

# The Globalization of the Private Prison Industry and its Effects on Mentally Ill Inmates

An Examination and Analysis of the Treatment of Mentally Ill  
Prisoners Housed in Private Prisons in the United States,  
Australia, Scotland, England, New Zealand and South Africa

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# **The Globalization of the Private Prison Industry and its Effects on the Mental Health Care of Inmates a Comparative Analysis**

The purpose of this paper is to examine the globalization of the private prison industry and its effects on mentally ill inmates. This paper will discuss what globalization means, the international privatization of the private prison industry, mental health policies and the care of mentally inmates in these private prisons, as well as what can be done to improve to improve the treatment of mentally ill inmates in private prisons throughout the world.

## **Introduction**

Several industries have fallen prey to globalization and the private prison industry is not immune from this global business model. The treatment of mentally ill individuals in prisons is critical, especially because these individuals are vulnerable and often abused while incarcerated. Left untreated, their psychiatric conditions often grow worse, and they leave prison sicker than when they entered. As a society, we owe it to those who suffer from mentally illness in the most dire of conditions (prison cells), to restructure the current system and find a solution to the revolving doors of the system.

## **Globalization:**

*“They paved paradise and put up a parking lot...”<sup>1</sup>*

Globalization is a fairly new theory to the world however, throughout the past three decades it has become less of a phenomenon and more of an ingrained concept.<sup>2</sup> Globalization is the process of an international fusion that arises from the exchange of world views, products, ideas and other aspects of culture<sup>3</sup>. The word connotes a social condition that consists of an interwoven network of global financial, political, cultural, and environmental interconnections and currents.<sup>4</sup> It is important to note that globalization brings society closer to an interdependence and integration; that is to say, that each nation will soon and possibly already does, rely on one another to function.<sup>5</sup>

Globalization involves the implementation and multiplication of new and existing social networks and activities that cut across customary political, economic, cultural, and geographical boundaries<sup>5</sup>. Here, the privatization of the prison industry is a concept that has its roots in existing social networks and activities that cut across those boundaries. Vast, and virtually indistinguishable, shopping malls have appeared on all continents, offering consumers commodities from all regions of the world. Like these shopping malls, private prisons have

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<sup>1</sup> JONI MITCHELL, *BIG YELLOW TAXI* (Reprise, 1970).

<sup>2</sup> MANFRED B. STEGER, *GLOBALIZATION: A VERY SHORT INTRODUCTION*, 8-15 (2009) (“[G]lobalization applies to a set of social processes that appear to transform the present social conditions of weakening nationality into one of globality...globalization is a movement towards greater interdependence and integration.”).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>5</sup> *Id.* at 9 (explaining “[G]lobalization implies three assertions: we are slowly leaving behind the condition of modern nationality that gradually unfolded from the eighteenth century onwards, second, we are moving towards the new condition of postmodern globality; and third, we have not yet reached it. Further, the term globalization suggests a notion of development or unfolding along discernible patterns. Such unfolding may occur quickly or slowly, but it always corresponds to the idea of change, and therefore, denotes transformation.”)

emerged across the globe offering “consumers” (the criminal justice systems) the ability to devour “commodities” (inmates) from across the globe.

### **What does it mean to be Mentally Ill?:**

To understand mental illness one must first understand mental health. Mental health is a state of well-being whereby individuals recognize their abilities, are able to cope with normal stresses of life, work productively and fruitfully and make a contribution to their communities.<sup>6</sup>

Mental illness refers to a wide range of mental health conditions and disorders that affect mood, thinking and behavior.<sup>7</sup> Examples of mental illness include depression, anxiety disorders, schizophrenia, addictive behaviors, and psychopathological disorders.<sup>8</sup> A mental health concern becomes a mental illness when ongoing signs and symptoms cause frequent stress and affect the ability to function.<sup>10</sup>

### **The Privatization of Prisons:**

*“In this industry, the raw material is people...A rose by any other name are still a rose.”<sup>9</sup>*

The exchange and transport of criminal justice policies, procedures for coping with offenses and offenders, as well as models of penal institutions have rapidly spread across the globe and caused the wide application of the private prison industry.<sup>10</sup>

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<sup>6</sup> WORLD HEALTH ORGANIZATION defining the term “mental health” [hereinafter WHO].

<sup>7</sup> NATIONAL ALLIANCE ON MENTAL ILLNESS defining the term “mental illness.”

<sup>8</sup>

*Id.*

<sup>10</sup>

Interview with Dr. John Garofalo, Neuropsychopharmacologist, Forensic Psychiatrist (Feb. 6, 2015).

<sup>9</sup> TERRY KUPERS, PRISON MADNESS (1999); WILLIAM SHAKESPEARE, ROMEO AND JULIET (1591).

<sup>10</sup> Phillip J. Wood, Globalization and Prison Privatization: Why Are Most of the World’s For-Profit Adult Prisons to Be Found in the American South?, 1 INT’L POLITICAL SOCIOLOGY 222 (2007).

Over the last three decades, for profit prison corporations such as Corrections Corporation of America, Serco, Sodexo and G4S have greatly benefitted from the dramatic rise in incarceration and detention throughout the world.<sup>11</sup> However, as much as these companies have profited, their reputations have suffered. An Associated Press article reported that in 2012 three horrible deaths occurred in private prisons located in Florida.<sup>12</sup> More so, a subsidiary of Corrections Corporation of America was sued 600 times in 5 years for the neglect and malpractice concerning mentally ill individuals.<sup>13</sup>

The for profit prison model and motive is fundamentally at odds with the core purpose of corrections, including municipal corrections, which is to lessen offenses that land people in penitentiaries thus decreasing the number of imprisoned individuals.<sup>14</sup> Private prison organizations are fiscally dependent upon the growth of inmate populations, providing a perverse motivation not to rehabilitate and help people reenter society.<sup>15</sup> The motivating factor is an economic one, the objective is for private prison companies is to keep people in custody under some form of supervision as long as possible and at the highest per diem rate possible in order to maximize revenue.<sup>18</sup> (Money is the name of the game).

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<sup>11</sup> THE SENTENCING PROJECT: Prison Privatization and the Use of Incarceration (2004) [hereinafter TSP].

<sup>12</sup> Caroline Isaacs, Treatment Industrial Complex: How For-Profit Prison Corporations are Undermining Efforts to Treat and Rehabilitate Prisoners for Corporate Gain, 11 ASFC OF ARIZONA 14 (2014).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>18</sup> *Id.*

The same cost cutting measures that allow private prisons to be so incredibly profitable are also responsible for undermining the security, accountability, and quality of life standards of the facilities.<sup>16</sup>

Numerous private prison corporations are now advocating for the repurposing of prisons into alternative facilities, including specialized mental health centers.<sup>17</sup> This only serves to refer to prisons by another name (*A rose by any other name would smell as sweet*).<sup>21</sup> This trend to create specialized mental health centers comes on the heels of several private prison scandals concerning the treatment of mentally ill inmates. A system that is already ill-equipped and unable to provide proper care should not make an attempt to move into new frontiers.

The promise of a more efficient penitentiary presents a glaring contrast to innumerable, well publicized examples of private prisons devolving into institutions of violence and deterioration, run by fewer, inexperienced, undertrained and underpaid staff.<sup>18</sup> Imprisonment not only eradicates a person's freedom, it enters them into a world of depression that leaves an indelible impression those who manage to survive.

These Private prison companies with poor reputations concerning the care mentally ill inmates can be found throughout the world, however this paper will focus on the United States, Australia, Scotland, England, New Zealand, and South Africa.<sup>1920</sup>

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<sup>16</sup> EVE GOLDBERG & LINDA EVANS, *THE PRISON INDUSTRIAL COMPLEX AND THE GLOBAL ECONOMY* (1998).

