

# Annual Privatization Report 2016

## Criminal Justice and Corrections

By Lauren Krisai, Austill Stuart and Leonard Gilroy



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(Note: Portions of this report have been published previously in various editions of Reason Foundation's *Privatization and Government Reform Newsletter* and related articles.)

## A. Prison Population Trends, 2000–2014

by Leonard Gilroy

According to the most recent data compiled by the Bureau of Justice Statistics, 2014 saw the declining trend in the total U.S. prison population in recent years continue, with a slight drop in the federal and state prison population relative to the previous year.<sup>1</sup> The combined federal and state prison population declined from 1,574,741 at the end of 2013 to 1,570,406 in 2014, a 0.3% drop that reversed a one-year increase in the overall population in 2013. The decrease was largely due to a decline in the total federal prison population of over 5,000 inmates, or 2.5%, since 2013. The state prison population increased slightly over the same time period by over 1,000 prisoners, or 0.1%.

Overall, there was a net decrease in the total U.S. prison population of over 4,330 between the end of 2013 and the end of 2014. Over that same period, the total U.S. prison population housed in privately operated prisons decreased by 1.3%, from 141,923 in 2013 to 140,142 in 2014.

At the federal level, the total prison population has risen from 145,416 in 2000 to 210,567 in 2014, an increase of 44.8%. Notably, the number of federal prisoners housed in private facilities has risen by over 158% during that same period (from 15,524 in 2000 to 40,017 in 2014), with the share of federal prisoners housed in private prisons increasing from 10.7% in 2000 to 19.0% in 2014. 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 1,359,839 in 2014, an 8.9% increase. The number of those state prisoners housed in private facilities rose from 75,291 to 100,125 over that same time period, a 32.9% increase. Overall, the share of state prisoners housed in private prisons increased slightly from 6.0% in 2000 to 7.4% in 2014.

**Table 1: Federal and State Prison Population in Private Facilities (2000–2014)**

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%
2014	210,567	40,017	19.0%	1,359,839	100,125	7.4%
Average annual % change, 2000–2010	3.3%	7.1%	n/a	1.1%	3.0%	n/a
Average annual % change, 2010–2014	0.1%	3.4%	n/a	-0.6%	-0.8%	n/a
Percent change, 2013–2014	-2.5%	-2.8%	n/a	0.1%	-0.6%	n/a

## Sources:

Total federal and state prison population data (2014): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016).  
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 (2014): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016).  
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 2010–2014. 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](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 12.6% from 2000 to 2014, rising from 1.39 million to 1.57 million (see Table 2 and Figure 1); it is worth noting that the total population has remained fairly steady since 2012 and has been on a declining trend since peaking at nearly 1.62 million in 2009. By comparison, the federal and state inmate population housed in private facilities increased by 54% between 2000 and 2014 and now accounts for 8.9% 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.

**Table 2: Change in Private Prison Population (2000–2014)**

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%
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%
2014	1,570,406	140,142	8.9%
Average annual % change, 2000–2010	1.3%	3.8%	n/a
Average annual % change, 2010–2014	-0.5%	0.3%	n/a
Percent change, 2013–2014	-0.3%	-1.3%	n/a

**Sources:**

Total federal and state prison population data (2014): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016).

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 (2014): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016).

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).

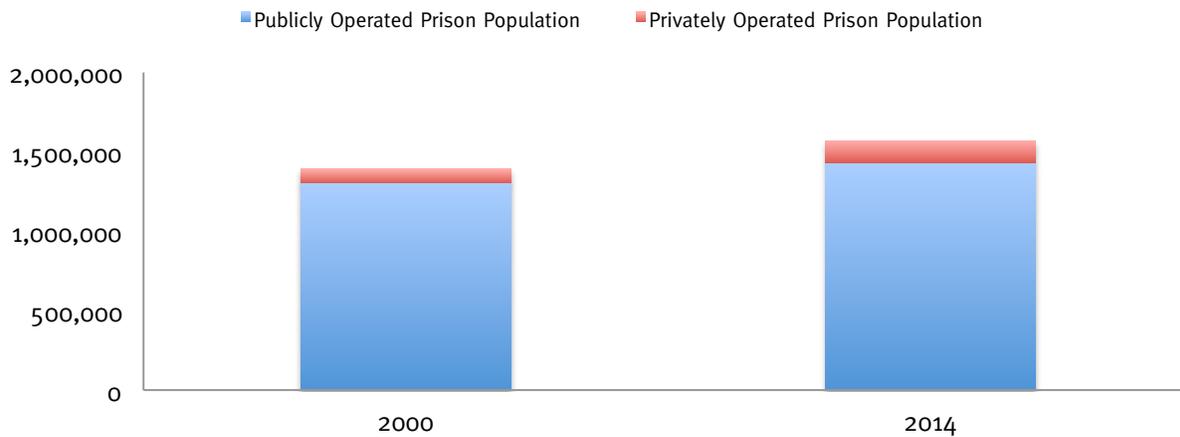
Federal and state private prison population data (2000, 2010): U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2011*, December 2012, p. 32, <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf> (accessed January 23, 2013).

