

# Privatization in Corrections:

Increased Performance and Accountability  
Is Leading to Expansion



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Mike Murphy, VP Marketing, MTC Corrections  
Rob Olding, Associate Dean, College of Health and Human Services, University of Phoenix  
Erik Rasmussen, Director, Financial Planning & Analysis, Corrections Corporation of America  
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Principal Author: Carl Nink

Comments are appreciated and should be directed to Carl Nink, Executive Director at:

MTC Institute  
500 North Marketplace Drive  
P.O. Box 10  
Centerville, UT 84014  
(801) 693-2870 - Fax: (801) 693-2900  
carl.nink@mtctrains.com  
www.mtcinstitute.com

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## INTRODUCTION

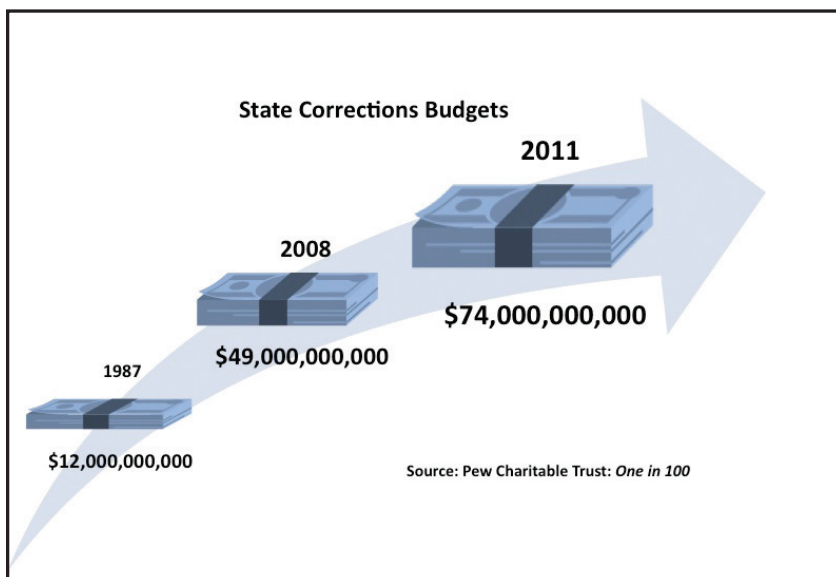
These are extraordinary times; the economy is in crisis nationwide. States are running out of money to fund necessary infrastructure improvements, education, medical care, and corrections. As a result, policymakers are looking for ways to stretch tight budgets without cutting services.

After cutting nearly \$73 billion to make up for gaps in funding Fiscal Year (FY) 2009 budgets and over \$113 billion in FY 2010, states are being forced to cut even more to make future budgets balance.<sup>1</sup> Nationwide, revenues were down in the first two quarters of FY 2009 almost 12 percent and 17 percent respectively.<sup>2</sup> As a consequence of substantial unemployment, resulting in lower revenue from income tax and lower state sales tax, as well as Medicaid spending that is up almost 8 percent in FY 2009,<sup>3</sup> many experts are predicting that there will be additional budget shortfalls of \$14.5 billion in FY 2010 and \$21.9 billion for FY 2011.<sup>4</sup> The situation California presents is not unique; there are at least nine additional states that are in a similar dire economic situation as California.<sup>5</sup> According to the report by the National Governors Association, “state revenues will likely not recover until 2014 or 2015” with some predictions that shortfalls could reach \$350 billion.<sup>6</sup>

With corrections budgets being the fifth largest state budget category, competition with other spending priorities, such as education, infrastructure, and health, is very tight.<sup>7</sup> In response, elected officials are calling for improved performance from corrections systems and specifically, reductions in recidivism.<sup>8</sup> Across 34 states, nearly 9 of 10 correctional dollars went to prisons in FY 2008.<sup>9</sup> During fiscal year 2009, correctional budgets were cut almost \$700 million, much of it by eliminating staff and programming for inmates. Finally, at least 22 state correctional agencies, according to a report from the Vera Institute, have had budget cuts for FY2010.<sup>10</sup> This approach has a long-term cost associated with the decision in terms of inmates, without rehabilitation, returning to prison.<sup>11</sup>

