

CELLS FOR SALE:
UNDERSTANDING PRISON
COSTS & SAVINGS

A REPORT FROM
POLICY MATTERS OHIO

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POLICY MATTERS OHIO is a nonprofit, nonpartisan research institute dedicated to researching an economy that works for all in Ohio. We seek to broaden debate about economic policy by providing research on issues that matter to Ohio's working people and their families. Areas of inquiry for Policy Matters include work, wages and benefits; education; economic development; energy policy; and tax policy.

Preface to the Report

A few months ago, Policy Matters Ohio asked journalist Bob Paynter to take a deep look at Ohio's current record on prison privatization. Though we had no way of knowing that Governor John Kasich's first budget would propose selling five publicly owned prisons, we thought it likely that prison privatization would be considered. Paynter's excellent analysis of the cost issues in private prisons follows.

To be clear, Policy Matters believes that there are many reasons to be concerned about prison privatization and to be skeptical even if cost savings exist. If "savings" result from higher prisoner-to-guard ratios, more crowding, less psychiatric or medical care, lower hourly pay for guards, less spending on training, or less spending on prison education, food, or recreation, they will likely cost us more in the long run. All of these can result in lower quality supervision, more morale problems, or overall declines in quality. This in turn can mean less rehabilitation, more recidivism, and possible increases in tension within the facility.

Second, accountability and transparency are significantly lower in private companies than in public entities. Incarceration is, by definition, a tremendous incursion on liberty. The isolation and tarnished reputation of inmates makes them prime targets for abuse. Thus, this is an area of government where we should want the highest levels of transparency and accountability, even if that results in slightly higher costs.

Third, private prisons must have room for profit. This can result in perverse incentives, where the interest of the operator is to maximize the number of inmates. That is not the same interest as those of Ohioans. In addition, if compensation of guards is lower, then Ohio communities are receiving less of the return for this state spending, increasing what economists call "leakage". In other words, if pay is reduced but profits for out-of-state operators are increased, the money is not staying and circulating in the Ohio economy. This reduces the positive impact of state spending, making it less helpful to Ohio's beleaguered communities.

The above concerns are all reasonable to raise about publicly-owned, privately-managed prisons. The concerns intensify when we consider outright private ownership. Once prisons are sold or privatized, there is reason to worry that the state will have reduced bargaining power to change course or switch vendors, giving private operators more leverage and more ability to garner excessive profits.

For these reasons and more, critics are rightly skeptical about prison privatization. A demonstration of lower cost is not sufficient reason to give over this most sensitive government function to private, profit-making companies. This study finds that, in fact, the cost calculations performed over a number of years by the State of Ohio have not reliably demonstrated the private-prison savings required under Ohio law. This history makes it difficult to have confidence in new claims of cost savings. Policy Matters recommends that policy makers reject the proposal to sell Ohio prisons to private bidders. We encourage you to read this detailed examination.

-- Amy Hanauer,
Executive Director

Executive Summary

Ohio taxpayers have purportedly saved more than \$45 million over the last decade from the private operation of two state prisons. Now, with the substantial expansion of prison privatization recently proposed by Republican Gov. John Kasich, they're being promised tens of millions more in savings over the next one.

But if past is prologue, there is little reason to be confident in such promises.

Since the first private prisons were opened here in 2000, Ohio law has required that any private operator produce savings of at least 5 percent compared to what it would cost the state to run the same facility. And if you believe past state pronouncements, the savings have exceeded that threshold by a factor of three.

But a closer look reveals that, as of last month – 10 years into the privatization experiment, and one day before Kasich's announced expansion – Ohio officials still hadn't developed an accurate, reliable way to compute how much, if anything, they had actually saved.

Their methods for calculating the seemingly robust savings have changed substantially and, in some case, inexplicably over the last several biennia. A detailed examination of those calculations shows them not only to be riddled with errors, oversights and omissions of significant data, but also potentially tainted by controversial accounting assumptions that many experts consider deeply flawed.

Acknowledging that previous efforts were both inconsistent and imprecise, state officials more than two years ago started re-tooling those cost-savings calculations, beginning with the 2010-2011 biennium that's now coming to a close. And in preparation for the coming biennium, they started instituting even more fundamental alterations last fall – many of which, had they been instituted in earlier calculations, would have raised significant red flags about the savings Ohio has been touting over the years.

Even last month, on the eve of Kasich's proposal to sell five prisons – which, in a stroke, would triple the number of Ohio prisoners under private supervision – numbers crunchers at the Ohio Department of Rehabilitation and Correction (ODRC) were still tinkering with the cost-savings calculations in fundamental ways, saying they hoped a new formula could be proposed and approved by the state budget office sometime this month (April).

Work on a reconstituted formula may well be ongoing. (Officials, promising transparency in the revision process, said the new methodology would appear on the ODRC website upon completion and approval. As of April 15, it had not appeared.)

On April 6, the state posted its bid request for the purchase and operation of the five prisons. And even though the savings formula was still being modified when the sale was proposed, ODRC's chief budget analyst, Kevin Stockdale, said he is confident the private-prison savings are there, "even without all the decimal places double checked."

But an examination of the calculations the state has relied on to proclaim those savings since 2006 shows that – once apparent errors are corrected and revisions being proposed by ODRC are made – it's far from clear that Ohio's private prisons are producing the savings required by law. Or that they ever have.

In fact, revised calculations suggest that it may actually have cost taxpayers MORE to contract with a private vendor for operations at the Lake Erie Correctional Facility in Conneaut for fiscal years 2006 and 2007 than to have allowed the state to run it. And for both the 2008-09 and the

2010-11 biennia, revised calculations for Lake Erie project savings that appear to fall below – and in some years, well below – the 5 percent minimum required by state law.

If that's been the case, and the touted savings have been largely illusory, then Ohio's 10-year-experiment with prison privatization becomes considerably less successful than its billing, leaving little more than blind ideology or political preference to justify the dramatic expansion now underway. And without a strong fiscal rationale, critics' concerns about the effectiveness and security of private prisons – underscored by dramatic events last summer in Arizona, where three inmates escaped from a private prison near Kingman and allegedly murdered a couple, take on that much more weight.

Stockdale and his fellow number crunchers at ODRC, working with the state's office of budget and management, may still devise and publicize a formula that documents the savings that state law requires. That they haven't previously is both telling, given the claims the state has made, and not terribly surprising.

Nationally, there is little or no consensus about whether private prisons save taxpayers much of anything. The private corrections industry and its allies claim substantial savings – in the range of 5 to 15 percent a year. Skeptics say there is little credible evidence for that. What independent research there is tends to be ambiguous.

The hunt for these savings is also politically charged – with Republicans and Democrats and their supporters tending to land on opposite sides of the debate. And it's an exceedingly difficult task to begin with, because it essentially involves comparing the operating costs of a real, privately operated prison with a make-believe facility, identical in every way to the private one, except that it's staffed by state employees and run by the state. That's what Ohio has been trying to do with its various calculations.

But a host of assumptions can crop up in such analyses, some of them quite controversial, which can tip the scale one way or the other depending on how they're handled. For instance, how should one account for the corrections department's central office expenses? And how should the state's payments for inmate labor in the private prison be handled – or reimbursements to the private vendor for outsized medical costs?

In interviews as recently as the day before Kasich's prison-sale announcement, Stockdale said these are among the items the state is now revisiting, in addition to trying to clean up the inconsistencies, oversights and imprecision in past calculations.

The problem is that once past errors in the state calculations are corrected and revisions made, the private-prison savings computed by the state over the years appear to shrink dramatically.

For the 2006-07 biennium, for instance, when apparently distorted staffing and overhead estimates are revised in the calculation, the computed savings of \$2.4 million for each of the two years becomes a COST of between \$380,000 and \$700,000 a year.

For the 2008-09 biennium, potential savings of as much as 21 percent a year shrivel to between 1.2 percent and -0.3 percent when errors are corrected and state-proposed revisions made, depending on how state overhead is handled. For 2010, the computed savings could drop from 13.9 percent to 3.6 percent, and for 2011, from 15 percent to 4.7 percent. In each year, once proposed revisions are made to the state's calculations, the computed savings could fall below the 5 percent required by law.

At the very least, that should give taxpayers pause. It may eventually turn out that private prisons do save money. But after 10 years of claiming it, Ohio has fallen well short of proving it.

Cells for Sale: Understanding Prison Costs & Savings

If you believe what you hear from the state of Ohio, then more prison privatization is a fiscal no-brainer.

