

# **Recommendation regarding investment in private, for-profit prison corporations**

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on behalf of the

**University of Rochester  
Ethical Investment Advisory Committee (EIAC)**

Revised<sup>3</sup> and adopted by the EIAC  
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## **Summary**

The Ethical Investment Advisory Committee recommends that the University of Rochester Investment Committee adopt a policy of making no direct investments in any publicly-traded company that owns or operates private prisons, including CoreCivic and its subsidiaries, GEO Group, and G4S. Additionally, the Investment Office will notify the EIAC of any private prison equity holding that may appear in the portfolio, and it will notify its investment managers of this policy.

In the context of privatization of government services, the private, for-profit incarceration of prisoners and immigrant detainees stands out as unique in the hazard it presents to the protection of fundamental liberties. Fair and impartial public adjudication of the grounds for depriving individuals of such rights and liberties is a fundamental due process right, and adequate public oversight to ensure that conditions of incarceration are consistent with Constitutional standards of humane treatment is similarly a solemn public trust. The introduction of private for-profit interests has undermined public oversight of prison conditions, created dangerous and inhumane conditions through cost cutting, and diminished the role of public authorities in determining what is most just and consistent with the public interest. The impartial justice owed the accused is less likely to be secured when profits are at stake, and in the absence of far greater transparency, there is no assurance that the public's legal and human rights obligations to a vulnerable captive population are being met. Nor is it possible to compare the full monetary and social costs of public and private prisons. In these circumstances, it is unseemly at best for institutions of a free society to seek profits from investments in for-profit prison corporations.

## **I. Background**

### **a. Key facts and figures**

- As of 2018, 8% of all inmates in the United States (around 126,000) are held in private prison facilities. These facilities are located in 29 states.<sup>4</sup>

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<sup>4</sup> Lauren-Brooke Eisen, *Inside Private Prisons* (New York: Columbia University Press, 2018), p. 9.

- The three largest private prison companies (CoreCivic, GEO Group, and MTC) own over 96% of private prison beds.<sup>5</sup>
- CoreCivic and GEO Group operate approximately 72% of all privately contracted ICE immigration detention beds.<sup>6</sup>
- The number of inmates housed in private prisons grew 90% between 1999 and 2019,<sup>7</sup> despite more than half the states having reduced their correctional populations in the last decade.<sup>8</sup>
- In 2016, GEO Group and CoreCivic earned a combined \$382 million in profits<sup>9</sup>

## **b. A brief history of mass incarceration and the rise of private prisons in the United States**

The per capita rate of imprisonment in the United States quadrupled between 1978 and 2014.<sup>10</sup> The rise of mass incarceration and the resulting need for prison space – filled in part by the private prison industry – grew out of a series of policies traceable to the mid-1960s. That decade marked a shift away from the rehabilitative view of punishment.<sup>11</sup> Sociologist Robert Martinson argued in a widely cited research study that no treatment programs were successful in preventing recidivism, and this led policy makers and legislators to de-emphasize rehabilitation in sentencing schemes. Although Martinson later concluded that this was incorrect, prison policy continued to rely on the initial findings that he repudiated. This shift away from a rehabilitative orientation coincided with President Lyndon B. Johnson’s call for a “war on crime,”<sup>12</sup> which was followed by President Nixon’s 1971 “War on Drugs” and its subsequent escalation by President Reagan. These “wars” led to an expanded correctional bureaucracy, exponentially increased policing in urban areas, and – in conjunction with the introduction of mandatory minimum sentencing, abolition of federal parole, and other strict policies – horrifically overcrowded prisons.<sup>13</sup> By the late 1980s, thirty-nine states, The District of Columbia, Puerto Rico, and the Virgin Islands were under court order to reduce prison populations, because their prisons were determined to be so overcrowded that confinement conditions violated constitutional standards.<sup>14</sup> Many states reduced overcrowding by releasing prisoners early, but since many prisoners could not be released, states called for the creation of new prisons.<sup>15</sup> Private corporations seized the opportunity to provide for-profit prison services.

The first private prisons of the early 1980s were funded through tax exempt bonds and leaseback agreements.<sup>16</sup> This allowed state and local governments to contract with private companies to build facilities, which the companies would then lease back to the government. States could thereby avoid the capital expenditures entailed by building the facilities themselves. Overcrowded state prisons in California, for example, could then send prisoners to private facilities, both in and out of state.<sup>17</sup>

The policies of the 1990s further expanded incarceration and encouraged the use of private prisons. President George H.W. Bush issued an executive order promoting the privatization of government

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<sup>5</sup> Ibid., p.203.

<sup>6</sup> Ibid., p. 154.

<sup>7</sup> A. E. Addae, “Challenging the constitutionality of private prisons: Insights from Israel,” *William Mary Journal of Race, Gender, and Social Justice* 25(3) (2019): 529.

<sup>8</sup> Eisen, *Inside Private Prisons*, p. 204.

<sup>9</sup> Ibid., p. 31.

