

Annual Privatization Report 2015

Criminal Justice and Corrections

By Lauren Galik and Leonard Gilroy



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A. 2014–15 Corrections Privatization Overview

by Leonard Gilroy

According to the most recent data compiled by the Bureau of Justice Statistics, 2013 marked a break from three consecutive years of overall decline in the total U.S. prison population, with a slight uptick in the federal and state prison population relative to the previous year.¹ The combined federal and state prison population increased to 1,574,741 at the end of 2013, up 0.28% from 1,570,397 in 2012. The rise was largely due to an increase in the total state prison population of over 6,200 since 2012, a 0.5% increase. The federal prison population fell slightly over the same time period by over 1,900 prisoners, a 0.9% decrease, marking the first decline in the federal prison population in over three decades.

Overall, there was a net increase in the total U.S. prison population of over 4,200 between the end of 2012 and the end of 2013. Over that same period, the total U.S. prison population housed in privately operated prisons decreased by 2.9%, from 146,120 in 2012 to 141,921 in 2013.

At the federal level, the total prison population rose from 145,416 in 2000 to 215,866 in 2013, an increase of 48.5%. Notably, the number of federal prisoners housed in private facilities has risen by over 165% during that same period (from 15,524 in 2000 to 41,159 in 2013), with the share of federal prisoners housed in private prisons increasing from 10.7% in 2000 to 19.1% in 2013. Shown in Table 1, this increase illustrates the trend in federal agencies' growing preference to rely on PPPs for new prison capacity, as opposed to developing government-run facilities.

At the state level, the overall share of offenders held in private facilities has also increased since 2000. The total state prison population rose from 1,248,815 in 2000 to 1,358,875 in 2013, an 8.8% increase. The number of those state prisoners housed in private facilities rose from 75,291 to 100,762 over that same time period, a 33.8% increase. Overall, the share of state prisoners housed in private prisons increased slightly from 6.0% in 2000 to 7.4% in 2013.

Table 1: Federal and State Prison Population in Private Facilities (2000–2013)

| Year | Total Federal Prison Population | Federal Population in Private Facilities | % Federal Population in Private Facilities | Total State Prison Population | State Population in Private Facilities | % State Population in Private Facilities |
|------------------------------------|---------------------------------|--|--|-------------------------------|--|--|
| 2000 | 145,416 | 15,524 | 10.7% | 1,248,815 | 75,291 | 6.0% |
| 2005 | 187,618 | 27,046 | 14.4% | 1,338,292 | 80,894 | 6.0% |
| 2010 | 209,771 | 33,830 | 16.1% | 1,404,032 | 104,361 | 7.4% |
| 2011 | 216,362 | 38,546 | 17.8% | 1,382,606 | 101,730 | 7.4% |
| 2012 | 217,815 | 40,446 | 18.6% | 1,352,582 | 105,674 | 7.8% |
| 2013 | 215,866 | 41,159 | 19.1% | 1,358,875 | 100,762 | 7.4% |
| Average annual % change, 2000–2010 | 3.3% | 7.1% | n/a | 1.1% | 3.0% | n/a |
| Average annual % change, 2010–2013 | 0.7% | 4.9% | n/a | -0.8% | -0.9% | n/a |
| Percent change, 2011–2013 | -0.9% | 1.8% | n/a | 0.5% | -4.6% | n/a |

Sources:

Total federal and state prison population data (2011–2013): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, September 2014, p. 2, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014).

Total federal and state prison population data (2000–2010): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 2, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

Federal and state private prison population data (2011–2013): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, September 2014, p. 14, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014).

Federal and state private prison population data (2000, 2010): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 32, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

Federal and state private prison population data (2001–2009): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2010*, February 2012, p. 30, <http://goo.gl/73pVs> (accessed January 23, 2013).

Percent federal and state population in private facilities (and related percent changes): Author's calculation.

Note: State-level private facility population totals differ from those reported by BJS due to its exclusion of California inmates held in contracted beds in out-of-state private facilities for 2010–2013. Data for each year were adjusted to include California inmates held in contracted out-of-state correctional facilities, as reported in the year-end (December) population reports published by the California Department of Corrections and Rehabilitation (http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html).

Taken together, the total federal and state prison population increased by 12.9% from 2000 to 2013, rising from 1.39 million to 1.57 million (see Table 2 and Figure 1). By comparison, the federal and state inmate population housed in private facilities increased by 56% over the same time period and now accounts for 9.0% of the total prison population. While these data certainly reflect an increasing reliance on corrections PPPs by federal and state officials over the last decade, the vast majority of inmates—approximately 91%—continue to be housed in government-run prisons.

| Year | Total Federal and State Prison Population | Federal and State Population in Private Facilities | % Federal and State Population in Private Facilities |
|------------------------------------|---|--|--|
| 2000 | 1,394,231 | 90,815 | 6.5% |
| 2005 | 1,525,910 | 107,940 | 7.1% |
| 2010 | 1,613,803 | 138,191 | 8.6% |
| 2011 | 1,598,968 | 140,276 | 8.8% |
| 2012 | 1,570,397 | 146,120 | 9.3% |
| 2013 | 1,574,741 | 141,921 | 9.0% |
| Average annual % change, 2000–2010 | 1.3% | 3.8% | n/a |
| Average annual % change, 2010–2013 | -0.6% | 0.7% | n/a |
| Percent change, 2012–2013 | 0.3% | -2.9% | n/a |

Sources:

Total federal and state prison population data (2011–2013): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, September 2014, p. 2, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014).

Total federal and state prison population data (2000–2010): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 2, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

Federal and state private prison population data (2011–2013): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, September 2014, p. 14, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014).

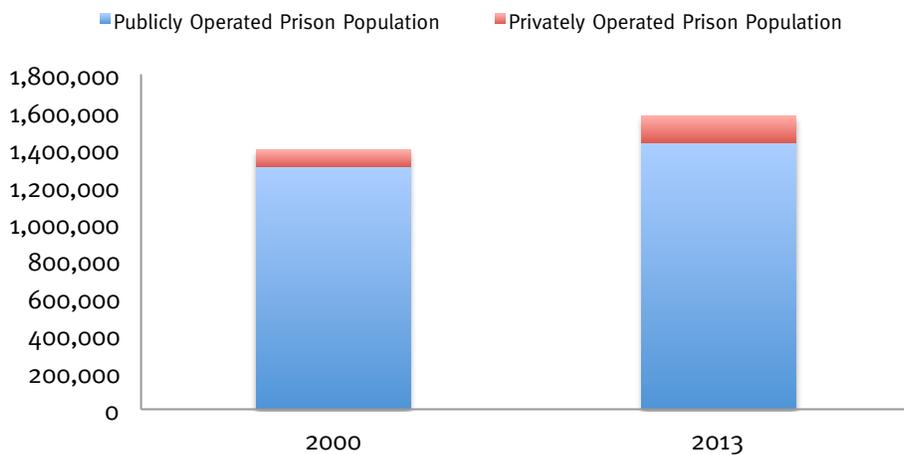
Federal and state private prison population data (2000, 2010): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 32, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

Federal and state private prison population data (2001–2009): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2010*, February 2012, p. 30, <http://goo.gl/73pVs> (accessed January 23, 2013).

Percent federal and state population in private facilities (and related percent changes): Author's calculation.

