The Color of Corporate Corrections, Part II: Contractual Exemptions and the Overrepresentation of People of Color in Private Prisons

CHRISTOPHER PETRELLA

My previous study published in _Radical Criminology_, (Issue 2, Fall 2013) demonstrates that people of color—though historically overrepresented in public prisons relative to their share of state and national populations—are further overrepresented in private prisons contracted by departments of correction in Arizona, California, and Texas.

My current research on the relationship between U.S. racial formation and prison privatization enlarges my previous work by foregrounding the question of why. That is, why is it that


3 Although racial designations are always imprecise, elusive, historically situated, and subject to revision, I have appropriated U.S. Census Bureau racial categories for the purposes of this study to preserve nomenclatural, and therefore statistical, fidelity in cross referencing figures. People of color here are defined as “Black, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, and non-white Hispanic or Latino.”
people of color are overrepresented in private versus public facilities in select states even in the absence of explicit racially discriminatory correctional placement or classification policies?

In order to explain why people of color tend to be overrepresented in private relative to public facilities around the country this study draws on data from nine (9) states: Arizona, California, Colorado, Georgia, Mississippi, Ohio, Oklahoma, Tennessee, and Texas. These states were selected on the basis of their reliably large sample size. Each of the nine states considered currently houses at least 3,000 prisoners in private minimum and/or medium security facilities. Additionally, this study controls for differences in facility population profile. Therefore, only public and private facilities/units with a minimum and/or medium security designation are included in this comparison. And finally, as in my previous work, in order to avoid artificially inflating the over-incarceration of people of color in for-profit prisons this examination intentionally excludes figures from federal detention centers controlled by U.S. Immigration and Customs Enforcement (ICE), the U.S. Marshals Service, and detention facilities managed at the local level. For similar reasons, it strategically excludes data from transfer centers, work release centers, community corrections facilities, and reception centers.

Based on an analysis of data obtained from over sixty separate public record requests and reports accessible on state department of corrections websites, this study finds that people of color are overrepresented in private minimum and/or medium security private facilities relative to their public counterparts in each of the nine (9) states examined.

This research further posits that the overrepresentation of people of color in private versus public prisons across the country is primarily attributable to an unlikely source: finely tailored

4 Over thirty states in total contract with private prison companies but many of these jurisdictions have sample sizes that are statistically insignificant. Alaska, for instance, houses less than 1,000 prisoners in minimum and/or medium security private facilities.

5 All public record requests were made between May, 2012 and September, 2013.
contractual provisions that implicitly exempt private prison companies from housing certain types of individuals whose health care and staffing costs disproportionately attenuate profit margins. *Health—and therefore age—tends to serve as a proxy for race without any explicit reference to it.*

These figures suggest that the older the prisoner, the more likely that prisoner is to be “Non-Hispanic, white.” Correspondingly, the younger the prisoner, the more likely that prisoner is to be a person of color. Most prisoners over 50 today were convicted and sentenced before the operationalization of the so-called “War on Drugs,” a skein of policies that have disproportionately criminalized communities of color. By implication, the vast majority of those incarcerated prior to 1980—both in real numbers and on a percentage basis—was “Non-Hispanic, white.”6 Contrastingly, black individuals constituted 30 percent of state prisons admits in 1950, 34 percent in 1960, roughly 40 percent in 1970, and 42 percent by 1980.7

_Therefore, age and health serve as dual proxies for race when explaining the persistent racial disparities in private versus public facilities with similar population profiles._

Elderly and/or geriatric prisoners tend to cost more to incarcerate. A 2012 ACLU report estimates that it costs $34,135 per year to house a non-geriatric prisoner, but it costs $68,270 per year to house a prisoner age 50 and older.8

My study firmly suggests that private prison management companies9 responsible for providing health services exempt themselves contractually from accepting and housing prisoners with chronic medical conditions as well as those whose health care costs will be “above average.”10 This fact results in a prisoner profile that is far younger and far “darker” in minimum

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6 For example, an individual convicted in 1970 as a 20 year-old would be 63 today. Research conducted by the U.S. Department of Justice and the ACLU both conclude that prisoners over the age of 50 are most likely to be “non-Hispanic, white.” https://www.ncjrs.gov/pdffiles1/ncj/nij/125618.pdf

7 Ibid.

8 https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

9 Corrections Corporation of America, the GEO Group, and MTC are the three largest private prison companies in the United States. Together they constitute close to 90 percent of the private corrections market share.
and/or medium security private facilities than in select counterpart public facilities. In fact, the states in which the private versus public racial disparities are most pronounced also happen to be the states in which the private versus public age disparities are most salient. Please see data on Oklahoma and Texas.

