
Memorandum

To: Governor Andrew Cuomo
From: Kyle Coleman
Subject: Private Prisons in New York
Date: Saturday, May 2nd 2015

It must be the priority of the Governor and State Legislature to prevent the establishment of private prisons in the State of New York. Long-term budgetary issues, undue political influence, loss of State autonomy, inhumane treatment of prisoners, and the incentivizing of a prison state accompany such private prison systems, and as such, prioritize their termination in New York.

Before considering New York specifically, it is worth noting the state of the Private Prison industry at the national level. Nationally, there are over 130 private prisons, holding over 128,000 inmates, across 30 states (Lee, 2012) (Mason, 2012). The total private prison population expanded by 80% between 1999 and 2010, while the Federal Private Prison population grew by an astounding 784% (3,828 to 33,830) (Mason, 2012). The *Corrections Corporation of America* and *GEO Group*, the two largest private prison firms, posted combined revenue of \$3.337 Billion in 2014, up from \$1.944 Billion in 2006 (Mason, 2012) (Corrections Corporation of America Revenue and Earnings Per Share (EPS), 2014). Additionally, CCA alone provides about \$1 million per year in Federal lobbying efforts, after reaching its height of nearly \$3.5 million in 2005. Additionally, CCA employs about 70 lobbyists across the country at any given time, to push their agenda at the State level (Mason, 2012).

It is often argued that establishing private prison systems offers state governments cost saving opportunities. Such firms argue that private prisons will be run more efficiently, due to market forces, as compared to their public counterparts who are not subjected to such pressures. Some proponents of such policy have suggested that private prisons can maintain operating costs between 5% and 20% lower than those of their public prison counterparts (Cohen, 2003). These savings can then be passed along to state governments, and as a result, lead to significantly lower public expenditures on prison costs. Such savings, if realized, would slash annual state prison expenditure growth by two-thirds (Cohen, 2003). At the same time, one prominent firm (the *Corrections Corporation of America*) has offered to purchase state prisons with cash, which would provide lawmakers with a desperately needed cash infusion (Kirkham, 2012). In other words, private prison systems offer both significant long-term budgetary savings, as well as funds for closing current budget shortfalls.

In order to cut costs, given their fiduciary responsibility to their shareholders, these firms cut corners. Recently, an article noted that, “inmates in state penitentiaries generally receive the minimum wage for their work...in privately-run prisons, they receive as little as 17 cents per hour for a maximum of six hours a day, the equivalent of \$20 per month.” (Pelaez, 2008). Even in federal prisons, infamous for low wages, inmates can earn \$1.25 per hour and sometimes receive overtime pay (Pelaez, 2008). Thus, the reason why private prisons can afford to stay in operation is because they exploit cheap labor of the inmates. Wages at such excessively low levels, even as

compared to other prisons, undermines inmate's basic civil rights. An inmate in a private prison would be paid less, for the same work, than an inmate in a public prison- an inequity and injustice served through no fault of their own (both inmates could have committed the same crimes). Contracting with organizations, who pay their "employees" approximately 2% of the federal minimum wage rate, is immoral. Additionally, guards in the private prison facilities are only paid slightly over \$22,000 per year (Mitchell, 2014). An individual could work full time, plus unpaid overtime, and that family of three would still qualify for food stamps (Mitchell, 2014). As a result, contraband is sold regularly to inmates, and the turnover rate exceeds 90% in Texas Private facilities, as compared to 24% in Texas Public facilities (A Brief History of Private Prisons in Immigration Detention, n.d.). Desperate conditions for employees, paired with high turnover rates (which are likely correlated), are a recipe for poor performance. These "cut corners" are a result of market forces at work, the very same "invisible hand" that proponents argue is the driving force behind the efficiency of private prisons. Market forces encourage cost reduction at the point of least resistance, which in this case, means inmates who do not have the protection of minimum wage mandates, and prison guards with few to no other options for employment.

