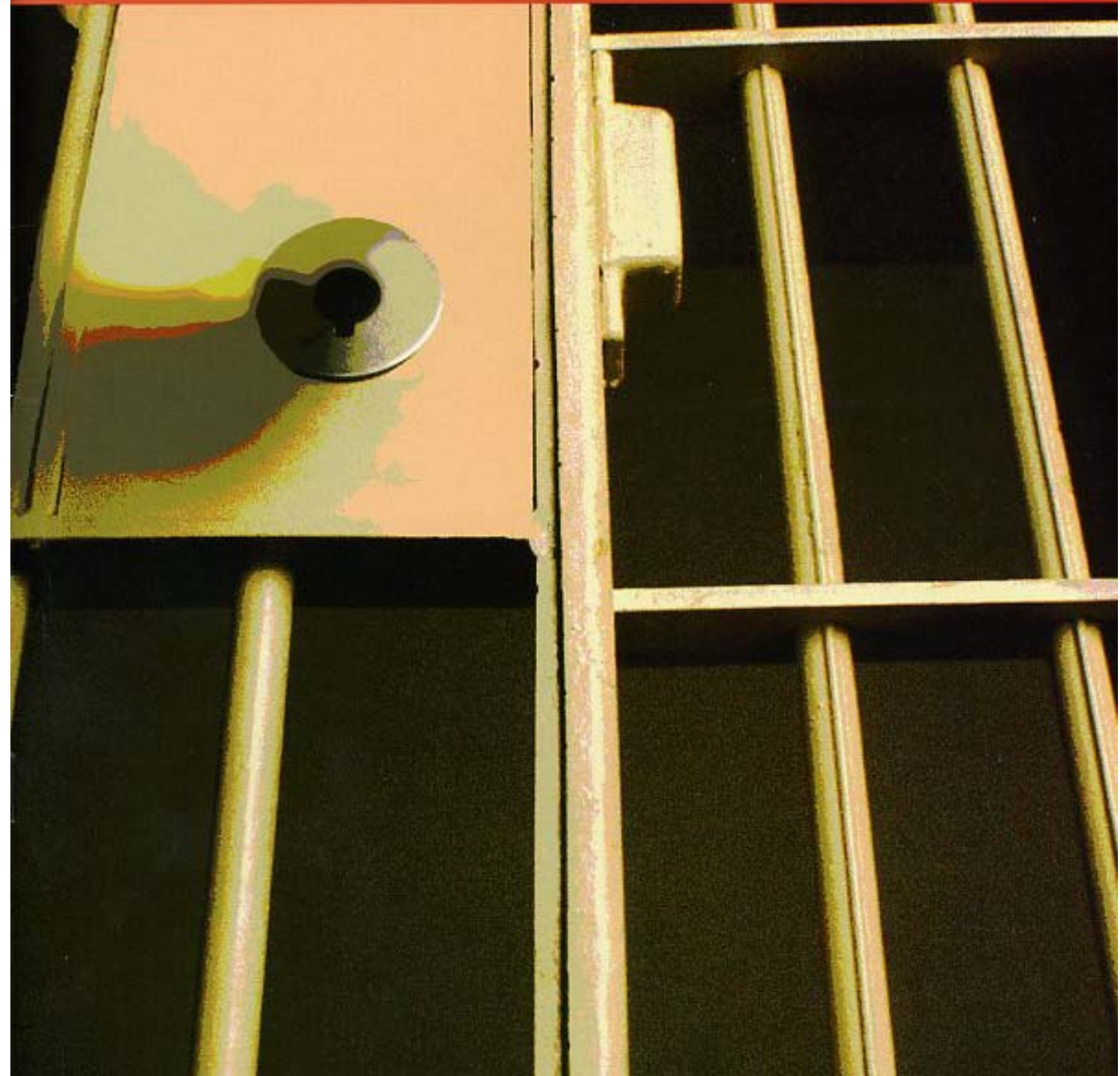


What To Do About The Prison Problem:
The Pros and Cons of Privatized Prisons in
Alabama

Kirk A. Johnson, Ph.D.



Founding Principles in Action



What to Do About the Prison Problem? The Pros and Cons of Privatized Prisons in Alabama

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In his January 2006 State of the State Address, Gov. Bob Riley of Alabama argued in favor of long-needed prison reform when he said, “But no matter how much we invest in public safety, we will continue facing threats to our security as long as we ignore the challenges in our corrections system. These problems have built up for decades...With your approval of these reforms, we’ll alleviate our prison and jail crowding problems, we’ll keep violent criminals locked up, and we’ll make Alabama a safer place to live.”²

Along with a growing number of state legislators, Gov. Riley recognizes the challenges facing Alabama’s prison system. Not unlike a variety of other areas in the nation, the state’s correctional system is grossly overcrowded and desperately in need of expansion. Alabama’s 30 correctional and work release facilities are at double their capacities as originally built, according to the state Department of Corrections’ annual report.³

One way that most other states, as well as some federal agencies, have dealt with growing correctional populations for more than 20 years is by contracting out prison construction and management to an outside company. In fact, all four states bordering Alabama have contracted with one or more private companies for prison services.

This report seeks to ascertain the costs and benefits of expanding prison capacity via private contracting in Alabama. To that end, a number of issues will be explored to aid Alabama policymakers on the scope of the problem, and how private prisons can be a part of the solution. The questions addressed include the following:

- What is the scope and scale of the prison overcrowding problem in Alabama? What are some of the policy options available to deal with the overcapacity issue?
- What aspects of prison construction and operation can be privatized or outsourced?
- What is the history of private prisons in the United States? How much has the domestic industry grown in the past two decades?
- What are the benefits and costs of privatizing prisons?
- On balance, do the benefits of prison privatization outweigh its costs, and what outcomes can policymakers reasonably expect?

Given the governor’s acknowledgment that “[t]hese problems have built up for decades,” the solution will take time to develop fully, no matter what Alabama policymakers decide. Because of the rise in use and popularity nationwide, a private solution should be seriously considered as the legislature takes up the issue in earnest.