Secondly, on the rare occasion that a state department of correction retains control of health services while contracting

10 Please consider these examples of contractual exemptions. **Note California:** “In the event that the CDCR requests that the contractor [Corrections Corporation of America] accept offenders with serious or significant mental health or serious or significant physical problems, included but not limited to physical disability, CDCR and the contractor shall mutually agree to an appropriate plan of care and the population and the allocation of costs associated therewith. If the overall percentage of offenders requiring Hepatitis C treatment exceeds the overall percentage of offenders requiring Hepatitis C treatment in the CDCR system, CDCR agrees to pay the treatment costs for those offenders in excess of the percentage of offenders requiring Hepatitis C treatment in the CDCR system…The cost of providing on-site medical, mental health or dental services through facility staff or contracted services shall be considered normal costs incidental to the operation of the facility and is included in the CDCR offender per diem rates, except that the CDCR shall pay for…all expenses in excess of $2,500 annually per inmate for medically necessary, off site hospital or emergency care…all HIV or AIDS related inpatient and outpatient medical costs and the costs of providing AZT or other medications therapeutically indicated and medically necessary for the treatment of offenders with HIV or AIDS.” **Note Oklahoma:** “The contractor [The GEO Group] will be responsible for the treatment of offenders infected with HIV. This will include, but will not be limited to, all in-patient and outpatient medical costs excluding the cost of providing antiviral medications therapeutically indicated for the treatment of HIV. If the number of the HIV positive offender population being treated increases by 10 offenders then the medication cost allocation shall be subject to negotiation. The contractor may return any offender diagnosed with AIDS, as defined the center for disease control to the state. The contractor is responsible for treatment of Hepatitis C offenders in accordance with the Oklahoma DOC protocol. If the number of Hepatitis C positive offender population being treated at any one time is more than two (2) then the DOC will transfer those additional offenders out of the facility. When an offender reaches end stage Hepatitis C and can no longer be treated at the contractor’s facility, the DOC will transfer the offender out of the facility…The contractor may claim reimbursement from the department for the inpatient hospitalization in a licensed hospital, for the hospital charges only, not separate physician or other provider charges, for the amount which exceeds 50,000 per inpatient hospital discharge for each single hospital stay which originates while the contract for services is in effect between the contractor and the department.” **Note Mississippi:** “MTC [Management and Training Company] will not be
with a private prison management company\textsuperscript{11} elderly populations still remain disproportionately expensive to incarcerate because those assigned to monitor geriatric and/or chronically ill prisoners often require special training, benefit from a higher pay grades, and are assigned at lower staff-to-prisoner ratios. Each of these considerations further erodes profit margins.

In sum, explicit contractual exemptions for health services and implicit provisions for reducing “high cost” geriatric or infirmed prisoners helps to explain ongoing racial disparities in private versus public prisons with similar population profiles. My modest hope is that this study provides an incontrovertible example of the ways in which seemingly “race neutral” or “colorblind” carceral policies continue to have a differential impact on communities of color.\textsuperscript{12}

\textbf{Note Arizona:} According to a 2011 report issued by the Arizona Department of Corrections “Both private and state-run prison units have differences in the types of inmates that can be housed based on inmate medical, mental health and dental needs Generally, state-run prisons house a higher percentage of inmates with higher medical and mental health needs than private prison units. Private prison units considered to be corridor facilities have access to off-site healthcare and can house inmates with more severe medical and mental health needs. Additionally, two private contracts have a $10,000 cap per inmate on health care services. When the health care cost of a single inmate exceeds this cap, the inmate is returned to a state-run prison unit and the state assumes all further medical treatment costs associated with the inmate. The consolidation of inmates with higher medical and mental health needs to certain units is cost-efficient overall, but results in a higher per diem cost for those units and complexes that house these inmates.”

\url{http://www.azcorrections.gov/ARS41_1609_01_Biennial_Comparison_Report122111_e_v.pdf}

\textsuperscript{11} In Texas, for instance, medical care in private prisons is provided by Correctional Managed Health Care, a public agency.

