

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Stephen Morris at 10:40 a.m. on January 27, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Kerr- excused
Senator Henry Helgeson- excused

Committee staff present:

J. G. Scott, Chief Fiscal Analyst, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Becky Krahl, Kansas Legislative Research Department
Jill Wolters, Senior Assistant, Revisor of Statutes
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Senator Derek Schmidt
Phill Kline, Attorney General, State of Kansas
Don Houston, Central Region Vice President for The GEO Group, Inc.
Mike Jennings, on behalf of Nola Foulston, District Attorney's Office, Sedgwick County
Roger Werholtz, Secretary, Kansas Department of Corrections
Frank Smith, Harper County Silver-Haired Legislature
David Wilkinson, Facilitator, AfterCare ACTION Initiative II: Ministry to the Formerly Incarcerated, Criminal Justice and Mercy Ministries
Peter Ninemire, Midwest Regional Trainer/Organizer for Families Against Mandatory Minimums
Andy Sanchez, Executive Director, Kansas Association of Public Employees
Kathy Gabara, Members of Kansas CURE (Citizens United for Rehabilitation of Errants)
Andy Sanchez, Executive Director, Kansas Association of Public Employees (written)

Others attending:

See Attached List.

Chairman Morris opened the public hearing on:

SB 275--Allowing private companies to construct correctional facilities

Chairman Morris welcomed the following conferees who testified on **SB 275**:

Senator Derek Schmidt testified in support of **SB 275** (Attachment 1). Senator Schmidt urged the committee to enact legislation such as **SB 275** which would authorize the construction of one or more private prisons in Kansas, under strict state regulation, as one part of the strategy to address the overcrowding of prisons in Kansas.

Phill Kline, Attorney General, State of Kansas, testified in support of **SB 275** (Attachment 2). Attorney General Kline mentioned that over 13 percent of federal inmates are housed in private facilities and just over 6 percent of state inmates around the nation are housed in private facilities. It is a tested approach. The Attorney General mentioned that he believes one could rest assured that the civil liberties and rights of inmates are protected, as it relates to private prisons, and there is accountability provided. He also encouraged allowing a flexible approach to the bed space problem in prisons which will come more acute.

Don Houston, Central Region Vice President for The GEO Group, Inc., (formerly known as Wackenhut Corrections) spoke in support of **SB 275** (Attachment 3). Mr. Houston explained that private correctional facilities in many states are now seen as an integral part of the corrections system. Low cost, high quality services help the Agencies in those states deal with expanding offender populations at a time when budgets

CONTINUATION SHEET

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE at 10:40 a.m. on January 27, 2004, in Room 123-S of the Capitol.

are shrinking. He advised the committee to consider adding a requirement to **SB 275** that the Attorney General must review any contract that would bring out-of-state inmates to Kansas.

Mike Jennings, testified in support of **SB 275** on behalf of Nola Foulston, District Attorney for the Eighteenth Judicial District, Sedgwick County (Attachment 4). Mr. Jennings mentioned that the Department of Corrections system has been at capacity for bed space for some time, particularly for higher security, long term inmates. He explained that this has several adverse and costly consequences for the courts and jails in the Eighteenth Judicial District. It creates a shortage of bed space in the Sedgwick County Adult Detention Facility because it takes longer for the Department of Corrections to find space for new inmates and the delay requires an inmate to remain housed in a local jail until Department of Corrections space is available. Mr. Jennings noted that having the ability to use bed space at private facilities is a very promising solution to meeting the need for additional Department of Corrections bed space.

Roger Werholtz, Secretary, Kansas Department of Corrections, testified as a neutral conferee on **SB 275** (Attachment 5). The Department of Corrections is not taking a position on the policy of whether to authorize private prisons in Kansas. Secretary Werholtz shared some thoughts in regard to the best ways to implement **SB 275** should the policy be adopted. He explained that one of the significant factors for the use of private prisons for the incarceration of Kansas offenders is the State's ability to use Violent Offender Incarceration/Truth In Sentencing (VOI/TIS) federal grant funds to pay for 90 percent of the cost of the confinement of offenders in private facilities. Secretary Werholtz noted that the last Congressional appropriation for VOI/TIS grants was in 2001 and it is anticipated that Kansas will have spent its VOI/TIS grant by the end of FY 2005. In his testimony, the Secretary detailed information regarding two items for consideration in the Role of the Kansas Department of Corrections:

- State as Regulator
- Kansas Department of Corrections as a Consumer

Due to time constraints, Chairman Morris asked Secretary Werholtz to come back to the committee at a later date and he requested the balloon amendments that were suggested in Secretary Werholtz's testimony.

Frank Smith, Harper County's Silver Haired Legislature, spoke in opposition to **SB 275** (Attachment 6). Mr. Smith explained that private prisons have not been demonstrated to save taxpayer money and often cost the taxpayer far more money than would have otherwise. Mr. Smith mentioned that public policy is imperative. In his written testimony, Mr. Smith presented a list of typical problems with for-profit prisons.

David Wilkinson, Facilitator, AfterCare ACTION Initiative II: Ministry to the Formerly Incarcerated Criminal Justice and Mercy Ministries, testified in opposition to **SB 275** (Attachment 7). Mr. Wilkinson expressed concerns about the bill and the system itself holistically and the problem of 65 to 70 percent recidivism rates where the prison population will continue to grow. He explained that the recidivism rate is driven by the lack of support for the formerly incarcerated in their transition to freedom. Mr. Wilkinson mentioned that the United Methodist Church is formally and officially against private prisons because they feel it is ethically morally wrong and ask that the committee reject the bill.

Peter Ninemire, Midwest Regional Trainer/Organizer for Families Against Mandatory Minimums (FAMM), Wichita, testified in opposition to **SB 275** (Attachment 8). He explained that FAMM does not believe that crime should go unpunished, but rather that the punishment should fit the crime. One of their main focuses is on alternatives to the long-term incarceration of low-level, non-violent drug offenders. Mr. Ninemire expressed the need for long-term solutions. He distributed copies of Families Against Mandatory Minimum's Smart on Crime publication. Copies are on file in the Kansas Legislative Research Department.

Written testimony was submitted by Andy Sanchez, Executive Director, Kansas Association of Public Employees, in opposition to **SB 275** (Attachment 9). Due to time constraints, Chairman Morris invited Mr. Sanchez to testify in person at the next meeting when **SB 275** will be addressed again.

Written testimony was submitted by Kathy Gabera on behalf of the Members of Kansas CURE (Citizens for Rehabilitation of Errants) in opposition to **SB 275** (Attachment 10).

CONTINUATION SHEET

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE at 10:40 a.m. on January 27, 2004, in Room 123-S of the Capitol.

The Chairman held the hearing on SB 275 open to be continued at a later date.

The meeting adjourned at 12:05 p.m. The next meeting is scheduled for January 28, 2004.