**National Governors Association reports state revenues will likely not recover until 2014 or 2015.**

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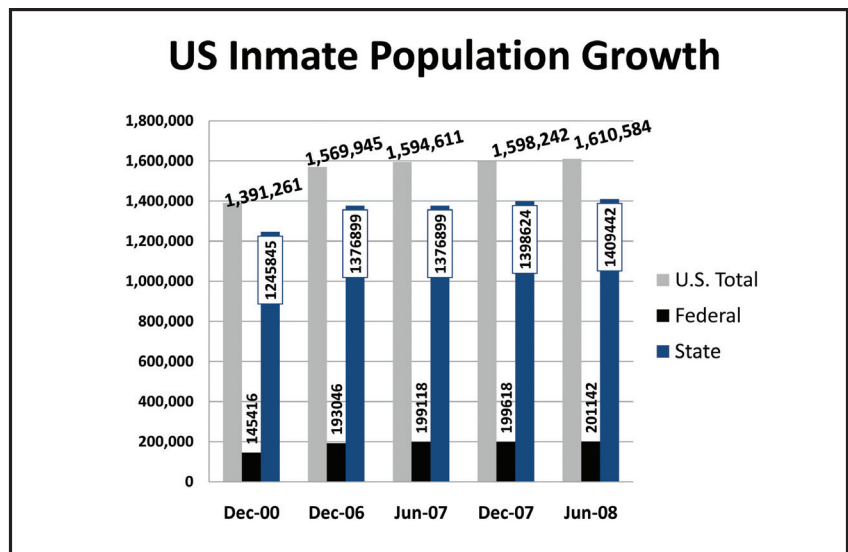
As a result of the fiscal crisis, states are increasingly examining and turning to private contractors for a variety of services in order to save precious resources, increase performance, and enhance accountability.

### HISTORY

Contracted prisons have been successfully used in the US for more than 25 years, and are a viable option to limit costs without compromising service.<sup>12</sup> Because they have been used for so long and studied so much, contracted prisons are no longer considered experimental. In many cases, even if prison operations are not contracted, other services such as medical, food, mental health, and commissary within a public facility may already be a contracted service.

### CHANGES IN INMATE POPULATION

At present, more than 7.3 million people in the US are confined in a place of incarceration or are under some form of correctional supervision at a cost in excess of \$68 billion annually.<sup>13</sup>



Despite falling crime rates, the U.S. prison and jail population is actually growing at an alarming rate, from 744,000 inmates in 1985<sup>14</sup> to more than 2.3 million in 2008.<sup>15</sup> Even though 16 prison systems reported decreases in their prison populations since yearend 2007, between December 2000 and 2007, the average annual inmate population growth was 2.4 percent, with an incarceration rate (per 100,000 population) that has grown from 684 in December 2000 to 762 in June 2008.<sup>16</sup>

**Public-sector correctional systems are currently operating at or in excess of design capacity.**

### PUBLIC PRISONS ARE OVERCROWDED

In California, which has the largest prison population, a federal judicial panel, noting conditions within the prisons are "appalling," directed the state to reduce its prison population by 40,000 in two years.<sup>17</sup>

While these offenders would probably be low risk, the fact remains that the state has a 70 percent return to prison rate and with community support programs being eliminated or seriously reduced, help offenders could count on for support in past years is gone. Further, with a jobless rate of nearly 12.5 percent, many offenders will not be able to find work.<sup>18</sup> With few options for success, many will likely end up back in prison within a short period of time and once again become a tax burden.

Public-sector correctional systems are currently operating at or in excess of design capacity. According to the Bureau of Justice Statistics – Prisoners in 2007<sup>19</sup> report:

- 19 states were operating at 100 percent or more of their highest capacity measure (29 states were operating at 100 percent or more of their lowest capacity measure);
- In total, state prisons were operating at 96 percent of their highest capacity measure and 113 percent of their lowest capacity measure; and
- The federal prison system was at 136 percent of capacity.

