

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on March 7, 2007 in Room 313-S of the Capitol.

All members were present except:

Representative Nile Dillmore- excused  
Representative Judy Morrison- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Carol Doel, Committee Assistant

Conferees:

Representative Forrest Knox  
Sister Therese Bangert , Kansas Catholic Conference  
Debra Stern, Kansas Hospital Association  
Dawn Lewis, Concerned Citizen

The Chair opened the floor for bill introductions. There were none.

Chairman Siegfroid entertained a motion for approval of the minutes from March 5<sup>th</sup>.

Representative Olson moved the minutes of March 5<sup>th</sup> be approved as read with a second by Representative Peterson. Motion passed.

The Chair opened the floor for public hearing on **HB 2341** - Disposition of fetal remains act.

Mike Heim, Office of the Revisor, gave an explanation of the bill.

Dawn Lewis, a concerned citizen, presented testimony in favor of **HB 2341**. Ms. Lewis related a personal experience of losing a baby still in the womb, and not having the privilege of knowing the method of disposal of the remains following her D&E surgery. Ms. Lewis wished to have had the availability of counseling for her grief as well as be able to have buried her child. (Attachment 1)

Deborah Stern, RN., JD, Vice President Clinical Services/Legal Counsel for the Kansas Hospital Association, addressed the Committee as a neutral to **HB 2341**. Ms. Stern stated that after surveying hospitals, it was found they already have policies in place which specifically address the disposition of tissue and fetal remains. The Kansas Hospital Association recommends that each facility provide information on the options available to the mother. The KHA also feels that counseling should not be mandated, but offered to the mother on a case-by -case basis. (Attachment 2)

No other person wished to speak to the bill and the hearing on **HB 2341** was closed.

Chairman Siegfroid opened the floor for public hearing on **HB 2029** - Concerning correctional facilities; relating to construction by private companies.

Mike Heim, Office of the Revisor, explained the bill.

Representative Forrest Knox addressed the Committee supporting **HB 2029** stating that the bill is the culmination of many years' efforts and is the work of many people. The bill includes the House and Senate amendments made to last years' bill **HB 2688**. Representative Knox stated that the bill lays down the framework that will enable Kansas to start to move down the road in a very deliberative and conservative manner. It does not compel any action, but allows the Secretary of Corrections another option. He asked for Committee support on **HB 2029** which gives the State of Kansas better options for dealing with the ever expanding need for prison beds. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 7, 2007 in Room 313-S of the Capitol.

Representative Knox also provided information for Committee review on *Facts about the Construction and Operation of a Private Prison in Kansas (Attachment 4)*, *Advantages of Private Contract Prisons, (Attachment 5)*, *History of Prison Privatization Actions and Legislation in Kansas, (Attachment 6)*, *Report of the Attorney General's Task Force on Crime and Sentencing Committee on Alternative Incarceration Options*, as presented to Attorney General Phill Kline (*Attachment 7*); *Knox Tours Private Prison (Attachment 8)*, as well as varied information regarding **HB 2688** which was the 2006 bill. (*Attachment 9*)

There were no other proponents of **HB 2029**, and Chairman Siegfried recognized Sister Bangert of the Kansas Catholic Conference who spoke on behalf of the Kansas Catholic Conference in opposition to the bill.

Sister Bangert related that the bishops question whether private, for-profit corporations can effectively run prisons. They opine that profit motives may lead to reduced efforts to change behaviors, treat substance abuse, and offer skills necessary for reintegration in the community. (*Attachment 10*) Sister Bangert also included a copy of a statement by the Catholic Bishops relating to their strong opposition to private prisons. (*Attachment 11*)

Written testimony in opposition to **HB 2029** was submitted by Roger Werholz, Secretary Kansas Department of Corrections. (*Attachment 12*)

No other person wished to speak to the bill and the Chair closed the hearing on **HB 2029**.

Chairman Siegfried appointed a conference committee of Representative Knox, Chair; Representative Bowers, Representative Hawk, and Representative McCray-Miller on **HB 2412** - Concerning children and minors; relating to minors' access to alcohol or cereal malt beverages.

With no further business before the Committee, the Chair adjourned the meeting.

**This is a re-typed letter received from DAWN LEWIS, Gardner, KS**  
**913-856-6225:**

August 6<sup>th</sup>, 2004, was an unusually cool for late summer in Kansas, and I was 16 weeks pregnant. I was excited for my prenatal visit as at 12 weeks I had heard the heart beat, and at 13 weeks began to feel the baby kick. The doctor ran the Doppler over my belly at the end of the appointment, but she could only find my heartbeat. She seems calm, and told me I would get to have a sonogram. I made my way to the lobby where my husband was sitting with my other children. I quietly told him why I was having a sonogram, and waited. Finally I was called in. The sonogram tech and I talked about the fetal models on the walls as the staff had dressed them in tiny clothes, they were wearing red white and blue outfits which had been on them since the 4<sup>th</sup> of July. The tech kept chattering while running the wand over my belly, but I looked intently at the screen. She first measured the head, then the femur. I asked, "is there a heartbeat?" She replied, "honey, I'll look." Then suddenly, the whole body was in view. She commented "what a beautiful baby, so perfect." I quickly realized, there was no flicker of light in the chest, no movement of the limbs, my baby was a perfectly curled up frame with no life inside. I told her, "there's no heartbeat." She said, "wait now, let me check." I repeated myself, and she said, "your doctor's going to be shocked as she didn't expect this at all."

The nurses talked with the children in another room while the doctor told my husband and me surgery was scheduled in five days. I didn't say much, but recall asking, "what happens to the baby?" She told me "you don't want to know." I asked again, and she said I only needed to worry about my health now. I saw my baby's image still on the sonogram as I left and thought, "they must not give you a copy when the baby dies."

I had a D&E on August 11<sup>th</sup>, 2004. Surgery went well, and the staff was very professional. I was allowed to take a letter to my little one into the operating room. I asked that it be placed with the remains, and when I woke up it was gone. The doctor spoke with my husband while I was in recovery and related that his wife went through the miscarriage, and it was very difficult. I went home with only a pair of hospital booties, no counseling or numbers to call. A week later, I had a follow up with my doctor, and asked her again what happens to the remains as I wasn't sure she understood what I was trying to ask the first time. She told me she didn't know for sure. On September 3<sup>rd</sup>, the day I got the DNA tests back showing my baby was a boy, I called the hospital to find out what happened to my baby's remains after pathology. The nurse first said, "what did your doctor say?" When I shared my doctor said "you don't want to know," she replied, "she's right." When I pressed her, she then snapped, "it goes out with the medical waste." I was stunned, and I certainly didn't want to be insulted by asking for the remains for burial. I did write an email of complaint to the hospital, and a social worker called. She explained that the baby wasn't out in the dumpster, but was put in the incinerator. She also was unaware that no literature or counseling numbers were given for those being treated for miscarriage before viability. She promised to put literature on the first floor ER and day surgery.

I have wondered during the past two years where my child, CJ, ended up for his final resting place, and what it would be like to have buried him. In researching, I found that at least 9 states have laws informing the mother experiencing miscarriage of her right to decide how her baby would be dealt with after all necessary tests were completed. If I had been informed of such a choice, it would have given me at least some sense of control in an awful situation. I would have chosen to bury my son.

Federal and State Affairs

Attachment 1

Date 3-7-07



Thomas L. Bell  
President

TO: House Committee on State & Federal Affairs

FROM: Deborah Stern, RN, JD  
Vice President Clinical Services/ Legal Counsel

RE: House Bill 2341

DATE: March 7, 2007

The Kansas Hospital Association (KHA) appreciates the opportunity to testify regarding its position on House Bill 2341 which deals with the disposition of fetal remains.

If this bill is worked, KHA asks that several issues be addressed:

- HB 2341 requires that hospitals have policies in place regarding the disposition of fetal remains. It is our understanding from surveying our member hospitals that they already have policies in place which specifically address the disposition of tissue and fetal remains.
- HB 2341 requires that within 24 hours of the miscarriage, the mother be given a copy of the medical facility's written standards regarding the disposition of fetal tissue and her right to determine the final disposition of the fetal remains. It is our recommendation to instead encourage each facility to provide information on the options available to the mother regarding the disposition of the fetal remains.
- HB 2341 also requires that the medical facility make counseling available to the mother concerning the death of the fetus. KHA feels that this counseling should not be mandated but instead offered to the mother on a case-by-case basis as assessed by the health care provider.

KHA thanks you for your consideration of our comments.

Federal and State Affairs  
Attachment 2  
Date 3-7-07

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### Kansas Hospital Association

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HOUSE OF REPRESENTATIVES

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FORREST J. KNOX

7 March 2007

**HB 2029 – Private Contract Prison Act**

Chairman Siegfried and members of the House Federal and State Affairs Committee:

HB 2029 is the culmination of many years' efforts and is the work of many people. It includes the House and Senate amendments made to last year's HB 2688 and to the previous year's SB 243. These amendments were at the suggestion of the Secretary of Corrections and completely protect the state from liability.

Many states now take advantage of the **flexibility and efficiency of private contract prisons**. Much experience has been gained over the years across the country. Kansas now stands in a position to take advantage of the experience of others. The most important lesson learned is the importance of a **strategic partnership between the Department of Corrections and contract providers**. HB 2029 is the foundation of such a partnership.