<sup>17</sup> Isaacs, *supra* note 14, at 8.

<sup>21</sup> SHAKESPEARE, *supra*.

<sup>18</sup> Michael King, *Private Prisons Seek Broader Markets*, *Austin Chronicle*, Nov. 24, 2014 at 1.

<sup>19</sup> TSP, *supra* note 13.

<sup>20</sup> [www.correctionsproject.com](http://www.correctionsproject.com)



Corrections Corporation of America (“CCA”) was founded in Nashville, Tennessee by an innovative former chairman of the Republican Party, Thomas Beasley.<sup>24</sup> The creation of CCA coincided with a court order to reduce the Tennessee prison population however, reducing the number of people incarcerated would cost the state almost \$400 million.<sup>25</sup> This is when CCA made its move and won its first contract to operate a private adult prison.<sup>30</sup> CCA cornered the market on private prisons because it charged the state only \$21 dollars a day for the care of an inmate.<sup>26</sup> Further, CCA touted this prison as a “work farm” that would rehabilitate offenders.<sup>27</sup> However, inside corruption and lack of rehabilitation soon came to light.

In 1986, the contract came up for renewal and county commissioners voted to stick with Corrections Corporation because many enjoyed close business ties with the company.<sup>28</sup> One county official had a pest-control contract with the firm, and later went to work for CCA as a lobbyist.<sup>29</sup> Another did landscaping at the prison, and a third ran the moving company that settled the warden into his new home.<sup>30</sup> The following year, the U.S. Justice Department published a report that warned against such conflicts of interest, although such complications were reported, officials often downplayed them.<sup>31</sup> As well as conflicts of interest, the Justice Department noted significant staff turnover problems but made a note that the turnover rate “did

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<sup>24</sup> Wood, *supra* note 12, at 224.

<sup>25</sup> Wood, *supra* at 224.

<sup>30</sup>Wood, *supra* at 224.

<sup>26</sup> Wood, *supra* at 224.

<sup>27</sup> Wood, *supra* at 224.

<sup>28</sup> Eric Bates, *Private Prisons*, *The Independent*, Jan. 5, 1998 at 11.

<sup>29</sup> Bates, *supra* note 32, at 12.

<sup>30</sup> Bates, *supra* at 12.

<sup>31</sup> Bates, *supra* at 12.

not apparently affect the quality of service.” Therefore, federal officials awarded CCA a stamp of approval to continue its “good work.”<sup>32</sup>

The same year, a young woman being held at one of the private prisons operated by CCA, died from an undiagnosed complication during her pregnancy.<sup>33</sup> A shift supervisor who later brought suit against the company testified that the prisoner writhed in pain for at least twelve hours before prison officials permitted her to be taken to a hospital.<sup>39</sup>

Later that same year, inspectors from the British Prison Officers Association visited the prison and stated they were shocked by what they witnessed.<sup>34</sup> The inspectors reported they observed evidence of cruel and inhumane treatment and the warden had in fact informed the same inspectors that noisy and belligerent prisoners were often gagged with tape however; the warden put an end to that practice after an inmate almost choked to death on tape.<sup>35</sup> Further, the inspectors also observed inmates confined to warehouse like dormitories for twenty-three hours a day.<sup>36</sup> The inspectors concluded that the private facility, demonstrated the worst conditions they had ever witnessed in terms of inmate care and supervision.<sup>43</sup>

Controversies and problems within the prison walls are not merely stories from the past. Throughout its history, CCA has experienced its fair share of problems. In 2006, government investigators found the medical care provided to immigrant detainees placed the welfare and

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<sup>32</sup> Bates, *supra* note 32, at 13.

<sup>33</sup> Bates, *supra* note 32, at 14.

<sup>39</sup> Bates, *supra* at 14.

<sup>34</sup> Bates, *supra* note 31, at 15.

<sup>35</sup> Bates, *supra* at 15.

<sup>36</sup> Bates, *supra* at 15.

<sup>43</sup> Bates, *supra* at 15.

well-being of inmates in grave danger of injury or death.<sup>37</sup> In fact, less than a year later, an inmate was found dead in the very same facility.<sup>45</sup> These deaths resulted in a suit brought by the ACLU which resulted in disclosure by the Obama administration that stated one in ten deaths among inmates in immigration detention facilities had been omitted from a list of deaths that had been presented to United States Congress a year earlier.<sup>46</sup>

Financial motivations and incentives are at the core of the privatization model.<sup>38</sup> These enticements call for companies to run these prisons in a conveyor belt like fashion and in order to run smoothly, corners must cut.<sup>39</sup> This fat is trimmed at the expense of the prison employees, the public, and of course, the prisoners. Notwithstanding actual costs, private prison corporations receive a guaranteed payment for every prisoner.<sup>40</sup> Every penny not spent on food, medical care or training for guards is a “penny earned.”

According to statistics, prison labor such as corrections officers, accounts for roughly 70% of all prison expenses.<sup>41</sup> Similar to most businesses seeking to cut corners, the prime way to cut expenses is to cut personnel. According to the Chief Financial Officer of CCA, “the bulk of the cost savings enjoyed by CCA is the result of lower labor costs.”<sup>42</sup> The lower labor cost means

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<sup>37</sup> Nina Bernstein, *Immigrant’s Death Shows Hard Path to Prison Reform*, N.Y. Times, Aug. 21, 2009 <sup>45</sup> Bernstein, *supra* at note 42. <sup>46</sup> Bernstein, *supra* at note 42.

<sup>38</sup> Michael Welch & Fatimiyah Turner, *Private Corrections, Financial Infrastructure, and Transportation: The New Geo-Economy of Shipping Prisoners*, 34 *Social Justice* 57 (2007-08) (explaining that economically strapped towns tempt jails and prison constructing by offering land, cash incentives, and cut rate deals on utilities; in return for such accommodations, towns people receive jobs and the financial benefits spread to other local businesses as well).

<sup>39</sup> See *supra*.

<sup>40</sup> See *supra*.

<sup>41</sup> Isaacs, *supra* note 14, at 8.

<sup>42</sup> Bates, *supra* note 32, at 16.

that often times, private prisons are understaffed and overworked.<sup>43</sup> Additionally, CCA prefers to design and build its own prisons.<sup>53</sup> Implemented it the design of these prisons is an increase of video cameras and clustered cellblocks that are cheaper to monitor; therefore they do not need to employ a large amount of personnel.<sup>44</sup> The idea of having the minimum number of officers watching the maximum number of inmates originated with Jeremy Bentham's Panopticon in the late 18th century, and it appears as though prisons have not progressed very far from this original model with the exception of the aid of technology.<sup>45</sup>

In 2013, CCA confirmed that an internal review revealed the Idaho state prison branch fabricated records comprising almost 5,000 employee hours over a period of seven months.<sup>46</sup> A subsequent audit revealed the actual overbilling was for over 26,000 hours.<sup>47</sup> Due to such an incredible miscarriage of trust, then Governor Butch Otter ordered Idaho State Police to investigate as to whether criminal charges should be brought.<sup>48</sup> However, it came to light that Otter had been receiving almost \$20,000 in campaign contributions from employees of the company since 2003.<sup>59</sup> Therefore, the FBI had stepped in to take over the investigation, one that extended to CCA operations in other states.<sup>49</sup> In the fall of 2012, auditors of the Lake Erie Correctional Institution in Ohio, acquired by the CCA in January of the same year, deducted

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<sup>43</sup> Bates, *supra* at 16.

<sup>53</sup> Bates, *supra* at 16.

<sup>44</sup> Bates, *supra* at 16 (Russell Boraas, the private prison administrator for Virginia stating, "You can afford to pay damn near anything for construction if it will get you an efficient prison").

