion of all new prison admissions. Parole agencies are hesitant to take the risk of continuing offenders on parole who are not following the conditions of the release, in case they later commit a crime and the parole agency is blamed for not violating them for the technical violation.

To reduce the number of prison admissions, jurisdictions are opting to punish technical parole violators with community-based sanctions, such as day reporting centers, electronic monitoring systems, and community service. A good example is California, which has a parolee return to prison rate of 66 percent (compared to the national average of 40 percent), representing two-thirds of all admissions to the state prisons. California recognized that they are recycling their inmates, as violators can be returned by the Board of Parole Hearings for no more than twelve months. In a report analyzing this problem, the authors suggested the development of a range of intermediate, community-based sanctions (especially for parolees with substance abuse problems) instead of a return to prison.³⁶

The Washington Institute for Public Policy in 2006 published a very important work that reviewed 571 evaluations of correctional programs that had rigorous methodologies and could be used to determine what worked to reduce crime and save taxpayers money.³⁷ Their work identified categories of programs that were determined to be "evidence based" in that there were sufficient data to prove that they were effective in reducing crime and were therefore cost effective. Programs found effective included vocational training and education, cognitive behavioral therapy, prison industries, sex offender treatment, and drug treatment for prison inmates. In the community, drug courts, employment training, drug treatment, and intensive supervision with treatment are effective. The conclusion was that states should implement these evidence-based programs to save money while not endangering public safety.

Restructuring Sentencing to Reduce the Number of Inmates

A second approach jurisdictions are taking to reduce the number of prisoners is to restructure sentencing codes so that prisoners do not stay longer than is necessary for punishment and the opportunity for rehabilitation. How many of the proposals being discussed will become a reality and how significantly the changes in policy or law will reduce prison populations is still a question. Several times in the past three decades, there have been modest efforts to restructure sentences to either reduce costs or create a system that seems to provide more equity and fairness. However, political reaction has always been strongly negative, and the sponsors of such legislation have backed down with few changes and very little change in policy or budgets. If the current recession deepens and continues, the likelihood that these efforts will this time lead to more significant and longer-lasting change increases.

However, some states are giving inmates the chance to earn more good time in order to reduce the length of sentence served. In California, Governor Arnold Schwarzenegger proposed to release 22,000 nonviolent inmates early and place them on unsupervised parole. In Rhode Island, lawmakers expanded good time to move more offenders from prison to postprison supervision. In Kentucky, nonviolent offenders were allowed to serve up to 180 days of their prison sentence at home. In Mississippi, Governor Haley Barbour signed into law a measure to make nonviolent inmates eligible for release after serving 25 percent of their sentences. In South Carolina, there was a proposal to abolish parole to slow down the return of parole violators to prison.³⁸

The issue of cost is not a yes–no question of whether offenders should be sanctioned by imprisonment or community supervision, but for how long and in what combination of prison and community sanctions. As a result of the tough on crime mentality of many policy makers, sentences for imprisonment have lengthened, more offenders receive mandatory prison terms rather than probation, three-strikes law sends repeat criminals to prison for life, opportunities for inmates to earn good time are reduced, there is longer postincarceration supervision, and both probation and parole are more likely to add to the costs of supervision with electronic monitoring or intensive supervision. The result of lengthening prison sentences and “stacking” community supervision has not been worth the increase in cost, nor has it resulted in a proportionate reduction of crime and increased safety to society. The accompanying Practical Perspectives case illustrates some of the dilemmas facing those trying to find options for reducing costs and the impact of even minor sentence modifications. As the example suggests, a lot of money can be saved by reducing sentences minimally, with little impact on public safety.

Practical Perspectives

Small Modifications Can Have Large Budget Implications

A state experiencing a rapid increase in the number of offenders in prison received a grant from the National Institute of Corrections to fund a prison overcrowding program. This program brought together legislators, judges, prosecutors, citizen groups, and correctional administrators to discuss the causes of the increase in prison population, to look for opportunities to reduce overcrowding, and to consider the need for more prison space while reducing the overall cost of the state correctional system. Many recommendations were suggested by the committee, one of which was a proposal to allow inmates to earn more good time for completion of drug abuse, educational, and vocational programs.

The state director of corrections began talking to legislators to explain the proposals and to urge their passage. One of the arguments was that if all inmates earned enough extra good time to reduce their sentences by only ninety days, it would save the state \$500 million over thirty years. Legislators were shocked by these figures, but the director explained how they were calculated. The state held approximately 20,000 inmates, and reducing the sentence served by each for three months would, over time, reduce the population by 500 inmates. To build a 500-bed prison would cost approximately \$50 million, and it is estimated that construction costs represent only 10 percent of the overall operating costs of a prison over 30 years, or a total of \$500 million. This represents how minor adjustments in time served can save massive amounts of dollars for state governments.

Reducing the Cost of Correctional Operations

As expenditures increase for correctional agencies and difficult choices must be made to not fund other preferred government operations, elected officials and the public express opinions on reducing the cost of current correctional operations. In a tough on crime climate with tough on criminals attitudes and rhetoric, it is not surprising that many people believe the costs of incarceration should be reduced by eliminating any programs or services that they see as not essential or that may detract from the punitive aspect of the sentence. In addition, correctional administrators know that they must do more with less and that their budgets will not continue to increase in direct proportion to the inmate population.

States have perhaps been hit the hardest in terms of the need to cut budgets. Governor Jim Douglas of Vermont, who is chair of the National Governors Association, reported that "43 states cut \$31 billion from their budgets in 2009. For fiscal year 2010, even with nearly \$30 billion in new revenue, 36 states have been forced to cut \$55 billion. Thirty states have cut elementary, secondary and higher education."³⁹ In a tight budget climate, legislative bodies sometimes pass specific legislation to require the elimination of some programs or services, or they may refuse to provide funds for correctional activities they do not support.

