Privately Failing: Recidivism in Public and Private Prisons

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Privately Failing

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RESEARCH QUESTION:

Recidivism is an ever present issue concerning the study and implementation of correctional theory and criminal justice as a whole. With the ever increasing number of private prisons being utilized in each state, the importance of determining the impact privatization has on rehabilitation has grown. One very effective way of determining the effectiveness of correctional rehabilitation is the recidivism rate. This study seeks to determine if the quality of confinement and rehabilitation has deteriorated or improved with the increase in prison privatization; to determine whether public or private prisons have increased or decreased their quality of confinement and the correlation the increase or decrease has on recidivism. The hypothesis of this study is that the quality of confinement and rehabilitation (including work-release programs, work study programs and educational programs) is greater in public prisons than private prisons and that there is a correlation between the quality of confinement and recidivism and thus, the recidivism rate of those leaving public prisons is less than those offenders being released from private prisons.

ABSTRACT:

This study would add to available research regarding recidivism rates following incarceration in private prisons in contrast to incarceration in government-run prisons. This is a

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non-experimental meta-analysis viewing numerous studies discussing the effects of multiple covariants within public and private prisons. Based on the information and conclusion in these studies, we find that there is little overall consensus concerning the effects of increased privatization on recidivism. While many studies find certain aspects of privatization to have some potential effect on recidivism, there are many other aspects that either are out of scope or have a negative effect on recidivism. However, these studies are important because the variables discussed are important as many of them involve the quality of confinement and what occurs when educational and other rehabilitative programs, such as work-study programs, are reduced or not implemented. Because there is no consensus, my hypothesis, that private prisons have reduced implementation of rehabilitation and confinement quality than public prisons and therefore, an increase in recidivism will be seen, can’t be determined without additional research.

**BACKGROUND:**

Daily, more than 2.4 million Americans are imprisoned in some way.¹ Private prisons have taken a large role in providing a public service; housing those impugned by the laws of our government. However, with private industry comes hunger for profitability which begs the question; is rehabilitation and correctional treatment being provided with a high standard even when it means sacrificing profit? Profitability means cutting costs and programs which, consequentially, will affect recidivism rates. It is my hypothesis that private prisons turn out “rehabilitated” persons with higher recidivism rates upon reentry.

The significance of the process and manner in which Americans are incarcerated is found in public policy and social change. Our nation’s wars on drugs and crime were meant to reduce crime; recidivism is just additional crime, not a reduction in crime in any way. The citizens of

¹United States Department of Justice, Prisoners in 2008 (2009)
our country seem to be misconceived about whether we are rehabilitating or simply isolating the deviants of society.

Since the 1970’s prisons have been built to house a fivefold increase of inmates. John Irwin contends that the increase is due to politicians’ exploitation of crime as an issue in order to divert attention away from more pressing political problems, to win elections, and to control and dispose of a new dangerous class. Because of this political focus, Americans have come to fear crime, as if one can never know when one is vulnerable as the next victim. Politicians used a war on drugs as a way to make Americans believe that their government was spending money to continue active efforts of keeping Americans safe. Michelle Alexander, contends that during the War on Drugs “[d]espite the fact that most drug arrests are for nonviolent minor offenses, the War on Drugs has ushered in an era of unprecedented punitiveness.” Alexander focuses on punitiveness; sentencing has become increasingly harsh. With more and more prisons being built, it was only a matter of time before private industry decided to exploit crime and punishment for profit. Sentences are longer and prisons are becoming less comfortable, to say the least. I, as many scholars have, contend that this privatization has decreased the rehabilitative objective of prison which has, arguably, had an effect on recidivism.

How did we get here? Alexander goes on to agree with Irwin; that government officials, to gain votes, used projects such as the War on Drugs and the War on Crime to place fear in

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2 JOHN IRWIN, THE WAREHOUSE PRISON (Dawn VanDercreek et al. eds., 2005.)
3 Id.
5 MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (Sharon Davies et al. eds., 2010.)
6 Id.
7 Id.
Americans who just want to feel safe. And there is no question that Americans need to feel safe. The country has developed into a frantic panic of people. Peter N. Stearns explains the demonstrable characteristics of fear in America; “It [fear] promotes a generalized level of anxiety that is distracting at best, positively counterproductive at worst.”

The question that everyone seems to be afraid to ask is: what is the effect on prisoners and future recidivism after prisons decrease educational programs and increase punitive measures? Irwin tells the story of Eagle River Community Corrections in Alaska. During the late 1970s, public attention became negative about the work release programs and education programs taking place in the facility. Within two years, the programs were removed and the funding was used for higher security. Lesser availability of programs for prisoners and higher security is about isolation, not rehabilitation. Isolation does not increase a smooth re-integration into society, rather, rehabilitation, including work release and education, allow prisoners to have a better chance to successfully re-integrate and lower the risk of recidivism.