For the last decade, the state has consistently claimed annual savings in the 10-to-17 percent range for the operation of its two privately run prisons – Lake Erie Correctional Institution, in Conneaut, and North Coast Correctional Treatment Facility, in Grafton. Both have been operated under contract by Management and Training Corporation (MTC) of Centerville, Utah since 2001 (Lake Erie, a year earlier). And, if you believe the state, they have combined to generate savings in excess of \$45 million for taxpayers compared to what the state would have spent to run them itself.¹

What's not to like about that?

Even before last fall's election, when a pre-disposition toward downsizing government was firmly established in Columbus, ferment for more privatization was building.

Nationally, from 2000 to 2009, the number of state and federal inmates in private prisons had grown by 48 percent, to nearly 130,000 – about 8 percent of all prisoners in the U.S.² With an established footprint in at least 32 states, private corrections had become a \$22.7 billion industry, Fortune Magazine reported last summer, with an annual growth rate of 4.7 percent and an optimistic outlook for the future.³

Citing Ohio's "successful 10-year experiment" with private management of two facilities, a pair of state senators introduced legislation last June to privatize at least half of the state's 31 prisons, arguing the move could save between 10 and 20 percent a year.⁴ The bill didn't go far.

But with the virtual clean sweep by Republicans at the polls in November, and the \$8 billion hole opened in Ohio's budget for the next biennium by the state tax cuts approved in 2005 and the financial meltdown of 2008-2009, a surge in prison privatization seemed all but inevitable.

So, on March 15, when Gov. John Kasich proposed the outright sale of five state-owned prisons, including the two already operated privately, the only real surprise was in the scope of the proposal – which in a single stroke would nearly triple the number of Ohio inmates under private supervision – and even that was mild. The idea just seemed to make sense:

- On ideological grounds – to those for whom private enterprise is *always* better and more efficient than government.
- On political grounds – to those who find far more support in business circles than in the public-employee unions most likely to be hurt, and
- Most importantly, on financial grounds. Not only would the proceeds from the sale – pegged at \$200 million, but estimated to provide only \$50 million to the General Revenue Fund budget – help with immediate budget problems. But, given the requirement in Ohio

¹ Ohio Legislative Service Commission (Joseph Rogers, Senior Budget Analyst), "Privately Operated State Prisons save \$5.5 million in FY 2010," Budget Footnotes, July 2010, page 30.

² Heather C. West, William J. Sabol and Sarah J. Greenman, "Prisoners in 2009," Bureau of Justice Statistics, page 34, December 2010 at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>

³ D. M. Levine, "What's costlier than a government run prison? A private one," Fortune Magazine, Aug. 18, 2010 at http://money.cnn.com/2010/08/17/news/economy/private_prisons_economic_impact.fortune/index.htm

⁴ Jon Craig, "Privatization Sought for Ohio Prisons," The Cincinnati Enquirer, June 21, 2010, page B1.

law that any private prison must produce a 5 percent savings compared to state operations, the move would arguably save taxpayers a minimum of \$55 million over the next decade.⁵

But it's over this fiscal argument – the only legitimate rationale from a policy perspective – that deep skepticism is in order. If Ohio is basing the promise of future savings from private prisons on its evaluation of their past performance, then there is little reason for confidence in that promise.

The state's method for calculating the hefty savings it has claimed for private prisons does not stand up well to scrutiny. It has shifted substantially and in some cases mysteriously and inexplicably, from biennium to biennium. And a detailed examination of the calculations over the last six years shows them to be riddled with errors, oversights and omissions of significant data and potentially tainted by controversial accounting assumptions that many experts consider deeply flawed.

Acknowledging that previous efforts were both inconsistent and imprecise, state officials decided on their own to re-tool the cost-savings calculations for the 2010-2011 biennium that's now coming to a close. And last fall, in preparation for the private-prison contract renewal for the coming biennium, they started instituting even more fundamental alterations in the calculations⁶ – changes that were still being proposed and considered last month, even as Kasich was unveiling his proposed prison sale.

On March 14, the day before the governor's announcement, the budget chief for the Ohio Department of Rehabilitation and Correction (ODRC) disclosed in an interview that a fundamental proposed change was under review in the way department overhead should be addressed in the calculation – a change that would substantially reduce the savings projected for the private prisons – and that a new method for calculating cost savings had neither been finalized nor approved.

Asked if, in an ideal world, the method to calculate privatization savings ought to be in place *before* a major expansion in privatization is proposed based on those very savings, ODRC budget chief Kevin Stockdale replied:

“Well, we don't live in that world.”⁷

Stockdale said he transferred to ODRC from the state budget office in September of 2008 and immediately saw problems with the way the private-prison savings projections were done for the two previous biennia – 2006-2007 and 2008-2009. “It wasn't very precise in the way it was done,” Stockdale said. “It was not consistent. As an outsider, it sort of shocked me. So we decided to change it.”

Stockdale said he has no stake in the privatization argument one way or the other. But despite the continuing flux in the methodology, he said that he and his department superiors, not to mention the state's political leaders, are convinced that private-prison savings are real.

“I didn't come into this with a pre-disposition either way,” Stockdale said. “But after looking at the numbers, I'm confident that ... even without all the decimal places double checked, the savings are definitely there. At least in my opinion.”

⁵ Timothy S. Keen, Ohio Office of Budget and Management, “The Savings Book,” State of Ohio Executive Budget, Fiscal Years 2012 and 2013, page 68 at <http://www.scribd.com/doc/50798366/Ohio-2012-13-Budget-Book-Four-The-Savings-Books>

⁶ Interview with Kevin Stockdale, Chief, Budget Planning and Analysis, Ohio Department of Rehabilitation and Correction, conducted Feb. 24, 2011.

⁷ Interview with Kevin Stockdale, Chief, Budget Planning and Analysis, Ohio Department of Rehabilitation and Correction, conducted March 14, 2011.

But if they are, the state has fallen far short of proving it.

For simplicity's sake, this examination will focus on the calculations as they apply to Lake Erie Correctional Institution, a medium security prison with similarities to several of Ohio's state-run facilities. (The cost-savings calculations follow the same pattern with the North Coast facility in Grafton. But that facility was designed especially for felony DUI offenders and its unique mission makes it much more difficult to compare to others.)

In a pair of recent interviews, Stockdale said he has proposed significant changes to virtually every phase of the calculations for the Lake Erie facility. Several apparent errors have been discovered as well. But, once the errors are corrected and proposed changes made to the calculations, it's not at all clear that Lake Erie is producing the 5 percent savings required by law. Or that it ever has.

In fact, in fiscal years 2006 and 2007, revised calculations suggest that it may actually have cost taxpayers MORE to contract with MTC for operations at Lake Erie than to have allowed the state to run it.

If that's the case, and the touted savings have been largely illusory, then Ohio's 10-year-experiment with prison privatization becomes something less than "successful," leaving little more than blind ideology, or political preference – or the prospect of the one-time injection of cash from an initial sale of assets – to justify further ventures in that direction.

And absent a strong fiscal rationale, concerns about the effectiveness and security of private prisons take on more weight.

National research

The cost question is unresolved in the national discussion as well.

While debate over prison privatization has been heated and divisive, there is little or no consensus on whether it actually saves money and, if so, how much. Industry leaders typically claim savings of from 5 to 15 percent, sometimes more, for a private versus public facility,⁸ but the research – such as it is – has been highly ambiguous and often seems more emotional than analytical.

"A lot of the arguments are very hypothetical and are more based on theory than on fact, more on ideology than anything," said Dr. Gerry Gaes, director of research at the federal Bureau of Prisons from 1988 to 2002 and a visiting scientist with the National Institute of Justice, the research, development and evaluation agency of the U.S. Department of Justice, from 2002 to 2007.⁹

Given the stakes and the fervor of the debate, one would expect the issue to have been thoroughly vetted by now. But Gaes's own review of the literature last year found very few studies that compared privately and publicly operated facilities. Many of the studies that were found were "of questionable value" and often contained widely differing conclusions about what the research actually shows.

For instance, Gaes noted a triangular dispute over privatization costs several years ago in Florida that involved the state department of corrections, a private prison contractor and the Office of Program Policy Analysis and Government Accountability, a research arm of the state legislature. "All three produced separate and contradictory results regarding the per capita costs of public and private facilities in the state. The Florida Department of Corrections showed that the private contractors were

⁸ Fortune, note 3

⁹ Interview with Dr. Gerald G. Gaes, director of research, Federal Bureau of Prisons from 1988 to 2002; visiting scientist at National Institute of Justice, 2002 to 2007, conducted March 23, 2011.

more expensive than the public operators. The private contractor showed that the privately operated facilities were less costly than the public counterpart. OPPAGA showed that the costs of the publicly and privately operated prisons were about the same.”