¹ The author would like to thank Tiffany Johnson for helpful research and editing and Ron Utt, Ph.D., for early comments on the subject.

² Gov. Bob Riley, “State of the State Address,” January 10, 2006, at www.governorpress.state.al.us/pr/sp-2006-01-10-sos2006.asp.

³ Alabama State Department of Corrections, “Annual Report: Fiscal Year 2004,” at www.doc.state.al.us/docs/AnnualRpts/2004AnnualReport.pdf.

The Scope of Alabama's Prison Overcrowding Problem

Gross overcrowding in Alabama's prisons has now become well-reported by the local press. The *Montgomery Advertiser*, for example, recently editorialized that "Alabama's prison system is broken. Unless the Legislature musters the political will to fix it, the state could soon face a major crisis."⁴ In a similar vein, the *Decatur Daily* opined, "With prisons operating at more than double capacity, experts caution that Alabama's prison system is a ticking time bomb that begs for answers to diffuse it."⁵

Even more recently, on May 11, 2006, Montgomery Circuit Court Judge William Shashy ordered the state to transfer some 185 prisoners from county jails to state prisons by the end of the month and the entire backlog of 585 prisoners by September 5. Failure to do so will cause the state's prison commissioner, Richard Allen, to be in contempt of court. The state's Department of Corrections has announced that it will appeal the decision.⁶

In late 2005, the state's Task Force on Prison Crowding recognized this problem. "The state's aging and often dilapidated prisons cannot be expected to serve its correctional needs. These structures must be supplemented in the near term and replaced or wholly renovated in the long term."⁷ The Task Force then recommended a variety of potential policy solutions to deal with these issues, which are discussed later in this report.

In terms of the scope and scale of the problem, the total population housed in Alabama's various correctional facilities has increased steadily over the past several years, without a substantial increase in new construction to accommodate the increase in inmates. Chart 1 shows the steady growth in Alabama's average daily population since Fiscal Year (FY) 1991.

During the 1990s, the total inmate population in Alabama grew by 70 percent. At the same time, the small number of renovation/expansion projects did not sufficiently increase the design capacity to accommodate the state's needs. While there have been a few expansions of facilities during the latter part of the 1990s,⁸ inmates grossly exceed the design capacity of the state's correctional facilities. According to the most recent Department of Corrections (DOC) *Annual Report*, there are almost twice as many inmates as the facilities were designed to hold.⁹ The designed capacity of the state's facilities is about 12,400, a number that has not changed substantially over the past few years (see Chart 1).¹⁰

⁴ Editorial, "Alabama Prisons Close to Crisis," *Montgomery Advertiser*, January 9, 2006.

⁵ M.J. Ellington, "Task Force Wants Prison Alternatives for Alabama," *Decatur Daily*, October 14, 2005.

⁶ Jamie Kizzire, "Alabama Prison Chief Seeks to Halt Judge's Jail Backlog Order," *Associated Press*, May 17, 2006.

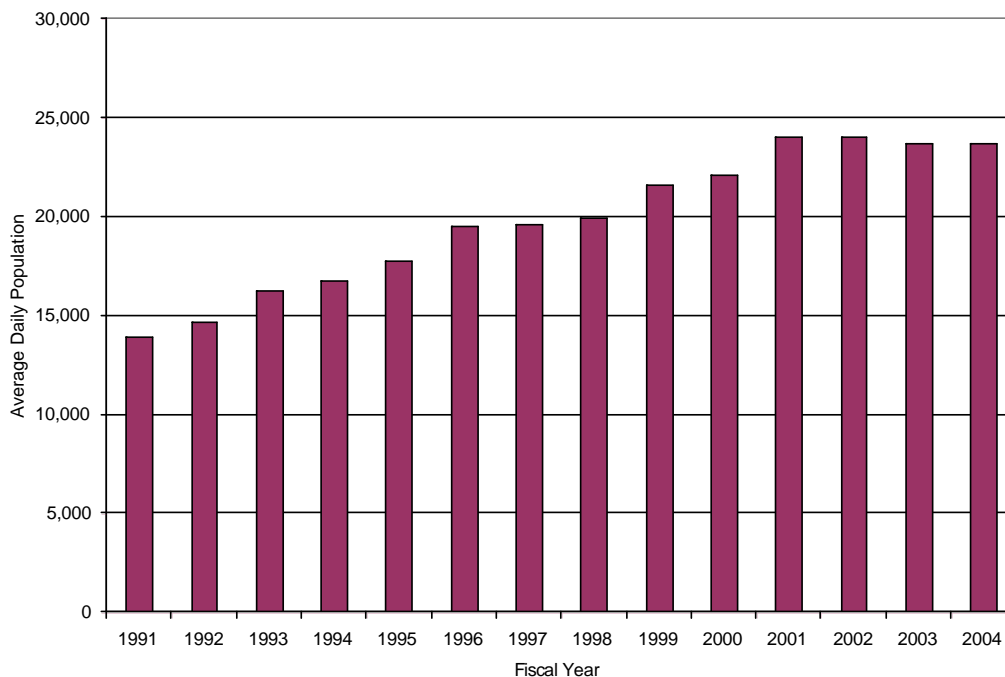
⁷ Governor's Task Force on Prison Crowding, "Final Report," October 27, 2005, p. 16, at www.sentencingcommission.alacourt.gov/Publications/Gov%20TF%20Report.pdf.

⁸ Some of these expansions/renovations included ones at Alexander City Work Release (various projects in 1993, 1995, and 1997), Bullock Work Release (1995, 1997), the J.O. Davis Correctional Facility (1995), Holman (2000), Loxley Work Release (1999/2000), and the Ventress Correctional Facility (2003). The Bibb Correctional Facility is the state's newest prison, built in 1998.

⁹ Alabama State Department of Corrections, "Annual Report: Fiscal Year 2004," p. 50, at www.doc.state.al.us/docs/AnnualRpts/2004AnnualReport.pdf.