There have been times when the involvement of the legislature lets politics get in the way of good policy. For instance, in the 1990s, California tried to save money by reducing the number of correctional officers. The correctional officer union is very strong in that state, and after some negotiations between the legislature and the union, it was agreed to eliminate some correctional officer positions if gun ports were built inside of the prison in areas such as the dining room and cell houses so that the officers would be protected. The policy allowed staff to shoot inmates to break up serious fights, so as not to put staff at risk by breaking up fights. Unfortunately, this policy resulted in regular shooting incidents within California prisons, with correctional officers killing 36 inmates and wounding 207 others from 1989 until 1998.⁴⁰ From 1994 until 1998, only six inmates were fatally shot by staff in all other states, with all involved inmates trying to escape.⁴¹

A typical prison budget will be 60–65 percent salaries and benefits for staff, 10 percent for medical care, 5 percent for food, 5 percent or more for utilities, and another 5 percent or more for buying goods and supplies. With the largest cost for staff, targeting reduction in personnel costs can save the most money. Raises for staff may be eliminated or freezes on the hiring of new positions may be invoked. Jurisdictions have also put in place furlough programs for staff, whereby they may have to take 10–12 days per year off without pay. And other jurisdictions have increased the percent of insurance paid by the employee rather than by the government.

Another high cost item is for medical care, although it is difficult to reduce costs without limiting medical care or reducing the quality. Instead, states have stopped doing what they consider optional or cosmetic types of care, such as doing nonemergent dental care or removing tattoos. Food is very important to inmates and most jurisdictions are very careful in trying to save money through food reductions. However, some jurisdictions have reviewed and reduced the daily calorie counts when they believe they are too high (most run in the range of diets and menus that provide 3000–3500 calories a day). In addition, some have opted to serve only two meals per day on the weekend, and this usually is acceptable as less than half the inmates get up when they do not need to and go to breakfast.

With utility costs being a large part of prison and jail budgets, correctional agencies have targeted how to save on the consumption by turning down heat in the winter or air conditioning in the summer. Water usage is high in a correctional facility, so flush valves to reduce water use in toilets or reduced flow water heads in showers can save on water use and gas for hot water. And a few states have even cancelled or renegotiated all contracts for services, and in 2009, California even began issuing "vouchers" instead of making payments to vendors.

One of the easiest targets for legislators has been to reduce inmate recreation or educational programs. Over the past fifteen years, several states have banned weight lifting in prisons, believing it was a security risk because inmates strengthening themselves may make it difficult for staff to physically control the inmates. The issue, however, was really the negative image of inmates lifting weights in prison when they were supposed to be punished. In the late 1990s, the U.S. Congress did not ban weight lifting in federal prisons but added an amendment to the budget bills that no funds could be spent on inmate weight lifting and many other recreational activities.

Historically, many state prison agencies used **Pell grants** to fund inmate college programs. Pell grants began in the 1970s as a way for "disadvantaged populations" to receive funds for college courses. Inmates met the requirements for these grants, and most prisons had active college programs to motivate and improve inmate morale. In 1994, Congress specifically eliminated inmates from receiving Pell grants, and many active and proven college programs in prisons were eliminated.⁴² Some jurisdictions kept college-level programs on a limited basis. However, in 2000, the Federal Bureau of Prisons proposed modifying their own rules to make inmates responsible for all college degree tuition costs.⁴³

Unfortunately, many jurisdictions are reducing spending for programs that both help reduce idleness among inmates and can aid in rehabilitation and reduce recidivism. In 2010, the state of California decided to reduce their prison program budgets by \$250 million and lay off 850 staff who deliver education and substance abuse classes. The cuts will result in 17,000 inmates who enroll in academic and vocational programs and 3,500 who are in substance abuse programs being idled. Critics have noted that with California's 70 percent recidivism rate (the highest in the nation), it is unwise to reduce programs that make a difference in whether offenders reoffend after release.⁴⁴ Other states (Florida, Ohio, Georgia, and Texas to list a few) have also planned to reduce programs to make up budget shortages.

Savings for correctional operations does not end with prisons and jails, and community corrections budgets have also been examined for cost savings. The largest opportunities come in two ways. The first is to reduce the contracts for transitional care, such as halfway houses. Halfway houses are used both for probationers and inmates returning to the community and provide a combination of supervision, structure, accountability, and programming to aid in community supervision. Most jurisdictions contract with not-for-profit organizations such as church groups or the Salvation Army that run halfway houses. Even though they are less expensive than the operation of a prison (average cost per inmate per day was \$78.95 in 2008⁴⁵) compared to the 2001 average cost of \$43.41 for contracted halfway houses,⁴⁶ they are often an added rather than alternative cost to correctional agencies. This means the contract for a service in addition to their normal probation supervision or release to the community. By reducing the budget for halfway house contract beds, fewer offenders will receive service. For example, the Texas

Department of Criminal Justice (Corrections) proposed in their 2011 budget to reduce funding for halfway houses by \$1.6 million, resulting in 400 fewer inmates released from prison and placed in a halfway house as a transition to the community.⁴⁷

Another way to save money in community corrections is to reduce the number of offenders under supervision and then reduce the number of probation or parole officers. Probation and parole officers classify offenders according to risk to reoffend (scored on the number of prior convictions, employment status, age, and present offense) and use this classification to determine the supervision level. The risk level can result in multiple levels of supervision. Intensive supervision is for offenders posing a significant risk of committing a new offense; they are assigned to smaller caseloads, must report at least once per week to the supervising officer, and are visited two to three times per month at home or at work. Most probationers are placed on regular supervision, with larger caseloads and fewer reporting requirements. For offenders who pose little risk to the community, minimum supervision is satisfactory, and these offenders have contact with their probation officer only every few months. Some jurisdictions are eliminating any supervision for minimum risk offenders, saving the number of staff necessary for this role. Also, they believe no supervision will result in fewer technical violations and fewer probationers and parolees returning to prison.