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST

DATE January 27, 2004

| NAME | REPRESENTING |
|---------------------|--|
| Julie Thomas | DOB |
| JP Apar | Budget |
| Patrick Whisley | COA |
| Jeff Botby | Kansas Stor. Hts Ass'n |
| Tom Slattery | AGC/KS |
| Ryan Paul Underwood | Sen. Oleen |
| Erin Land | Sen. Adkins |
| Sarah Booker | Sen. Lee |
| SHELY SMITH | GRW |
| Dewey Aft | GRW |
| Roger Werbeltz | KDOC |
| Tim Maddru | KDOC |
| JEREMY S BARCLAY | KDOC |
| Brenda Harmon | KSC |
| Patricia Biggs | KSC |
| R Co | Self |
| David Wilkinson | The United Methodist Church |
| Jan Moore | myself |
| Randy Smully | KAPE |
| Scott Heidner | KS Consulting Engineers |
| Peter Ninemire | Families Against mandatory Minimums |
| Mike Jennings | Nola Foadton, D.A. 18 th Juv. Dist. |

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Senator Derek Schmidt
15th District

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Testimony in Support of Senate Bill 275
“The Private Contract Prison Act”
Presented to the Senate Ways & Means Committee
By Senator Derek Schmidt

January 27, 2004

Chairman Morris, members of the committee, thank you for conducting this hearing today and for allowing me to testify. You are focused on one of the most important and least glamorous issues we must deal with as state public officials – how to manage our prison space in the best interest of public safety and of taxpayers.

You know the statistics. We are out of space today for medium and maximum-security male inmates. We will reach overall capacity in 2007, according to the Kansas Sentencing Commission.

I am here to urge you to enact legislation such as Senate Bill 275 that would authorize the construction and operation of one or more private prisons in our state, under strict state regulation, as one part of the strategy to address our overcrowding problem. This common-sense approach to minimizing the costly burden of prison construction on taxpayers and to maximizing flexibility in our overall corrections system is long overdue. Private prisons operate effectively in more than half the states, including our neighbors of Colorado, Oklahoma and Missouri. They are authorized in Nebraska. But they are effectively prohibited in Kansas.

I Adding capacity is unavoidable

Further sentencing adjustments alone cannot solve our prison crowding problem. Despite at least two rounds of sentencing reductions in recent years aimed at easing the growth of our inmate population, Kansas prisons are full. Our actions in recent years to give priority to violent offenders are working – but one result is that our prisons are increasingly occupied by violent offenders. That sharply limits options for future rounds of sentencing reductions as a strategy for dealing with overcrowding.

The Sentencing Commission projects that our adult male inmate population will grow by 1,113 over the next decade even with no changes to current sentencing laws.

- 1,107 of those new beds will be occupied by the most serious offenders. 427 more beds (61.9% growth) needed for off-grid crimes (the most serious violent offenses); 436 more beds (62.1% growth) needed for Non-drug Level 1 crimes (the second most serious violent offenses); and 244 more beds needed (49.9% growth) for Drug Level 1 crimes (manufacturers).
- The net increase for all other categories of offenders over the next decade is six beds.

Unless we are prepared to release or ease sentences on violent offenders, we cannot solve our prison crowding problem through further sentencing adjustments alone. We will need to add capacity.

II. Expanding state-owned prisons will not alone solve overcrowding

The most likely option for expanding prison space in Kansas in the traditional manner is to construct a new “pod” at the El Dorado Correctional Facility. The current proposal would add 128 cells that could house up to 256 more medium-security male prisoners. The estimated construction cost exceeds \$7.1 million. But according to the Sentencing Commission, those 256 new beds would serve only to delay by two years – until 2009 instead of 2007 – the date by which Kansas prisons would be full.

To accommodate all of the expected growth in violent offender population over the next decade, Kansas taxpayers would have to undertake four similar-sized construction projects. Even the most conservative estimate puts that cost at more than \$30 million in construction costs alone. The actual cost likely would be much higher because we are approaching the limits of our ability to expand existing state facilities – and constructing new facilities is much more costly.

III. Construction of one or more private prisons should be part of the solution

Kansas already has turned – quietly – to private prisons as a key part of our strategy for managing our overcrowding problem. In recent years, Kansas has sent 100 inmates to a private facility in Colorado. Kansas currently has 48 inmates in a private facility in Texas. Our experience with both has been positive.

We also have allowed at least two private prisons to be built and operated in Kansas. Corrections Corporation of America (CCA) operates a large private prison in Leavenworth, and the experience with both has been positive. When the current expansion of that facility is complete, it will have a capacity of nearly 750 inmates. But

all of its prisoners are federal prisoners – from the U.S. Marshal’s Service and from the Immigration and Naturalization Service. CCA also operates the juvenile boot camp in Labette County.

But, although Kansas public policy allows private prisons to operate in our state and allows our state to contract with private prisons to house Kansas offenders, our law effective precludes private prisons from operating in Kansas to house state-level inmates. (K.S.A. 75-52,133). That makes no sense.

IV. My interest in this subject.

My interest in private prisons began as a constituent matter. I represent Woodson County, and community leaders there have worked for two decades – yes, two decades – to try to cause the construction of a private prison in that community as part of the local economic development strategy. My predecessor, Senator Talkington, was one of the proponents of this effort. Attached to this testimony is a letter from the multi-county local task force called Sunflower Solutions, which is working to bring a private prison to Woodson County.

But as I have studied this issue, I have become convinced that private prisons make sense from the standpoint of our state’s corrections system. They are one option we should allow as part of our overall strategy for maintaining a balanced, flexible corrections system that can handle the offender populations we anticipate well into the future.

Knowing of my interest in this subject, Attorney General Kline last summer appointed me chairman of that portion of his Task Force on Crime and Sentencing that was assigned to study alternative incarceration options. Our committee conducted a day-long field hearing in Yates Center and heard testimony for supporters and opponents of authorizing a private prison in our state. The committee recommended enactment of Senate Bill 275 or similar legislation. Our report is attached to my testimony.

V. Advantages of private prisons

Private prisons are not a substitute for a state-run corrections system. But having one or more private facilities in Kansas as part of our state’s corrections system would offer several advantages:

Cost savings: We should mandate in the authorizing legislation that a private prison operating in Kansas would have to guarantee Kansas taxpayers savings compared with the cost of incarcerating an inmate in a state-owned facility. I would favor a required cost savings of 10 percent below the cost of state facilities.

Avoidance of Construction Costs: Because private investors would pay the cost of constructing the private prison, taxpayers would not have to finance up-front construction costs. That would free millions of dollars for use in other important state programs.

Flexibility: By giving Kansas “bumping rights” at an in-state private prison, our corrections system would obtain maximum flexibility. If we need 20 extra beds, that’s what we rent. If we need 400, that’s what we rent. We don’t pay for 400 when we only need 20.

Proximity: Kansas is now sending prisoners to out-of-state private prisons, including one in Texas. Keeping those prisoners at a private facility in Kansas would save on transportation costs and would tend to promote inmate rehabilitation and reintegration by promoting visitation.

Economic Development: Kansas today is sending tax dollars out-of-state to house Kansas prisoners in private facilities. If we had one or more private facilities in Kansas, our tax dollars would recycle here through property taxes paid, salaries, purchase of supplies, and similar activities.

VI. Key provisions in the legislation

Because the private prison industry is now mature, Kansas has the advantage of being able to learn from the experiences of other states. To that end, we have the ability to craft authorizing legislation that fully protects our state’s interests. Key elements of any authorizing bill (included in Senate Bill 275) include:

- The state must have ample control over the siting, operations and activities of any private prison.
- To maximize flexibility, we should have “bumping rights” to use as many of the beds in the local private prison as we determine desirable but should not be required to use any.
- There should be a guarantee of savings (as compared with the cost of incarcerating an inmate at a state-owned facility) for Kansas when we place inmates in an in-state private prison.
- There should be a prohibition on using classic economic development incentives, such as property tax abatements, to attract private prisons to Kansas (this provision should be added to Senate Bill 275).
- There should be provisions fully indemnifying the state against any lawsuits or similar claims arising out of actions at the private prison.