¹⁰ The Alabama DOC differentiates "designed capacity" from "operational capacity," which includes the adaptation of auxiliary facilities into inmate bed space (such as a gymnasium). The Alabama DOC calculates its "overcrowding index" based on the average monthly population divided by the designed capacity.

Chart 1
Recent Trends in Alabama's Inmate Population



Source: Alabama Department of Corrections Annual Report (Various Years)

Possible Policy Responses to the Prison Overcrowding Problem

The state of Alabama can address the problems of prison overcrowding via one or more of three basic policy initiatives:

1. Continue to ship inmates to out-of-state facilities. Recent efforts to deal with the prison overcrowding have included shipping Alabama inmates to private facilities out of state. Although the total number of inmates housed in out-of-state facilities is relatively small, the Alabama Sentencing Commission anticipates a growing need to do so in the near future. Since 2002, the state has spent \$12.7 million on such prisoner transfers. In addition, in order to house an additional 500 inmates out of state, it will cost the taxpayers between \$32 and \$34 per inmate per day in FY 2005.¹¹ If the inmates were kept out of state the entire year the maximum cost would be approximately \$6.2 million.

While less extreme, the state also houses convicts in county jails on a regular basis, and as noted above, Montgomery Circuit Court Judge William Shashy has ordered 185 prisoners transferred. As of mid-October 2005, more than 1,800 state prisoners were housed in county

¹¹ The majority of prisoners held out of state reside there less than one year. In FY 2004, for example, 1,398 prisoners—1,192 males and 206 females—were held in private prisons out of state. The female prisoners were held out of state for the entire year, but the male prisoners were kept for only five months. Alabama Sentencing Commission, “2005 Annual Report,” p. 9, at www.sentencingcommission.alacourt.gov/Publications/2005%20Annual%20Report.pdf.

jails waiting for transfer to state facilities.¹² This housing of state prisoners in county jails is part of a growing trend over the past few years. To put this figure into context, in February 2005, the number of state prisoners in county jails was less than 1,450.¹³

While it may be useful to house prisoners in county jails and out-of-state prisons on an emergency basis, there are a number of reasons it is not desirable as a long-term solution. First, as noted by the recent sentencing commission report, these options should be viewed as temporary, emergency measures, rather than a part of standard correctional procedure. Second, shipping prisoners out of state or to county facilities decreases the ability of the state to provide standardized services to incarcerated individuals (drug treatment, job training via prison industries, etc.). Moreover, the state reimburses county jails only \$1.75 per day per inmate they hold.¹⁴ It is little wonder, then, that the state's Sentencing Commission deemed that these stopgap measures "cannot continue indefinitely."¹⁵

Nevertheless, the state has announced that it wants to ship some 600 prisoners out of state to deal with the short-term overcrowding problem.¹⁶

2. Reduce incarcerations by limiting sentences for certain offenses. The Governor's Task Force's recommendations begin with a set of eight legislative bills, focusing on a number of sentencing standardization reforms, alternative sentencing for technical parole violators, increased fines for convicts, and the like. On January 18, 2006, the state House of Representatives passed eight bills largely in the spirit of the Task Force's recommendations.

The state's Sentencing Commission's annual report also advocated for this type of sentencing reform by "concentrating on the incarceration of violent, sex, and dangerous offenders."¹⁷ At the same time, the Sentencing Commission advocates that the state should move towards "truth-in-sentencing," which would limit the ability for the state to parole or otherwise give early release to those incarcerated in the state's prison facilities. Recently, Gov. Riley signed SB 231 into law, which enacted these voluntary sentencing guidelines for certain felonies.

The net effect of this law is uncertain, but the guidelines might only have, at best, a mixed effect on overcrowding. Rep. Marcel Black (D-Tuscumbia), a sponsor of many of the bills, put it succinctly: "Like any major problem, very few, if any, are solved immediately. This [law] is a step down that road."¹⁸

The Sentencing Commission underscored that recent policy changes, while providing some relief on the overcrowding situation, are temporary fixes, at best. The most recent report

¹² Governor's Task Force on Prison Crowding, "Final Report," October 27, 2005, p. 12, at www.sentencingcommission.alacourt.gov/Publications/Gov%20TF%20Report.pdf.

¹³ Alabama Sentencing Commission, "2005 Annual Report," p. 9, at www.sentencingcommission.alacourt.gov/Publications/2005%20Annual%20Report.pdf.

¹⁴ Lynda Flynt, Alabama Sentencing Commission, July 26, 2006, personal communication.

¹⁵ *Ibid*, p. 10.

¹⁶ Jamie Kizzire, "Alabama Prison Chief Seeks to Halt Judge's Jail Backlog Order," *Associated Press*, May 17, 2006.

¹⁷ Alabama Sentencing Commission, "2005 Annual Report," p. i, at www.sentencingcommission.alacourt.gov/Publications/2005%20Annual%20Report.pdf.

¹⁸ Mike Linn, "Prison Reform Bills Clear House Logjam," *Montgomery Advertiser*, January 18, 2006.

states plainly, “Without adopting permanent long-term comprehensive reform measures, this number will continue to rise.”¹⁹

Other members of the House were less convinced of the effect on overcrowding. “Not a single one of these bills address alternative sentencing, prison overcrowding, and rehabilitation,” noted Rep. James Buskey (D-Mobile).²⁰

3. Build more prisons in the state of Alabama (or otherwise increase capacity).

Given that the state has already greatly expanded the number of beds in existing facilities far in excess of the design specifications, another option is to build new prison facilities. As noted above, the last wholly new state prison built in Alabama was the Bibb Correctional Facility in 1998. Since then, the state’s prison population has increased by around 20 percent, and the current trend indicates more growth. Therefore, there is certainly a need for more facilities in the state.

While building one or more new prisons may sound like an easy solution to the problem, it is an expensive one. In addition, there is no single way to build and operate prisons today. There is the traditional way of directly building and operating prisons by state government, but the state may alternatively contract with a private company to either build or operate a new prison facility (or both).