#### PRISON BED SUPPLY AND DEMAND IMBALANCE

It is projected demand will outpace supply for the next 5+ years, and the annual inmate/detainee population growth will be more than 30,000 per year.<sup>20</sup> However,

- Correctional systems already operate at or in excess of capacity (e.g., Bureau of Prisons (BOP) at 136 percent).<sup>21</sup>
- It is estimated that 120,000 new beds will needed to reduce state Department of Corrections (DOC) occupancy to 100 percent.<sup>22</sup>
- A recent survey of 30 states revealed just over 13,000 beds being slated for construction over several years with a corresponding annual increase of about 10,000 to 15,000 inmates.<sup>23</sup>

There are many budget constraints which limit government funds necessary for new construction or operating expenses for additional staffing. That is why most of the increase in offenders coming to prison are housed in private prisons. While inmate growth climbed almost 16,000 inmates (0.8 percent) from December 2007 to June 2008, over half of that number was housed in expanded capacity in private sector facilities .<sup>24</sup>

An analyst for Avondale Partners, LLC, following the performance of correctional companies, recently reported, 30 states indicated in a survey they would need to build more than 27,000 beds by 2011 at a time of significant budget deficit. Based on this and other factors, this demand will drive states using the private sector to expand their use of it, and those who are not using the private sector will start to seriously explore this option. As an example of movement in this direction, the budget transmitted to the Governor by the Arizona Legislature on August 20, 2009 requires the procurement of 5,000 private prison beds.<sup>25</sup>

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In addition, California recently filed a proposal with the Federal District Court, in response to a finding that its system is unconstitutionally overcrowded, that it would be expanding use of private prison beds by as much as 7,500 by the end of fiscal year 2012.<sup>26</sup>

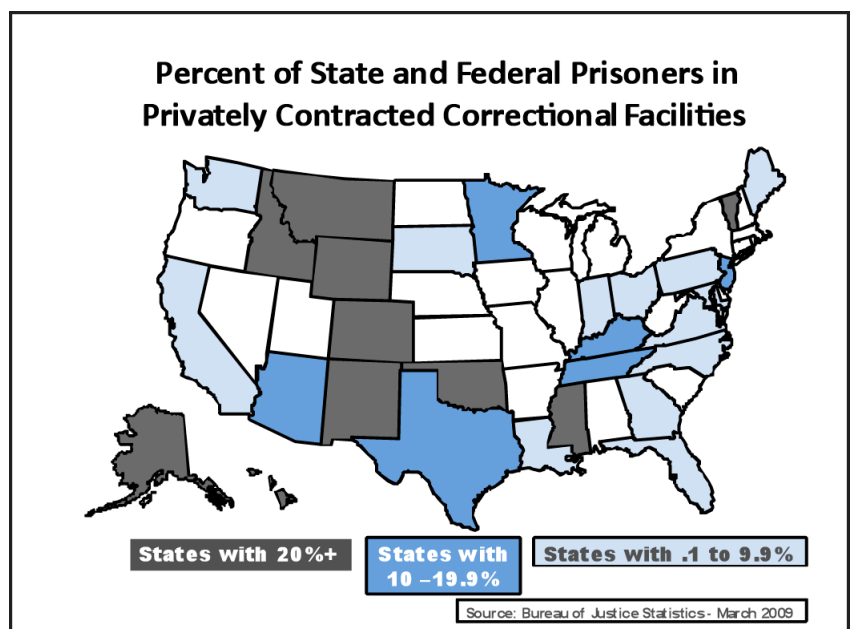
### USE OF PRIVATELY CONTRACTED PRISONS IS EXPANDING

The current prison system is overcrowded and there are inadequate prison beds in the pipeline to satisfy the needs of the state and federal government. In response to this situation, the growth rate in the use of privately operated prisons has escalated. Since 2000, the number of private prison beds has been expanding, but averaging about 6.9 percent per year.<sup>27</sup> In March 2009, the US Bureau of Justice Statistics reported that privately contracted facilities, as of December 2008, now hold 7.8 percent of all adult inmates in the United States, up from 7.4 percent in June 2008, or about 1 in every 13 adults in prison.<sup>28</sup>

The use of the private sector by government to meet its expanding need for institutional bed space continues to out-pace the public sector. Over the last year (June 2007 to 2008) the inmate population has increased almost 16,000, inmates and over 50 percent of those offenders have been housed in beds provided by the private sector.<sup>29</sup> Since December 2000 and December 2007, public facilities have had an annual increase in inmates of 2.0 percent overall in comparison to privately operated facilities which increased by 4.8 percent overall.<sup>30</sup>

According to the Bureau of Justice Statistics, New Mexico leads the nation with 45.6 percent of their inmates in privately contracted prisons;