Overall, there are many ways to reduce the costs of correctional operations, but as is obvious, these come with risks and potential unintended consequences. While not desired, these challenging budget times are forcing correctional administrators to find ways to reduce costs. Many believe that these are not good long-term solutions, but hope that as the recession ends, employment improves, and tax revenues return to prior levels, these cuts can be restored and effective practices can be renewed.

Reducing the Cost of Prison Construction

Correctional administrators are continually pressured to find ways to reduce the cost of building prisons. There is no doubt that it is expensive to construct facilities that safely and securely house criminals; have sufficient space for operational needs such as food and medical services; and have program opportunities such as education, vocational training, and recreation. All of these activities require considerable space, and prison construction is not inexpensive.

As an example of prison architecture, the last facility I worked in as a warden was the Federal Correctional Institution (FCI) in Greenville, Illinois, opened in 1994. The facility includes approximately 357,000 square feet of space at the main medium security facility, 74,000 square feet at the minimum security camp, and 42,000 square feet of shared facility space such as the warehouse and central utility plant. The prison was constructed with 512 medium security cells and 128 minimum security inmate cubicles.⁴⁸ The cost of construction was approximately \$62 million. With the Federal Bureau of Prisons calculating the **design capacity** of this prison at 768 medium security and 256 minimum security inmates, the combined total cost per inmate bed was more than \$60,000. It must be understood, however, that the cost per bed includes the overall cost for constructing the prison as well as all the space other than that used for cell or cubicle construction.

As correctional populations continued to rise over the 1990s, new prisons were needed, and from 1993 to 2000, 288 new prisons were constructed and opened,⁴⁹ and from

June 30, 2000 to December 30, 2005, 153 new state and federal prisons and 151 new private prisons were constructed and opened.⁵⁰ With this added bedspace, the issue of how much it costs to build a prison became a target for elected officials. The desire was to bring down these costs and make adding bedspace as economical as possible. As a result, several approaches to saving money on prison construction were considered and adopted, helping to keep costs down for a while, as construction costs rose during the first few years of the 1990s and then declined in 1996 and 1997. In both maximum and medium security prisons, the 1997 cost was actually less than that in 1990.⁵¹ However, a 2006 report noted that, "a typical new prison [2000 beds] costs about \$250 million to build and \$45 million a year to operate."⁵² This calculates to \$125,000 per bed.

There are many approaches to reducing construction costs. The biggest savings for prison construction are associated with space and type of security. The housing units make up far less than 50 percent of the total square footage at FCI, Greenville. If a jurisdiction decides they could do without space for education, prison industries, religious programming, drug abuse, and recreation, then considerable funds would be saved on construction. In addition, if a jurisdiction determined that inmates with security designations above minimum (medium or even maximum) could safely be held in open dormitory space (cubicles) instead of cells, there would also be considerable construction savings. Apart from these questionable philosophical and policy considerations, jurisdictions look for other methods and opportunities to reduce construction costs, and several approaches have been successful, including the use of inmate labor for portions of the construction, design/build construction techniques, and the use of prototype prison design and construction.

All states use inmate labor to renovate space or even do small construction projects within existing prisons. This is a cost-effective way to renovate prisons, as well as excellent experience and training for the inmates. One reason it saves considerable dollars is because it is not necessary to bring outside construction crews and equipment into the prison, and develop what turns out to be expensive approaches to providing security for the construction project. If inmates do the work and correctional staff supervise their efforts, there is less need to provide security and to keep inmates away from the construction area.

However, a few states have tried to use inmate labor to reduce construction costs of new prisons. In the early 1990s, the Federal Bureau of Prisons contracted with private construction companies to build housing units and key operational areas such as food service and medical areas. The private contractors also built the outer shell of the program and activities buildings. The shells included the foundations, roofs, and unfinished walls. Inmates were then moved into the prison and completed the interiors of these buildings, including installing electrical wiring, heating and ventilation systems, and drywall ceilings and walls.

The size of a facility has much to do with the cost of construction, and many jurisdictions try to take advantage of economies of scale by building prison complexes that place a number of facilities in the same location. There may be three facilities sharing an administration building; warehouse, water treatment systems, and training building.⁵³ And **fast-track construction** methods have also been shown to save money by reducing the time of construction. Fast-track methods involve a collaborative process with the architect, contractor, and client working together throughout the process to begin some construction even before all of the design is completed. While opponents note the risks of this, most projects have been completed without major problems and are believed to save money.⁵⁴

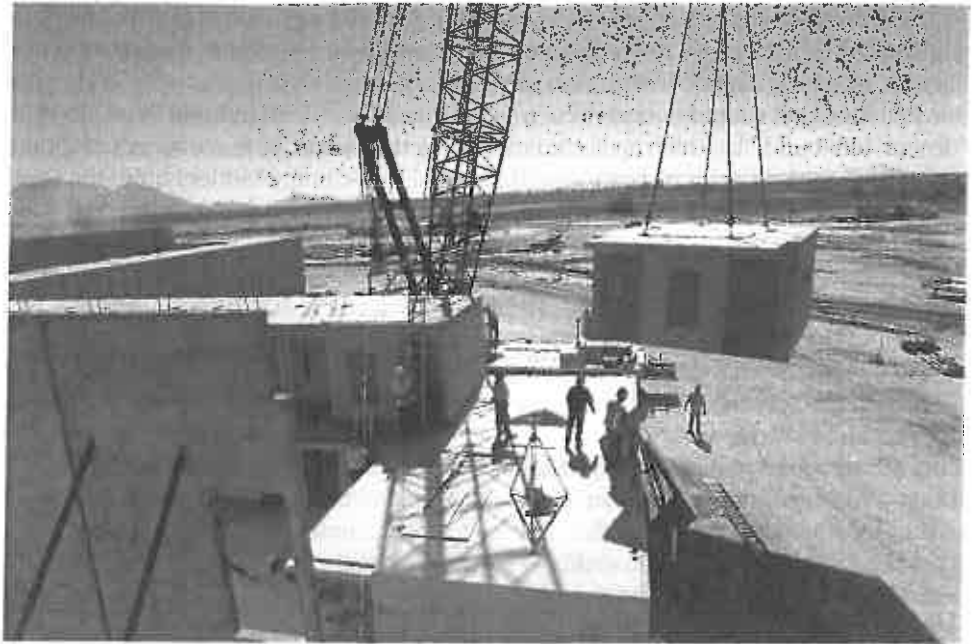
Design/build is a rather new approach for government and prison construction. **Design/build** basically tries to consolidate responsibility for design and construction of a facility to "meet very tight construction schedules, guarantee budgets in the early phases of construction and simplify construction administration."⁵⁵ Design/build is an alternative to "design-bid-build," in which an architect designs the prison, bids are accepted for many portions of the prison from construction firms, and the winning bidders build the portion of the prison for which they received the bid. Each step is completed in sequence, and the average time of design and construction is 30–36 months. With design/build, "the entire scope of work—architectural and engineering design, construction, project management, cost management and quality control—[is] shared as a single-source responsibility by the designer and the builder under one individual contract."⁵⁶