Note: Private facility population totals differ from those reported by BJS due to its exclusion of California inmates held in contracted beds in out-of-state private facilities for 2010–2013. Data for each year were adjusted to include California inmates held in contracted out-of-state correctional facilities, as reported in the year-end (December) population reports published by the California Department of Corrections and Rehabilitation (http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html).

Figure 1: Proportion of Publicly vs. Privately Operated Prison Population (2000–2013)



Sources: 2013 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, September 2014, p. 14, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014). BJS data adjusted to include 8,900 California inmates held in contracted out-of-state correctional facilities, as reported in the December 2013 population report published by the California Department of Corrections and Rehabilitation (http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Top1a_Archive.html).

2000 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 32, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

A total of 29 states held some inmates in privately operated prisons in 2013, though state usage of corrections PPPs varies considerably, as shown in Table 3. Some states have large proportions of their inmate populations in privately operated facilities—including New Mexico (43.6%), Montana (40.1%), Idaho (36.4%), Oklahoma (25.6%), Hawaii (25.2%) and Vermont (24.0%)—while other states make limited use of corrections PPPs, including Alabama (1.7%), Pennsylvania (1.1%), Kansas (1.0%), Alaska (0.5%), South Dakota (0.4%), Maryland (0.1%), North Carolina (0.1%) and South Carolina (0.1%).

In terms of absolute numbers, the states with the highest numbers of inmates held in privately operated prisons are Texas (14,538), Florida (11,801), California (10,903), Georgia (7,900), Oklahoma (7,051) and Arizona (6,405). These six states account for over half of the total number of state inmates held in privately operated prisons.

The number of inmates held in privately operated prisons held fairly steady in most states between 2012 and 2013, with the exception of Texas, which saw a drop in over 4,000 inmates in private prisons, and California, which added over 1,700 inmates to private facilities.

Table 3: Federal and State Prisoners in Private Facilities, by Jurisdiction, 2000–2013

| Jurisdiction | Inmates in Private Facilities (2000) | Inmates in Private Facilities (2010) | Inmates in Private Facilities (2011) | Inmates in Private Facilities (2012) | Inmates in Private Facilities (2013) | Percent of Total Jurisdictional Population (2012) |
|----------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---|
| Alabama | 0 | 1,024 | 545 | 538 | 554 | 1.7% |
| Alaska | 1,383 | 1,598 | 1,688 | 1,733 | 27 | 0.5% |
| Arizona | 1,430 | 5,356 | 6,457 | 6,435 | 6,405 | 15.6% |
| Arkansas | 1,540 | 0 | 0 | 0 | 0 | 0.0% |
| California * | 4,547 | 12,416 | 10,001 | 9,508 | 10,903 | 8.0% |
| Colorado | 2,099 | 4,498 | 4,303 | 3,939 | 3,898 | 19.1% |
| Connecticut | n/a | 883 | 855 | 817 | 725 | 4.1% |
| Delaware | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Florida | 3,912 | 11,796 | 11,827 | 11,701 | 11,801 | 11.5% |
| Georgia | 3,746 | 5,233 | 5,615 | 7,900 | 7,900 | 14.6% |
| Hawaii | 1,187 | 1,931 | 1,767 | 1,636 | 1,421 | 25.2% |
| Idaho | 1,163 | 2,236 | 2,332 | 2,725 | 2,745 | 36.4% |
| Illinois | n/a | 0 | 0 | n/a | 0 | 0.0% |
| Indiana | 991 | 2,817 | 2,952 | 4,251 | 4,438 | 14.8% |
| Iowa | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Kansas | n/a | 0 | 74 | 83 | 95 | 1.0% |
| Kentucky | 1,268 | 2,127 | 2,050 | 812 | 0 | 0.0% |
| Louisiana | 3,065 | 2,921 | 2,951 | 2,956 | 3,158 | 8.0% |
| Maine | 11 | 0 | 0 | 0 | 0 | 0.0% |
| Maryland | 127 | 70 | 78 | 27 | 29 | 0.1% |
| Massachusetts | n/a | 0 | 0 | 0 | 0 | 0.0% |
| Michigan | 449 | 0 | 0 | 0 | 0 | 0.0% |
| Minnesota | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Mississippi | 3,230 | 5,241 | 4,669 | 4,334 | 4,394 | 20.0% |
| Missouri | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Montana | 986 | 1,502 | 1,418 | 1,418 | 1,459 | 40.1% |
| Nebraska | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Nevada | 508 | 0 | 0 | n/a | n/a | n/a |
| New Hampshire | 0 | 0 | 0 | 0 | 0 | 0.0% |
| New Jersey | 2,498 | 2,841 | 2,887 | 2,717 | 2,735 | 12.2% |
| New Mexico | 2,132 | 2,905 | 2,853 | 2,999 | 2,984 | 43.6% |
| New York | 0 | 0 | 0 | 0 | 0 | 0.0% |
| North Carolina | 330 | 208 | 30 | 30 | 30 | 0.1% |
| North Dakota | 96 | 0 | 0 | 0 | 0 | 0.0% |
| Ohio | 1,918 | 3,038 | 3,004 | 5,343 | 5,487 | 10.6% |
| Oklahoma | 6,931 | 6,019 | 6,026 | 6,423 | 7,051 | 25.6% |
| Oregon | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Pennsylvania | 0 | 1,015 | 1,195 | 1,219 | 546 | 1.1% |
| Rhode Island | n/a | 0 | 0 | 0 | 0 | 0.0% |
| South Carolina | 13 | 17 | 20 | 16 | 15 | 0.1% |
| South Dakota | 45 | 5 | 11 | 15 | 16 | 0.4% |

Table 3: Federal and State Prisoners in Private Facilities, by Jurisdiction, 2000–2013

| Jurisdiction | Inmates in Private Facilities (2000) | Inmates in Private Facilities (2010) | Inmates in Private Facilities (2011) | Inmates in Private Facilities (2012) | Inmates in Private Facilities (2013) | Percent of Total Jurisdictional Population (2012) |
|---------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|---|
| Tennessee | 3,510 | 5,120 | 5,147 | 5,165 | 5,103 | 17.9% |
| Texas | 17,432 | 19,155 | 18,603 | 18,617 | 14,538 | 8.6% |
| Utah | 208 | 0 | 0 | 0 | 0 | 0.0% |
| Vermont | 0 | 562 | 522 | 504 | 499 | 24.0% |
| Virginia | 1,571 | 1,560 | 1,569 | 1,559 | 1,554 | 4.2% |
| Washington | 0 | 0 | 0 | 0 | 0 | 0.0% |
| West Virginia | 0 | 0 | 0 | 0 | 0 | 0.0% |
| Wisconsin | 4,349 | 50 | 36 | 18 | 0 | 0.0% |
| Wyoming | 275 | 217 | 245 | 236 | 252 | 10.9% |
| State Total * | 75,291 | 104,361 | 101,730 | 105,674 | 100,762 | 7.4% |
| Federal Total | 15,524 | 33,830 | 38,546 | 40,446 | 41,159 | 19.1% |
| U.S. Total * | 90,815 | 138,191 | 140,276 | 146,120 | 141,921 | 9.0% |

Sources: 2012-2013 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, September 2014, p. 14, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014).

2011 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2012*, December 2013, p. 40, <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf> (accessed December 19, 2013).

