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Annual Privatization Report 2011: Corrections and Public Safety

By Leonard Gilroy and Harris Kenny
Edited by Leonard Gilroy and Harris Kenny



Reason Foundation



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Part 1

2011 Corrections Privatization Overview

According to the most recent data compiled by the Bureau of Justice Statistics, 2010 marked the first year in decades that saw an overall decline in the total U.S. prison population from the previous year.¹ The federal and state prison population fell to 1,605,127 million at the end of 2010, down 0.6% from 1,614,355 in 2009 and representing the first decline in the total prison population in nearly four decades. This decline was largely due to a decrease in the total state prison population of 10,881 since 2009, a 0.8% decline driven by a decrease in new prison admissions relative to prison releases. The federal prison population grew over the same time period by 0.8%, or 1,653 prisoners, yielding an overall net decrease in total U.S. prison population of over 9,200 between the end of 2009 and the end of 2010.

Commensurate with the overall decline in the U.S. prison population between 2009 and 2010, the total U.S. prison population housed in privately operated prisons declined by nearly 0.9% from 129,333 in 2009 to 128,195 in 2010.

The biggest development in corrections public-private partnerships (PPPs) in 2011 was the private sector's role in a promising prison reform strategy that, if successful, could dramatically reduce recidivism and transform corrections. Since the emergence of corrections public-private partnerships (PPPs) in the early 1980s, governments at all levels have increasingly partnered with private sector correctional services providers to finance, design, build and/or operate correctional facilities and to deliver a wide array of correctional services. Similar to PPPs in other areas of government-provided services, partnerships in corrections can be used in a variety of ways, including the financing and construction of new correctional facilities, contracts for private prison beds to relieve inmate overcrowding, and the delivery of an array of services (e.g., healthcare, food services, transportation, etc.) that reduces corrections costs for struggling budgets. However, policymakers in the United Kingdom and Florida are currently advancing policies that would evolve the model further by leveraging the power of PPPs and performance-based contracting to make recidivism reduction a central aim of privatization, with partnerships structured to hold private correctional service providers directly accountable for offenders' post-release outcomes. Part 2 of this report examines these innovations in detail.

At the federal and state level, the use of corrections PPPs has grown steadily over the past decade. The number of federal and state prisoners held in private facilities has also increased significantly since 2000, as shown in Table 1. At the federal level, the total prison population rose from 145,416 in 2000 to 209,711 in 2010, an increase of 44%. By contrast, the number of federal prisoners housed in private facilities has risen by nearly 118% over that same period (from 15,524 in 2000 to 33,830 in 2010), illustrating federal agencies' growing preference to rely on PPPs for new capacity, as opposed to developing government-run facilities. Accordingly, the share of federal prisoners housed in private prisons increased from 10.7% in 2000 to 16.1% in 2010.

At the state level, the share of offenders held in private facilities has also increased since 2000. The total state prison population rose from 1,245,845 in 2000 to 1,395,356 in 2010, a 12% increase. The number of those state prisoners housed in private facilities rose from 71,845 in 2000 to 94,365 in 2010 over that same time period, a 31% increase. Overall, the share of state prisoners housed in private prisons increased slightly from 5.8% in 2000 to 6.8% in 2010.

Taken together, the total federal and state prison population increased by over 15% from 2000 to 2010, rising from 1.39 million to 1.6 million (see Table 2). By comparison, the federal and state inmate population housed in private facilities increased by 47% over the same time period and now accounts for approximately 8% of the total prison population. While these data certainly reflect an increasing reliance on corrections PPPs by federal and state officials over the last decade, the vast majority of inmates—approximately 92%—continue to be housed in government-run prisons.

Year	Total Federal Prison Population	Federal Population in Private Facilities	% Federal Population in Private Facilities	Total State Prison Population	State Population in Private Facilities	% State Population in Private Facilities
2000	145,416	15,524	10.7%	1,245,845	71,845	5.8%
2001	156,993	19,251	12.3%	1,247,039	72,577	5.8%
2002	163,528	20,274	12.4%	1,276,616	73,638	5.8%
2003	173,059	21,865	12.6%	1,295,542	73,842	5.7%
2004	180,328	24,768	13.7%	1,316,772	73,860	5.6%
2005	187,618	27,046	14.4%	1,340,311	80,894	6.0%
2006	193,046	27,726	14.4%	1,376,899	85,971	6.2%
2007	199,618	31,310	15.7%	1,398,627	92,632	6.6%
2008	201,280	33,162	16.5%	1,408,479	96,320	6.8%
2009	208,118	34,087	16.4%	1,406,237	95,246	6.8%
2010	209,771	33,830	16.1%	1,395,356	94,365	6.8%
Average annual % change, 2000–2009	4.1%	9.1%	-	1.4%	3.2%	-
Percent change, 2009–2010	0.8%	-0.8%	-	-0.8%	-0.9%	-

Source: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2010*, December 2011, pp. 14, 30.

Note: 2000-2009 average annual percent change and 2009–2010 percent change calculated by author.

Table 2: Change in Private Prison Population (2000-2010)

Year	Total Federal and State Prison Population	Federal and State Population in Private Facilities	% Federal and State Population in Private Facilities
2000	1,391,261	87,369	6.3%
2001	1,404,032	91,828	6.5%
2002	1,440,144	93,912	6.5%
2003	1,468,601	95,707	6.5%
2004	1,497,100	98,628	6.6%
2005	1,527,929	107,940	7.1%
2006	1,569,945	113,697	7.2%
2007	1,598,245	123,942	7.8%
2008	1,609,759	129,482	8.0%
2009	1,614,355	129,333	8.0%
2010	1,605,127	128,195	8.0%
Average annual % change, 2000–2009	1.7%	4.5%	-
Percent change, 2009–2010	-0.6%	-0.9%	-

Source: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2010*, December 2011, pp. 14, 30.

Note: 2000–2009 average annual percent change and 2009–2010 percent change calculated by author.

State usage of corrections PPPs varies considerably, as shown in Table 3. Some states have large numbers of their inmate populations in privately operated facilities—including New Mexico (43.6%), Montana (40.4%), Alaska (33.5%) and Vermont (27.0%)—while other states make limited use of corrections PPPs, including Pennsylvania (2.0%), North Carolina (0.5%), Maryland (0.3%), Wisconsin (0.1%) and South Dakota (0.1%).

Table 3: Federal and State Prisoners in Private Facilities, by Jurisdiction, 2000 and 2010

Jurisdiction	Total Inmates (2000)	Inmates in Private Facilities (2000)	Privatization Rate (2000)	Total Inmates (2010)	Inmates in Private Facilities (2010)	Privatization Rate (2010)
Alabama	26,332	0	0.0%	31,764	1,024	3.2%
Alaska	4,173	1,383	33.1%	5,597	1,873	33.5%
Arizona	26,510	1,430	5.4%	40,130	5,356	13.3%
Arkansas	11,915	1,540	12.9%	16,204	0	0.0%
California	163,001	4,547	2.8%	165,062	2,170	1.3%
Colorado	16,833	n/a	n/a	22,815	4,498	19.7%
Connecticut	18,355	0	0.0%	19,321	883	4.6%
Delaware	6,921	0	0.0%	6,598	0	0.0%
Florida	71,319	3,912	5.5%	104,306	11,796	11.3%
Georgia	44,232	3,746	8.5%	49,164	5,233	10.6%
Hawaii	5,053	1,187	23.5%	5,912	1,931	32.7%
Idaho	5,535	1,162	21.0%	7,431	2,236	30.1%
Illinois	45,281	0	0.0%	48,418	0	0.0%
Indiana	20,125	991	4.9%	28,028	2,817	10.1%
Iowa	7,955	0	0.0%	9,455	0	0.0%
Kansas	8,344	0	0.0%	9,051	0	0.0%

Table 3: Federal and State Prisoners in Private Facilities, by Jurisdiction, 2000 and 2010						
Jurisdiction	Total Inmates (2000)	Inmates in Private Facilities (2000)	Privatization Rate (2000)	Total Inmates (2010)	Inmates in Private Facilities (2010)	Privatization Rate (2010)
Kentucky	14,919	1,268	8.5%	20,544	2,127	10.4%
Louisiana	35,207	3,068	8.7%	39,445	2,921	7.4%
Maine	1,679	11	0.7%	2,154	0	0.0%
Maryland	23,538	127	0.5%	22,645	70	0.3%
Massachusetts	10,722	0	0.0%	11,312	0	0.0%
Michigan	47,718	449	0.9%	44,113	0	0.0%
Minnesota	6,238	0	0.0%	9,796	0	0.0%
Mississippi	20,241	3,230	16.0%	21,067	5,241	24.9%
Missouri	27,543	0	0.0%	30,623	0	0.0%
Montana	3,105	986	31.8%	3,716	1,502	40.4%
Nebraska	3,895	0	0.0%	4,587	0	0.0%
Nevada	10,063	508	5.0%	12,653	0	0.0%
New Hampshire	2,257	0	0.0%	2,761	0	0.0%
New Jersey	29,784	2,498	8.4%	25,007	2,841	11.4%
New Mexico	5,342	2,155	40.3%	6,659	2,905	43.6%
New York	70,199	0	0.0%	56,656	0	0.0%
North Carolina	31,266	330	1.1%	40,116	208	0.5%
North Dakota	1,076	96	8.9%	1,487	0	0.0%
Ohio	45,833	1,918	4.2%	51,712	3,038	5.9%
Oklahoma	23,181	6,931	29.9%	26,252	6,019	22.9%
Oregon	10,580	0	0.0%	14,014	0	0.0%
Pennsylvania	36,847	0	0.0%	51,264	1,015	2.0%
Rhode Island	3,286	0	0.0%	3,357	0	0.0%
South Carolina	21,778	0	0.0%	23,578	17	0.1%
South Dakota	2,616	45	1.7%	3,434	5	0.1%
Tennessee	22,166	3,510	15.8%	27,451	5,120	18.7%
Texas	166,719	13,985	8.4%	173,649	19,155	11.0%
Utah	5,637	208	3.7%	6,807	0	0.0%
Vermont	1,697	0	0.0%	2,079	562	27.0%
Virginia	30,168	1,571	5.2%	37,410	1,560	4.2%
Washington	14,915	0	0.0%	18,235	0	0.0%
West Virginia	3,856	0	0.0%	6,681	0	0.0%
Wisconsin	20,754	4,337	20.9%	22,724	25	0.1%
Wyoming	1,680	275	16.4%	2,112	217	10.3%
State Total	1,245,845	71,845	5.8%	1,395,356	94,365	6.8%
Federal	145,416	15,524	10.7%	209,771	33,830	16.1%
U.S. Total	1,391,261	87,369	6.3%	1,605,127	128,195	8.0%

Sources: *Total Inmates (2000, 2010)*: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2010*, pp. 14, 31.