<sup>10</sup> Ibid., p. 27.

<sup>11</sup> Ibid., p. 18.

<sup>12</sup> Ibid., p. 19.

<sup>13</sup> Addae, “Challenging the constitutionality of private prisons,” 527-554, 526-8.

<sup>14</sup> Eisen, *Inside Private Prisons*, p. 52.

<sup>15</sup> Ibid., p. 54.

<sup>16</sup> Ibid.

<sup>17</sup> California began transferring inmates to private out-of-state prisons in 2006 and had sent out over 10,000 inmates by 2010 (Ibid., p. 201).

functions.<sup>18</sup> Congress passed the Violent Crime Control and Law Enforcement Act in 1994, which authorized nearly \$8 billion in state construction grants for prisons and boot camps.<sup>19</sup> In 1996, the Chairman of what later became the GEO Group testified on the benefits of private prison facilities before Congress. President Clinton then promised in a budget proposal to cut costs through privatization, and the ensuing Appropriations Act allowed states to use funding received under the act for private prison facilities.<sup>20</sup> Changes in immigration enforcement in the early 2000s offered more opportunities for private prison companies. The Intelligence Reform and Terrorism Prevention Act, signed into law by President George W. Bush in 2004, authorized the Department of Homeland Security to add 40,000 new detention beds.<sup>21</sup> Then with the DHS Appropriations Act of 2010, which required ICE to “maintain” no fewer than 33,400 detention beds, the number of immigrants detained each year more than doubled.<sup>22</sup>

Although the modern conception of private prisons did not appear until the 1980s, there is a long history of both privatizing corrections and profiting from imprisonment in the United States. Even prior to the country’s founding in the Colonial era, the British government frequently sent convicts to the American colonies to labor as indentured servants for their sentence. This labor source was, of course, later replaced by the slave trade.<sup>23</sup> The New York State Prison in Auburn, NY was the first prison to use prisoners as cheap labor, leasing out convicts starting in 1825.<sup>24</sup> The state contracted with manufacturers for its convicts to make shoes, carpets, and furniture.<sup>25</sup> From 1825 to 1880, the Kentucky State Penitentiary leased inmates to Joel Scott, a textile manufacturer, who returned half of net prison labor profits to the state. The practice of convict leasing became widespread after the Civil War as states (particularly those in the South) found ways to work around the Thirteenth Amendment, which abolished involuntary servitude, *except in cases where it has been assigned as punishment upon conviction for a crime*. Under the leasing model, a state government would lease out its convicts to a private company. In exchange, the company would pay a fee for the labor, and then house, feed, and discipline the convicts. In the 1870s in South Carolina, convicts were leased to the railroad industry, in whose custody 45% of them died. Nearly all convicts were former slaves.<sup>26</sup> *These financial incentives to provide convict labor led states to rewrite laws so as to increase their prison populations*. For example, the Mississippi “Pig Law” redefined grand larceny as “the theft of a farm animal or any property valued at ten dollars or more” and made it punishable by up to five years in prison.<sup>27</sup> The practice of convict leasing ended at the close of the 19<sup>th</sup> century, primarily because economic conditions were no longer favorable.<sup>28</sup> Between the 1880s and 1940s, Congress passed a series of laws designed to limit the use of prison labor, but much of this legislation was repealed in the 1970s.<sup>29</sup>

### c. Companies under consideration

With a capacity of 88,500 prison beds, **CoreCivic**—formerly Corrections Corporation of America (CCA) — is the largest private prison operator in the United States.<sup>30</sup> In addition to prisons, it runs drug-treatment

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<sup>18</sup> Addae, “Challenging the constitutionality of private prisons,” 526-8.

<sup>19</sup> Eisen, *Inside Private Prisons*, p. 24.

<sup>20</sup> *Ibid.*, p. 25.

<sup>21</sup> *Ibid.*, p. 150.

<sup>22</sup> *Ibid.*, p. 153.

<sup>23</sup> *Ibid.*, pp. 46-48.

<sup>24</sup> Shane Bauer, *American Prison: A Reporter’s Undercover Journey into the Business of Punishment* (New York: Penguin Press, 2018), p. 59.

<sup>25</sup> Eisen, *Inside Private Prisons*, pp. 16-17.

<sup>26</sup> *Ibid.*, pp. 48-49.

<sup>27</sup> *Ibid.*, pp. 48.

<sup>28</sup> *Ibid.*, p. 49.

<sup>29</sup> *Ibid.*, pp. 50-52.