The belief is that design/build will reduce the construction schedule, because construction actually can begin on early phases (such as site preparation and underground utilities) even before the entire architectural and engineering designs are completed. It also has the advantage of providing a known fixed cost, because the entire project is bid to one contractor for a set price, rather than having 20–30 bids for small pieces of the construction pie. Although there are risks with this approach, both construction time and costs are usually reduced. In describing the use of a design/build for the U.S. Penitentiary in Coleman, Florida, Mary S. Galey, construction project administrator for the Bureau of Prisons, writes,

The result was a design that more than meets the minimum needs of the BOP and still allows the contractor to construct the institution in an economical and efficient manner. Approximately 50 percent of the contract time has passed, the design is complete and the contractor is working with a schedule that has a construction completion date two months prior to the contract completion date.⁵⁷

Finally, governments have been using **prototype prison construction** as a cost savings approach. The fact that many jurisdictions are building more than one prison of similar size and security level allows a single design to be used for more than one prison.⁵⁸ Correctional agencies can use the prototype designs in a variety of ways. They can select one architect to develop a prison design for several different sites. This reduces the cost and time for architectural planning. The Federal Correctional Institutions at Greenville and Pekin, Illinois, are identical designs, with the only variations being a few color changes and slight adaptations for varying gradations between the two sites. Another prototypical approach is to use the same architectural design for certain portions of a prison, such as housing units, food service, or a program building.

Whatever approaches are used to reduce construction costs, there is ample opportunity to save money. The sheer volume of construction over the next several years will be significant. The *1999 Corrections Yearbook* reports that on January 1, 1999, there were in total 41,368 beds to be added to state and federal prisons at a cost of more than \$1.9 billion.⁵⁹ Correctional agencies can select a variety of security and operations philosophies that have a meaningful impact on construction costs. And there are several approaches to construction that can reduce costs, including the use of inmate labor, design/build, and prototypical prison designs. And with a large amount of correctional budgets going toward prison construction, these cost reduction efforts can have significant monetary impact.



Precast cells for prison construction. Precast cells are constructed with doors, windows, toilets, and sinks already installed. When brought to the construction site, they are stacked into place and are a way to reduce construction costs.

(Courtesy of Corrections Corporation of America)

Creating Revenues in Corrections

Seldom does one think of creating revenues when it comes to operating a correctional agency. However, many jurisdictions have become quite innovative in finding opportunities for creating revenue, and there are possibly many others that, although perhaps somewhat controversial, may be sources of income. In a chapter entitled "Enterprising Government: Earning Rather than Spending," the authors of *Reinventing Government* write,

Our (government's) budget systems drive people to spend money, not to make it. And our employees oblige. We have 15 million trained spenders in American government, but few people who are trained to make money. . . . But can you imagine the creativity they would turn loose if they thought as much about how to *make* money as they do about how to *spend* it?⁶⁰

Since Osborne and Gaebler wrote about the need and ways to reinvent government, there has been much more attention paid to creating revenue by public agencies. The government often has unused products and services that could be sold to the private sector or even other government agencies. There is often the opportunity for government agencies to charge individuals fees for services, for example, to play on a recreational softball team, to use a public camp ground, or to tour a public building. With a bit of creativity,

there are many ways that correctional agencies could create revenue. Agencies are charging offenders for supervision or for services, and are using offenders to produce products that can be sold for income or at least to reduce the cost of correctional operations.

Charging offenders for some aspects of their supervision has been going on for some time, particularly with community corrections. As a condition of probation, offenders have regularly been charged a fine or had to pay victim restitution, and many probation agencies charge offenders for services such as drug counseling, halfway house stays, or participation in work release programs, as well as for their supervision costs of electronic monitoring, intensive supervision, or drug testing. Forty-one states and almost all county probation departments report using such fees.⁶¹

Another approach with much political appeal has been to charge inmates for the cost of their incarceration, and over the past ten years, many jurisdictions have approved **cost of incarceration fees** for prisoners housed in local jails or state and federal prisons. These fees require inmates to pay the cost of their incarceration, if they have the financial resources. However, few offenders have the means to pay these fees, and there have been few instances in which a significant amount of money has been collected from an inmate to cover his or her cost of confinement.