Inmates in Private Facilities (2000, 2010): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2010*, p. 31.

Privatization Rate (2000, 2010): Inmates in Private Facilities divided by Total Inmates, by year.

Part 2

Florida, U.K. Launch Transformative Innovations in Correctional Privatization to Reduce Recidivism, Lower Costs

Ongoing fiscal challenges and persistently high recidivism rates are presenting an opportunity for policymakers and correctional administrators to transform and right-size correctional systems, both in traditional public sector corrections operations and in government partnerships with private corrections management firms and other service providers. New innovations from Florida and the United Kingdom designed to lower costs while reducing recidivism represent major advances on this front, and ones that policymakers elsewhere may begin to consider.

Though different in structure, both involve large-scale expansions of the use of privatization and public-private partnerships (PPPs), and both rely extensively on incentivizing better performance in offender rehabilitation by tying funding to the achievement of measurable results in recidivism reduction.

A. Innovation in Florida: Continuum of Care in South Florida

In May 2011, Florida Gov. Rick Scott signed into law a state budget that authorized a cutting-edge PPP that will privatize nearly all correctional facilities and services in south Florida. Far from a typical outsourcing, it represents a groundbreaking approach to corrections PPPs that will hold providers directly accountable for reducing recidivism, expanding offender treatment and programming and achieving other key rehabilitation and safety goals.

Under the new Florida initiative, the state is seeking to privatize nearly all correctional facilities and services within an 18-county region of south Florida, and the resulting contract is required under law to include a range of over 40 performance measures that include reducing recidivism, expanding offender treatment and programming, and achieving other key rehabilitation and safety goals. For example, the original budget language and the request for proposals later issued by the

state detail a range of mandatory performance criteria vendors will be evaluated on, including, but not limited to:

- percentage of inmates who successfully complete transition, rehabilitation or support programs without subsequent recommitment to community supervision or prison for 24 months after release;
- percentage of inmates successfully completing drug abuse education or treatment programs;
- number of inmates receiving substance abuse services;
- percentage of inmates successfully completing mandatory literacy, GED education and vocational education programs;
- percentage of inmates needing special education programs who participate in special education (federal law) programs;
- average increase in grade level achieved by inmates participating in educational programs;
- the number of batteries committed by inmates on one or more persons per 1,000 inmates; and
- the number of escapes from the secure perimeter of major institutions.

Overall, this new PPP approach is expected to align the financial incentives of the private sector with government's goals of maintaining public safety, reducing recidivism, improving rehabilitation and lowering costs. However, the privatization initiative will not proceed unless the state realizes savings of at least 7%, as required under state law.

Central to achieving the co-equal goals of spending reduction and improved performance in rehabilitation is the structure of the privatization initiative, which bundles up the bulk of correctional services in a large geographic area under one contract. The key to Florida's proposed PPP lies in applying a continuum of care approach that coordinates and links evaluations, programs and resources for an inmate across all facilities and levels of care, maximizing the effect of the care and programming he receives. According to proponents, spending a lot of resources on uneven, uncoordinated programming for an inmate across various facilities and levels of care delivers a poor return on expenditures, and coordination across a continuum of care would maximize the value of every tax dollar spent.²

Florida's privatization initiative will be the first attempt to create a continuum of care in corrections, one expected to yield hundreds of millions in savings over the long term by strategically tying cost savings to improvements in system performance. Though targeted for completion by the end of 2011, the procurement for this PPP was placed on a temporary hold in the fall of 2011 pending the resolution of a lawsuit filed by the Florida Police Benevolent Association—the public employee union representing state prison guards—seeking to thwart the initiative on constitutional grounds.

In September 2011, a Leon County Circuit Court judge ruling on the lawsuit found the privatization initiative unconstitutional on a technicality, arguing that such sweeping changes should have been passed as a stand-alone piece of legislation, as opposed to being embedded in the larger state budget. Florida Attorney General Pam Bondi appealed the decision on behalf of the legislature, and at press time, the legal challenge was ongoing.

In early 2012, legislative leaders were unsuccessful in advancing a stand-alone privatization bill that would have rendered moot the union lawsuit, so this initiative is likely to remain stalled until either the legal challenge is resolved or Governor Scott directs the state corrections agency to re-launch the procurement. Separately, the International Brotherhood of Teamsters union filed an ethics complaint over donations to Governor Scott's inaugural committee from several private corrections firms likely to bid on the procurement, but the Florida Commission on Ethics dismissed the complaint in October 2011, citing no legal basis for the charge.

B. Innovation in the U.K.: Payment by Results

The Florida initiative draws inspiration from some of the criminal justice reforms underway in the United Kingdom (U.K.). Like a number of U.S. states, the U.K. is struggling with the combination of ongoing fiscal pressures, rising corrections costs and persistent recidivism, and it too is embracing an expanded private sector role in service delivery as part of the nation's larger criminal justice reform strategy.

In April 2011, the U.K. Ministry of Justice announced the results of a procurement for the operation of four prisons that resulted in three new prison contracts estimated to save over \$350 million (USD) over their lifetime, with one representing the first of several pilot projects for a groundbreaking "payment by results" (PBR) approach.

After evaluating competitive bids from private firms and the public sector (HM Prison Service), the Ministry selected the firm G4S to take over operations of HMP Birmingham—representing the first privatization of the operations of an existing U.K. prison; all of the nation's privately operated facilities had previously been "new build" projects—and the new HMP Featherstone 2 is set to open in the spring of 2012. Another facility (HMP Buckley Hall) will remain under public operation by HM Prison Service.

But it is the fourth contract—HMP Doncaster, which will continue to be operated by the firm Serco—that has captured the most attention, as it represents the first PBR pilot project. Though different in structure, the PBR approach underway at HMP Doncaster is conceptually similar to Florida's current privatization initiative in that both are rooted in incentivizing private corrections management firms to reduce recidivism rates through an increased focus on treatment, programming and rehabilitation services.

In the U.K.'s case, 10 percent of Serco's payment for operating the Doncaster facility will only be payable if the operator reduces the one-year reconviction rates of released offenders by at least five percentage points. In essence, the private prison operator will be paid more for keeping offenders from coming back to prison. To implement the initiative, Serco will partner with the nonprofits Turning Point and Catch 22, along with others in the private, social enterprise, charity and voluntary sectors to target the specific needs of individual offenders. The pilot at HMP Doncaster will include the vast majority of offenders within the prison.

According to U.K. Justice Secretary Ken Clarke, the new contract price for HMP Doncaster will deliver significant annual savings as well as the much wider social benefit of a potential reduction in crime. In an April press release, Clarke noted that:

Public protection is not just about how we manage prisons in order to punish people. It is also about how we achieve genuine and long-lasting reductions in crime, by cutting reoffending. I am particularly pleased therefore to be able to announce that for the first time, the contract award for HMP Doncaster will include an element of Payment by Results. Payment by Results is central to our rehabilitation reform plans because it means that we can concentrate resources on what works to reduce reoffending. The contract for HMP Doncaster is an important first step towards fulfilling this commitment.

Today's announcement shows that competition has a significant role to play in delivering value for money, better outcomes and broader reform. I encourage providers from any sector to rise to the challenge: the public should expect safety and security and better results to go hand in hand with efficiency and innovation.

In October 2011, the U.K. Ministry of Justice launched a second, much larger procurement for the operations and maintenance of 9 prisons, soliciting qualifications from interested bidders on a package of contracts worth an estimated total value of \$3.3 billion (USD).

According to Inspiratia.com, qualified bidders can submit proposals to operate up to 6 of the 9 prisons, though the Ministry has capped the total number of facilities to be awarded to any single bidder at no more than four.³ Each of the facilities would operate under a 15.5-year concession, with an early termination option after 7.5 years.

The 9 prisons include HMP Acklington, HMP Castington, HMP Coldingley, HMP Durham, HMP Hatfield, HMP Lindholme, HMP Moorland, HMP Onley and HMP Wolds. Eight of the facilities are currently under public sector operation, while HMP Wolds is currently operated by the firm G4S and is up for contract rebidding.

At press time, it was unclear how many of the 9 facilities would ultimately be transferred to private operation, as the Ministry may decide to keep some under public sector operation, as it did with the HMP Buckley Hall facility earlier in the year. It was also unclear at the initial stage of procurement if the Ministry would expand the current PBR pilot to any of the 9 facilities up for bid as the procurement process moves forward.

However, PBR integration is likely, as the Ministry has announced plans to expand PBR to all U.K. prisons by 2015. BBC News reported in October 2011 that the publicly run HMP Leeds prison will be the first public sector prison to have its funding subject to PBR, and it will begin to partner with external charities and nonprofits on integrated schemes to reduce recidivism in 2012.⁴

Separately, the U.K. launched another PBR variant in the Peterborough prison in late 2010 through the first pilot of a “social impact bond,” whereby private investors finance and arrange the delivery of public services on behalf of a government agency and are only repaid by the public sector if they meet a range of program performance measures.