His conclusion on the state of the research? “Direct comparisons of cost and quality neither favor the public nor the private sector.”¹⁰

In 2007, researchers at the University of Utah reached essentially the same conclusion: “The intensity of the debate suggests that a clear, obvious choice about privatizing prisons does not exist. Eight of the 12 studies ... (that were sufficiently rigorous to review) provided information on cost effectiveness. Half of these eight revealed that privately managed prisons outperformed publicly managed prisons, with a range of cost effectiveness from 4.6 percent to 15.2 percent. Of the remaining four studies, two showed that publicly managed prisons were more cost effective than their privately managed counterparts (10.0 percent and 14.2 percent). The remaining two studies revealed a statistical tie: that is neither system outperformed the other. Our conclusion is that prison privatization provides neither a clear advantage nor disadvantage compared to publicly managed prisons. Cost savings from privatization are not guaranteed and quality of services is not improved.”¹¹

Because of political and ideological forces that often drive them, government analyses typically have not been helpful, others have found. Not only have governments generally neglected to develop independent estimates of what privatization would actually cost before deciding to do it, they also have typically failed to follow consistent accounting procedures in evaluating the results.¹²

If privatization decisions were left to public corrections officials, and if such decisions were not so politically contentious, Abt Associates concluded in a 2003 privatization study that most officials could probably be counted on to do the analysis necessary to identify the most cost-effective course to follow. “But most prison privatization decisions are initiated not by correctional administrators but by their political masters – the governors or legislatures,” Abt found. “And these decisions are often surrounded by much politicking by private firms and public employee union representatives who feel their jobs may be at stake.”¹³

Complicating the process further, according to Abt, is the inherent difficulty of trying to estimate what the government *would have spent* to operate a facility that’s actually being run by a private firm – or trying to quantify what Abt describes as “the course not taken.”¹⁴ That’s exactly what Ohio has tried to do.

An exercise in make believe

Since no state-run facility is directly comparable to Lake Erie Correctional (or the North Coast facility, for that matter), the state’s calculations essentially involve an exercise in make believe: Creating a hypothetical prison – identical in every respect to that run by the private company except that it’s fully staffed and operated by the state, and then calculating what this make-believe prison

¹⁰ Gerald G. Gaes, “The Current Status of Prison Privatization Research on American Prisons,” August, 2010 at http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=gerald_gaes&sei-redir=1#search=%22current+status+of+prison+privatization+research+on%22

¹¹ Lundhal, Brad W., Kunz, Chelsea, Brownell, Cyndi; Harris, Norma; Van Vleet, Russ (2009). "Prison privatization: A meta-analysis of cost and quality of confinement indicators." *Research on Social Work Practice*, vol 19(4), July 2009, pp. 383-394, or at <http://ucjc.law.utah.edu/wp-content/uploads/86.pdf>

¹² Douglas McDonald and Carl Patten, Abt Associates Inc., “Governments' Management of Private Prisons,” Sept. 15, 2003 for the National Institute of Justice at <http://www.ncjrs.gov/pdffiles1/nij/grants/203968.pdf>

¹³ *ibid.*

¹⁴ *ibid.*

would cost to operate per inmate per day compared to what the state is paying MTC to run the actual one.

As Abt noted in 2003, and Gaes and others have noted since, such analyses of hypotheticals are vulnerable to controversial accounting assumptions that can radically skew the results.¹⁵ What, for instance, is an analyst to do about governmental overhead expenses, which often are figured as high as 10–15 percent of a prison’s direct operating costs? In Ohio’s case, how do you handle Lake Erie’s share of ODRC’s expenses for central office functions like planning, research and administration, to name just a few?

Are such expenses actually “saved” by the act of privatization, which is how Ohio has treated them in past calculations? Or, are they the ongoing costs of running a prison system that taxpayers still must shoulder whether Lake Erie is public or private and, thus, not really savings at all? As will be seen, the difference in the two approaches can be huge.

“Whenever you compare a real facility against a hypothetical facility, this becomes an issue,” said Travis Pratt, an Arizona State University criminologist who has studied privatization questions. Treating a facility’s share of central office functions as a savings from privatization “is a disingenuous way of doing the accounting. You fabricate a cost savings that way.” Pratt said the approach is typical of how private corrections firms “creatively budget to show a savings that is not there. That savings is not real. The state is not going to be saving money off of that.”

But that’s not to say privatization doesn’t save money, Pratt said. It might, even if there is little systematic evidence to prove it. But if there are savings, Pratt said, they are likely to come from only one place: staffing.¹⁶

“If you look at a department of corrections budget, there isn’t a line item that says ‘waste’ that you can just go ahead and cut. The cuts have to come from somewhere and there are very few places where you can actually cut costs, whether a public institution or a private. Where you get that savings is usually going to be in the number of staff, how they are compensated and how extensively they are trained.”

And as Arizona has experienced recently, Pratt said, “those kinds of cost savings don’t come without consequences.”¹⁷

Arizona has been a more aggressive – and some might argue, less careful – privatizer than Ohio. The number of inmates in private prisons there has grown more than six-fold since 2000 and now accounts for about 22 percent of the state’s prisoners,¹⁸ compared to what would only be about 13 percent in Ohio – even after the contemplated prison sale is completed.¹⁹ Two years ago, the Arizona legislature passed, and the governor signed, a bill allowing the sale of virtually all of the state’s prisons

¹⁵ *ibid.* Gerry Gaes, “Cost, Performance Studies Look at Prison Privatization,” National Institute of Justice Journal No. 259, March 2008, or at <http://www.nij.gov/journals/259/prison-privatization.htm>

¹⁶ Interview with Travis Pratt, professor of criminology and criminal justice, Arizona State University, conducted March 23, 2011

¹⁷ *ibid.*

¹⁸ Prisoners in 2009, note 2.

¹⁹ Ohio Department of Administrative Services, Request for Proposals for Operation, Maintenance and Purchase of Correctional Facilities, RFP # CSP901412, April 6, 2011 at <http://procure.ohio.gov/PDF/462011163521CSP901412.pdf> (the private prisons would have combined capacity of 6,561, about 13 percent of current overall prison population of 50,500).

to private vendors willing to pay \$100 million in cash upfront. The provision was later stricken from the budget bill after no suitors came forward.²⁰

Last July, Arizona officials got a sudden wake-up call when three inmates escaped from a private prison near Kingman, led authorities on a manhunt throughout the western United States and allegedly murdered a couple in New Mexico before they were apprehended. Family members of the slain couple have filed a \$40 million claim against Arizona and the prison operator – Management and Training Corporation (MTC), the same company that operates both of Ohio’s private prisons.²¹

Among the culprits identified by state investigators was an inexperienced, poorly trained staff at the MTC facility and apparently lax monitoring by the state that left that and other serious security lapses undetected.²²

The day after Ohio’s prison-sale proposal was unveiled last month, Gary C. Mohr – the director of ODRC and a veteran of both public and private corrections²³ was grilled by skeptical Democratic lawmakers on precisely that potential vulnerability. Asked where the savings from privatization would come from, Mohr essentially agreed with Pratt: From personnel. Not only do private firms typically pay less than the state, Mohr said, but they also allow less vacation and less sick and personal time off, so they can hire fewer people to cover the same number of required positions.

“We are paying more often for people to be off work than they are,” Mohr said. As a result, for some security posts, it would take two state employees to staff a position that a private firm could cover with 1.7.²⁴

When lawmakers expressed concern about a possible falloff in quality among these less expensive staffers, Mohr was reassuring. As is currently the case, he said, the private prisons will be required to meet the same operating standards as the state. And in a change from current practice, ODRC spokesman Carlo LoParo said the state will require that the private prisons’ corrections officers be trained by the state – at the private vendor’s expense – at the department’s training academy alongside their counterparts from state-run institutions.