- There should be provisions requiring the private prison to meet all standards governing the operation of state-owned prisons in Kansas.
- There should be provisions governing the disposition of any private prison property in an orderly and responsible manner that best serves the public interest in the event the private contractor wishes to sell the facility.

VII. Next steps

Finally, Mr. Chairman, let me thank the Department of Corrections and Secretary Werholz for his interest in this subject. I have met with him on several occasions. The Department is not taking a position on the policy question of whether to authorize construction of private prisons in Kansas, but the Secretary does have several specific recommendations on changes that would improve Senate Bill 275. I believe the Secretary's recommendations are positive and, if you concur, I would like to work with him to strengthen Senate Bill 275 and bring back to this committee an improved work product for your further consideration.

Thank you for allowing me to testify. I would be glad to stand for questions.

Sunflower Solutions

A Private Prison Task Force

117 East Rutledge Street, Yates Center, Kansas 66783
Phone 620-625-2118 ~ Fax 620-625-3119

January 22, 2003

Yates Center Mayor
Vernon D. Burkhart

Chairman
Shelia Lampe

Public Relations
Janie Massoth

Media
Chris Faimon

Members
Rusty Arnold
Don Barney
Ron Call
Donna Curry
John Danler
Julie Galemore
Evelyn Hendrickson
John Hotalling
Lyle Kee
Jay Leedy
Bill Linde
Jim Lomon
Jack Newcomb
Linda Niemeyer
Bill Norris
Cliff Parks
Ross Thornburg
Les Wilhite

Senator Derek Schmidt
State Capitol
Room 143N
Topeka, Kansas 66612-1504

Dear Senator Schmidt:

Sunflower Solutions, a Private Prison Task Force for the city of Yates Center, has been very committed and active in locating a privatized correctional facility in Yates Center since early 1985. During the past fifteen years we have witnessed our community struggling for some form of business opportunity and watched as our tax base and employment opportunities plummeted.

The Wackenhut Corporation as agreed to be our partner in this huge endeavor. With the location of a privatized correctional facility within our city many benefits would happen. Our tax base would more than triple, the correctional facility would provide employment opportunities for Woodson County and Southeast Kansas which are experiencing downward economic trends and it would give our area a "shot in the arm" that we so desperately need and deserve.

Please consider very strongly the passage of Senate Bill 275. If Sunflower Solutions can assist you in **any way** please advise and we will be there.

Thank you for your time and consideration.

Respectfully,



Shelia Lampe, Chairman
Sunflower Solutions

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

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

December 12, 2003

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Senator Derek Schmidt
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During Session

December 12, 2003

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

Dear General Kline:

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Derek Schmidt". The signature is written in a cursive, flowing style.

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

COMMITTEE MEMBERS

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

- ***Dwayne Umbarger, Kansas State Senator (District 14)
- ***Mary Compton, Kansas State Representative (District 13)
- ***Stanley Dreher, Kansas State Representative (District 9)

* Indicates member attended the Yates Center meeting.

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

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

AGENDA

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

Friday, December 12, 2003

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

CONCLUSIONS AND RECOMMENDATIONS

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

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

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

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

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

Findings and Conclusions

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

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

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

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

RECOMMENDATIONS

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

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

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

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

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

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



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

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To: Senate Ways and Means Committee
From: Attorney General Phill Kline

Re: SB 275 on Private Prisons

Chairman Morris and Members of the Committee:

I want to thank you for the opportunity to address the committee on this important piece of legislation. I was very pleased to hear of the committee's interest in developing private prisons in Kansas.

In my verbal remarks, I will focus on the need for Kansas to make critical decisions as to the direction of the corrections system. Specifically, a decision needs to be made as to whether we continue adopting failed philosophies as seen in SB 149, SB 323 and SB 123. Or, instead we adopt a philosophy, that I strongly support, of putting criminals behind bars by exploring alternative methods of incarceration.

The remainder of my written remarks will focus on preliminary research I've conducted. Summaries of research I've conducted are below.

Summary of Harvard Law Review Article of May, 2002

Harvard Law Review reports in May of 2002, that private prisons demonstrate cost savings, greater accountability for constitutional violation of inmate rights, and generally greater quality. As of June, 2001, 13% of federal inmates and 6.5% of state inmates were housed in private prisons for a total of 94,948 inmates, up from 69,000 inmates in December of 1999.

Prisons do have a trade association, which can serve as a wealth of information. It is called the Association of Private Corrections and Treatment Organizations (APCTO). Nearby states, Texas and Oklahoma, lead the nation in the number of private prisons.

A Review of Constitutional Standards

The Supreme Court has held that private prison guards cannot claim qualified immunity in 1983 civil rights suits. *Richardson v. McKnight*, 521 US 399 (1997). Qualified immunity does attach to public prison guards providing immunity for discretionary conduct unless their

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actions violate clearly "established constitutional rights of which a reasonable person would have known". Harlow v. Fitzgerald, 457 US 800 (1982), at (815-19). Richardson held that private prison guards do not enjoy such immunity but may assert a good faith defense. Factors or corporations are held in the same light as public agencies and therefore are not subject to bivance as civil rights suites. See Correctional Services Corp. v. Malesko 122 S. Ct. 515 (2001).

Accordingly, private prisons arguably have greater accountability as it relates to protecting the civil rights of inmates. The article, of course, suggests that states require private prison management companies to carry the appropriate insurance, and possible to indemnify the state against any claims.

Prison Performance Studies

To date, 28 studies have been completed regarding the performance of private prisons. The authors of the Harvard Law Review article consider six of the studies to be rigorous and valid. All show cost savings for private prisons and most show better quality. None of the studies indicate less quality in private prisons.

A December 1996 study conducted at Louisiana University, compared one public and two private prisons in Louisiana. The private prison demonstrated a cost savings of 12 to 14% a year, \$22.93 per inmate per day to \$26.60. The study demonstrates a wash on quality assessments.

A 2000 Arizona Department of Corrections study, compared three private prisons with 15 public facilities. On average, the private prisons demonstrated a 13.6% cost savings in 1998, \$40.36 per inmate per day compared to \$46.72 at the public facility. The study demonstrated equal quality.

A review conducted by the state of Florida in 2000, compared one public facility with one private facility. The Florida contract required a demonstration of 7% cost savings. The study demonstrated that over a two year period the private prison saved 3.5% in costs in one year and 10.5% in the subsequent year. Construction costs were 24% lower and quality was improved in the private prison.

Private prisons generally save money on design and construction costs and experience lower labor costs due to lower wages and greater efficiency. Because private companies are not subject to civil service laws, they are able to utilize a greater flexibility in designing incentives for improving efficiency.

Thank you for your time. I appreciate your interest in this matter.

Senate Bill 275
By Committee on Ways and Means

Mr. Chairman and members of the Committee my name is Don Houston and I am the Central Region Vice President for The GEO Group Inc. (formerly known as Wackenhut Corrections). I am here today to testify in support of SB 275.

The GEO Group is one the largest providers of correctional services to federal, state and local governments with facilities in 13 states and on three continents. We have nearly 9,000 employees and approximately 35,000 of all classifications. The company just celebrated our twenty-year anniversary as a provider of correctional services. In the course of the past twenty years we have grown as a company and the industry has matured along with our growth. Private correctional facilities in many states are now seen as an integral part of the correctional system. Low cost, high quality services help the Agencies in those states deal with expanding offender populations at a time when budgets are shrinking.