Social Finance, the U.K.-based organization that originally developed the social impact bond concept, raised \$7.8 million USD from 17 social investors to fund the Peterborough pilot.⁵ It will partner with social sector organizations like the St. Giles Trust, Ormiston Trust and YMCA to provide intensive support to prepare approximately 3,000 short-term, male prisoners for release, working with them both before and after release to prevent re-offending. If recidivism drops by more than 7.5% within six years, investors receive a payment representing a share of the long-term savings from avoided recidivism, with up to a 13% return if they exceed the target. Conversely, investors will receive no return if they fail to meet that target.

C. Conclusion

Though different in structure, both the Florida and U.K. initiatives target the same goals: reorienting the corrections system away from a central focus on incarceration and placing a heavier emphasis on rehabilitation and recidivism reduction. Perhaps more significantly, both jurisdictions are expanding and transforming the role for the private sector to achieve these goals, using privatization and PPPs as mechanisms to drive improved performance in offender rehabilitation. If ultimately successful, both initiatives are likely to draw significant attention and inspire similar efforts in other states and nations grappling with their own spending and criminal justice challenges.

Part 3

State Spotlight: Ohio

In September 2011, the Ohio Department of Rehabilitation and Correction announced the results of a large-scale procurement that will see the state raise \$72 million from the sale of one state prison to a private operator—the first sale of its kind in the nation—and two others turned over to private management, for an estimated \$13 million in annualized cost savings. The procurement was part of a larger initiative advanced by the administration of Gov. John Kasich that shifted the operation and/or ownership of five state correctional facilities in a move designed to help improve safety, reduce daily operating expenses and reduce the state’s long-term fiscal burden.

Under the initiative:

- The state will sell the Lake Erie Correctional Institution to Corrections Corporation of America for \$72.7 million and will contract with the new owner to continue housing state inmates there, representing the first “sale plus operations” corrections contract in the United States. The company’s operating costs are expected to be 8% less than estimated state operational costs, generating a projected \$3 million in annual savings.
- Management and Training Corp. (MTC) will take over operations of the North Central Correctional Institution and the currently vacant Marion Juvenile Correctional Facility. Both facilities will remain state-owned, and they will be operated for 6% less than the state’s estimated in-house operational costs, yielding \$3 million in projected annual savings.
- One additional facility currently operated by MTC—the North Coast Correctional Treatment Facility—will be brought back under state operation through a consolidation of the facility with the state-run Grafton Correctional Institution. ODRC anticipates that the merger will provide an estimated savings of over \$7 million beyond FY 2011 expenditures through the consolidation of administrative operations and costs.

The state’s biennial budget signed in June 2011 authorized the Department to sell up to five prisons to help close the state’s budget deficit and reduce corrections costs. ODRC estimated that it could receive \$200 million in cash payments from the sale of these five facilities overall, but the agency’s budgetary obligation was for only \$50 million in upfront cash. Hence, the state’s procurement was designed to be flexible and allow for any number of outcomes to obtain the best possible financial deal for the state.

Vendors were allowed to submit bids encompassing purchase, operation and management of particular facilities, as well as just operation and management. The final project mix reflects the best negotiated options the state received from those bid scenarios, and the final sale amount (\$72.7 million) and annual cost savings (\$13 million) exceeded the minimum targets set by ODRC (\$50 million and \$6.6 million, respectively). Further, Ohio law requires private prisons to realize at least 5% annual savings over the cost of similar publicly run facilities, and the announced agreements of 8% annual savings at Lake Erie and 6% at the North Central and Marion facilities exceed this legal requirement.

“The safety of prison staff and effective rehabilitative programs are the top priority,” said ODRC Director Gary Mohr in a September 2011 press release. “Reducing our costs and bringing in new innovative management allows us to better achieve those priorities. [...] Our prisons will now provide the taxpayers a greater value, while remaining safe for the communities in which they are located.”

In the end the Department ultimately opted to pursue a mix of asset sales, outsourced facility operations and facility consolidation/insourcing. To help address overcrowding, the state will gain an estimated 702 prison beds as part of the initiative; the Marion complex will gain an additional 398 beds, with another 304 beds added at the Lake Erie Correctional Institution.

The advocacy group Progress Ohio has filed a lawsuit against the state challenging the Ohio prison deal on constitutional grounds. At press time, no court decision had been issued. According to ODRC, lawsuit-related delays in implementation could have a significant fiscal impact, as the savings from privatization is built into the agency’s FY 2012 operating budget. The agency estimates that it could lose over \$1 million each pay period that the process is delayed beyond January 1, 2012, necessitating a potential mix of additional prison closures, spending cuts and employee layoffs.

Part 4

State Spotlight: California

California's correctional system is in a state of crippling disrepair. The latest confirmation of the state's prison woes came in the form of the U.S. Supreme Court's *Brown v. Plata* decision in May 2011, which ruled California must reduce overcrowding at its prisons in order to improve conditions currently so poor as to be unconstitutional.

In 2009, a three-judge court was convened after California failed to fully comply with two federal district court rulings regarding the constitutionality of inmate care (*Plata v. Brown* and *Coleman v. Brown*.) The three-judge court found that overcrowding continues to be the primary cause of the violations of the inmates' rights to medical care (*Plata*) and mental health care (*Coleman*) during incarceration. At the time, California held about 156,000 inmates in a system designed for less than 80,000 inmates, representing utilization at almost twice the design capacity.

In its *Brown v. Plata* ruling, upholding both the two federal district court rulings and the three-judge court ruling, the Supreme Court found:

The medical and mental health care provided by California's prisons falls below the standard of decency that inheres in the Eighth Amendment. This extensive and ongoing constitutional violation requires a remedy, and a remedy will not be achieved without a reduction in overcrowding.⁶

Notes from the *Brown v. Plata* case reveal just how bad conditions are in California's prisons. In one state-run prison two hundred inmates are living in a gymnasium, sometimes monitored by only two or three guards. In another, 54 inmates share one toilet. Mental health care is a serious problem, too. As the decision relates:

Prisoners in California with serious mental illness do not receive minimal, adequate care. Because of a shortage of treatment beds, suicidal inmates may be held for prolonged periods in telephone booth sized cages without toilets. A psychiatric expert reported observing an inmate who had been held in such a cage for nearly 24 hours, standing in a pool of his own urine, unresponsive and nearly catatonic. Prison officials explained they had "no place to put him."⁷

In the high court's majority ruling, Justice Anthony M. Kennedy even took the unusual step of including pictures of some of the violative conditions in his decision. Such conditions likely contributed to a suicide rate the Court cited as "approaching an average of one per week," 80 percent higher than the national average. Furthermore, the Court concluded, during 2006 and 2007,

“a preventable or possibly preventable death occurred once every five to six days.” Ultimately the state has two years to reduce its system-wide prison population at or below 137.5 percent of the prison design capacity.

California Gov. Jerry Brown had previously outlined a realignment proposal that would shift approximately 41,000 low-level criminals guilty of non-serious, non-violent crimes from state jurisdiction to local jurisdictions over a four-year period. The proposal also calls for shifting responsibility for parole violators, all adult parolee services, and juvenile offenders currently overseen by the Division of Juvenile Facilities to the local level. After the Supreme Court’s ruling Gov. Brown issued a press release touting the recently passed inmate transfer bill, Assembly Bill (AB) 109, which enables the state to transfer certain types of felony offenders to county jails rather than state prisons. In writing the Opinion of the Court, Justice Kennedy acknowledges AB 109 as progress toward relieving overcrowding.

But transferring tens of thousands of inmates to counties is easier said than done. First, the state needs to figure out how to compensate county jails for these inmates, making it a burdensome liability at a time when many local governments are struggling with their finances as much as is the state. Gov. Brown’s Realignment calls for providing local jurisdictions with \$212 million in revenues in fiscal year 2011–12 and \$821 million by 2014–15 when the plan would be fully implemented. However, the funding has not yet been approved and is expected to come from Gov. Brown’s tax hike extension proposal. Table 4 below outlines the estimated inmate population reductions required for compliance with the ruling.

Table 4: Estimated Inmate Population Reductions to Meet <i>Brown v. Plata</i> Ruling			
Court–Imposed Deadlines	Design Capacity Limit	Population Limit	Population Reduction ^a
27-Dec-11	167.00%	133,000	11,000
27-Jun-12	155	123,000	10,000
27-Dec-12	147	117,000	6,000
27-Jun-13	137.5	110,000	7,000 ^b
Two–Year Total			34,000

^a Relative to July 13, 2011 state prison population of 143,493. ^b Author calculation to correct error in LAO data table.

Source: Reducing Prison Overcrowding in California, Legislative Analyst’s Office, August 5, 2011.

http://www.lao.ca.gov/reports/2011/crim/overcrowding_080511.aspx

The Legislative Analyst’s Office (LAO) published an extensive review of the California corrections system entitled, “Reducing Prison Overcrowding in California,”⁸ that outlines the latest information on this issue. According to LAO, the state has already undertaken, or is in the process of implementing, the following measures:

- **Various 2009–10 Statutory Changes** Lawmakers have amended several state laws related to reducing inmate prison stay and reforming parole, and increasing the dollar threshold for certain property crimes to be considered a felony. It’s difficult to calculate the exact impact of these sentencing reforms.

- **Out-of-State Transfers** As Reason Foundation reported in *Annual Privatization Report 2010*, former Governor Schwarzenegger effectively partnered with the private sector to relieve overcrowding, enabled by declaring a state of emergency in the prison system. Today, the California Department of Corrections and Rehabilitation (CDCR) has almost 15,000 inmates in privately operated facilities (roughly two-thirds out-of-state and one-third in-state).
- **AB 900 Prison Construction Plan** AB 900 was enacted by the state legislature in 2007, which included authorizing \$6.5 billion for construction of increased prison capacity. Several projects are in progress from these funds, but they have not been fully taken advantage of.
- **Realignment of Certain Adult Offenders and Parolees** This includes AB 109 and AB 117—both effectively enabling Gov. Brown’s Realignment.