<sup>45</sup> JEREMY BENTHAM, *PANOPTICON* (1995).

<sup>46</sup> Hannah Furfaro, Corrections Corporation of America Admits Falsifying Staffing Records, Huffington Post, Apr. 12, 2013.

<sup>47</sup> Rebecca Boone, FBI Investigating CCA, Nashville based Prison Operator, Associated Press, Mar. 7, 2014.

<sup>48</sup> Rebecca Boone, Idaho Governor orders police to investigate CCA prison, Seattle Times, Feb. 18, 2014.

<sup>59</sup> Boone *supra*, note 57.

<sup>49</sup> Boone *supra*, note 56.

\$500,000 for contract violations and inadequate staffing.<sup>50</sup>

*“Crime does pay...”<sup>51</sup>*

Although the company has been under fire for its improper accounting practices, it legally generates so much revenue that it is a publicly traded company.<sup>52</sup> CCA's share price went from a dollar in 2000 to \$39.34 this year.<sup>53</sup> It is safe to say that the private prison industry has become a very lucrative and profitable business. According to journalist Matt Taibbi, Wall Street banks took notice of this inflow of money, and are now some of the prison industry's biggest investors.<sup>54</sup> The financial institution Wells Fargo currently has around six million dollars invested in CCA.<sup>66</sup> Other major investors include Bank of America, Fidelity Investments, General Electric and The Vanguard Group.<sup>55</sup> Several of these financial institutions compete to underwrite corrections construction with tax exempt bonds that do not require voter approval.<sup>56</sup> Titans of the defense industry are also getting in on the game as well as manufacturers of name

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<sup>50</sup> Chris Kirkham, Lake Erie Prison Plagued by Violence and Drugs After Corporate Takeover, Huffington Post, Mar. 22, 2013.

<sup>51</sup> THE OFFSPRING, HAVE YOU EVER? (Columbia Records, 1998).

<sup>52</sup> CORRECTIONS CORPORATION OF AMERICA HISTORY <https://www.cca.com/our-history> (last visited Feb. 16, 2015).

<sup>53</sup> *Id.*

<sup>54</sup> Welch, *supra* note 46, at 57.

<sup>66</sup> Welch, *supra* note 46, at 57.

<sup>55</sup> Donald Cohen, Captive Customers, Outsourcing Prison Services is Ruining Lives and Bilking Taxpayers, Huffington Post, Oct. 24, 2014 (“Almost every service delivered inside the prison is being outsourced to for-profit corporations. Outsourced inmate health care, food and commissary services, telephone and financial services like money transfers between families and inmates are all adding to the poor conditions in prisons and burdening inmates and their families with extra costs.”).

<sup>56</sup> John L. Campbell, Neoliberalism’s Penal and Debtor States, 14 Theoretical Criminology, 59-73 (2010).

<sup>69</sup> Welch, *supra* note 46, at 57.

brand products.<sup>69</sup> For example, every year, Dial soap sells over \$100,000 of its products to New York City jails.<sup>57</sup>

While corporate officers and investors alike line their pockets, the mentally ill who are housed in these private institutions are the ones left to suffer. Cutting corners to save money started to affect the mentally ill long before the privatization of the prison industry, however this industry only serves to add to the current problem.

### **Treatment of Mentally Ill:**

*“In prison there is a very dangerous mentality that you have to treat everyone the same; you can’t treat everyone the same no matter much they ingrain it in you.”<sup>58</sup>*

The United States can most recently trace its mental health policies back to 1946 wherein President Harry Truman signed the National Mental Health Act, which called for the establishment of a National Institute of Mental Health and the first meeting of the National Advisory Mental Health Council was held later that year.<sup>59</sup> The Mental Health Study Act of 1955 called for "an objective, thorough, nationwide analysis and reevaluation of the human and economic problems of mental health." <sup>60</sup>

Beginning in 1955 with the extensive introduction of the first, effective antipsychotic medication Thorazine, the stage was set for moving patients out of hospital settings and

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<sup>57</sup> Welch, *supra* note 46, at 58.

<sup>58</sup> LORNA A. RHODES, TOTAL CONFINEMENT (2004).

<sup>59</sup> <http://www.nih.gov/about/almanac/organization/NIMH.htm> (last visited March 5, 2014).

<sup>60</sup> *Id.*

institutions.<sup>61</sup> After the enactment of Medicaid and Medicare, deinstitutionalization began to grow by leaps and bounds.<sup>75</sup> By discharging patients, the states managed to shift their fiscal responsibilities to the federal government.<sup>62</sup>

Prior to the 1960s, when federal funds for psychiatric care became available, the public psychiatric care system was almost entirely run by the states, often in partnership with local counties or cities.<sup>63</sup> However, since then, the public psychiatric care system has become a muddle of rigid programs funded by countless federal, state, and local sources.<sup>64</sup> The primary question that drives the system is not "what does the patient need?" but rather "what will federal programs pay for?"<sup>65</sup>

In 1963 President Kennedy was the first president to address Congress on the topic of mental health.<sup>66</sup> Congress listened to what President Kennedy had to say and quickly passed the Mental Retardation Facilities and Community Mental Health Centers Construction Act both of which created a new era in Federal support for mental health services.<sup>67</sup> Presidents Johnson and Carter furthered President Kennedy's message and took on the cause to support research and

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<sup>61</sup> DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM* (2002). ("[F]or psychiatrists working on the front line it was a miracle drug. Its effectiveness was reflected in the transformation of disturbed wards and psychiatric service. Its commercial success stimulated the development of other psychotropic drugs."). <sup>75</sup> Treatment Advocacy Center: *Treatment Behind Bars Annual Report* (2014) .

<sup>62</sup> *Id.*

<sup>63</sup> ROTHMAN, *supra* note 73, at 247.

<sup>64</sup> ROTHMAN, *supra* note 73, at 247.

<sup>65</sup> ROTHMAN, *supra* note 73, at 247.

<sup>66</sup> ROTHMAN, *supra* note 73, at 255.

<sup>67</sup> ROTHMAN, *supra* note 73, at 255.

funding for mentally ill, however interest in funding mental health eventually waned and the country witnessed the phenomenon called deinstitutionalization.<sup>68</sup>

The United States was once home to a large number of institutions whose sole purpose was to serve the mentally ill.<sup>69</sup> Deinstitutionalization, the name given to the policy of moving people with mental illnesses out of large state institutions and then shuttering part or all of those institutions, has had a great contributory effect on increased homelessness, incarceration and acts of violence.<sup>70</sup>

Since 1960, more than 90% of state psychiatric hospital beds have been eliminated, many of which were located in our own backyards.<sup>71</sup> In 1955, there were 559,000 individuals with severe mental illnesses in state psychiatric hospital wards.<sup>72</sup> Today, there are less than 70,000 and the rate of psychiatric hospital closures has continued to grow.<sup>73</sup> In the 1990's, 44 state psychiatric hospitals locked their doors; more closings than in the previous two decades combined.<sup>74</sup> Nearly half of all state psychiatric hospital beds closed between 1990 and 2000. States cut five billion dollars in mental health services funding in a three year period (2009 to

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<sup>68</sup> ROTHMAN, *supra* note 73, at 257.

<sup>69</sup> ROTHMAN, *supra* note 73, at 258.

<sup>70</sup> ROTHMAN, *supra* note 73, at 258; E. FULLER TORREY, DEINSTITUTIONALIZATION: A PSYCHIATRIC TITANIC (1997) (“[D]einstitutionalization is the name given to the policy of moving severely mentally ill people out of large state institutions and then closing part or all of those institutions; it has been a major contributing factor to the mental illness crisis.”).

<sup>71</sup> TORREY, *supra* note 83.