<sup>30</sup> *Ibid.*, p. 3.

facilities, including the seven it acquired when it bought Correctional Management Inc. in 2016,<sup>31</sup> and it owns prisoner transportation company TransCor America.<sup>32</sup> Prior to founding CCA, co-founder T. Don Hutto ran the Arkansas Department of Corrections, which he sought to operate at a profit, forcing inmates to work on prison farms for sixty hours a week.<sup>33</sup>

**GEO Group** is the second-largest private prison operator in the U.S. It too has expanded into reentry services and drug treatment. GEO Group acquired Just Care, which provides medical and mental health services, in 2009, and Behavioral Interventions, which produces monitoring equipment for those on parole and probation, in 2011.<sup>34</sup>

**G4S** is the world's largest private security firm. In the U.S., it transports immigrants for Immigrant Customs Enforcement (ICE) and it provides security services for military bases and other government and non-governmental entities. It provides security services in other countries and operates private prisons and immigrant detention centers in Australia, South Africa, and the UK.<sup>35</sup> These include four prisons in the UK,<sup>36</sup> as well as Mangaung Correctional Centre in South Africa, which is the second largest private prison in the world. The South African government took over the facility from 2013-2014, during which an investigation uncovered use of electric shock and forcible drug injections by guards, among other things. Between 2012 and 2014, G4S was contracted by the Australian government to operate an offshore detention facility for asylum seekers on Manus Island, Papua New Guinea. Three days of rioting occurred in February 2014 during a period of severe overcrowding. At least 69 detainees were injured, some of them seriously, and an Iranian asylum seeker, Reza Berati, was killed. In 2017, a class action lawsuit for A\$70M was settled in favor of 1,905 refugees and asylum seekers for being held illegally in damaging and dangerous circumstances at the Manus detention facility. G4S along with the Australian government and another contractor were named as defendants in the lawsuit.<sup>37</sup>

These are the primary players in the publicly traded private prison “market.” There are other active companies such as Management and Training Corporation (MTC), the third-largest US private prison company,<sup>38</sup> and LaSalle Corrections. Neither is publicly traded and accountable to shareholders,<sup>39</sup> so neither will be discussed extensively in this document. Further, there are a multitude of private companies that profit from incarceration, referred to collectively as the “prison-industrial complex.” These include Global Tel Link, Jpay, Securus, MHM Services, Correct Care Solutions, Corizon Health, Armor Correctional Health Services, Providence Services Corporation, all of which contract with for-profit prison companies.<sup>40</sup> However, for the purpose of providing a limited list of companies in which it may be feasible to avoid investing, we have chosen to limit our discussion and recommendations to those companies that run and manage private, for-profit prisons.

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<sup>31</sup> Ibid, p. 5.

<sup>32</sup> Ibid., p. 72.

<sup>33</sup> Ibid., p. 57.

<sup>34</sup> Ibid., p. 4.

<sup>35</sup> American Friends Service Committee, “G4S PLC,” *Investigate* March, 4, 2020, <https://investigate.afsc.org/company/g4s>.

<sup>36</sup> HM Prison Service, “Contracted-out prisons,” Justice webpage, updated 9 July 2019, <https://www.justice.gov.uk/about/hmps/contracted-out>.

<sup>37</sup> Ben Doherty and Calla Wahlquist, “Government to Pay \$70M Damages to 1,905 Manus Detainees in Class Action,” *The Guardian* 5 Sept. 2017, <https://www.theguardian.com/australia-news/2017/jun/14/government-to-pay-damages-to-manus-island-detainees-in-class-action>; AU News, “Manus Island Detainees’ \$70M Compensation Settlement Approved,” *AU News* updated 5 Sept 2017, <https://www.abc.net.au/news/2017-09-06/manus-island-detainees-settlement-with-commonwealth/8876934>.

<sup>38</sup> Eisen, *Inside Private Prisons*, p. 4.

<sup>39</sup> Ibid., p. 204.

<sup>40</sup> Hunter Campbell, “Princeton Private Prison Divest asks U. faculty to sign divestment petition,” *The Daily Princetonian* Dec. 13, 2016, <http://www.dailyprincetonian.com/article/2016/12/princeton-private-prison-divest-asks-u-faculty-to-sign-divestment-petition>.

#### d. Practices of for-profit prison corporations

*Minimum Occupancy Agreements.* When corporations contract with the government, they set a daily fee per inmate. This fee is based on actual or minimum guaranteed occupancy.<sup>41</sup> Nearly two-thirds of contracts require state and local governments to maintain a particular occupancy rate or require taxpayers to pay for empty beds.<sup>42</sup>

*Cost-cutting measures.* A common argument made in favor of private prisons is that they are less expensive to operate than government facilities. However, while studies have come to varying conclusions about whether or not they save money, the general consensus among these studies is that the difference in cost is negligible. In addition, it is a matter of concern that when private prisons achieve cost savings, they typically do so as a result of understaffing, lower paid and undertrained correctional officers, and inadequate medical care. For example, Lee Adjustment Center, a CoreCivic prison in Kentucky, has one officer for every three units, whereas Vermont state prisons typically have one per unit.<sup>43</sup> Criminologist James Austin argues that lower wages and limited benefits produce a less productive staff, which also “limits their ability to manage medium and maximum custody inmates.”<sup>44</sup> A 2016 Department of Justice Report found that private prisons have a 28 percent higher rate of inmate-on-inmate assaults and more than double the rate of inmate-on-staff assaults.<sup>45</sup> Services such as food, medical, and telecommunications services are further contracted out to companies such as Jpay and Corizon Health. Inmates can only make calls and send emails through these services, which charge exorbitant prices – telephone calls can cost up to \$15.00, and Jpay charges 40 cents to send an email.<sup>46</sup> Private prisons also save money by rejecting the most expensive and difficult prisoners, such as those with severe illness, chronic conditions, limited physical capacity, or high-need mental health conditions. State facilities, on the other hand, must accept prisoners and provide care regardless of condition.<sup>47</sup> When Florida Representative David Richardson visited MTC-owned and operated Gadsden Correctional Facility in Florida, he observed medical care being withheld from inmates in order to save money.<sup>48</sup>