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 2010–2014. 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](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html)).

A total of 30 states held some inmates in privately operated prisons in 2014, though state usage of corrections PPPs varies considerably, as shown in Table 3. Some states have relatively large proportions of their inmate populations in privately operated facilities—including New Mexico (43.8%), Montana (38.7%), Oklahoma (26.3%), Hawaii (24.3%), Mississippi (21.9%), Vermont (21.8%) and North Dakota (21.6%)—while other states make limited use of corrections PPPs, including Alabama (1.4%), Pennsylvania (1.3%), Kansas (1.1%), South Dakota (0.3%), Maryland (0.1%), North Carolina (0.1%) and South Carolina (0.1%).

**Figure 1: Proportion of Publicly vs. Privately Operated Prison Population (2000–2014)****Sources:**

2014 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016). BJS data adjusted to include 8,881 California inmates held in contracted out-of-state correctional facilities, as reported in the December 2014 population report 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](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_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).

In terms of absolute numbers, the states with the highest numbers of inmates held in privately operated prisons are Texas (14,368), Florida (12,395), California (11,257), Georgia (7,901), Oklahoma (7,367) and Arizona (6,955). These six states account for over 60% of the total number of state inmates held in privately operated prisons in 2014.

The number of inmates held in privately operated prisons held fairly steady in most states between 2013 and 2014, with the exception of Idaho, which saw a drop in over 2,100 inmates in private prisons after the state took over operations of the Idaho Correctional Center, which had previously been privately operated since opening in 2000.

**Table 3: Federal and State Prisoners in Private Facilities, by jurisdiction (2000–2014)**

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)	Inmates in Private Facilities (2014)	Percent of total jurisdictional population (2014)
Alabama	0	1,024	545	538	554	481	1.4
Alaska	1,383	1,598	1,688	1,733	27	28	n/a
Arizona	1,430	5,356	6,457	6,435	6,405	6,955	16.5
Arkansas	1,540	0	0	0	0	0	0.0
California *	4,547	12,416	10,001	9,508	10,903	11,257	7.8
Colorado	2,099	4,498	4,303	3,939	3,898	3,782	18.3
Connecticut	n/a	883	855	817	725	647	3.9
Delaware	0	0	0	0	0	0	0.0
Florida	3,912	11,796	11,827	11,701	11,801	12,395	12.0
Georgia	3,746	5,233	5,615	7,900	7,900	7,901	14.9
Hawaii	1,187	1,931	1,767	1,636	1,421	1,425	24.3
Idaho	1,163	2,236	2,332	2,725	2,745	639	7.9