While Alabama has not had experience with private prison contracting in the past, such agreements are certainly not new. Around half of all states, as well as the federal government, contract some part of their prison systems to one or more private providers. In addition, a private prison has been built in Uniontown, Alabama, via a local agreement between the Perry County Commission and the Louisiana-based LCS Corporation. This facility will house local inmates and inmates from out of state, but the prison operator has no formal agreement with the state for housing state inmates.²¹

Given that the state has tried the first two options with limited success, new construction is likely the only legitimate, long-term option to solve the overcrowding issue. In order to adequately understand the options, a brief history of private prisons is in order, followed by the costs and benefits of implementing this option, compared to a more traditional state-built and -run facility.

A Brief History and Growth of Private Prisons in the United States

As Amy Cheung of the Washington, D.C.-based Sentencing Project notes, “Private sector involvement in prisons is not new—federal and state governments have had a long history of contracting out specific services to private firms, including medical services, food preparation, vocational training, and inmate transportation.”²² That said, the wholesale management of prisons by private operators in the United States only dates back to the 1980s, when the

¹⁹ Alabama Sentencing Commission, “2005 Annual Report,” p. iii.

²⁰ Linn, “Prison Reform Bills Clear House Logjam.”

²¹ Carla Crowder, “Resistance to Private Prison is Strong: Perry Group Raises Several Concerns,” *Birmingham News*, October 28, 2004.

²² Amy Cheung, “Prison Privatization and the Use of Incarceration,” *The Sentencing Project*, September 2004, at www.sentencingproject.org/pdfs/1053.pdf.

Corrections Corporation of America (CCA) won a contract with the federal government to operate a facility in South Texas to house immigration detainees for the Immigration and Naturalization Service (now called the Bureau of Immigration and Customs Enforcement). Then in March 1984, CCA opened the Houston Processing Center, which continues to this day.

Recent growth in America’s private prison industry has been steady. According to the Bureau of Justice Statistics, the number of private facilities under contract to state or federal authorities nearly doubled between 1990 and 1995. The growth in the number of these facilities doubled over the following decade (see Table 1). According to the latest government statistics, there are about 100,000 state and federal inmates in private facilities across the nation, or about 6.6 percent of inmates.²³

Table 1: Number of Private Correctional Facilities in the United States, by Year	
1990	67
1995	110
2005	213

Sources: Bureau of Justice Statistics, “Census of State and Federal Correctional Facilities, 1995,” and the Association of Private Correctional & Treatment Organizations.

Since largely founding the industry in the mid-1980s, CCA remains the leading company, housing roughly half of all privately housed inmates. Other major firms include the Geo Group (previously Wackenhut), LCS Corrections, and the Cornell Companies.

There are perhaps many reasons for the growth and development of private correctional firms over the past few decades. Perhaps the most reasonable explanation of the growth of private correctional facilities is two-fold: (1) the dramatic increase in need for inmate space and (2) the growth in privatization more generally.

Prisoner Population over Time

The prisoner population has risen considerably in the United States since about 1970. Between 1975 and 1985, the state and federal prisoner population doubled, according to the Bureau of Justice Statistics.²⁴ As former University of Florida professor Charles W. Thomas noted, “Nothing of comparable magnitude had ever confronted the American correctional systems all across the nation to seek out alternatives to a business as usual approach.”²⁵

²³ Bureau of Justice Statistics, “Prisoners in 2004,” *BJS Bulletin* NCJ 210677, October 2005. Some estimates of inmates housed by private firms are somewhat higher than 100,000—for example, the Reason Foundation and the Association of Private Corrections and Treatment Organizations estimate some 130,000 beds available—however, this discrepancy is probably a difference in definitions (i.e. rated capacity vs. actual inmates housed and/or type of facilities included).

²⁴ Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics: 1995* (Washington, DC: Bureau of Justice Statistics, 1996), p. 556.

²⁵ Charles W. Thomas, “Testimony Regarding Correctional Privatization,” before the Little Hoover Commission, Sacramento, California, August 21, 1997.

Consequently, an increasing number of federal, state, and local agencies began to contract with a small number of entrepreneurial firms that could quickly adapt to the nation's growing incarceration needs. Indeed, before the Houston Processing Center was first opened, the INS contacted CCA to house detainees sooner than expected. Management of CCA then scrambled to lease housing, secure it, and then open the temporary facility far sooner than the federal government could have itself.²⁶

Growth of Privatization Generally in the United States

Modern social services contracting can trace its roots to the Social Security Act of 1967, which allowed the private procurement of services for individuals and families participating in the Aid to Families with Dependent Children (AFDC) program (or those at risk of enrolling in AFDC). Contracting-out accelerated in 1975 with the Title XX expansion of the Social Security Act.²⁷

By the Reagan Administration in the 1980s, governments at all levels were contracting out for all manner of goods and services. This continued with the “reinventing government” program of the Clinton Administration. With privatization movements occurring in all manner of policy areas, it is little wonder that corrections contracting also took place in the recent past.²⁸

Studies of Private Prisons

Research and debate on private prisons focus on two issues:

1. The philosophical debate as to the propriety of prison contracting; and
2. The cost/benefit analysis of private prisons vs. public prisons.

Since both directly affect the policy debate, both should be discussed here as well.

The Philosophical Debate

In contrast to other privatization efforts, there is a great deal of philosophical debate on the topic of whether private firms should be able to contract with public agencies to provide prison management. This debate has continued for more than 15 years.²⁹

The most prevalent argument against private prisons stems from the notion that prisons are, by nature, an extension of law enforcement, generally considered a primary government activity that should not be contracted out. This argument fails for two reasons. First, prisoners are already incarcerated for their actions (they either already have been arrested or otherwise detained or have been convicted of a crime), so there is a far more limited law enforcement role. Second, private prison contractors often work side by side with law enforcement when issues requiring

²⁶ More on this opening can be found in the online history of CCA at www.correctionscorp.com/ccahistory.html.