Many jurisdictions charge inmates a fee for medical care while in prison or jail. By the early 2000s, forty states and the U.S. Bureau of Prisons were charging inmates a small **copayment** of \$2–\$5 when they requested medical care, just as most citizens pay a copayment when they see a family physician.⁶² While this copayment may generate a small amount of revenue, the primary purpose is to reduce the demand for medical services. Private medical insurance companies know that a copay is considered by individuals and they will not go to a doctor for minor colds or illnesses they do not consider serious. As a corrections example, Nevada was one of the first states to begin to use copayments, and in the first two years after implementing a copayment, inmate medical utilization was reduced by 50 percent.⁶³

Another program that results in generating revenues and reducing the cost of incarceration is prison industries, in which inmates produce products that are sold to generate revenue and, in many cases, make a profit to help cover the cost of prison operation. On January 1, 2002, there were 78,881 inmates (7.8 percent of the prison population) working in prison industries in the fifty states, the District of Columbia, and the Federal Bureau of Prisons. In 2001, these programs had sales of \$1.7 billion and profits of nearly \$19 million.⁶⁴ All costs of the work program are covered to include industrial supervisors who train and supervise inmates, avoiding the cost to taxpayers for other inmate training programs. Also, inmates are paid between \$2.63 and \$7.64 per day,⁶⁵ and these earnings are often used to pay for their cost of incarceration or for fines and victim restitution.

A form of prison industry program is the **PIE Program**, in which private companies hire inmates to produce goods inside the prisons. In 2001, there were 5,103 inmates employed in over 200 PIE industry programs. A requirement of PIE programs is that inmates must be paid wages comparable to private-sector workers, and the daily wage as of January 1, 2002, for inmates working in PIE ranged from \$21.43 to \$36.50.⁶⁶ PIE inmates are required to have deductions for fines, victim compensation, room and board, support of families, and payment of taxes from their pay. From the beginning of the PIE Program until June 2003, on wages of \$264 million, more than \$146 million was withheld from pay, of which 48 percent was for room and board, 24 percent for taxes, 17 percent for victim restitution, and 11 percent for family support.⁶⁷



Prison industry programs keep inmates busy and produce products that can be sold to cover their operational and staff costs.

(Courtesy of Corrections Corporation of America)

Creation of revenues by correctional agencies is still very small, particularly in terms of the millions of offenders under the supervision of correctional agencies on any given day. However, these difficult budget times are forcing public agencies to consider opportunities to create revenues that they may not have done in the past. Opportunities will always be limited, but the entrepreneurship and creativity that will result from trying to find revenues should be a skill that will benefit correctional administrators far into the future.

Privatizing Services or Operations

Another way that jurisdictions have attempted to save money is to contract with the private sector so that the service can be provided cheaper than by the public correctional agency. The private sector has been involved in the administration of various correctional aspects almost since the origination of penal codes. When countries transported offenders to penal colonies, the offenders were often required to serve as indentured servants to individuals and businesses that had contractual agreements with the governments. Early prisons allowed businesses to contract for the use of prisoners as a labor source, with the funds offsetting the cost of prison operations. These contracts were ripe for abuse and led to federal legislation limiting the products of prison labor being sold on the open market. Since the 1950s, halfway houses have served as a transition from prison to the community. Most halfway houses

are privately operated, although most are owned by faith-based or not-for-profit charitable organizations. By the 1980s, almost every state had contracts with privately operated halfway houses to provide residential services, supervision, and transitional programs for inmates leaving prison and returning to the community.⁶⁸ Also, many states with very small juvenile offender populations have often found it cost effective to contract with privately operated facilities, rather than to open state-run juvenile facilities. In 1984, it was reported that 65 percent of all juvenile facilities were private, housing approximately 32,000 offenders.⁶⁹ During the 1980s, prisons began to contract with private companies to provide food services, medical and mental health care, educational programming, and substance abuse counseling, and by the turn of the century, there were 126 state and federal prisons contracting for food services and 397 for medical care for inmates.⁷⁰ Another 300 prisons had private contractors providing mental health services, and 226 prisons contracted for substance abuse services.⁷¹

These uses of the private sector in corrections have not been controversial. However, when agencies began to contract to house adult prisoners in private for-profit prisons, many ethical and practical questions were raised. The use of private prisons as a cost-saving mechanism is herein described and discussed. A **private prison** is any secure correctional facility operated by an organization other than a governmental agency and usually in a for-profit manner that contracts with the government to provide security, housing, and programs for adult offenders. In a private prison, staff are employees of the company that owns and operates the prison. Such prisons can be administered without cumbersome governmental purchasing and personnel policies, although they are still held to the same constitutional standard for treatment of inmates as a public prison.

The first private contract to house adult offenders was in 1984, for a small, 250-bed facility operated by Corrections Corporation of America under contract with Hamilton County, Tennessee. Soon thereafter, additional contracts with the private sector to house illegal aliens (contracted with the U.S. Immigration and Naturalization Service) and youthful offenders (with the Federal Bureau of Prisons) were established. The growth over the next few decades in the privatization of correctional facilities was spurred by the increasing number of inmates and the rapid need to build new prisons, the budgetary challenges required to fund these new prisons, and the Reagan-era support of using the private sector to help downsize the scope of government. Welch notes,

At that time, the prevailing political and economic philosophy encouraged government officials to turn to the private sector to administer public services, such as sanitation, health care, security, fire protection, and education. As a result of the introduction of free-market principles into the administration of public services, . . . the privatization of corrections appeared to be a new and novel approach to some old problems (i.e., overcrowding and mounting costs).⁷²

By 1990, Logan reported that private prisons held just over 9,000 adult inmates,⁷³ but by June 30, 2008, there were 126,249 state and federal prisoners held in private prisons, accounting for 7.8 percent of all prisoners.⁷⁴ At an average cost of \$53.38 per day, these contracts equate to almost \$2.5 billion per year.⁷⁵ Table 9-1 illustrates the numbers and percentage of all state and federal inmates held in private prisons.