2000, 2010 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 32, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

* Totals differ from those reported by BJS due to its exclusion of California inmates held in contracted beds in out-of-state private facilities for 2010–2013. Data for each year were adjusted to include California inmates held in contracted out-of-state correctional facilities, as reported in the year-end (December) population reports published by the California Department of Corrections and Rehabilitation (http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html).

B. Federal Criminal Justice Reform Update

by Lauren Galik

At the federal level, the U.S. Justice Department has made moves to rein in abuses of civil asset forfeiture through two separate memoranda issued by Attorney General Eric Holder.

In January 2015, Holder issued a memorandum prohibiting federal agency forfeiture—called “adoptions”—of assets seized by state and local law enforcement agencies.² Adoption is when state or local law enforcement agencies seize assets, then ask a federal agency of the Justice Department to pursue forfeiture under federal law, and is usually used when state law prohibits the type of forfeiture these law enforcement agencies are attempting, but federal law does not.³ In other words, Holder’s policy prohibits state and local police agencies from circumventing state law aimed at reining in civil asset forfeiture abuses.

This policy does not apply to the following:

- Seizures by state and local authorities working in a joint task force with federal authorities;
- Seizures by state and local authorities that are coordinated with federal authorities or a result of joint federal-state investigations; and
- Seizures pursuant to federal seizure warrants that were obtained from federal courts to take custody of assets originally seized under state law.⁴

The potential effects of this new policy remain unclear. The policy will not reform federal civil asset forfeiture and will not affect laws in states whose forfeiture laws do not restrict the use of civil asset forfeiture already. Moreover, according to Radley Balko, reporter at *The Washington Post*, adoption “makes up only 14 percent of the equitable sharing program, which itself only makes up 22 percent of overall federal forfeiture receipts,” and “the new policy at most will restrict about 3 percent of all federal forfeiture revenue.”⁵

On March 31, 2015, Holder issued another memorandum to all federal prosecutors that put tighter restrictions on the state’s ability to seize assets of individuals charged with “structuring” offenses.⁶ Under the federal Bank Secrecy Act, structuring occurs when a person is suspected of arranging

financial transactions in a way that avoids triggering a report to the federal government by the bank.

Prosecutors have used this statute to seize assets from individuals and small business owners who may not understand that the way they were depositing funds triggered a report. Many who have had their assets seized this way are not aware that their transactions are considered illegal, and are often never charged with a crime.⁷

Two of the most important new rules Holder laid out in his memorandum are as follows:

- Prosecutors must have probable cause that the funds were generated by illegal activity or intended to be used for illegal activity before conducting a structuring seizure against individuals not charged with a crime; and
- The full funds obtained through a structuring seizure must be returned to individuals when the state lacks evidence to succeed at either a civil or criminal trial.⁸

It's too early to tell how many individuals will be positively affected by this change. However, these orders signify that the federal government recognizes the rampant abuse committed through our current civil asset forfeiture laws and is enacting immediate reform.

Besides reforms made to civil asset forfeiture proceedings by the Justice Department, 2015 saw the swearing in of the 114th Congress, and along with it a number of new federal criminal justice reform bills. If these bills and their co-sponsors are any indication, it appears that criminal justice reform is a more bi-partisan issue than ever.

Detailed below are some of the more prominent bills introduced either in the U.S. Senate, U.S. House of Representatives, or both, which aim to reduce criminal penalties, increase access to medical marijuana, reduce recidivism and restore convicted felons' right to vote in federal elections, among other things.

1. The Smarter Sentencing Act (2015)

On February 12, 2015, The Smarter Sentencing Act (S. 502/H.R. 920) was introduced in the U.S. Senate and House of Representatives. Senators Mike Lee (R-UT) and Richard Durbin (D-IL) sponsored the bi-partisan bill in the U.S.

Senate, and Representatives Raul Labrador (R-ID) and Bobby Scott (D-VA) sponsored it in the House.

If enacted, the bill will do four things:

- ***Reduce certain mandatory minimum sentences:*** If passed, this bill would reduce certain 20-year, 10-year and 5-year mandatory minimum drug sentences to 10, 5 and 2 years, and reduce mandatory minimum life without parole sentences to 25 years (in the Senate bill) or 20 years (in the House bill) for individuals convicted of a third drug offense. Last year, the Justice Department said reducing mandatory minimum sentences for drug offenses was projected to save roughly \$24 billion over the next 20 years. According to a report by the Urban Institute, this change could potentially affect as many as 15,295 individuals per year.⁹
- ***Expand the current drug safety valve:*** If passed, this bill would expand the existing federal drug “safety valve,” which currently allows judges to sentence federal drug offenders pursuant to the United States Sentencing Commission guidelines instead of the statutory mandatory minimum prison term if the offender has one criminal history point or less. This bill would allow federal drug offenders with three or fewer criminal history points to be eligible for sentencing under the safety valve, however, this provision will not be made retroactive. Last year, The Urban Institute estimated that the expansion of the drug safety valve would save \$544 million over 10 years.¹⁰
- ***Make the Fair Sentencing Act of 2010 (FSA) retroactive:*** If passed, this bill would permit roughly 8,800 federal prisoners who are currently imprisoned for a crack cocaine offense to petition a court for resentencing. These prisoners would have received a different (and shorter) sentence if they were convicted after the Fair Sentencing Act was enacted in 2010. FSA reduced the disparity between crack and powder cocaine sentences from 100:1 to 18:1 and eliminated the five-year mandatory minimum sentence for simple possession of crack cocaine. The Urban Institute estimates that this portion of the bill may lead to \$229 million in savings over 10 years.¹¹
- ***Address overcriminalization:*** If passed, this bill will require the Justice Department and other federal agencies to compile a list of all federal laws and regulations and their penalties, as well as the intent required to violate these laws. It would also require these agencies to make this list publicly available on their websites.

As things stand, both the House and Senate versions of the bill are before the House Judiciary Committee and the Senate Judiciary Committee, respectively, but neither has been considered or voted on. To pass this bill, the versions must be approved by the applicable committees, then voted on by the full U.S. House and U.S. Senate, respectively. It is unclear at this point if or when these actions will be taken. A slightly different version of this bill was put forth during the 113th Congress and it was passed out of the Senate Judiciary Committee. It was never voted on in the full U.S. Senate, and was not voted on in the U.S. House Judiciary Committee.

2. The Corrections Act (2015)

On February 10, 2015, Senators Sheldon Whitehouse (D-RI) and John Cornyn (R-TX) introduced the Corrections Act in the U.S. Senate.

The bill would allow certain prisoners to earn a certain amount of time off of their prison sentences by participating in “recidivism reduction” education programming or for “productive activities” such as holding a prison job. The amount of time inmates would be eligible to earn would depend on how much of a risk they are to recidivate. Low-risk inmates would get more time off of their sentences for participation, and higher-risk inmates would earn less, or none at all.¹²

However, the projected impact of the bill is limited, as a number of different types of offenders are excluded from participating in these programs and earning credits laid out in this bill.