HB 2029 lays down the framework that will enable Kansas to start to move down this road in a very deliberative and conservative manner. **HB 2029 does not compel any action** but just allows the Secretary of Corrections **another option**. Kansas is not obligated to house any prisoners in such a facility but the Secretary of Corrections has total authority to license, monitor, and regulate not just every aspect of the operations of the private contract facility, but the design and construction of it also. The cost of this oversight is paid by the facility through a licensing fee. The Secretary has final say on the prisoners that are housed from out of state. The liability for these prisoners is the prison owners, with Kansas being protected from responsibility for virtually any foreseeable eventuality. **The facility, staff, and programs must meet the same standards as existing public facilities in Kansas.**

While Kansas is not compelled to house any prisoners at such a facility, we can requisition space at the time that it is needed. Kansas would only be required to pay a maximum of 90% of the average cost per bed at equivalent state owned facilities. **Cities and counties that possess prison space that meets the states requirements would now be given first**

Federal and State Affairs  
Attachment 3

Date 3-7-07

**consideration for needed space.** If a private contract prison is ever sold, the state has right of first refusal on the facility.

We already have a great track record of private contract prison facilities in Kansas. Corrections Corporation of America currently operates a major penal facility in Leavenworth that houses federal prisoners. This partnership seems to be performing exceptionally well and has doubled its initial capacity. It is also an asset to the local communities. Staff training is equivalent to our state facilities, most having been trained at state prisons. And, **staff is better paid than at our state facilities.**

A second success story is found in Labette County. The juvenile boot camp has operated successfully for many years, doing a better job than many publicly owned counterparts.

I would like to address **how a prison can fit in a small community.** Here again, we have experience, in Kansas, in Rooks County at the Stockton correctional facility. **This is a 20-year-old success story of how the community has benefited in many ways from the prison.** Of course, there are always set backs but the Department of Corrections and the communities have worked together to solve these problems and everybody has gained; the state, the community, and the Department of Corrections. This partnership has shown the merits of such an arrangement.

Another example is in Woodson County. The Toronto correctional facility is another success story of the Kansas Department of Corrections and the local community. Labor from this minimum security facility helps make Toronto Lake a great success for the whole area. Also, the town of Toronto, Kansas gains much from this arrangement.

While HB 2029 in no way dictates any preferred location in the state, Woodson County has for many years taken the lead in pushing for private contract prisons. Yates Center, in the center of Woodson County, is centrally located among the population centers of eastern Kansas. It is also centrally located among the prisons of eastern Kansas.

Yates Center is within about 30 miles of six major area towns, with a labor force between adjacent counties of more than 25,000 workers, more than 1,500 of these being available for work immediately. SEK Inc., which comprises thirteen Southeast Kansas counties, supports the building of a prison in Woodson County. Just for the record, Yates Center is prepared to site such a facility, having the infrastructure currently in place.

Last year Jessica's Law was passed. In previous years, we learned that we cannot just turn criminals out on the street to solve our prison bed space problems. They come right back. New rehab and reentry programs are being developed in Kansas. A drug rehab facility is being talked about. Kansas Corrections is one of the best in the country, but we do not have to reinvent the wheel. Public and private contractors are developing such programs throughout the country. Faith based programs have by far the best track records in the

industry. It's time to consider options that have been successfully developed outside of Kansas.

Private contract prisons, which are tightly regulated by our own Department of Corrections, would give another degree of flexibility to our Secretary of Corrections and to state government. This is not the only answer. Expansions will doubtless be needed at state facilities. But, **private prisons can come on line much quicker**, and with **private investment**. We would not need to house our prisoners out of state, but give the economic boost to our own citizens and perhaps to economically disadvantaged parts of the state, Woodson County for example. In addition, private prisons would offer a **lower cost per bed**, with the **flexibility** of not having to fill every bed with state prisoners, and not having to pay for unused overhead.

Texas presently has 23,000 privatized prison beds. These beds cost **\$34 per day in Texas** per inmate and this includes medical care. **In Kansas, our average cost is more than \$60.** Adding needed beds in Kansas will have up-front costs to the state as well as ongoing costs. Per HB 2029, Kansas would be saved the up-front costs and the associated debt service costs plus at least 10% in ongoing costs related to any private facility expansion.

Also, please note that most of any money spent in private facilities will be going directly into the economies of the local communities of Kansas. Also, it is worthy to note that even if Kansas does not place inmates in a private facility, the economic gains to the local and state economy will still occur because of out-of-state inmates. Instead of sending our inmates and money out of state, we will be importing money from other states.

**HB 2029 does not compel any action** but just allows the Secretary of Corrections **another option**. I request that you give serious consideration of HB 2029 and give the state of Kansas better options for dealing with the ever expanding need for prison beds.

Thank you for your consideration. Please contact me if you have any questions.

Rep. Forrest Knox (cell # 620 636 0051)

## **Facts about the Construction and Operation of a Private Prison in Kansas (HB 2029)**

- The bill does not require any financial or other commitment from the State of Kansas. The State is not being asked by the industry for a penny, nor are they required to house any prisoners in any facility constructed pursuant to this Act.
- However, a private facility constructed pursuant to this Act would have to take Kansas prisoners if requested by the Secretary, because the State of Kansas has the option to use any beds the Secretary deems necessary under this Act, regardless of other contracts the private facility may have.
- If beds in a private facility are used by Kansas, the bill requires the per diem cost to be at least 10% below the current cost of public correctional institutions.
- This Act requires any private facility built in Kansas to be subject to the requirement of accreditation by the American Correctional Association (ACA), and to submit to a great degree of oversight, regulation, and on site monitoring by the Secretary of Corrections. The Secretary has publicly stated that the language in this bill will satisfy his requirements for regulation, and he has also said he believes this bill contains appropriate safeguards for Kansans.
- This Act is not targeted to any specific region in the State and will apply to any community that can qualify under the provisions. A very positive economic impact will be realized by any community where a private facility is constructed.
- All out of state prisoners housed in a private prison will be returned to the sending state to be released. No out of state prisoners will be released in Kansas.
- There will be no cost to the State of dealing with an emergency situation because the bill requires the private contractor to reimburse the State for all expenditures.

Federal and State Affairs

Attachment 4

Date 3-7-07

## Advantages of Private Contract Prisons

- The Kansas Department of Corrections currently has a contract with a private prison in Colorado to manage any overflow of Kansas' prisoners.
- If the Kansas Legislature is ok with using out-of-state private prisons for managing any current overflow prison populations, why then would they not support a bill that would allow the Secretary of Corrections the regulatory authority to oversee a private prison in Kansas?
- This would keep inmates closer and more connected to their families during their incarceration.
- American Correctional Association (ACA) accredits private and public facilities on their quality and operational standards.
- The Reason Public Policy Institute report issued in January 2002 found that 44% of private prisons meet standards and are accredited by ACA, this in contrast to only 10% of public prisons.
- Privatization has a positive impact on the overall state corrections budgets. In a report released in April of 2003, researchers from Vanderbilt University found that the use of private prisons in a state resulted in the reduction of daily incarcerations for the public corrections system by 4.45% annually. (Blumstein and Cohen, April 2003)
- A research report, by the Washington Policy Center in February 2003, cited findings that states that have at least 20% of their prisons privately operated had a lower increase in their corrections budgets and overall state budgets, during the study period of June 1997 and June 2001, than states that chose not to privatize correctional facilities during the same period (Washington Policy Center, February 2003).
- The December 2003 Wall Street Journal Editorial compared the corrections budgets in the State of California and the State of Texas. The editorial found that "Though the Texas inmate population is roughly the same as California, 145,000 for Texas versus 162,000 for California, the total Texas budget clocks in at \$2.5 billion, less than half that of California's." The main difference in the two State correctional systems was the significant use of private prisons in Texas. (California Jail Break, Wall Street Journal, December 23, 2003).

Federal and State Affairs

Attachment 5

Date 3-7-07

March 2007

## History of Prison Privatization Actions and Legislation in Kansas

**1990 HB 2835** was considered in the 1990 session, but was not enacted. It would have permitted cities or counties to create regional prison authorities with the power to construct or purchase prison facilities.

**SB 748** (1990 Legislature): Provides that, unless authorized by Kansas statute, local units of government and private entities are prohibited from authorizing, constructing, owning, or operating any type of correctional facility for the placement or confinement of inmates from any agency of another state until such time as the Legislature has reviewed and provided a public policy regarding such activity. Provisions expire July 1, 1991.

Studies by interim Special Committee on Judiciary (1990): Committee recommended that the moratorium on the construction of private prisons to house prisoners from other states be extended indefinitely. The Committee questioned the economic feasibility of the plans and the potential exposure of local governments or the state to civil liability. The Committee also stated that the proposal raised the basic issue of the fundamental role of government.

**1991** As a result of the interim study, **HB 2003** was introduced to extend the moratorium indefinitely. KSA 75-52, 133 enacted, providing that no city, county, or private entity shall authorize, construct, own, or operate any type of correctional facility for the placement of inmates from any agency of another state.

**1997 HB 2571** would permit any county to “construct, own, or operate any type of correctional facility for the placement or confinement of inmates from the department of correction and any agency of another state.” It was not passed.

**1998** Kansas Department of Correction (KDOC) issued an RFP for operation of a female conservation camp. The KDOC contracted with GRW for operation of the camp. First inmates were accepted at LSCC in January 2000.

**2001** KDOC entered into a contract with Correction Corporation of America for the placement of inmates at a facility in Burlington, Colorado. Inmates were placed in that facility for a 7 month period ending in June 2002.

**2002** (November) KDOC issues RFP for medium security offender housing. This resulted in a contract entered into in December 2003 for placement of inmates at a facility operated in Civigenics in Limestone County, Texas. Inmates were placed there in January 2004. KDOC discontinued use of this contract in early 2005 as the overall inmate census decreased.

Federal and State Affairs

Attachment 6

Date 3-7-07

Since 2003, this private prison measure, **HB 2029**, in various versions, has been:

- The subject of seven public hearings (three House committee hearings, two Senate committee hearings, and two attorney general's task force hearings).
- Subject to scrutiny and negotiation by three conference committees.
- Subject to debate on the Senate floor four times, and passed each time.
- Subject to debate on the House floor four times on procedural questions.
- Amended to accommodate every request that the Department of Correction has made.

