

- SUBJECT:** Increasing cap on number of inmates in private prisons
- COMMITTEE:** Corrections — favorable without amendment
- VOTE:** 4 ayes — Madden, Hochberg, McReynolds, Jones
- 1 nay — Haggerty
- 1 present not voting — Dunnam
- 1 absent — Oliveira
- WITNESSES:** For — Randy Blanton, The GEO Group; Donald Lee, Texas Conference of Urban Counties; Laurie Shanblum, Corrections Corporation of America
- Against — Scott Medlock, Texas Civil Rights Project; Nicole Porter, American Civil Liberties Union of Texas; Dee Simpson, AFSCME Correction Employee Council 7; Judith Greene; (*Registered, but did not testify*: Ana Yanez-Correa, Texas Criminal Justice Coalition)
- On — Marc Levin, Texas Public Policy Foundation; Brad Livingston, Texas Department of Criminal Justice
- BACKGROUND:** Government Code, ch. 495 governs the state’s contracts with private vendors operating prison facilities. The operations of other types of facilities, such as state jails, by private vendors is governed by other statutes.
- Government Code, sec. 495.001(b) limits private prison facilities to an average daily population 1,000 inmates. Sec. 495.007 limits the total amount of private prison beds that the state can have under contract to 4,580. The state currently has contracts with private vendors to operate 4,078 prison beds in seven facilities.
- DIGEST:** HB 198 would increase the cap on the average daily number of inmates who can be housed in a private prison facility from 1,000 to 1,500. It also would increase the cap on the total amount of private prison beds that the state can have under contract from 4,580 to 5,580.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 198 would give the state more flexibility in dealing with its prison capacity needs. Texas now has a total correctional capacity of about 152,703 beds, which includes 1,916 state beds under contract with counties. The state has been operating at capacity since July 2005 and has had to contract with counties for additional beds.

Lifting the cap on the number of beds that could be operated by a private prison would give the state another source of prison beds at a potentially lower price than the cost to lease county space. At least one private vendor operating at the 1,000-bed cap has indicated that it may have space that could be used for additional beds if the cap were raised. The state is paying counties an average of about \$40 per bed per day for temporary capacity and pays private vendors about \$33 per bed per day for similar services. According to the fiscal note, the potential annual savings from HB 198 could be \$1.2 million.

Texas already has made a decision to allow some private prison beds, and these beds are operating successfully. Criticism of the use of private beds often focuses on theoretical issues or past incidents in other states and does not take into account current operations at private facilities and the process for monitoring those beds. Private facilities in Texas have not been plagued by the problems described by many critics. In fact, Texas has a good reputation for strict monitoring of its private facilities.

HB 198 simply would authorize a small number of additional beds at private facilities, but would not mandate that the state put more inmates in any private facility. The state is never sure how many county beds are available or how long counties are willing to lease them. Some counties themselves are operating at capacity, and some county facilities are overcrowded. In many cases, it would be preferable to house inmates in private beds, which can offer education and other programs for inmates, than in county facilities that generally offer only limited programs, if any.

Before adding any additional beds, TDCJ would have to follow the detailed process outlined in Government Code, ch. 499, subch. E. This includes verifying that the facility has adequate space, laundry, food facilities, and other infrastructure as well as adequate programs to support

additional inmates. In addition, additional private prison beds would have to be accredited by the American Correctional Association as required by the statutes. TDCJ would continue to monitor private vendors closely.

While the state is not yet at the current overall cap of 4,580 private prison beds, it would be best to increase that cap now so that if all authorized private beds were filled, the overall cap would not stand in the way of TDCJ's authorizing an expansion. Raising the overall cap also would give the state the flexibility to add an additional private unit in the future, if that became desirable and was approved by the Legislature. The state is operating at capacity, and the Legislature is discussing ways of meeting the future demand for beds, including a proposal to allow a private vendor to run a treatment facility. However, HB 198 alone would not be enough to authorize a new unit. TDCJ would require legislative approval and funding to open an additional private prison.

OPPONENTS
SAY:

The state should not further abdicate its responsibility to punish those found guilty of committing crimes by expanding the number of prison beds operated by private vendors. It sets a bad precedent to incrementally expand private beds whenever space is needed when such an important decision should be fully vetted on its own. There is space in county facilities for the state to lease if it needs additional prison beds, and this space should be used before more private beds are authorized.

The responsibility for incarcerating an even larger number of law breakers should not be given to for-profit companies that have a tainted history of poor employment standards and inadequate security, staff training, and protection of prisoners' rights. While private prisons may offer a per-day rate cheaper than county or other state facilities, they often carry hidden costs not reflected in the daily rate, such as the cost to the state of monitoring them. In the long run, the increased reliance on private beds could be more costly to the state than other available options because Texas would lose control over these additional beds while maintaining liability for constitutional violations and the litigation by prisoners that could result.

OTHER
OPPONENTS
SAY:

It is unnecessary to increase the total cap on private beds in Texas. The state currently is about 500 beds shy of that cap. Leaving the cap at its current level but allowing TDCJ to increase the population at individual

prisons would give the state more flexibility while ensuring that the total

number of beds run by private companies did not increase.