The inadequate medical care and effects of under-staffing (and under-training) in private prisons have led to numerous lawsuits. In 2010, the ACLU filed a class action suit against CoreCivic-operated Idaho State Correctional Institution, which is so violent that it is known by inmates as “Gladiator School.” CoreCivic admitted that they were understaffed and had forced staff to falsify documents to cover up the vacancies. In a 2012 lawsuit against GEO Group’s Walnut Grove Correctional Facility in Mississippi, a federal judge referred to the facility as “a cesspool of unconstitutional and inhuman acts and conditions.”<sup>49</sup>

All of this suggests that the premise of prison privatization – its lower cost to the public – is debatable at best. First, to the extent that average costs per inmate are lower in private prisons because they only accept less expensive and difficult prisoners, the apparent financial savings are an illusion. Lower cost per

<sup>41</sup> Addae, “Challenging the constitutionality of private prisons,” pp. 529-530.

<sup>42</sup> Ibid., pp. 532-533.

<sup>43</sup> Eisen, *Inside Private Prisons*, p. 170.

44 Ibid., p. 175.

<sup>45</sup> Office of the Inspector General, “Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons,” (Washington, DC: U.S. Department of Justice, August 2016), <https://docs.google.com/viewer?url=https%3A%2F%2Fojig.justice.gov%2Freports%2F2016%2F61606.pdf>.

<sup>46</sup> Eisen, *Inside Private Prisons*, pp. 74-75.

47 Richard A. Oppel Jr., "Private Prisons Found to Offer Little in Savings," *New York Times* May, 19, 2011, [https://www.nytimes.com/2011/05/19/us/19prisons.html?\\_r=2&ref=us](https://www.nytimes.com/2011/05/19/us/19prisons.html?_r=2&ref=us).

48 Ibid., p. 205.

49 Ibid., p. 179.

inmate is only meaningful if the comparison is between comparable inmate populations. Second, to the extent that lower financial costs are achieved through inadequate staffing, prison security, and medical care, the financial cost per inmate is not an adequate measure of the full costs of private incarceration. In economic terms, there are negative externalities or costs borne by the public in addition to the fees paid to private prison operators. These costs may include the lower lifetime productivity and higher Medicaid and social service costs of former inmates who are denied needed care and security during their incarceration. In legal and ethical terms, there are further serious costs in tolerating “unconstitutional and inhuman acts and conditions.” The survival of a functional system of justice requires that constitutional norms and commitments to protect human rights be honored.

*Lobbying.* Private prison companies have a vested interest in high incarceration rates. A 2010 CCA Annual Report states that, “the demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. . . [R]eductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities.”<sup>50</sup> Both CoreCivic and GEO Group have spent millions of dollars lobbying at the state and federal levels for policies that increase incarceration and against those that would limit it. GEO Group spent \$2.5 million on lobbying expenditures from 2004 to 2012, while CoreCivic spent over \$17 million from 2002 to 2012. Between 2003 and 2010, GEO Group spent \$2.4 million on state election campaigns. Legislators on the U.S. House Appropriations Committee have received campaign funds from both groups.<sup>51</sup> And, although CoreCivic says that it “does not, under longstanding policy, lobby for or against policies or legislation that would determine the basis for or duration of an individual’s incarceration or detention,”<sup>52</sup> between 1998 and 2014, CoreCivic spent over \$21 million lobbying the US Congress and federal agencies on bills relating to immigration, detention, and private prisons, including the Justice is Not for Sale Act and the Private Prison Information Act. Likewise, the GEO Group lobbied Congress regarding legislation affecting their business interests such as the Corrections Act, Recidivism Risk Reduction Act, Border Security Act, and Immigration Modernization Act.<sup>53</sup> Further, both GEO Group and CoreCivic benefitted from active partnerships with the American Legislative Exchange Council (ALEC), an organization that hosts conferences and writes model bills, which are then introduced in state capitols by ALEC members (one-quarter of state legislators are members). GEO Group and CoreCivic were long-time members, and CoreCivic (then CCA) Vice President John Rees served concurrently as ALEC criminal justice task force co-chair until 2000. In 1995, twenty-five states enacted “truth-in-sentencing” laws based on ALEC model legislation requiring prisoners to serve 85 percent of their sentences in prison. Eleven states enacted ALEC model “three-strikes” laws.<sup>54</sup> The effect of these laws is to increase the duration of time served, by limiting the discretion of parole boards and courts to judge that less time served is more just and consistent with the public interest.