Currently, MTC, although required to meet ODRC standards, trains its own staff. LoParo said the change is designed to ensure a “uniform system” where not only are procedures identical in public

²⁰ Casey Newton, Ginger Rough and JJ Hensley, “Arizona inmate escape puts spotlight on state private prisons,” The Arizona Republic, Aug. 22, 2010 at <http://www.azcentral.com/news/articles/2010/08/22/20100822arizona-private-prisons.html>

²¹ JJ Hensley and Ginger Rough, “Kingman prison still under scrutiny,” The Arizona Republic, Jan. 30, 2011 at <http://www.azcentral.com/news/articles/2011/01/30/20110130kingman-prison-still-under-scrutiny0130.html>

²² *ibid.*

²³ Mohr is a former consultant and managing director for Corrections Corporation of America, the Nashville-based corrections giant. Mohr moved to the private sector in 2005 after an extensive career in Ohio’s prison system. He was an ODRC deputy director under two different administrations and a warden at three Ohio prisons. Mohr was a managing director for CCA from 2007 to 2009. The company also was a client of his consulting firm, Mohr Correctional Insight, before and after his CCA employment. CCA would be eligible to bid on the state prison sales, but Mohr has promised to remove himself from all consideration of those bids. Joe Guillen, “Private corrections company with ties to government officials will not get special treatment while Ohio sells five prisons, director says,” The Cleveland Plain Dealer, March 21, 2011 at http://www.cleveland.com/open/index.ssf/2011/03/private_corrections_company_wi.html. On March 30, according to The Columbus Dispatch, the interim executive director of the Ohio Ethics Commission said Mohr does not have a conflict of interest with regard to the state’s privatization plans.

²⁴ Laura A. Bischoff, “Ohio wants 5 prisons sold by August,” The Dayton Daily News, March 22, 2011 at <http://www.daytondailynews.com/news/dayton-news/ohio-wants-5-prisons-sold-by-august-1114455.html> ; Alan Johnson, “Sale of prisons, fewer inmates part of budget plan,” The Columbus Dispatch, March 22, 2011 at [http://www.dispatchpolitics.com/live/content/local_news/stories/2011/03/22/copy/sale-of-prisons-fewer-inmates-part-of-plan.html?sid=101](http://www.dispatchpolitics.com/live/content/local_news/stories/2011/03/22/copy/sale-of-prisons-fewer-inmates-part-of-plan.html?sid=101;);

Gongwer News Service, “Administration pitches prison sales, sentencing changes to House panel,” March 22, 2011

and private facilities, but staff training is also. He and Mohr emphasized that, as is currently the case with Lake Erie and North Coast, state-paid monitors would be on hand at all times to oversee compliance with state requirements. But as was discovered last year at MTC's facility in Kingman, Arizona, the presence of state-paid monitors isn't always a panacea.

In the beginning

Ohio was a relative late-comer to the era of private prisons, which dawned in the U.S. in 1983 with the founding of Corrections Corporation of America (CCA) and the opening in Texas the following year of its first privately designed, built and operated facility. CCA still has the largest private-corrections footprint in the nation, according to Gaes, with 17,000 employees and 75,000 inmates housed in 60 facilities in 19 states, 44 of which are company owned.²⁵ A close second is The GEO Group, formerly Wackenhut Corrections Corporation, which, following a merger last year with former competitor Cornell Corrections, now claims some 80,000 prison beds under contract worldwide, including operations in Canada, South Africa, Australia and the United Kingdom.²⁶ The corrections division of Wackenhut was formed in 1984. MTC started in 1981 as a job training organization operating U.S. Department of Labor Job Corps centers. The company entered private corrections in 1987 and now operates 20 state and federal facilities with 25,000 beds in seven states, including Arizona and Ohio.²⁷

The first private prison on Ohio soil was the Northeast Ohio Correctional Facility, initially a troubled facility for federal inmates that was opened by CCA in Youngstown in 1997.²⁸ By the time the state of Ohio first opened its own privately operated prisons three years later, nearly 70,000 inmates were already under private supervision in 29 other states, along with more than 15,500 federal prisoners.²⁹

By the end of 2009, the number of federal inmates in private prisons had more than doubled and those under state authority had increased by a third. With about 4 percent of its prisoners under private supervision at the end of 2009, Ohio ranked 20th among the states in the percentage of privatized beds (behind New Mexico, with 43.3 percent; Montana, Alaska and Vermont, with between 30 and 40 percent; and Hawaii, Idaho, Mississippi, Oklahoma, Colorado and Arizona, all with 20 percent or more). The federal government, with 34,087, had the largest number of privately held prisoners at the end of 2009. Ohio had roughly 2,200, ranking it 15th in the number of privately held inmates, behind Texas – far and away the national leader with more than 19,000 – and Florida, Arizona, Oklahoma, Mississippi, Georgia and Tennessee, all with 5,000 or more.³⁰

If the Kasich plan is realized³¹, Ohio's private prisons would have a combined population of about 6,560. Assuming no change elsewhere, that would put Ohio in the top five in the number of privatized beds and roughly 12th among the states in percentage of private prisoners.

²⁵ Gaes, note 10; Corrections Corporation of America website at <http://www.cca.com/about/>

²⁶ The GEO Group Inc. website at <http://www.thegeogroupinc.com/about.asp>

²⁷ Management & Training Corporation website at <http://www.mtctrains.com/about-mtc/overview>

²⁸ Michael Hallett and Amy Hanauer, "Selective Celling: Inmate Population in Ohio's Private Prison," Policy Matters Ohio, May 2001 at <http://www.policymattersohio.org/pris.html>

²⁹ Prisoners in 2009, note 2

³⁰ *ibid.*

³¹ The state issued its request for proposals (RFP) for the prison sale on April 6. All proposals are due by June 16, with an estimated contract-award date of Aug. 31 and transfer of operations by Dec. 31. ODRC director Mohr has said he expects five to seven bidders.

Ohio's prison population and corrections budget have exploded since the 1970s just as they have in virtually every other jurisdiction. But unlike Arizona and most of the other private-prison states, Ohio appears to have ventured into private corrections almost exclusively as an experiment in cost control. In a survey conducted by Abt Associates, of the 23 states (plus the federal government, District of Columbia and the Commonwealth of Puerto Rico) that reported having prison contracts with private firms at the end of 1997, only eight reported that cost savings were of primary importance in the privatization decisions. For the rest, privatization was seen as a means to reduce overcrowding and to acquire prison beds quickly.³² For Ohio, private prisons were seen as a way to save money. In fact, the requirement that any private prison firm operate at least 5 percent below ODRC's estimated costs for a comparable state institution was inserted into law from the outset.³³

But the process for assuring that that goal is met has been both mysterious and something short of rigorous.

In 2001, after CiviGenics – the first operator of the North Coast Correctional Treatment Facility – ran afoul of state officials for contract violations and other issues there, ODRC offered to pay potential replacements significantly more than CiviGenics was getting per inmate per day to operate the facility. But when an insufficient number of bids met the 5 percent savings goal, ODRC simply raised its estimate of what the state would have spent to run it. That allowed would-be operators to ask for as much as \$62.88 per inmate per day – 13.5 percent more than CiviGenics had been receiving – and still meet the 5 percent “savings” requirement.³⁴

That contract was eventually awarded to MTC, the original contractor hired (without a competitive bid and to the chagrin of competitors) to operate Lake Erie Correctional Institution, a 1380-bed institution that opened in Conneaut in April of 2000, about a month after North Coast Correctional.³⁵

For Lake Erie, ODRC estimated that MTC would save 12 percent annually over what the state would incur to run the facility, based on the contract per diem of \$36.47 awarded to the company and the department's estimate that it would have cost the state \$41.47 per inmate per day to run it. ODRC used a hypothetical model to derive this estimated cost and released limited information about the variables that went into that model.³⁶

Mystery has shrouded the state's savings calculations almost ever since.

In fact, officials of the Ohio Civil Service Employees Association, the public-employees union whose members' jobs are most threatened by the push toward privatization, are deeply skeptical about the savings the department has claimed. But they say they have never seen the actual calculations that produced those savings projections.³⁷

Last December, union officials submitted a public records request to ODRC for “all documents that explain the process whereby the 5 percent savings that private prisons must demonstrate was calculated.” In return, they received a document entitled “Overview of Privately-Operated Prison Cost Comparison” that described the components of the calculations, but contained no calculations.

³² Abt, note 12

³³ Selective Celling note 28

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ Interview with Tim Roberts, vice president of the Ohio Civil Service Employees Association/AFSCME Local 11, conducted on Feb. 16, 2010

In response to its own public records request, Policy Matters Ohio in January received electronic copies of the actual spreadsheets that ODRC officials have used to calculate the projected savings from private prisons in each of the last three biennia – 2006-07; 2008-09 and 2010- 2011.

