

The State Determines Sentencing

A CRITIQUE OF “DO PRIVATE PRISONS DISTORT JUSTICE?”

OVERVIEW

This paper offers a critique of Anita Mukherjee’s research, “Do Private Prisons Distort Justice? Evidence on Time Served and Recidivism.”ⁱ

The author makes a number of assumptions about how private prisons operate in Mississippi, the impacts private prisons have on parole decisions and the motives that underlie private operators’ decisions. These assumptions can be summarized as follows:

Private prisons use the disciplinary system as a way to retain inmates four to seven percent longer than public facilities. Private operators do so by writing up infractions at an increased rate. The average inmate in a private facility receives 15 percent more infractions than inmates in public facilities. These increased infractions impact an inmate’s likelihood of early release because the parole board considers behavior while incarcerated as a deciding factor for early release. Private operators’ motive for profit explains why inmates in private facilities receive more infractions and consequentially stay longer (Mukherjee, 2015).

CRITIQUE

The assumption that private operators write up infractions at an increased rate for self-serving motives ignores the oversight of Mississippi Department of Corrections (MDOC) staff of private facilities and the due process given to inmates in all facilities within MDOC’s published rules. It’s critical to note:

- All private facilities in Mississippi have an MDOC “compliance monitor” on site. One role of this monitor is to ensure all disciplinary decisions comply with MDOC policies.
- Under MDOC’s rules, if an inmate’s infraction is serious enough to warrant the penalty of loss of earned time credits, the decision requires the approval of MDOC administrators. It cannot be solely the decision of private prison staff.

The author also assumes the number of infractions an inmate receives while in custody is the pivotal factor when parole boards review cases for early release.

- Under MDOC rules, the Parole Board considers 15 factors when reviewing cases, of which “disciplinary action while incarcerated” is only one factor.
- Parole board members are free to use other factors in their decision-making as well.
- The author does not provide an average infraction rate for inmates in the public facilities. Without knowing if those inmate have, on average, ten infractions or 100 infractions, it is difficult to compare.
 - If inmates in public facilities have, on average ten infractions, the 15 percent rate would result in 11.5 infractions for inmates in private facilities.

Finally, to infer that the underlying reason for increased infractions is motivated by profit without testing other possible hypotheses reveals that the author has a strong underlying bias regarding private prisons. The author provides a series of assumptions about how private operators cut costs as proof of an underlying profit motive driving all decisions made in private facilities. The assertion is that private prisons do whatever they can to cut costs, including hiring less experienced guards that work for less pay and have high turnover.

RESPONSE

It is important to note that private operators have statutory and contractual obligations to hire and train staff. These obligations mean:

- Correctional officers hired by private operators have the same educational and experiential qualifications as those hired by MDOC. New hires must complete a criminal background check just like MDOC employees. The wage rates offered by private operators are competitive in the areas where they are located.
- Training requirements for private operators are statutorily mandated. These statutes state that private operators are required to train staff *for at least the minimum number of hours that public personnel are currently trained* (emphasis added).

ⁱ [Mukherjee, Anita. \(2015\). *Do Private Prisons Distort Justice? Evidence on Time Served and Recidivism.*](#)