A system focused on security rather than rehabilitation overlooks recidivism. What happens when these inmates are released back into society? Consider, without education programs or work release programs, these inmates will be far from prepared for employment at the time of reentry. The fear of criminals that our society already possesses is a strong enough deterrent for companies to avoid hiring ex-convicts. This leaves former inmates in a disadvantageous position in the job market; a characteristic that, according to many theories (strain theory and rational choice theory, for example) will likely lead to recidivism. Ex-convicts

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8 Compare MICHÉLLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (Sharon Davies et al. eds., 2010.), with JOHN IRWIN, THE WAREHOUSE PRISON (Dawn VanDercreek et al. eds., 2005.)
9 PETER N. STEARNS, AMERICAN FEAR: THE CAUSES AND CONSEQUENCES OF HIGH ANXIETY (2006). This counter productivity has resulted in the mass incarceration that I attempt to analyze.
10 JOHN IRWIN, THE WAREHOUSE PRISON (Dawn VanDercreek et al. eds., 2005.)
11 Id.
12 Id.
will have less opportunity to obtain legal work and without a method to provide for food, housing and other basic essentials or provide a place to spend time away from negative social elements, will once again engage in criminal activity.

What is being done to rehabilitate inmates? Irwin writes about his extensive study at Solano, a correctional facility in California. He provides an hour by hour schedule for each day of the week; the exact schedule the inmates live by. A twenty-four hour day basically breaks down as follows: six hours at work, thirteen hours of lock up, one hour in the cafeteria, and about two-three hours of recreational time. In a factory type setting, where activities change at the sound of a bell such as this, are the inmates being rehabilitated or being better prepared to reenter society? Irwin displays the hour by hour schedule in his book under a chapter subtitle: “Psychological Damage.” As can be seen, Irwin contends that this type of supervision and lack of education or any type of work release does not create an environment in which an inmate may one day find employment and a lifestyle conducive to a low risk of recidivism. Inmates are losing their emotional drive, their social ability, and their ability to make their own decisions. For example, inmates’ meals are decided for them. Not just what they eat, but where and when they eat. Basic decision making abilities become unpracticed and more difficult to utilize at time of reentry. This can cause very serious issues upon social re-entry and can lead to a much higher risk of recidivism.

What can make this societal desire of safety more authoritative? Our government has given private industry the ability to exploit incarceration for monetary gain; which is far worse than exploitation for votes. The private prison industry has become an economic power house

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13 Id.
14 Id.
15 Id.
16 Id.
17 Id.
with companies such as Corrections Corporation of America inviting the public to invest through
the New York Stock Exchange.

There is a demonstrable conflict of interest once private prisons become involved. While
many would argue on the side of private prison corporations, claiming that justice always come
first, businesses are in the business of making money. In The Perpetual Prisoner Machine, Joel
Dyer discusses the financial side of the private prison industry; an industry that has become
lucrative enough that many large companies have joined for a slice of the profit.

At the time of Dyer’s writing, there were concerning changes coming down the pipeline,
“… many states, as well as the federal government, [are] currently considering legislation similar
to the recently passed Oregon law requiring all inmates to work.” 18 Prison labor, however, is an
issue of both private and public prisons. Why is this important? Prisons are cutting programs that
could contribute to the rehabilitation of inmates and turning the tables to turn a profit. This is the
influence that comes with privatization of the industry. Private prisons win on two levels; the
government pays a steady rent to house prisoners and those prisoners provide cheap labor so that
the private prison companies can provide a type of outsourcing to giant American corporations.

Early in American history, it was believed that criminals forfeit their labor to the state;
therefore, the state could expect to profit off of the incarceration of criminals. 19 Prisoners have
always been a part of a working class. In 2002, only 3.5% of the two million incarcerated
Americans worked to produce $1.5 billion dollars’ worth of goods and services. 20 Because of
the captive labor pool, prison labor provides businesses with low cost workers and provides
inmates with something to occupy their idle time.

18 JOEL DYER, THE PERPETUAL PRISONER MACHINE (Rob Williams, 2000)
20 Id.
Oregon is known for its recidivism rates, which sit about thirty five percent lower than the national average, and inmate work programs receive a proportional amount of the credit. That is to say, it is believed that prison labor is reducing recidivism. It is a reasonable argument; gaining work experience while incarcerated is a transferrable skill upon reentry. At the Snake River Institution, only 80 of 2900 Snake River Inmates can hold jobs telemarketing. Additionally, in a Pendleton, Oregon correctional facility, only 50 inmates have jobs manufacturing approximately 200,000 clothing garments per year. If so few inmates take place in prison labor, can there be any significant effect on the recidivism rates? Perhaps it is something else that Oregon is doing right. It is noteworthy that prisons also offer employment opportunities that assist the operation of the facility including maintenance and other daily activities. Perhaps it is the educational opportunities many prisoners receive in Oregon public prisons, or the work-study programs available. Unfortunately, there are no private prisons in Oregon so it is impossible to compare the effects of privatization on quality of confinement. However, it is noteworthy that Oregon, the only state without private prisons, has a significantly lower rate of recidivism than the national average. That is something that deserves greater study.