²⁷ For more details on this history, see Sheila B. Kamerman and Alfred J. Kahn, “Privatization, Contracting, and Reform of Child and Family Social Services,” The Finance Project, June 1998, at www.financeproject.org/Publications/private.htm.

²⁸ It is also noteworthy that during the 1980s and 1990s, conservative governments in other nations—for example, England and Australia—also began contracting for private prison space. Therefore, this policy change is not unique to the United States.

²⁹ See, for example, Charles H. Logan, *Private Prisons: Cons and Pros* (New York: Oxford University Press, 1990).

law enforcement arise (for example, when inmates riot), so a division of labor already exists between incarceration activities and law enforcement activities.

Other philosophical arguments focus on the “propriety of private prisons,”³⁰ whereby it may be unseemly for private firms to profit from the incarceration of people. This argument would be more persuasive if private firms had influence over the length or type of sentence for the criminal. It is not persuasive, however, because length of sentence is a function of the judicial system.

On balance, it is in the government’s interest to acquire the best public services based on cost and quality. If the best services can be provided by a private entity, then it is in the public interest to contract for these services.

Research on Costs, Benefits, and Quality of Private Prisons

Because the issue is so highly charged, there have been numerous studies on the comparative results of private prisons. These studies tend to focus on one of two areas of interest: cost and quality. Cost studies typically compare the per inmate cost of incarceration between a private facility and one or more comparable facilities. Quality studies analyze the non-economic aspects of private prisons, such as inmate rights, escapes, disturbances, and/or other measures of quality.

Like most privatization efforts, private prison contracts tend to save taxpayer money. Indeed, the main reason for contracting out public services is cost consideration. Twenty years ago, it was difficult, if not impossible, to estimate cost savings, if they existed, by way of these contracts.³¹ More recently, however, a broad range of studies exist that deal directly with comparable costs of private and public prisons.

Recently, the National Institute of Justice published a detailed analysis of the cost and quality issues surrounding the private Taft Correctional Institute, a federal prison managed by the Geo Group in California.³² The researchers concluded that federal taxpayers saved about 10 percent versus what it likely would have cost the federal government to run the facility itself. These cost savings are in line with other recent research on cost.

In 2002, Geoffrey Segal of the Reason Foundation³³ summarized the results of 23 government or university cost studies of private prisons. Most of the private prisons saved money. “This research supports a conservative estimate that private facilities operate at about 10 to 15 percent lower cost than do government facilities,” Segal concluded.

³⁰ Charles W. Thomas, “Testimony Regarding Correctional Privatization,” p. 18.

³¹ See Judith Hackett, Harry Hatry, Robert B. Levinson, Joan Allen, Keon Chi, and Edward D. Feigenbaum, *Issues in Contracting for the Private Operation of Prisons and Jails* (Washington, DC: Council of State Governments and The Urban Institute, 1987), p. 124.

³² Douglas C. McDonald and Kenneth Carlson, “Contracting for Imprisonment in the Federal Prison System: Cost and Performance of the Privately Operated Taft Correctional Institution,” National Institute of Justice, 2005, at www.ncjrs.gov/pdffiles1/nij/grants/211990.pdf.

³³ Geoffrey Segal, “Corporate Corrections? Frequently Asked Questions about Prison Privatization,” Reason Foundation, November 2002, at www.reason.org/corrections/faq_private_prisons.shtml.

Table 2
Cost Savings of Private Prisons

Study	Estimated Savings
Group A	
Louisiana State University, 1996	14–16%
Wisconsin Task Force, 1996	11–14%
Arizona Department of Corrections, 1997	0.17%
Delaware County Pennsylvania, 1999	14–16%
Florida OPPAGA, 2000	3.5–10.6%
Arizona Department of Corrections, 2000	12.23%
Group B	
Hamilton County, Tennessee, 1989	4–8%
Texas Sunset Advisory, 1991	14–15%
Texas Criminal Justice Policy Council, 1991	12.4–20.2%
Florida Corrections Commission, 1993	8–10%
Australia, 1993	23%
Texas Criminal Justice Policy Council, 1993	18.6–22.9%
Australia, 1994	11–28%
Kentucky Department of Corrections, 1994	9%
Texas Criminal Justice Policy Council, 1995	20.5–20.6%
Tennessee Fiscal Review Committee, 1995	0%
United Kingdom, 1996	13–22%
United Kingdom, 1996	11–17%
Washington (TN and LA), 1996	0–2%
Kentucky Department of Corrections, 1996–1997	12%
Texas Criminal Justice Policy Council, 1997	14.9–21%
Texas Criminal Justice Policy Council, 1999	4.4–8.8%
University of Cincinnati, 1999	\$0–\$2.45 per inmate/day
Texas Criminal Justice Policy Council, 2001	10.7–11.3%
Group C	
Urban Institute: KY and MA, 1989	0%
Sellers Study, 1989	37%
California Community Corrections, 1993	0%
National Institute of Corrections: Florida, 1995	0%

Source: Geoffrey Segal and Adrian Moore, "Weighing the Watchmen," 2002.

Table 2 details the results of this survey of cost studies. The authors separate the studies into three different groups. The “A” group is regarded as the most rigorous of the three, usually ones that went to great pains to use reasonable comparison groups. The “B” group of studies use a less rigorous methodology, while the “C” group studies have some identified deficiency. It is noteworthy, however, that almost all of the studies show a cost savings, and none shows that private operators cost more.

Cost savings make sense because governments typically would not be interested in contracting out services if no cost savings can be achieved. State policy in both Texas and Mississippi, for example, prevents contracting out prisons unless there is at least a 10 percent cost savings, and a number of other states have enacted similar policies to ensure cost savings for these contracts.³⁴

³⁴ Deanna Mascle, “Filling a Niche,” *The Lane Report*, September 1999, at www.kybiz.com/lanereport/issues/september99/prison-feat999.html.