Table 9-1
NUMBER OF PRISONERS HELD IN PRIVATE FACILITIES, DECEMBER 31, 2000–2007,
AND JUNE 30, 2007 AND 2008

Year	Number of Prisoners			Percent of all Prisoners
	Total	Federal	State	
2000	90,542	15,524	75,018	6.5%
2001	91,053	19,251	72,702	6.5
2002	93,912	20,274	73,638	6.5
2003	95,707	21,865	73,842	6.5
2004	98,628	24,768	73,860	6.6
2005	107,940	27,046	80,894	7.1
2006	113,697	27,726	85,971	7.2
2007				
June 30	118,239	30,379	87,860	7.4%
December 31	125,997	31,310	94,687	7.9
2008		32,712	93,537	7.8%
June 30	126,249			
Annual change				
Average annual change, 12/31/2000–12/31/2007	4.6%	10.5%	3.4%	
Percent change, 06/30/2007–06/30/2008	6.8	7.7	6.5	

Note: Includes estimates for Illinois for 2006, 2007, and 2008 and Nevada for December 31, 2007.
 Not Calculated

Source: Heather C. West and William J. Sabol, *Prison Inmates at Midyear 2008—Statistical Tables* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, March 2009), p. 12.

How Private Prisons Function

When a jurisdiction decides to attempt to contract the placement of prisoners in a private prison, a formal legal and contractual process must begin. The first step is to determine the need for housing of inmates, both in terms of the number of inmates and security level required. Second, the correctional agency develops a **request for proposal (RFP)**, which outlines in detail the requirements, expectations, and standards to be met by the bidding companies. In the RFP, the agency will usually clarify the geographic area for which they will consider contracting for bed space. It is usually not necessary for the private prison to be located in the same jurisdiction as the correctional agency. It is not unusual for states to contract for bed space in a state some distance away.⁷⁶

For a private company to own and operate a prison and contract for prisoners with a governmental agency there must be **enabling statutes** by the state in which the private prison is located. Several states do not allow private prisons to operate within the state or limit the operation to contract with and house only prisoners from that state and not bring in prisoners from other states. Also, the state must pass legislation allowing the state to delegate by contract its correctional authority. In order to clarify responsibilities and avoid legal challenges,

This statute must specifically address rules, regulations, licensing, policies, and procedures pertinent to the operation of private correctional facilities, as well as designate staff, facilities, budgets, and responsible agencies for the oversight of those rules, regulations, licensing, policies, and procedures. Enabling statutes must grant judges authority to sentence defendants to private institutions; without such legislation, any sentence to a private prison would be subject to a jurisdictional challenge.⁷⁷

The agency makes public the RFP, and any private company that meets the minimum requirements of experience and capabilities may submit a bid. Bids are usually evaluated on both cost and quality of service delivery, often rated by the company's past record and description of how they would operate the prison. The governmental jurisdiction then awards the contract, transports prisoners to the facility, and monitors compliance with contract provisions. These provisions are usually both general in nature, such as requiring the company to comply with American Correctional Association standards, and very specific, such as directing the availability of sick call for inmates or the number of calories per day in meals served.

There are several variations of operations by private companies as they comply with RFPs. First, the RFP may require a private company to own (already or build) a prison to house the inmates. Many times, a private company will build a large prison and then respond to RFPs from many jurisdictions to fill it. Very few problems result from having inmates from a variety of jurisdictions in the same facility. Second, a jurisdiction may already have a prison and may seek a private operator to manage the facility. Some jurisdictions prefer this approach, fearing that if contractual problems result with the private company, they can find another manager. However, if the company owns the prison, they must find available space elsewhere if the contract ends.

Finally, there are some governmental agencies that operate as private firms and respond to RFPs from other jurisdictions. Sechrest and Shichor refer to these as **public proprietary facilities** operated by "small jurisdictions without a strong economic base, thus making the (facilities) a potential source of income and employment."⁷⁸ These municipalities or counties pass bonds and build prisons specifically for contracting with other governmental jurisdictions. They often contract with one of the large private prison companies to manage them. However, the fact that they are owned by a governmental agency makes the contracts less bureaucratic to develop, and a response to an RFP can usually be avoided and a "direct award" to the public proprietary facility is legally allowable.

Issues in Prison Privatization

As noted, privatizing the operation of prisons has been controversial, and there are arguments both for and against private involvement in corrections. These arguments include two general areas of issues: philosophical and pragmatic. The philosophical issues center on the distinction of roles between the private sector profit-making enterprises and government, ethics and corruption, and the larger public interest. The pragmatic arguments include cost effectiveness, quality of service, security and public protection, and liability.

Logan identified the following ten issues that are key to any deliberations regarding the use of private prisons:

1. **The propriety of proprietary prisons**—Can the punishment of offenders be delegated to nonpublic agencies?
2. **Cost and efficiency**—Are private prisons operated less expensively than public prisons?
3. **Quality**—Does the profit motive diminish the drive for delivery of quality services and programs to inmates?
4. **Quantity**—Does the involvement of the private sector to make a profit encourage the expansion of imprisonment beyond what is in the public interest?
5. **Flexibility**—Does the fact that the private sector does not have to follow bureaucratic government policies for purchasing and personnel management increase efficiency?
6. **Security**—Does the fact that an emphasis on profits and cost cutting undermine security for inmates, staff, and the community?
7. **Liability**—What impact does a government contracting with a private firm for housing inmates have on the liability of the government for violation of inmates' constitutional rights?
8. **Accountability and monitoring**—How will the private contractor be monitored to fulfill requirements and be held responsible if they do not?
9. **Corruption**—Without the restraints inherent in government to reduce the likelihood of corruption, will there be an increase in private prisons?
10. **Dependence**—Will the public sector become dependent on the private sector contract, and if so, how does this affect decision making?⁷⁹

Some of these issues are addressed at this point. The basic issue is the philosophical issue of whether private companies should be allowed to make a profit out of incarcerating criminal offenders. Many individuals and groups (such as the American Civil Liberties Union [ACLU]) argue that taking away an individual's freedom is the responsibility of the government and should not be abdicated to the lowest bidder. At this point, the U.S. Supreme Court has not clearly established whether government can transfer correctional functions to the private sector.⁸⁰ Logan notes, however, that the authority of government is derived from the consent of the governed and, therefore, may be delegated further with similar consent.⁸¹ Although this question continues to be raised in every discussion of private prisons, it has generally been decided by the dozens of state and local governmental agencies that make use of the private sector to incarcerate inmates.