**Table 3: Federal and State Prisoners in Private Facilities, by jurisdiction (2000–2014)**

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)	Inmates in Private Facilities (2014)	Percent of total jurisdictional population (2014)
Illinois	n/a	0	0	n/a	0	0	0.0
Indiana	991	2,817	2,952	4,251	4,438	4,420	15.1
Iowa	0	0	0	0	0	0	0.0
Kansas	n/a	0	74	83	95	105	1.1
Kentucky	1,268	2,127	2,050	812	0	0	0.0
Louisiana	3,065	2,921	2,951	2,956	3,158	3,142	8.3
Maine	11	0	0	0	0	0	0.0
Maryland	127	70	78	27	29	30	0.1
Massachusetts	n/a	0	0	0	0	0	0.0
Michigan	449	0	0	0	0	0	0.0
Minnesota	0	0	0	0	0	0	0.0
Mississippi	3,230	5,241	4,669	4,334	4,394	4,114	21.9
Missouri	0	0	0	0	0	0	0.0
Montana	986	1,502	1,418	1,418	1,459	1,432	38.7
Nebraska	0	0	0	0	0	0	0.0
Nevada	508	0	0	n/a	n/a	0	n/a
New Hampshire	0	0	0	0	0	0	0.0
New Jersey	2,498	2,841	2,887	2,717	2,735	2,761	12.8
New Mexico	2,132	2,905	2,853	2,999	2,984	3,072	43.8
New York	0	0	0	0	0	0	0.0
North Carolina	330	208	30	30	30	30	0.1
North Dakota	96	0	0	0	319	371	21.6
Ohio	1,918	3,038	3,004	5,343	5,487	5,370	10.4
Oklahoma	6,931	6,019	6,026	6,423	7,051	7,367	26.3
Oregon	0	0	0	0	0	0	0.0
Pennsylvania	0	1,015	1,195	1,219	546	636	1.3
Rhode Island	n/a	0	0	0	0	0	0.0
South Carolina	13	17	20	16	15	15	0.1
South Dakota	45	5	11	15	16	10	0.3
Tennessee	3,510	5,120	5,147	5,165	5,103	5,116	17.8
Texas	17,432	19,155	18,603	18,617	14,538	14,368	8.7
Utah	208	0	0	0	0	0	0.0
Vermont	0	562	522	504	499	431	21.8
Virginia	1,571	1,560	1,569	1,559	1,554	1,570	4.2
Washington	0	0	0	0	0	0	0.0
West Virginia	0	0	0	0	0	0	0.0
Wisconsin	4,349	50	36	18	0	0	0.0
Wyoming	275	217	245	236	252	255	10.7
<b>State Total *</b>	<b>75,291</b>	<b>104,361</b>	<b>101,730</b>	<b>105,674</b>	<b>100,762</b>	<b>100,125</b>	<b>7.4</b>
<b>Federal Total</b>	<b>15,524</b>	<b>33,830</b>	<b>38,546</b>	<b>40,446</b>	<b>41,159</b>	<b>40,017</b>	<b>19.0</b>
<b>U.S. Total *</b>	<b>90,815</b>	<b>138,191</b>	<b>140,276</b>	<b>146,120</b>	<b>141,921</b>	<b>140,142</b>	<b>8.9</b>

Sources:

2013-2014 data: U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016).2012 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 2010-2014. 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](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html)).

## B. Federal Criminal Justice Reform Update

by Lauren Krisai

So far, 2016 has been a slow year for federal criminal justice reform. While Congress introduced several bills to alter criminal sentences, the House and Senate advanced only two main pieces of reform legislation, with neither piece moving beyond its respective committee. As the end of the year approaches, it seems unlikely that any federal reform will pass in 2016.

Below is a summary of the major federal criminal justice reform bills that were introduced this year.

### 1. The REVISED Sentencing Reform and Corrections Act of 2015 (S. 2123/H.R. 3713)

The original Sentencing Reform and Corrections Act of 2015 was introduced October 1, 2015 by Senate Judiciary Committee Chairman Chuck Grassley (R-IA), Senators John Cornyn (R-TX), Lindsey Graham (R-SC), Mike Lee (R-UT), Sheldon Whitehouse (D-RI), Richard Durbin (D-IL), Patrick Leahy (D-VT), and Cory Booker (D-NJ). The bill was approved by the Senate Judiciary Committee on October 22, 2015, and revisions were introduced by legislators on April 28, 2016.

The House version of the Sentencing Reform Act (H.R. 3713) contains similar sentencing reforms as S. 2123, but does not contain prison reforms. The House version of the bill was approved by the House Judiciary Committee on November 18, 2015.

The Senate version of the bill contains many different reforms to the following aspects of the federal criminal justice system:

#### *a. Reduced Mandatory Minimum Sentences*

- Reduces the mandatory minimum sentence for drug offenders who have a prior conviction for a “serious violent felony” or “serious drug felony” from 20 years to a mandatory minimum of 15 years. This aspect of the law allows for retroactivity, except for those with prior “serious violent felony” convictions.
- Reduces the mandatory life without parole sentence for drug offenders who have two or more prior convictions for a “serious violent felony” or a “serious drug felony” to a mandatory minimum of 25 years. This aspect would also be made retroactive with the bill’s passage.
- Limits the application of a 25-year mandatory minimum for a second or subsequent conviction for possession of a gun during the commission of a gun crime or crime of violence. The 25-year mandatory minimum would apply only to convictions that were final prior to the commission of the current offense,

not for subsequent charges brought during a single indictment. This aspect would also be made retroactive, but not for those who have a “serious violent felony” conviction, among other restrictions.

*b. Fair Sentencing Act of 2010 Retroactivity*

In 2010, President Obama signed the Fair Sentencing Act, which reduced the disparity between sentences for crack and powder cocaine from 100:1 to 18:1. S. 2123 would make the Fair Sentencing Act retroactive, which would likely impact the sentences of roughly 5,800 currently incarcerated individuals who were sentenced before the passage of this law.