Private prisons have hidden costs. And with public prisons cutting funding for certain programs to save federal money, the door is open for private prisons to cut funding for certain programs to save profits. Dyer warns that we must “…examine the private prison industry’s claim that it is saving America money when it comes to the justice system, a claim I believe evidence shows to be false.” The issue that Dyer is discussing is whether or not private prisons cost the tax payers less money than public prisons. Dyer breaks down the issue’s main arguments; private corporations are efficient and the government is inefficient. However, what

\footnote{Id.}\footnote{Dyer supra, at note 18.}
does this really mean? Private corporations are in the business of maximizing profits. In the prison industry this means maximizing profits from the construction of prisons and the housing of government prisoners. Taxpayers are responsible for the rent being paid to this highly efficient profit making corporation. Additionally, if the government is inefficient, we should suppose that they will be inefficient at saving money using an outside party to house our inmates. The logic is not so logical.

For the purposes of this paper, what is important is how this affects the prisoners who, most of them, will one day be expected to smoothly re-enter society. Can we expect recidivism rates to be effected by profit squeezing? More studies to compare recidivism rates from public prisons compared to private prisons are needed.

If public prisons could save money in the same areas as private prisons, that money could be redirected toward treatment and educational programs. But with mass incarceration taking so much of the corrections budget, it is difficult enough to house all of America’s prisoners; treating and teaching them has becoming a back-burner concern. As public prisons must cut their budgets to deal with the federal budget, private prisons are given an excuse to cut their spending as well, which equals higher profits and less rehabilitation.

Gran and Williams discuss private prisons in the United States as they stack up against private correctional institutions abroad, in Australia and Canada23. The notion that seems to be best understood in Australia and Canada is that when government assigns duties to private corporations, that corporation takes on certain areas of accountability to three main groups; taxpayers, residents, and inmates. But in the United States, accountability to the inmates does not seem to be upheld.

Public spending on corrections seems to be most concerned with simply housing criminals and less concerned with treating and rehabilitating them. So long as public correctional institutions operate with these types of priorities, private prisons can play par-for-the-course by doing the same. While many arguments claim that private corporations are more efficient as a result of competition; government run, public prisons provide a very weak competition. One must ask of our society “Should corrections be more concerned with punishing offenders for crimes or with providing programs to help them overcome the problems in their lives that contribute to crime?” 24 Perhaps Americans are purely retributive, but what happens when those inmates must reenter society?

METHODS:

This meta-analysis aims to further compare private and public prisons based on existing research. In the process, I will propose changes to research methods from existing studies that should make for an additional research design; outside of those already available.

Morris conducted a study using a random sample of Florida inmates released between 1998 and 2001 in which they measured recidivism rates using a method of “survival time.” 25 Survival time measured the amount of time before an inmate recidivated after release; the presumption being that this would be measurable. 26 This study focused more on the inmate upon release than the actions that led to incarceration. 27 Each subject was given an incarceration profile which accounted for (1) the inmate’s custody level at release, (2) the number of disciplinary actions on the inmate while incarcerated, and (3) the amount of time served. 28 The study also tracked if the subject was over or under thirty years of age and if the subject was white.

26 Id.
27 Id.
28 Id.
Morris’ study found that certain covariants were significant predictors of survival time. The study found that post release supervision had a negative effect on offenders likelihood to recidivate or that the offender would take longer to recidivate. A more extensive criminal history increased the likelihood of recidivism, but that variable became less significant, weakening over time; this result tied into the finding that younger offenders were more likely to recidivate. Finally, non-white offenders had a more significant risk of recidivism than white offenders.

For our study to compare recidivism between private and public prisons, we would have a slightly different approach. First, Morris conducted research to show the speed with which one recidivates, specifically a survival time of one year. Our goal would be to inquire as to recidivism rates more generally, looking for survival rates over a period of ten years. Then, rather than measuring how long it takes to re-offend, our study would simply inquire as to whether or not recidivism occurred within ten years of release. Additionally, while the profile in the Morris study was focused on the time the inmate spent in prison and the supervision that followed, our study would focus on what led to incarceration. The reasoning is simple; our study is more concerned with better rehabilitation as an end goal. How can we improve our system of punishment? Morris is focused on predicting how long it will take for one to recidivate while we are more focused on the effects of lack of rehabilitative programs (as a lessening of quality of confinement due to privatization) as expressed by recidivism.
Past research evaluating private and public prisons had methodological issues with particular variables. Few studies are able to compare prisons that have the same security level. For example, one would not want to contrast a minimum security private prison against a maximum security public prison. Because the inmates in the minimum-security prison are less dangerous, the reports would probably show less disciplinary actions filed in that facility as well as a completely different type of offender incarcerated within that facility. Likewise, the lesser security prison, with lower risk offenders, would probably recidivate less. A Tennessee study by Drowota exercised oversight regarding this variable; performing a study in which the public facilities were lower security, therefore, having a higher percentage of minimum risk inmates.37