The issue of whether or to what extent a government agency that contracts with the private sector is able to pass on liability is complex and not yet clearly established through case law. It is generally accepted that the state or local government does not escape liability by simply contracting with a private provider for housing criminal offenders. The government maintains responsibility for the constitutional rights of all citizens, including prisoners. Private prisons under contract with government agencies act "under the color of the law," or with the power of the government. In general, pertinent case law indicates that governmental liability under the Federal Civil Rights Act (42 USC Section 1983) would most likely not be reduced by contracting with the private sector.⁸²

In *Lugar v. Edmonson Oil Co.*, the U.S. Supreme Court determined that a party alleging a violation of its constitutional rights must first show that the violating party was acting under the color of law.⁸³ When this has been established, both private contracts and the governmental agency can be held liable. (See *Medina v. O'Neill*⁸⁴) In *Medina*, the Immigration and Naturalization Service detained stowaways on a vessel, placed some in a local jail, and placed others in the custody of a private company. When the illegal aliens attempted to escape, a private guard accidentally killed one of them. The Court found both the government and the private company liable for damages in the death.

If it is determined that it is legally and ethically acceptable to contract with the private sector to incarcerate inmates, the next key issue is that of cost efficiency. Several studies have compared the cost of privately operated prisons. The earliest review of the Hamilton County, Tennessee, private prison suggested that it saved from 4 to 15 percent annually over county-operated penal farm costs.⁸⁵ A 1992 study comparing costs for public and private facilities housing parole violators in California found a lower cost per day for private facilities.⁸⁶ A study initially funded by private prisons determined that between 1999 and 2004, "states that have some of their prisoners in privately-owned or -operated prisons experience lower growth in the cost of housing their public prisoners."⁸⁷ A *Harvard Law Review* article concluded that "what imperfect empirical evidence there is suggests that private prisons cost less than public prisons and that their quality is no worse."⁸⁸ A literature review in 2002 by the Reason Foundation identified seventeen studies that measure quality of operations by government and private prisons, and fifteen of those conclude that "the quality at the private facilities is as good or better than at government-run facilities."⁸⁹ However, Segal and Moore, in a review of the costs of outsourcing correctional services, conclude that "Policymakers should be wary of overreliance on cost-comparison data in making privatization decisions, and be certain that cost analysts do not take it upon themselves to make policy assumptions in determining cost figures."⁹⁰ Further, there are still many concerns with states contracting with for-profit companies to incarcerate offenders. Dolovich questions the legitimacy of this approach, even if private prisons can operate for less money without a drop in quality.⁹¹

Another reason why correctional agencies turn to privatization is to eliminate having to appropriate funds for the enormous capital outlay required to build prisons. During the period of tremendous growth in the inmate population from the late 1980s through the early 2000s, the private sector was able to fund, build, and provide prison beds more rapidly than the public sector. Austin and Coventry note that, because private companies are not subject to government regulations regarding construction of buildings, the private sector can build prisons for nearly 25 percent less and in half the time compared to the public sector.⁹² Culp also notes that some states were

approaching their debt ceilings or did not have the time to issue bonds to fund new prison construction.⁹³ A 2004 analysis of Oklahoma's use of private prisons found that the state succeeded in housing a substantial number of offenders without spending a penny on building new facilities.⁹⁴

There have also been reviews of quality with mixed results. A study comparing costs of public and private prisons in Kentucky and Massachusetts found that private prisons appeared to be better managed than public prisons.⁹⁵ Results from a Florida study comparing recidivism of releasees from private and public prisons favored the private prisons. Recidivism of releasees from the private prisons was lower than for those released from public prisons, and of those who reoffended; the crimes were less serious for the private prison releasees.⁹⁶ When the General Accounting Office (GAO) conducted a comprehensive review of five outcome studies of private prisons completed since 1991 in Texas, New Mexico, California, Tennessee, and Louisiana, analysts did not believe that three of these studies were sufficiently designed to use results, but found that outcomes from the remaining two indicated minimal or no differences between the public and private prison operations.⁹⁷

Other studies have also failed to find any significant differences between the outcomes of offenders released from public versus private prisons.⁹⁸ In a national survey to compare private and public prison operations that analyzed the types of inmates, inmate misconduct, and general characteristics of prisons and their staff, Camp and Gaes concluded that private prisons had higher escape rates and more positive results from drug tests and did not enhance staff or community safety.⁹⁹ There has not yet been a sufficient number of "apples to apples" comparisons of quality and cost between public and privately operated prisons to draw decisive conclusions. The most recent and perhaps most comprehensive is a review of the Taft, California, private prison, which found that inmates and staff were provided a safe living and working environment and the private facility cost less to operate, but it had lower rates of assault, more escapes, higher rates of drug use, and higher rates of inmate grievances.¹⁰⁰

Perhaps the most difficult issue to address is the one of "quantity." Essentially, the question is whether the involvement of the private sector as a profit-making entity in control of the imprisonment of offenders may somehow push for more, rather than less, incarceration. Sentencing policies and the increasing number of prisoners are always areas of public debate and dispute, and it is reasonable to examine the interest of private prison operators regarding these issues. In a recent article, David Shichor identified the issues and discussed problems of the free-market model in providing human services and the symbolic references of private prisons and corporate ethics.¹⁰¹

Earlier, Lilly and Knepper investigated the developing private correctional enterprise and compared the commercial pressures for expansion to those that exist in the "military-industrial complex."¹⁰² There is no doubt that successful private correctional companies have spent millions of dollars lobbying and educating elected officials in their role and performance. Although it is doubtful that private correctional companies would intentionally push for changes in sentencing that would end up sending more offenders to prison simply for the potential business, the private companies certainly could benefit from such laws. However, this issue is more of a perception than reality. There is no evidence that the involvement of private corrections influences overall sentencing policy.