The Department of Correction has never testified as an opponent of this measure (always as a neutral conferee), and testified against a bill that would have stopped the department practice of sending Kansas inmates to private prison in other states.

2005 (September) KDOC entered into a contract with Corrections Corporation of America to house inmates, as needed, at a facility in Burlington, Colorado. As of February 2006, the KDOC has not had to utilize this contract.

**Report of the Attorney General's Task Force  
on Crime and Sentencing  
Committee on Alternative Incarceration Options**

**Presented to Attorney General Phill Kline  
By Senator Derek Schmidt  
Committee Chairman**

**December 12, 2003**

Federal and State Affairs

Attachment 7

Date 3-7-07

December 12, 2003

Honorable Phill Kline  
Attorney General  
2<sup>nd</sup> Floor, Memorial Building  
120 S.W. 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

Dear General Kline:

Your Task Force Committee on Alternative Incarceration Options met December 12, 2003, in Yates Center. The committee conducted a full day of hearings on whether the State of Kansas should authorize construction and operation of one or more private prisons in Kansas for the purposes of improving public safety by expanding prison capacity in our state, increasing flexibility in the corrections system, and easing the cost that incarceration imposes on taxpayers.

The committee is of the opinion that public safety considerations will soon require Kansas to expand the capacity of our state prison system. To that end, the committee is supportive of the concept of authorizing construction and operation of a privately owned prison in Kansas *provided* sufficient statutory and contractual protections are in place to provide proper state oversight and control of the facility. This report contains a description of our deliberations and our recommendations.

Thank you for entrusting me with responsibility for the work of this Committee. I look forward to working with you to implement this report's recommendations.

Sincerely,

Derek Schmidt  
Kansas State Senator  
Chairman, Committee on Alternative  
Incarceration Options

## COMMITTEE MEMBERS

- \*Derek Schmidt, Kansas State Senator (District 15) (Chairman)
- \*Doug Martin, Clay County Attorney (Vice Chairman)
  - Steve Bundy, Rice County Sheriff
  - Stan Clark, Kansas State Senator (District 40)
- \*Jeff Goering, Kansas State Representative (District 105)
  - Jim Hill, Salina Police Chief
- \*\*Paul Morrison, Johnson County District Attorney
  - \*Currie Myers, Johnson County Sheriff
- Mike O'Neal, Kansas State Representative (District 104)
- \*Tony Powell, District Court Judge (18th Judicial District)
  - Gary Steed, Sedgwick County Sheriff
  - John Vratil, Kansas State Senator (District 11)
- \*\*\*Dwayne Umbarger, Kansas State Senator (District 14)
- \*\*\*Mary Compton, Kansas State Representative (District 13)
- \*\*\*Stanley Dreher, Kansas State Representative (District 9)

\* Indicates member attended the Yates Center meeting.

\*\* District Attorney Morrison attended part of the meeting in Yates Center but had to leave early. He was present for most of the testimony and participated in the questioning of conferees but was not present for the committee's deliberations and did not participate in those deliberations.

\*\*\* Indicates a legislator who is not a member of the committee but who, at the invitation of the chairman, attended and participated in the Yates Center meeting.

## AGENDA

**Attorney General's Task Force on Crime and Sentencing  
Committee on Alternative Incarceration Options  
Public Hearing – Yates Center, Kansas  
Fire Station Meeting Room – 101 S. Main St.**

**Friday, December 12, 2003**

- 10:00 a.m.: **Welcome and Call to Order** (Chairman Derek Schmidt)
- Opening remarks from committee members
- 10:30 a.m.: **Panel I:** Patricia Biggs, Executive Director, Kansas Sentencing Commission
- Overview of Kansas prison space needs and sentencing trends
- Panel II:** Mike Heim, Principal Analyst and Martha Dorsey, Senior Fiscal Analyst, Kansas Legislative Research Department
- History of legislative consideration of private prisons
  - Review of provisions of Senate Bill 275
- Noon: Break for lunch
- 1:30 p.m.: **Panel III: Criticism of Prison Privatization**
- Frank Smith, Bluff City, Silver Haired Legislator, Kansas Green Party
  - David Wilkinson, Sedan, Criminal Justice and Mercy Ministries of The Kansas West Conference of The United Methodist Church
  - Peter Ninemire, Wichita, Families Against Mandatory Minimums
- Panel IV: Private Prison Presentations**
- Don Houston, Vice President, Central Region, Wackenhut Corrections Corporation
  - Brad Wiggins, Senior Director for Business Development, Corrections Corporation of America
- Panel V:** Honorable Ron Kirby, Chairman, Oklahoma House of Representatives Corrections Committee
- The Oklahoma experience with private prisons
- Panel VI:** Woodson County and Regional Perspective
- *Moderator:* Shelia Lampe, Executive Director, Woodson County Chamber of Commerce
  - Honorable Ron Call, District Magistrate Judge (retired)
  - Honorable Mark Taylor, Woodson County Sheriff
  - Honorable Vernon Burkhart, Mayor, Yates Center
  - Dennis George, Administrator, Coffey County Health System
- 3:30 p.m.: **Public Comment and Discussion**
- 4:00 p.m.: **Committee Discussion and Deliberations**

## CONCLUSIONS AND RECOMMENDATIONS

The committee received testimony from persons listed on the agenda and other members of the public. Conferees who appeared before the committee can be grouped into three categories: Providers of neutral information (Biggs, Heim, Dorsey, Kirby\*), supporters of authorizing private prisons in Kansas (Houston, Wiggins, Kirby\*, Lampe, Call, Taylor, Burkhart, George), and opponents of authorizing private prisons in Kansas (Smith, Wilkinson, Ninemire). Copies of testimony presented to the committee are appended to this report.

Members of the committee listened to the testimony of all conferees and asked numerous questions of conferees. The committee also heard public discussion from members of the public present at the meeting. The committee also reviewed and considered written comments submitted by the following in support of authorizing construction of one or more private prisons in Kansas:

- Kansas Association of Counties
- Woodson County Board of Commissioners
- Bourbon County Board of Commissioners
- City of Yates Center
- City of Neosho Falls
- Southeast Kansas Regional Planning Commission
- Richard W. Clasen, Editor/Publisher, The Eureka Herald
- Chanute Workforce Development Center, Kansas Department of Human Resources
- Coffey County Office of Emergency Preparedness
- Coffey County Airport Commissioner
- Steve Robb, Director, Business and Technology Institute (Pittsburg State University)
- Jon Hotaling, Director, Coffey County Economic Development
- Larry J. Nelson, President, Piqua State Bank
- Honorable Stanley Dreher, State Representative, District 9
- Honorable C. Fred Lorentz, Chief Judge, 31<sup>st</sup> Judicial District

The committee then conducted deliberations among its members. The recommendations of the committee were reached by consensus and adopted by unanimous vote of those members present.

\*Representative Kirby supports private prisons as good public policy in general but, as an Oklahoma state representative, takes no position on whether constructing one in Kansas is desirable.

## Findings and Conclusions

Based on the testimony and upon members' individual knowledge of criminal justice policy and corrections policy in Kansas, the committee made the following findings and reached the following conclusions:

- The principal consideration of criminal justice policy should be the protection of public safety, not the management of prison space.
- Under current law, even taking into account sentencing changes in recent years designed to reduce the demand for prison space, Kansas prisons will reach overall capacity in 2007.
- Kansas prisons already have reached capacity for male inmates assigned to medium and maximum security.
- A proposal currently under consideration in the Kansas Legislature to build an additional cell "pod" at the El Dorado state prison would cost taxpayers more than \$7 million and would add 128 maximum-security beds or 256 medium-security beds. The Kansas Sentencing Commission testified that if this additional capacity were built, the Kansas prison system would reach capacity in 2009 – only two years later than without construction of this additional state-owned capacity.
- Current Kansas law prohibits the construction or operation of private prisons in Kansas for the housing of state or local prisoners without additional authorizing legislation.
- Despite the general statutory prohibition on constructing most private prisons in Kansas, at least two private prison facilities currently are operated in Kansas. Corrections Corporation of America operates the juvenile boot camp in Labette County and also operates a major penal facility in Leavenworth that houses federal prisoners for the United States Marshal's Service and for the Department of Homeland Security (former the Immigration and Naturalization Service). The Leavenworth facility is currently undergoing significant expansion. Both facilities have been operated without notable problems and have been supported by their local communities.
- Despite the statutory prohibition on constructing most private prisons in Kansas, the State of Kansas currently relies on private prisons to manage its state inmate population. In recent years, Kansas has contracted with Corrections Corporation of America to house state inmates at a private facility in Colorado. This year, Kansas contracted with CiviGenics to house state inmates at the Limestone County Detention Center, a private facility in Texas.
- Private prisons have a notable record of cost-savings compared with state-owned facilities in the states that use them. Because construction of private prisons is financed by investors, taxpayers avoid the initial cost of construction associated with public facilities.

Because private prisons can contract with other authorities – such as the federal government or other states – to fill beds not needed by the host state, the host state avoids “overhead costs” associated with operating a state prison with more space than the state currently needs. There also is evidence that the operation of private prisons tends to generate efficiencies and drive down costs in the state system that is host to the private facility.

