

NATIONAL JUVENILE JUSTICE NETWORK

Protecting Youth Confined for Profit*

POLICY SAFEGUARDS

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The private prison industry has grown exponentially in the last two decades, with the number of individuals in private prisons increasing by 1600 percent between 1990 and 2009.¹ In the juvenile justice arena, approximately half of the juvenile facilities nationally are privately owned or operated. Although most private youth confinement facilities are currently run by non-profits, the huge growth in the for-profit correctional industry has also affected our juvenile justice systems. The documented rise in for-profit youth confinement facilities throughout the 1990s² has been starkly evidenced recently in Florida. In Florida, all confinement facilities for youth adjudicated delinquent are now private, and approximately 83 percent of them are currently run by for-profit corporations, up from approximately 61 percent in 2012.³

Due to the dangers that for-profit privatization of juvenile confinement facilities⁴ pose for youth, which the National Juvenile Justice Network (NJJN) detailed in its policy platform, “Confining Youth for Profit,” NJJN recommends ending the use of for-profit private youth confinement facilities. Yet NJJN recognizes that in some jurisdictions, it may not be possible to immediately eliminate their use. Therefore, NJJN urges states and localities, while they work to put an end to the use of for-profit juvenile facilities, to take actions to protect youth confined by private prison companies. Without appropriate attention paid to the operations of for-profit juvenile facilities, we leave a vulnerable population of youth at risk and enable fraud, abuse, and wasted public funds. And, as it is crucial for states and localities to have youth served by well-managed organizations subject to independent and robust oversight in which the best interests of the child and the community are paramount, these safeguards should also be considered when working with private non-profit companies that operate juvenile confinement facilities and programs.

NJJN recommends that jurisdictions engage in the following activities in order to create the mechanisms for appropriate oversight and detailed contracting that are necessary to protect youth in private for-profit facilities, increase public safety and spend taxpayer dollars wisely.

*See the National Juvenile Justice Network’s (NJJN) policy platform, “Confining Youth for Profit” (July 2015), at <http://bit.ly/1g6cZw6>.

Strengthen the Contractual Obligations of Private Facility Owners and Operators

- Strengthen the contractual obligations of private youth confinement companies so that they are outcome-based, with a focus on positive youth development,⁵ ensuring ample in-person visitation time for families. The contracts should require services that include the following, specifying as much detail as possible to ensure good quality:
 - educational programming for youth that meets the educational standards for public schools in the state and local jurisdiction, federal educational requirements, and the U.S. Government’s Department of Education and Department of Justice’s Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings,⁶ and provides the requisite and appropriate instruction necessary to accommodate youth with special needs;
 - work skills and vocational training;
 - requisite educational and vocational personnel and equipment and supplies;
 - reentry planning;
 - quality medical care and mental health screening, assessment, and treatment;
 - healthy and adequate food portions; and
 - quality clothing.
- Private facility populations should reflect the population of youth confined in public facilities. The contract should bar private facilities from “cherry picking” particular youth from the population of youth to be confined.
- Contractually require that private correctional facilities:
 - comply with all state juvenile justice agency policies for juvenile confinement facilities, such as use of force standards, incident reporting, operating standards, minimum staffing ratios, medical standards, and emergency protocols;⁷
 - adhere to comprehensive and humane standards for care of youth in custody (such as the Performance-based Standards (PbS) program,⁸ or the Annie E. Casey

Foundation’s Juvenile Detention Alternatives Initiative facility assessment process⁹);