While it is difficult to attribute individual policy changes with changes in prison population, LAO was able to identify several broad takeaways. Past population reeducation measures are unlikely to have further impact on prison population. In fact, if nothing else changes, CDCR projects inmate population will increase by several thousand over the next five years. While there has been discussion of reducing contract beds, LAO concludes this would increase overcrowding. Further, publicly funded capacity expansion is not expected to have a significant impact over the next two years.

LAO concludes, “even though the prison population will be dramatically reduced through Realignment, it appears likely that the department will fall short of meeting the court’s deadlines for reducing the population of the institutions to 137.5 percent of their design capacity *within two years*.”⁹

Ultimately, LAO provides state officials the following three recommendations:

1. Encourage Gov. Brown’s administration to request more time to comply;
2. Have the legislature reconsider the AB 900 construction plan; and
3. Maintain out-of-state contract beds at privately operated facilities for now.

CDCR’s treatment of Community Correctional Facilities (CCF) has led some to question Gov. Brown’s approach to solving the overcrowding crisis. In December CDCR announced the final eight remaining contracts with CCF expired as the state reduces the number of offenders eligible to be housed in CCF. In the past, the department has used CCF to house minimum- and medium-custody inmates, virtually the same population that under Realignment will be housed in local jails. However, CCF have been a relatively cost-effective resource costing an average daily rate of \$55.68 per contracted bed.¹⁰ An average bed in a state-run prison (across all custody levels) costs an average of \$162 per day.¹¹

CDCR will only maintain its contract with Golden State Modified Community Correctional Facility (GSMCCF) in Kern County. The facility houses 600 Level I/II (Level IV being the highest

security level) adult male inmates. The CDCR's Community Correctional Facilities Administration was deactivated effective December 1, 2011. Oversight of the remaining community correctional facility, GSMCCF, will be maintained under CDCR's Contract Bed Unit, which oversees California's out-of-state correctional facilities contracts.

With the expiration of the CDCR contracts, as of press time there are 2,321 public and 2,903 private CCF beds available in **Fresno, Kern, Los Angeles, Lassen, San Bernardino and Sutter Counties.**¹²

Separately, Gov. Brown elected to stop sending California inmates to GEO Group's North Lake Correctional Facility in **Baldwin, Michigan**. The facility opened in May 2011 and was expected to eventually house over 2,500 California inmates. GEO will retain minimal staffing levels at North Lake in case an agreement is reached with another state to lease the facility.

Part 5

State Spotlight: Arizona

Correctional public-private partnerships (PPPs) remain a prominent issue in Arizona in the aftermath of a 2010 inmate escape from a privately operated prison that focused attention not only on the Arizona Department of Corrections' (ADOC) oversight of private prisons, but the agency's security policies and procedures system-wide. For the last year, the agency has focused on implementing a wide range of internal policies to enhance the oversight and operation of private prisons, which has generated significant improvements but also contributed to delays in two large-scale, ongoing procurements for new prison facilities and private operation of the state's correctional healthcare system whose previously expected completion was 2011.

In 2009, the state legislature directed ADOC to issue a request for proposals for 5,000 beds in new, privately operated prisons. ADOC initiated this procurement in early 2010, soliciting private proposals for a 20-year contract to deliver 5,000 beds of new prison capacity for minimum- and medium-security inmates. However, the 5,000-bed procurement was subsequently cancelled in the wake of the July 2010 escape of three inmates from Arizona State Prison-Kingman, a 3,200-bed, medium-security prison operated by MTC.

The three escapees and an accomplice were all subsequently captured, but only after a prolonged, national manhunt during which fugitives allegedly murdered a couple in New Mexico. As discussed in Reason Foundation's *Annual Privatization Report 2010*, ADOC temporarily suspended inmate transfers to the facility after the escape and initiated reviews of prison operations at that facility and the agency's larger system of managing private corrections contracts.

ADOC subsequently reissued the 5,000-bed RFP in late January 2011, incorporating a variety of new agency policies adopted to enhance the safety and oversight of private prisons, including revised bid evaluation criteria, revamped auditing procedures, more stringent performance assessment and additional financial penalties for vendor underperformance. ADOC asked bidders to submit proposals that would deliver at least 2,000 beds by April 2013 and an additional 3,000 beds by April 2015.

In February, ADOC received proposals from five firms—Corrections Corporation of America (CCA), The GEO Group (GEO), Management and Training Corporation (MTC), Emerald Correctional Management and LaSalle Correctional Management—and began a months-long process of initial proposal evaluation, clarification from vendors on submitted proposals and final proposal evaluation. In July, ADOC announced four final bids—all but Emerald's proposal

advanced to the final stage of the procurement—as well as a series of public hearings in the potentially affected counties, required under state law before a contract can be awarded.

Despite expectations of a final contract award in September, the procurement remained open at press time, delayed largely by a lawsuit filed by the American Friends Service Committee (AFSC)—a Quaker advocacy group opposed to private prisons—seeking to prevent ADOC from signing a contract for the new facilities until the agency completes a biannual report on the comparative costs, operations and quality of public and private prisons, as required under state statutes.

In October 2011, a Maricopa County Superior Court judge dismissed the AFSC lawsuit for lack of legal standing, but AFSC announced it would appeal the lawsuit dismissal and seek an injunction on contract approval. The lawsuit may ultimately be rendered moot, however, as ADOC Director Charles Ryan told legislators in November 2011 that the public-private comparison report was nearly complete and will be submitted to the state legislature in January 2012, before any contract announcement is made.¹³

Along with the prison capacity expansion, ADOC's multi-year effort to hire a vendor to take over the state's correctional healthcare system appears to be moving forward despite procurement delays. Pursuant to a 2009 legislative directive, ADOC issued an RFP in 2010 to solicit private bids on taking over the department's entire delivery of correctional healthcare services. ADOC received six proposals from correctional healthcare providers, but the procurement stalled in 2011 amid shifting internal healthcare costs at the agency.

The 2009 legislation required ADOC to solicit bids from private correctional healthcare firms, but it mandated that any winning bid could not exceed the amount the agency spent on healthcare in FY 2008 (\$137.3 million). However, ADOC was subsequently allowed to pay lower Medicaid rates, lowering the agency's total healthcare cost to \$122 million in FY 2010 and prompting ADOC to cancel the procurement to account for the new cost numbers.¹⁴

State policymakers took action in 2011 to move the correctional healthcare initiative forward without the cost requirements. In April, Gov. Jan Brewer signed into law an emergency measure enacted by the legislature (House Bill 2154) directing ADOC to issue a new request for information from potential bidders on the correctional healthcare initiative, without a requirement to cap contract costs at the 2008 level. Ten vendors submitted responses to the request for information, which ADOC used to develop a request for proposals issued in October 2011. Vendor responses are due in late December 2011, with a potential contract award in the spring of 2012. ADOC anticipates that the transition to a private healthcare provider will reduce its workforce by approximately 750 state employees, though vendors will be encouraged to give preferential hiring to former state workers.

Amid the increased scrutiny of private prisons in the wake of the 2010 escape, the state's Auditor General released a performance audit in September 2011 that found that ADOC had made

significant improvements in the security and oversight of private prisons, but also identified a range of security problems in the agency's state-run prisons stemming from noncompliance with agency policies and procedures.

Among the problems found in ADOC's state-run prisons include personal property not being properly searched upon entry to prison units, noncompliance with policies on the supervision and storage of tools and keys accessible to inmates, poorly executed pat searches during inmate movement, and inconsistent enforcement of inmate regulations covering dress and grooming, identification cards and cell inspections. In the case of personal property searches upon entering prison facilities, the report noted noncompliance with search policies at 12 of 17 units inspected at the Eyman, Lewis and Yuma prisons in their most recent annual audits, "indicating this is a pervasive issue in the prison system and that the risk for undetected contraband may be significant."¹⁵

Responding to the problems cited in the audit, Ryan told the *Arizona Capital Times* that the agency planned to improve correctional officer training, improve post orders given to officers, and analyze statistical data to identify trends in security deficiencies.¹⁶

The audit also cited a number of improvements implemented by ADOC to strengthen the security and oversight of privately operated prisons, including adoption of the agency's new "Green Amber Red" inspection program to better assess security operations, deployment of a new annual audit tool to better measure performance against agency policies and procedures, a new training regime for agency contract monitors, and strengthened security and monitoring requirements in the procurement for 5,000 new prison beds.

In separate Arizona corrections news, recognizing the growing relevance of PPPs in Arizona corrections, Ryan issued a letter to employees and stakeholders in November 2011 announcing that ADOC's chief procurement officer would directly report to the agency's Administrative Services Division director to reflect the importance of administering its contractual functions across the enterprise.

Part 6

State Spotlight: Hawaii

Hawaii has partnered with private corrections management companies for over 16 years to meet the needs of a state lacking the facilities or the resources to house all of its inmates in state prisons. Since 1995, the Hawaii Department of Public Safety (HDPS) has transferred some of its inmate population to privately operated prisons in other states—including Arizona, Oklahoma, Texas, Oregon, Minnesota and Tennessee—based on the premise that such out-of-state transfers offer a temporary solution to overcrowding until adequate facilities are built within the state. By the end of 2010, approximately 30% of the state's nearly 6,000 inmates were housed in privately operated prisons on the mainland at a cost of approximately \$63 per inmate per day for care, custody, transportation, inmate compensation and healthcare.

However, pursuant to a December 2010 report by the state auditor criticizing HDPS's corrections contract processes, management and oversight, incoming Gov. Neil Abercrombie vowed to stop exporting inmates out of state.