The bill excludes:

- Prisoners serving a sentence for a second or subsequent conviction for a federal offense
- Prisoners with a category VI criminal history at the time of sentencing
- Prisoners convicted of a federal crime of violence
- Prisoners convicted of a terrorism offense
- Prisoners convicted of a federal sex offense
- Prisoners convicted of a federal fraud offense for which he or she received a sentence of more than 15 years

- Prisoners convicted of participating in a "continuing criminal enterprise," which is a label typically applied to drug offenders
- Prisoners serving life without parole sentences
- Prisoners convicted of a "major fraud"

Inmates whose crimes do not fit into any of the above-listed exclusions and are also deemed to be "low risk" may earn 10 days in credit for every 30 days they spend in an education program or productive activity, "medium-risk" inmates can earn five days, and the highest-risk inmates cannot earn any time off their sentences at all.¹³

The bill also requires the attorney general to develop an offender risk and needs assessment system no later than 30 months after it becomes law. It does not say how such a system should be developed, but only lists what it should do, such as come up with a way to identify the risk of recidivism for all prisoners, among other things.

To become law, this bill must be voted out of the U.S. Senate Judiciary Committee, then passed by the full U.S. Senate. It must then be filed in the U.S. House of Representatives and go through the same process there.

3. Justice Safety Valve Act (2015)

On February 3, 2015, the Justice Safety Valve Act (S. 353/H.R. 706) was introduced in the U.S. Senate and House of Representatives. Senators Patrick Leahy (D-VT) and Rand Paul (R-KY) sponsored the bipartisan bill in the U.S. Senate, and Congressmen Thomas Massie (R-KY) and Bobby Scott (D-VA) sponsored the bill in the U.S. House of Representatives.

If enacted, it would allow federal judges to depart below mandatory minimum prison sentences for all offenders when doing so is necessary to prevent unjust punishment, ensure rehabilitation or victim restitution, avoid irrational sentencing outcomes, or protect the public. This legislation was previously put forth in the 113th Congress, but no action was taken.

4. Compassionate Access, Research Expansion, and Respect States (CARERS) Act (2015)

On March 10, 2015, the Compassionate Access, Research Expansion, and Respect States (CARERS) Act was introduced in the U.S. Senate and referred to the Committee on the Judiciary. Senators Cory Booker (D-NJ), Rand Paul (R-KY) and Kirsten Gillibrand (D-NY) sponsored the bill.

If enacted, the bill would do six things:

- ***Extend the principle of federalism to state medical marijuana policy:*** If enacted, the bill would prohibit federal law from applying to individuals who act in compliance with state medical marijuana laws. It would not extend to states with legalized marijuana for recreational purposes.
- ***Permit interstate commerce of cannabidiol (CBD) oils***
- ***Reschedule marijuana:*** If enacted, this bill would amend the Controlled Substances Act so that marijuana is listed as a Schedule II substance, not a Schedule I substance. The Drug Enforcement Agency currently defines Schedule I substances as “drugs with no currently accepted medical use and a high potential for abuse.”¹⁴
- ***Allow banks to provide financial services to marijuana dispensaries:*** As things currently stand, any financial institution in the U.S. that provides financial services, such as setting up a checking account, to legally operated marijuana dispensaries, is breaking federal law. For example, according to University of Alabama law professor Julie Andersen Hill, “By facilitating customers’ credit card payments, the institution would be aiding and abetting the distribution of marijuana.”¹⁵ This aspect of the bill would allow banks to legally provide financial services to marijuana dispensaries without fear of federal backlash.
- ***Eliminate barriers for marijuana research:*** This bill would also make it easier for private researchers to gain access to medical marijuana for research purposes, if enacted.
- ***Allow Veterans Administration doctors to recommend medical marijuana to veterans:*** This aspect of the bill would apply only in states where medical marijuana is legal.
- ***Permit interstate commerce of cannabidiol (CBD) oils:*** This aspect of the bill would allow CBD oils to be transported across state lines by removing them from the federal definition of marijuana. CBD is commonly used to treat such illnesses as epilepsy and other seizure disorders, and is not always readily available in all states that have legalized medical marijuana.

To become law, this bill must be voted out of the U.S. Senate Judiciary Committee, then passed by the full U.S. Senate. The same process must be completed in the U.S. House of Representatives. However, a version of this bill had not been filed in the U.S. House of Representatives at the time of this publication.

5. Civil Rights Voting Restoration Act of 2015

On February 11, 2015, Senators Rand Paul (R-KY) and Harry Reid (D-NV) introduced the Civil Rights Voting Restoration Act of 2015 to the U.S. Senate.

If enacted, this legislation would allow individuals convicted of a nonviolent felony offense to vote in any election for federal office, unless he or she is incarcerated or on probation at the time of the election. Currently, individuals in states that prohibit those with a felony criminal record from voting are barred from voting in federal elections as well. This act would allow only those individuals with a nonviolent felony conviction to vote in federal elections, regardless of which state they live in.

This legislation was previously put forth in the 113th Congress, but no action was taken.

C. State and Local Corrections Privatization Update

by Leonard Gilroy

Recent state and local developments in correctional public-private partnerships since 2014 include:

Alabama: A report issued by Arkansas's Bureau of Legislative Research in November 2014 recommended exploring contracting with private corrections management firms to house inmates in out-of-state private prisons as one potential strategy for addressing overcrowding in state prisons.¹⁶ The state currently houses approximately 2,500 of its 18,000 inmates in county jails, according to the Associated Press.¹⁷ Other potential strategies outlined in the report included constructing a new 1,000-bed maximum security prison funded by an increase in vehicle registration fees, expanding drug courts and re-entry programs, utilizing abandoned school facilities, and modifying sentencing policies.

Arizona: The state budget approved in March 2015 and signed by new Arizona Gov. Doug Ducey includes provisions allocating \$24 million per year to shift 1,000 medium-security inmates out of state-run prisons, allowing private correctional management companies and county jail systems to compete head-to-head to house them.¹⁸ The final plan is less than what the Ducey administration originally proposed—\$100 million to fund 3,000 additional beds in new private prisons—and opened the door to managed competition, or public vs. private bidding, for the first time in the state. State corrections officials have previously resisted calls to house inmates in county jail facilities, citing a lack of available rehabilitation and educational programming, but sheriffs in large counties like Maricopa and Pinal were vocal in requesting that policymakers consider utilizing available space in their local facilities.¹⁹

California: California corrections officials announced in January 2015 that the state had reached a significant milestone by meeting a judicial panel's prison population cap mandate nearly a year ahead of schedule. As discussed in the last several editions of Reason Foundation's *Annual Privatization Report*, a three-judge panel ruled in 2009 that overcrowding in California's state prisons had created unconstitutional and criminogenic conditions for inmates, and required

the state to reduce the population of state prisons down to a level of 137.5% of capacity. The U.S. Supreme Court validated this ruling in 2011, and, after a series of extensions, the panel set a deadline of February 2016 for the state to achieve compliance with the population cap.

The January 2015 report by the California Department of Corrections and Rehabilitation cited an inmate population of 113,463, representing 137.2% of state prison capacity, down from approximately 170,000 inmates at the system's peak population in the late 2000s, which meets the Supreme Court mandate.²⁰ The bulk of the population reduction in recent years is attributable to a 2011 "realignment" law that shifted tens of thousands of non-violent, non-serious offenders from state prisons to county jails. Additionally, the state has sent over 10,000 inmates to a combination of out-of-state privately operated prisons and in-state privately operated community corrections facilities.