Opponents of privatization cite lack of training, inadequate oversight by the government, insufficient or inferior programming and cherry picking of offenders as reasons why they oppose private operations. In general I disagree with those charges; however, there have been instances of them occurring in some locations. In my opinion, those shortcomings were primarily due to poor contracts that did not spell out expectations or inadequate legislation that did not provide the Department with the tools to enforce their expectations.

In reviewing Senate Bill 275 I was very pleased to see that it included many of the oversight provisions that have been added to legislation in other states to protect the interests of the citizens, the Department of Corrections and the Legislature. The Bill provides an excellent framework for the Department of Correction to contract with the private sector and maintain appropriate oversight of that contracted facility. The most important provisions are the requirement that the private contractor comply with applicable laws, court orders and national correctional standards. In addition the mandate that private contractor meet the operational standards for correctional facilities adopted by the Secretary of Corrections is an important provision. The requirement to provide the same level of program, medical, dental, psychological and work programs at least equal to those provided at state operated correctional facilities is another important provision.

Senate Bill 275 provides for contract monitoring by the Secretary's Office but passes those monitoring costs to the private operator. This provision ensures adequate oversight without the Department incurring additional costs.

The Bill prohibits the contractor from developing disciplinary rules or sanctions that differ from those that apply to the facilities operated by the Secretary of Corrections. Additionally, the contractor is prohibited from making the final decision that affects the sentence imposed upon or the time served by an inmate, including a decision to award, deny or forfeit earned time.

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There are numerous other protections in SB 275 but the ones mentioned previously address some of the concerns that arose twenty years ago when private corrections was in it's infancy. It is obvious that the authors of this Bill did their research and included language that ensures a quality operation, provides sufficient oversight and protects the investment of the taxpayer.

Following me will be those testifying against this Bill and more than likely they will provide you with a list of problems that have occurred at private correctional facilities. Most of the incidents or problems they will present have occurred over a twenty-year period. I would venture to say that most of the incidents they bring forward are quite dated. It would be incorrect of me to say that problems do not occur in private facilities, because problems do occur. Corrections whether private or public has a history of days when things go wrong or people make mistakes. A perfect example of this has been going on in Arizona for the past week. Inmates have taken employees hostage in an area that inmates are not allowed. Obviously someone made some serious mistakes to allow this to occur. However, I am confident that once the incident is over the Department will thoroughly investigate the situation and take appropriate corrective action. The same thing happens in the private sector. Incidents happen, they are investigated and appropriate corrective action is taken to keep those incidents from re-occurring.

The one thing I would advise this body to consider adding to this legislation is a requirement that the Attorney General must review any contract that would bring out of state inmates into Kansas.

That concludes my testimony today but I would be pleased to answer any questions you may have.



OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT

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TO: Chairman Morris and the members of the Senate Ways and Means Committee

RE: Private prisons and SB275

DATE: January 27, 2004

On behalf of Nola Foulston, District Attorney for the Eighteenth Judicial District (Sedgwick County), thank you for the opportunity to address the Committee on the desirability of additional prison space and the suitability of allowing one or more private prison companies to fill that need, in whole or in part.

We believe the need for additional bed space in our state prisons is clear. The DOC system has been at capacity for some time, particularly for higher security, long term inmates. Sentencing Commission projections show that the pressure for additional beds in these security categories will continue for several years.

This has several adverse and costly consequences for our courts and jails in the Eighteenth Judicial District. First, it creates a shortage of bed space in the Sedgwick County Adult Detention Facility because it takes longer for the DOC to find space for new inmates. This delay requires an inmate to remain housed in a local jail until DOC space is available to receive him/her.

Because the local jail is full, several state-wide legislative objectives are frustrated. One is the increased use of the 60-day jail incarceration provision as a condition of probation. Space to implement this state legislative objective is not as easily obtained as a result of the delay

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caused by the lack of adequate space in the DOC institutions. The increased disincentive to use the 60-day jail sanction followed by continued local supervision can result in a disincentive to keep a violator under community based supervision. This, of course, defeats the state objective of keeping as many offenders from entering the DOC system as is reasonably possible by providing for local alternatives. Perhaps more to the point, the lack of DOC capacity can create artificial parameters for a sentencing judge since the protection for the public, as well as for likely victims should the offender remain out of custody, may not be well served simply because of a lack of space at the state level.

Another consequence of the shortage of bed space at the state level is the reduced ability of municipal courts to use incarceration in the local jail to carry out the municipal objectives reflected in their ordinances. The result is a tendency to ignore legitimate sentencing alternatives and a resulting decrease in the quality of life for our local communities.

We submit that having the ability to use bed space at private facilities is a very promising solution to meeting the need for additional DOC bed space. Indeed, it is our understanding that the DOC is already housing a substantial number of inmates at private prisons in other states at this very moment. That should speak volumes as to the suitability of the private prison solution to at least some of the bed space needs of the DOC. Having a private prison facility in state would mean easier visitation for family; easier reintegration for the inmate and lower transportation costs. Also, the DOC would likely be in better position to bargain for more favorable daily rates if the company had a facility already built in this state.

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 275
to
The Senate Committee on Ways and Means

By Roger Werholtz
Secretary
Kansas Department of Corrections
January 27, 2004

SB 275 provides statutory authority for the construction and operation of private prisons in Kansas. While the Kansas Department of Corrections on its own as well as in conjunction with Labette County have joined with private entities for the construction and operation of correctional facilities for conservation camps and day reporting centers, the use of those facilities have been limited to offenders convicted of felony crimes committed in Kansas. SB 275 would permit use of privately constructed and operated correctional facilities for the incarceration of offenders from other states, thus providing an exception to K.S.A. 75-52,133.

In the past, the Department of Corrections has successfully utilized a private correctional facility located in Colorado for the housing of offenders sentenced to the department's custody. The department's experience was favorable and was due in no small part to the role of the Colorado Department of Corrections in providing oversight of private prisons in that state. Currently, the department has placed 48 medium custody inmates at the privately operated Limestone County Detention Center in Groesbeck, Texas. That facility is operated by CiviGenics. Likewise, various levels of Texas government are involved in the housing of out of state prisoners in Texas by private entities. However, the department is also aware of instances nationwide where the operation of private correctional facilities was detrimental to the safety of the public, staff, and inmates. The department's experience in using private correctional facilities and its observations of the experience of other states cause me to bring to the attention of the Committee issues for consideration in your deliberations on SB 275. Additionally, I would like to take this opportunity to point out that one of the significant factors for the use of private prisons for the incarceration of Kansas offenders is the State's ability to use Violent Offender Incarceration/Truth In Sentencing (VOI/TIS) federal grant funds to pay for 90% of the cost of the confinement of offenders in private facilities. However, the last Congressional appropriation for VOI/TIS grants was in 2001 and it is anticipated that Kansas will have spent its VOI/TIS grant by the end of FY 2005.

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Issues for Consideration

Role of the Kansas Department of Corrections

1. State as Regulator

SB 275 provides for two distinct functions for the Department of Corrections. First the department serves the role of approving proposals for private prisons and monitoring the performance of those facilities. Secondly, the department may be a consumer of the services provided by private facilities through the placement of KDOC inmates.