- The State of Kansas could save transportation costs by housing inmates in Kansas rather than in Colorado or Texas.
- Public fiscal policy would be better served if the State could contract with a private prison facility in Kansas, which would pay Kansas taxes and employ Kansas workers, rather than the current policy of contracting with private facilities out-of-state that take taxpayer dollars as well as jobs to other states.
- Corrections policy would be better served by housing Kansas inmates in Kansas – where visitation and other connections to local communities could be more readily maintained – than by sending inmates out-of-state.
- There is at least one community in Kansas apparently willing to play host to a private prison facility.
- More than half of the states in the United States have private prisons. In crafting authorizing legislation, Kansas can learn from the experience of other states.
- Most or all of the problems that have led to criticisms of private prisons operating in other states can be avoided by properly crafted authorizing legislation and well-structured operating contracts. For example, problems of “cherry picking” the most manageable prisoners, liability risks to the state, and the professionalism of private staff all can be addressed by proper authorizing legislation and contract terms.
- Proper legislation that ensures adequate state oversight and coordination of private prisons is essential to the successful use of private prisons as part of the state’s corrections policy.
- Senate Bill 275, which is pending before the Committee on Ways and Means, would authorize the State of Kansas to contract for the construction and operation of one or more private prisons in Kansas. Among the notable provisions of Senate Bill 275 are a requirement for cost savings, strong provisions to ensure state oversight and regulation of any private facility, a requirement for indemnification of the state against lawsuits arising from the operation of a private facility, and a provision giving Kansas “bumping rights” for use of the space at any private facility constructed in the state.

## RECOMMENDATIONS

Though committee members might wish circumstances were otherwise, the committee is of the opinion that building more prison space in Kansas is necessary to ensure public safety. The committee has no objection to the State constructing additional publicly owned prison space in the traditional manner.

However, the committee is mindful of the significant financial constraints confronting state government. The committee also is mindful of pending issues regarding the financing of public schools, the financing of higher education, the financing of social services, and the financing of other popular and important state services. The committee questions whether Kansas public opinion would support dedicating sufficient taxpayer funds to prison construction at the expense of other important state priorities.

The committee also doubts that embarking on the expansion of public prison facilities alone will provide sufficient space and flexibility. The committee took particular note of testimony by the Kansas Sentencing Commission that, even with the sentencing adjustments made in recent years to help manage prison space, the investment of more than \$7 million in taxpayer funds to construct 256 new medium-security prison beds at the El Dorado Correctional Facility would delay by only two years – from 2007 to 2009 – the filling to capacity of our state prison system.

Therefore, the committee believes it is necessary for the State of Kansas to pursue alternatives to traditional methods of incarceration for state inmates. Noting the broad experience of other states, the Committee believes the Kansas chief executive should have authority to contract for the construction and operation of one or more private prison facilities in Kansas as part of the state's overall approach to corrections policy.

**To that end, the Committee recommends enactment of legislation that would authorize the construction and operation of private prisons in Kansas but only with adequate safeguards to ensure cost savings, safe and sound facility operation, adequate state oversight of facility construction and operations, full and proper integration of the private facilities into the overall Kansas corrections system, and the willingness of a local community to play host to a facility. The committee notes that Senate Bill 275 contains provisions intended to achieve these purposes.**

Because the state corrections system already has reached capacity for male inmates assigned to medium and maximum security and because the overall state system will reach capacity in 2007, the Committee encourages the Attorney General to advocate adoption of such legislation during the 2004 session of the Kansas Legislature, encourages the Legislature to adopt such legislation, and encourages the Governor to sign it into law.

STATE OF KANSAS  
HOUSE OF  
REPRESENTATIVES



*Representative Forrest Knox*  
*13<sup>th</sup> District*

**For Immediate Release:**  
March 2, 2006

**For Information Contact:**  
Rep. Knox 785-296-7678

**Knox Tours Private Prison**

TOPEKA-Representative Forrest Knox (R-Fredonia) toured the Lockhart Secure Work Facility in Lockhart, Texas this past week. This was in regard to his introduction of the Private Contract Prison Bill, HB 2688, this session and its subsequent recommendation for passage by the House Appropriations Committee.

The Lockhart facility is a minimum/medium security prison that is operated by the GEO Group, Inc. a private company which operates private prison facilities all over the world. 500 female and 500 male offenders are housed there, though completely separate. Over 400 of these offenders are employed onsite at one of two manufacturing facilities. Many are learning job skills and the "work ethic" for the first time in their lives. These work positions are highly sought after by the offenders. Early on, only the men could fill these positions. But, when the women found out, it was not long before the opportunity was also given to them. A prerequisite of filling one of these positions is, of course, an excellent behavior record, and also, a GED or high school diploma. Because of this, the facilities rate of completion of their GED course is about four times the standard set by the state. A maximum of 20% of the money earned by the offenders can be used by them, and most of that is saved for post release or goes to their families. 55% goes to the state for room and board. Other goes to pay restitution, etc.

Yes, the facility is highly regulated by the state. The same standard which is used in state operated prisons is applied to the privately owned facilities. The Department of Corrections maintains staff at the prison to assure compliance. The warden, and all management staff, have many years of work experience in public prisons, both federal and from many different states, even some international experience. This wide base of experiential knowledge allows the company to operate such private facilities much more efficiently than many state owned facilities. Many of these facilities operate at nearly half the cost of state run prisons. The key is to have a close working relationship with the state corrections department which is regulating them. It's a partnership that works to the advantage of all the parties.

HB 2688 will soon be debated on the floor of the Kansas House of Representatives. It is the hope of Rep. Knox that Kansas can soon take advantage of a similar working relationship. This bill lays out the framework to get us started down that path.

Federal and State Affairs  
Attachment 8  
Date 3-7-07



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**Ray Allen and Associates**

House Appropriations Committee, Kansas State Legislature

February 20, 2006

Hearing on

**HB 2688 – Private Contract Prison Act**

Written testimony submitted by,

Ray Allen

Texas House of Representatives 1993-2006 (Retired January 20, 2006)

Chair of Corrections Committee 2003-2004

Chair County Affairs Committee 2005-2006

Immediate past Chair American Legislative Exchange Council

Task Force on Criminal Justice 2002-2006

Sent to:

Rep. Forrest Knox, Kansas House of Representatives

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I hope you are able to pass a good privatization bill. It has been my experience that the private sector can play an extremely productive role in corrections, but I will say it doesn't happen automatically with the passage of a bill. A variety of hurdles have to be dealt with effectively.

**BACKGROUND**

A well run corrections system requires a great deal of flexibility, especially as regards capacity. In addition to having sufficient bed space to house offenders, the system needs additional space to house disciplinary problem inmates, those who are ill, and flexible space for those whose transfers are required due to illness, court appearances, and, sometimes, special requests by members of the Legislature. Remember that the number of inmates flowing into the system is not within the control of corrections officials, and that they and they alone will be judged by whether the system runs smoothly, without escapes, riots, accusations regarding use of force, etc. These difficult and complex factors lead to an understandable attitude from those charged with the responsibility for prisons: they want total, unquestioned control of all facilities and all factors that might ultimately lead to problems they will have to clean up.

That makes corrections officials extremely conservative in the classic sense of the word; that is, they have a strong bias in favor of the status quo. Changes of any kind to the system create opportunity for important security issues to fall through the cracks and create upheaval, chaos, and ultimately political trouble for the state's Department of Corrections.

Federal and State Affairs

Attachment 9

Date 3-7-07

Despite your state's need for additional prison beds, I would be quite surprised if the Department of Corrections were leading the effort to create privatized prison beds. Most state systems have preferred to house overflow inmates in county jails where there exists an indigenous political accountability system (local elected officials) with shared political risks in case something goes wrong.

The downside of this politically motivated conservative approach is that cost savings are more difficult to obtain, that county jails most often are ill-equipped to offer inmate program services such as job training, substance abuse programming, evidence-based life skills and cognitive behavior therapies—all of which are proven to reduce recidivism by offenders. Finally, the speedy response, innovation and efficiencies possible with the private sector are lost.

## KANSAS' NEED

Your state's *urgent* need is more prison beds. However, it is extremely important to you as a policy maker to understand that the urgent need is not always synonymous with needs which are *important* as well as urgent. For example, it is important that the new capacity be efficient in order to avoid wasting future resources which will be needed for future urgent priorities like health care, education, transportation, and economic development. It is equally important that the new beds serve a purpose larger than mere reduction of immediate population pressure, especially since the addition of new beds could be dedicated to programs which alleviate future problems. States all across the country are beginning to realize that they face significant risk of federal lawsuits over the availability and quality of mental health care and physical health care.

Further, the availability of evidence-based recidivism reduction strategies including drug and alcohol treatment, correctional industries work programs such as Kansas' PIE private sector work program partnerships virtually demands that policy makers get better value for the money you invest in prison beds. If Kansas is like Texas (and other states facing similar challenges), Kansas could contract for prison beds with treatment programs such as those described above at costs comparable to or less than those of county jail beds which provide no services.

In crafting legislation for privatization, it is important not to lose sight of the ultimate goal: a corrections system in which **strategic partnerships between the Kansas Department of Corrections and contract providers function harmoniously together** to assure the most efficient delivery of corrections services to a selected population of offenders, at the lowest possible costs in a manner which absolutely assures that security and public safety is always the top priority.

## SUMMARY

A successful bill must strike a balance between the legitimate needs of the state for accountability and control of circumstances which could impact the state's interests, and the flexibility and freedom of operations necessary for private sector partners to innovate in operations and programming in order to achieve cost savings and efficiencies. The state must grow to trust the ability of its private sector partners. The private sector partners must grow to trust that the state will not arbitrarily use its power to inhibit operations aimed at providing services at over the long term with a reasonable expectation of return on investment.

Forrest, the above is my own personal opinion, not colored by any other influence and learned at a pretty high cost here in Texas where we now have more than 23,000 beds under private contract to the state. It has been a bumpy road, and we still face more miles of bumpy roads in the future. Nevertheless, the private sector is performing an important role which is pretty well integrated into the system. Let me offer a personal example of what I mean.

Following a series of working group sessions in 2003 in which as Chair of Corrections, I forced the Department of Corrections to meet and work with private sector prison providers regarding contract issues, Texas let new bids on all 23,000 privatized beds. The result of the Department's new bid procedures yielded more than \$50 million in savings to the state because the private prison companies were able to show the state how they could lower their bids by the removal of arbitrary and unnecessary bid conditions previously required by the state.