Florida: At press time, Florida's House and Senate were considering different versions of legislation that would increase oversight over Florida's prison system in the wake of a series of media reports in 2014 that identified abuses and corruption in state-run prisons. Options under consideration include provisions aimed at reducing inmate abuse and retaliation against whistleblowers, establishing new penalties for guards and prison health providers delivering substandard inmate care, and creating an independent oversight commission empowered to undertake unannounced inspections of both public and private prisons and investigate allegations of abuse.²¹

Also, in May 2014, officials in Marion County, Florida received an offer from CCA for a 20-year, \$50 million sale-leaseback arrangement for the 1,900-bed Marion County Jail facility. Under the proposed deal, the county would receive a \$50 million upfront payment from CCA and would make annual lease payments to the company; the county sheriff would continue operating the jail during that time.²² At press time, county officials were still in talks with CCA over a potential deal.

Louisiana: In the wake of the defeat of a proposal to send a \$335 million public safety tax measure to the ballot for voter approval, some members of East Baton Rouge Parish Metro Council are considering privatization as a means to replace the aging 1,500-bed East Baton Rouge Parish Prison. The parish currently sends approximately 700 inmates to other parishes at a cost of an estimated \$25 per inmate per day, compared to \$60–70 per inmate per day in the Baton Rouge facility.²³ Both Mayor-President Kip Holden and the East Baton Rouge Parish

Sheriff's Office have expressed skepticism about exploring privatization as an option to replace the current facility.²⁴

Michigan: In October 2014, Michigan corrections officials announced a number of actions designed to improve the state's three-year, \$145 million contract with Aramark Correctional Services to provide statewide prison food services, a contract that got off to a rocky start its first year due to a number of problems—including worker shortages, workers fired for fraternizing with prisoners, and unauthorized menu substitutions—that resulted in the state levying a \$200,000 penalty against the company, a fine used to hire an outside contract monitor to oversee compliance. Among the changes are agreements for Aramark to increase worker pay in certain parts of the state and for the firm to increase staffing to 120% of the necessary level to address high turnover rates; Aramark will bear the costs of the changes.²⁵ Despite the troubled rollout, officials report that the state is still on track to save approximately \$12–16 million per year through the contract, and they report that the company's performance improved significantly toward the end of the first year of the contract.²⁶

Mississippi: In December 2014, a state task force examining contracting in the Mississippi Department of Corrections (MDOC) issued an initial set of recommendations aimed at improving procurement and avoiding future abuses of the contracting process. The task force was appointed by Gov. Phil Bryant in November 2014 in the wake of a federal indictment of former Corrections Commissioner Chris Epps and former state legislator Cecil McCrory over allegations of awarding no-bid corrections contracts in exchange for over \$1 million in bribes; Epps and McCrory pled not guilty to the charges that same month.²⁷ While the state's contracts with private prison operators are competitively bid, several contracts for commissary and other services have been issued on a no-bid basis.

The initial recommendations by the task force, which will continue to meet throughout 2015, include cancelling no-bid MDOC contracts with a term greater than six months, requiring all agencies to competitively bid contracts over \$100,000 in value, posting procurement notices and contract award information on a new state transparency website, implementing a new vendor registration process, and requiring firms to disclose lobbyists and consultants hired in pursuit of contracts.²⁸ The task force has also asked a legislative committee to produce an analysis of the relative costs of public and private prisons in Mississippi to ensure that the state's statutory requirement that private prisons save 10% relative to the comparable costs of government operation is being met.²⁹

Management and Training Corporation currently operates four private prisons on behalf of MDOC.

New Mexico: A report released by the New Mexico Legislative Finance Committee in June 2014 found that the state's public prisons are facing an estimated \$277 million in capital needs—including \$236 million in deferred maintenance—and concluded that the state could save money by building new medium-security prison housing units modeled after the more efficient and modern design of the state's privately operated prisons, as opposed to continuing to invest in existing prisons.³⁰ The report found that the average public prison cost the state \$112 per inmate per day, compared to the average state expenditure of \$80 per inmate per day in private prisons. The report attributes the difference between the costs to the higher costs of the higher security population in state-run prisons and the relative inefficiency in design—leading to higher staff-to-inmate ratios and cost—in state-run facilities. It also found that replacing medium security units in public prisons could drive down private prison costs and allow inmates to be transferred from other state or privately operated prisons.

North Carolina: In May 2014, legislative leaders in North Carolina received a report from the state's Department of Public Safety (DPS) suggesting that there was no conclusive evidence that privatized prison maintenance would produce significant savings over in-house maintenance operations.³¹ The report—authored by DPS Secretary Frank Perry and DPS Division of Adult Correction and Juvenile Justice Commissioner David Guice—compared the costs of privatized maintenance in three of the state's prison facilities with three comparable public-maintained facilities over the past three fiscal years and found that costs were similar, typically within a range of \$2.40–\$2.60 per square foot. Notably, the report concentrated on a mixed model of partially privatized services using short-term contracts along the lines of those currently used in the state; it did not evaluate alternate scenarios using bundled maintenance contracts and longer-term, fixed-cost, performance-based contracts.

Ohio: Ohio corrections officials are considering the possibility of contracting for bed space in private prisons—along with reactivating beds at current state prisons—to address overcrowding in state facilities.³² One option under consideration is contracting for approximately 600 beds now open at the Corrections Corporation of America's Youngstown prison made available by the recent loss of a contract to house federal inmates.

Also, the Ohio Department of Rehabilitation and Correction decided in late 2014 to renew a two-year, \$110 million contract with Aramark to provide food services in state prisons, finding that the contract has delivered more cost savings than originally expected. A review by the Associated Press found that the state saved \$17 million in the second year of its food services contract, relative to the \$14 million in expected annual savings.³³ While the department issued \$272,000 in fines to Aramark in 2014 over missed staffing level targets, sanitation issues and food shortages, the state has found that the problems have been limited and not dissimilar from issues that occurred under state operation and that the contractor's performance has improved.³⁴ However, the extension cannot be formalized until April 2015, and in the meantime the Ohio Civil Service Employees Association has chosen to submit a competing bid for food service operations—allowed by a provision in its state contract—which it claims will save approximately \$2.9 million relative to the Aramark contract.³⁵

Pennsylvania: Officials in two Pennsylvania counties—Mercer County and Butler County—explored the possibility of privatizing their county jails in 2014 in an effort to reduce the annual costs of operation. While Butler County officials had not reached a decision at press time, Mercer County reached an agreement with correctional officers for a new contract in August that would preclude any privatization through 2017 in exchange for concessions by unions on pay and retiree health care costs.³⁶ Officials in both counties have an example to look to in Delaware County, which privatized the operation of its jail in 2009. County Executive Director Marianne Grace told *The Cranberry Eagle* that the county is saving \$4 million annually and has "always been pleased with the decision."³⁷

Vermont: In November 2014, a superior court judge ruled that a male Vermont inmate's constitutional right to equal protection was violated because he was sent to be housed in an out-of-state private prison, while female inmates are held in in-state facilities.³⁸ The state returned the inmate to an in-state facility after the ruling and did not appeal the decision. Meanwhile, the state launched a procurement in September 2014 to re-bid the contract it currently uses to house approximately 500 inmates in out-of-state private prisons, as the current contract is set to expire in the summer of 2015.³⁹ While state corrections officials have yet to make a final vendor selection, many state legislators have expressed a desire to see those inmates returned to Vermont, and at press time, the legislature was considering a criminal justice reform bill that would reduce the prison population and free up space in state prisons, allowing it to return inmates from out-of-state private prisons.⁴⁰

West Virginia: In January 2015, West Virginia's corrections department announced that it was no longer pursuing a plan to contract with CCA to house up to 400 West Virginia inmates in an out-of-state private prison in Kentucky, citing the recent implementation of justice reinvestment legislation aimed at recidivism reduction.⁴¹ CCA was the only bidder in a 2013 procurement seeking an alternative to the regional jails currently used to hold over 1,000 state inmates.