On the other hand, quality studies, by their very nature, are more difficult to quantify. Nevertheless, studies of performance measures have focused on contractual performance measures, such as prisoner condition, activities (e.g., work and education programs), and order, American Correctional Association (ACA) accreditation, recidivism, and the like.

Segal and Moore documented the results from more than a dozen quality studies. Once again, they subdivide the studies, this time into two groups, with the “A” group being more methodologically rigorous than the “B” group.³⁵ Again, these studies generally show that private prisons perform well on quality measures, as compared to publicly-run ones (see Table 3).

Table 3
Quality Differences in Private Prisons

Study	Findings
Group A	
Urban Institute: KY and MA, 1989	Quality advantage to private facilities; staff and inmate ratings are higher: fewer escapes and disturbances.
National Institute of Justice—Well Kept, 1991	Private facility outperforms state facility in 7 of 8 dimensions.
Louisiana State University, 1996	Private outperformed government in 5 categories; government outperformed private in 5 categories.
Arizona Department of Corrections, 1997	Private facilities showed superior performance in public safety issues, protecting staff and inmates, and compliance with professional standards.
Juvenile Facilities in United States, 1998	Private facilities outperformed in 23 of 30 indicators.
Florida Recidivism, 1998	Private facilities outperformed in 4 of 5 measures.
Dallas County Judicial Treatment Center, 1997, 1999	Private-program treatment recidivism rate is almost 50% lower than non-participant rate.
OPPAGA, 2000	Private facilities showed satisfactory management with three noteworthy examples of performance.
Arizona Department of Corrections, 2000	Private facilities outperformed 7 of 10 measures in 1998; 5 of 10 measures in 1999.
Bureau of Justice Assistance, 2001	Rates of assault on both inmates and staff are higher at private prisons. Rates of riots and inmate death are higher at government prisons. Private prisons produced "an impressive record of programming activities."
Group B	
National Institute of Corrections: Okeechobee, 1985	No fundamental differences; noted improvements in private operation.
Silverdale Study, 1988	Private facilities ranked high on most issues; other areas had equal positive and negative responses.
Sellers, 1989	Private facilities showed enhanced level of programming and better conditions in 2 of 3 private facilities.
Tennessee Fiscal Review, 1995	Private facilities showed higher overall performance rating.
United Kingdom, 1996, 1997	Private facilities overall outperformed government prisons.
Minnesota Inmate Interviews, 1999	Services at government facilities rate higher.

A final note on quality comes from ACA accreditation. Far more private prisons are accredited by the ACA than public ones. Less than 10 percent of public facilities have been accredited, while about 44 percent of private facilities have been accredited. Many contracts, however, are contingent on ACA accreditation.³⁶

³⁵ Geoffrey Segal and Adrian Moore, “Weighing the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services,” Reason Public Policy Institute, *Policy Brief #290* (Part II), January 2002, at www.rppi.org/ps290.doc.

³⁶ Segal and Moore, “Weighing the Watchmen.”

Similarities and Differences between Private and Public Prisons

The basic operation of both public and private prisons is the same—incarceration. There are, however, a few key differences. First, the construction and management of public prisons are regulated by governmental procurement and personnel policies. Therefore, it is much more likely that prisons will take longer to build and that the cost of labor (guards and other support personnel) will be higher. Given that the state is operating under a court order to deal with the overcrowding issues in the state, the speed at which facilities are built is critically important.

Second, public prison cost structures are affected greatly by administrative overhead. As Charles Thomas observed,

One generally finds that public agencies of all kinds create structures that have a greater number of administrative “layers” and that each layer is “wider” in that each tends to be more labor intensive than what one finds in private corporations. Such “structural inefficiency” dramatically affects administrative overhead costs. Thus, the organizational approach of successful private sector firms provides them with a distinctive advantage.³⁷

Therefore, even if nothing changed about the operation of an existing prison except the management, the state would tend to save on administrative overhead alone. This savings, by itself, is a powerful argument in favor of contracting out prison management.

There are also longer-term cost savings associated with private prisons. While they would typically be eligible for standard health and defined contribution retirement benefits, private prison guards would not be subject to the lavish health and retirement benefits from the State of Alabama. As an example, the Retirement System of Alabama, like many other state pension systems, is facing a funding problem and will need to pay out \$11 billion in benefits in the next few decades;³⁸ moving workers away from both systems would certainly save the state money.

Finally, private sector workers tend to work more days in a year than public sector employees. One estimate indicates, for example, that private sector workers take fewer sick days in a year (four, as opposed to 10, for a public sector worker) and work two more days each month, as compared to public sector workers.³⁹

While cost structures are notably different between public and private prisons, there are far more similarities than differences. Both public and private prisons provide a number of programs for inmates, such as drug treatment, work skills, medical screening/treatment, and religious study opportunities. Indeed, depending on the correctional facility, these programs are usually written into the private prison contract document itself. Thus, the oft-heard criticism that private prisons only incarcerate prisoners and do nothing else for them is incorrect.

Both private and public prison guards receive training in corrections, either as specified by the state, by contract, or by ACA accreditation standards. It is incorrect to argue that private prison

³⁷ Charles W. Thomas, “Testimony Regarding Correctional Privatization,” p. 26.

³⁸ Alan Greenblatt, “Plight of the Benefits,” *Governing Magazine*, April 2006.