*c. Drug “Safety Valve”*

This bill would expand the existing drug “safety valve” for certain offenses, which allows judges to sentence individuals below the mandatory minimum if they meet certain standards, such as:

- They do not have more than four criminal history points, based on the federal sentencing guidelines, a prior three-point offense, or a prior two-point violent offense
- The court determines that the person does not have a prior “serious violent felony” or “serious drug felony” conviction
- The court determines that the criminal history score substantially over-represents the seriousness of the defendant’s criminal record or likelihood that he or she will commit more crimes
- The individual did not possess or use a gun, pled guilty, and no death or serious bodily injury resulted to any person.

It would also create an additional “safety valve” for certain drug offenders facing a 10-year mandatory minimum sentence, and would allow them to receive a five-year mandatory minimum prison term if:

- They do not have a prior “serious drug felony” or “serious violent felony” conviction, and
- They were not the leader, organizer, manager, or supervisor during the commission of the offense, and
- They did not act as an importer or exporter of the substance, or a high-level distributor, wholesaler, or manufacturer, and
- They did not use or possess a gun during the commission of the offense, and
- They pled guilty, and
- No death or serious bodily injury occurred, and
- They didn’t sell drugs to any individual under the age of 18.

#### *d. Prison Reform*

The bill, if passed, would require the Bureau of Prisons to use a risk assessment tool to place prisoners into categories of high, medium, or low risk of reoffending, as well as allow certain categories of prisoners to earn additional credits toward a reduction in their sentences for completing rehabilitative programming. However, it does not authorize funding for these programs.

#### *e. New Mandatory Minimums*

Finally, the bill would create new mandatory minimum sentences for the following offenses:

- Individuals convicted of drug offenses who have a prior “serious violent felony” conviction would be subject to 15- and 25-year mandatory minimum sentences
- Individuals convicted of interstate domestic violence resulting in a death would receive a 10-year mandatory minimum sentence, and an additional five years for providing certain weapons or aid to terrorists.
- Individuals convicted of a drug offense involving an analogue or any detectable amount of fentanyl will receive an additional mandatory minimum of five years in prison in addition to the underlying sentence.

Unless it is heard before the end of the year, it is likely that this bill will die in 2016.

## **2. The Smarter Sentencing Act of 2015 (S. 502 / H.R. 920)**

The Smarter Sentencing Act (SSA) was introduced in the U.S. Senate (S. 502) by Senators Richard Durbin (D-IL) and Mike Lee (R-UT) on February 12, 2015. A version of the same bill (H.R. 920) was introduced in the U.S. House of Representatives by Representatives Bobby Scott (D-VA) and Raul Labrador (R-ID). The proposed law would do several things:

- It would make the Fair Sentencing Act of 2010 retroactive.
- It would reduce the currently required five-, 10-, and 20-year mandatory minimum sentences for certain drug crimes to two-, five-, and 10-year mandatory minimum terms. It would also require the U.S. Sentencing Commission to alter the drug sentencing guidelines to reflect these lower sentences shortly after the bill becomes law.
- The Senate version of the bill would reduce mandatory life without parole sentences for third or higher drug felony conviction to a 25-year mandatory minimum sentence; the House version would do the same but require a 20-year mandatory minimum sentence instead.
- It would expand the existing “safety valve” exception for federal drug offenses to include individuals who fall into Criminal History Categories I or II under the U.S. Sentencing Guidelines, in addition to meeting

other criteria. Currently, only individuals that fall into Criminal History Category I, and who meet other criteria, are eligible.

- It would require the U.S. Justice Department, as well as other federal agencies, to list all federal laws and regulations that carry criminal penalties, as well as the intent required to violate those provisions, publicly on their websites.

Unless it is heard before the end of the year, it is likely that this bill will die in 2016.

## C. Corrections Privatization Update

by Austill Stuart

Recent developments in correctional public-private partnerships since 2015 include:

### 1. Federal Government

In August 2016, the U.S. Department of Justice’s Office of the Inspector General (OIG) released a report claiming that “contract prisons incurred more safety and security incidents per capita than comparable [Bureau of Prisons (BOP)] institutions and that the BOP needs to improve how it monitors contract prisons.”<sup>2</sup> Shortly after the release of the OIG report, Deputy Attorney General Sally Yates issued a memo stating an intention for “reducing—and ultimately ending” DOJ’s use of private prisons and directing that as each BOP private prison contract comes up for renewal in the coming years, the agency should either “decline to renew that contract or substantially reduce its scope.”<sup>3</sup>

Correctional management firms quickly countered that the OIG report was flawed and failed to take into account the very different demographics of the population of private prisons in the BOP system (compared to BOP-operated facilities), along with a number of other underlying factors ignored by the OIG.