D. State and Local Correctional Health Care Privatization Update

By Lauren Galik

The following summarizes major developments in correctional health care privatization since 2014:

Alabama: In February 2015, the Alabama Department of Corrections renewed its contract with Corizon Health, Inc. through September 30, 2017. The contract now includes a number of new services, including use of telemedicine services at 20 prisons, a new administrator for female inmates' health care, yearly HIV testing and increased staffing.⁴²

According to the Alabama Department of Finance, the state paid Corizon more than \$80.5 million to provide correctional medical services in fiscal year 2014. According to Corizon, the Alabama Department of Corrections will have contracted out its correctional health care services to Corizon for 10 years by the end of this contract in 2017.⁴³

Arizona: In February 2015, the Arizona Department of Corrections (ADC) settled a class-action lawsuit alleging inadequate prison health care and challenging its solitary confinement procedures. The lawsuit was filed on behalf of 34,000 inmates.

The ruling stipulates that the Arizona Department of Corrections (ADC) request the legislature to approve a budget that allows ADC and its contracted health services vendor (currently Corizon) “to modify the health services contract to increase staffing of medical and mental health positions” as well as abide by a number of health care performance measures.⁴⁴

Delaware: In March 2014, Delaware signed a contract with Connections Community Support Programs, Inc (CCSP) to provide correctional health care services to inmates at all state correctional facilities.

The contract is for four years with the option of two additional two-year renewal periods, and began on July 1, 2014. The contract specifies that CCSP will be paid roughly \$40.6 million for the first 13 months of the contract, and roughly

\$41.1 million for the second year. The following years, the contract specifies, will not exceed a 2.5% increase from the annual base price in effect.

The contract specifies that CCSP adhere to the National Commission on Correctional Healthcare standards, American Correctional Association standards, and the Delaware Department of Corrections' Bureau of Correctional Healthcare Services in providing health care services to inmates. The contract further specifies that CCSP will be subject to Delaware's public records law.

This new contract marks a shift in correctional health care providers for Delaware. Prior to signing the contract with CCSP, Correct Care Services was tasked with providing correctional health care services to Delaware inmates.

Florida: On February 23, 2015, the Florida Department of Corrections announced its intention to rebid its correctional health care contracts to improve the way correctional health care is delivered to inmates in the state. The department intends to formally open the bidding process prior to the beginning of 2016.⁴⁵

According to the *Panama City News Herald*, Senate Criminal Justice Chairman Chris Evans became concerned by the way prisons were understaffed by nurses and doctors when he visited several in his district last year, and ordered Florida Department of Corrections Secretary Julie Jones to “redo the current contracts.”⁴⁶

As detailed in the 2014 *Annual Privatization Report*, Florida began contracting with two private vendors—Wexford Health and Corizon Health—to provide health care to the majority of inmates housed at state prisons.⁴⁷ Corizon was tasked with providing health care to inmates housed in prisons in the North and Central Florida regions, as well as part of South Florida. Its contract was for roughly \$229 million per year, and was set to expire June 30, 2018. Wexford currently provides health care to inmates at nine state prisons in South Florida. Wexford's contract was for \$48 million per year and is set to expire December 20, 2017.⁴⁸ According to both contracts, the companies are also responsible for providing health care to inmates at certain “assigned satellite facilities, including annexes, work camps, road prisons and work release centers.”⁴⁹

According to the DOC press release, “the Department seeks to enhance elements of the health care services provided to inmates.” According to Jones, a number of “enhanced elements” of the new contracts will include “the ability to ensure that appropriate staffing is provided by our contractors that enables a proper mix

of administrative and institutional-level direct care, the presence of medical staff who possess the proper skills and qualifications to provide quality care to our inmate population and clinical oversight and supervision.”⁵⁰ Both Corizon and Wexford are permitted to place bids for the redone contracts.

Missouri: In 2014, the Missouri Department of Corrections renewed its contract with Corizon Health. According to a Corizon press release, “The contract, which was awarded through a competitive bid process, is for three years with four potential one-year renewals and is valued at \$1.1 billion over the seven-year term.”⁵¹

This contract requires Corizon Health to provide medical, mental, dental and pharmacy services to all inmates housed in state correctional facilities. The contract was expanded to include a “behavioral health component.” Corizon has provided correctional health care services in Missouri for 22 years, according to the company.⁵²

Virginia: In early June 2014, Corizon Health voluntarily terminated its contract with the Virginia Department of Corrections after giving 120 days notice. According to a DOC spokesperson, Corizon’s contract was for \$76.5 million per year and began in May 2013. Following Corizon’s termination, the corrections department signed an emergency contract with Armor Correctional Services, another private prison health care provider. The company began providing services October 1, 2014.⁵³ Last year, the switch was projected to cost the state an additional \$21.6 million per year to provide services.

In a statement issued by Corizon via an email correspondence with Reason Foundation, the company says it was not allowed to apply its recommended practices in its contract, and as a result, “the savings proposed in the Corizon Health bid were not realized.” Corizon Health, the company says, “gave notice due in large measure to the lack of cooperation with these effective industry practices.”⁵⁴

The company also filed a motion to halt a lawsuit alleging that the state, as well as Corizon Health, failed to provide constitutionally adequate medical care to inmates. The lawsuit was first filed in 2012 when Armor was providing correctional health care services to the state, but Corizon was listed as a defendant in 2013.⁵⁵

Vermont: In November 2014, the Vermont Department of Corrections announced it had awarded a three-year contract to Centurion Managed Care.

According to a press release, Centurion Managed Care will be providing “medical and behavioral health services to offenders and detainees housed at eight facilities throughout the state.”⁵⁶

The contract is for three years and began on February 1, 2015. It is valued at roughly \$19.5 million per year, in addition to costs for implementing electronic health records.⁵⁷

Previously, Vermont contracted out its correctional health care services with Correct Care Solutions. When the five-year contract ended, the Vermont DOC decided not to renew.

Washington, D.C.: In December 2014, former D.C. Mayor Vincent Gray postponed a decision would have allowed the district to contract out its correctional health care services for the D.C. Jail with Corizon Health. The contract would have been for three years and cost \$66 million.⁵⁸

A spokesperson for the mayor’s office said the contract was “delayed and not dead” and that “the administration hoped to see it come up for a vote next year after the company had more time to address concerns of activists,” who protested Corizon’s bid. Washington, D.C. will continue to contract out its health care services with Unity Health Care Inc, which it has had since 2006.⁵⁹

On March 12, 2015, Corizon announced its decision to partner with Washington, D.C.-based MBI Health Services, LLC in providing correctional health services to D.C.’s Department of Corrections. In a press release, Corizon stated the partnership “will provide more than \$30 million to the local small disadvantaged business enterprise over the term of the contract.”⁶⁰

The contract was reintroduced to the D.C. Council in March. On April 14, the Council voted 6–5 against the contract.⁶¹

Riverside County, CA: In November 2014, the Riverside County Sheriff’s Office signed a 10-year contract with NaphCare, Inc. to provide its electronic health record system at five correctional facilities and three juvenile halls in Riverside, California.

