

## Concerning Prison Privatization

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Many studies concluded that when compared to federal and state government-run prisons, most private prisons are less safe and transparent than public facilities, provide inadequate medical care, and impede the due process of justice for incarcerated individuals. These deficiencies raise significant constitutional concerns. NACDL's position is that incarceration should be solely the responsibility of federal, state, and local governments; should not be contracted to the private sector; and the prevalence of existing privatization should be reduced and subject to more thorough oversight to insure transparency, accountability, and sufficient care to the incarcerated population.

The Bureau of Justice Statistics' data reflect that the nation's federal and state private prison population grew about 93% in under 20 years -- from approximately 71,000 prisoners in 1999 to over 137,000 in 2012 -- but then decreased to 126,000 in 2015. The state and federal government's almost 20-year experiment with prison privatization has also been expanded into privatizing other justice-related functions, such as probation oversight, court fee debt collection, "Pay to Stay" facilities for individuals with the ability to privately pay for incarceration costs, and costly services for telephone and video contacts and visits with family and friends. These quietly executed, privately-managed expansion initiatives into many other aspects of our nation's justice system raise concerns that profit may take precedence over medical care, drug treatment, and rehabilitation initiatives such as job training, placement assistance, and counseling, and even people's ability to have in-person contact with families.

Another concern is the employment in the private sector by retiring public prison officials. There have been documented instances where Department of Justice ("DOJ") Bureau of Prison executives, previously working in positions of authority and fiduciary oversight over contractors, have retired and immediately occupied high-level positions in the private prison management sector. Such relationships between the private and public sector raise an appearance of impropriety and misplaced motives that may undermine prison officials' fiduciary duties. For example, only months after his retirement, a retired Federal Bureau of Prisons Director, after taking his new role as an executive of Corrections Corporation of America (now CoreCivic), issued a solicitation letter to the nation's governors proposing buying and operating state facilities with a mandate that they be kept at 90% capacity. Any minimum prisoner population mandate could lead to abuse and unnecessary incarceration, which is particularly troubling given that the United States already confines 25% of the world's prisoners, while only accounting for 5% of its total population.

In 2016, the DOJ Office of the Inspector General released the [Review of the Federal Bureau of Prisons, Monitoring of Contract Prisons](#), Report # 16-06, which found selected private prisons had more safety and security incidents than similar publicly-operated counterparts. Those incidents included an increase in assaults (inmate-on-inmate and inmate-on-staff), presence of contraband items such as cell phones, and improper housing of new inmates in Special Housing Units. The report also found poor oversight in several areas, including medical treatment, and recommended that safeguards be implemented so inmates' rights and needs are not jeopardized. In response to the report, former Acting Attorney General Sally Yates submitted a memorandum to the Acting Director of the Bureau of Prisons emphasizing the goal of reducing the use of private contracts and eventually ending privatization, and stated that private prisons "*do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in [the] recent report by the Department's Office of the Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource - and these services are essential to reducing recidivism and improving public safety.*"

## RESOLUTION

That NACDL opposes the privatization of prisons as follows:

**Whereas**, approximately eight percent of the prisoners in state and federal prisons within the United States (comprising approximately 126,000 individuals) have been "privatized," or placed in the custody of private business entities; and

**Whereas**, compared to publicly-managed services, the private sector's profit incentive can result in lower employee wages, higher staff turnover rates, a reduction in staff and training, fewer rehabilitation programs (such as education, job training, and counseling services -- which have been proven to reduce the risks of recidivism), decreased medical and psychological services, and an increased risk of violence. Additionally, the privatization of prisons has been shown to establish only marginal savings to governments and, in other instances, greater costs; and

**Whereas**, the discussion of privatization distracts from reasoned debate about the social problems driving our criminal justice system while reinforcing the perception of prisons as economic engines; and

**Whereas**, private corporations are not subject to the Freedom of Information Act or state equivalents, and privatization reduces transparency and public accountability concerning prison operations and inmate care and treatment; and

**Whereas**, the privatization of prisons may impede prisoner administrative remedy programs including whether claims are being rejected on legitimate grounds; unjustly curtail court access; and exacerbate the prevalence of violence: and

**Whereas**, the federal government has contracted with private prisons to house a number of undocumented immigrants and resident aliens, which in some cases may foster illegal and unconstitutional treatment; and

**Whereas**, the private prison industry spends millions of dollars each year lobbying governments to enact laws that increase the nation's prison population, and often uses former public prison officials to engage in these lobbying efforts; and

**Whereas**, when private prisons are contracted, a transparent reporting system should be in place to ensure compliance with the government's objectives, especially in relation to prisoner treatment and anti-recidivism programs, and to hold non-compliant institutions accountable; therefore

**BE IT RESOLVED** that to the extent government corrections actors contract with private providers, all such contracts must require the private prison, at a minimum, to meet all government regulations and requirements for the care, treatment and protections of inmates and to be fully transparent and to comply with any and all reporting requirements authorized by law; and

**BE IT FURTHER RESOLVED** that private prisons be subject to the same disclosure requirements under the Freedom of Information Act (FOIA) or state equivalents as are government-run Prisons; and

**BE IT FURTHER RESOLVED** that NACDL is committed to protecting the rights of all federal, state, and local prisoners and is seeking complete transparency and accountability regarding the care and maintenance of prison facilities; and

**BE IT FURTHER RESOLVED** that NACDL urges all governments contracting with private prisons to establish independent agencies to regularly monitor and report completely, publicly and accurately on the conditions in all contracted facilities within their jurisdictions; and

**BE IT FURTHER RESOLVED** that NACDL supports the establishment of policies to prevent former public corrections officials from lobbying for any private prison association or company for a period of two years from government employment.