In the wake of the OIG report and new DOJ policy, another federal agency has announced a review of its private prison use. In August 2016, Department of Homeland Security (DHS) Secretary Jeh Johnson announced that he had directed the agency’s advisory council to assess whether Immigration and Customs Enforcement should continue its use of private prisons for immigration detention. Recommendations pursuant to the study are due from the advisory council by November 30, 2016.<sup>4</sup>

### 2. State and Local Government

#### Arizona

In June 2016, state officials approved an Arizona Department of Corrections (ADOC) plan to refinance and buy a prison currently operated by the GEO Group. The \$137 million deal, brokered by the state, Tucson-based Community Finance Corp. and prison operator GEO Group, enables estimated interest savings of close to \$80 million over nine years.<sup>5</sup> Some of the savings will be used to increase spending on correctional health care statewide and to develop a new community corrections facility in Maricopa County. GEO will receive around \$2 million from the refinancing, which it will be required to use to increase the pay of corrections officers to help combat the high turnover rate for correctional officers at the facility. Arizona private prison

contracts typically involve private financing up front, with financing costs built into 20-year contracts; at the end of the contract term, the state has the option to take over full ownership of the facilities.

## California

In September, Gov. Jerry Brown vetoed SB 1289, which would have prohibited any state, county, or local law enforcement agency from entering into a contract with a private company for the purposes of holding immigrant detainees on behalf of Immigration and Customs Enforcement. The bill, which would have affected three existing facilities in California, passed the Senate and Assembly in August with votes of 25–13 and 51–28, respectively.

In his veto statement, Gov. Brown deferred to the Department of Homeland Security’s ongoing internal review of its use of private prisons:

*I have been troubled by recent reports detailing unsatisfactory conditions and limited access to counsel in private immigration detention facilities. The Department of Homeland Security, however, is now considering whether private contracting should continue for immigrant detention, and if so under what conditions... These actions indicate that a more permanent solution to this issue may be at hand. I urge the federal authorities to act swiftly.*<sup>6</sup>

*Ventura County:* In May, Ventura County received a \$1.5 million grant from the state, to be matched with county funds, to cover the costs of a five-year program aimed at reducing recidivism. The “pay for success” program will initially be launched with funds raised from philanthropists, social impact investment vehicles and other private sources by Boston-based Social Finance; another nonprofit, Interface Children & Family Services, will be responsible for service delivery.<sup>7</sup> Officials hope to save \$4 million in costs in the program, where investors would recoup their money—and, if the program is successful, a return of up to \$260,000, which would be repaid from the \$3 million in state and county funds—if the recidivism rate for released offenders on probation falls 10% or more. Failure to meet that target would result in investor losses; the county would not be responsible for covering the costs of the program in that event.<sup>8</sup>

## Idaho

In May 2015, the U.S. Department of Justice declined to pursue criminal charges against Corrections Corporation of America over an investigation concerning records falsification at the Idaho Correctional Center, the state’s largest prison facility. The investigation found that the issues were limited to lower-level employees, while higher-level employees (assistant warden and above) were unaware of the practice.<sup>9</sup> A lawsuit filed by the ACLU over the practice resulted in a contempt of Court ruling for CCA, which was upheld by an appellate court in May 2016, meaning CCA will have to pay “higher-than-normal” attorneys’ fees to the ACLU.<sup>10</sup>

## Michigan

A report released this spring by the University of Michigan’s Institute for Research on Labor, Employment and the Economy linked the state’s arrangement with Aramark to provide food services with increased prison gang activity, citing underqualified and undertrained staff being manipulated by inmates. A spokesman from the Michigan Department of Corrections called the findings of increased gang activity “ridiculous”, while noting that Michigan’s Auditor General found \$10–12 million in savings from the prison food privatization program.<sup>11</sup> While the UM report focuses on interviews conducted during Aramark’s time as the state’s prison food contractor, Trinity Services Group took over duties in August 2015 in a three-year, \$158 million contract, a year before the Aramark contract was scheduled to end.<sup>12</sup>

Partially in response to its issues with Aramark, the Michigan Department of Corrections created a 30-person unit to monitor its contracted services within its department, focusing mostly on food and medical services.<sup>13</sup> A related bill introduced into the state legislature requiring prison kitchens to be inspected when run by a private company received committee approval, but has received no floor vote as of press time.<sup>14</sup>