Though it has since brought over 100 inmates back from the mainland, just three months into its first term the new administration put its larger inmate return ambitions on hold and issued a request for proposals in March 2011 for a three-year contract to continue housing Hawaii's inmates in out-of-state, privately operated facilities. At the time, the state's existing contract with Corrections Corporation of America (CCA) to house approximately 1,800 Hawaii inmates in Arizona facilities was set to expire in June 2011.

“It is very clear at this time that we do not have all the facilities to bring the inmates back,” HDPS Deputy Director of Administration Martha Torney told the *Honolulu Star Advertiser* in March, indicating that a longer-term plan to bring out-of-state inmates back to Hawaii—one likely to rely on expanded in-state facilities and community re-entry programs—was expected to be completed and presented to the legislature in the near future.¹⁷

In June 2011, HDPS announced that it had selected CCA to continue housing up to 1,900 inmates at its Saquaro and Red Rock correctional facilities in Arizona at a rate of \$63.85 per inmate per day. The new three-year contract contains two one-year renewal options, but the state retained the ability to terminate the contract early at its own discretion, with three months' notice.

Separately, the Hawaii state legislature considered several bills in 2011 that may help set the stage for a significant private sector role in delivering the new, in-state correctional facility capacity sought by the Abercrombie administration.

- In April 2011, the legislature adopted House Concurrent Resolution 208, requesting the Department of Public Safety and Department of Accounting and General Services to study the feasibility of establishing a public-private correctional partnership for construction and operation of prisons, to return all inmates who are incarcerated on the mainland, to close inefficient and aging prisons, and identify specific locations as new prison sites. Specifically, the two agencies were asked to report on estimated total construction costs, annual debt service costs and annual operating costs for a new, publicly financed and operated prison to be used as a benchmark for comparison to a public-private project. The requested report and recommendations are due to the legislature in 2012.
- A separate resolution—House Concurrent Resolution 204—passed by the House would have requested the state's director of public safety to form a task force to initiate the planning and design process to develop a correctional treatment facility to house 1,000 to 1,200 inmates on undeveloped property in the state. Given the prevalence of drug law violations in Hawaii, the task force would consider planning a secure correctional facility to provide intensive in-house rehabilitation programs for the treatment of chemical dependency and other mental health problems and which would be operated either by the state or a private operator with the ability to provide a total continuum of care covering education, prevention, treatment and supervision services following an offender's reentry into the community. HCR 204 passed the House in April 2011 but failed to receive a vote in the Senate before the close of the regular 2011 legislative session.
- In May 2011, Gov. Abercrombie signed into law Act 55 (Senate Bill 1555), transferring state-owned lands to a new Public Land Development Corporation, a development arm of the state's Department of Land and Natural Resources authorized to form PPPs to develop state land, renovate public recreation and leisure assets, and generate revenues to offset major departmental budget cuts in recent years. The corporation can also issue revenue bonds for land acquisition and the construction or renovation of state facilities.
- In July 2011, Governor Abercrombie approved Act 231 (House Bill 1505), establishing a new State Facility Renovation Partnership Program in which the state may enter into PPPs to modernize and repair aging state buildings. Under the program, the state's Department of Accounting and General Services can sell state buildings to private investors, who would finance renovations (or new facility construction) and lease the assets back to the state. The state would continue to own the land underneath the facility, and it would have the option to repurchase the facility back from the private partner.

Part 7

State Spotlight: Louisiana

One of Louisiana Gov. Bobby Jindal's major FY 2012 budget proposals—the proposed sale of three prisons to generate approximately \$100 million to help close a gap in state healthcare spending—was scuttled in June 2011 when the House Appropriations Committee voted 13–12 to reject a bill (House Bill 545) that would have set the plan into motion.

Jindal's proposed FY 2012 budget included a plan to privatize the operation of two prisons (Avoyelles Correctional Center and Dabadie Correctional Center) and sell three prisons (the Allen, Avoyelles and Winn Correctional Centers) to a private operator. In addition to the expected upfront payment from the prison sales, the administration estimated that the outsourced prison operations would lower the state's prison operating costs by over \$200 million over the next 20 years.¹⁸

The plan was immediately met with a skeptical response from public employee unions and state legislators who objected to the proposed use of one-time revenues to cover ongoing operational costs and raised other concerns related to the potential public safety impacts. Prior to the HB 45 vote, the House of Representatives had already removed language from the budget that would have facilitated the transfer of prison sale proceeds to healthcare, and HB 45 would have only authorized the spending of sale proceeds on one-time capital expenditures.

At press time, it is unclear whether the Jindal administration will revive the prison plan in 2012, but if it does it is likely to receive significant private sector interest. In February 2011, six potential bidders submitted responses to a request for information issued by the Louisiana Department of Public Safety and Corrections seeking market interest in the proposed operational outsourcing at the Avoyelles and Dabadie facilities.

Part 8

Texas, Other States Exploring Prison Healthcare Privatization

Inmate health care costs dominated in the headlines in **Texas** this year. The state's nearly \$500 million (annual) prisoner health care system was the subject of ongoing discussion as the legislature grapples with a \$24 billion budget deficit. The University of Texas Medical Branch (UTMB) at Galveston and Texas Tech University currently provide inmate healthcare for three-fourths and one-fourth of the state's 154,000 inmates respectively. UTMB specifically provides care in conjunction with its correctional managed health care division (UTMB-CMC Division).

One idea to generate more revenue came from Rep. Jerry Madden (R-Richardson) who authored House Bill (HB) 3386. HB 3386 would have charged inmates \$100 in annual health care service fees, replacing the current model where inmates pay \$3 per visit to see a prison doctor. Money to pay the fees would have come from inmate trust fund accounts. If an inmate didn't have sufficient trust fund money, half would have come from the Criminal Justice Department taking half of all the deposits into the account until the \$100 is paid. As of press time, the bill has not reached the House floor.

UTMB came under fire in spring 2011 after State Auditor John Keel released a report entitled, "An Audit Report on Correctional Managed Health Care at the University of Texas Medical Branch at Galveston,"¹⁹ that State Sen. Steve Ogden (R-Bryan) characterized as "devastating." The State Auditor's Office (SAO) found that UTMB faces a \$95.1 million projected deficit for fiscal years (FY) 2009–2011, which included:

- A \$12.8 million deficit in providing healthcare to offenders in FY 2009;
- An \$82.3 million projected deficit in providing health care to offenders from FY 2010–2011; and
- During this audit, UTMB revised its overall projected deficit for FY 2009–2011 to \$83.5 million.

SAO attributed the following items to the deficit:

- **"Reimbursement amounts.** UTMB develops reimbursement amounts for UTMB-CMC Division services internally without independent review and approval from the Correctional Managed Health Care Committee. Based on information UTMB provided, in FY 2010,

UTMB-CMC Division physician reimbursement amounts exceeded standard Medicare, Medicaid, and a major private insurance carrier's reimbursement amounts... [Costing on] average 135 percent of the Medicare reimbursement amount...”

- **“Salary adjustments.** Although UTMB was reporting a deficit for UTMB-CMC Division, it authorized \$14.1 million in salary increases for UTMB-CMC Division during FY 2008 through FY 2010. Additionally, in November 2010, UTMB awarded \$7,747,621 in Together Employees Achieve More (TEAM) award payouts to employees after it reported what one newspaper article referred to as a positive adjusted margin of \$37.5 million for FY 2010...”
- **“Indirect costs.** UTMB may be charging UTMB-CMC Division for a disproportionate amount of UTMB's indirect costs... The shared services costs (indirect costs) charged to UTMB-CMC Division in FY 2009–2010 totaled \$16.2 million and included costs that were not directly related to providing health care to offenders...”
- **“Allowability of expenditures.** Auditors tested a sample of UTMB-CMC Division expenditures from the \$715.9 million in total expenditures that UTMB-CMC Division made to provide offender health care from fiscal year 2009 through April 30, 2010. Overall, the expenditures tested were adequately supported. However, UTMB-CMC Division charged more than \$6.6 million for costs specifically prohibited by the contract with the Correctional Managed Health Care Committee or state requirements... Auditors identified a net \$220,113 in overcharges to the contract with the Correctional Managed Health Care Committee... Lack of clear guidance in the contract between UTMB and the Correctional Managed Health Care Committee also prevented auditors from determining whether an additional \$17.9 million in expenditures were reasonable and necessary to providing offender health care. In addition, auditors identified expenditures that were not properly classified, which could prevent the Correctional Managed Health Care Committee from adequately overseeing costs...”
- **“Organizational structure.** UTMB established UTMB-CMC Division as a department within UTMB. This means that UTMB makes both administrative and management decisions and provides services to UTMB-CMC Division. This structure allows for limited independent review and approval of UTMB-CMC Division finances and has resulted in a lack of coordination among UTMB, UTMB-CMC Division, and the Correctional Managed Health Care Committee. This relationship also minimizes the oversight role of the Correctional Managed Health Care Committee as established by Texas Government Code, Chapter 501...”

UTMB has responded in two ways. First, UTMB officials were critical of SAO’s audit and are pursuing an audit from an outside firm. Dr. David Callendar, president of UTMB, declared in November that the school wants to end its contract with the state and instead only wants to operate the prison system’s hospital in Galveston, and not the 85 in-prison clinics that are operating at a significant loss. Meanwhile, until an agreement is reached, lawmakers agreed to bail out UTMB to cover operating losses last year and this year. In contrast, Texas Tech University’s Health Sciences Center has been able to extend its contract without any additional funding.

Four years ago a 222-bed Veterans Administration hospital in **Marlin, Texas** was transferred to the state prison system. Prison officials have spent \$1.2 million maintaining the vacant facility, and it has surfaced as a possible part of the solution to the state's spiraling healthcare costs.²⁰

State officials may elect to pursue full privatization instead. And indeed there were several proposals by policymakers in 2011 that did not materialize. While the state must meaningfully pursue this reform to generate full cost savings numbers for comparison, a newly formed private correctional company, Corizon submitted a written proposal to lawmakers estimating that \$30–\$50 million in annual cost savings could be achieved through privatization.²¹

While Texas is leading one of the most significant discussions on privately provided inmate healthcare, policymakers across the country are engaging and leading in this policy area as well.