I'll repeat for the sake of clarity: ***the bids of late 2003 came in \$50 million less than the bids which were in force at the time of our working groups for the same 23,000 privatized beds.***

Further, typical operations costs for private beds (including medical care) average around \$34 per day, per inmate under the state's current limited programming strategy. I think our current strategy which severely limits services and treatment programs is a bad one, but there can be little doubt that privatized prisons have yielded significant cost savings to the state of Texas. My recollection is that the current cost of privatized beds in Texas is roughly half the current cost of state beds in Kansas. One contract by a private sector provider for the most basic incarceration services pays \$ 18 per day excluding medical costs.

Don't be discouraged. This is an important step for any state. Your Department of Corrections has legitimate concerns whenever changes are proposed, and they need to be carefully weighed as you contemplate changes in policy. Remember, too, that in order to attract competent and stable private sector partners, they need a great deal of flexibility in how they carry out the mission you give them. It's a worthy goal to pursue, one that has reaped significant benefits here in Texas for more than a decade.

Sincerely,

Ray Allen  
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HOUSE OF  
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RANKING MINORITY MEMBER: COMMERCE & LABOR  
MEMBER: FEDERAL AND STATE  
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2006 Session

House Members:

Because we represent the Lansing Correctional Facility, the largest state prison in Kansas, we want to stop this "hell bent" drive to allow privatized correctional facilities in our state. Although the issue is not new to our legislative discussions, no bill was openly debated by this body nor did any of us have the opportunity to express our outrage or support. We take exception to adding this important issue to a conference committee on the last day of the Legislative Session.

Not for a moment do we discount the efforts of the Yates City community. Faced with a weakened economy and limited employment, its leaders looked to the state for economic development initiatives. Where the construction of a private prison may offer relief to one Kansas town, it bears the potential to implement disastrous state policy.

Among us we may disagree about the types of inmates we want to incarcerate in Kansas. We may have different ideas of what is best when it comes to treatment versus prison. But what we should all commit to is this: capping the prison population is a must.

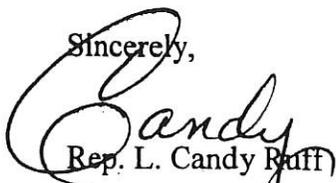
Please consider the information we have attached to this letter. You will find articles that speak to the true costs of private versus public prisons. Note with some interest the statistics that indicate dissimilarities in costs when adding beds to existing facilities. Frankly, it's cheaper for the state.

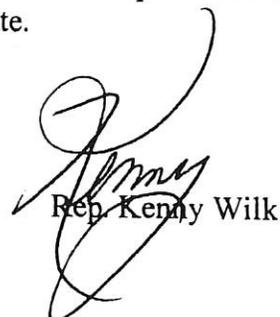
Expanding existing correctional facilities is much preferred. Faced with the need to add beds, lawmakers should chose to invest in the communities and employees that already exist in 12 Kansas towns. Who among us can forget the panic that spread several years ago through Stockton, Osawatomie and Toronto? Our inmate population had fallen at the time and serious discussions took place about closing those prisons.

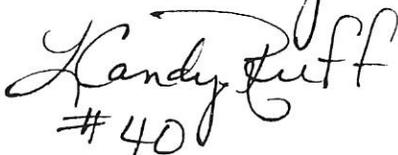
Kansas lawmakers tend to make better policies when we are forced to act. With a private prison setting empty with 800 open beds, our tendency will be to increase our prison population, not reduce it and the costs associated with corrections. With a private prison in Kansas, lawmakers will continually be pressured to keep it and the company's coffers filled.

Instead of going down the risky pathway of inviting a private prison into Kansas, we respectfully ask your consideration in keeping the doors closed. The serious implications of such an important policy decision deserve open and honest debate.

Sincerely,

  
Rep. L. Candy Ruff

  
Rep. Kenny Wilk

  
#40

# Contract Lens

As states continue to outsource corrections services, they are struggling to find the right level of private-prison scrutiny.

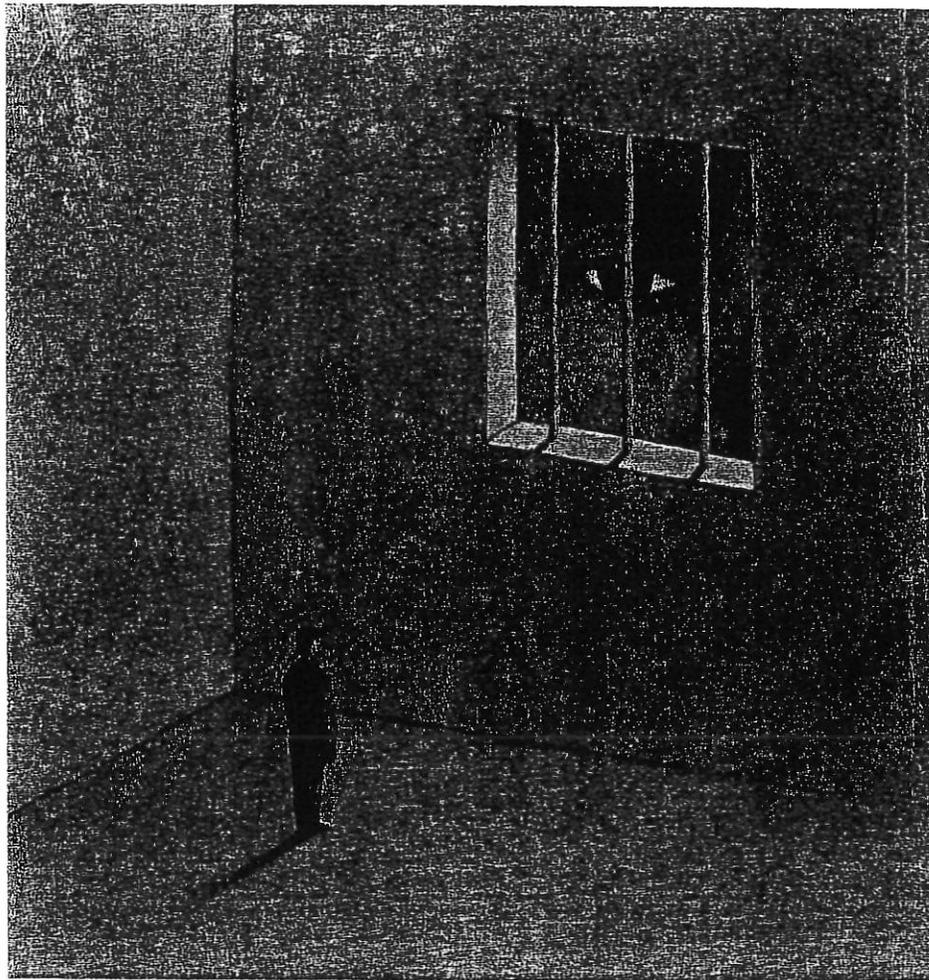
By Zach Patton

**J**ust after seven in the evening last July 20, the Crowley County Correctional Facility was on edge. A group of inmates in this southeast Colorado prison had gathered in a recreation yard and demanded to speak to the warden about food quality and inmate care. When a shift captain denied their request, the prisoners began threatening the guards on duty.

Concerned for their safety, the guards ordered the inmates to return to their cells. They refused, and the protest quickly escalated into a riot: For the next five hours, the prison was engulfed in chaos, as inmates smashed windows, flooded cells, set fire to furniture and bashed down doors and walls. Some 400 inmates—more than a third of the prison population—swarmed the facility's 10-building campus.

The rioters broke into management offices, tore through files of prisoners they suspected of being police informants or sex offenders, and targeted them for assault. One prisoner was dragged from his cell, beaten with weight bars, thrown from a balcony and struck on the head with a microwave oven. Another was stabbed until the blade of the weapon bent. Although no one was killed in the melee, 19 inmates were seriously injured.

In the weeks that followed, the Colorado Department of Corrections conducted an extensive inquiry into the most destructive prison riot in state history. In addition to establishing the chronology of the insurrection, the CDOC's after-action report identified several management issues that may have helped spur or exacerbate the uprising. Among them: Employees did not consis-



tently follow "fundamental security measures," the prison was inadequately staffed and the facility's emergency response team was not properly trained to handle a riot of that magnitude.

But the CDOC's findings weren't a mea culpa. Rather, the tough assessment was directed at a private prison company, Corrections Corp. of America, which owns and operates the Crowley County facility. The

guards, prison managers—even the warden—are all private-sector employees contracted by the state to manage the more than 1,100 convicted murderers, rapists and thieves housed at Crowley County, one of four private corrections facilities in Colorado.

The state has already made changes in the wake of the riot, according to the CDOC's prisons director Nolin Renfrow. "What we learned is that we cannot count

on their on-site staff to adequately handle a crisis like that," he says. As a result, the state has increased crisis training and emergency preparedness for its employees at publicly run prisons near private facilities. That way, the state can better respond if an incident erupts in the future. "We are ultimately responsible for every inmate in Colorado," Renfrow notes, "even if they are placed in a private facility." He expects more changes to be implemented when the state renegotiates the prison's contract in July.

While Colorado officials are quick to acknowledge that last year's riot isn't indicative of systemic problems with private prisons, the Crowley County incident serves as an example of the issues surrounding contracted corrections. Throughout the country, states are trying to develop the right balance of private-prison oversight. The fact is that many privately run facilities aren't closely scrutinized until an incident incites calls for review. This June, Colorado will release the results of a full-scale audit of its prison-contracting process—the first such review in the state's 13-year history of outsourcing corrections services.