³⁹ Wendell Cox, “America’s Protected Class: The Excess Value of Public Employment,” American Legislative Exchange Council *Issue Paper*, June 1994.

guards lack sufficient training. New hires with CCA, for example, receive 120 pre-service hours of training, with an additional 40 hours in-service per year.⁴⁰

Other Benefits of Private Prison Contracting

While cost considerations are often cited as the main reason for contracting out for private prisons, it is not the only potential benefit. There are four other reasons often cited for contracting out prisons:

1. Reduced overcrowding. Obviously, if the state has more prisons available to it, the gross overcrowding issue will be reduced. Since Alabama is again under a court order to reduce overcrowding, this reason is the most pressing to contract out for building. As overcrowding is reduced, the state is provided additional flexibility on sentencing reform; for example, the state can decide to parole fewer existing prisoners if policymakers decide to do so.
2. Predictable costs to the state. Many private prison contracts specify a “per diem” rate, which is a daily rate of reimbursement per prisoner. If the state signs a contract that specifies a certain per diem rate for certain incarceration services, then the state can better budget and manage prison costs.⁴¹
3. Scalability for future use. If a new private prison is built in Alabama, the private operator and the state would tend to select a location whereby the prison itself could be expanded if needed. In addition, private prisons that are not filled to their rated capacity often have the opportunity to import prisoners from other states and localities.
4. Economic development. Prisons offer jobs and economic activity, which may be especially important in rural areas. Economic development is a key reason why the Perry County facility was supported by local policymakers. As Perry County Commission Chairman Johnny Flowers noted, “I feel it’s going to be a win-win situation for Perry County and the State of Alabama.... It will provide about 140 jobs for this area. That’s going to make a big difference. I believe it will altogether change the economic base of our county.”⁴²

Common Arguments against Private Prisons

Opponents of such contracting forward a number of arguments against private prisons, but these are usually insufficient to prevent the state from considering private prison contracting.

Argument 1: Standards will suffer under private management. This argument is, at its root, a quality argument. As noted above, several studies of prison quality generally show that private prisons perform well and often at least comparably to publicly-run ones.

Argument 2: The company could go bankrupt. Well-constructed government contracts of all types often have contingencies in the case of financial difficulty. Many times, these

⁴⁰ See www.correctionscorp.com/myths.html.

⁴¹ Naturally, policymakers would not be able to predict all costs of corrections, given that they do not know how many lawbreakers would be sentenced to serve time in the state’s prisons.

⁴² June Mathews, “Promising Prison: Alabama Detention Facility Holds Economic Hope for Rural County,” *South Central Construction*, February 2006, at www.southcentral.construction.com/features/archive/0602_feature2.asp.

contingencies include the posting of a performance bond as a hedge against bankruptcy. In the process of contractor selection, government procurement officers will often also evaluate a company's record of accomplishment and financials. A number of companies in the United States have the capability of managing a private prison, and if one cannot keep their obligations under the contract, others would be able to step in quickly. After all, if a management company goes bankrupt, most employees, with the possible exception of the management, would still be working at the prison, but under new management. As an alternative, the state could come in and manage the prison if the company could not fulfill its contractual obligations.

Argument 3: The company would “cherry pick” certain inmates. This argument maintains that companies would likely choose more low-security prisoners. According to the Association of Private Correctional and Treatment Organizations, most of the private prison capacity is medium security in rating, and there are an almost equal number of low-security prison beds available as maximum-security beds.⁴³

Argument 4: The company could increase their fees to the state. Competition in the marketplace and a good procurement policy generally prevent fee increases from being a significant problem. With a well-written contract, the state would almost never be required to raise the reimbursement rate during the course of the agreement. In addition, at contract renegotiation time, if the company demands an unreasonable increase in fees, the state could simply give the contract to another firm. Indeed, state procurement policy would require open competition near the end of the contract. The state, therefore, would be able to choose the best contract. Although not always the case, the best contract is usually with the same company.

Practical Considerations in Private Prison Contracting

If Alabama's policymakers decide to contract with a private prison firm, the following are the practical issues to consider (in no particular order):

1. Competitive bidding. Obviously, the bidding process should be open to all companies or other entities (e.g., nonprofit groups) that wish to operate a prison.
2. State-owned or private-owned facility. While most of this paper has focused on the operations of the prison itself, the prison could be designed and/or built, as well, by the private firm to specifications dictated by the state. Governments that contract out for the building of facilities can oftentimes find that the facility is ready for occupancy faster or at a lower price (versus state construction), or both. Given that Alabama is under a court order to increase occupancy, expediency is of paramount concern.
3. Minimum standards in inmate treatment. The state should be very careful with outlining in the Request for Proposal (RFP) the standards of treatment for the inmates, along with the services that will be provided within the prison. Some basic questions will need to be asked. For example, will the facility provide drug treatment services? Will drug treatment services be integrated into the per diem rate for all of the prisoners or billed separately? The same questions hold for medical care, job training/work programs, and the like. Those RFPs that

⁴³ Reason Foundation, “Corrections,” *Annual Privatization Report 2005*, at www.reason.org/apr2005/corrections.shtml.

adequately cover these issues will have fewer problems post-award and will more accurately reflect the underlying costs of providing incarceration and inmate services.

4. Performance contracts. Private firms of all types respond well to incentives. Instituting objective performance measures with financial incentives built in will help assure that quality services are being provided. In addition, the contract should specify performance measures at a variety of times throughout the contract, which would provide some feedback on how well the contractor is performing at a number of times during the contract, as well as provide an evaluation mechanism for the government procurement officials.
5. Periodic contract evaluation/re-bidding cycles. The initial contract term should be between three and five years, long enough to be worthwhile for the company while not so long that it could not be re-evaluated and bid again at regular intervals. State procurement officials should ensure that contract terms are being followed via a series of site inspection audits for compliance purposes. It is important to stress that the contract document should specify the oversight of the private prisons.

These evaluations can provide a good deal of information and allow the state to correct any deficiencies that may arise. As former Virginia state prison commissioner T. Don Hutto, now an executive for a private prison company, observed, “As a director of corrections, I did a better job of monitoring and evaluating private-sector contracts than I did of monitoring and evaluating my own operations. Through the contracting process, government can be more objective about the goals it wants to reach.”⁴⁴

In doing so, most governments tend to be very pleased with private prison operations. It is noteworthy to observe that few private prisons are rescinded or otherwise taken over by the governmental entity. Industrial leader CCA, for example, boasts a 95 percent contract renewal rate.⁴⁵ In addition, one of its first major contracts in 1984 (the Houston Processing Center, noted above) is still in operation by CCA.