Comparison of inmates in public and private prisons may also be hindered by evaluating facilities of drastically different ages. Perrone and Pratt argued that those operating a new facility may not have the experience of the administrators of an older facility.38 However, this makes several presumptions about private prison companies’ human resources departments and the hiring processes of the government regarding public prisons. Perrone and Pratt discussed a series of studies; some that failed to account for age of facility and some that did account for the variable.39 They concluded that some studies comparing public and private facilities were not properly matched as comparable entities. They found that, without controlling for certain factors, the results may have been impacted by the age and security of the facility and certain factors.

characteristics may not have been accurately compared. For example, approximately 90% of private facilities compared in the Florida study conducted in the Austin and Coventry survey were 10 years old while only about 30% of the public facilities fit in that category. Controlling for certain characteristics is extremely important in designing the methodology and the methodological limitations must be taken into consideration when viewing the data.

An essential element has been missing from comparative research between public and private prisons, a systematic method of analyzing and comparing the quality of confinement. Most studies use a laundry list approach. The most accepted laundry list is the structure used by Logan, which uses seven categories of measure: safety, order, care, activity, justice, conditions, and management. Though this categorical method (sometimes with a variation of laundry list methods) is widely accepted, some argue that it is seriously flawed. However, the laundry list approach is likely the best available systematic method for analogously analyzing and comparing the quality of confinement.

The simplicity of the attempts to measure the seven categories is indicative of potential error. While measuring security, Logan cited the number of escapes. This view over simplifies the element of security. It does not account for security of inmates being in restricted areas; security that leads to assaults; security regarding prohibited items inside prison walls; or a number of other issues regarding security. For safety, Logan utilized statistics about assaults and injuries regarding both inmates and staff. The largest oversight of this measure is health issues not related to assault. Injury is an ambiguous term and may or may not include types of diseases.

40 Id.
41 John Ashcroft & Garry Coventry, Emerging issues on privatized prisons, Social Justice (1999).
42 Logan, supra at note 38.
44 Logan, supra at 38.
45 Id
illnesses, or psychological health. A more macro-based gathering of information may be less prone to error. This would, of course, insinuate that for the category of safety, The Correctional Medical Authority review of health care services should be used. However, The Correctional Medical Authority is what Logan used to evaluate the category of care.\footnote{Id.}

However, because the seven domain laundry list approach is the most widely accepted, this is how our research would be structured. Results have been based on the seven accepted domains. We evaluate results from studies that used the remaining categories: management, activity, security, safety, and order.

Studies to evaluate management of correctional facilities focus on staff. This type of evaluation is probably irrelevant for our study design; one which focuses on recidivism. However, in order to maintain the complete meta-analysis, we briefly cover management as part of the seven categorical factors to measure quality of confinement. A Louisiana State University study measured sick leave hours to indicate staff burnout and stress in Louisiana, Kentucky, and Tennessee private and public prisons.\footnote{W.G. ARCHAMBEAULT, & D.R. DEIS, \textit{Cost Effectiveness Comparisons Of Private Versus Public Prisons In Louisiana: A Comprehensive Analysis Of Allen, Avoyelles, And Winn Correctional Centers} (Executive Summary). Baton Rouge: Louisiana State University, School of Social Work (1996).} The correlation between sick leave, stress, burnout and recidivism, while not obvious, is present.\footnote{Id.} The study showed that private facilities in the study had the highest number of sick leave hours used each month.\footnote{Id.} With further research, it might be possible to see that there is a correlation between those private facilities with the highest number of sick leave hours used are also the private facilities with the lowest quality of confinement, lowest number of educational programs and most supervision and isolation. More research is needed, but there is some thought that the less time inmates spend in educational and work
programs and the more time they spend under isolation or supervision, the less likely they are to behave in a non-violent or disruptive way and the greater chance they have to recidivate. The correlation to burnouts and sick leave is that, with the increase in disruptive behavior (and the increase in recidivism) comes an increase in correctional staff supervision and stress, thus an increase in the need for sick leave and an increase in burnouts.\textsuperscript{50}

The activity domain may be worth more consideration for our purposes. Private prisons provided programs for more inmates in the Louisiana study, but fewer in the Tennessee and Kentucky studies.\textsuperscript{51} In Florida, more inmates participated and completed vocational and educational programs in private prisons than in public.\textsuperscript{52} The private facilities also offered more programs in Florida. In Kentucky, the private prisons offered fewer educational and vocational programs\textsuperscript{53}. Educational and vocational programs are essential factors for recidivism.\textsuperscript{54} Furthering skills and education affects an inmate’s ability to interact with society upon reentry.\textsuperscript{55}

As mentioned above, security was measured in many studies by the rate of escape. This does not measure the effectiveness of prisons in regards to rehabilitation and recidivism as it may not control for differing characteristics that can have an effect on the specific data regarding recidivism for specific classes of inmates. Therefore, we will not discuss this issue as the control factors would skew the information this study attempts to review.