One of the most significant correctional healthcare news stories of 2011 happened in the private sector with the merger of America Service Group Inc. (parent company of PHS Correctional Healthcare Inc.) and Valitás Health Services Inc. (the parent company of Correctional Medical Services Inc. (CMS)). The merger led to the creation of a new company called Corizon, which generated roughly \$1.4 billion in revenue this year by providing services in 400 correctional facilities in 31 states through 11,000 employees.²²

There were many significant developments in the public sector as well in states across the U.S.

- **Florida** Governor Rick Scott campaigned on introducing competitive bidding throughout state government, including for correctional healthcare for the Sunshine State's over 100,000 inmates. Lawmakers introduced this reform through the FY 2012 budget, however the Florida Nurses Association filed a lawsuit in Leon County Circuit Court that threatens to halt the plan. This lawsuit is similar to one filed regarding the state's broader continuum of care privatization described in Part 2: Florida, U.K. Launch Transformative Innovations in Correctional Privatization to Reduce Recidivism, Lower Costs. Florida spent \$414.7 million on inmate care in 2010, and lawmakers are hoping to achieve \$30 million in annual savings through privatization. As of press time, policymakers are revisiting how to effectively administer procurement and this will likely be an important story in 2012.
- The **Arizona** DOC's multi-year effort to hire a vendor to take over the state's correctional healthcare system appears to be moving forward despite procurement delays. In April, Gov. Jan Brewer signed into law an emergency measure enacted by the legislature (House Bill 2154) directing ADOC to issue a new request for information from potential bidders on the correctional healthcare initiative. Ten vendors submitted responses to the request for information, which ADOC used to develop a request for proposals issued in October 2011. Vendor responses were due in late December 2011, with a potential contract award in the spring of 2012. (For more on Arizona, see Section E: State Spotlight: Arizona.)
- The **North Carolina** DOC is currently exploring privatizing healthcare services for its entire 70 facility, 40,000 inmate system. Under the current system, the state spends \$244 million

annually through a roughly 2,000 public employee network.²³ DOC officials are considering a five- to seven-year contract worth an estimated \$1.5 billion that would be in place by summer 2013. Officials are reportedly interested in partnering with a single major provider, who may subcontract, rather than take a piecemeal approach.²⁴

- **Pennsylvania** DOC issued a request for proposals (RFP) in December 2011 for a rebidding of its current correctional healthcare contract. Bidders were asked to respond to two different scenarios: one that would replicate the current scope of outsourced services, and a second that would expand the current scope to include additional nursing and other staff. As of press time the DOC is still evaluating proposals and a decision is expected in 2012. However, State Rep. Mike Fleck (R-District 81) authored and introduced House Bill 1985, which would amend The Administrative Code of 1929 to include a ban on the DOC from privatizing or outsourcing nursing services in state correctional institutions. As of press time the bill has been referred to the House Appropriations Committee.
- Lawmakers in **Michigan** began efforts to find cost savings in earnest this year, after lingering budget woes put corrections spending under scrutiny. In Michigan, roughly a quarter of the general fund goes to corrections, equaling approximately \$2 billion. Rep. Joe Haveman (R-Holland) serves as chairman of the House Corrections Subcommittee and outlined his focus on privatizing ancillary services, such as inmate medical care and food provision. The Great Lakes State already partially contracts for inmate medical care, partnering with PHS Correctional Healthcare (who recently merged to become Corizon, as explained on page 24 of this report), which provides inmate care for roughly \$100 million annually.²⁵ Officials are looking to save as much as \$20 million by expanding private provision of medical services.²⁶ Separately, privatizing food services is expected to save almost \$7 million annually.²⁷
- The **Virginia** Center for Behavioral Rehabilitation (VCBR) became the focus of cost savings efforts after GEO Care submitted an unsolicited proposal to the Department of Behavioral Health and Developmental Services in spring of 2011. VCBR is currently designed to hold 300 offenders classified as sexually violent predators (SVP), but officials are scrambling to find additional capacity and considering double bunking offenders as a temporary solution. Further, officials are struggling with volatile costs, which currently equal nearly \$100,000 per inmate per year. GEO Care's proposal would reportedly double the number of beds without requiring additional taxpayer money, promises accreditation within 18 months, and would improve treatment quality.²⁸

GEO Care currently provides similar services for almost 700 inmates in **Florida** through the state's civil commitment program. At a November 19, 2011 meeting Virginia's Joint Legislative Audit and Review Commission (JLARC) discussed a commission draft of a report entitled *Review of the Civil Commitment of Sexually Violent Predators* that compares per patient costs between VCBR and GEO Care's SVP facility in Florida.²⁹ JLARC found the cost per patient in GEO Care's privately operated SVP facilities cost \$38,500, while Virginia's state-run VCBR costs \$90,898 per patient. In other words, privatization of a comparable service implies costs could be reduced by two-thirds. Per inmate costs at VCBR are projected to decline to over \$60,000 per inmate per year by 2015, however even if these savings materialize privatization would likely be less costly.³⁰

- The Jackson Health System ended its effort to subcontract inmate healthcare in **Miami-Dade County, Florida**'s Miami-Dade County Corrections and Rehabilitation Department. Officials spent two years exploring ways to cut costs by partnering with another private provider, however Jackson Health System ultimately rejected the bids in anticipation of reduced labor costs over the next two years.³¹
- Officials in **Passaic County, New Jersey** agreed to privatize inmate healthcare services at the county jail signing a three-year, \$8 million contract with CMS (who recently merged to become Corizon, as explained on page 24 of this report) effective May 20, 2011. One contributing factor that led to privatization was former jail Medical Director Dr. Magdy Wahba's tenure, which was defined by repeated lawsuits from inmates. In a separate but related move, the county signed a one-year \$700,000 deal with East Orange Hospital to provide non-emergency services to inmates. Privatization is expected to provide both cost savings and risk mitigation for the county.³²

Part 9

Other Corrections Privatization News

Policymakers at all levels of government are exploring innovative approaches to correctional policy and public safety. Highlights from 2011 are detailed below in alphabetical order by state.

After contentious debate **Alaska** lawmakers are moving forward with opening the costly new medium-security Goose Creek Correctional Center in **Mat-Su Borough** (in compliance with a Senate Bill 65 that was signed into law in 2004³³) to construct additional in-state prison capacity.³⁴ Goose Creek grabbed headlines throughout 2011 for its eye-popping construction and operating costs. The facility cost almost \$250 million to build (including construction, project management, a water line, equipment and furnishings).

Overall, annual operating costs equal approximately \$52.8 million annually. Leasing the facility from Mat-Su Borough will cost the state \$17.8 million annually. The 100-acre campus has 435,000 square feet of building space and a maximum capacity of 1,536 medium security inmates. State officials are planning on transferring 1,050 inmates from the privately operated Hudson Correctional Facility (operated by GEO Group, Inc. in **Hudson, Colorado**), which would cost an additional \$35 million annually.

In contrast, housing inmates in Hudson only costs Alaska taxpayers \$23.5 million annually. Corrections Commissioner Joe Schmidt defended the cost explaining to reporters in November that “We’ve been very straightforward. We never promised this to be a money saver.”³⁵ Proponents argue that despite significantly raising costs to taxpayers, it is better to have the inmates in state.

Before the facility starts receiving inmates in 2013, assuming it does, the legislature would have to approve operating funds, the Alaska DOC would have to fill 347 staff positions, and state officials would have to pay the U.S. Marshals Service to transfer the inmates (which would take an estimated ten trips on a 110-passenger plane costing \$250,000 per trip—totaling \$2.5 million).

Fresno County, California Officials in Fresno County have increasingly come to rely on private attorneys to handle cases that Public Defender employees cannot handle due to repeated budget cuts. The Public Defender’s Office declined from 81 attorneys in 2007 to 49 in September 2011. *The Fresno Bee* cited County Administrative Office representative John Navarrette, reporting in September, “Private attorneys can provide the service more cheaply because they don’t receive benefits such as pensions. He wants to explore plans later this year to privatize all criminal defense work, essentially eliminating the office.”

Apples-to-apples comparisons are difficult to come by and opponents argue that in the long run this could cost the city more. Meanwhile, attorneys in the Public Defender's Office are suing in Superior Court claiming layoffs over the past five years essentially made privatization inevitable. As of press time, the court had not released its decision on this case.

Brevard County, Florida Brevard County Courts Clerk's Office faced a projected \$1.3 million shortfall that grew to \$2 million by June 2011. Mitch Needelman, Brevard County Clerk of Courts, calculated that he would have had to lay off 163 employees to balance the budget. Instead of following through with budget cuts, he adopted a streamlining approach covered in detail by *Florida Today*.³⁶ Needelman reorganized the clerk's office, eliminated 23 positions, and reassigned 33 employees, saving \$400,000. He then received almost \$1 million from a federal court settlement and court funds from the year before.

The remaining savings were realized in a contract signed with Source 2 on March 1, 2011. The six-month contract has an automatic three-month renewal clause, and includes a 60-day notice early termination clause. The clerk's office has been criticized for the manner in which it conducted the bidding process, since the contract with Source 2 was not open to bid. Needelman cites the time-sensitive nature of the office's budget deficit, however an open RFP has not been issued effective after the contract with Source 2 expires. In an interview with *Florida Today*, Needelman explained the clerk's office paid Source 2 the salaries of the employees plus 35 percent for the 119 full-time workers and 18 percent for one part-time employee and seven students.³⁷ Needelman's calculations suggest the privatization initiative is saving \$896,000 each year, primarily from not having to pay health and retirement benefits and various administrative costs.