Discussion and Policy Recommendations for Alabama

When discussing the implications of this report, returning to the policy options is helpful. Alabama could continue to ship inmates to out-of-state facilities, release more prisoners early via sentencing reform, or provide a mechanism to expand the number of prison beds available. In the very short term, Alabama will likely need to rely on a combination of either or both of the first two solutions. Over a longer period, however, the state should seriously consider the private prison option.

While private prisons typically save the government money, this savings is not always the case. In addition, Alabama’s prisons are already some of the lowest cost facilities in the nation, so cost cannot be the sole consideration.

That said, there are three reasons why private prison construction makes sense for Alabama:

⁴⁴ Geoffrey Segal, “Corporate Corrections? Frequently Asked Questions about Prison Privatization,” Reason Foundation, November 2002, at www.reason.org/corrections/faq_private_prisons.shtml.

⁴⁵ www.correctionscorp.com/aboutcca.html.

1. Private construction would create more prisoner bed space faster, thereby relieving overcrowding. Obviously, the most pressing reason for building new facilities would be to alleviate overcrowding, assuming that policymakers rightly reject more parole or prisoner shipments out of state. The prisons could themselves be built more quickly than state constructed facilities at a lower cost than state construction. One estimate suggests that privately constructed prisons can be completed in half the time, with a total cost savings of between 15 and 25 percent.⁴⁶

Perhaps more importantly, none of the other policy options suggested would be long-term solutions to the overcrowding problem. Recall that the state's Sentencing Commission deemed that these stopgap measures "cannot continue indefinitely" and another solution must be found. In reviewing the benefits and costs or other potential risks to the state, private contracting for prison space seems to be both logical and timely.

2. Private construction could replace many aging facilities in Alabama with more efficient, state-of-the-art prisons. As noted above, the last prison built in Alabama was the Bibb Correctional Facility in 1998. As Table 4 shows, most of the correctional facilities were built decades ago; indeed, these prisons (not including the work release facilities) are more than 30 years old on average.

Some of the correctional facilities (like Draper, Fountain, and Ventress) are more than 50 years old, and may be beginning to outlive their usefulness. The state should begin to consider not only how to house a growing prison population, but also plan for the replacement of obsolete facilities.

Contracting with private firms to build new facilities is a reasonable way to replace these prisons with state-of-the-art facilities. Today's new medium- to maximum-security prisons typically use an "inverted fortress" design, featuring 360-degree views of the perimeter walls, dozens of security cameras broadcasting into a surveillance center, and electronic security doors opened by remote control throughout.⁴⁷

3. Private contracting brings increased flexibility for the state's future incarceration needs. Currently, the prison population in Alabama is increasing by about 100 new inmates per month.⁴⁸ Private prison construction contracts could be structured in phases, to account for growth over time. Operationally speaking, the state could engage a private provider to build a self-contained prison unit on a large parcel of land, with the option to add to the initial unit as needed.

Such expansion contracts are common; indeed, in 2005, the state of Florida expanded three private facilities: Moore Haven, 235 beds (GEO Group); Gadsden, 384 beds (CCA), and Bay, 235 beds (CCA). This expansion came just one year after Florida voted to expand two

⁴⁶ See "Developments in the Law: The Law of Prisons," *Harvard Law Review*, Vol. 115, No. 7. (May 2002), pp. 1838-1963.

⁴⁷ For more on modern prison design, see Building Design & Construction, "State-of-the-Art Maryland Prison Will Be Most Technologically Advanced in the World," available at www.bdcnetwork.com/article/CA6261357.html?industryid=42776.

⁴⁸ Editorial, "Private Prison Blues," *Birmingham News*, March 18, 2006.

other private prisons by more than 500 beds each.⁴⁹ Thus, such arrangements between states and private prison providers are common and can be transferred elsewhere in the country.

Table 4
Alabama’s Correctional Facilities, by Year Built

Facility	Year Built		Facility	Year Built
Alexander City Work Release	1974		Fountain Correctional Facility	1955
Atmore Work Release	1976		Frank Lee Youth Center	1964
Bibb Correctional Facility	1998		Hamilton Aged & Infirm	1981
Birmingham Work Release	1973		Hamilton Work Release	1976
Bullock Correctional Facility	1987		Holman Correctional Facility	1969
Bullock Work Release	1995		Kilby Correctional Facility	1969
Camden Work Release	1976		Limestone Correctional Facility	1984
Childersburg Work Release	1990		Loxley Work Release	1990
Decatur Work Release	1981		Mobile Work Release	1978
Donaldson Correctional Facility	1982		Montgomery Community Work Center	1976
Draper Correctional Facility	1939		Red Eagle Honor Farm	1972
Easterling Correctional Facility	1990		St. Clair Correctional Facility	1983
Elba Work Release	1976		Staton Correctional Facility	1978
Elmore Correctional Facility	1981		Tutwiler Prison for Women	1942
Farquhar State Cattle Ranch	1940		Ventress Correctional Facility	1990

Source: Alabama Department of Corrections, Annual Report, Fiscal Year 2004

In addition to these rationales for private construction contracts, the state also has an excellent opportunity to contract with the new LCS Corrections facility in Perry County to house state inmates. This resource provides at least some immediate relief for the overcrowding problem that does not include out-of-state prisoner transfers, although no more than a few hundred prisoners could be housed in the near term in this facility.

In conclusion, private prison contracting is a policy that the state of Alabama should pursue. It has been used successfully by the federal government and more than 30 other states to house inmates, including all four states bordering Alabama. Given the persistently increasing needs of more prison space—nationwide America incarcerated more than 1,000 individuals every week last year—the overcrowding issue is not one that will soon abate.⁵⁰ Private prison contracting is a policy that can save money and certainly relieve the persistent overcrowding issue.

⁴⁹ Joni James, “Private Prison Contracts May Get a Pass,” *St. Petersburg Times*, May 5, 2005.

⁵⁰ Elizabeth White, “1 in 136 U.S. Residents Behind Bars,” *Associated Press*, May 21, 2006.