The safety domain may have some significance for recidivism. In order to mesh well with society upon reentry, it is probably best that the inmate is not exposed to a violent environment day after day while incarcerated. As discussed above, most studies measure safety according to

\textsuperscript{50} This is still scholarly conjecture, as additional studies are needed.
\textsuperscript{51} ARCHAMBEAULT, supra at note 35.
\textsuperscript{53} ARCHAMBEAULT, supra at note 35.
\textsuperscript{54} \textit{Id}.
\textsuperscript{55} \textit{Id}. 

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statistics regarding staff and inmate assaults. An Arizona study found that private facilities generally had either less or equal assaults on inmates staff than public facilities. The private facilities have also been found to have fewer assaults in Louisiana and Kentucky. However, the Tennessee studies and the research by both found more injuries on staff and inmates in private prisons than in the public prisons. Though these figures could be stretched for an argument of an abusive setting influencing reentry and recidivism, psychological results of the abusive environment would probably be a better indicator of recidivism.

Finally, Spivake and Sharp look at recidivism’s known correlates to help them understand the difference between public and private inmates. They point out that the characteristic associated with recidivism can be very similar to the traits that predict offending in general. Those traits are: age, race, sex, and prior criminal history. They found, like many other studies have found, that younger males are more likely to recidivate and those with a more extensive criminal history are likely to recidivate, however this correlation decreases over time. They did find that race as a predictor of recidivism is mixed. While some studies found that whites are less likely to recidivate, other studies found that there was no significant race-recidivism correlation. Spivake and Sharp conducted their study in Oklahoma, comparing the recidivism rates for public versus private inmates and controlled for multiple variables include: sex, age, race, times incarcerated, length of sentence, etc and used a continuous follow up period

56 C.W. THOMAS, Comparing the cost and performance of the public and private prisons in Arizona, monograph. Phoenix, AZ: Arizona Department of Corrections (1997). (This study only observed six month sequences).
57 ARCHAMBEAULT, supra at note 35.
58 THOMAS, supra at note 44; AUSTIN, supra at note 39.
60 Id.
61 Id.
62 Id.
tracking inmates for periods ranging from 36 to 84 months after release. They found that there was a statistically significant higher risk of recidivism among private prison inmates. However, Spivake and Sharp only compared medium security prisons in Oklahoma using certain variables and their results differ from many other studies.

Most of the studies we have discussed showed similar results in the domain of order; private prisons outperformed public prisons. This was also the case with the care domain. In the Louisiana study and Florida study, private prisons used less structured disciplinary actions. As mentioned above, these studies were conducted over a six month period.

CONCLUSION:

Aside from the domains of safety, order, and care, there were few consistencies or patterns in the findings of the collective studies discussed. This shows that the quality of confinement in private and public prisons needs further study to determine a better practice. It is an essential study because of the sheer numbers of people incarcerated in correctional facilities on a daily basis. According to the Bureau of Justice Statistics 2000 Census of State and Federal Correctional Facilities (the most recent census with this information), the number of private prison facilities has increased 140% and the number of inmates held in those facilities increased 459% from data collected in 1995. Studies determining the quality of these facilities in comparison to the quality of public facilities are extremely important as there is such a large number of incarcerated adults in both public and private facilities. Theses studies’ inconsistencies may be due to the limitations of methods such as incomparable security levels, age of facility, and standardization of comparisons, to name a few. Of course, there are always

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63 Id.
64 Id.
65 Id.
unavoidable differences from study to study: data collection methods or ownership’s preference of management style (for private facilities).

With all information available, it is difficult to claim that the categorical laundry list system of study uncovers how private prisons compare to public prisons in quality of confinement. To further study quality of confinement between public and private prisons, there are additional ways to gather and compare data, such as Spivak and Sharp’s multi model measure and comparison between private and public prison exposure. Spivak and Sharp, unlike other authors such as Logan or Archambeault and Deis, did not use the laundry list approach of seven domains and instead based their groups on other factors such as age, level of security and time incarcerated. Granted, these studies were concluded at different times, but even so, they found differing conclusions regarding the quality of confinement comparing public to private prisons. This area of concentration is ripe for additional empirical analysis as there is currently conflicting information available as there are so many variables to contend with. A more modern comparison determining the quality of confinement between public and private prisons will need to control for variables such as level of security, duration of incarceration, age at incarnation, type of crime, and criminal history. These variables are a mix between the laundry list comparison established by Logan and expounded upon by Perrone and Pratt and the covariant approach utilized by Spivak and Sharp and utilizing an appropriate sample population and study parameters, a study controlling for these variables could lead to a compelling conclusion regarding whether or not private prisons have reduced the quality of confinement and thus increased the recidivism rate.