Advocates continue to maintain that outsourcing corrections is an ideal way for states to save money, but the Crowley County riot has provided new fodder for opponents. They argue that private facilities fail to provide adequate levels of service and management, and that decisions to contract out are based more on successful lobbying efforts than on what's best for the state. In the rush to outsource, do states really know what they're getting?

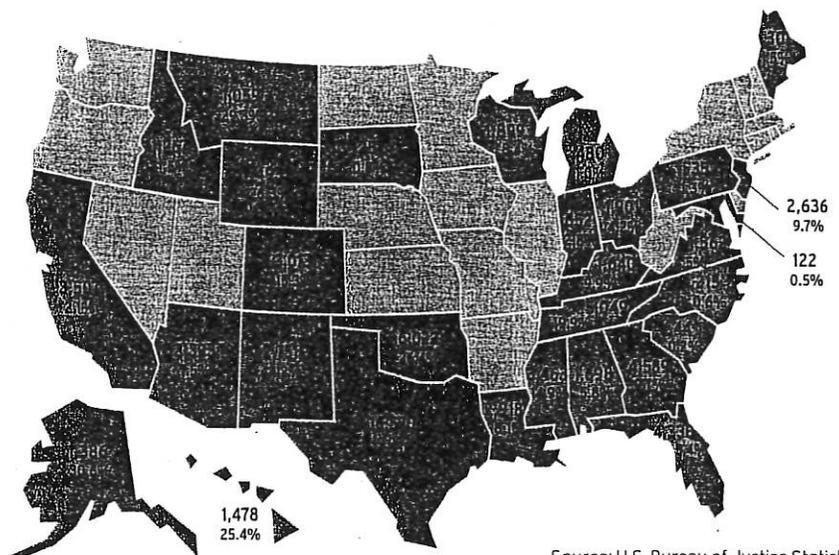
### The Cost-Savings Debate

Private prisons are not a new concept in America. They were especially popular in the late 1800s. But around the turn of the 20th century, privately run prisons began to dwindle as states took over the management of inmates. Faced with booming incarceration rates and overcrowded prisons in the early 1980s, however, states and the federal government began to hire private companies to operate parts of their prison systems.

Today, a few companies—including Correctional Services Corp., Wackenhut Corrections Corp. and Cornell Companies—manage more than 95,000 inmates in at least 31 states. Nationally, 6.5 percent of prisoners are in facilities run by the private sector. Seven states contract more than one-fifth

## Private Lockups

State and federal inmates held in private prisons (total number and as % of all inmates) by jurisdiction, year end 2003



Source: U.S. Bureau of Justice Statistics

of their prison population to private firms.

By far the biggest player in the field of prison facilities management, though, is the Corrections Corp. of America, a Nashville-based company that supervises more than 63,000 inmates in 23 states. CCA founded the modern private-prison industry in 1983 and now administers the sixth-largest prison system in the country—behind only the federal government, Texas, Florida, California and New York.

"States are having to make some pretty difficult decisions about how to spend their capital dollars," says Tony Grande, CCA's vice president for state customer relations. "They just don't have the means to put new beds on line fast enough. We allow the state to focus on its other infrastructure while we invest our money in prison construction."

While privately funded prison construction does save states money up front on capital costs, the ongoing debate over private prisons centers on how much—if any—states save by outsourcing the care of inmates. Industry officials claim that private prisons typically save about 10 percent over publicly operated facilities. In addition, some evidence suggests that the presence of privately run prisons in a given state can, over time, lower the costs of running public prisons in that state.

A 2003 Vanderbilt University study,

which was funded by two private prison companies, found that the existence of private prisons slows the growth rate of the per-diem costs at public prisons by about 4 percent. "It's not huge, but it's far from trivial," says James Blumstein, a Vanderbilt constitutional law professor and co-author of the study. He says the public-sector savings may be attributable to competition from private companies or from a sharing of management expertise.

Critics of private prisons say cost comparisons can be misleading and that it's difficult to compare apples to apples when it comes to discussing prison costs. They note, for example, that studies showing cost savings neglect to account for the age of specific facilities. Running older facilities is more expensive, and private prisons tend to be newer buildings. Critics also point out that lower-security facilities are cheaper to run, and the majority of private prisons are low or medium security. "When you compare the costs of running new facilities—private versus public—you basically come out with a wash," says Peter Wagner, assistant director of the Prison Policy Institute. "The best thing you can say about private prisons is that they don't appear to cost us any more. But that's so not the promise of two decades ago."

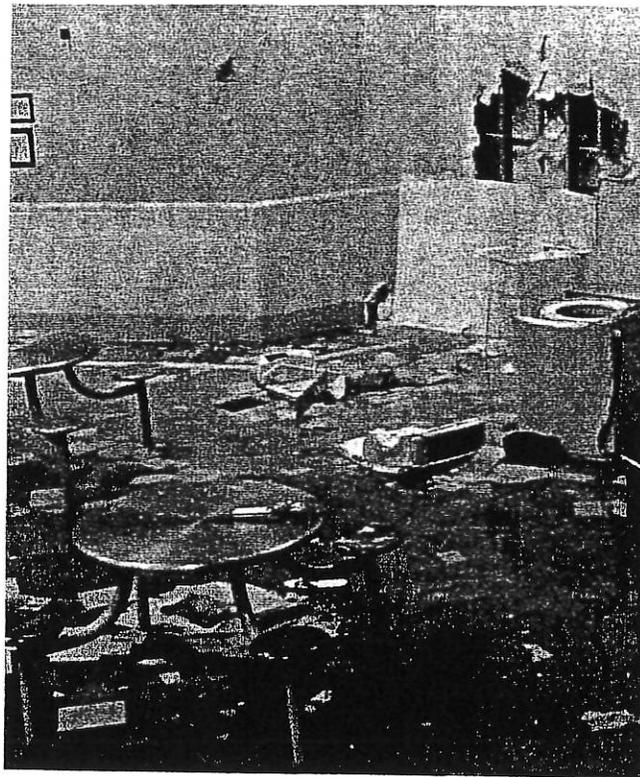
If, in fact, contracted prisons do save money in the day-to-day management of

inmates, there are concerns about how the companies realize those savings. In many cases, private prisons offer employees lower salaries and fewer benefits than their state counterparts. In Colorado, for example, guards at private facilities earn about 60 percent of what they would at state-run prisons, says the CDOC's Renfrow. That pay differential can lead to very high turnover rates. According to a report from the Prison Policy Initiative, the annual turnover rate for state corrections officers nationally is about 15 percent. Within private facilities, the rate is more than 40 percent.

Critics charge that private companies also find ways to save money that are detrimental to inmates, including substandard medical care, inadequate education resources and sub-par food services. Renfrow thinks one cost-saving method in particular may have contributed to the unrest at Crowley County. He says that state-run facilities take in new inmates at a rate of 10 to 15 a day. "We deliberately go slowly," he notes. "We want to find out who these people are, whether they're in a gang, whether they have problems with other inmates specifically. But for [the private companies], their motivation is to fill more quickly; every inmate that's in there every day is more profit for them." In the weeks leading up to last year's riot, Renfrow argues, CCA's "intake rate was higher than it should have been."

The notion that corrections companies are driven predominantly by a profit motive—and that more inmates equate to higher profits—is at the heart of an even broader accusation against the prison industry: The increase in the nation's current incarceration rate, which has quadrupled over the past three decades, has been driven in part by the prison companies themselves.

In a 2000 report called "The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom," Edwin Bender, a former journalist, alleges that private-prison companies have, over the past two decades, pushed for tougher sentencing laws, such as mandatory minimums and "three strikes" legislation, in ef-



## A private-prison riot in 2004 was the most destructive inmate uprising in Colorado history.

fect to ensure a growing "market" of prisoners. He and others believe prison corporations utilize the American Legislative Exchange Council, a national organization of conservative lawmakers, to advocate stricter criminal justice legislation.

"While private prisons still represent a small percentage of the overall prison industry, they exert an increasing influence on criminal justice policy," according to the report. "The involvement of private prison corporations in the development of model criminal justice legislation through [ALEC] cannot be ignored."

Bender, who now heads the Institute on Money in State Politics, tracks political donations from prison companies at [www.followthemoney.org](http://www.followthemoney.org). He says there's a link between those donations and legislators who support stronger crime laws and outsourcing prisons services. CCA for several years co-chaired ALEC's Criminal Justice Task Force.

Prison corporation officials are aware of such criticism, but they say the industry is only responding to an existing need for new facilities, not advocating more prisoners. "CCA has never lobbied for stiffer sentencing guidelines or anything like that," says

Grande, who points out that a former CCA chief executive testified to Congress in opposition to mandatory sentencing laws.

While the private-prison population has grown in absolute numbers over the past decade, the share of the nation's inmates in private facilities has remained fairly constant at around 6 percent. Grande says the industry will not grow by adding inmates to the nation's prison systems but by increasing its presence within states. "Our growth is going to be about states turning to us more and more," he adds.

### Tightening Contracts

If that's the case, how can states ensure that issues such as the intake rate, food quality, guard training and inmate health care and education are being properly addressed by the companies running these prisons? The most obvious method is regular monitoring to ensure prison facilities and management meet

contract standards. Some states install a full-time public employee in each privately run facility; others send out a team of monitors to visit different facilities around the state on a rotating schedule.

Nationally, there is not a unified approach to state monitoring. In Colorado, a prison-monitoring unit visits each private facility on a weekly basis, and the state has no plans to change that policy despite last year's riot. Georgia announced in February that it planned to scale back its monitoring capacity to cut costs: While the state had had an on-site state monitor at each of its three private prisons, it will now have one monitor who tracks all three facilities.

According to CCA, state monitors maintain offices in about half of the company's facilities. "That is the most effective way we know of to achieve oversight," says Grande, the company's spokesman. "Frankly, we prefer it because it's a degree of protection for both sides of the equation." Nevertheless, he says there's some level of state oversight in all cases. "I can't think of one instance today where states have handed over their inmates and just put it on autopilot."