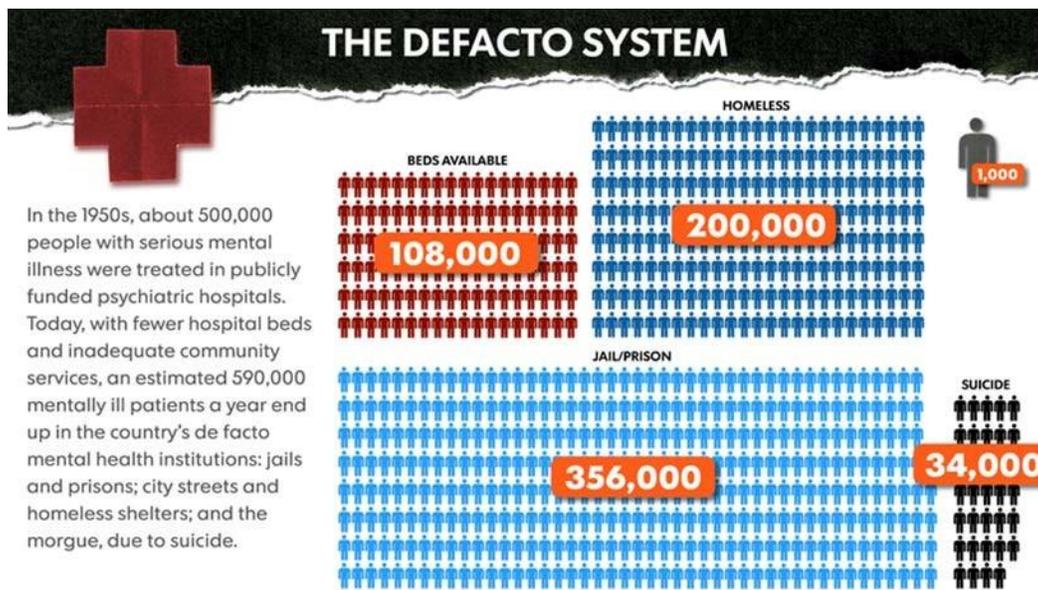
<sup>72</sup> TORREY, *supra* note 83.

<sup>73</sup> TORREY, *supra* note 83.

<sup>74</sup> Mental Health Atlas 2011 - Department of Mental Health and Substance Abuse, WHO

2012).<sup>75</sup> In the same timeframe, the country eliminated at least 4,500 public psychiatric hospital beds which are almost 10% of the total supply.<sup>76</sup>

The incredible failure to provide suitable treatment and ongoing follow-up care for patients discharged from hospitals has sent many individuals with the severest forms of mental illnesses spiraling through an endless revolving door of hospital admissions and readmission to jails, and public shelters.<sup>77</sup> At any given time there are more people with schizophrenia who are homeless or confined in jails and prisons than there are in hospitals.<sup>78,79</sup>



<sup>75</sup> Homelessness, Incarceration, Episodes of Violence: Way of Life for almost Half of Americans with Untreated Severe Mental Illness, <http://mentalillnesspolicy.org/consequences/consequences.html> (last visit March 4, 2015).

<sup>76</sup> *Id.*

<sup>77</sup> Liz Szabo, The Cost of Not Caring: Nowhere to Go: The Financial and Human Toll for Neglecting the Mentally Ill, USA Today May 12, 2014.

<sup>78</sup> Szabo, *supra* note 90.

<sup>79</sup> Szabo, *supra* note 90. <sup>94</sup>

HOMELESSNESS, INCARCERATION, EPISODES OF VIOLENCE: WAY OF LIFE FOR ALMOST HALF OF AMERICANS WITH UNTREATED SEVERE MENTAL ILLNESS, <http://mentalillnesspolicy.org/consequences/consequences.html> (last visit March 4, 2015).

According to data collected by the U.S. Department of Justice, in mid-2005 there were 2,186,230 prisoners in local jails and state and federal prisons in the United States.<sup>94</sup> Some studies suggest that approximately 10% of prisoners have severe psychiatric disorders.<sup>80</sup> Accordingly, approximately 218,000 people with severe psychiatric disorders are incarcerated in the nation's jails and prisons at any given time.<sup>81</sup> This number is equivalent to the population of such cities as Akron, Ohio; Madison, Wisconsin; Montgomery, Alabama; Richmond, Virginia; or Tacoma, Washington.<sup>82</sup>

The costs of such incarceration are enormous.<sup>83</sup> According to the Department of Justice, it costs American taxpayers a staggering fifteen billion dollars per year to house individuals with psychiatric disorders in jails and prisons (\$50,000 per person annually; 300,000 incarcerated individuals with mental illness).<sup>99</sup>

A recent study of American jails reported that 35% of jails admitted holding mentally ill people with no charges against them.<sup>100</sup> These individuals were being held awaiting psychiatric evaluation, the availability of a hospital bed, or transportation to a psychiatric hospital.<sup>84</sup> Jailings such as these are done under state laws permitting emergency detentions of individuals suspected of being mentally ill and are especially common in rural states such as Kentucky,

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<sup>80</sup>

*Id.*

<sup>81</sup>

*Id.*

<sup>82</sup> *Id.*

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*Id.*

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U.S. Department of Justice Bureau of Justice Statistics Special Report, *Mental Health Treatment in State Prisons*, (2011). <sup>100</sup>

HOMELESSNESS, INCARCERATION, EPISODES OF VIOLENCE: WAY OF LIFE FOR ALMOST HALF OF AMERICANS WITH UNTREATED SEVERE MENTAL ILLNESS, <http://mentalillnesspolicy.org/consequences/consequences.html> (last visit March 4, 2015).

<sup>84</sup> *Id.*

Mississippi, Alaska, Montana, Wyoming, and New Mexico.<sup>85</sup>

This same study also found that the vast majority of U.S. jails do not offer suitable psychiatric services to inmates with the most severe of mental illnesses.<sup>86</sup> Further, more than one in five jails has no access to mental health services of any kind.<sup>87</sup> Corrections officers are left to cope with mentally ill inmates however, in 84% of jails corrections officers receive either no training or less than three hours training in dealing with the special problems of people with severe mental illness.<sup>105</sup>

The current mental health system in the United States needs major improvement. Like many other countries, individuals with mental illnesses in America are stigmatized by society. More traumatizing is the fact that the mentally ill in the United States are not simply ostracized but they are oft locked into cells and left to rot. A reopening of institutions geared specifically towards mental illnesses would serve the United States well as would public education about the differing types of mental illnesses. Perhaps, it would further serve the United States well to look upon the moral and ethical convictions that are the foundation of the country when creating laws and policies that govern mental health laws.

### **Australia**

*“New boss; same as the old boss...”<sup>88</sup>*

Corrections Corporation of America is responsible for operating the first private prison in

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

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Kenneth L. Appelbaum, *The Role of Correctional Officers in Multidisciplinary Mental Health Care in Prisons*, 52 *Psychiatric Services* 1343-1347 (2001).

<sup>88</sup> THE WHO, *WON'T GET FOOLED AGAIN* (Polydor/MCA 1971).

Australia.<sup>89</sup> CCA opened this first facility in Queensland and it began operating in 1990.<sup>90</sup>

Soon several other Australian states wanted to get a piece of the pie.<sup>91</sup>

Within the next decade, five of Australia's eight states had some level of privatization.<sup>110</sup> Like the facilities operated by CCA in the United States, the private prisons in Australia have experienced their fair share of scandals.<sup>92</sup> In 1996 some of the prisoners breached a security perimeter, protest over a rumor that guards were beating some of the prisoners.<sup>93</sup> This protest soon turned into a riot and according to court testimony, most of the guards panicked and sealed themselves in a room, leaving the prisoners temporarily in control.<sup>113</sup>

The prison, originally built to house 135 prisoners currently houses 161, resulting in double and sometimes triple bunking inside cells.<sup>94</sup> More so, in only four years, the prison has been "locked down" 75 times. Reports also revealed a high level of self-harm and drug overdoses.<sup>95</sup> According to a state Auditor-General's report, the Women's Correction Centre exceeded the acceptable limit for self-mutilations and attempted suicides by 91% and assaults on

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<sup>89</sup> The Sentencing Project: International Growth Trends in Prison Privatization (2013).