From the 1930s to mid-1970s, all US jurisdictions, both state and federal, had indeterminate sentencing systems, which were structured in such a way that sentences could be tailored to the individual in question – both in terms of that individual’s rehabilitative treatment needs and the risk they posed to the public.<sup>55</sup>

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<sup>50</sup> ACLU, “Banking on Bondage: Private Prisons and Mass Incarceration,” (New York: American Civil Liberties Union, Nov. 2011), [https://www.aclu.org/files/assets/bankingonbondage\\_20111102.pdf](https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf), citing CCA 2010 Annual Report on Form 10-K 19 (2010) at pp. 19-20.

<sup>51</sup> Eisen, *Inside Private Prisons*, pp. 158, 188; Kathryn Johnson, “Appropriations Bills Preserve Profits for Private Prison Companies,” *The Hill* Aug. 22, 2016, <https://thehill.com/blogs/congress-blog/homeland-security/292057-appropriations-bills-preserve-profits-for-private>.

<sup>52</sup> Eisen, *Inside Private Prisons*, p. 189.

<sup>53</sup> *Ibid.*, p. 188.

<sup>54</sup> *Ibid.*, pp. 195-196.

<sup>55</sup> Michael Tonry, “Reconsidering Indeterminate and Structured Sentencing, Research in Brief,” *National Institute of Justice* 1999, <https://www.ncjrs.gov/pdffiles1/nij/175722.pdf>, p. 3.

In these systems, legislators set maximum authorized sentences for specific offenses, which then allow judges to select imprisonment, probation, or fines as punishment, as well as set a maximum sentence for the individual based on the facts of that individual's case and situation. Corrections officials and parole boards have influence over actual release dates, regularly reviewing the individual's eligibility for parole and release.<sup>56</sup> "Truth-in-sentencing" laws both limit that judicial discretion, by ensuring certain minimum sentences are served in prison, and increase time served. For example, in New Jersey, prior to the introduction of determinate sentencing with an 85% requirement in the 1990s, the average percentage of a given sentence served was around 40%.<sup>57</sup> Additionally, "truth-in-sentencing" laws limit or eliminate the possibility of parole for certain types of crimes. In some states, parole is allowed after 85% of time is served, in others, parole is eliminated entirely.<sup>58</sup> "Three-strikes" laws view individuals as beyond rehabilitation once they have committed three crimes and therefore impose a penalty much more severe than usual after the third crime. Three relatively minor offenses can result in life imprisonment.<sup>59</sup> Though many jurisdictions still use indeterminate sentencing, twenty-nine states have adopted mandatory sentencing procedure reforms. Half of all states have adopted "three-strikes" policies, and over half use "truth-in-sentencing" laws. A recent study by the National Research Council found that half of prison population growth between 1980 and 2010 is due in part to a rise in admissions to prison and in part to greater time served in prison.<sup>60</sup>

In sum, there is clear evidence that prison industry lobbying and participation in drafting "model" legislation contribute to keeping the overall rate and cost of incarceration in the U.S. extraordinarily high by world standards, whether or not the financial cost of incarceration per inmate may be lower.<sup>61</sup>

*Lack of transparency.* Private prisons are not subject to the same standards of transparency as their public counterparts. Unlike state prisons, in most US states private prisons are not covered by FOIA and open record laws.<sup>62</sup> For example, private prisons generally do not have to report data such as how many inmates are held in isolation. However, some state courts now require those private prisons that receive public funding to comply with disclosure requests.<sup>63</sup> Beyond the difficulties this presents to evaluating safety in private prisons, the lack of access to equivalent datasets makes it all but impossible to compare the efficacy of public and private prisons and judge whether conditions in the latter are consistent with constitutional standards and the public interest.<sup>64</sup>

#### **e. The flexibility argument for private prisons**

In addition to presumed cost savings, another argument made for private prisons is that they allow for flexibility. Private facilities are not obligated to provide state pensions to their employees, and they can easily shed capacity when prison populations drop. Prisoners can also be transferred to them quickly from other, often over-crowded facilities.<sup>65</sup>

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<sup>56</sup> Ibid., p. 1.

<sup>57</sup> William J. Sabol, et al., "Influences of Truth-in-Sentencing Reforms on Changes in States' Sentencing Practices and Prison Populations, Executive Summary." Report to the National Institute of Justice by the Urban Institute Justice Policy Center, July 3, 2002, <https://www.ncjrs.gov/pdffiles1/nij/grants/195163.pdf>, p. 16.

<sup>58</sup> Ibid., p. 4.

<sup>59</sup> James Cullen, "Sentencing Laws and How They Contribute to Mass Incarceration," *Brennan Center for Justice*, Oct. 5, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>.