\textsuperscript{12} The overrepresentation of people of color in private prisons indicates they are disproportionately siphoned away from public prisons—precisely the types of facilities that provide the greatest access to educational and rehabilitative programs and services. \url{http://www.urban.org/projects/reentry-roundtable/upload/Crayton.pdf}. People of color continue to be seen in the national imagination as sources of profit extraction and not necessarily as citizens deserving of public services.
DATA:

ARIZONA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Douglas-Gila: 359/601
Douglas-Mohave: 663/930
Douglas-Eggers: 127/231
Florence-East: 397/690
Florence-North: 604/1085
Florence-Globe: 164/293
Lewis-Stiner: 786/1176
Lewis-Sunrise: 42/99
Safford-Fort Grant: 331/573
Safford-Graham: 349/536
Safford-Tonto: 194/306
Tucson-Cimarron: 246/371
Tucson-Santa Rita: 503/777
Tucson-Winchester: 501/769
Tucson-Catalina: 144/348
Tucson-Whetstone: 685/1171
Winslow-Coronado: 318/498
Winslow-Kaibab: 614/775
Winslow-Apache: 212/358
Yuma-Cheyenne: 734/1188
Yuma-Cocopah: 570/1047
Yuma-Cibola: 152/308
Yuma-La Paz: 661/864
### Arizona: Private Minimum/Medium Security Facilities or Units (People of Color / Total Population)

- Kingman-Cerbat: 1193/1965
- Kingman-Hualapal: 1069/1512
- Marana: 309/496

| Arizona Private Facilities | 65 % ■
|----------------------------|------------------|
| Percent population People of Color | 35 % ■

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### Arizona Public Facilities

<table>
<thead>
<tr>
<th>62 % ■</th>
<th>Percent population People of Color</th>
<th>38 % ■</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>13 % ■</th>
<th>Percent population age 50 or older</th>
<th>87 % ■</th>
</tr>
</thead>
</table>

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**Percentage of People of Color in Arizona Public Facilities:**

- 62%

**Percentage of Population age 50 or older in Arizona Public Facilities:**

- 13%
CALIFORNIA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Avenal: 4447/6217
California Men's Colony: 4719/6240
California Men's Rehabilitation Center: 3156/4263
Chuckawalla / Ironwood: 6221/7634
Folsom: 5360/6676

*Note: Though the California Department of Corrections and Rehabilitation has been incredibly uncooperative in releasing data pertaining to the proportion of prisoners age 50 and older in minimum/medium-security public and private facilities, readers should note that the publicly-operated California Health Care facility in Stockton, CA is the only facility officially charged with the task of “housing for patients who require acute and long-term care for medical or psychiatric needs.” It is therefore reasonable to hypothesize that this particular publicly-operated facility would contain the highest proportion of prisoners age 50 and older among California's more than 30 state-operated prisons. http://cdcrtoday.blogspot.com/2013/06/cdcr-dedicates-new-california-health.html
**California: Private (outsourced) Minimum/Medium Security Facilities or Units (people of color / total population)**

- La Palma (in Arizona): 2454/2949
- North Fork (in Oklahoma): 1774/2003
- Red Rock (in Arizona): 1382/1504
- Tallahatchie (in Mississippi): 2410/2603

**Colorado: Public Minimum/Medium Security Facilities or Units (people of color / total population)**

- Arkansas Valley: 575/1008
- Buena Vista: 546/926
- Fremont: 798/1662

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89% | California Private Facilities
---|---
Percent population People of Color
11% |

53% | Colorado Public Facilities
---|---
Percent population People of Color
47% |
COLORADO: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Bent: 764/1317
Crowley: 938/1590
Kit Carson: 456/800

23 %
Percent population Age 50 or Older

77 %

58 %
Percent population People of Color

42 %

16 %
Percent population Age 50 or Older

84 %
GEORGIA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

- Autry: 1155/1644
- Calhoun: 1169/1635
- Central: 614/1099
- Dodge: 796/1198
- Dooly: 1093/1652
- Johnson State: 855/1544
- Lee State: 523/725
- Long: 100/224
- Montgomery: 236/374

65 % ■
Percentage People of Color

35 % ■

21 % ■
Percent population Age 50 or Older

79 % ■
Georgia: Private Minimum/Medium Security Facilities or Units (People of Color / Total Population)

Coffee: 1811/2540
Jenkins: 665/1107
Riverbend: 1012/1459
Wheeler: 1817/2640

68% People of Color

15% Percent population Age 50 or Older
MISSISSIPPI: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)*

CMCF: 1451/2188

<table>
<thead>
<tr>
<th>Percentage People of Color</th>
<th>Mississippi Public Facility</th>
</tr>
</thead>
<tbody>
<tr>
<td>66 %</td>
<td></td>
</tr>
<tr>
<td>34 %</td>
<td></td>
</tr>
</tbody>
</table>