In reality, it is still unclear whether private prisons (even after such "cut corners") offer cost savings as compared to their public counterparts. Though private prisons have been in place for about 30 years, a lack of controls, paired with different rules of operation, invalidate any potential comparisons (Volokh, 2014). For example, many private prisons have lockup quotas, which represent guarantees by the state that at least a certain percentage of the prison cells will be filled (or paid for by the state)- these often hover around 90%. On the other hand, public prisons do not have this guarantee. Thus, if public and private prisons maintain equal cost structures per marginal inmate, but overall crime decreases statewide, private prisons will have lower average costs comparatively (population will decrease in public facilities, thereby effectively increasing the fixed cost burden on each of their prisoners). The lockup quotas serve to guarantee that the private prisons will always be running at maximum efficiency, though no greater efficiencies may be developed. Additionally, many private prisons mandate they house particular types of criminals- effectively allowing them to avoid housing the most dangerous, and therefore expensive inmates, who will instead be housed by public prisons. The only substantive comparison, as such, would have to account for performance within the cost comparison. Comparing costs for different population, like comparing apples to oranges, is a futile exercise. Unfortunately, to date, no significant studies have been able to effectively control for performance. How exactly, could one hold performance for both public and private prisons constant, without a clear definition of what good performance is? Since we haven't decided on a set of principles for defining high quality detention, the data we have cannot provide meaningful insight- we're not able to parse out the reasons for the differences. Arguing for private prisons, on the basis of cost-savings, is not statistically supported.

Another argument made is essentially that private prisons will allow the state greater flexibility, in terms of their resource budgeting. The argument goes, that private prisons will care for many low-risk inmates, at a low cost, which would allow the states to focus their attention elsewhere. In reality, private prison systems serve to restrict state autonomy and flexibility. For example, the *Corrections Corporation of America* is seeking a 20-year agreement with the state, upon purchase of the publicly owned prisons. Additionally, CCA is seeking a guaranteed 90% lockup rate in the contract (Kirkham, 2012). In other words, if accepted, New York will be contractually obligated

to the *Corrections Corporation of America* for 20 years, and required to fill their prisons for them, regardless of criminal activity changes.

Lastly, the growth of the private prison industry threatens our political system, by encouraging the undue and outsized influence of said firms. As their business expands, so too does their political footprint. For example, when executives from the *Corrections Corporation of America* “identified immigration detainees as a significant new source of revenue”, they helped to draft the legislation that would later become the tough anti-immigration bill SB1070 in Arizona- this correlation is no coincidence (Collins, 2011). This is not merely a local issue- from 2000 to 2011, the national prison population grew by 16%, while the private prison population grew by 106% (Cantu, 2014). During approximately the same period, *Corrections Corporation of America* and *GEO Group*, two of the largest private prison companies, spent \$13,990,000 and \$3,110,000, respectively, on lobbying efforts (Cantu, 2014). Between these two firms, 246 lobbyists were deployed to do their bidding (Cantu, 2014). On a national level, in 2013, these efforts came to bear: the private prison industry lobbied extensively against comprehensive immigration reform, and had a large say in helping to defeat it (Bogado, 2014). Their political control has increased dramatically as of late, and it will expand into New York if allowed to.

New York today, fortunately, does not allow for private prisons. In 1990, Illinois passed the first of its kind legislation which banned private prisons- New York followed with its own legislation in 2000 (Private Correctional Facility Moratorium Act, n.d.). However, given CCA’s recent offer of \$250 million, to buy correctional facilities nationwide, there will likely be pressure applied to repeal this legislation (Kirkham, 2012). Even though selling the facilities will cost the State money in the long-run, near sighted politicians will certainly be tempted to “take the bait”. I believe New York should stand in opposition to such repeal efforts- there are several reasons for this stance. For one, the chief argument for their existence, couched in terms of cost savings, is simply not statistically supportable. No credible studies exist to support this claim, and advancing an agenda based on mere speculation is simply misleading and irrational. A private prison system would also serve as a means of furthering corruption in New York State. The private prison system’s success has tracked its growing influence in congress, which is no coincidence. Additionally, private prison contracts, which seek to gain approval by providing upfront cash payments, lock the state into long-term (20 year) agreements. These contracts would make the state leaders, and thus the taxpayers, subject to the private prisons for many years to come, regardless of our crime and inmate figures. Wages provided to inmates and guards by private prisons, with an understanding of the profits netted by such labor, undermines basic worker rights. Private prisons encourage increased detention rates, and fail to secure basic civil liberties for said criminals, without providing cost savings. Governor Cuomo, I recommend that you continue to support the New York legislation that outlaws the establishment of private prisons in New York State.

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