In April, the state announced that it was closing two prisons—without specifying which ones— and transferring a portion of their populations to a private prison facility that the state would lease and operate, with an expectation of cutting \$15.4 million in annual department spending.<sup>15</sup> While the state’s inmate population has been dropping—from about 50,000 to 40,000 over nine years—several state-owned prisons need drastic upgrades, making a state lease of the GEO Group-owned facility near Baldwin an attractive option.<sup>16</sup> GEO would get a \$5 million payment for the lease, while the state plans to spend \$26.6 million to staff the prison.<sup>17</sup>

## Minnesota

In response to overcrowding concerns, a bill was introduced in the state’s legislature this year that would re-open a private prison in Swift County. Protests from criminal justice groups shut down a legislative hearing on the bill soon after it was introduced, and Governor Mark Dayton promises a veto. The bill’s sponsor, Lyle Koenen, sees such as actions as politically motivated, and described the bill as a common sense approach to addressing the state’s overcrowding issues.<sup>18</sup> As of press time, the House and Senate versions of the provision (HF 3223 and SF 3192, respectively), have not received a floor vote.<sup>19</sup>

## Mississippi

In June 2016, Mississippi corrections officials announced plans to close the privately operated Walnut Grove Correctional Facility amid a decline in the state prison population resulting from recent criminal justice reforms.<sup>20</sup> Within three months of the announcement, the 900 inmates at the facility were transferred to other state prisons. The facility has been subject to federal court oversight under a 2012 consent decree resulting from a lawsuit over unsafe living conditions at the prison when it held juvenile inmates, who were later moved to other facilities and replaced by an adult inmate population.

## Ohio

A provision that would have allowed for the privatization of county-run prisons was struck from the state budget in 2015 by the state's House Finance Committee.<sup>21</sup> Supporters saw the bill as a means for county commissioners to better address budget shortfalls by providing flexibility, while those against it questioned whether savings actually would be achieved.<sup>22</sup>

## Oklahoma

In July 2016, the state began moving inmates to a private facility, as part of a six-year, \$37.5 million lease agreement that will have state employees operate a prison owned by Corrections Corporation of America (CCA).<sup>23</sup> Many of the state's existing prisons—such as the 107-year old State Reformatory in Granite from where the prisoners will be moved—were once converted from buildings serving other purposes, such as Boys' Homes, hospitals and munitions facilities, and thus are lacking in technology. The CCA-owned prison in North Fork, in sharp contrast, is under 20 years old, is the most technologically advanced prison in the state, and can be reconfigured to become the equivalent of four separate prisons, allowing for separation of different types of inmates.<sup>24</sup>

In other news, the CCA-owned and operated Cimarron Correctional Facility in Oklahoma was guilty of multiple contract breaches in 2015, while the Department of Corrections, which monitors the state's private prisons, was slow to report such incidents. While the state previously had withheld funds to private prison contractors for lack of performance, the state chose not to do so in this case.<sup>25</sup>

## Pennsylvania

In August 2015, the Pennsylvania Department of Corrections (PDOC) announced an overall 11.3% reduction in recidivism across its 42 contracted community corrections centers between July 2014 and June 2015, marking the second consecutive year of decline.<sup>26</sup>

The goal of the initiative was to improve the ability of the contracted halfway houses to successfully transition parolees back into society. Prior to the contracting shift, approximately 60% of parolees were re-arrested after release from contracted halfway houses.<sup>27</sup>

Under the new contract regime, the state may cancel a contract if a private halfway house operator's recidivism rate increases over two consecutive year-long periods. Conversely, contractors can receive bonuses if recidivism rates decline past a certain threshold. For the latest year, six of the 42 contracted halfway houses (14%) qualified for a 1% increase in the per diem rate paid per client as an incentive bonus, while one center was placed into warning status for exceeding the baseline recidivism level.<sup>28</sup>

## Tennessee

In August, the state announced that Aramark was the lone qualified bidder to provide food services for Tennessee's prisons, increasing the company's odds of winning the estimated five-year, \$118 million contract.<sup>29</sup> While Trinity Services Group, Inc. also submitted a bid, the state's Department of Correction (DOC) found Trinity failed to meet several components of the RFP.