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overall there are 29 states with privately operated prisons. Of that group:

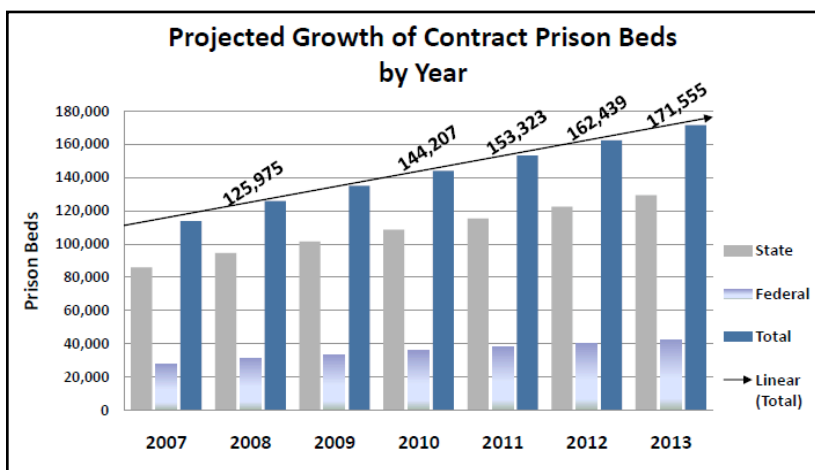
- Ten states have more than 20 percent of state inmates in privately operated facilities;
- Another six states have between 10 - 20 percent, and
- There are 13 states which have up to 10 percent of state and federal inmates in privately contracted prisons.<sup>31</sup>

Concern over correctional population growth and costs can also be observed in statements made by the National Conference of State Legislatures, which is predicting that the jail and prison population could grow by “nearly 200,000 inmates at a cost to states of \$27.5 billion” by 2011. Given the state of the economy and government budgets, it is inevitable that the private sector will continue to be sought out to address capacity demands.<sup>32</sup>

As further evidence of government’s reliance on the private sector, the director of the Federal Bureau of Prisons testified on July 21, 2009, in a congressional hearing, that their system was severely overcrowded and suggested greater use of privately operated prisons for low-security criminal aliens was one solution being actively considered.<sup>33</sup>

With current level of overcrowding, efficacy of the use of contracted prisons and the economic situation in most of the states, there will be limited construction of public institutions. It is predicted that there will be increased reliance on privately constructed and operated institutional beds. This prediction is based in part on an extrapolation of the baseline numbers, the fact that while private facilities require operating funds, there is no large capital outlays required to accommodate the growing inmate population. Finally, the projected supply of beds and the demand for beds, as well as the expansive nature of the budget gaps, it is believed that there will be in excess of 170,000 private adult correctional facility beds within the next four years.<sup>34</sup>

**With current level of overcrowding, efficacy of the use of contracted prisons and the economic situation in most of the states, there will be limited construction of public institutions.**



**In the last 20 years states have seen corrections budgets increase 315 percent, from \$10.6 billion to \$44.06 billion in 2007.**

**Should a contractor not perform, they put themselves in a position to lose business on an existing contract and probably adversely impact any future contracts as well.**

## GOVERNMENT IS EXPLORING ALL OPTIONS

As states grapple with the increasing number of inmates, options on what to do during the national economic crisis presents a significant challenge for elected officials, who are now publicly discussing ideas that would not have surfaced in the past, such as:

- Reducing or eliminating rehabilitation programs
- Sentencing reform or releasing inmates early or earned time off for program completion
- Electronic monitoring, enabling offenders to live at home
- Severely overcrowding existing facilities
- Placing inmates in out-of-state facilities
- Exploring or piloting secure offender transition facilities, focused on the large group of parole violators and others, in need of intensive programming and reentry services
- Contracting for the financing, design, construction, and operation of prison beds

States face difficult questions regarding budget obligations. In the last 20 years states have seen corrections budgets increase 315 percent, from \$10.6 billion to \$44.06 billion in 2007.<sup>35</sup> As costs continue to increase, prison agencies and wardens are faced with the dilemma of how to save money while at the same time maintaining service levels.

Therefore contracted prison operators are seen as a benefit to states facing larger budgets but smaller revenues, especially in light of their ability to reduce costs and perform in a way that ensures accountability for taxpayer resources.