<sup>60</sup> Marc Mauer, "Long-Term Sentences: Time to Reconsider the Scale of Punishment," *The Sentencing Project*, Nov 5, 2018, <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

<sup>61</sup> For comparative data and trends in U.S. incarceration, see *The Sentencing Project*, Fact Sheet: Trends in U.S. Corrections, 2019, <https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>.

<sup>62</sup> Eisen, *Inside Private Prisons*, p. 181.

<sup>63</sup> Ibid., p. 197. This includes Texas, Vermont, Tennessee, and Florida.

<sup>64</sup> Ibid., p. 172.

<sup>65</sup> Ibid., p. 90.



## II. Actions Taken by Peer Institutions

In 2015, **Columbia University** adopted a policy of divestment from companies engaged in the operation of private prisons,<sup>66</sup> including CoreCivic (then Corrections Corporation of America) and British private security company G4S.<sup>67</sup> The Committee cited litigation alleging “violations of constitutionally required minimal levels of maintenance, welfare, and medical conditions,” and it noted with particular concern that the incentives for increasing the level of incarceration in the United States are inherent in the private prison business model. They concluded that an investment “whose positive performance is linked to an increase in already high levels of incarceration” did not fit with the University’s mission and values.<sup>68</sup>

The **University of California** system divested from CCA, GEO Group, and G4S in 2015 following student pressure.<sup>69</sup>

**Yale University** divested from CCA in 2007 but did not rule out future investment in private prison companies.<sup>70</sup> They revisited the issue in 2018, and while the Committee found that based on their investment guidelines divestment was not warranted, they did adopt the recommendation that if Yale ever did invest in private prison companies, “the University should support appropriate, reasonable, and well-constructed shareholder resolutions related to the improvement of operations of private prisons and the disclosure of political contributions and lobbying activities.”<sup>71</sup>

**Georgetown University** announced in 2017 that it would continue to avoid investment in private prisons in accordance with its Socially Responsible Investing Policy, which aims to “align the university’s investment commitment to social justice, protection of human life and dignity, stewardship for the planet and promotion of the common good.” Georgetown’s Committee on Investments and Social Responsibility (CISR) recommended a policy of no direct investment in private prisons.<sup>72</sup> The CISR determined that it would be inconsistent with Georgetown’s Catholic and Jesuit values to invest in companies that profit from the incarceration of human beings, citing a statement from a 2000 U.S. Conference of Catholic Bishops, which argues that the profit motive of private prisons may undermine efforts to “change behaviors, treat substance abuse, and offer skills necessary for reintegration,” as well as the substandard conditions frequently found in for-profit prisons.<sup>73</sup>

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<sup>66</sup> Casey Tolan, “What the DOJ’s new private prison policy could mean for the prison divestment movement,” *Splinter News* Aug. 19, 2016, <https://splinternews.com/what-the-doj-s-new-private-prison-policy-could-mean-for-1793861292>.

<sup>67</sup> Wilfred Chan, “Columbia becomes first US University to divest from prisons,” CNN, June 24, 2015, <https://www.cnn.com/2015/06/23/us/columbia-university-prison-divest/index.html>.

<sup>68</sup> “ACSRI Resolution on the Private Prison Divestment Proposal,” *Columbia University*, March 2015, <https://finance.columbia.edu/files/gateway/content/sri/ASCRI%20Resolution%20on%20PPD%2BViews%20FINAL%20040115.pdf>.

<sup>69</sup> Jason Song, “UC system divests \$30 million in prison holdings amid student pressure,” *Los Angeles Times*, 26 December 2015, <https://www.latimes.com/local/education/la-me-uc-divestment-prisons-20151226-story.html>. We were unable to locate any specific reasoning behind the decision, beyond action by student groups.

<sup>70</sup> Chan, “Columbia becomes first US University to divest from prisons.”

<sup>71</sup> Memo on Private Prison Investment by the Yale Advisory Committee on Investor Responsibility. 2018, <https://static1.squarespace.com/static/55db7b87e4b0dca22fba2438/t/5bbcf503c830256cbbd1c815/1539110147909/Private+Prison.pdf>, p. 2.

<sup>72</sup> Elizabeth Pankova, “Board of Directors Announces Continued Avoidance of Investment in Private Prisons,” *The Georgetown Voice*, October 14, 2017, <https://georgetownvoice.com/2017/10/14/board-of-directors-announces-continued-avoidance-of-investment-in-private-prisons/>.

<sup>73</sup> Memo from the Committee on Investments and Social Responsibility to the Committee on Finance and Administration, Georgetown University Board of Directors, March 2, 2017, <https://georgetown.app.box.com/s/jv5fgdjrx8rdzfudse783jj59dushkk2>.