Recidivism rates are important as they are a strong indication of the quality of confinement; determining if the quality has been reduced by budget cuts to the public sector and
a profit-based ideology in the private sector is a good way to project future recidivism (and thus additional crime) as well as to determine what factors are a detriment to rehabilitation and what factors (or lack thereof) are an improvement to rehabilitation and confinement.

One of the reasons studying the quality of confinement as opposed to only reviewing recidivism and then attempting to devise a correlation is because recidivism can be difficult to measure. There are many different variables to account for and many different ways to collect and analyze data. Even though these issues arise when studying the quality of confinement (including rehabilitation), recidivism has additional challenges that make it much more difficult to make accurate conclusions based on generalizable studies. Recidivism, as a whole, accounts for any and all crimes committed upon release from prison. It does not account for age, sex or location of offender. It does not account for the type of crime committed, whether the crime was something along the lines of a parole violation (and then what kind of parole violation) or a new crime committed independent of the crime previously incarcerated for. Recidivism data does not include information concerning the offender’s education, work history or whether or not the offender had undergone a type of rehabilitation. To study recidivism alone and attempt to devise a correlation between that data and the quality of public over private prisons would leave too many questionable conclusions and until that additional information is more available, it is more responsible to conduct empirical research to determine the quality of confinement between public and private prisons and develop a correlation based on that information.

Overall, this topic is extremely amenable to additional empirical analysis and study as the information available at this time is conflicting and does not lead to a firm conclusion. I submit that further studies controlling for certain variables and comparing like public and private prisons
could lead to important information that could lead to better informed policy decisions and better predictive abilities concerning crime and recidivism.

**RESEARCH QUESTION:**

Abuse within prison has been an ongoing and only recently researched issue. With the limited amount of empirical data on the subject, it is impertinent that additional studies are conducted to determine how much and to what effect abuse within prisons has on the inmate upon release from prison. However, abuse is not limited to physical confrontation. It includes physical maltreatment between inmates as well as physical maltreatment by staff perpetrated upon inmates. However, there have been fewer empirical studies regarding inmate abuse by correctional staff. This may be in large part due to the difficulty in finding verifiable data and issues concerning the methodology of such a study. Since there is such a large imbalance of power between a correctional staffer and an inmate, many instances of abuse go unreported and unknown. If instances of abuse are reported, they may just be single instances in a series of abuse that has just been discovered. Therefore, this study will focus on inmate against inmate abuse. With the increase in gang activity and the increase in prison population, I theorize that the level of inmate on inmate abuse has increased and that this abuse, physical, mental and sexual, has a correlation to recidivism. The greater the abuse an inmate suffers while incarcerated, the greater the hazard that inmate will re-offend upon release and subsequently be re-incarcerated.

**ABSTRACT**

Abuse within prisons is a problem that every prison within the United States deals with. Studies have been done to determine what constitutes abuse and how prevalent it is. There has been some debate as to what constitutes certain types of abuse, but there has been agreement as
to certain variables that have an impact on both the risk of victimization and the risk of perpetrating abuse. This study analyzes the previous research to attempt to find the prevalence of abuse and if there is a correlation between abuse (both victimization and perpetration) and recidivism. While this study confirms that there are certain agreed upon variables that have an effect on both abuse and recidivism, there are too many additional variables that must be controlled for before a pure correlation can be found. Therefore, I propose that additional study is needed, as this information can be extremely useful as a predictive tool for correctional officials in creating or changing programming and implementing new devices to combat abuse and crime in general.

BACKGROUND:

In an analysis of characteristics relating to inmate victimization, the academic field generally opines that, “Violence and victimization are ever-present and persistent problems in U.S. correctional facilities.”66 For the purposes of this meta-analysis, I focus on physical assault and sexual assault and misconduct.

Studies have shown high rates of assault within correctional facilities. One survey showed 10% of a sample of Ohio inmates experienced a physical assault while incarcerated within the past six months.67 More recent studies show that this percentage may be conservative or outdated; finding that approximately 20% of female and 25% of male inmates claimed to have been physically assaulted by another inmate.68

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Sexual abuse in correctional facilities can be more difficult for research and study. For fear of retaliation, sexual assaults are not always reported within prison walls. After the passing of the Prison Rape Elimination Act the federal government conducted a national study of sexual violence in prisons via the National Inmate Survey; which has continued each year after. A recent study found 5,605 claims of sexual violence against inmates. Over half of the claims involved sexual assaults by prison staff.