Pinellas County, Florida Pinellas County lawmakers signed an agreement with Lend Lease to develop an \$81.4 million public safety facility and centralized communications center on a 40-acre campus. Lend Lease will be responsible for design, development, construction, furnishings and equipment. The campus is expected to be complete in August 2013, and will feature an emergency operations center, a 911 call center, EMS and sheriff's dispatch center. Lend Lease will partner with St. Petersburg, Florida-based Harvard Jolly for architectural work.

In **Dalton, Georgia** the city council unanimously approved a one-year contract to return probation services to private operator Alternative Probation Services (APS) effective March 1, 2011. APS had been responsible for providing this service six years ago before officials decided to insource it.³⁸

On September 1, 2011 U.S. District Court Judge Marvin Shoob ordered that **Fulton County, Georgia** purchase the Atlanta City Detention Center (ACDC) in 60 days to relieve chronic overcrowding in county facilities. Shoob focused on the Rice Street Jail where he cited 3,400 instances when inmates were forced to sleep on the floor over the course of three months in the spring, with an additional 1,400 such instances in August alone. Shoob argued in his decision that "additional capacity is needed immediately, and the only immediate solution is acquisition of the

City Jail.”³⁹ Shoob went so far as to say that county officials could be held in contempt and sentenced to serve in the facility themselves if they don’t solve the problem.

A couple weeks later Shoob changed his mind after a closed-door meeting with county officials in his chambers.⁴⁰ Shoob declared the sale is off the table and the threat of criminal sentencing for county officials is no longer imminent. Short-term fixes have proven difficult to implement. For example, the county commission unanimously rejected purchasing the prison for \$85 million and turned down the city’s offer to provide 400–750 reserved beds for \$103 per inmate per night. Alternate solutions are being sought, such as selling the facility to a private operator, expanding jail capacity (a new facility could cost over \$150 million), and starting new programs to address recidivism.

Idaho officials fined Correctional Medical Services (CMS) (who recently merged to become Corizon, as explained on page 24 of this report) over \$382,500 for contract violations uncovered through a series of public records requested by The Associated Press. Specifically, CMS failed to hire an obstetrician/gynecologist at the South Boise Women’s Correctional Center for two years and a staff psychologist at the Idaho Maximum Security Institution for eight months; the previous contract required all vacant positions be filled within 60 days.⁴¹ State officials were quick to note that no inmates were denied care. Instead inmates were transported for care off-site, usually at the state’s cost. These expenses were later recuperated through fines.

Legislators in **Illinois** amended its existing state ban on privately operated correctional functions to include any unit of local government or a county sheriff. However, the ban does not include:

*(S)tate work release centers or juvenile residential facilities that provide separate care or special treatment operated in whole or part by private contractors or contracts for ancillary services, including medical services, educational services, repair and maintenance contracts, or other contracts not directly related to the ownership, management or operation of security services in a correctional facility.*⁴²

HB 2590 frustrated officials in Tazewell County who had been considering privatizing the Tazewell County Jail. Months of debate over liability, cost savings and employee compensation were thrown out the window after the state law forbade the county’s ability to enact privatization. County Administrator David Jones discussed the bill with the *Peoria Journal Star* in June saying, “(HB 2590 is) a local control issue for us. That decision should rest with the County Board. That’s why they’re elected, and why the sheriff’s elected. I think the County Board and sheriff collectively understand the significance of this matter and they were capable of deciding this for themselves.”⁴³ HB 2590 takes Illinois out of step with other states, and many expect the bill will make reforming and improving the state’s correctional system more difficult in the future.

Efforts to pave the way for a privately built and operated prison in **Milo, Maine** were stalled after the Legislature’s Criminal Justice and Public Safety Committee decided to take up Legislative Document (LD) 1095 sponsored by state Sen. Douglas Thomas (R-Somerset County) in 2012. LD 1095 would have authorized the construction and operation of private prisons. Lawmakers

specifically cited concerns for the long-term health care needs of a small percentage of prison inmates. While passage of LD 1095 could reportedly have led to the construction of a \$100–\$150 million facility housing 1,800–2,300 inmates and created 200–300 new jobs, the measure failed in January 2012.⁴⁴

The **Michigan** DOC announced its plans to close the Mound Correctional Facility in **Detroit, Michigan** and is exploring privatizing a correctional facility in **Chelsea, Michigan**. Privatizing the Chelsea facility could save taxpayers as much as \$1 million annually.⁴⁵

Minnesota lawmakers sought to reopen the CCA-owned Prairie Correctional Facility in Appleton, which closed after Minnesota inmates were transferred to state facilities, through House File (HF) 939 sponsored by Rep. Torrey Westrom (R-Elbow Lake). Torrey explained the bill to the House Civil Law Committee saying, “This is a policy to allow private prisons to be a part of the solution to save money and house inmates. ... The idea is how can we have a private-public mix of corrections and potentially save the taxpayers’ money...?”⁴⁶ The proposal failed to materialize however and as of press time the facility remains vacant.

The Delta Correctional Facility in **Greenwood, Mississippi** is closing once again, effective January 1, 2012. The number of inmates in Mississippi is steadily declining and is currently around 21,500, and excess capacity in its regional jails makes it easier for the 900 Delta Correctional Facility inmates to be absorbed into the system. Closing the 1,172-bed facility was mutually agreed upon between its current operator, CCA, and state officials. CCA approached the state to end the contract because state laws mandating private operators receive \$31.15 per inmate per day for medium-security inmates (10 percent less than the state’s \$34.61 cost per day for medium-security inmates) was unworkable.⁴⁷

The **Montana** DOC is partnering with three existing private prison operators (CCA, Community Counseling and Corrections Services Inc. and Two Rivers Authority) to expand capacity by 120 medium-security beds in 2012 after the legislature approved \$3 million for the effort. At least 20 of the beds must accommodate special needs inmates, such as elderly, disabled, mentally ill and/or those who require sex-offender treatment.⁴⁸

New Hampshire experienced significant changes in correctional policy over the last two years. In 2010 the early moves were in sentencing reform. Lawmakers passed Senate Bill (SB) 500 into law, which releases—with certain caveats—nonviolent criminals after serving 120 percent of their minimum prison sentences. Eligible prisoners will be paroled at least nine months before their minimum prison sentences, and parole violators would face 90 days back in jail in a special program designed to re-engage them in their parole plans. The legislature’s intention with SB 500 is to address the failure of the prison system to adequately prepare inmates for re-entry into society, however states cannot exclusively legislate recidivism reduction.

In spring 2011 the dialogue shifted toward reducing spending during budget negotiations. According to the Council of State Governments Justice Center, over the past ten years New

Hampshire's prison population has increased 31%, while lawmakers have doubled spending on corrections.⁴⁹ Meanwhile the Department of Corrections is expected to be the only state agency whose funding will increase over the next biennium.

State Senator John Morse, Chairman of the Senate Finance Committee, led discussion on finding ways to cut the state's spending on corrections. The *Nashua Telegraph* reports he proposed relocating 600 inmates to private facilities in order to realize around \$11 million in savings over the next biennium.⁵⁰ Sen. Morse also asked lawmakers to study the state's entire corrections system saying, "The reality is, (corrections spending) can't continue to grow and grow and grow in costs."⁵¹ The Morse plan was not adopted in its original form, but lawmakers agreed to cut the New Hampshire DOC's proposed budget increases by \$13 million over the next biennium. The DOC was the only state agency to receive a budget increase, which amounted to a roughly 2% increase over the next biennium.

In fall 2011 the conversation moved more substantively toward privatization. In October the state issued an RFP to build and operate a 3,000-bed men's prison and a 300-bed women's prison. The men's facility is expected to cost \$150–\$200 million and would replace the 133-year-old state prison in Concord, which houses 1,349 inmates and has a separate residential psychiatric facility that houses 61 inmates. The women's facility would replace a 100-bed prison in Goffstown.⁵² The state also issued RFPs for privately provided nursing, pharmacy and sex offender treatment. As of press time, the option to send the inmates to privately operated out-of-state facilities remains on the table as well.

In November 2011, the **New Jersey** Department of the Treasury issued a request for proposals on behalf of the state Department of Corrections for a pilot project to provide correctional food service operations and management at Bayside State Prison and two satellite locations. This move is in compliance with a budget provision for a one-year pilot for Bayside State Prison, with a latter pilot for the Albert C. Wagner Youth Correctional Facility.

New Jersey's Office of the State Comptroller (OSC), led by A. Matthew Boxer, published an audit on June 15, 2011 that "exposes crucial weaknesses in state oversight of inmate halfway houses."⁵³ The audit was highly critical of the Garden State's nearly \$65 million halfway house program, which is administered by the DOC's Office of Community Programs. The state relies on contracts with a network of eight nonprofits operating 23 facilities housing an average of 2,720 residents each day.

While the audit is substantive and contains many interesting findings, it is summarized succinctly with the following excerpt, "The (New Jersey) Department of Corrections does not adequately monitor its state-funded halfway houses and failed to take appropriate action against halfway house providers following inmate escapes..."⁵⁴

In all, OSC's audit provides 28 recommendations to enhance the DOC's oversight over the program, which DOC is working to implement. Specifically, the DOC is now determining and

analyzing recidivism patterns for halfway house residents in response to OSC's recommendation that an outcome-based evaluation be used to measure halfway house performance. OSC's procurement division conducted a separate review detailing a variety of other violations and concerns regarding the administration of the halfway house program.