Warden in housing unit with extra bunks in day room. Some private prison companies argue that contracting with the private sector can increase capacity, reduce overcrowding, and bring down the cost of incarceration.
(Courtesy of the Federal Bureau of Prisons)

The Future of Private Corrections

Although the growth in the number of state and federal prisoners has slowed down over the past two to three years, significant increases in the number of inmates are still expected, and with state and federal revenues down due to the 2008 through 2010 recession continuing, very few jurisdictions are constructing new prisons. Tightening government budgets force public officials to increasingly look for alternatives to the traditional approaches. And the continued lack of public confidence in the public sector leads many citizens to support giving the private sector a chance. Gowdy notes

Nonetheless, the public's unsatisfactory view of today's penal system in terms of its costs and high recidivism rates are two factors that are likely to encourage further expansion of the private sector's role.¹⁰⁸

Although the growth of the prison population has slowed down and even declined in 2010, it is estimated that approximately one-half of the growth during the past decade has gone into private prisons. The tight budget situation may make this even more likely in the future. There is little if any construction by public correctional agencies during the recession, and they are looking to reduce their population through other approaches mentioned earlier. This could mean that at some point, these relief valves will be exhausted and the growth will come without any capacity ready to receive it. If this is the case, it is likely that the future of privatization will be even stronger in the next decade than it has been in the past ten years.

SUMMARY

Why have correctional budgets increased so rapidly, and is there anything that can be done to slow down this increase? What are the pressures on correctional administrators as government budgets tighten, and what alternatives to increased spending are available to them? What is the role of correctional administrators in developing alternatives to incarceration, and what risks do they face by encouraging such alternatives? What nontraditional approaches can correctional administrators consider, and how much flexibility do they have in experimenting with or implementing these approaches? And, if they attempt to contract with the private sector to provide historically public correctional services, what are the issues that must be addressed in the contract award and monitoring?

All these questions have been addressed in this chapter, and they have prompted an examination and consideration of the complex administrative and political challenges that confront today and tomorrow's correctional administrator. The recession has resulted in lower than expected tax revenues, and state and local governments have had to look for ways to reduce spending. Since corrections has become one of the largest users of taxpayer dollars, it is targeted for reductions and correctional administrators are forced to find ways to reduce their costs.

The most obvious way to reduce costs is to reduce demand by reducing the number of incarcerated offenders, as prisons and jails make up most of the cost for corrections. However, even with budget pressures, it is very difficult to get political support to divert offenders or shorten the time they serve. The past few years has seen the slowing of inmate growth, and even a reduction in the total number of inmates in several states in 2009. However, this change in population has had minimal effect on budgets to date, and government officials continue to search for other measures to reduce spending.

The most likely options for correctional administrators in responding to the challenges of tight budgets is to reduce their own daily costs of operation, to reduce costs of prison construction, and to privatize those services and needs for additional beds that are likely to be cost effective. There is a move to eliminate all prison "amenities," from prisons and jails and even to reduce spending for inmate programs that may reduce recidivism. This may seem shortsighted; however, many decisions are being made to reduce costs in the short term and worry about the long-term impact later. Reducing construction costs does offer a potential budget savings; correctional administrators can consider some of the techniques identified in this chapter as proven cost-reduction techniques. However, construction costs represent only a small percentage of the commitment of funds when a new prison is built when compared with the outlook of growth for a correctional agency.

Finally, correctional administrators are turning more often to the private sector to provide various services for offenders, including the construction and operation of prisons. With thoughtful contracting, enhanced competition before the acceptance of a bid for the service, specific requirements for quality of service delivery, and clear and constant evaluation and monitoring of performance, the private sector can take some

of the burden off correctional administrators in planning how to meet growth needs and maintain budget accountability. While this practice will continue to generate controversy, it is likely to continue and grow in use in the future.

The future for correctional administrators in meeting budgetary challenges is cloudy and far from resolved. Although there are many alternatives that are being, and need to continue to be, explored, there is no panacea for resolving this issue. Although this creates stresses for, and taxes the abilities of, today's correctional administrators, future correctional administrators who want challenges are almost guaranteed them as well. There will be no quick end to the recession nor significant improvement in the revenues of state and local governments.

KEY TERMS

Expense-based budgets
Incremental
Furlough
Pell grants
Design capacity

Fast-track construction
Design/build
Prototype prison construction
Cost of incarceration fees
Copayment

PIE Program
Private prison
Request for proposal (RFP)
Enabling statutes
Public proprietary facilities

YOU'RE THE CORRECTIONAL ADMINISTRATOR

1. You are the director of a state department of corrections, responsible for operating the state prisons, parole and probation supervision, and a variety of community sanctions that are alternatives to incarceration. Your prison inmate count has increased by 25 percent over the past four years, the prisons are very overcrowded, and you are building new institutions to help with the overcrowding. However, your agency budget increases have not kept up with demand, and you have a higher inmate to staff ratio, meaning you have fewer staff available to manage the prisons. Legislative budget committees are asking you to reduce the costs of operation, because they do not want to have a tax increase to fund the increasing corrections budget. How do you develop a proactive plan to reduce the increased budget needs yet still operate all of the state correctional functions in a safe and effective manner? Describe the plan you would put in place over the next three years.
2. You are the contract administrator for a county correctional agency. The jail is filled well beyond capacity, and the increases are expected to continue, at least for the next three years. Instead of building a new jail, the county commissioners have decided to contract with a private corrections company to house the overflow of prisoners. There are already two companies that operate jails and have space within a 100 mile radius of the county. They ask you to prepare a request for proposal (RFP). How do you go about developing the RFP? What do you put into the RFP to make sure you are getting the best price and that you are getting the services needed to meet your responsibility to house inmates in a manner that meets the constitutional requirements for incarceration?