The system will allow these locations to “self-audit services on a daily basis” and “create a link with the current jail management system sharing information between the pharmacy, lab and radiology services, and other specialty providers,” according to the NaphCare press release.⁶²

The contract began December 1, 2014, and is valued at roughly \$9.4 million.⁶³

Alameda County, CA: In February 2015, Alameda County and Corizon Health, Inc. agreed to settle a lawsuit filed on behalf of the four adult children of an inmate who died at the county jail in 2010. Alameda County and Corizon agreed to pay the children of the inmate, Martin Harrison, \$8.3 million, which is the largest wrongful death settlement in the state’s history.⁶⁴

The inmate died in 2010 two days after he was beaten and tased by 10 deputies at the Santa Rita Jail. Lawyers argue that Harrison was hallucinating from severe alcohol withdrawal, which was not caught by nurses employed by Corizon. Under California law, Corizon is required to have registered nurses screen inmates upon intake. However, Harrison’s screening was performed by a licensed vocational nurse. According to Corizon, Harrison never alerted the licensed vocational nurse that he had a history of alcohol withdrawal.⁶⁵

After the event, Corizon agreed to only allow registered nurses to perform intake screenings at the jail. According to the *Contra Costa Times*, “The correctional health care reforms mandated in the settlement will be monitored for at least four years by federal Judge Jon S. Tiger and will apply to Corizon's contracts at jails in Santa Barbara, Fresno, and Tulare counties.”⁶⁶

Hillsborough County, Florida: In September 2014, it was announced that the Hillsborough County Sheriff’s Office cut ties with Armor Correctional Health Services, which provided correctional health care services to its jail facilities for roughly a decade.⁶⁷

Instead, the county awarded a \$20 million contract to NaphCare, which began providing health care services at the county jails on October 1, 2014. According to Col. Kenneth Davis, who oversees jail operations in the county, “NaphCare just had a better model ... for the delivery of health care. They are quick to identify and treat the needs of inmates.” In addition to providing health care services, NaphCare will use electronic medical records. Previously, the sheriff’s office was using a paper system.⁶⁸

It’s worth noting that the switch in vendors may have been due to the fact that Armor was the subject of a wrongful death claim filed on behalf of the children of Allen Hicks, a man who “had lain on the floor of Hillsborough County jail cells for 36 hours before he was diagnosed with a severe stroke, and later died at Tampa General Hospital.” As a result of that suit, Armor paid \$800,000 to his children, and the Sheriff’s Office paid an additional \$200,000 in legal

settlements. Shortly afterward, the Hillsborough Sheriff's Office demanded that Lewis Hays, the top Armor administrator at the jail, be removed from the facility.⁶⁹

Osceola County, Florida: Osceola county commissioners voted to approve a five-year contract with Armor Correctional Health Services in October 2014. The contract is valued at roughly \$21.8 million, and the deputy county manager, Beth Knight, expects to save \$677,000 over the duration of the contract.⁷⁰

Armor began providing correctional health care services to inmates at the county jail on November 15, 2014.

Pinellas County, Florida: The Pinellas County Sheriff's Office terminated its correctional health care contract with Armor Correctional Health Services last May. The contract was scheduled to end in 2015.

Pinellas County Sheriff Bob Gaultieri cited "operational concerns" between the jail management and Armor staff. Moreover, Armor was fined more than \$150,000 between March 16 and March 31, 2014, for "failing to provide timely medical care to inmates."⁷¹

According to Gaultieri, "The prudent thing to do is bring [correctional health care services] back in-house."⁷²

Volusia County, Florida: In October 2014, Volusia County announced that it had ended its 10-year correctional health care contract with Corizon and switched vendors. The county signed a three-year contract with Armor Correctional Health Services to provide correctional health care services at the county jail. The contract is valued at roughly \$25 million dollars, according to county records. The county is set to pay \$8.2 million for the first year, increasing to \$8.5 million by 2017.⁷³

Essex County, New Jersey: Essex County, New Jersey renewed its contract with Corizon Health, which became effective January 1, 2015. The contract requires Corizon to provide comprehensive medical and mental health services, pharmacy services and re-entry coordination for Essex County, New Jersey Juvenile Detention.⁷⁴

E. ANALYSIS: Reforming California's Three Strikes Law

By Lauren Galik

California's Three Strikes law was one of the first and broadest habitual offender laws enacted in the nation. First enacted legislatively and later reaffirmed by ballot initiative in 1994, California's law mandates that significantly longer terms of imprisonment be prescribed for certain offenders who had been previously convicted of a violent or serious offense—regardless of whether their current offense is nonviolent.⁷⁵ A second-strike punishment carries twice the term otherwise prescribed for a first-time conviction, and a third-strike punishment is a life sentence, with a requirement that a minimum of 25 years be served.

To be sentenced under the second-strike aspect of the law, a person must have been previously convicted of a violent or serious offense. The current conviction, or second “strike” may be any felony offense. A second-strike punishment is twice the term otherwise prescribed for a first-time conviction. To be sentenced under the third-strike aspect of the law, a person must have been convicted of three violent or serious offenses. Prior to 2012, the third conviction could have been for any felony offense—violent or nonviolent. A third-strike punishment is life in prison.

Since the law was enacted, California's prison population has exploded and its prisons have become dangerously overcrowded. In 2006, California's prisons were so overcrowded that then-Governor Schwarzenegger declared them to be in a state of emergency. In 2011, the United States Supreme Court found that the extreme overcrowding in California's prisons subjected inmates to cruel and unusual punishment, and therefore violated the Eighth Amendment of the U.S. Constitution.

A forthcoming Reason Foundation study details the more pervasive consequences of California's Three Strikes law, and lays out several recommendations for reforming the law that would help California reduce its notoriously large prison population without compromising public safety.

Some of the more pervasive problems of the law, which the study highlights, include:

- Today, approximately 47% of second-strike inmates and 44% of third-strike inmates are serving sentences for a drug crime, a property crime or for illegally possessing a weapon—all nonviolent, nonserious crimes as defined by California state law.
- California’s Three Strikes law has created a system in which similarly situated offenders receive wildly inconsistent and, in many cases, disproportionate terms of imprisonment based upon nothing more than a prior conviction that may be decades old, or obtained when the offender was a minor.
- California’s Three Strikes law weakens judicial discretion by giving prosecutors, not judges, the power to waive a defendant’s prior conviction from being considered a strike, which could prevent him or her from receiving a second- or third-strike punishment if convicted.
- The longer sentences mandated under the Three Strikes law have cost taxpayers billions of dollars, and will continue to do so if the law is not reformed. According to a 2010 report published by the California State Auditor, longer sentences for second- and third-strike inmates results in roughly \$19.2 billion in additional costs over the duration of their incarceration. Already, the average cost of incarcerating prisoners in California runs taxpayers roughly \$47,000 per prisoner per year.
- Because California’s Three Strikes law mandates significantly longer terms of imprisonment for second- and third-strike inmates, the state’s elderly prison population—or prisoners over aged 50—has increased substantially. Today, inmates over the age of 50 account for roughly 20% of all prisoners and 53% of all third-strike inmates. According to the ACLU, it costs roughly twice the amount to incarcerate a prisoner over the age of 50 compared to an average-aged prisoner.
- California’s Three Strikes law discourages rehabilitation by prohibiting offenders sentenced under the law from participating in any rehabilitative programming while incarcerated, and restricts the number of “good time” credits they may earn. Although a three-judge federal court recently ordered California to allow nonviolent second-strike inmates to earn “milestone credits” for completing rehabilitative programs, current state law still prohibits these inmates from participating. These restrictions and limitations offer fewer incentives for second- and third-strike inmates to obey prison rules or rehabilitate themselves while incarcerated, and therefore leave those sentenced under the law ill-prepared for release if or when the time eventually comes, increasing the probability of recidivism.