<sup>90</sup> P. Mattera et al., Corrections Corporation of America: A Critical Look at its First Twenty Years, Charlotte, NC: Grassroots Leadership, <http://grassrootsleadership.org/sites/default/files/uploads/CCAAnniversaryReport.pdf> (last visited Mar. 3, 2015).

<sup>91</sup> *Id.* (Important to note: for a month after the contract was awarded, CC Australia staff did not have firearms accreditation and the Government had to temporarily subcontract the work back to the state correctional services division.) <sup>110</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* <sup>113</sup>

*Id.*

<sup>94</sup> Selma Milovanovic, Prison Cleared Over Inmates Death, *The Age*, Sept. 10, 2002.

<sup>95</sup> *Id.* (Averaging six incidents per week. In 1998-99 self-mutilation and prisoner-to-prisoner assaults occurred at rates of 26.5 and 35.3 percent of all inmates. This was four times higher than the state prison average of 6.2 and 8.9 percent.)

other prisoners by 20%.<sup>96</sup> The sheer fact that the prison has an “acceptable” level of such things is horrifying!

By 1997, the prison’s first general manager resigned and there were calls in parliament for the government to take over the management.<sup>97</sup> The following two years were characterized by more incidents, including the death of 23 year old prisoner.<sup>98</sup> The female prisoner died as a result of "a simulated suicide that went wrong."<sup>99</sup> Shortly after being placed in a solitary cell for biting and spitting at an officer, she was found hanging by a plastic shower curtain.<sup>100</sup>

After four years of persistent problems, Corrections Corporation of Australia’s contract for the Metropolitan Women’s Correctional Centre in Victoria was terminated.<sup>101</sup> Management and ownership of the prison were taken over by the government.<sup>102</sup>

Further, analogous to the United States, the chief goal of CCA’s operation of private prisons in Australia is to cut costs.<sup>103</sup> An Australian state Treasurer set targets derived from the costs incurred at the three publicly run prisons and these original benchmark costs that the private sector had to improve upon have never been published, because they were deemed commercially confidential.<sup>104</sup> Another report concluded the financial performance was that “cost

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<sup>96</sup> *Id.*

<sup>97</sup> Mattera, *supra* note 107.

<sup>98</sup> Milovanovic, *supra* note, 113.

<sup>99</sup> Milovanovic, *supra* note, 113.

<sup>100</sup> Milovanovic, *supra*, note 113.

<sup>101</sup> Author Unknown, Officials Say Frustration with CCA Led to Contract Termination, Associated Press, Sept. 17, 1998

<sup>102</sup> Mattera, *supra* note 107.

<sup>103</sup> VICTORIA. DEPT. OF PLANNING AND DEVELOPMENT, AN INTRODUCTION TO THE PRISON DEVELOPMENT PLAN, PROPOSED METROPOLITAN WOMEN’S PRISON, NEW PRISONS PROJECT (1995).

<sup>104</sup> VICTORIA. DEPT. OF PLANNING AND DEVELOPMENT, *supra* note 122.

data provided by the department of justice does not provide a clear indication that private prisons are cheaper to run than public prisons.”<sup>105106</sup>

The United States branch of CCA is not the only branch that has a problem concerning financial matter, but Australia does as well. Again, these attempts to cut costs only serve to create a poor prison environment for all inmates, especially those who suffer from mental illnesses.

### **Treatment of Mentally Ill:**

*“Hear the voices could it be they’re calling out to me?”<sup>107</sup>*

The Government of as well as all state and territory governments share responsibility for mental health policy and the facilitation of support services for Australians living with a mental illness.<sup>127</sup> The National Mental Health Strategy includes four five-year National Mental Health Plans.<sup>128</sup> Under this plan, state and territory governments have funded and provided specialist care for Australians affected by mental illness.<sup>129</sup> The program also funds social support and income support programs.<sup>130</sup>

Like most prison populations, Australian prisons are largely made up of some of the most underprivileged and stigmatized people in the community.<sup>131</sup> People from these backgrounds, with little education, and a history of unemployment, as well as indigenous populations are overrepresented among prisoner populations in Australia.<sup>132</sup> A recent study of Australian prisons found the prevalence of any psychiatric disorder substantially higher than that in the general

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<sup>105</sup> CORRECTIONS CORPORATION OF AMERICA HISTORY <https://www.cca.com/our-history> (last visited Feb. 16, <sup>106</sup> ) (The data in this paragraph come from a presentation by CCA Chief Financial Officer Irving E. Lingo Jr. at the Deutsche Bank Global High Yield Conference, October 8, 2003; available online at the Investor Relations section of the CCA website).

<sup>107</sup> SUICIDAL TENDENCIES, HEARING VOICES (Epic, 1998).

community.<sup>133</sup> The same study found that almost half of incoming inmates and a little over one third of sentenced inmates suffer from a mental illness.<sup>134</sup>

The most prevalent mental disorders found among the inmates studied were psychosis and affective disorders.<sup>135</sup> According to the DSM V, psychotic disorders are severe mental

<sup>127</sup>

L. BIRMINGHAM, *BETWEEN PRISON AND THE COMMUNITY: THE REVOLVING DOOR PSYCHIATRIC PATIENT* (1999) (explaining that over the last three decades the Australian governments have worked together, via the National Mental Health Strategy, to develop mental health programs and services to better address the mental health needs of Australians). <sup>128</sup>

TONY BUTLER & STEPHEN ALLNUT, *CORRECTION HEALTH SERVICES, MENTAL ILLNESSES AMONG PRISONERS IN NEW SOUTH WALES* (2003). <sup>129</sup>

BUTLER & ALLNUT, *supra* note 127, at 49.

<sup>130</sup>

BUTLER & ALLNUT, *supra* note 127, at 50.

<sup>131</sup>

BUTLER & ALLNUT, *supra* note 127, at 6.

<sup>132</sup>

BUTLER & ALLNUT, *supra* note 127, at 6.

<sup>133</sup>

BUTLER & ALLNUT, *supra* note 127, at VII.

<sup>134</sup>

BUTLER & ALLNUT, *supra* note 127, at 6.

<sup>135</sup>

BUTLER & ALLNUT, *supra* note 127, at 3.

disorders that cause abnormal thinking and perceptions.<sup>108</sup> These disorders can be tremendously disabling and are characterized by symptoms such as hallucinations, delusions and an inability to make realistic and rational decisions. Individuals with psychosis are vulnerable to exploitation in environments that are not therapeutic (such as prisons). <sup>109</sup>

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<sup>108</sup> American Psychiatric Association, *Diagnostic and statistical manual of mental disorders: DSM-V, (2013)* (In DSMV, two of these five symptoms are required AND at least one symptom must be one of the first three (delusions, hallucinations, disorganized speech). Schizoaffective: Schizoaffective disorder forms a link between psychosis and mood.) [hereinafter DSM-V].

<sup>109</sup> DSM-V *supra* note 135.