Violence, both physical and sexual, is a problem in our prisons. This can affect the probability of recidivism upon reentry. Those who have been physically or sexually abused and assaulted in prisons will have a more difficult time transitioning back to society upon reentry. Continuous study of abuse in prisons is necessary for evaluation of its effects on prisoners (such as mental health and disabilities) but also for the societal goal of reducing recidivism. First, it is necessary to inquire as to what are the contributing factors and characteristics of such violence.

METHODS:

Many studies have focused on the correlations between prison violence and other factors. One such study explored previous research based on nine factors: age, race-ethnicity, education, prison gang affiliation, prior prison and criminal history, psychological disturbance, type of sentence, conviction offense, and homicide offenders. This research was conducted using inmates who had been sentenced to death but reduced to life without parole; a group of 111 subjects. While this sample is of only a limited scope, it

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72 *Id.*
confirmed that age tends to be a factor in prison violence.\textsuperscript{73} The study revealed that “Assaultive misconduct has a strong inverse relationship with the age of the inmate”.\textsuperscript{74} This confirmed previous research conducted by the same scholar.\textsuperscript{75} If, as results indicate, age is directly correlated with violence inside of prisons, larger implications may be dangerous.\textsuperscript{76} If younger inmates (from the meta-analysis because the study’s subjects are serving life sentences) are more prone to prison violence, how does this reflect actions upon reentry and, therefore, possible recidivism?

Regarding a correlation with prison violence, Cunningham found, through meta-analysis of other studies, the influence of race and ethnicity to return mixed results.\textsuperscript{77} Cunningham cites several studies which differ in results; leaving the matter inconclusive.\textsuperscript{78} However, later, I discuss gang related violence which past studies (in the 1970’s) have shown race to be a significant factor. Race is often an area of focus with crime rates and recidivism rates. However, more research to examine race in relation to violence inside of correctional facilities is necessary.

Cunningham concludes that the summation of research on education portrays an inverse relationship with assaultive prison conduct.\textsuperscript{79} This is probably more deeply rooted than simple coincidence; education has been hypothesized to be a broader community stability factor.\textsuperscript{80} That is to say; in society, those who are more highly educated do not generally act as violently. Of course, this is only a pattern, not a concrete fact or rule.

\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{76} Cunningham, supra at note 59.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
Gang affiliation is also associated with prison violence especially among the younger inmates. Little research is available for gang influence on prison violence. One study examined prison violence in Texas during the “war years” (from 1984-1985) when the government push on the war on drugs was especially strong. The study found that twenty of twenty five homicides in 1984 and twenty three of twenty seven homicides in 1985 were gang related. In 1972, thirty of thirty six murders in California prisons were committed by a single gang known as the Mexican Mafia. The studies available cannot provide conclusive evidence to claim but for the Mexican Mafia, there would have been thirty fewer prison homicides in California prisons in 1972. Gang violence in prisons is difficult to study because of the number of variables. For example, some gangs are less violent than others, some prisons have rival gangs, some gangs are more deadly than others, and some gangs claim that they orchestrate actions for the outside world.

Prior prison time and criminal history has also been found to increase prison violence. The most concerning notion regarding prior prison time is that it has been found to increase the probability of inmate on staff violence. This could be speculated to show a developing dislike to those working for the corrections and criminal justice system, which would make for an interesting and useful study.

Cunningham also concludes that psychological disturbance (mental health problems) are indicative of inmates being more involved with prison violence: both aggressor and victim.
Psychological disturbance does have potential for erroneous study as it relies on pre-incarceration evaluations. However, there are many types of psychological disturbances which are derivative of many sources. Later, I discuss John Irwin’s contention of the psychological effects of sexual abuse in prison.

Type of sentence has been correlated with prison violence. Inmates serving life sentences have been shown to have less assaultive behaviors in prison. Speculatively, this finding could be attributed to inmates not needing to create enemies in a place they will be present for the rest of their life. Cunningham’s meta-analysis of the literature available points toward lower rates of violence among inmates serving longer sentences.

When evaluating prison violence while considering a sample of homicide offenders, Cunningham’s meta-analysis finds mixed results among the research. However, some research shows that homicide offenders who had committed robberies or burglaries have higher rates of prison violence. A Florida study inquired as to whether convicted murderers were more violence prone than other inmates. The results of the study reflect a lower involvement in assaultive behaviors compared to other inmates. The degree of the homicide had little, if any, effect on the results.

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88 Cunningham, supra at note 68.
89 Cunningham, supra at note 59.
90 Id.
91 Id.
93 Id.
94 Id.
Having covered the nine influences considered by Cunningham with supplemental information from outside studies, I turn to another consideration.  

For example, Cunningham did not delve into sexual abuse. 