**Hampshire College** amended the language of its institutional investment policy in 2015 to include a list of industries not favored for investing, which includes businesses that operate private prisons and provide security and surveillance services.<sup>74</sup>

**Princeton University** considered the issue for two years before deciding not to divest. While the Committee shared concerns about mass incarceration in the United States, they argued that private prisons are not themselves responsible for the policy decisions that led to mass incarceration, but rather, a consequence;<sup>75</sup> that there is too little research on the actual outcomes and performance of private prisons to determine whether and how they contravene University values, or to categorically reject them; that since there was not broad consensus on the issue on campus, divestment could inhibit the exchange of ideas; that prison privatization is not an outlier historically or within the broader context of government privatization.<sup>76</sup> It is worth noting that if Princeton chooses to divest from a sector or company, they remove it entirely from their portfolio, including managed funds.<sup>77</sup> Perhaps because of this, the trustees set an exceedingly high bar for divestment.<sup>78</sup> It is also worth noting that at the time, Princeton was not invested in any of the companies of concern and had not been for years.<sup>79</sup>

**Syracuse University** considered divestment in May 2018 and took no action.

**Harvard University** has not acted on the issue of private prisons, although it has announced that its holdings of firms that own and operate private prisons are small. A group of students recently issued a Harvard Prison Divestment Campaign report, and several students have sued the University to compel it to divest.<sup>80</sup> The report looks at both direct investments and investments made through various funds. It makes a broad abolitionist argument that targets not only companies that operate private prisons such as CoreCivic and GEO Group, but also companies that supply services to prisons (private and public) ranging from telecommunications to medical services. The ethical justification for divestment is presented as a claim that the current “prison-industrial complex” is a continuation of slavery and post-Reconstruction enforced labor/policing schemes as well as white supremacy and structural racism. The harmful effects of this system fall mainly on Black, Brown and poor people, who are exploited economically and often trapped in and by debt. The report notes that divestment from private prison operators alone is not very controversial, given that JP Morgan Chase has already done it.

According to NBC, as of September 2019, there are also active student campaigns for divestment at the University of Chicago, Johns Hopkins University, MIT, Swarthmore College, Florida State University, University of Florida, Middlebury College, Portland State University, and Grinnell College.<sup>81</sup> Students at

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<sup>74</sup> “Hampshire College amends investment policy to exclude prison industry,” *Hampshire College*, Office of Communications, November 24, 2015, <https://www.hampshire.edu/news/2015/11/24/hampshire-college-amends-investment-policy-to-exclude-prison-industry>.

<sup>75</sup> “CPUC Resources Committee Annual Report for the Academic Year 2017-2018,” Princeton University, 2018, [https://cpucresources.princeton.edu/sites/cpucresources/files/cpuc\\_resources\\_committee\\_report\\_2017-2018.pdf](https://cpucresources.princeton.edu/sites/cpucresources/files/cpuc_resources_committee_report_2017-2018.pdf), 8.

<sup>76</sup> Ibid. 9.

<sup>77</sup> Ibid. 3.

<sup>78</sup> The Trustees’ divestment guidelines can be found here:

<https://cpucresources.princeton.edu/sites/cpucresources/files/guidelines/GUIDELINES-FOR-RESOURCES-COMMITTEE.pdf>.

<sup>79</sup> “Resources Committee issues report on private prison divestment,” Princeton Office of Communications, April 20, 2018, <https://www.princeton.edu/news/2018/04/20/resources-committee-issues-report-private-prison-divestment>.

<sup>80</sup> Janita Davis, “Harvard Students Connect the Dots Between Slavery and Prison,” *Yes!* March 4, 2020, <https://www.yesmagazine.org/social-justice/2020/03/04/harvard-students-divest-prisons/>.

<sup>81</sup> Haimy Assefa and Erik Ortiz, “‘An uphill battle’: Harvard students urge school to pull investments that support prisons,” NBC, Sept. 3, 2019, <https://www.nbcnews.com/news/us-news/uphill-battle-harvard-students-urge-school-pull-investments-support-prisons-n1038686>.

the University of Pennsylvania petitioned to divest from several private prison companies in 2015, but it does not appear that the board of trustees considered the matter.<sup>82</sup>

Other institutions that have announced or carried out divestment from CoreCivic and GEO Group include New York City public pension funds in 2017,<sup>83</sup> New York State in 2018,<sup>84</sup> and JP Morgan Chase, Wells Fargo, Bank of America, SunTrust, BNP Paribas, and Fifth Third Bancorp, all in 2019. These six banks have reportedly provided \$1.9 billion or 72% of the current private financing of CoreCivic and GEO Group, and they have publicly committed themselves to providing no new funding beyond the current agreements in place.<sup>85</sup> Their public announcements followed coordinated “petitions, protests, and sit-ins” by a coalition of 100 groups concerned about the separation of families at immigrant detention centers, and about the mass incarceration of immigrants more generally.<sup>86</sup>

### III. Analysis

The concerns raised by peer institutions are substantial. Princeton is the singular outlier in making a deliberate decision not to divest. We regard the considerations that shaped its decision to be either inapplicable to the University of Rochester or unpersuasive.

First, unlike the U of R, Princeton is not open to policies concerning direct investment that are not similarly reflected in its managed funds.