The most commonly known psychotic disorder is schizophrenia which is characterized by delusions, hallucinations, disorganized speech and behavior, and other symptoms that cause social or occupational dysfunction.<sup>110</sup> Affective disorders also referred to as mood disorders, include depression, bipolar disorder, and anxiety disorder. Individual symptoms vary, but they typically affect mood and can range from mild to severe.<sup>111</sup>

Depression is characterized by feelings of extreme sadness and hopelessness.<sup>112</sup> Bipolar disorder refers to periods of depression, and periods of mania.<sup>113</sup> There are several different types of anxiety disorders.<sup>114</sup> All of which are characterized by feelings of nervousness, anxiety, and fear.<sup>143</sup>

There are many effective treatments for mental illness, but often the limited available resources are wasted in ineffective, expensive interventions and services that only reach a small proportion of those in need.<sup>115</sup> For example, the construction of psychiatric prison hospitals is not particularly cost-effective, because they are very expensive to run, have a limited capacity,

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<sup>110</sup> DSM-V *supra* note, 135.

<sup>111</sup> DSM-V *supra* note, 135.

<sup>112</sup> American Psychiatric Association, Diagnostic and statistical manual of mental disorders: DSM-V, (2013) (“[D]epressed mood or a loss of interest or pleasure in daily activities for more than two weeks. • Mood represents a change from the person's baseline.”).

<sup>113</sup> American Psychiatric Association, Diagnostic and statistical manual of mental disorders: DSM-V, (2013) (The DSM first explains what is required for the different behavioral mood episodes: Major Depressive Episode, Manic Episode, Mixed Episode and Hypomanic Episode. It then differentiates the diagnosis according to the presence, sequence and history of those episodes.)

<sup>114</sup> American Psychiatric Association, Diagnostic and statistical manual of mental disorders: DSM-V, (2013) (“[A]n anxiety disorder is a serious mental illness. For people with anxiety disorders, worry and fear are constant and overwhelming, and can be crippling/Phobias.”) [hereinafter DSM-V Anxiety].<sup>143</sup> DSM-V Anxiety, *supra* note, 142.

<sup>115</sup> JR OGOLOFF, IDENTIFYING AND ACCOMMODATING THE NEEDS OF MENTALLY ILL PEOPLE IN GOALS AND PRISONS (2002).

are associated with low release rates, and they often leave the individual with a severe and persistent stigma.<sup>116</sup>

Access to assessment, treatment, and the referral of people with mental disorders should be a vital part of general health services available to all prisoners. At the very minimum, the mental health services provided to prisoners should be the equivalent to that offered to those in the community. In order to achieve adequate mental health care for inmates, prisons will need to institute mental health training programs for prison health workers, arrange for consistent visits from community mental health professionals, or create a program that will enable prisoners access to mental health services located outside of the prison walls.

### **Scotland**

Her Majesty's Prison ("HMP") which opened in 1999 was Scotland's first private prison.<sup>117</sup> Serco, a British private prison company operates the prison and is currently under a 25-year contract with the Scottish Prison Service.<sup>118</sup> In 2008, Sodexo, another private prison company opened, Addiewell.<sup>119</sup> Both of these prisons have been the subject of internal problems. In 2009, HMP witnessed an inmate uprising that sent a prison officer to the hospital.<sup>149</sup> In the same year, a cell was damaged by fire during a three hour uprising.<sup>120</sup> Further, two prison officers were injured in the same prison during a January 2010 riot.<sup>121</sup>

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<sup>116</sup> OGOLOFF, *supra* note 143, at 57.

<sup>117</sup> TSP, *supra* note 13, at 5.

<sup>118</sup> TSP, *supra* note 13 at 5.

<sup>119</sup> SODEXO <http://uk.sodexo.com/uk/en/solutions/on-site/justice/addiewell.asp> (last visited Feb. 15, 2015).

<sup>149</sup> Janice Burns, Angry Prisoners at Scots Jail Riot After Crackdown on Drugs, Daily Record, Jan. 3, 2009.

<sup>120</sup> Addiewell Prison Erupts in Riot as 70 Inmates Set Fires and Throw Missiles, Edinburgh News, Jan. 3, 2009.

<sup>121</sup> Addiewell Rioters Sentenced, British Broadcasting Company, Sept. 2, 2010.

In March 2011, the Chief Inspector of Prisons expressed concerns about the level of assaults on staff at the prison in Addiwell.<sup>122</sup> His report further indicated that Addiwell was more violent than any other jail of its size in the country.<sup>123</sup> Prison staff suffered 49 "minor" attacks - almost one a week – and records also showed 278 "minor" prisoner-on-prisoner in the same time period, and just three months later, an officer was hit with a pool cue as violence erupted again.<sup>124</sup>

Critics of these institutions assert that private prisons cut corners on staffing to maximize profits therefore; minimizing safety and the numbers appear to agree with these critics.<sup>125</sup> However, for now the government has vowed to keep a close watch on Addiwell.<sup>126</sup>

### **Treatment of Mentally Ill:**

*“Voices telling me what to do...”<sup>127</sup>*

In 2012, the Scottish Government’s mental health division presented the Mental Health Strategy for Scotland.<sup>128</sup> This plan set out a variety of commitments across the spectrum of mental health improvement, services and recovery to ensure delivery of effective, quality care and treatment for people with a mental illness, their care takers and families.<sup>129</sup> The public health

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<sup>122</sup> Jack Mathieson, Scotland's Flagship Private Prison the Most Violent in the Country, Daily Record, Mar. 10, 2011.

<sup>123</sup> Mathieson, *supra* note 151.

<sup>124</sup> Mathieson, *supra* note 151.

<sup>125</sup> Mathieson, *supra* note 151.

<sup>126</sup> Mathieson, *supra* note 151.

<sup>127</sup> SILVERCHAIR, SUICIDAL DREAM (Murmur/Epic, 1995).

<sup>128</sup> MENTAL HEALTH STRATEGY FOR SCOTLAND available at <http://www.gov.scot/Publications/2012/08/9714>

<sup>129</sup> *Id.*

policy in Scotland has increasingly identified mental health as an integral part of the wider agenda for health.<sup>130</sup>

Scotland now imprisons more of its people than many other places in Europe.<sup>131</sup> The prison population has greatly increased over the past decade, and is projected to reach 9,500 by 2019-20.<sup>132</sup> Individuals with mental illnesses are disproportionately represented within the Scottish prison system, and many gaps exist when it comes to mental health.<sup>133</sup> There is a lack of skilled staff and resources to provide aid and care for those who suffer from mental disorders.<sup>164</sup>

In 2008, an inspection of mental health issues in Scotland's prisons was conducted. This study found that a large proportion of prisoners have some form of mental health problem(s).<sup>134</sup> At least 315 prisoners were identified as having severe mental health problems; 4.5% of the prison population and four times the level among the general public.<sup>135</sup> Like Australia, the most common problems identified were schizophrenia and bi-polar affective disorder.<sup>136</sup>

## **England**

Up until the nineteenth century, most of the prisons in London were privately run. Independent gaolers would purchase the right to run a prison at their whim.<sup>137</sup> The entire system

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<sup>130</sup> *Id.*

<sup>131</sup> TSP, *supra* note 13, at 6.

<sup>132</sup> TSP, *supra* note 13, at 6.

<sup>133</sup> TSP, *supra* note 13, at 6.

<sup>164</sup> TSP, *supra* note 13, at 6.

<sup>134</sup> Carla Rodgers MD & John A. Baird MD, Mentally Disordered Offenders in Prison-Old Problems that Still Require Attention, 41 J. Am. Acad. Psychiatry Law 514 (2009).

<sup>135</sup> Bada M. Suresh, Minds Imprisoned: Mental Health Care in Prison, 10 National Institute of Mental Health Neuro Health Sciences 50 (2011).

<sup>136</sup> Suresh, *supra* note 165 at 53.