The three spreadsheets contain significant detail on how the recent calculations have been made. However, it's clear they were not designed to determine an appropriate per diem for the private prisons, one that would ensure that the required 5 percent savings is realized. Rather, the per diem is negotiated with the private provider first. The calculation is then used to determine that the per diem would generate the requisite savings.

The process has always been the same, Stockdale said in an interview: Negotiate a rate acceptable to the private vendor, then run a series of calculations to show it saves 5 percent.³⁸

Focusing, as mentioned earlier, on Lake Erie Correctional, and based on a detailed examination of the recent spreadsheets, here's how the process has worked.

In order to calculate Lake Erie's projected savings, one needs to imagine a hypothetical institution that looks exactly like Lake Erie, but is operated by the state, and then ask how much it would cost:

- to staff such a facility with state employees;
- to stock, supply and equip such a facility and to provide an appropriate menu of services; and
- to provide the facility with heat, electricity, water and sewer services.

Utilities appear to be the smallest of these cost components and the most straightforward to calculate. State officials have simply assumed that utilities would cost the same whether the state or a private firm was in charge. So Lake Erie's actual utility costs for previous years, adjusted for inflation and divided up per inmate per day, are simply inserted into the per diem cost calculation for its hypothetical twin.³⁹

Since there is no state-run facility that works just like Lake Erie, calculating costs for equipment, supplies and contract services for the hypothetical is much trickier. So, the ODRC has tried to create a composite facility of sorts by selecting five prisons that share some of Lake Erie's characteristics, averaging their non-utility, non-personnel expenses, dividing the total by the average of their inmate populations per day and inserting the result into the hypothetical's per diem calculation.⁴⁰

Staffing requirements – the number of posts that need to be manned per shift – are established for Lake Erie by contract. But because private firms have had different training regimens than the state, offer less time off and tend to pay less overall, real cost differences may exist here. To measure that, state officials determine how many state employees would be needed to fill the required number of positions and how much those employees would receive in state pay. That total is also divided by the number of inmates per day and added to the previous two components to produce a payroll+costs+utilities per diem for the hypothetical.

Then, the spreadsheets show, an estimate or calculation has been made of the hypothetical's share of "indirect costs," which essentially are all ODRC costs associated with running prisons – as opposed to functions like community-based corrections and parole operations. These, too, are divided by the number of inmates per day and added to the hypothetical's per diem.

³⁸ Stockdale interview, Feb. 24, 2011, note 6.

³⁹ *ibid.*

⁴⁰ *ibid.*

Under the private-prison contract, ODRC-paid staffers must be on hand at the private prison to maintain correctional records and to monitor adherence to contractual obligations. Salaries and benefits for those staffers are totaled, divided by the number of inmates per day and added to Lake Erie's negotiated per diem – because these are additional costs associated with privatization, as opposed to savings.⁴¹

Finally, the hypothetical's per diem costs for payroll, supplies and equipment, utilities and indirect expenses are adjusted for inflation where appropriate and added together to create a total per diem for the facility if it were state run. That, in turn, is compared to Lake Erie's negotiated per diem, plus the daily per-inmate cost for contract monitors and records staff. If the Lake Erie figure is at least 5 percent lower than the hypothetical's, then the statutory savings requirement has been met.

But a close examination of the ODRC spreadsheets shows that errors, omissions and inconsistencies have dramatically distorted the savings projected by the state.

The Spreadsheets

Take the 2006-07 biennium, for instance. ODRC officials calculated the savings for Lake Erie over its hypothetical, state-run counterpart for those fiscal years at 10.2 percent, or about \$2.4 million for each year of the biennium (**Table 1, Column A**). But a detailed examination of the state's calculations shows that they include an apparently bloated staffing estimate for the state-run hypothetical – a figure nearly 20 percent higher than the actual number of employees at Lake Erie and approximately 12 percent higher than what the state would have needed to operate it.

The calculation also assesses the hypothetical for central office “indirect costs” at the rate of about 10 percent of its payroll+costs+utility per diem. As was mentioned earlier, it is controversial to include such central office “savings” at all. But granting for a moment that it should be included, based on the size of the adjustments now being considered by the state, that assessment was at least six times too high. Once those figures are adjusted, the picture of Lake Erie as a clear bargain for taxpayers is tarnished considerably.

In fact, with more realistic treatment of overhead costs, the savings projected by the state's calculation for a privatized Lake Erie could slip to as low as 1.1 percent to 2.5 percent, well below the minimum required by law. (**Table 1, Columns B and C**) And when staffing levels for the state-run hypothetical are cut to their proper size, the privatized Lake Erie actually appears to have cost between 1.8 percent and 3.4 percent MORE to operate than its state-run twin – a loss for taxpayers of between \$380,000 and \$700,000 for each of those fiscal years. (**Table 1, Columns D and E**)

⁴¹ *ibid.*

Table 1

Ohio's Cost Savings Calculations for 2006-2007 biennium including revisions for hypothetical state-run prison identical to Lake Erie Correctional Institution, both with 1360 inmates					
	Column A	Column B	Column C	Column D	Column E
	Per diem* costs and savings computed by state officials	With adjusted central office costs per new state revision	With no central office costs as some recommend	With corrected staff levels and central office costs	With corrected staff levels; no central office costs
Utilities	\$2.34	\$2.34	\$2.34	\$2.34	\$2.34
Costs**	\$6.94	\$6.94	\$6.94	\$6.94	\$6.94
Payroll	\$33.68	\$33.68	\$33.68	\$31.81	\$31.81
Payroll+costs+utilities per diem	\$42.96	\$42.96	\$42.96	\$41.08	\$41.08
Central Office costs ***	\$4.36	\$0.64	\$0.00	\$0.64	\$0.00
Hypothetical's per diem cost	\$47.32	\$43.60	\$42.96	\$41.72	\$41.08
Negotiated per diem for Lake Erie	\$42.27	\$42.27	\$42.27	\$42.27	\$42.27
State monitor; other charges	\$0.22	\$0.22	\$0.22	\$0.22	\$0.22
Lake Erie's per diem	\$42.49	\$42.49	\$42.49	\$42.49	\$42.49
Lake Erie's savings vs hypothetical	\$4.83	\$1.11	\$0.47	-\$0.77	-\$1.41
Percent savings per year	10.2	2.5	1.1	-1.8	-3.4
Dollar savings per year (per diem savings*365*1360)	\$2,397,580	\$551,575	\$233,879	-\$380,420	-\$698,116

Source: Ohio Department of Rehabilitation and Correction; author's calculations

* amounts per inmate, per day

** equipment, supplies, other expenses

*** about 10% of payroll+costs+utilities

For the 2008-09 biennium, officials calculated the projected savings for Lake Erie over its hypothetical, state-run counterpart at about 6 percent per year, or roughly \$1.4 million for each year of the biennium. **(Table 2, Column A)** Actually, had state analysts been consistent with the previous biennium, those projected savings would have been dramatically higher – a whopping 21 percent, or nearly \$6 million a year for Lake Erie alone.⁴² **(Table 2, Column B)**

⁴² Here's why the projected savings reported by the state were so much lower. A detailed examination of the calculations reveals two apparent oversights by state officials that, if corrected, would have produced the much more dramatic savings figures. As with the previous biennium, the spreadsheet contains the calculation of a percentage assessment for "indirect costs" (although for the 2008-09 biennium, the assessment was for about 13.9 percent of the payroll+costs+utilities per diem instead of the 10 percent used previously). For whatever reason, however, officials either neglected or declined to apply the assessment to the state-run facility as they had in the previous biennium and would again in the next one. Had they applied the assessment, the projected annual savings for Lake Erie would have been 17.6 percent – or more than \$4.6 million each year. The spreadsheet also reveals that, after estimating the position-by-position wages and salaries that state employees would earn in fiscal 2008 if they were staffing the Lake Erie facility, officials inadvertently used an earlier year's pay estimates in the final cost calculations – seemingly understating the payroll costs. If both of those errors are corrected, the purported savings shoot to 21 percent per year.