The Tennessee Rehabilitative Initiative in Correction (TRICOR)—the state's in-house prison enterprise providing services to various public and private entities—previously ran the program, combining with smaller contractors to spend close to \$200 million on the DOC's food services from 2012 to 2016, an arrangement that never operated under a formal contract.<sup>30</sup>

*Hamilton County:* In May, the County Commission voted unanimously to approve a pair of agreements totaling up to \$500,000 for the law firms McGuireWoods LLP and Chambliss, Bahner, and Stophel to assist with legal matters with what could ultimately be a new, privately run jail facility.<sup>31</sup> In February, three companies—Corrections Corporation of America, GEO Group, and Emerald Companies—expressed interest in operating a new proposed corrections facility in Hamilton County, where existing facilities have operated over capacity since before 2010, and with basic toiletries for inmates often lacking.<sup>32</sup>

*Shelby County:* In March 2016, the County Commission voted 7–5 to approve a two-year, \$3.65 million contract extension with Aramark to provide food services for the county's correctional center.<sup>33</sup> The contract allows the county to close a \$1.9 million projected budget deficit largely attributable to a decrease in state compensation rates for inmates, and it also added a separate county facility on Mullins Station Road to the agreement with Aramark.<sup>34</sup>

## D. Correctional Health Care Privatization Update

By Lauren Krisai and Austill Stuart

The following summarizes major developments in correctional health care privatization since 2015.

### 1. Federal Government

#### Federal Correctional Institution, Miami

In May 2016, NaphCare, Inc. announced it was awarded a contract under a Blanket Purchase Agreement with the Federal Bureau of Prisons to provide medical services to the approximately 1,400 male inmates housed at the Federal Correctional Institution in Miami, Florida.<sup>35</sup>

### 2. State and Local Government

#### Alabama

*Madison County:* In April 2015, the Madison County Commission voted to end its contract with Advanced Correctional Healthcare, the company that provided health care at the Madison County jail for the past several years. The contract was ended amid disagreements over the handling of inmate-related lawsuits, especially those stemming from inmates who died in jail under the care of Advanced Correctional Healthcare. The County Commission voted to replace Advanced Correctional Healthcare with Southern Health Partners, who agreed to provide health care for approximately \$300,000 less than Advanced.<sup>36</sup>

#### California

*Alameda County:* In August 2016, the county's Board of Supervisors voted 4–0 to enter into a three-year, \$135-million contract with California Forensic Medical Group to provide health care services to the county's inmates over Corizon.<sup>37</sup> Corizon, which currently faces a lawsuit by an inmate in the county's Santa Rita prison, inherited the contract in 2011 after a merger with Prison Health Services.

*San Bernardino County:* In December 2015, San Bernardino County signed a new five-year contract with NaphCare, Inc. The contract stipulates that NaphCare, Inc. install its electronic health record system within the county's six facilities—four correctional facilities and two juvenile halls.<sup>38</sup>

## Florida

In November 2015, Corizon decided to exit its correctional health care contract with the state of Florida over two years early. The company was responsible for the largest share of inmate health care in the state—providing services for roughly 74,000 inmates in Regions 1, 2 and 3 in the state—in a contract valued at roughly \$1.1 billion.<sup>39</sup>

Centurion announced it signed a contract with the Florida Department of Corrections to fill the remainder of Corizon’s contract term. Centurion’s contract, valued at \$268 million, expires in January 2018. At that time, the Florida Department of Corrections will rebid the contract. Wexford will continue to provide correctional health care services in Region 4, which is in the southern part of the state.<sup>40</sup>

*Collier County:* Armor Correctional Health Services, Inc. began providing correctional health care services at the Collier County Correctional Facility on October 1, 2015. The facility has an average daily population of roughly 900 inmates. According to the company, it provides correctional health care services to roughly 60% of all of the state jails that have privatized correctional health care in Florida.<sup>41</sup>

## Georgia

*Oconee County:* In June 2015, the Oconee County Council awarded Southern Health Partners a contract to provide correctional health care at the Oconee County Detention Center. The one-year contract totals \$254,820. Oconee County Sheriff Mike Crenshaw estimates the savings will amount to roughly \$112,000 compared to county-incurred costs from last year. The company began providing health care services at the facility in July 2015.<sup>42</sup>

## Illinois

*Lake County:* Armor Correctional Health Services, Inc. began providing comprehensive correctional health care services at the Lake County, Illinois jail facilities on June 20, 2015. The facilities consist of a juvenile and adult facility and have a combined average daily population of roughly 600 inmates.<sup>43</sup>

## Indiana

*Marion County:* Facing the expiration of its \$300 million contract with Corizon at the end of 2016, Marion County is currently seeking bids to perform health care services for the county’s inmate population.<sup>44</sup> Bids are due in mid-November, with Wexford Health, Centurion, and Correct Care Solutions expressing interest in submitting bids. The request for proposals includes a provision that would fine the potential provider for deficiencies in service.