Monitors are there to track contract standards, but that makes it all the more important to include as many details in the contracts as possible, according to both public and private officials. "Contract negotiation is the most crucial time," says Grande, who notes that the contracting process has become more sophisticated during the 20-year history of modern private prisons. "We've seen a definite change in the scope and definitions within contracts. Before, you might just say, 'An education program will be available.' Now, we're actually adopting the programs used by the state, as part of the contract. States also can dictate a particular diet and specific dietary requirements."

In Colorado, the prisoner-intake rate that Renfrow points to as a precipitate of the Crowley County riot is not spelled out in the state's contracts. He says that Colorado will be sure to include intake rates when prison contracts are next renewed, although it's tough to specify every detail. "There's some real intangibles out there, such as quality of

food. But we learn as we go, and every year we tighten up the contract."

As states in general are moving to longer contract periods, it becomes even more important to get contracts right the first time. In the 1980s and early '90s, notes Grande, states were more skeptical of the private-prison industry, and they tended to sign two- or three-year contracts. "Now that the industry has established itself, states are much more willing to put renewals in a contract that could go 10 to 15 years," Grande says. "States are realizing that the RFP process is an expensive, time-consuming process. It's not something you want to be doing every two years."

But even if states adequately address specific issues in the contract process, holding corporations to agreed-upon standards can be challenging, says Ken Kopczynski at the Private Corrections Institute, a watchdog group. Given the difficulty for a state to take over a private prison, including assuming any debt the company may have, states tend to look the other way

if contract violations spring up, he argues.

Moreover, when states do closely monitor the contracts, Kopczynski says it becomes evident that companies frequently cannot offer the services contained in the contract at the negotiated rates. He points to Nevada, where CCA chose not to renew a contract for a prison last year because the company could not afford to operate the prison at the rate it had contracted. The company pointed to rising health care costs and said it was losing more than \$1 million a year. "CCA low-balled the costs," Kopczynski says.

Nevertheless, it's clear that private enterprise will continue to play a significant role in many states' corrections systems—and public officials must keep trying to pin down the cost savings and hone contract language. Noting that Arizona has already developed very specific and tough private-prison contracts, Colorado's Renfrow says, "We're headed that way."

Zach Patton can be reached at  
zpatton@governing.com

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**House Federal and State Affairs Committee  
Testimony on HB 2029  
March 7, 2007  
Kansas Catholic Conference - Sister Therese Bangert**

Chairman Siegfried and Members of the Committee:

My name is Sister Therese Bangert, S.C.L. and I speak on behalf of the Kansas Catholic Conference, the public policy office of the Catholic Church in Kansas, regarding private prisons.

In December 2000, the United States Conference of Catholic Bishops (USCCB) released a statement titled **Responsibility, Rehabilitation and Restoration – A Catholic Perspective on Crime and Criminal Justice**. It is a thoughtful and pastoral document noting that response to crime in the United States is a moral test for our nation and a challenge for our Church.

The bishops address the policy of private prisons in their statement: “We bishops question whether private, for-profit corporations can effectively run prisons. The profit motive may lead to reduced efforts to change behaviors, treat substance abuse, and offer skills necessary for reintegration in the community”.

In their statement the Bishops acknowledge the need for society to be safe and victims to have resources for healing. They also acknowledge the complexities of the issues around responsibility, rehabilitation and restoration, and question if increased incarceration is the answer.

Making a profit on incarcerating men and women is troubling especially in light of the prevailing characteristics of persons who populate our prisons: those who are poor, illiterate, addicted and mentally ill. Furthermore there is no denying that the racism and discrimination that continue to haunt our nation are reflected in similar ways in the criminal justice system.

In the interim of 2006, the Joint Committee on Corrections and Juvenile Justice had extensive hearings on the private prison issue. Justin Jones, the Director of the Department of Corrections in Oklahoma, was one of those who testified. I would encourage each member of this committee to read his testimony. The testimony speaks to the Oklahoma experience. Mr. Jones raised questions. I’ll share a few of those questions.

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.  
DIOCESE OF DODGE CITY

MOST REVEREND JOSEPH F. NAUMANN, D.D.  
*Chairman of Board*  
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND PAUL S. COAKLEY, S.T.L., D.D.  
DIOCESE OF SALINA

MOST REVEREND MICHAEL O. JACKELS, S.T.D.  
DIOCESE OF WICHITA

MICHAEL P. FARMER  
*Executive Director*

Federal and State Affairs  
Attachment 10

MOST REVEREND EUGENE J. GERBER, S.T.L., D.D.  
BISHOP EMERITUS - DIOCESE OF WICHITA

MOST REVEREND GEORGE K. FITZSIMONS, D.D.  
BISHOP EMERITUS - DIOCESE OF SALINA

Date 3-7-07

- Are citizens of the State of Kansas comfortable with companies making money on the incarceration of prisoners?
- Is the cost of private prisons, in fact, less expensive?
- From where will the money come for oversight of the private prisons?
- Since a contractor cannot be forced to release information to the public, how will information about the private facilities be obtained?

The members of the Corrections and Juvenile Justice Committee voted to keep prison operations in the hands of the state and to oppose private prisons.

I've attached to this testimony part of a statement by the Catholic Bishops in the Southern States. You can read their strong opposition to private prisons and many of their reasons for that opposition – including the fact that the private prison industry has been known to actively support institutions that lobby for harsher sentencing laws, which increase the prison population.

The Kansas Catholic Conference could foresee not-for-profit private prisons that would serve those incarcerated in a way that focused on the rehabilitation of those imprisoned. This is different than a focus on profit for the shareholders.

Thank you,

*Sister Therese Bangert*

Sister Therese Bangert  
Kansas Catholic Conference

*This is the second in a series of six pastoral statements by Catholic Bishops of the South on the Criminal Justice process and a gospel response.*

**“We bishops question whether private, for-profit corporations can effectively run prisons. The profit motive may lead to reduced efforts to change behaviors, treat substance abuse, and offer skills necessary for reintegration into the community.”** U.S. Catholic Bishops statement “Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice,” November 2000.

As pastoral leaders of the Roman Catholic community, we continue to reflect with you on the themes of responsibility, rehabilitation and restoration in light of the reality of crime and criminal justice in our area of the country. The restoration of justice, along with compassion, is the way of the gospel.

**We note with apprehension the rise of for-profit private prisons in the South and in the nation.** The focus of this statement is the private prison industry. Recent reports by the U.S. Department of Justice indicate that prisons operated by private corporations’ house over 100,000 prisoners in our country.<sup>1</sup> Private prisons have become more prevalent because our nation is putting growing numbers of people behind bars, governments are facing the rising costs of incarceration as with all public services, and there is increasing political pressure to privatize many government services.

**We are concerned about the rise in for-profit private prisons because previous attempts to introduce the profit motive into prisons have failed to respect the fundamental human dignity of every prisoner.** Immediately following the abolition of slavery, Southern states developed the Convict Lease System, under which state and local governments contracted out prisoners as laborers on farms, roads, railroads and mines. Widespread physical abuse and an extraordinary level of death among prisoners led to legislation declaring the commercial exploitation of prisoners’ illegal.<sup>2</sup>

**We recognize the fundamental human dignity of prisoners and are troubled by the documented level of violence against prisoners in private prisons.**<sup>3</sup> Prisoners are persons, with inherent God-given human dignity. When prisoners become units from which profit is derived, there is a tendency to see them as commodities rather than as children of God. Our troubled times have taught us that, once people are dehumanized, they are more liable to be exploited, abused and violated and to becoming more violent themselves.

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<sup>1</sup> “Prisoners in 2001,” US Department of Justice, July 2002, Highlights.

<sup>2</sup> “A Tale of Two Systems: Cost, Quality and Accountability in Private Prisons,” see footnote 9.

<sup>3</sup> An industry-wide survey conducted in 1997 by James Austin, a professor at George Washington University, found 49 percent more inmate-on-staff assaults and 65 percent more inmate-on-inmate assaults in medium- and minimum-security private facilities than in medium- and minimum-security prisons run by government. [from Judy Greene’s article in *The American Prospect* (September 1, 2001)]

**We recognize the inherent dignity of labor and are troubled by the working conditions and wages of those entrusted with the care of prisoners in private facilities.** In order to reduce costs and maximize profits, private prisons redistribute their operational costs, with less money going to those employees who work directly with prisoners and more to executives and shareholders. We do not agree that paying private prison staff lower wages than public employees receive, or cutting their numbers, advances the common good or just treatment of prisoners. We note that some state and local governments have canceled private prison contracts because of insufficient staff and mismanagement.<sup>4</sup>

**We question whether private prisons have the incentive to assist people not to return to prison.** In addition to removing people from the community for the safety of the community, one of the stated purposes of prison is to prepare the people who are in prison for reintegration into the community once their sentences have been served. Almost everyone in prison is re-entering our communities at some point. We are concerned that cutting staff and reducing wages in order to protect profit margins is in conflict with the need to respect and rehabilitate prisoners. We are even more deeply troubled that the private prison industry has actively supported institutions that lobby for harsher sentencing laws, which increase the prison population.

**We believe that private prisons confront us with serious moral issues, demanding a gospel response.** To deprive other persons of their freedom, to restrict them from contact with other human beings, to use force against them up to and including deadly force, are the most serious of acts. To delegate such acts to institutions whose success depends on the amount of profit they generate is to invite abuse and to abdicate our responsibility to care for our sisters and brothers.

**Since it appears that private prisons are not consistent with the need for our prisons to respect the human dignity of each and every person, we call for an end to all for-profit private prisons.** The trend towards more and more people being held in private prisons should be reversed immediately. We call on all levels of government to refuse to sign new contracts or to renew expiring ones with private prison corporations.