Second, its Committee held that private prisons are not responsible for the mass incarceration that facilitated their own creation. Clearly this is true, but the fact remains that for-profit prison corporations have intervened through extensive lobbying, “model” legislation, and campaign contributions to sustain high levels of incarceration in the interest of profitability. Private prisons have influenced incarceration policy through decades of lobbying efforts.

Third, the Princeton Committee argued further that, since there was no broad consensus on the issue on its campus, divestment could inhibit the exchange of ideas. We agree that appropriate institutional neutrality on controversial matters is important to the protection of academic freedom, but this is not a persuasive argument in this case. First, any tendency of a non-investment pledge to inhibit robust academic debate would likely be greater, not smaller, if there were broad consensus. Second, it is unclear how a University’s pledge to avoid investment in a market sector in which it was not invested would inhibit academic freedom. The situation might be very different if the institution were to stake its future on investment in something that could be seriously questioned on ethical grounds, such as autonomous weapons systems. In such a hypothetical case, the gravity of the University’s financial interest in the industry might have a chilling effect on dissenting opinions. By contrast, if the University refrains from investing in private prisons it acquires no institutional interest in that sector, and therefore has no incentive to restrain free expression of opinion on the subject.

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<sup>82</sup> Jade Huynh and Lauren Ballester, “Guest Column: Penn divest from displacement,” *The Daily Pennsylvanian*, March 3, 2015, <https://www.thedp.com/article/2015/03/guest-column-penn-divest-from-displacement>. For past actions, see the Penn divestment website: <https://secretary.upenn.edu/trustees-governance/divestment>.

<sup>83</sup> “New York City Pension System to Divest from Private Prisons,” *New York Civil Liberties Union*, June 8, 2017, <https://www.nyclu.org/en/press-releases/new-york-city-pension-system-divest-private-prisons>.

<sup>84</sup> <https://prisondivest.com/why-divestment/campaign-victories/>.

<sup>85</sup> Mike Ludwig, “Big banks are divesting from private prisons, thanks to anti-ICE activism,” *Truthout*, July 23, 2019, <https://truthout.org/articles/big-banks-are-divesting-from-private-prisons-thanks-to-anti-ice-activism/>.

<sup>86</sup> *Ibid.*

Fourth and finally, the Princeton Committee argued that prison privatization is not an outlier historically or within the broader context of government privatization. We have carefully reviewed the principal historical account on which the Committee relied,<sup>87</sup> and while it is true that prison privatization is not an outlier historically, the history in question is disturbing. As we noted above, the financial incentives to provide convict labor led states to rewrite laws so as to increase their prison populations. In other words, the history of introducing a profit motive into prison operations *reinforces* the justified apprehension that the impartial justice owed the accused is less likely to be secured when profits are at stake. In the context of privatization of government services, the private, for-profit incarceration of prisoners and immigrant detainees stands out as unique in the hazard it presents to the protection of fundamental liberties.

The Constitutionally guaranteed rights and liberties of fellow Americans and rights of immigrant petitioners for refugee status guaranteed by international treaties and US law are the fundamental issue at stake. Fair and impartial public adjudication of the criminal grounds for depriving individuals of such rights and liberties is a fundamental right, and adequate public oversight to ensure that conditions of incarceration are consistent with Constitutional standards of humane treatment is similarly a solemn public trust. The intervention of private for-profit interests, whether through lobbying or through cost-cutting that causes harm shrouded from public view, is a matter of fundamental concern. It is unseemly at best for institutions of a free society to seek profits through such investments.

Fair and impartial adjudication of the grounds for and duration of imprisonment is a fundamental due process right. In a system in which judges, juries, and parole boards play roles in such adjudication, and are charged with protecting the rights and interests of both the public and the accused, there should be no role for profit-seeking in preempting the judgment of these public actors though misleadingly titled “three-strikes” and “truth-in-sentencing” laws. As we noted above, the effect of these laws is to increase the duration of time served, by limiting the discretion of parole boards and courts to judge that less time served is more just and consistent with the public interest.

It is clear from the many lawsuits brought by the ACLU and others that in many cases, the introduction of a profit motive compromises the conditions in prisons and public oversight of those conditions. We noted above that there are serious social and ethical costs in tolerating the “unconstitutional and inhuman acts and conditions” observed in private prisons. In the absence of far greater transparency, which may or may not ever be achieved and will certainly be fought by commercial prison providers, the public and its representatives have no assurance that their legal obligations to a vulnerable captive population are being met. Nor can we assess the full monetary and social costs of private prisons or judge whether the cost-savings premise for their existence is even sound.

#### **IV. Committee Recommendation**

The Ethical Investment Advisory Committee recommends that the University of Rochester Investment Committee adopt a policy of making no direct investments in any publicly-traded company that owns or operates private prisons, including CoreCivic and its subsidiaries, GEO Group, and G4S. Additionally, the Investment Office will notify the EIAC of any private prison equity holding that may appear in the portfolio, and it will notify its investment managers of this policy.

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<sup>87</sup> Eisen, *Inside Private Prisons*.