- **Criteria for Permitting Private Prisons.** SB 275 provides certain prerequisites for vendors responding to a Request for Proposal for the construction and operation of a private prison. However, the department does not believe that some of the criteria provided in SB 275 is relevant to circumstances in which KDOC is not a consumer of the services provided by the private prison. For example, a requirement for the expedited siting, design, and construction, of a prison is not of particular concern to either the department or the state, if the proposed facility is not intended to meet the capacity needs of the department, or even if intended to meet future needs of KDOC, when time of construction is not of the essence. [See Section 3(b)]. A related question is whether the legislature wishes to require that any private facility constructed and operated in a Kansas community be designed and operated in a manner that would meet the capacity needs of KDOC particularly in regard to the custody level of the proposed facility.
- **Screening Inmates for Placement and Monitoring Operations.** The department believes that it is critical to the successful operation of a private for profit prison that the State both monitor the operation of the facility as well as screen inmates proposed for transfer to the private facility by other jurisdictions. SB 275 provides that KDOC is to monitor private prisons and that the cost of such monitoring is to be borne by the vendor. [Section 4(j)]. However, the department believes that the custody classification of inmates proposed to be transferred to a private facility should be determined pursuant to the department's custody classification system and that all inmate records concerning classification, including conduct records, and the inmate's medical and mental health records be reviewed by KDOC prior to transfer of the inmate and the transfer be subject to the approval of KDOC. The department recommends that contractors also bear the cost of screening proposed inmates.
- **Rates and Services.** SB 275 provides that the rates charged and the programs provided by a private facility be compared to KDOC facilities. [Section 3(d) and Section 4(a)]. The department believes such a comparison is beneficial to the State when a private facility is utilized for the incarceration of KDOC offenders. However, the department has no objection to private facilities charging other jurisdictions a higher rate particularly if such a practice resulted in the facility being able to extend more favorable terms to KDOC. Additionally, the rehabilitation programs provided by correctional facilities are dependent upon the needs of the offenders incarcerated at the facility. It is the department's experience that inmates proposed for transfer to a private facility must be evaluated relative to their program needs and those offered by the facility. The department has no objection to private prisons having flexibility in determining the program services provided depending upon market demand. The department as a consumer of private facility capacity can contract for the services necessary for the population considered for placement.

- **Custody of Offenders.** The department has a concern with the provision of SB 275 that inmates in a private contract prison are in the legal custody of the department of corrections. [Section 9]. This provision provides a significantly more expansive role and liability to KDOC and the State than merely regulating and licensing the private facility; or permitting private facilities through contract. Suits brought for injuries based upon common law or the constitution need not be based upon contract obligations and thus section 4(k)'s limitation on third party benefits to the contract would not serve as a bar to suits based upon obligations created by the legal custody of KDOC. For example, as a legal custodian, a jurisdiction confining an offender is responsible for the provision and cost of necessary medical care. The department believes that the unique relationship and constitutional obligation created by exercising legal custody over an individual should be limited to those offenders sentenced to KDOC custody.
- **Discipline Rules and Procedures.** In its role as regulating and licensing private facilities, the department believes that requiring a private facility to only adopt disciplinary rules and procedures utilized by KDOC unduly limits the private vendor. [Section 5(b)]. The department believes the vendor should be free to utilize the disciplinary rules and processes that may have been adopted by the states which contract with the vendor for the incarceration of that state's prisoners as long as the rules and procedures used by the vendor meet constitutional muster and are reviewed and approved by KDOC.
- **Use of Inmate Labor.** SB 275 prohibits private contractors from benefiting financially from the labor of inmate. [Section 4(m)]. The department has the concern that such a complete prohibition would severely hinder a private prison in meeting daily operations needs of a facility routinely performed by inmates such as basic custodial, food, and ground care services, and the recruitment of private correctional industries. The department does have a concern as to whether authorization for private industry programs at private correctional facilities would negatively impact the availability of private correctional industry programs at state facilities. KDOC inmates employed by private industries pay 25% of their wages to the state for room and board.

2. KDOC as a Consumer

- **Availability.** The department believes that it should have the right of first refusal for any capacity provide by a private facility. [Section 4(l)].
- **Limitation on Cost.** The cost chargeable to the State should be statutorily capped. The Department believes that 90% of KDOC's average per capita operating costs for the previous fiscal year would represent a balance between the savings intended to be achieved as well as the intangible costs that any community might incur due to the location of a correctional facility.
- **No Requirement to Utilize.** The department believes that it is critical that the State not be required to utilize a private facility when the cost, custody level, or services provide are not in the State's best interest. SB 275 provides for the terms regarding utilization to be set out in contract. [Section 4(l)]. The department believes that due to the long life span of correctional facilities and the importance of the proper match between a facility and the population it is to serve, this would more properly be addressed as a statutory requirement.

Frank Smith
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January 27, 2004

Typical problems with for-profit prisons:

- ✓ Don't save taxpayers money; damage, even bankrupt municipalities (FBOP, State of TN, Abt Associates; CCA Youngstown and Sayre, OK)
- ✓ Treat both staff and prisoners badly, increased assaults, escapes. (Carolina jury found CCA used gratuitous force to control inmates, Austin study finding 49%+ violence on staff, 65%+ on inmates)
- ✓ Though presenting as "economic development," don't really have a positive effect on local economies (U. of Iowa, Besser study; NY State)
- ✓ Lobby directly and indirectly, to increase prisoner population (Both CCA and Wackenhut are members of ALEC that has pushed "Three Strikes" and "Truth in Sentencing" legislation.)
- ✓ Present moral question: Is it ethical to profit from imprisonment? (Denominations condemning for-profit prisons include Episcopalians, Methodists, Catholics, Presbyterians, United Church of Christ, Friends)
- ✓ Present "solutions" which aren't: Only "Band Aids" for overcrowding
- ✓ Concoct "research" to support their scams. (Dr. Charles Thomas)
- ✓ Enable governments to conceal the real costs of incarceration (Certificates of Participation, Lease Revenue Bonds, avoid voters)
- ✓ Reduce public spending on education, health care, infrastructure (Fund for Investigative Journalism website, education vs. prison funding)
- ✓ Export wages from hosting states; avoid taxes, solicit subsidies. (Good Jobs First/Jail Breaks)
- ✓ Cut expenditures on prisoners to increase "bottom line." (Burlington case over death from withholding medication, Victor Valley food riots)
- ✓ Move prisoners far from homes, families, employers, support systems (Hawaiian prisoners in Oklahoma, Alaskans in Arizona with D.C. cons.)
- ✓ Convert taxes to profits, lobbyist salaries, campaign contributions, dividends, bloated CEO salaries (WCC's Zoley = \$2 million/year)
- ✓ Reduce "open government" (Privates not subject to FOIAs)
- ✓ Higher rates of escape, assaults on both staff and inmates (See CUSA)
- ✓ Immense staff turnover; marginal staff training (Turnover 53%/yr. Vs. 14% public, private guards often making \$8 hr.)
- ✓ Corrupt local and state officials (Sheriff Leslie, Georgia parole board, Graham Brothers & Governor Edwards, Vita-Pro)
- ✓ Anti-union (NLRB problems, no prisons with national unions)
- ✓ Questionable accreditations (whistleblower info)

Some resources:

- http://www.flpba.org/private/index_private.html
- <http://www.afscme.org/private/aculink3.htm>
- <http://www.cjcj.org/>
- <http://www.realcostofprisons.org/>

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Dear Legislators:

If inmates from other states (and of course the legislation allows the contractor to bring in other inmates) offend again while in prison, the local jurisdiction becomes obligated to try the inmates and the state would assume jurisdiction when the original sending out-of-state sentence expired. The inmate might even be given an early discharge so the sending state could back out of the expense.