Table 2

**Ohio's Cost Savings Calculations for 2008-2009 biennium, including revisions
for hypothetical state-run prison identical to Lake Erie Correctional Institution, both with 1380 inmates**

	Column A	Column B	Column C	Column D	Column E	Column F
	Per diem* costs and savings computed by state officials****	With oversights restored and payroll errors corrected	With adjusted central office costs per state's revision	With no central office costs as some recommend	With inmate pay, revised staffing central office costs	With inmate pay, revised staffing, no central office costs
Utilities	\$2.87	\$2.87	\$2.87	\$2.87	\$2.87	\$2.87
Costs **	\$7.94	\$7.94	\$7.94	\$7.94	\$7.94	\$7.94
Payroll	\$35.25	\$37.46	\$37.46	\$37.46	\$33.11	\$33.11
Payroll+costs+utilities per diem	\$46.06	\$48.27	\$48.27	\$48.27	\$43.93	\$43.93
Central Office costs ***	\$6.42	\$6.71	\$0.68	\$0.00	\$0.68	\$0.00
Hypothetical's per diem cost	\$46.06	\$54.98	\$48.95	\$48.27	\$44.61	\$43.93
Negotiated per diem for Lake Erie	\$43.25	\$43.25	\$43.25	\$43.25	\$43.25	\$43.25
Inmate pay (columns E and F)	0	0	0	0	\$0.71	\$0.71
State monitor; other required charges	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10	\$0.10
Lake Erie's per diem	\$43.25	\$43.35	\$43.35	\$43.35	\$44.06	\$44.06
Lake Erie's savings vs hypothetical	\$2.81	\$11.63	\$5.60	\$4.92	\$0.55	-\$0.13
Percent savings per year	6.1	21.2	11.4	10.2	1.2	-0.3
Dollar savings per year (per diem savings*365*1380)	\$1,416,721	\$5,857,496	\$2,820,185	\$2,477,669	\$276,039	-\$66,477

* amounts per inmate, per day

** equipment, supplies, other expenses

*** originally (Columns A and B) about 13.9 % of payroll+costs+utilities

**** the central office costs for the hypothetical, and the state monitor costs for Lake Erie apparently were overlooked and the wrong year's pay estimates used in this calculation

Numbers like that make the privatization experiment look even more like a slam dunk.

But, as with the 2006-07 figures before them, the 2008-09 calculations for the hypothetical are burdened by dubious overhead assumptions and even more bloated staffing estimates (16 percent more employees than the state would actually have needed) which make the mythical state-run institution appear more expensive than it actually would be.

When those figures are cut to size in the calculation, and when previously ignored state costs (like inmate pay) are inserted, the projected savings virtually disappear – shrinking to between 1.2 percent and -0.3 percent, depending on how central office costs are handled, well below the 5 percent savings required by law. (**Table 2, Columns E and F**)

It should be mentioned that Stockdale was not with ODRC when those calculations were made and can't speak directly to how they were constructed. Arriving from the state budget office, Stockdale became chief of budget planning and analysis for ODRC in the fall of 2008. The following year, as he and his staff began preparing for the renewal of the private-prison contracts for Lake Erie and its sister institution, Stockdale said that several inconsistencies and problems with the state's earlier calculations became apparent and he set out to fix them.

Some of the more obvious concerns were rectified in the 2010-11 calculations, including the use of more precise salary figures for various positions in the state-run hypothetical and a more realistic estimate of its staffing levels. Stockdale also began to refine the calculations for “indirect costs,” using actual figures for the department’s prison-related central office expenses as a starting point instead of the shifting percentage estimation (about 10 percent for 2006-07, 13.9 percent in 2008-09) used previously.

“That is one of the things where it’s inconsistent from year to year,” Stockdale said in an interview. “Instead of trying to calculate the cost of central office, they applied a flat percentage. That is one of the things that bothered me.”

One result of Stockdale’s revision is what appears to be a much cleaner analysis for 2010-11, one that still shows an attractive projected savings for Lake Erie of 13.9 percent (\$3.8 million) in fiscal 2010 and an even more attractive 15 percent (\$4.2 million) for 2011.⁴³ **(Table 3, next page, Columns C and D)**

But there are ample reasons to be wary about these savings figures as well. In their ongoing review of the cost-saving calculations, Stockdale and his superiors at ODRC have discovered a number of other problems with the methodology – problems with significant implications not only for the savings attributed to the private facilities in the past, but also for projected savings in the future.

Multiple changes to the methodology – proposed by ODRC and awaiting approval by the Office of Budget and Management – were expected to be in place by this month (April), Stockdale said, before the department was scheduled to renew contracts for Lake Erie and North Coast. In the interest of transparency, he said the new methodology would appear on the ODRC website upon completion and approval. As of April 15, it had not appeared. Stockdale disclosed several of those proposed revisions during an interview in February.

They include probable changes in the complement of comparison facilities used to calculate cost estimates for equipment and supplies for the state-run hypothetical. While similar in size to Lake Erie, Grafton Correctional Institution (one of the five prisons, including the two already under private supervision, to be sold) and Allen Correctional Institution don’t compare well otherwise, ODRC has concluded. Both have mental-health residential components within or attached to them that make them considerably more expensive to operate and the inmate populations of both are generally older and less healthy than at Lake Erie.⁴⁴

⁴³ Actually, the projected savings figures the state had been using for 2010-2011 are somewhat lower because, in the original calculation, Stockdale’s office mistakenly used Lake Erie’s actual staffing figures for the state-run hypothetical, instead of the higher number the state would have needed to fill the same number of posts. As a result, the original calculations for the current biennium understated the personnel costs for the state-run hypothetical by about \$1.36 per inmate per day, which amounts to about \$725,000 per year. **(Table 3, Columns A and B)**

⁴⁴ *ibid.*

Table 3

Ohio's Cost Savings Calculations for the 2010-2011 biennium, with revisions For hypothetical state-run prison identical to Lake Erie, both with projected average inmate population of 1450								
	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
	2010 per diem costs and savings computed by state*	2011 per diem costs and savings computed by state*	2010 calculation with hypothetical's staff level corrected	2011 calculation with hypothetical's staff level corrected	2010 calculation, adjusted to reflect state revisions ***	2011 calculation, adjusted to reflect state revisions ***	Revised 2010 calculation (Column E), no central office costs ***	Revised 2011 calculation (Column F), no central office costs ***
Utilities	\$3.06	\$3.15	\$3.06	\$3.15	\$3.06	\$3.15	\$3.06	\$3.15
Costs	\$8.75	\$9.02	\$8.75	\$9.02	\$8.65	\$8.90	\$8.65	\$8.90
Payroll	\$35.50	\$35.70	\$36.86	\$37.07	\$36.86	\$37.07	\$36.86	\$37.07
State monitor; records staff for Lake Erie	(\$0.56)	(\$0.57)	(\$0.56)	(\$0.57)	(\$0.56)	(\$0.57)	(\$0.56)	(\$0.57)
Payroll+costs+ utilities per diem	\$46.74	\$47.29	\$48.10	\$48.67	\$48.00	\$48.55	\$48.01	\$48.55
Central office costs**	\$3.94	\$4.06	\$3.94	\$4.06	\$0.72	\$0.75	\$-	\$-
Hypothetical's per diem	\$50.68	\$51.35	\$52.04	\$52.72	\$48.72	\$49.30	\$48.01	\$48.55
Negotiated per diem	44.25	44.25	44.25	44.25	44.25	44.25	44.25	44.25
State monitor; records staff	\$0.56	\$0.57	\$0.56	\$0.57	\$0.56	\$0.57	\$0.56	\$0.57
Inmate pay and over-the-cap medical (Actual 2010 figures)					\$1.44	\$1.44	\$1.44	\$1.44
Lake Erie's per diem	\$44.81	\$44.82	\$44.81	\$44.82	\$46.25	\$46.26	\$46.25	\$46.26
Lake Erie's savings vs hypothetical	\$5.87	\$6.53	\$7.23	\$7.91	\$2.46	\$3.04	\$1.75	\$2.30
Percent savings per year	11.6	12.7	13.9	15.0	5.1	6.2	3.6	4.7
Dollar savings per year	\$3,104,102	\$3,458,641	\$3,825,454	\$4,184,278	\$1,303,602	\$1,609,635	\$926,199	\$1,214,713

* officials mistakenly used actual Lake Erie staffing levels instead of higher number of employees that the state would need to hire

** share of actual prison-related department functions

*** includes costs for remaining comparison facilities, actual 2010 inmate pay and over-the-cap medical payments and revised central office costs based on proposed state adjustment

By way of illustration: in 2009, 7.4 times more prescriptions were written per 100 inmates at Allen than at Lake Erie, according to state data, and nearly 3 times more at Grafton.⁴⁵ As of the middle of last year, about 12 percent of the combined inmate population of Allen and Grafton were considered seriously mentally ill, compared to just about 4 percent at Lake Erie.⁴⁶ According to ODRC data, both Allen and Grafton were also carrying about 35 percent more staffers per inmate at the beginning of this year than Lake Erie and the three other comparison prisons.⁴⁷

Stockdale said analysts would probably retain the more similar, albeit larger, facilities now used as comparables – North Central Correctional Institution, in Marion, (which also is to be sold under the Kasich plan); Noble Correctional Institution and Belmont Correctional Institution. Allen and Grafton, he said, would probably be replaced by Southeastern Correctional Institution, in Lancaster, which is roughly the same size and has a younger, healthier inmate population more similar to Lake Erie's.