- are in compliance with all applicable standards and appropriately licensed for fire, health, and safety, and must pay contractually-specified damages if they fail to pass an inspection;¹⁰
 - are accredited by a national organization, such as the Commission on the Accreditation of Rehabilitation Facilities;¹¹ and
 - are in compliance with the Prison Rape Elimination Act.¹²
- Include provisions for the public contracting entity to monitor the terms of the contract regularly and to hold the private company (“contractor”) accountable for breach of contractual obligations. Ideally, the contract should provide explicit penalties for non-compliance and graduated sanctions – such as fines and increased monitoring requirements, culminating in termination of the contract where necessary. It should also provide for the ability of the state to remedy non-compliance at the company’s expense.¹³
 - Ensure that the public entity remains responsible for the contractor’s fulfillment of all the contract provisions and assumes ultimate responsibility for ensuring that private juvenile facilities are operated in compliance with state and federal law. This will help to assure diligent oversight of private facilities by the responsible government agency, in order to prevent costly lawsuits.
 - Ban the use of guaranteed profit or occupancy guarantee clauses in contracts. These clauses obligate governments to keep private facility beds filled (generally ranging from between 80 – 100 percent occupancy) or pay facilities for empty beds.¹⁴ It has had the effect of encouraging increased incarceration in many states.¹⁵
 - If your state law requires private confinement companies to provide a percentage of cost savings to the state, ensure through contracting that the company cannot achieve the savings through activities that would be harmful to youth, such as lowering the quality of services.
 - Require minimum staffing wages and benefits, as private for-profit confinement companies will often achieve cost savings through very low pay and benefits, which contributes to the likelihood of poor quality staff and high employee turnover.¹⁶
 - Guarantee maximum flexibility for the state to modify or cancel a contract, which may be necessary due to shifts in population levels or contractor non-compliance, through the following:

- limit the contract length to enable public agencies to more easily modify or terminate arrangements as needed;
- include a clause that allows the state to cancel the contract at any time, without cause and with a minimum amount of notice;
- specify how the costs related to any contract cancellation will be handled and make sure the state’s financial responsibility is reasonable and clear; and
- make sure that the contract contains provisions that guide the transfer of duties back to the state.¹⁷

Increase Data Collection and Transparency of Data and Records

- Increase transparency by contractually requiring private companies to regularly collect and publicly release information and data regarding the conditions of the youth in their custody, services provided, family visitation policies and practices, fees assessed on families, positive youth development outcomes, and recidivism rates.
- Require the company to maintain detailed records on prison operations and compliance with departmental policies, state statutes, and contract provisions, and to self-report important compliance measures. The company should also have specified time frames for reporting serious incidents, such as escapes, deaths, and riots.¹⁸
- Require adherence to the state’s freedom of information or open records laws – the facility serves a public function and, accordingly, the public should have access to its data and records, just as it would if it were a publicly owned and operated facility.¹⁹

Assess “Hidden Costs” to Determine the True Cost of Privatization

- Government contracting agencies should be sure to determine the cost of their monitoring and oversight of the contract, and add these costs to the overall assessment of facility privatization. Research has found that contract administration typically adds about 20 percent of the price of the contract to the total cost. This is especially true in the case of private youth confinement facilities, as more intensive monitoring is called for when dealing with the care of this vulnerable population. The contract oversight costs can be high enough that they cancel out any anticipated savings from privatization.²⁰

- Other hidden costs should also be taken into account, such as medical costs that the state may accrue if the cost that the private facility is obligated to pay is capped, costs for contractor training if borne by the state, and personnel costs that might be associated with privatization, such as accrued leave for former public employees who lost their jobs due to privatization.
- The contract should account for all costs that the state must incur, and clearly and appropriately allocate costs between the state and the contractor, such as costs for transporting youth to and from the facility, managing payroll, and purchasing equipment, and should allocate these costs in a similar manner to the division in place between the state and public confinement facilities.²¹

Strengthen Oversight and Monitoring of Private Youth Facilities

- Strengthen oversight by requiring regular external, independent monitoring and public reporting on conditions at for-profit youth confinement facilities by an authorized public entity that is adequately funded, staffed and trained. Ensure that youth and staff have standardized, secure mechanisms for making complaints regarding youth conditions and treatment to the oversight bodies without fear of retaliation.
- Ensure that the oversight body, has unfettered, open access to the facility, youth within the facility, and all appropriate documents and records (including camera footage),²² and has the authority to conduct scheduled and unannounced or “surprise” inspections, and has a duty to register and investigate youth’s complaints regarding treatment.
- The external oversight should supplement but not replace internal mechanisms of monitoring, inspection, and evaluation by correctional administrators of the facilities and the state juvenile justice agency.²³ At a minimum, private confinement facilities should have reporting requirements that mirror the system of accountability for publicly owned and operated facilities. Monitoring and oversight should include engaging parent advocates in the process to elicit their comments and concerns.

Maintain Public Oversight and Control Over Youths’ Length of Stay and Release

- Ensure that a public entity, such as the state’s juvenile justice agency, retains control over all youths’ length of stay and release dates.

- Ensure that every child has post-dispositional legal representation and regular review hearings to provide oversight as to each youth's well-being and conditions of confinement, as well as to monitor each youth's treatment program and make sure that no youth is being confined unnecessarily.