## GREATER PERFORMANCE AND ACCOUNTABILITY

Market forces play a major role in private contractors providing the best services and management of prison facilities. Should a contractor not perform, they put themselves in a position to lose business on an existing contract and probably adversely impact any future contracts as well. This business priority necessarily demands that the company, warden, and staff pay attention to their performance and ensure that every dollar is spent wisely and efficiently, minimizing waste.

Contractually, private companies must provide the level of performance required in such areas as security, management, and programs or face being sanctioned and/or losing the trust and confidence of their client. Most jurisdictions have contract monitoring and performance measures in the contract.<sup>36</sup> Of the 91 contracts studied by the Abt Associates for the National Institute of Corrections, all contracts had monitors assigned with 52 percent mandating daily monitoring and 23 percent mandating regular monthly visits. The remaining 25 percent of contracts specified quarterly visits or other forms of monitoring.<sup>37</sup> Typically, this contract monitoring takes place in at least three areas: <sup>38</sup>



## 1. Administrative

- Evaluates the agency's compliance with the terms and conditions included in the contract (e.g., limiting staff vacancies and turnover, providing training, resolving grievances, holding offenders accountable for compliance with the rules, improving efficiency and actions designed to reduce costs).
- Ensures compliance with insurance coverage and any licensure requirements.

## 2. Fiscal

- Evaluates compliance with the fiscal requirements included in the contract.
- Reviews the agency's invoices to ensure that they are being submitted in a timely manner and in the format specified in the contract.
- Ensures that the billing rates included on the invoice meet the contractually agreed upon rates and those units of service, or activity being billed for, are supported by adequate documentation.

## 3. Program (Service Delivery)

- Evaluates the extent to which the operator is delivering the agreed upon services, specified in the contract in a timely manner, in the quantity required, and that the quality of the services provided are appropriate.
- Monitoring should ultimately, with the help of a third party in some instances, determine their impact on improving outcomes which includes reducing recidivism.
- Program assessments would likely be based on a review of offender records, interviews with offenders that received services and interviews/discussions with the facility staff and management, as well as observations made during tours of the facility.

Some states use legislators to inspect facilities. Ohio statutes provide for the operation of the Correctional Institutions Inspection Committee (CIIC) which is composed of legislators of each major political party.<sup>39</sup> On August 6, 2009, the CIIC conducted an on-site inspection of the MTC operated North Coast Correctional Treatment Facility (NCCTF). They stated in their report "the cleanliness of the entire facility was the best ever seen." They went on to report NCCTF "staff were very cordial and accommodating. Their positive attitude and motivation towards their mission were most impressive."<sup>40</sup>

Most contracts have performance measures in them. Depending on what government wants, some private prison contracts require higher program outcomes in academic areas, career and technical training, and reentry programs designed to help reduce the number of inmates returning to prison.

**Contractually, private companies must provide the level of performance required in such areas as security, management, and programs or face being sanctioned and/or losing the trust and confidence of their client.**

**Ultimately for all prisons, the determination of a successful facility includes the provision of a safe and secure environment where offender basic welfare needs are met within an institutional culture which promotes an appropriate quality of life.**

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- Depending on desired outcomes private contractors will increase and expand programs for inmates.
- Contracts can also have incentives to reduce the number of inmates who return to prison once released.
- Quality companies invest in staff training, program development, and research, looking for more effective ways to improve outcomes.

When problems do arise, generally it is a contracting problem and not a problem with the contractor or with the agency. The contract dictates what will happen in a facility; if a contract is not clear and does not communicate all requirements, the contracting agency will not get what they want and the contractor will not deliver what is expected.

Ultimately for all prisons, the determination of a successful facility includes the provision of a safe and secure environment where offender basic welfare needs are met within an institutional culture which promotes an appropriate quality of life. Additionally, the successful prison must have programs that prepare the offenders for reentry into society, thus protecting the public from further effects of crime upon the release of the offenders from custody. Finally, the successful prison must be accountable for and manage the scarce taxpayer provided resources to achieve the greatest impact, while continuously looking for innovative, efficient, and effective ways to improve service while meeting identified outcome standards.