Burlington County, New Jersey officials sent layoff notices to 43 employees in April 2011 as a part of moves to foster privatization. Thirty-seven employees work in the Buildings and Grounds Department that costs almost \$2.4 million each year to operate, according to Ralph Shrom, Burlington County public information officer. The remaining six employees work in the inmate-records unit at the Burlington County Jail. *The Burlington County Times* reports that county officials approved a \$1.8 million contract with the private, nonprofit Occupational Training Center for May 16, 2011–May 31, 2013. The move is expected to save county taxpayers approximately \$500,000.⁵⁵

Officials in **Cumberland County, New Jersey** agreed to privatize nursing services at the county jail, signing a two-year, \$1.8 million contract with CMS (who recently merged to become Corizon, as explained on page 24 of this report) effective July 1, 2011. According to Cumberland County Administrator Ken Mecouch, privatizing will save Cumberland County taxpayers \$319,000 annually. The nursing department proposed \$236,000–\$275,000 in savings, however their offer did not address overtime hours, which added up to \$89,000 this year.⁵⁶

New Mexico's Corrections Department levied \$1.1 million in fines on GEO for not adequately staffing its facility in **Hobbs, New Mexico**. Further, the firm will spend \$200,000 next year to recruit new officers to maintain staffing levels required in its contract (which prohibits staffing vacancies at 10 percent or more for 30 consecutive days).⁵⁷

The **Surry County, North Carolina** Board of Commissioners inked a deal with Aramark to privatize food services at the county jail in a deal that dropped per meal costs from \$2.41 down to \$1.60. Privatization saved the county \$97,000, which they immediately used to order 29 new mobile data terminals (MDTs). MDTs are used in police officers' vehicles permitting them access to crucial information in the field of duty.⁵⁸

Lawmakers in **Horry County, South Carolina** voted in September 2011 to privatize medical, dental and mental health services for the roughly 600 inmates in the J. Reuben Long Detention Center effective October 1, 2011. The county will partner with Southern Health Partners and is expected to save \$75,000 annually.⁵⁹

The U.S. Supreme Court is currently weighing whether federal inmates may sue employees of a private prison company for violations of the Constitution in the case *Minnecci v. Pollard* (Docket No. 10-1104). Federal employees are normally immune from lawsuits unless Congress has specifically authorized them. In this case, the question is whether the Court should imply a cause action based on the precedent set under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*. In the *Bivens* case, the Supreme Court ruled that some lawsuits might proceed if the

federal employee has violated constitutionally protected rights. *The Associated Press* reports the Court is “unlikely” to allow private prison company employees to be liable, specifically asking why they failed to file a state negligence lawsuit instead. As of press time, the justices have not made their ruling on *Minneci v. Pollard*.⁶⁰

Officials in **Harris County, Texas** launched a market test for outsourced correctional services in 2011, issuing a RFP in the spring seeking bids for the operations, management and maintenance of all of its jails—a large-scale procurement covering over 9,000 beds. The RFP included all aspects of jail operations, including security, staffing, food services, healthcare, mental health, maintenance, rehabilitation programs, education, intake/release processing, transportation and more. The request envisioned a phased-in approach, beginning with an initial pilot jail and ultimately transitioning the jails to total privatization. The initial term would be five years, with the possibility of 4 three-year renewal options, and the RFP anticipates a contract award to one vendor (while reserving the right to award contracts to multiple vendors). Any contract would require prior approval by the Harris County Commissioners Court before execution.

Houston's local Fox 26 affiliate reported in December 2011 that county officials were reviewing submitted bids, but noted that the proposal already faces opposition from the local sheriff and the county deputies association.⁶¹

Montgomery County, Texas Judges in Montgomery County are exploring transitioning to a private public defender system, specifically a managed assigned counsel program, that would reform court-appointment of attorneys for indigent clients. County Court Judge Patrice McDonald unveiled the plan in a July 25, 2011 budget hearing with the support of 11 circuit county judges. This transition is made possible by an amendment to the Texas Code of Criminal Procedure included in SB 1682.⁶² Currently, the county has a docket of attorneys capable of representing clients for different types of offenses—this mechanism is also known as a rotating wheel selection process. Under a managed assigned counsel program, a nonprofit organization would hire attorneys to represent indigent clients.

This reform addresses three issues. First, in some parts of Texas there is a shortage of qualified criminal defense attorneys. This has delayed trials and some Texans accused of misdemeanor offenses have gone to trial without counsel, according to the Texas Task Force on Indigent Defense. Second, there is a lack of accountability in the billing process for attorneys. There are few checks or balances on their billing, and costs continue to rise. In Montgomery County, costs rose from \$4.9 million in 2009 to \$5.6 million in 2010, and the judges estimate this reform would reduce the court operation budget by \$500,000.⁶³ Third, it allows judges to focus on ruling cases rather than the administrative burden of selecting defendants' lawyers. Elsewhere in Texas, Lubbock County is implementing a managed assigned counsel program too. A similar program was enacted in San Mateo, California where the county contracts with the local bar association to manage the assigned counsel system.⁶⁴

In April 2011 the *American-Statesmen* reported that the **Travis County, Texas** County Commissioners voted to issue an RFI for a PPP to construct a new civil courthouse. If built, the facility will be on a \$21.75 million lot in downtown Austin, purchased by the county in late 2010. In a separate vote the commissioners approved a panel of officials from county departments to oversee the RFI process. The move received support from Civil State District Judge John Dietz, who told the commissioners, “I believe that we really don’t have a choice but to go PPP.” Officials received 21 responses from a diverse list of firms with offices across the world. The *American-Statesman* reported on July 7, 2011 that the list includes the following firms:

- Endeavor Real Estate Group, an Austin, Texas-based firm that built nine shopping centers across Central Texas.
- Meridiam Infrastructure, a company with offices in Paris, New York and Toronto that is leading a private consortium that will pay for, design, construct and operate the \$490 million Long Beach, Calif., courthouse.
- Skanska, a Stockholm-based firm, which has PPP experience and worked on courthouses in Belton, Seattle and Jacksonville, Fla.
- AECOM, a global firm headquartered in Los Angeles that offers a range of services, such as design, planning and engineering.

County Judge Sam Briscoe described the responses saying, “It’s an impressive list of companies. Several have impressive histories of developing substantial construction projects in different parts of the world.” After concluding an internal review and hiring consultants to proceed, Travis County officials will issue a formal solicitation with a detailed description of their expectations for the courthouse project. The current plan calls for a 500,000 square foot, 17-story facility; however Briscoe told the *American-Statesman* this might be expanded depending on how well the county can leverage partnering with the private sector.

Milwaukee County, Wisconsin Reason Foundation’s *Annual Privatization Report 2010* reported that former County Executive (now Governor of Wisconsin) Scott Walker laid off over two dozen security guards at the courthouse and two other county buildings and hired international security contractor G4S Wackenhut under a one-year, \$1.1 million contract to provide security at the facilities. Unions and some Board members criticized the move on legal and contractual grounds, through Walker countered that the move was reviewed and validated by city attorneys. A court ruling in January reversed the outsourcing, and most of the workers that worked for Wackenhut resumed their work for the county as public employees. Others remained with Wackenhut providing security at other county buildings. Walker’s successor, Chris Abele, has proposed returning to privately provided security personnel in his 2012 budget proposal. Abele’s proposal estimates that privatizing the security detail would save \$400,000–\$500,000 next year—savings that would make a small dent in the county’s \$55 million budget deficit. Abele also supports hiring a private company to provide health care in the jail and Franklin County South Correctional Facility in a move that would replace 110 public employees and save \$641,000 next year.⁶⁵

Part 10

States Coalescing Around Petitioning DEA to Reschedule Marijuana

Colorado joined **Rhode Island** and **Washington State** in petitioning the federal government to change the schedule of marijuana under the Controlled Substances Act. All three states are moving on this issue in an effort to resolve the conflict between federal drug laws and state laws in regards to the establishment of medical marijuana dispensaries. Marijuana (also known as cannabis) is currently a schedule I controlled substance in the Drug Enforcement Administration (DEA) regulations, 21 C.F.R. Section 1308.11. According to the DEA, this scheduling designation means:

(Schedule I substances) have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug or other substance under medical supervision.

Drugs listed in schedule I have no currently accepted medical use in treatment in the United States and, therefore, may not be prescribed, administered, or dispensed for medical use. In contrast, drugs listed in schedules II-V have some accepted medical use and may be prescribed, administered, or dispensed for medical use.⁶⁶

Rhode Island and Washington State submitted their petitions in November 2011, with support from their respective governors Lincoln Chaffee and Christine Gregoire.⁶⁷ Each state has a strong history of leading in this policy area.

- Rhode Island legalized medical marijuana in 2006 through the passage of The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act, which was later amended by Senate Bill (SB) 07-791 and SB 09-185.
- Washington State legalized medical marijuana in 1998 through voter approval of Initiative 692, which was later amended by SB 07-6032, SB 10-5798, and SB 11-5073.

Meanwhile, Colorado legalized medical marijuana in 2000 through voter approval of Amendment 20, which was later amended by SB 10-109, House Bill (HB) 10-1284 and HB 11-1043. Colorado was essentially dragged into joining the other states by complying with a two-year old state law (HB 10-1284):

In recognition of the potential medical value of medical marijuana, (the Department of Revenue) make a request by January 1, 2012 to the federal Drug Enforcement Administration to consider rescheduling, for pharmaceutical purposes, medical marijuana from a schedule I controlled substance to a schedule II controlled substance.

Unlike in Rhode Island or Washington State, Colorado Governor John Hickenlooper will not sign the petition. Hickenlooper instead opted to have the Department of Revenue submit the petition.

While three states have coalesced around this issue so far, more states are expected to join since 15 states (and the District of Columbia) have now passed medical marijuana laws. In fall 2011 Vermont Governor Peter Shumlin and New Jersey Governor Chris Christie made public statements essentially supporting a re-evaluation of the federal government's so-called "War on Drugs."

Changes in state law could have a dramatic impact on law enforcement and correctional policy across the country. States are not required to enforce federal law, so they can get around DEA scheduling, however the specter of federal enforcement haunts medical marijuana patients, producers and providers. According to the latest U.S. Sentencing Commission data, drug offenses are the second largest category of federal convictions with 26% of those offenders being convicted for marijuana-related offenses.⁶⁸ With marijuana legalization ballot measures anticipated in (at least) California and Colorado in the upcoming election, this will likely be a high-profile issue in 2012.

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