Refrain from Privatizing All Youth Confinement Options

- Refrain from completely privatizing all youth confinement options in a jurisdiction. If all or even most beds are privatized, the state will lose its capacity to pull youth out of or close facilities that are unsafe, because it may have nowhere else to put them.

Maintain State Control of Prison Building and Financing

- Many jurisdictions have learned the hard way that allowing private prison developers to facilitate the construction of private prisons with private revenue bonds secured by local government entities or financing authorities can lead to financial devastation for the community or state, the threat of which can mean it is difficult to close down a failing correctional facility.
- Private revenue bonds are premised upon a guarantee of incoming revenue, unlike government general obligation bonds, which are used for a variety of government revenue needs. Accordingly, investors in private revenue bonds demand much higher interest rates than would be required for a state general obligation bond. Even though these are private bonds, the state can still be on the hook for repaying this more costly debt, or face a downgrade of its bond rating.
 - Louisiana legislators found this out in 2003, when they tried to shut down the Tallulah juvenile correctional center, in which there was widespread abuse of youth. The Standard & Poor's rating agency informed them that if they quit financing the private prison, it would put Louisiana's bond rating at risk. Youth were forced to stay confined at Tallulah for an extra year while the bond controversy was resolved and the state figured out a way to repurpose the facility so that it was not committing the publicly unpalatable act of paying debt on an empty prison.

Increase Transparency of the Legislative and Political Activities of Private Facility Owners and Operators

- Take action to reduce the influence of private youth confinement companies on the legislative process, such as requiring greater transparency in the political contributions

and lobbying activities of these private companies. Three of the largest private prison companies – Corrections Corporation of America (CCA), GEO Group, and Cornell Companies (which merged with Geo Group in 2010) – contributed a total of \$10,002,795 to a combination of federal and state candidates, party committees (such as political parties or political action committees), and ballot measure committees from 2004 to 2014.²⁴

- Expose the work of private for-profit prison companies in influencing and drafting legislation to increase incarceration, such as with “three-strikes” and “truth-in-sentencing” laws.²⁵

For More Information

For additional information and assistance, we encourage you to turn to the following organizations:

- [American Civil Liberties Union](#)’s program to end mass incarceration includes information and resources on the privatization of criminal justice.
- [Grassroots Leadership](#) fights to end for-profit incarceration and reduce reliance on criminalization and detention through direct action, organizing, research, and public education.
- [In the Public Interest](#) is a comprehensive research and policy center on privatization and responsible contracting.
- [Justice Strategies](#) is a nonprofit research organization focusing on more humane and cost-effective approaches to criminal justice and immigration reform, including research and analysis of prison privatization.

¹ David Shapiro, “Banking on Bondage: Private Prisons and Mass Incarceration” (New York, NY: American Civil Liberties Union, Nov. 2, 2011), 5, n. 6, <http://bit.ly/1HhDXLR>; citing United States Department of Justice, Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 1995 iv* (1997); Heather C. West, Et Al., United States Department of Justice, Bureau of Justice Statistics, *Prisoners in 2009*, 33 App. Table 19 (2010).

² A 2000 report comparing surveys of private sector involvement in juvenile justice systems in 1991 and 1999 found that the proportion of jurisdictions contracting with nonprofits remained the same while private sector contracts with for-profit agencies increased substantially. Robert B. Levinson and Raymond Chase, “Private Sector Involvement in Juvenile Justice,” *Corrections Today* (Alexandria, VA, 2000): 1, 3, <http://bit.ly/1ib06Ti>. In 2012, juvenile residential facility census data reported by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) indicated that 5 percent of private juvenile facilities were owned by for-profit companies and 7 percent were operated by for-profit companies, though this was prior to Florida’s statewide privatization of its juvenile residential facilities. See Sarah Hockenberry, Melissa Sickmund, and Anthony Sladky, “Juvenile Residential Facility Census, 2012: Selected Findings” (Washington, DC: US Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, DC, March 2015): 3, <http://1.usa.gov/1GqMIza>.

³ Florida Department of Juvenile Justice, “Residential Facilities,” accessed April 23, 2015, <http://bit.ly/1GuNtr5>. In FY 2012–2013, 61 percent of Florida’s juvenile residential facility providers were for-profit organizations, based on NJJN’s review of the material at Florida Department of Juvenile Justice, “Residential Data Report, FY 2012 – 2013,” <http://bit.ly/1iv6tAH>, accessed Sept. 2, 2015.