**As long as private prisons continue to exist, they need to be held fully accountable.** While private prisons continue there, needs to be independent, thorough, and systematic oversight of their operation by government. Independent monitors should be allowed to make sure that private prisons are operating in ways that treat all concerned, including prisoners, with the dignity that is inherent in all human beings.

**Our region and our nation must change the policies that are putting so many of our people in prison.** Imprisonment for profit would not have arisen again if our nation's prison population had not been expanded so radically. While the U.S. now leads the entire world in rate of incarceration, our southern states lead the nation<sup>5</sup> -- the seven states with the highest incarceration rates are in the South.<sup>6</sup> Sentencing must be reformed and alternative sentences

<sup>4</sup> Sentencing Project, "Prison Privatization and the Use of Incarceration," 1/02, page 3. North Carolina has canceled contracts and Arkansas has taken back some of its prisons from private contractors.

<sup>5</sup> Sentencing Project, "New Prison Population Figures: Crisis and Opportunity," August 2002. This analysis shows the USA leads all nations in the rate of incarceration with 686 per 100,000. Russia is second with 644 per 100,000.

<sup>6</sup> Bureau of Justice Statistics Bulletin, PRISONERS IN 2001, Table 6, released July 2002 reported that the states with the highest incarceration rates were: Louisiana, Mississippi, Texas, Oklahoma, Alabama, Georgia, South Carolina, Missouri, Delaware, and Arizona.

employed so that justice rather than profit is served.

**Only when our criminal justice system  
reflects the love and truth of Jesus Christ will  
our communities be truly safe and just.**

Bishop Robert Baker Charleston, SC	Bishop William Friend Shreveport, LA
Archbishop Patrick Flores San Antonio, TX	Bishop John Favalora Miami, FL
Msgr. Mauricio West Charlotte, NC	Bishop John Nevins Venice, FL
Archbishop Thomas Kelly Louisville, KY	Bishop John McRaith Owensboro, KY
Bishop Sean O'Malley Palm Beach, FL	Bishop Kevin Boland Savannah, GA
Archbishop John Donoghue Atlanta, GA	Bishop Edward Kmeic Nashville, TN
Archbishop Oscar Lipscomb Mobile, AL	Bishop Curtis Guillory Beaumont, TX
Bishop David Fellhauer Victoria, TX	Bishop Sam Jacobs Alexandria, LA
Bishop Michael Jarrell Lafayette, LA	Bishop Norbert Dorsey Orlando, FL
Bishop Joseph Fiorenza Houston, TX	Bishop Joseph Gossman Raleigh, NC
Bishop Palcido Rodriquez Lubbock, TX	Bishop Joseph Latino Jackson, MS
Bishop Joseph Kurtz Knoxville, TN	Bishop Gregory Aymond Austin, TX
Bishop Raymundo Pena Brownsville, TX	Bishop Roger Foys Covington, KY
Bishop Peter Sartain Little Rock, AR	Bishop Terry Steib Memphis, TN
Bishop Paul Loverde Arlington, VA	Bishop Robert Lynch St. Petersburg, FL
Bishop Michael Pfeifer San Angelo, TX	Bishop Victor Galeone Jacksonville, FL
Bishop Walter Sullivan Richmond, VA	Bishop John Yanta Amarillo, TX
Bishop Edward Braxton Lake Charles, LA	Bishop John Delaney Fort Worth, TX
Archbishop Alfred Hughes New Orleans, LA	Bishop John Ricard Pensacola, FL
Bishop David Foley Birmingham, AL	Bishop Alvaro Corrado Tyler, TX
Bishop Charles Grahmann Dallas, TX	Bishop Edmond Carmody Corpus Christi, TX
Bishop Thomas Rodi Biloxi, MS	

Testimony on HB 2029  
to  
The House Federal and State Affairs Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

March 7, 2007

I would like to preface my comments regarding private correctional facilities with my opinion that it is preferable for a state to operate its own correctional facilities whenever possible. In addition to the management of the facility regarding the day to day operations and emergency responses, state ownership of the facility allows the State to change the mission or operation of a facility without having to take into consideration the property and contract rights of a private entity. Secondly, any excess capacity of the state's correctional facilities may be leased to other jurisdictions, but on terms and in accordance with the regulations, operational orders, standards and policies that the Department of Corrections controls. **Finally, private prisons cannot operate more efficiently or less expensively than capacity added to existing state prisons.** Due to the savings from expansion of existing facilities and the **benefit to the state in having the flexibility to respond to changing needs and changing directions from the legislature without any need to renegotiate contracts and costs for services**, I believe the state's correctional interests are best served through maintaining state operation of our corrections capacity.

However, if the legislature should make a different decision and approve the establishment and operation of one or more private for profit prisons in the state, I believe that the department must be given the tools to properly protect the interests of the state and the safety of the general public. Two years ago, I proposed to the Senate the amendments to SB 243 made during the 2005 Session that would accomplish that. The proposed amendments were incorporated into SB 243 which are identical to the provisions of HB 2029 and substantially fill the gaps we have identified in making this change in policy as workable as possible. I am appreciative of the consideration given to those suggestions we made.

If the decision is made to authorize private prisons in Kansas, you can be assured that the Department of Corrections will make a good faith effort to see that that policy succeeds, and that the public safety and economic interests of the state are well served. **I would also hope that the legislature will be alert and resist any attempts, now or in the future, to weaken the regulatory authority or increase the obligations of the state to private prison operators that are established in the current version of the legislation.** In particular, HB 2029 limits the maximum amount the department can pay for a bed in a facility authorized by this legislation to "90% of the department's average per capita operating costs for the previous fiscal year for

comparable state correctional facilities and services” (see page 2 lines 20 through 24). This is consistent with legislative policy in limiting reimbursement to county jails to exclude administrative overhead, capital construction and depreciation, etc. There are ample tools at the legislature's disposal to insure that the Department of Corrections fulfills its obligations in good faith. I would hope that, if you approve this legislation, operators of private for profit prisons will be held to the same standards.

I have attached a history of privatization relative to the department as background for the Committee.

March, 2005

## History of privatization in Kansas

1988-Department of Corrections contracted with a company (VIP) for operation of community residential centers in Topeka and Wichita. The contract was terminated in 1989 due to the failure of the contractor to deliver services in compliance with the terms of the contract.

HB 2835 was considered in the 1990 session but was not enacted. It would have permitted the creation of regional prison authorities by cities or counties with the power to construct or purchase prison facilities.

SB 748 (1990 Legislature): Provides that, unless authorized by Kansas statute, local units of government and private entities are prohibited from authorizing, constructing, owning, or operating any type of correctional facility for the placement or confinement of inmates from any agency of another state until such time as the Legislature has reviewed and provided a public policy regarding such activity. Provisions expire July 1, 1991.

Studied by interim Special Committee on Judiciary (1990): Committee recommended that the moratorium on the construction of private prisons to house prisoners from other states be extended indefinitely. The Committee questioned the economic feasibility of the plans, the potential exposure of local governments or the state to civil liability, and that the proposal raised the basic issue of the fundamental role of government. As a result of the interim study HB No. 2003 was introduced in the 1991 session to extend the moratorium indefinitely. KSA 75-52,133 enacted, providing that no city, county or private entity shall authorize, construct, own or operate any type of correctional facility for the placement of inmates from any agency of another state.

March, 1994: Attorney General Opinion 94-27 issued. Opinion concludes that with some narrowly drawn exceptions, cities, counties and private entities are prohibited from authorizing, constructing, owning or operating a correctional facility for the placement or confinement of inmates from any agency of another state. There is no constitutional or statutory impediment which would prevent a city, county or the state from contracting with a private entity for the construction or operation of a jail or correctional facility for the placement or confinement of persons held pursuant to Kansas law.

1997: HB 2576(e)-Ch. 192 Sec. 45 Session Laws: preparation and issue of request for proposals for design, construction, and operation of a 200 bed medium security facility and a 200 bed low cost special management unit; bidders could bid on both projects; DOC could submit proposals. Award based on review of updated inmate population projections and approval of the state finance council.

RFP issued in June 1997 (assisted in preparation by Richard Crane, national expert on privatization)

Responses received August 1997

Review of inmate population projections resulted in a recommendation to defer additional capacity expansion to the 1999 session. No award made of a contract from the RFP.

1997: HB 2571 would permit any county to "construct, own or operate any type of correctional facility for the placement or confinement of inmates from the department of corrections and any agency of another state." HB 2571 was not passed.

Privatization was discussed in the 10 year Strategic Development Plan prepared for the state in January, 1998.

1998-KDOC issued an RFP for operation of a female conservation camp. The DOC contracted with GRW for operation of the camp. First inmates were accepted at LWCC in January, 2000.

2001-DOC enters into a contract with Corrections Corporation of America for the placement of inmates at a facility in Burlington, Colorado. Inmates are placed in that facility for a 7 month period ending in June, 2002.

2002 (November)-DOC issues RFP for medium security offender housing. This results in a contract entered into in December 2003 for the placement of inmates at a facility operated by Civigenics in Limestone County, Texas. Inmates are placed there in January, 2004. DOC discontinued use of this contract in early 2005 as the overall inmate census decreased.

2004: SB 275 proposed. Bill would have permitted use of privately constructed and operated correctional facilities for the incarceration of offenders from other states. Bill was not enacted.

2005: Bill concerning prison privatization considered but not enacted during the 2005 session.

2005 (September): DOC entered into a contract with Corrections Corporation of America to house inmates, as needed, at a facility in Burlington, Colorado. As of February, 2006 the DOC has not had to utilize this contract.

2006: Labette County has notified GRW of an intent to terminate the management contract for the Labette Correctional Conservation Camp effective July 1, 2006.