The study also suggests there is little evidence to support a link between California's Three Strikes law and reductions in violent crime. Indeed, the study indicates California counties that utilized the Three Strikes law the least saw a slightly greater reduction in violent crime and homicide rates between 1993 and 2012 than counties that utilized the law most frequently.

Although a series of reforms have been made to the Three Strikes law through ballot initiatives and federal court orders, it hasn't been enough to overcome the negative consequences the law has produced. The forthcoming study suggests a combination of either repealing the Three Strikes law and ensuring these changes are made retroactive, or limiting the scope of the Three Strikes law to allow only offenders with current violent or serious convictions to be sentenced under the second-strike aspect of the law.

These proposed reforms will allow California to safely and effectively reduce its already overcrowded prisons and bloated correctional budget, and better focus its resources on prisoners who pose a threat to public safety. The savings achieved by eliminating or scaling back the Three Strikes law may be reinvested in rehabilitation and re-entry programs that have been shown to reduce rates of recidivism. Only when California pursues meaningful reform to this draconian, decades-old law may California's prison crisis begin to come to an end.

This article is a summary of a forthcoming Reason Foundation study.

F. ANALYSIS: Reforming Florida’s Harsh Sentencing Laws and Gain-Time Policies

By Lauren Galik

Over the past few decades, Florida has enacted a number of laws that have dramatically increased criminal sentences, and enacted others that have limited the amount of gain-time credits—or credits for good behavior or participation in rehabilitative programming—inmates may earn toward a reduction of their sentences. These laws have mandated all prisoners, even nonviolent offenders, to not only serve longer sentences, but a larger percentage of their sentences as well.

A forthcoming Reason Foundation study highlights some of Florida’s most pervasive sentencing laws and policies that have produced a number of unintended consequences.

The laws and policies highlighted in the study include:

- ***Drug trafficking statutes:*** The types and quantities of drugs required for an offense to be considered drug trafficking in Florida are wildly disparate. Illegal possession of some drugs, such as prescription painkillers that contain oxycodone or hydrocodone, require a very small amount—7 grams of oxycodone (roughly 14 pills) and 14 grams of hydrocodone (roughly 27 pills)—to trigger a drug trafficking charge that carries the same mandatory minimum sentence as trafficking a much larger quantity of other drugs, such as cocaine, for example. Florida’s mandatory minimum sentences for these offenses are not only disproportionately harsh, but have led to the imprisonment of numerous low-level offenders, have increased corrections expenditures, and have effectively eliminated judicial discretion, which has resulted in unjust and unnecessary punishment in some cases.
- ***10-20-Life:*** Florida’s 10-20-Life law was enacted with the intention of incapacitating violent offenders who use firearms during the commission of an offense, as well as deterring others from committing these types of crimes. However, since its enactment, 10-20-Life has been routinely applied to defendants whose crimes were far removed from the original intent of the law, including those who have brandished a firearm or fired a “warning shot” to defend themselves or others. Although this aspect of the law was

reformed in 2014, many who would not necessarily be sentenced to mandatory sentences under the law today remain in prison because these reforms were not made retroactive.

- ***Habitual offender statutes:*** Florida has a number of overlapping habitual offender statutes that require judges to sentence certain offenders to significantly longer terms of imprisonment based on their criminal history. Some of Florida’s habitual offender laws, such as the Prisoner Releasee Reoffender Law, the Habitual Felony Offender Law and the Habitual Violent Felony Offender Law, have required judges to send a number of nonviolent offenders to prison for disproportionately longer terms of imprisonment, even when the judge believes that doing so is not in the best interest of justice. Today, roughly 105 Florida inmates are serving life without parole sentences under these habitual offender laws.
- ***Limits on incentive gain-time:*** Most states allow inmates to earn credits toward a reduction in their sentences as a way to incentivize rehabilitation, promote good behavior and reduce recidivism. Florida is unique in that it prohibits all of its inmates—regardless of whether they committed a violent or nonviolent crime—from earning more than a 15% reduction in their sentences in the form of credits. Mandating that all prisoners serve a specific portion of their sentences not only discourages rehabilitation and good behavior, but removes individualization from punishment—it requires Florida to view individual prisoners as a collective whole that needs to be locked away for a specific period of time before they can be deemed ready for release, which isn’t always accurate.

The study details a number of unfortunate consequences these laws have produced, such as an 11-fold increase in the state’s prison population, from 8,793 (.13% of Florida’s population) in 1970 to 100,942 (.51% of Florida’s population) in 2014, and a \$1.1 billion increase in corrections expenditures over the past 20 years, which topped \$2.1 billion in FY 2014. Because these laws have mandated that prisoners serve longer prison terms and larger percentages of their sentences, Florida’s elderly prison population has increased at a faster rate than any other age group over the past 10 years. The cost of incarceration for these inmates—roughly \$68,000 per year—is more than three times higher than the cost of an average inmate.

Beyond this, there is little evidence that these laws have been responsible for a reduction in crime in the state, as studies have shown that laws that mandate longer sentences, such as those in Florida, do not have a positive deterrent effect on crime, and even may be counter-productive. Another study has shown that

Florida's 10-20-Life law cannot be definitively linked to a reduction of violent crime in the state, either; a study published by the Pew Center on the States concluded that thousands of nonviolent offenders could be released before serving 85% of their prison sentences without having any negative impact on public safety, and instead would lead to millions in savings for Florida taxpayers.⁷⁶

The study suggests a number of reforms legislators could pursue that would limit the negative impacts of these laws and reduce the state's exorbitant prison population and corrections expenditures—all without compromising public safety. Some of the recommendations include:

- Repealing or reforming mandatory minimum sentences to give judges more discretion in sentencing and to prevent arbitrary and unjust prison terms for low-level, nonviolent offenders while retaining the option of handing out long terms of imprisonment for offenders who pose the largest threat to society.
- Enacting a broad safety valve measure that would give judges the discretion to depart below mandatory minimum sentences when they believe it would be in the best interest of justice to do so.
- Allowing certain inmates to earn additional incentive gain-time credits toward a reduction in their sentences for individuals whose prolonged incarceration results in no impact on public safety and who may be safely released before they have served 85% of their sentences.
- Limiting the scope of Florida's habitual offender laws so that they may only be applied to violent habitual offenders.
- Making any of these reforms, as well as past reforms enacted in previous years, retroactive.

Enacting any of the above-recommended reforms will allow Florida to become a leader in smart and effective criminal justice reform.

This article is a summary of a forthcoming Reason Foundation study.

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