Changes to the calculations are also likely to include assurances, in Stockdale's words, "that all of the costs that should be assigned to private prisons are assigned." Because it's a projection for the coming fiscal year, the per diem negotiated for Lake Erie (and North Coast) doesn't include some of the actual costs incurred by the state for the facility during the course of a year's operations.

For instance, the state typically reimburses Lake Erie for payments made to inmates for work performed in the prison (at the estimated rate of \$18 per inmate, per month) and for the amounts they are given for initial expenses upon their release. Those costs have not been included in the department's previous cost-savings calculations, Stockdale said.⁴⁸

A more significant example is what Stockdale described as "over-the-cap medical payments." Beginning with the 2007-08 biennium, according to an amendment to Lake Erie's contract, the state agreed to reimburse MTC for all hospitalization costs beyond \$20,000 for any inmate per admission. Such reimbursements, which totaled \$484,000 in fiscal year 2010, should be added to Lake Erie's per diem in the savings calculation, but haven't been to date.

Stockdale acknowledged that those changes would tend to make the hypothetical state-run facility look more competitive with Lake Erie in the savings analysis.⁴⁹

But one of the biggest changes the department is proposing – a dramatic alteration in the way the department's "central office" overhead expenses are handled in future calculations, wasn't disclosed until Stockdale was specifically asked about the issue in a follow-up interview on March 14 – the day before the announcement of Kasich's intention to sell five prisons.⁵⁰

The significance of this "central office" issue is dramatically illustrated by a pair of in-depth privatization studies by private research firms that were commissioned by the federal government and completed in 2005. Both were designed to compare the cost to the government of contracting with what was then the Wackenhut Corrections Corporation (now The GEO Group) to run a low-security prison in Taft, California, from 1998 through 2002 with what it would have cost the federal bureau of prisons to run it.

⁴⁵ Gregory T. Geisler, "The Cost of Correctional Health Care," Ohio Correctional Institution Inspection Committee, December 15, 2010 at <http://www.ciic.state.oh.us/health-care-or-medical-services/view-category.html> page 11, Table 1

⁴⁶ CIIC Progress Report and Staff Briefing, Ohio Correctional Institution Inspection Committee, June 29, 2010 at <http://www.ciic.state.oh.us/199-ciic-progress-report-and-staff-briefing-2010.html> pages 7 and 8, Tables 3 and 4

⁴⁷ Ohio Department of Rehabilitation and Correction website at <http://www.drc.ohio.gov/web/prisprog.htm>

⁴⁸ Stockdale interview, February 24, 2011

⁴⁹ *ibid.*

⁵⁰ Stockdale interview, March 14, 2011

Both studies – one by Abt Associates, the other by The CNA Corporation – used the same three federally operated prisons for cost comparisons. And yet they came to dramatically different conclusions which, according to Gaes, should hammer home two key lessons for would-be privatizers and their foes:

- Public-private cost comparisons are “deceptively complex,” and
- Be careful with overhead.⁵¹

The “problem of overhead costing is so pervasive and difficult,” Gaes wrote last year, “that ... this calculation alone can tip the balance (often erroneously) in favor of one sector over the other.” Unless considerable effort is made to determine which overhead expenses represent actual “savings” for taxpayers, “large errors in the cost comparisons between private and public sector comparisons can occur.”⁵²

In the studies at issue, Abt found that Taft, the privately operated prison, was much less expensive to operate than the public facilities – by an average of about 14 percent in fiscal years 2001 and 2002. CNA, on the other hand, found a statistical dead heat: Taft appeared cheaper, but only by 1 percent. The much bigger cost difference found by Abt between the public and private facilities was, almost dollar for dollar, equivalent to government overhead expenses it calculated for the public facilities but did not charge against the private one.

Abt concluded that Taft’s share of “government overhead” – which it calculated for the public facilities at 12 percent of their salary, wages and fringe benefits – should be counted as a savings from privatization even while conceding that taxpayers didn’t actually save that money because the Bureau of Prisons’ overhead didn’t actually change.⁵³

By contrast, CNA reasoned that if the government doesn’t actually avoid an expense as a result of privatization – if the taxpayers don’t experience an actual savings – than the expense should not be included in the calculation. CNA analyst Julianne Nelson concluded what Abt conceded – that most Bureau of Prison (BOP) overhead costs associated with Taft would continue to be incurred by the government even though a private company was operating the prison.⁵⁴

“Many of these support expenditures – such as central office costs—benefit *all* BOP facilities, both publicly- and privately-managed,” Nelson wrote. “As a result, these costs are essentially independent of outsourcing – they are the same whether GEO runs Taft as a BOP contractor or the BOP runs Taft directly on its own behalf.” According to CNA’s Nelson, “central office expenditures are *un*avoidable and can thus be ignored when evaluating the merits of outsourcing.” An alternative to ignoring them completely, Nelson wrote, would be to add them to both the public and the private scenarios, which would have roughly the same effect.

When asked about Nelson’s argument on March 14, the day before Kasich’s budget was released, Stockdale acknowledged that state officials were re-evaluating the overhead charges even in the refined 2010-2011 calculation and were proposing significant reductions. Instead of charging the hypothetical state-run institution a per-inmate share of \$67.9 million in central office functions – essentially for all prison-related activity in the department’s Columbus headquarters – he said what

⁵¹ Gaes, NIJ journal, note 15

⁵² Gaes, research review, note 10

⁵³ Douglas C. McDonald and Kenneth Carlson, Abt Associates, Inc., “Contracting for Imprisonment in the Federal Prison System: Cost and Performance of the Privately Operated Taft Correctional Institution,” November 2005 for National Institute of Justice at <http://www.ncjrs.gov/pdffiles1/nij/grants/211990.pdf>

⁵⁴ Julianne Nelson, The CNA Corporation, “Competition in Corrections: Comparing Public and Private Sector Operations,” December 2005 at http://www.bop.gov/news/research_projects/published_reports/pub_vs_priv/cnanelson.pdf

“we are going toward” is a function-by-function breakdown of what should be included and what shouldn’t.

For instance, the department’s office of prisons oversees facility operations whether they are public or private, Stockdale said. By excluding that office, the central office figure becomes “significantly smaller,” he said, somewhere in the \$10 million to \$15 million range.⁵⁵ Taking the mid-point, that’s a cut of more than 80 percent in the “central office” costs attributed in past calculations to the state-run hypothetical. When that adjustment is inserted in the calculation along with the other changes already discussed, the projected 2010 savings for Lake Erie suddenly shrinks by nearly two thirds – from 13.9 percent to just 5.1 percent, just a hair above the minimum allowed by state law (or from \$3.8 million to about \$1.3 million). (**Table 3, Column E**)

But even those changes may not be enough.

The central office calculation could still include Lake Erie’s share of such functions as the department director’s office, public affairs, legal services, human resources, planning, research, budgeting, accounting, purchasing and other department-wide operations, most of which would have to be performed from Columbus whether the facility is publicly or privately operated.

Following Nelson’s argument – ignoring such expenses or charging them to both the public and private scenarios in the 2010-2011 calculations – would drop the projected savings for Lake Erie to about 3.6 percent for 2010 and 4.7 percent for 2011, (**Table 3, Columns G and H**) below the legal requirement for privatized facilities.

Stockdale said he and other ODRC officials are aware of the argument Nelson puts forward. “It’s something that we kick around too,” he said.

“You could make that argument – I’m not saying whether it’s appropriate or not. I am not judging either way. I want to be as accurate as possible. I don’t want to put my finger on the scale either way, because all this affects people and I recognize that. So I just try to take as dispassionate a stance as possible and that’s why we wanted to re-look at this.”

A race to the bottom?

Whether or nor the Lake Erie facility meets Ohio’s 5 percent savings requirement, it’s clear from ODRC calculations that personnel costs – which account for about 70 percent of facilities’ operating expenses – are the likeliest place a private vendor would look to for cuts. One question, from a public policy point of view, is how far can such expenses be trimmed before effectiveness and safety are compromised?