In 1999 in Shelby, Montana, CCA completed a prison almost as far away from urban centers and reservations as was possible. (It's nearly in Canada.) The legislature passed the private prisons bill only with the prohibition of importation. That provision was sought by a large majority of legislators. The enabling legislation would have never come close to passing otherwise. But when the State of Montana finally started reducing its prison population due to budget strictures and began removing inmates from the for-profit, CCA went back to the legislature and got the prohibition removed. They claimed they'd have to shut down the prison otherwise, and needed to import convicts from other states.

Montana had put itself in a position of dependence on the prison, and the legislators couldn't resist the threat to shutter the facility. Now Shelby is even taking federal pre-trial inmates. CCA wants sentenced federal prisoners there, and wants to expand its prison, claiming that it wants Native Americans doing federal time to return. But it's over three hundred miles away from the big reservations from which so many inmates are sent, such as the Northern Cheyenne and the Crow. CCA claims that it respects Native traditions but I have about 150 pages of affidavits from a CCA prison in which many inmates detail gratuitous denials of traditional spiritual practices.

One Shelby inmate gratuitously killed another. The killer was suffering from AIDS. Can you imagine the expense involved were Montana to be forced to assume jurisdiction and costs in this sort of a case? Montana would have also been obligated to provide indigent defense of course.

One would think that Montana would have gotten the picture. In 1997, a Montana prisoner was murdered by other inmates in the Bobby Ross Group (BRG) prison in Texas. There were severe racial problems between Native Hawaiians, and Native Americans and skinheads from Montana. The prisoners burnt down the prison on two separate occasions. The Hawaiians were subsequently moved to Arizona, then to Oklahoma, and Montanans were similarly shuffled around. A former Director of Corrections and parole board member was convicted just last week of taking bribes. He was getting \$3,000 per month from this same Bobby Ross Group.

At some point in the future, for budgetary or programatic reasons, Kansas may be able to reduce its state prison population. If Kansas then allows importation of prisoners, it can quickly find itself in the same position as Montana.

The liability involved in these sorts of situations should give the state pause, not only in it's consideration of establishment of for-profit prisons, but in shipping its own prisoners out of state.

Frank Smith



24 January 2004

Dear Honorable Senator and/or Representative:

A task force convened by Kansas Attorney General Phil Kline and led by State Senator Derek Schmidt is championing the case for private prisons in Kansas, or prisons for profit. This effort is being driven by the capacity of Kansas' prisons that are near 100%. Their argument is that this is a solution to the prison problem in Kansas. The notion of corporate prisons in Kansas should alarm us all. The concept of deriving a profit from imprisoning human beings glorifies prisons falsely as economic development, profiteering upon the suffering of others. The profit motive and "economic development" become the driving force behind prison construction and the need to fill the corporate prisons up. Additionally, corporate prisons create problems by design, an issue this task force has not fully researched, nor addressed.

Kansas' prisons are near capacity for a multitude of reasons, the least of which is space. A comprehensive look at the issues, systems and needs of the Kansas Department of Corrections' (KDOC) are necessary to address this issue long term. We cannot build ourselves out of this problem. Foremost among these issues are the need to deal with the issue of the transition to freedom from prison to community. Presently in Kansas the rate of return to prison is over 65%. Last fiscal year over 2,000 persons returned to prison for technical violations of their parole, not committing a new crime. This recidivism rate is driven by the lack of support for the formerly incarcerated in their transition to freedom.

Formerly incarcerated people often have a history of drug addiction, mental health issues, low levels of job skills, and a lack of educational achievement. Prison life does little to address the primary reasons most people are in prison for. The result is the ever-revolving door of prison, a fact that has become cliché in our culture. We suggest that resources directed at continuing a failed prison system be directed towards reintegration efforts, not more incarceration. Models of this being done successfully exist around the nation. Presently, the KDOC has a reintegration program in Shawnee County, funded by a federal grant that shows great promise in creating success in reintegration of the formerly incarcerated. Faith based groups as well have demonstrated successful reintegration programs. Successful reintegration is not rocket science.

Cutting the recidivism rate should be the primary concern of our policy makers. This is where our energy should be directed. The recidivism rate is what is fueling growth in Kansas prison populations. A fact born out by crime statistics, indicating historically low crime rates in Kansas and the nation. We urge a thoughtful consideration of this issue as we work to return people, our fellow Kansans to productive lives as taxpayers, family members and members of our community who, like all of us, have made mistakes. This issue will not be resolved by constructing prisons, but by constructing caring communities and compassionate answers.

Sincerely,

David H. Wilkinson, M.A.
Facilitator, AfterCare ACTION Initiative II:
Ministry to the Formerly Incarcerated
Criminal Justice and Mercy Ministries

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Kansas West Conference of The United Methodist Church
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Petition of General Conference 2000 The United Methodist Church- Opposition To Private Prisons

There are a number of penal systems in the United States which take upon themselves the job of confinement or supervision of persons charged with, or convicted of crimes. For the most part, these systems are capable neither of rehabilitating criminals nor of protecting society, much less restoring crime victims. They are, in fact, institutions where persons are further conditioned in criminal conduct and where advanced skills in crime are taught. More often than not, penal institutions have created more crime rather than deterred criminals. They represent an indescribable failure and have been subjected to gross neglect by the rest of society and by the church. They do not deserve the designation of *correctional* institutions, for they correct nothing for the crime victim, the offender, or the community.

Despite their massive failure, prisons and jails and the numbers of persons confined within them are growing rapidly in the United States, leading some to speak of a "Prison Industrial Complex." This concept refers to the extent to which corporate interests and the profit motive -- not concerns of public safety, equal justice, offender rehabilitation, or victim restoration -- are increasingly driving and determining criminal justice policy in the United States.

Private Prisons

International attention has been given to the long and rapid rise in the United States prison population over the last 25 years. The United States imprisons a higher proportion of its people than all but one other country in the world, Russia. Incarceration has become a very expensive growth industry in the United States.

This industry of warehousing people has presented a temptation to those who would profit from the punishment of human beings, leading to perhaps the most ominous illustration of the prison industrial complex at work: the privatization of prison operation and/or ownership. Sometimes governments contract with corporations to operate prisons. A recent trend is for private corporations to design, build, and own prisons to be privately operated and to house prisoners from anywhere in the United States or its territories. Often this takes the form of companies' building prisons *on spec*, or as speculation, assuming that prisoners will be found, somewhere, to fill their beds.

There is a long history in the United States especially in the South, of exploitation of prison labor through the convict lease system and other arrangements whereby private industry has been allowed to have control over prisoners' lives. The 13th Amendment to the United States Constitution allows for legal exploitation of prisoners. Today, private prison entrepreneurs seek

areas which have a surplus of prisoners and areas of high unemployment which often welcome prisons as a new form of *economic development*. Typically, this means that it tends to be the poor and ethnic minorities who find their labor, their spirits, and their lives exploited, whether as the keepers or as the kept.

Private prison companies typically are paid on a per capita and per diem basis. Therefore they have little incentive to rehabilitate prisoners or to prevent recidivism. Indeed, it is in their economic interest to have more crime, more incarceration, and more recidivism, all of which lead to more profits. The logic of the profit motive is to cut costs. In privately operated prisons, this is usually achieved by cutting staff, payroll, benefits, supplies, security, and rehabilitation programming for prisoners. Such cuts lead to a decreased sense of professionalism and a higher rate of turnover among employees, greater hopelessness and bitterness among prisoners, and

greater threats to the safety of staff, prisoners, and the general public, especially in the local community.