<sup>137</sup> Llewellyn Hinks-Jones, Privatized Prisons: A Human Marketplace, Jan. 10, 2013 (Goaler: a person in charge of a jail or of the prisoners in it).

was profit driven and corrupt.<sup>138</sup> There are several parallels with the current private prison system.

In the modern era, the United Kingdom was the first country in all of Europe to use prisons run by the private sector.<sup>139</sup> Worlds Prison opened as the first privately managed prison in the UK in 1992, as one of a number of prisons built by the public sector but contracted to the private sector to operate under five year contracts.<sup>140</sup> Soon private prisons were established under the government's Private Finance Initiative, where contracts are awarded for the entire design, construction, management and finance of a prison with a twenty five year contract.<sup>141</sup>

These private prisons are run under contracts that set out a system of checks and balances and regulations that must be strictly followed.<sup>142</sup> These contracts provide that payments may be withheld for poor performance and the improper treatment of inmates.<sup>143</sup> Government monitors are permanently stationed within each privately managed prison to check on conditions and treatment and management of prisoners.<sup>144</sup> Further, these privately operated prisons are subject to inspection by the Chief Inspector of Prisons.<sup>145</sup> There are now 14 prisons in England and Wales operated under contract by private companies.<sup>146</sup> Between them they have the capacity to hold

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<sup>138</sup> Jones, *supra* note 167, at 5 (“[A]nything from bedding and food to removing irons or leaving the jail at the end of a sentence required payment.”).

<sup>139</sup> TSP *supra*, note 13 at 6.

<sup>140</sup> Ministry of Justice: Story of Prison Population 1993-2012 available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218185/story-prisonpopulation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218185/story-prisonpopulation.pdf) [hereinafter MOJ].

<sup>141</sup> MOJ *supra* note 170.

<sup>142</sup> MOJ *supra* note 170.

<sup>143</sup> Author Unknown, G4S Loses World Contract, *The Guardian*, Nov.8, 2012.

<sup>144</sup> G4S, *supra* note 173.

<sup>145</sup> G4S, *supra* note 173.

<sup>146</sup> G4S, *supra* note 173.

<sup>178</sup> G4S, *supra* note 173.

about 13,500 prisoners or approximately 11% of the entire prison population.<sup>178</sup> Current operators in the United Kingdom include G4S, Sodexo Justice Services and Serco.<sup>147</sup>

A competition is in progress to run nine prisons in England and Wales.<sup>180</sup> The first stage of the results was announced in 2012 and stated that the public sector will retain three and also take over Worlds Prison, currently run by G4S.<sup>148</sup> The other five prisons will be subject of further competition between Serco, Sodexo and a new company called MTC/Amey.<sup>149</sup> At the same time, Ministers outlined plans to contract out all but core custodial functions at all public sector prisons with the aim of saving £450 million over six years.<sup>150</sup> The loss of G4S of Worlds Prison and its failure to win any new contracts was widely linked to the company's failures with its contract for the 2012 Summer Olympics in London.<sup>151</sup>

HMP Ashfield opened in 1999 and was the first private prison in the UK to house young offenders.<sup>152</sup> The prison was soon mired in controversy after repeated riots and reports of poor management.<sup>153</sup> Conditions at the prison became so bad in 2003 that the Youth Justice Board withdrew prisoners from Ashfield, and threatened to recommend that the prison should be taken over by the public sector.<sup>154</sup> Conditions at the prison improved however and the jail remained privately managed. Buckley Hall Prison was originally opened as a privately managed prison in

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<sup>147</sup> About Us, Her Majesty's Prisons (2009) (formerly known as Kalyx, and prior to that UKDS)

<sup>180</sup> G4S, *supra* note 173.

<sup>148</sup> G4S, *supra* note 173.

<sup>149</sup> G4s, *supra* note 173.

<sup>150</sup> Youngsters Removed From Worst Prison, British Broadcasting Company, May 22, 2010.

<sup>151</sup> BBC, *supra* note 182.

<sup>152</sup> BBC, *supra* note 182.

<sup>153</sup> BBC, *supra* note 182.

<sup>154</sup> BBC, *supra* note 182.

1994, but after a competitive tendering process in 2000, management of the prison was transferred to Her Majesty's Prison Service in Australia.<sup>155</sup>

### **Treatment of Mentally Ill:**

*“You taught me to be sad as you...You almost made me take it all...Let me in, I'll bury the pain”<sup>156</sup>*

The Mental Health Act of 1983 is the law that precisely sets out when an individual can be admitted, detained and treated in a hospital against their wishes.<sup>157</sup> A person can be admitted against their will only if they are a harm to themselves or others.<sup>191</sup> No prison, or part of a prison, is considered a hospital for the purposes of this act therefore; it does not apply to prisons at all.<sup>158</sup> Because this Act does not apply to prisons, mentally ill inmates cannot be treated against their will.<sup>159</sup> This can present problems in the treatment of severely mentally ill inmates because there are often delays in transferring such prisoners to a hospital.<sup>160</sup>

Like the other countries examined, England's prison population also has a high number of mentally ill inmates.<sup>161</sup> According to studies, psychiatric symptoms are most prevalent within the first two months of incarceration with personality disorders and substance abuse being the most common diagnoses.<sup>162</sup> Further, learning disabilities, epilepsy and neurotic symptoms are

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<sup>155</sup> BBC, *supra* note 182.

<sup>156</sup> IN FLAMES, METAPHOR (Nuclear Blast, 2002).

<sup>157</sup> Mental Health Act available at [http://www.mentalhealthcare.org.uk/mental\\_health\\_act](http://www.mentalhealthcare.org.uk/mental_health_act).

<sup>191</sup> Derek Chiswick & Enda Dooley, *Psychiatry in Prison* (2007).

<sup>158</sup> Mental Health Act available at [http://www.mentalhealthcare.org.uk/mental\\_health\\_act](http://www.mentalhealthcare.org.uk/mental_health_act).

<sup>159</sup> Mental Health Act available at [http://www.mentalhealthcare.org.uk/mental\\_health\\_act](http://www.mentalhealthcare.org.uk/mental_health_act).

<sup>160</sup> Chiswick & Dooley, *supra* note 189.

<sup>161</sup> Chiswick & Dooley, *supra* note 189.

<sup>162</sup> Chiswick & Dooley, *supra* note 189.

found more within the prison population than the general community.<sup>163</sup> Severely mentally ill inmates can sometimes be transferred to hospitals however, individuals often go without care.<sup>164</sup> Further, there is a high rate of violence within the prisons against others and self.<sup>165</sup> Most people die by suicide than from any other reason in prison and, that the majority of suicides occur within the first days of detention in prisons.<sup>200</sup>

Preventing the incarceration of the mentally ill would be the best solution. However, prevention often fails and mentally ill individuals do end up in prison, therefore correctional systems should have protocols for their management and treatment. Treatment programs in prisons should not be second to quality to similar services in the community and should address both the immediate mental health needs of the inmate and develop adequate post-release plans.

In spite of countless efforts and initiatives to curtail the difficulty of the mentally ill in prison their numbers continue to climb. Interconnection between agencies and better treatment approaches are necessary to stop the transfer of mental patients from hospitals to prisons.

### **New Zealand**

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<sup>163</sup> Julio Florez, *Mental Patients in Prison*, 3 *World Psychiatry* 189 (2009).

<sup>164</sup> Florez, *supra* note 196.

<sup>165</sup> Florez, *supra* note 196.

<sup>200</sup> Florez, *supra* note 196.