According to Gaes, it’s an area of privatization that has received even less research attention – and may be even harder to quantify – than cost. “What is the impact of lower labor costs on staff turnover or staff performance?” he asked in his research review last year. “How do private companies develop training for workers with fewer skills? Do private companies, in fact, hire lower skilled workers? Have private companies re-engineered the prison employee’s job?” Gaes fears what he calls a “McDonaldization” of prison labor.⁵⁶

Once you introduce the profit motive into prisons, says Arizona State University’s Travis Pratt, there’s always a danger that cost cutting in the most expensive areas – personnel and programming – can impact quality and security. “It’s difficult to keep good people,” Pratt said, “when they are

⁵⁵ Stockdale interview March 14, 2011

⁵⁶ Gaes, research review, note 10

understaffed and not compensated very well. If the cost saving is coming in the form of staffing, if it's coming in the form of encouraging turnover, than there is a safety risk at that point."⁵⁷

In a 2009 letter to the governor protesting Arizona's later-scuttled initiative to put for-sale signs on virtually all of the state's prisons, the state's corrections chief issued a prophetic warning: "Undoubtedly, a private company would pay its employees significantly lower wages and provide them lesser training to realize cost savings," department director Charles Ryan wrote. "This would lead to higher staff turnover, low morale and place public safety at risk."

A year later, that prophecy was seemingly fulfilled with the escape from the MTC facility near Kingman and its tragic aftermath.

State investigators found that turnover at the facility was high, leading to a lack of training, the Arizona Republic reported; some officers struggled to load and use their weapons during a security review. The warden reported that nearly 80 percent of the staff was new or newly promoted and investigators found that many showed a lack of experience and "command presence." One investigator estimated that a third of the security employees had less than three months on the job. Inmates at the facility were found to be unkempt, unruly and poorly controlled. And false alarms were so frequent that the staff simply ignored them. During a 16-hour review period before and after the escape, 89 alarms sounded and only two were legitimate. The rest were false.⁵⁸

After the investigation, MTC was warned that if it didn't comply with revised safety standards it could lose its contract to run the facility. Some of the prison's administrators resigned; others were re-assigned and the state increased the number of state employees on hand to monitor MTC's operations.⁵⁹

As Ohio readies itself to triple the number of inmates under private supervision, the debacle at Kingman Arizona last year stands as a cautionary tale. Ohio officials say they have experienced no such security lapses with MTC in its 10-year operation of Lake Erie and North Coast. ODRC's LoParo said there have been no prisoner walk-aways from either facility on MTC's watch. Records provided by LoParo show that over the last three fiscal years combined, Lake Erie has experienced inmate-on-inmate assaults at only about half the rate of the state's designated comparison facilities (three per 100 inmates, compared to 5.8 on average at the five comparables.) Lake Erie has experienced about the same level of inmate-on-staff assaults as the comparables over the period (just over 3 per 100 inmates).⁶⁰

As for staff stability, average corrections-officer turnover for the last two years has been higher at the MTC facilities than at state-run prisons (12.5 percent at Lake Erie and 10.2 percent at North Coast, compared to 8.7 percent for ODRC as a whole), according to figures provided by LoParo. But the private-prison turnover rate is still below what LoParo described as the maximum permissible rate of about 20 percent. "Anything less than that is acceptable," he said.

Still, MTC's problems in Arizona raise questions. It's not as if the company was a newcomer to corrections last year and didn't know better. MTC had been running prisons for nearly 25 years at the time and had operated the Kingman facility for six. Surely, experience had taught company officials

⁵⁷ Travis Pratt interview, March 23, 2011

⁵⁸ JJ Hensley, "State rips private prison, begins making changes," The Arizona Republic, Aug. 20, 2010 at <http://www.azcentral.com/news/articles/2010/08/19/20100819arizona-prison-escape-report-brk19-ON.html> ; Arizona Department of Corrections, Security Review of MTC Facility at Kingman, Aug. 4-6, 2010 at http://www.azcorrections.gov/adcc/news/2010/kingman_sec_review/Kingman_Assessment_1.pdf

⁵⁹ *ibid*, Arizona Republic, note

⁶⁰ Ohio Department of Rehabilitation and Correction, Inmate on Staff Assault Report – Fiscal Years 2008, 2009, 2010, and Inmate on Inmate Assault Report – Fiscal Years 2008, 2009, 2010.

how to maintain a stable, well-trained staff. So, one is entitled to ask, were the staff deficiencies at Kingman a result of corner-cutting to boost the bottom line?

In 1998, after six prisoners, including five murderers, escaped from the CCA-operated federal prison in Youngstown, many of the guards were found to have had little or no experience in corrections and conditions at the prison were described as generally chaotic.⁶¹ And yet, CCA had been in the corrections business for a decade and a half at that point and presumably knew better.

Escapes can happen. Prisons tend to be volatile and unpredictable places. So, when seasoned prison operators staff their facilities in one location with inexperienced, insufficiently trained employees, one is entitled to ask what motives are at work and whether similar problems could crop up again elsewhere.

Whatever the answers to such questions, one thing is probably safe to assume: Once the commitment is made to aggressively go private – for whatever reason – it’s a decision that’s unlikely to be reversed.

Many commentators have warned that once a jurisdiction delegates its authority to manage and operate a correctional facility to a private corporation, the jurisdiction also runs the risk of becoming overly dependent upon that corporation for services.⁶² The limited number of private corrections firms makes it difficult for states to shop around for replacements if they are unhappy with the services – especially if the vendor owns the facility. In its prison-sale RFP, Ohio has asked would-be purchasers to outline a procedure for transferring the facility operations and assets to the state or a new vendor if their contract is terminated.

If the vendors happen to become political players, the dynamic can be that much more complicated. Last August, the Arizona Republic cited a 2006 report from the National Institute on Money in State Politics stating that the private-prison industry had contributed to the campaigns of 29 of 42 Arizona lawmakers who heard a 2003 proposal to increase state private-prison beds there. Between 2001 and 2004, according to the report, the industry contributed \$77,267 to Arizona's legislative and gubernatorial candidates, most through lobbyists representing company interests at the legislature.⁶³

Last year, before the Kingman episode, Arizona lawmakers approved 5,000 more private-prison beds, an expansion that was slowed by the outcry over the escape last summer and fall. But those beds have since gone out for bid⁶⁴, while multiple bills to increase state oversight of for-profit prisons have languished – without so much as a hearing – in the legislature.⁶⁵

Meanwhile it’s not at all clear that Arizona’s private prisons are saving taxpayers anything.

In fact, when the comparison is apples-to-apples, the evidence shows the opposite. In a study completed last year, the state department of corrections concluded that, overall, it costs taxpayers about \$2.45 less per inmate per day to house medium- and minimum-security prisoners in private facilities. But that comparison is skewed by the fact that contract provisions allow some operators to screen inmates based on medical conditions. As a result, private prisons spend about 35 percent less per prisoner on health care than the state-run facilities do. Once the playing field is leveled, the tables are

⁶¹ Hallett and Hanauer, note 28

⁶² *ibid.*

⁶³ Newton, Rough and Hensley, Arizona Republic, note 20

⁶⁴ Hensley and Rough, Arizona Republic, note 21

⁶⁵ Mary K. Reinhard, “Arizona private prison oversight bills die,” The Arizona Republic, Feb. 12, 2011 at <http://www.azcentral.com/news/articles/2011/02/15/20110215arizona-private-prison-bills.html>

turned. Setting medical costs aside, Arizona's state-run facilities cost \$1.78 per inmate LESS per day to operate than its private facilities – or about \$5.8 million less per year.⁶⁶

The bottom line?

“I don't want to be ideological about this,” said Gaes, who acknowledges deep skepticism on the wisdom of private prisons.

“There are going to be occasions where you are going to save money,” he said in an interview. “You can begin to squeeze money out of the system. Maybe you can squeeze a half a percent out, who knows? But it's not as if these systems are overfunded to begin with. And at some point, you start to lose quality. And because quality is very difficult to measure in prisons, I'm just worried that you're getting into a race to the bottom.”

⁶⁶ Arizona Department of Corrections, “Revised FY 2009 Operating Per Capita Cost Report,” Sept. 28, 2010 at http://www.azcorrections.gov/adcreports/ADC_FY2009_PerCapitaRep_revised.pdf

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