### USE OF CONTRACTED PRISONS RESULTS IN LOWER COSTS

**The use of privately contracted prisons reduced the growth of public expenditures for inmates by a statistically significant amount.**

An interest in the overall impact on state budgets where correctional agencies use privately contracted prisons led to a study which was recently published.

Vanderbilt University researchers studied the impact of contract corrections on state correctional systems over a period of eight years, publishing their findings in a report titled *Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons*. The study found that the use of privately contracted prisons reduced the growth of public expenditures for inmates by a statistically significant amount. In a typical state correctional system with no private prisons and a budget of \$493 million (2004), the introduction of private prisons resulted in a reduction in the overall budget from \$13 - \$15 million annually, when compared with states that do not make use of privately contracted prisons. In addition to these savings, government reaps the benefits from the lower per diems found at the privately operated prisons. The study also pointed to the fact that where a government monopoly exists, competition is lacking, as is any transfer of industry knowledge.<sup>41</sup>

A 2009 survey of 30 state correctional agencies, many of which use privately operated correctional facilities, also demonstrated contracted prisons are lower in cost than the public sector by 28 percent.<sup>42</sup>

As a result of many factors, some elected officials are choosing to look closer at performance. The Oklahoma Legislature contracted a performance audit of the Oklahoma Department of Corrections. This performance audit was conducted by MGT of America Inc. and a final report was delivered to the legislature on December 31, 2007. The report states, the rates per day per inmate have decreased to \$47.14 for contracted facilities while the public rate has increased to \$51.94 for comparable facilities from 1996 to 2006. The Oklahoma Performance Audit report also suggested that “attaining high levels of operational performance through privatization requires:

1. Contract terms and requirements that establish clear, well-defined duties and responsibilities consistent with the state’s expectations;
2. An effective system for monitoring contractor operations and compliance with contract terms; and
3. Critical analyses of the reasons underlying good or bad contractor performance, and a willingness to apply such analysis to improve operations.”<sup>43</sup>

To further substantiate the importance of privately contracted corrections and the benefit they provide to states, the non-partisan independently prepared report encouraged the state to “pursue additional privatization opportunities to obtain additional correctional system capacity quickly.”<sup>44</sup>

Private companies are also usually more flexible than the public sector when it comes to completing tasks and projects. A private company can design and build a correctional facility faster than a public agency. This is usually because public agencies must initiate a cumbersome and lengthy process to hire a company to design the facility, and then bid to build the facility. Research proves this process can be done much more efficiently and with less cost by the private sector.<sup>45</sup>

Besides the reduced costs, research demonstrates there are many more benefits of contracted prison operations including greater accountability, performance management, and less bureaucracy.

## CONCLUSION

During this time of fiscal crisis, elected officials are paying attention. When contracted correctional facilities exist within a state, the budgets for the public correctional systems are reduced by millions of dollars, and savings are accrued through lower daily per inmate costs.<sup>46</sup>

With competition, managers and facilities provide input into operational practices, aiming to improve performance. Without competition, agencies tend to expect their line-item appropriations, usually greater than the ones given the year before, regardless of performance. Since the funding will be the same regardless of agency actions, there is limited incentive to develop more productive or cost-effective programs.

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**The contract and what is included in it are critical to operating a successful correctional facility: One that reduces cost to the taxpayer, operates effectively, and lowers the number of offenders that return to the prison system.**

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The contract and what is included in it are critical to operating a successful correctional facility: One that reduces cost to the taxpayer, operates effectively, and lowers the number of offenders that return to the prison system. The contract dictates methods of accountability and transparency as well as what will happen in a facility. If a contract is not clear in communicating all requirements, the contractor may not deliver what is expected and the contracting agency probably will not get what they want.

Performance measurement is the great equalizer; which should be applied to all prisons regardless of what entity operates the facility. Those exceeding prescribed benchmarks are rewarded, whereas those failing to meet standards, performance measures and outcomes are sanctioned and ultimately replaced.

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MTC Institute  
Privatization in Corrections: Increased Performance  
and Accountability Is Leading to Expansion

500 North Marketplace Drive  
P.O. Box 10, Centerville, UT 84014

(801) 693-2870 Fax (801) 693-2900

[carl.nink@mtctrains.com](mailto:carl.nink@mtctrains.com)  
[www.mtctrains.com/institute](http://www.mtctrains.com/institute)