⁴ For the purposes of this policy platform, unless otherwise specified, we use the term “confinement” to refer to any out-of-home placement of youth stemming from a delinquency or criminal charge, or an order of a delinquency or criminal court judge. Youth can be confined in detention and jail facilities, prison and incarceration facilities, long-term secure care confinement, reception and diagnostic centers, shelters, group homes, residential treatment facilities, boot camps, and ranch/wilderness camps. Click here for definitions of any of these terms: <http://1.usa.gov/1Nipf7Z>.

⁵ Positive Youth Development is strengths-oriented rather than deficit based; it builds on the resilience of youth and supports positive development by encouraging youth to develop useful skills and competencies and build stronger connections with pro-social peers, families, and communities. Jeffrey A. Butts, Gordon Bazemore, and Aundra Saa Meroe, “Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development” (Washington, DC: Coalition for Juvenile Justice, 2010), 9, <http://bit.ly/QAJIDA>.

⁶ U.S. Departments of Education and Justice, *Guiding Principles for Providing High-Quality Education in Juvenile Justice Secure Care Settings* (Washington, D.C., 2014), <http://www2.ed.gov/policy/gen/guid/correctional-education/guiding-principles.pdf>.

⁷ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts” (October 2012), 7, <http://bit.ly/1JJzfc8>.

⁸ The Performance-based Standards (PbS) program identifies, monitors and improves conditions of confinement and treatment services in residential facilities and programs, using national standards and performance outcome measures.

⁹ Juvenile Detention Alternatives Initiative, “Juvenile Detention Facility Assessment” (Baltimore, MD: Annie E. Casey Foundation, 2014), <http://bit.ly/1G38Ez8>.

¹⁰ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 7.

¹¹ See CARF International, accessed July 1, 2015, <http://www.carf.org/home/>.

¹² Prison Rape Elimination Act (PREA), P.L. 108-79, 42 U.S.C. § 15601 (2003).

¹³ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 10.

¹⁴ In the Public Interest, “Criminal: How Lockup Quotas and ‘Low-Crime Taxes’ Guarantee Profits for Private Prison Corporations” (September 2013), 6, <http://bit.ly/1M7UQZd>.

¹⁵ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 5.

¹⁶ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 6.

¹⁷ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 10.

¹⁸ In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 8.

¹⁹ Most states have their own version of the federal Freedom of Information Act (FOIA), a law that gives the public the right to access records from any federal agency. Federal agencies must disclose the information unless it falls under one of nine exemptions. United States Department of Justice, FOIA.gov, “What is FOIA,” accessed June 29, 2015, <http://www.foia.gov/about.html>. States’ freedom of information laws or open records laws vary in the exemptions provided. See National Freedom of Information Coalition, “State Freedom of Information Laws,” accessed June 29, 2015, <http://www.nfoic.org/state-freedom-of-information-laws>.

²⁰ In the Public Interest, “Standing Guard: How Unaccountable Contracting Fails Governments and Taxpayers (December 2014), 14–15, <http://bit.ly/1FDupoK>.

²¹ For example, for a breakdown of some of the additional costs and revenues that can be associated with detention center operation, see National Juvenile Justice Network, “Fiscal Policy Center Toolkit: How to Calculate the Average Costs of Detaining a Youth” (Washington, DC: May 2013), 3, <http://bit.ly/1T7O7T8>.

²² In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 7.

²³ American Bar Association Recommendation 104B (2008), 5–6, <http://bit.ly/1NfVBjh>; In the Public Interest, “Essential Public Interest Protections for Private Prison Contracts,” 8.

²⁴ National Institute on Money in State Politics, “Showing Correctional Facilities Construction & Management/For-Profit Contributions to Candidates and Committees in Elections in Selected Years,” accessed July 6, 2015, <http://bit.ly/1UwOp7T>.

²⁵ Paul Ashton and Amanda Petteruti, “Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies” (Washington, D.C., Justice Policy Institute, June 22, 2011), 3, <http://bit.ly/1HhEkWz3>, <http://bit.ly/1HhEkWz>; Donald Cohen, “Jailing Teenagers and the Poisoning of Public Purpose,” *Huffington Post*, March 18, 2009, <http://huff.to/1LCnNwf>.