*“Come join the murder...Come fly with black...We'll give you freedom...From the human trap...”*<sup>166</sup>

The first private prison in New Zealand opened in 2000 and was operated by the GEO group until 2005, when the New Zealand Parliament rescinded the law allowing private prisons.<sup>202</sup> However, the parliament’s decision was reversed in 2009, and the British company Serco took over the operations of the facility in 2011; the private prison industry continued to expand with the construction of a new 960 bed prison also operated by Serco.<sup>167</sup>

According to the Department of Corrections, these prisons must provide regular reports to the chief executive of the Department of Corrections, including details of prisoner complaints, incidents of violence or self-harm involving prisoners, disciplinary proceedings taken against prisoners and/or staff, escapes and attempted escapes, and prisoner deaths.<sup>168</sup> Contract-managed prisons are subject to intensive oversight by monitors appointed by the chief executive and are subject to specific investigations by external legal bodies where appropriate.<sup>169</sup>

Although, these private prisons are required to provide reports, institutions are not immune to improprieties. In 2015, a 44 year old inmate died in Christchurch Men's Prison after being bashed by three other prisoners.<sup>170</sup> There have also been allegations of assaults, intimidation and sexual harassment by correctional officers.<sup>171</sup> Opponents have rallied against the

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<sup>166</sup> THE WHITE BUFFALO AND THE FOREST RANGERS, COME JOIN THE MURDER (Union Music Group, 2013). <sup>202</sup>

TSP, *supra* note 13 at 8.

<sup>167</sup> TSP, *supra* note 13, at 8.

<sup>168</sup> New Zealand Department of Corrections available at <http://www.corrections.govt.nz/>

<sup>169</sup> *Id.*

<sup>170</sup> Blair Ensor & Myles Hume, Homicide Probe after Christchurch Prisoner Dies Following Assault, *The Press*, Mar. 13, 2015.

<sup>171</sup> Ensor & Hume, *supra* note 205.

private prison industry saying it is a waste of taxpayers' money and a back-stop for what they describe as National's increasingly punitive social policy.<sup>172</sup> Further, these critics have also cited cost cutting measures as dangerous to the security of corrections officers and to the welfare of the inmates.<sup>173</sup>

**Treatment of Mentally Ill Inmates:**

Many individuals imprisoned within New Zealand's private prisons suffer from mental illnesses that are often unaddressed.<sup>174</sup> Further, prisoners facing these issues are often denied appropriate support and care because the department of corrections does not provide therapeutic services such as counseling.<sup>175</sup> Moreover, the department of corrections harbors the idea that they have a custodial role, not a healing one.<sup>176</sup>

Most facilities have special units designed for inmates that may cause serious injury to themselves however, prisoners housed in these units are held in isolation cells and are constantly observed to prevent self-harm.<sup>177</sup> According to regulations, the maximum stay is one week but the Health in Justice Report revealed that some people are kept in them for months at a time.<sup>178</sup> Likewise, prisoners in these units are not allowed footwear and are clothed in a single rectangle of fabric with the intention of decreasing the ability to commit suicide.<sup>179</sup> The cells are small and bare, with only a fixed bed and toilet, sometimes a concrete bed or mattress and a plastic

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<sup>172</sup> Ensor & Hume, *supra* note 205.

<sup>173</sup> Ensor & Hume, *supra* note 205.

<sup>174</sup> Mental Health Treatment and Services in NZ available at <http://justspeak.org.nz/mental-health-treatment-and-services-in-nz-prisons-are-inadequate/>.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

container as a toilet.<sup>180</sup> Noise is constant, and access to the outside world is prohibited, leaving them with no fresh air and no human contact.<sup>181</sup>

Adding insult to injury, once released from prison, mentally ill inmates do not receive continuity of care upon release which increases the possibility of recidivism.<sup>182</sup> The Department of Corrections has failed in their duty of care, failing to uphold the standards of the Corrections Act 2004 and the United Nations Minimum Standard Rules for the Treatment of Prisoners.<sup>183</sup>

Drastic changes need to occur because current mental health services provided by the Department of Corrections are inadequate.

Mentally Inmates in New Zealand would be better served by a restructuring of the current programs as well as an implementation of community based mental health services.

### **South Africa**

*“You can't escape the master keeper...”<sup>184</sup>*

South Africa is home the second largest private prison in the world; G4S played an integral part in the design and construction of the penitentiary and has been awarded a 25 year contract to operate the prison on behalf of the Department of Correctional Services.<sup>185</sup>

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> OZZY OSBOURNE, SUICIDE SOLUTION (Jet/Epic 1980).

<sup>185</sup> TSP, *supra* note 13, at 9.

G4S is a British multinational security services company and is currently the world's largest security company measured by revenues and has operations in around 125 countries.<sup>186</sup> The company was founded in 2004 by the merger of the UK-based Securicor with the Denmarkbased Group 4 Falck. Like CCA, G4S is a publicly traded company with listings on the London Stock Exchange.<sup>223</sup>

Like other companies explored in this paper, G4S has also been the subject of investigations due to alleged improprieties. For three years in a row, the company was the subject of a global campaign by union workers alleging that its subsidiaries undermined employment and human rights standards.<sup>187</sup> In 2013, the British Broadcasting Corporation (“BBC”) reported allegations of prisoners being tortured at the corporation’s prison in South Africa.<sup>188</sup> The BBC cites research from the Wits Justice Project at Wits University in Johannesburg, claiming that dozens of the nearly 3,000 inmates in prison have been tortured using electroshock and forced injections.<sup>189</sup>

### **The Treatment of Mentally Ill Inmates:**

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<sup>186</sup> G4S available at <http://www.g4s.com/>.

<sup>223</sup> G4S, *supra* note 221.

<sup>187</sup> Kate Forbes, Shocking Abuse Claims at South Africa’s Manguang Prison, British Broadcasting Company, Oct. 28 2013. (years: 2006, 2007 and 2008).

<sup>188</sup> Rupert Neate, Desmond Tutu Tells G4S to Stop Supplying to Israel Prisons, *The Guardian*, June 4, 2014.

<sup>189</sup> Neate, *supra* note 224.

Mental illness is very prevalent in South Africa, yet the country lacks many of the necessary resources and policies needed to execute an effective mental health strategy and the treatment of the mentally ill varies from region to region.<sup>190</sup>

Prior to 1997, mental health care in South Africa was mostly institutionalized, and little emphasis was placed on the development of curative therapies.<sup>191</sup> Due to a scarcity of resources, it was more cost effective to simply isolate mentally unstable individuals rather than invest in effective, yet costly care. Following the 1997 White Paper Act and the National Health Act 61 of 2003, the South African government moved to deinstitutionalize mental health care and relegate it to the primary care settings.<sup>192</sup> However, existing figures indicate the objective of deinstitutionalization and effective primary mental care has still not been fulfilled.<sup>230</sup>

The percentage of mentally ill prisoners housed in South African prisons, both private and public is unknown. To date, only one study has been conducted regarding mental health activities in the criminal justice system; the study reported that 1-20% of prisons have at least one prisoner per month in treatment contact with a mental health professional.<sup>193</sup>

It is obvious by the lack of data concerning the well-being and treatment of mentally ill inmates that the current system is inadequate. The country as a whole would benefit from the implementation of new mental health strategies and policies.

## **Conclusion:**

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<sup>190</sup> WHO, *supra* note 7.

<sup>191</sup> WHO, *supra* note 7.

<sup>192</sup> WHO, *supra* note 7.

<sup>230</sup> WHO, *supra* note 7.

<sup>193</sup> WHO, *supra* note 7.

The research gathered strongly indicates the globalization of the private prison industry has a very poor, if not abhorrent, effect on mentally ill inmates. The private prison industry focuses more on cutting costs than it does on the well-being of the inmates housed within the penitentiary walls. The world can no longer ignore the substantial oppression inflicted upon the mentally ill spanning the globe. If mentally ill inmates are ever expected to recover or at the very least, live a life without the shackles of mental illness, the current system requires a drastic.