In, The Warehouse Prison, Irwin contends that the “involuntary celibacy” that comes from monosexual prison arrangements causes permanent impact on an inmate’s psychological orientations. This effect of sexual abuse insinuates an issue that can affect reentry and, thus, recidivism. Irwin’s study at Solano derived information from inmates that showed most prisoners are uncomfortable with homosexual prison patterns. Conversely, in a study by Trammell, inmates from other California prisons contradicted Irwin’s findings: 

“Look, it’s not like rape. In prison, these guys get off the bus in women’s underwear and stuff. They dress up like women. They do this so someone will take care of them. I know that real rape happens, but it’s not a big problem. Guys do each other and everyone’s on board with the program.” 

Trammell’s study focused on the “Prison Wife” relationship in which tougher inmates would protect the weaker inmates in exchange for sex. This arrangement makes sexual abuse in prisons less of a rape or abuse problem and more of an organized protection theory formed by the inmates. The data collection methods have some flaws. Trammell reports that 44% of the men interviewed personally knew men in these relationships. However, because her samples were taken from only three prisons, it is likely that men interviewed personally knew the same

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95 Cunningham, supra at note 59.
96 Irwin, supra at note 2.
97 Id.
99 Id.
100 Id.
101 Id.
men. Thus, 44% of subjects personally knowing someone in this sort of relationship could, possibly, reflect only one such relationship in each prison.102 While it is probably more than one per prison (based on the inmate interviews), this hypothetical illustrates the data collection flaw found in the questions of the survey. The study describes the “Prison Wife” arrangement as “… a viable option for men who cannot take care of themselves” 103

Another inmate in the study explained “The guys are completely volunteering for this and they get to be safe. This has nothing to do with violence.”104 However, Irwin’s contention does not claim these acts to be physically involuntary as much as psychologically involuntary; as if prisoners’ agency is being broken down over time.105 Irwin attributes the breakdown of agency (in regards to sexual orientation as his book covers many other aspects of agency) to the inmates being “… regularly confronted with and disturbed by the complex and unique prison homosexual activities.”106 He goes on to other claims which contradict the findings of Trammell:

“Always present are prison sexual predators in search of new victims they can seduce or rape. Additionally, prisoners, in humor or intimidate, regularly impute homosexuality to others.”107

While Trammell contends that this is generally a voluntary arrangement for protective purposes, Irwin finds it to be a form of abuse which is detrimental to the psychological health of the inmates.108 If Irwin is correct, this has a massive effect on the inmates upon reentry. It can be said that any psychological damage accrued during incarceration will impact reentry and, possibly, likelihood of recidivism.

CONCLUSION:

102 Id.
103 Id.
104 Id.
105 Irwin, supra at note 2.
106 Id.
107 Id.
108 Trammel, supra at note 86; Irwin, supra at note 2.
Based on the analysis of the data collected by scholars such as Cunningham, Trammel and Irwin, it appears that there is no general consensus as to what constitutes abuse. While Cunningham and Irwin both contend that sexual and psychological abuse is rife within prisons in the form of rape and the so called “prison wife” arrangement, Trammell contends that the “prison wife” is not actually an instance of psychological or sexual abuse, but rather a bartering system trading sex for protection. This indicates that additional studies are needed to determine what exactly is abuse and how it effects inmates while incarcerated and upon release. This issue would serve as an excellent topic for further research as much of the previous research leaves questions unanswered.

With the research at hand, scholars have been able to establish some continuity. Certain variables have been distinguished as variables that must be controlled and some that can have an effect on the data. Variables such as race-ethnicity, age of incarceration, criminal history, and gang affiliation have historically been found to have an impact on both the risk of victimization as well as the risk for perpetrating abuse among other prisoners. It is imperative that additional research be conducted to expand upon this and to attempt to find a correlation between the risk of victimization (and actual victimization) and recidivism as well as the risk of perpetrating abuse (and actually perpetrating abuse) and recidivism. There are some methodological concerns, however, and they must be accounted for. As Cunningham found, inmates with longer sentences were less likely to commit abusive acts. These inmates (depending on how long the sentence actually is) are also less likely to recidivate due to other factors such as age upon release and separation from their previously criminal social group. I must acknowledge and control for those factors to determine what the correlation is between abuse in prison and recidivism.
Overall, the research available has allowed the academic community to predict certain hazards associated with incarceration such as the risk of victimization and the risk of perpetration. The research has found certain variables that impact this risk and can help academia and correctional staff to create programs that will lessen the risk based on these factors. The research has also created questions that require further study to answer. There is some debate about what sexual abuse and psychological abuse constitute in a prison setting and thus, the question becomes how to classify and work with that information. Finally, the question regarding the relationship between abuse and recidivism needs additional research to be answered. I believe that with further research, scholars can find a correlative effect between victimization, perpetration and recidivism.