

## COMMENTARY

# Privatized jails due careful look, debate

As they continue to search for budget relief, some Shelby County commissioners are considering privatizing the Downtown jail and the Shelby County Correction Center.

But the question of whether government should transfer its sovereign responsibility for the safety, health and welfare of its incarcerated citizens to private companies deserves thorough study and much debate.

More than 80 percent of the approximately 4,700 adults in the jail and the correction center are African-American. That's a relevant statistic because private prisons have a sordid history in the South that dates to the racist "convict leasing" systems of the late 19th Century.

After the Civil War, financially distressed Southern states had lost their source of free labor with the emancipation of the slaves. Subsequent enactment of the Black Codes criminalized everyday behavior, such as standing on a street corner; these vagrancy and loitering statutes created a new form of social control over African-Americans that soon resulted in growing prison populations.

The convergence of prison crowding and local economies' need for low-cost labor soon gave birth to a



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new, and by all accounts worse, form of slavery: the convict leasing system.

Although a few prisons in the North were operated by private entities, leasing convict labor to private companies was a method of relieving stretched state budgets that was unique to Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Tennessee and Texas.

These private contracts took many forms. They ranged from states leasing inmates to businesses and directing the revenue to their treasuries to wholesale privatization of the correction system, with all profits going to an entrepreneur who paid an annual fee to the state.

In all cases, the contracts forced convicts to work for private industries such as logging, phosphate and coal mining, farming, railroad con-

struction, sawmills and turpentine processors.

The convict leasing system was notorious for its unconscionable use of forced free labor to generate state revenues, enrich private enterprises and pay kickbacks to public officials who brought convicts into the system. After investigations revealed the widespread corruption and abuse of inmates and other businesses complained of unfair competition, convict leasing was outlawed in all states by 1933.

A half-century later, the beginning of the war on drugs in the 1980s led to another substantial increase in the U.S. prison population, from 500,000 in 1985 to 2.1 million in 2004. With that came a dramatic change in the racial landscape of federal and state prisons.

Federal sentencing guidelines provided stiff mandatory minimum penalties for possession of as little as 5 grams of crack cocaine that sent thousands of young black men to long prison terms. Yet a person could possess as much as 500 grams of powder cocaine before being subjected to the same punishment. Legislators acknowledge the unfair racial impact of such guidelines but have not changed them.

A study by the Justice Policy Insti-

tute, "Poor Prescription: The Costs of Imprisoning Drug Offenders," found that from 1986 to 1996 the number of white people imprisoned for drug offenses doubled, while the number of black people imprisoned for drug offenses increased fivefold. This is despite the fact that white people accounted for more than 70 percent of all illicit drug use in America.

In a more recent study the institute noted: "The prison and jail populations of the South accounted for 4 out of 10 incarcerated people in the U.S. and . . . African-Americans and Latinos are subject to higher incarceration rates than whites."

As an industry, private prison companies such as the Nashville-based Corrections Corporation of America (CCA) have experienced security, management, personnel and fiscal problems. Their livelihood depends on a stable, if not increasing, "inventory" — of prisoners — and their managers' first loyalty is to their stockholders.

Studies that compare cost savings and quality of services between public and private prisons show mixed results at best — and at worst, their findings may be suspect. Reliable analyses are difficult because private enterprise does not operate under the same rules about public access

to information that government agencies do; information is not always compiled in the same format or made readily available.

A May 2002 Harvard University Law Review article that CCA cites on its Web site concludes: "What imperfect empirical evidence there is suggests that private prisons cost less than public prisons and that their quality is no worse." Such caution is not a ringing endorsement of any cost-benefit analysis supporting privatization.

Before contracting away county government's responsibility, we should consider alternatives in enforcement policies that could have a greater impact on cost savings than simply shifting the same system to private enterprises that have no incentive to reduce crime.

We should focus more resources on crime prevention measures, such as early childhood development initiatives, keeping children in school, providing livable wages and encouraging employers to give people who have made a mistake a second chance.

Success in these areas will not only reduce our criminal justice system budget, but also will make ours a safer, healthier community.