Many states where private prisons are now operating have no laws regulating their operations (including health, safety, security, legal access for prisoners and disciplinary policies). Many private prisons are under no obligation to ensure access to information about prisoners held in them or how they are classified, and often regard this as proprietary information. Private prisons hurt local and state economies. Contracting out operations exports taxpayer monies from local communities to corporations often headquartered out of state. For existing prisons, communities lose public sector jobs with family-supporting wages and benefits, and civil service job security. Local communities which provide supplies, services or equipment to government agencies lose out when a large contractor, usually based out of state, wins a contract to operate a former government facility. Finally, when private prisons contract out bed space to prisoners from distant states, it makes it more difficult for families, friends, ministers, attorneys, and advocates to visit them for support, or counsel. This also increases their chances of recidivism when they are released.

Our Lord began his ministry by declaring "release to the captives..." (Luke 4:18 NRSV), and He distinguished those who would receive a blessing at the last judgment by saying, "I was in prison and you visited to me." (Matthew 25:36b NRSV) Jesus also declared that one cannot serve two masters and condemned the idolatry of mammon, or wealth. (Luke 16:13).

Christians, therefore, must have a special concern for those who are captive in any way, especially for those who are imprisoned, and for the human conditions under which persons are incarcerated. Individual Christians and churches must also oppose those policies and practices which reflect greater allegiance to the profit motive than to public safety and to restorative justice for offenders, crime victims, and local communities.

Therefore, The United Methodist Church declares its opposition to the privatization of prisons and jails and to profit making from the punishment of human beings.

7-5

AfterCare ACTION Initiative II: Ministry to the Formerly Incarcerated Healing Connections = Transitions to Freedom

Saturday, April 17, 2004 ~ 8:00 am to 5:00 pm

Saint Mark United Methodist Church ~ 1525 N. Lorraine ~ Wichita, KS

Registration Fee \$25.00 ~ Early-bird Discount Fee \$20.00 (postmarked by Mar. 22)

Continental Breakfast ~ Lunch ~ Network/Resource Directory

KEYNOTE SPEAKERS

Rev. Stanley Nixon, Prison Outreach Ministry of Pennsylvania TUMC

Rev. Mark Hicks of Disciple Bible Outreach, North Carolina Conferences of TUMC

Bishop Richard Wilke, Author of Disciple Bible Study

Roger Werholtz, Kansas Secretary of Corrections



This event is facilitated by the Criminal Justice and Mercy Ministries task forces of the Kansas West and Kansas East conferences of The United Methodist Church. It's designed to ignite ministries of connection and healing, build relationships and connect incarcerated persons with communities, putting faith into action.

Today, more than 16,000 people in Kansas prisons and county jails seek hope, connection and community. Each year, many people released from prison return to prison. During their transition to freedom, our brothers and sisters in Christ need faith communities, people acting in the love of Jesus.

Learn about the many prison ministry opportunities, network with others in ministry, hear expert panelists from around the region and nation, along with local and state officials. The AfterCare ACTION Initiative is a way to connect and heal brokenness in our communities. Join with us!

"If prisons were countries we would be organizing missions to go there."

Bishop Richard Wilke

(registration form on the reverse side)

Since 1730, originating with John Wesley, The United Methodist Church has been involved in prison ministry, an act of mercy.
"Remember those who are in prison, as though you were in prison with them..." Hebrews 13:3

Scholarships are available upon request. Contact David Wilkinson, CJAMM Conference Director, 316.806.7289 or cjamm@cox.net before mailing registration.
Registration form, workshop descriptions and conference schedule available online at www.kswestumc.org/cim/social_issues/cj_min.htm or by e-mail at cjamm@cox.net.
For additional conference details or ministry opportunities, contact: David Wilkinson at 316.806.7289 or cjamm@cox.net.

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Kairos Prison Ministry of Kansas, Prison Fellowship, Offender/Victim Ministries, Tabernacle Baptist Church, Families Against Mandatory Minimums (FAMM), Saint Mark United Methodist Church-Wichita, Team Saint Mark Prison Ministry Group, Regional Prevention Center of Sedgwick County, Integrated Ministries Council of Kansas West Conference, Inner-Change Freedom Initiative, Boeing Credit Union, KU Medical School of Wichita, CURVES Fitness Center, Peace with Justice Task Force, United Methodist Men of Kansas West, Bridges to Life at Winfield Correctional Facility, Saint Mark United Methodist Church Food Ministry, LifeLine Prayer Connection of The Criminal Justice and Mercy Ministries, the Kansas East and West conferences of The United Methodist Church



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- #5 Transitional Housing _____
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Will you need childcare during the conference? Yes _____ Number of children _____
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Families Against Mandatory Minimums

F O U N D A T I O N

Senator Morris & Other Honorable Members of this Committee:

My name is Peter Ninemire. I live in Wichita, and am the Midwest Regional Trainer/Organizer for Families Against Mandatory Minimums, a national organization headquartered in Washington, D.C. FAMM's focus on the national level is on restoring judicial discretion in sentencing. (Perhaps you saw "More Than They Deserve" the lead story we assisted 60 Minutes with a couple of weeks ago) FAMM does not believe that crime should go unpunished, but rather that the punishment should fit the crime.

On the state level, we work with Sentencing Commission and others in finding more efficient and effective use of our limited state resources, while at the same time keeping public safety as a top priority. One of our main focuses is on alternatives to the long-term incarceration of low-level, non-violent drug offenders. (In relation to that, the sentencing project recently found that three fourths of the 5 billion dollars spent incarcerating 251,000 state drug offenders, went toward confining people who never committed a violent crime. These were mostly drug offenders, 58% of whom had no history of either violence or high level drug dealing.) **The Truth in Sentencing and Get Tough on Crime Policies** of the late 80's and early 90's have created a 200 billion dollars shortfall that states have really began to feel in the new millennium.

Many of these states across the country have asked us to come work with them as they grapple with their rising and expanding prison populations. We have done so in a variety of ways. Much of this has to do with lending input and drafting thoughtful legislation that includes alternatives to incarceration and length of sentences for select offenders who meet specific criteria. To further assist with this endeavor, FAMM recently launched our "Smart on Crime" as a companion to our www.famm.org website for legislators and policy makers to review successful sentencing reforms and alternatives from across the country. FAMM is proposing that it is much more important and responsible to be "Smart on Crime" than soft or tough on crime. Please review the "Smart On Crime" reports that I have given each of you today. This report was compiled by one of our board members. It provides the details of "**Positive Trends in State-Level Sentencing and Corrections Policy**" from this past year in 39 states across the country.

Texas for example, recently passed a drug treatment alternative law and saw its prison population remain virtually unchanged from 2001 to 2002. Ohio, which revised its sentencing and parole guidelines in the late 1990's had its prison and jail population rise just 0.8 percent last year compared to 1.9 percent for the Midwest as a whole.

In 2003 alone, according to the Vera Institute of Justice, seven states adopted legislation reducing sentences and repealing mandatory minimums. Six states created alternatives to incarceration. Nine eased truth in sentencing laws and expedited release. Six fostered drug courts in order to emphasize treatment. Five altered the way they deal with

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technical violations of parole rules so that fewer offenders are forced back into long prison terms. (About one-third fall into this category) Seven states expanded transition programs to help released offenders reenter their communities in ways that reduce chances of their committing new crimes.