MISSISSIPPI: PRIVATE MEDIUM SECURITY FACILITIES (PEOPLE OF COLOR / TOTAL POPULATION)*

as Composite Totals: 3256/4314

<table>
<thead>
<tr>
<th>Percentage People of Color</th>
<th>Mississippi Private Facilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>75 %</td>
<td></td>
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<tr>
<td>25 %</td>
<td></td>
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</tbody>
</table>

*Note: Though the Mississippi Department of Corrections has not been able to provide me with data pertaining to the proportion of prisoners age 50 and older in minimum/medium-security public and private facilities, readers should note that the publicly-operated Mississippi State Penitentiary in Parchman, MS is the only facility responsible for “maintain[ing] two special units for its elderly prisoners.”—http://www.mdoc.state.ms.us
**Ohio: Public Minimum/Medium Security Facilities or Units (People of Color / Total Population)**

<table>
<thead>
<tr>
<th>Location</th>
<th>People of Color</th>
<th>Total Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allen Oakwood</td>
<td>659</td>
<td>1590</td>
</tr>
<tr>
<td>Marion</td>
<td>1343</td>
<td>2617</td>
</tr>
<tr>
<td>Dayton</td>
<td>315</td>
<td>882</td>
</tr>
<tr>
<td>Chillicothe</td>
<td>1038</td>
<td>2747</td>
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<tr>
<td>London</td>
<td>1119</td>
<td>2263</td>
</tr>
<tr>
<td>Belmont</td>
<td>1220</td>
<td>2762</td>
</tr>
<tr>
<td>Noble</td>
<td>1034</td>
<td>2495</td>
</tr>
<tr>
<td>Southeastern</td>
<td>853</td>
<td>2055</td>
</tr>
<tr>
<td>Pickaway</td>
<td>919</td>
<td>2165</td>
</tr>
</tbody>
</table>

43% [■] **Ohio Public Facilities**

**Percentage People of Color**

57% [■]

20% [■] **Ohio Public Facilities**

**Percent population Age 50 or Older**

50% [■]
**Ohio: Private Minimum/Medium Security Facilities or Units (People of Color / Total Population)**

Lake Erie: 898/1542
North Central Complex: 1113/2708

**Oklahoma: Public Minimum/Medium Security Facilities or Units (People of Color / Total Population)**

Dick Conner: 608/1202
James Crabtree: 387/992
Joseph Harp: 555/1396
Mack Alford: 349/793
OK State Reformatory: 483/1067
OKLAHOMA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Davis: 989/1682
Lawton: 1423/2529

57 % ■ Percentage People of Color

43 % ■

Oklahoma Private Facilities
TENNESSEE: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

CBCX: 315/604
NWCX: 1315/2404

TENNESSEE: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Hardeman: 1265/1998
South Central: 765: 1669
Whiteville: 974/1528
Note: Though the Tennessee Department of Correction has stated it “does not have the resources to perform individual requests to disaggregate data [pertaining to the proportion of prisoners age 50 and older in minimum/medium-security public and private facilities],” readers should note that the publicly-operated Lois M. DeBerry Special Needs Facility in Nashville, TN is the only facility responsible for providing “acute and convalescent health care” to Tennessee prisoners. It is therefore reasonable to hypothesize that this particular publicly-operated facility would contain the largest proportion of prisoners age 50 and older among all of Tennessee's prisons. —http://www.tn.gov/correction/institutions/dsnf.html

**Texas: Public Minimum/Medium Security Facilities or Units (People of Color / Total Population)**

- Byrd: 723/1088
- Goree: 483/975
- Huntsville: 874/1520
- Jester III: 629/1083
- Luther: 795/1261
- Pack: 763/1429
- Powledge: 504/1105
- Terrell: 940/1539
- Vance: 192/295
Texas Public Facilities

- **Percentage People of Color**
  - 57%

Texas Public Facilities

- **Percent population Age 50 or Older**
  - 37%

Texas Private Facilities

- **Percentage People of Color**
  - 69%

**Texas: Private Minimum/Medium Security Facilities or Units (People of Color / Total Population)**

- Billy Moore: 344/499
- Bridgeport: 360/520
- Cleveland: 361/519
- Diboll: 354/517
- Estes: 722/1039
17% ■
Percent population Age 50 or Older

83% ■

Texas Private Facilities