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: A Private Prison Comeback?

As the federal employee union screeching about President Biden's vaccine mandates can be heard in every U.S. Department of Justice Bureau of Prison (BOP) facility, I cannot be the only one gazing on the landscape of federal corrections and seeing opportunity for private prisons to recapture what they lost and, perhaps, advance their business model during the administration of America's 46th President. It is not just vaccines. Opportunity was first planted with the passage of the First Step Act (FSA).

As part of the ethnic cleansing, via Executive Order, in the first hours of the Biden Presidency, the directive to eliminate government contracts with private prisons was implemented. Facilities operated by GEO, MTC, Core Civic, and others began seeing their captive clients (inmates) moved from from private lock-ups to BOP operated facilities (home of those "good union jobs" referenced on the 2020 campaign trail).

Now as the President seeks prompt compliance to create a vaccinated workforce, the federal workers collectively and individually are saying "not so fast Joe." The debate between the unions and the Democrat leadership, like all debates between Democrat leadership and unions, will assure an ultimate win-win for the leaders of both, but the process will not be fast and will not be pretty. Private corrections could offer an alternative.

While unions and the administration debate, private prison operators could promise and deliver immediate compliance with the orders, mandates, and even future modifications of related Executive Orders. The federal contractors of the United States of America have proven their ability to respond to political priorities much faster than federal workers (subject to price negotiations of course). So while the federal union employees of BOP facilities assert their "rights," the private prison industry has a unique opportunity to be the "good child" with a plan.

When President Joe Biden included federal contractors in the workforce groups he demanded vaccine compliance, an obedient example was guaranteed. The question is, will the private prison industry use this opportunity for a comeback or will the federal employee unions representing prison workers use potential job losses as a reason for compliance? The reality may be neither. Private prisons may not stand a chance with Biden by being vaccine compliant, and federal unions never have to do anything Biden wants as long as they deliver in even numbered years.

Still, the possibility of a private prison comeback, using the vaccine mandate, is worth considering, and whether or not that avenue is viable, FSA deserves independent review as a comeback opportunity. Effectively executed programming and the implications of that programming, including the increased demand for home confinement and half way house resources, are meaningful private sector opportunities.

Flawed FSA implementation has opened the doors for a private prison comeback. While the opportunities will be concentrated in programming and half way house or home confinement, private prisons have the contracting experience and relevant contract vehicles to step in and assist this administration.

BOP has failed to implement programming that would have resulted in a wave of good time credits, and had they accomplished that mandate, there is no clear plan as to support the explosive growth in home confinement and half-way house needs. Had FSA been fully implemented, as promised, significantly increase numbers of federal inmates would be reducing their sentences through programming that earns good time credits resulting in related increases in releases, home confinements, and half way house assignments.

Of the political forces that came together in December 2018 to allow the passage of FSA, none could have been clearly identified as aligning with private corrections, but the ensuing implementation has offered a road map for the private sector to have a critical role and, perhaps, gather some unlikely allies in the process.

No document, when compared to reality, underscores the FSA private sector opportunity better than the U.S. Department of Justice's very own FSA program guide issued in July 2021. A simple review, of the published programs, what is claimed to be offered in BOP facilities, what is being offered, and inmate program completion, builds the narrative of unaccomplished mandates. The failings are so massive other issues like the absolute lack of Spanish language programming need not be considered before calling time of death on the efforts thus far. The pandemic is an excuse that may, superficially, suffice in the event the BOP is asked by Congress why there has not been more progress. The truth is that neither Congress nor the BOP is



ready to live in a world where FSA is fully implemented.

FSA's slow implementation has been okay with elected officials who are not ready to face voters and explain how felons taking classes (programming to earn good time credits and getting released) makes their communities safer. The sentencing reforms of FSA were pleasant platitudes without consequences, until voters notice more crime in their streets. That does not change the fact that FSA is federal law, timelines have been made public, and results are not forthcoming.

The BOP is not aggressively pushing FSA implementation either. The unionized BOP employees responsible for FSA programming found they like "pandemic mode." Pay has remained the same with additional overtime to deal with quarantine responsibilities, and they have an excuse to cancel classes and teach less; the number of classes held in BOP facilities in 2020 and the first two quarters of 2021 (compared to 2019) confirms this fact in disturbing detail. Just like much of America, they have gotten used to being paid to not work (just show-up). Re-energizing BOP employees responsible for programming may take generations, and the interested stakeholders, beyond the unions and Congress, will not be patient.

The inmate advocacy groups will explode when they do not see promised numbers of inmates getting good times credits, going to half way houses, and being put on home confinement. In another era, such fringe views might not have been a source of power, but the polarized political landscape changes the significance of such groups.

In this environment, to be less than sensitive to the concern of those speaking on behalf of the families seeking programming good time credits for their incarcerated loved ones (given the demographic make-up of the federally incarcerated) is a quick path to being labeled a racist. Pandemic or no pandemic, FSA has not delivered the amount of good time credits and shortened incarceration anticipated because the program roll-out simply has not happened.

FSA's delayed implementation will be all the more obvious in January 2022 when the deadline for calculations of good time credits for programming are to be published by Justice. With that publication, thousands with incarcerated family members will know that the legislation that should have released their loved ones has, thus far, failed. Throughout the United States inmate litigation regarding the failures of FSA implementation and good time credits has been countered by the fact the U.S. Department of Justice has until January 2022 to publish certain calculations. However, a publication a few months from now cannot change over three years of flawed failed delayed implementation.

The January 2022 data will likely confirm a minimum estimate of 6,000 federal inmates, that should have earned release, have been denied freedom, thousands more should be on home confinement or in a half way house. Promised programs have not been offered, and good time credits were not earned. There will be outrage unless such a train wreck is avoided or a solution is proposed.

The private sector can offer an elegant solution using performance based contracting in delivering programming and managing the potentially explosive demand for home confinement and half way house resources (when program participation results in massive good time credits). The private sector deploying programming without raising the ire of the federal employee unions has historical models to follow.

Twenty years ago in response to 911, Pearson education obtained a contract to train new TSA employees, and notwithstanding the less than perfect result, that contract does provide metrics and a model for a prompt solution. Months before, No Child Left Behind (NCLB) gave opportunities to combine private sector profits with union employee involvement. NCLB confirmed that private companies can allow union members to augment their offerings thus avoiding tensions while earning profits. Uniquely because of FSA (and the failures thus far), private corrections has an opportunity to build alliances with federal employee unions (offering them participation in their programming offerings) and inmate advocacy groups (delivering the expected good time credits and sentence modifications).

In the end, the need for the private corrections industry is more significant than ever. The private sector has operations and implementation expertise, and the private prison industry has the contracting relationships in place. Private corrections need only create a best of breed FSA solution combined with a vaccinated workforce that includes capacity for the increase in home confinement and half way house demand. The opportunity is clear.