FAMM is principally opposed to private prisons because they reduce the incentive for sentencing reform, and in fact, appear to be an obvious proponent of incarceration. We suggest managing prison populations through thoughtful reform in a myriad of ways listed in your "Smart on Crime" reports. We need to focus on more on long term solutions. Bringing private prisons to Kansas does nothing for the rate of growth and expansion we are currently undergoing in Kansas. Last year there were 34,000 people either incarcerated, or on parole or probations in our state. This was up 4.9 percent from the previous year. This growth appears to be unsustainable.

Probation is often a sensible alternative to incarceration for non-violent offenders, but the system for managing these mounting numbers of probationers and parolees is under severe stress. Kansas, like the rest of the nation, has undergone a historic ill-conceived shift from rehabilitation to a greater emphasis on retribution. As a result, we are imprisoning people who should be making restitution to society in different, less expensive ways. As they do that, they should get the help they need to become more productive members of society. In too many states, including Kansas, as there are no funds left after incarceration to prepare them with life skills, drug treatment, employment and educational opportunities, and other rehabilitation tools that would give them a reasonable chance to succeed once they are released.

I suggest to you that mandatory sentencing laws, coupled with drug abusers who often need treatment more than they need imprisonment where they too often adopt criminal attitudes and behaviors, are adding to the expensive pressure on prisons and parole systems. State and local lawmakers alike, must pay attention to these disturbing statistics and begin to create a criminal justice system that makes much more sense.

I do not believe that bringing private prisons to Kansas makes sense, or is any type of long term solution to our current capacity problems in Kansas. I believe we need to look at levels of classification, which the Kansas Sentencing Commission is very qualified to do, as well as revamp our parole system that sets too many up for failure by monitoring their every move, instead of mainstream supervision focused on assisting with reintegration efforts. And speaking of that, VO-TIS funds were recently released for reintegration efforts. The legislature has the ability to take the initiative to unlock these funds and should also look at areas where good time might be a viable and prudent alternative to further incarceration of specific number of inmates who meet a strict criteria. We need find more effective and efficient alternatives than bringing private prisons to Kansas. Sentencing reforms are a much better and longer term solution.



FPE / AFT / AFL-CIO

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Working Together,
We Make A Difference!



Testimony on SB 275

Before the

Senate Ways and Means Committee

January 27, 2004

Presented by Andy Sanchez, Executive Director
Kansas Association of Public Employees

Thank you Mr. Chairman and members of the committee. I am thankful for the opportunity to appear before you today to speak on SB 275. As most of you already know KAPE represents state, city and county employees across the state. KAPE is the bargaining representative for all of the state correctional facilities except Lansing. As an organization whose mission includes the retention of public services within public agencies, never has our mission been more just than when we seek to retain our state prison system as a public sector function. Thus, we oppose SB 275 on the premise of inherent problems that arise in the operation of a private prison.

First, a private prison is a for-profit prison. This means first and foremost, a private vendor must maintain a profit. While turning a profit is an admirable business practice, I will explain later how this can be an overriding factor.

Second, say what you want, but if SB 275 is passed Kansas will be part of an experiment. That is, while Kansas will not be the first to do this, there is a great deal of research to support private prison management as controversial. In fact, for-profit prisons are still considered to be in the "immature" stage. Data is still relatively new to developing a track record. Private prison companies have captured only 5% of the total U.S prison market (including local facilities).

SB 275 is filled with language to offer assurances that the company selected looks every bit like a public facility assuring qualifications, experience, adherence to national standards, and certified training. But, I suspect the most telling thing about this bill is in two parts, page 1, Sec. 2 limited liability company. Sec. 4 (a) in which substantial savings must be attained. Clearly, the bill struggles with the dilemma of trying to provide the same level of service currently provided but at the same time needing a great deal of oversight and then finally, relinquishing the company of responsibilities.

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I will also point out that Page 4 of the bill addresses a distinct possibility where it reads the contractor shall provide an emergency plan to address among other things, work stoppages and strikes. Our people fall under the Public Employer Employee Relations Act (PEERA), and thus cannot subject the state to a strike. If a union should decide to organize in a Kansas privately operated prison, PEERA would not apply.

Last, hiring a private contractor will assuredly involve a bidding process where the lowest bidder is awarded the contract. I urge this committee to steer away from private prisons and do not get into a situation where the lowest bidder guards our prisoners. Have them show exactly how they will save money and our members will show you shortcuts and compromises to security.

In a 2003 research project report by "Good Jobs First", it states that "containing labor costs is the crux of the privatization movement". It goes on to say prisons are primarily labor intensive with 65 to 70 percent of the costs for operating a prison being staff salaries, fringe benefits, and overtime. Private firms claim they can save 10-20 percent largely due to efficient handling of labor costs. The report cites these key areas as a "recipe for disaster".

- *Inadequate staffing levels
- *Lack of experience amongst personnel
- *Turnover
- *Insufficient training
- *Cutting corners on medical care

All of the above are major contributors to problems of violent out breaks. This is an industry where we can't afford to have policy driven by our budget problems. We have a system that works and we have a system that is prepped to expand. We urge this committee to invest in a sure thing and that is quality public services by public employees.

Thank you

Written testimony

From: Mary Shaw
To: Mary Shaw
Date: 1/26/04 3:06PM
Subject: SB275 - Thank You

>>> ks_cure 01/26/04 15:06 >>>

This written testimony is prepared for the Senate Hearing on January 27, 2004 at 9:30a.m. regarding Senate Bill 275 – provides authority for private, for-profit prison construction in Kansas

The members of Kansas CURE a local chapter of the national Citizens United for Rehabilitation of Errants, a social justice advocacy organization, opposes the building of additional prison space in the state of Kansas generally, and specifically opposes the building of for-profit prison construction in Kansas. Aside from the obvious and negative moral implication of investors profiting from incarcerating people, for profit prison industries have earned a dubious record in communities where they have located. Kansas and Woodson County are not in financial positions to remedy the debris that may be left in the wake of the for profit prison frenzy.

Many of you have received the research KS CURE completed on Woodson County. As a result you know Woodson County is in no better or worse shape than the majority of rural Kansas. One has to ask the question, if this bill passes, what is to prevent other counties from following suit and flooding the market with for profit holding facilities? More to the point, will the taxpayers of the state be strapped for paying losses incurred if, as many have, the for profit prison fails to make enough money for the investors and is closed?

The research on Woodson County opens the door on other means to reduce individual property tax burden on residents, and increase employment opportunities. Woodson County is positioned to utilize natural resources and develop recreational activities to generate income. The trucking industry provides 10,000 jobs in Kansas. A county with good highway access should be able to build on these flourishing industries. Prisons are not designed, nor should they be allowed, to serve as a means to increase tax revenues.

The criminal justice system in Kansas has much work to do to effectively meet the challenges of corrections. Building more prisons will not further guarantee public safety, nor is it a good economic development plan. The prison crowding crisis should be remedied through proactive legislation utilizing the least expensive methods of monitoring those individuals whose behavior requires supervision. Sentencing reform, better trained community corrections and parole supervision techniques as well as effective re-entry programs will reduce the number incarcerated below the capacity of current Kansas structures. If managed properly Kansas has adequate resources to meet the needs of the state. Exploiting Kansas as a holding ground for offenders from other jurisdictions is offensive on many levels and can not be tolerated.

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Bottom line: This bill would further the interest of individual stakeholders of for profit prisons at the very real risk to the taxpayer; therefore, it is unacceptable.

Kansas CURE wishes to thank you for your careful consideration of the above facts when considering SB 275 and requests your vote to defeat SB 275.

KS CURE can be reached at ks_cure@yahoo.com for questions.

Kathy Gabera

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