## Maryland

*Cecil County:* In July, 2015, Cecil County officials selected PrimeCare Medical, Inc. to be its new medical vendor for its community corrections center and county jail. The contract stipulates that PrimeCare Medical institute electronic medical records, as well as provide correctional health care for inmates at these two facilities.<sup>45</sup>

## Michigan

The Michigan Department of Corrections renewed and expanded its contract with Corizon Health in March 2016, which went into effect in June. In addition to providing health care services, Corizon will also provide mental health and pharmacy services.<sup>46</sup>

*Jackson County:* In November 2015, Jackson County Commissioners approved a \$535,000, five-year contract with Advanced Correctional Health after a competitive bidding process. Coordinated Care, the previous provider, gave the county a 90-day notice of termination in August of last year.<sup>47</sup>

## Minnesota

*Kandiyohi County:* Last summer, Sheriff Dan Hartog, who oversees the county's jail, recommended privatizing health services for inmates to MeND Correctional Care, which handles such services at over 20 facilities in Minnesota and Wisconsin.<sup>48</sup> The move targets mental health services especially—from 2005 through 2010, the state dropped to 50th in the country in terms of public psychiatric beds per person, a national survey found.<sup>49</sup> The county jail's 2015 annual report noted the change happened as planned last November, with improved 24-hour access to nurses, as well as a significant drop in referrals to outside facilities for medical appointments—from an average of 21 per month, to only seven for the last month and a half of 2015.<sup>50</sup>

The lack of facilities and staff for mental health services has often led to arrests and emergency room visits for the mentally ill, with Kandiyohi County being a prime example. The *Star-Tribune's* own analysis from state figures found 436 arrests of mentally-ill adults from 2007 to 2012 in an 18-county cluster that includes Kandiyohi at its center. The article also noted that the state closed a large state hospital that had mental health facilities in Kandiyohi's largest city, Willmar, back in 2008, likely contributing to the spike in arrests.<sup>51</sup>

## Mississippi

Centurion was selected to continue to provide correctional health care services to its 17,000 inmates throughout the state. In July 2015, Centurion began providing services to the Mississippi Department of Corrections under an emergency one-year contract, which took effect in July 2016.<sup>52</sup>

## Nevada

*Washoe County:* In June 2015, Washoe County selected NaphCare, Inc. to provide health care services for the approximately 1,200 inmates at the Washoe County Detention Facility. The cost of the contract is approximately \$11 million over two years, and will run through May 2017. The contract stipulates that NaphCare implement its electronic health record system immediately.<sup>53</sup>

## New Hampshire

The New Hampshire Department of Corrections signed a new, three-year contract with NaphCare, Inc. to install and maintain its Electronic Health Record (EHR) system in four facilities for roughly 3,000 inmates. The partnership began in January 2016.<sup>54</sup>

*Rockingham County:* Rockingham County officials renewed their multi-year contract with PrimeCare Medical, Inc. in November 2015. The company will continue to provide health care services to inmates housed at the Rockingham County Department of Corrections in Brentwood, NH.<sup>55</sup>

## New Mexico

The New Mexico Department of Corrections announced in May that it awarded Centurion LLC contracts to provide medical and pharmaceutical services to the approximately 7,200 inmates in the state. The contract is for one year, and the state has agreed to pay roughly \$41 million for medical services and \$11 million for pharmaceutical services. The New Mexico Department of Corrections chose to contract with Centurion over Corizon and Wexford Health Sources. The state ended its contract with Wexford Health Sources in 2007 over concerns about health care quality.<sup>56</sup>

## New York

*New York City:* New York City Mayor Bill DeBlasio announced that the city would not be renewing its contracts with private health care providers Corizon and Damian Family Care Centers, Inc. Since June 2015, the Health and Hospitals Corporation has provided correctional health care for the city's approximately 70,000 inmates housed in a NYC Department of Corrections facility, which is the same organization that operates the public hospitals and clinics in New York City.<sup>57</sup>

According to the mayor's press release, the Department of Mental Health and Hygiene's budget for correctional health care services was approximately \$225 million in fiscal year 2015. This figure included the \$154 million Corizon contract and the \$8 million Damian Family Care Centers contract. Though the cost of the contract for the Health and Hospitals Corporation was not listed in the press release, it stated "Additional costs for correctional health services will be determined after the operation is transferred and stabilized, at which point HHC will assess operational and capital needs to bring about improvements in quality of care."<sup>58</sup>

## Oregon

*Washington County:* In May 2015, Washington County awarded NaphCare, Inc. a contract to provide correctional health care services for the roughly 570 inmates housed at the Washington County Jail in Hillsboro, OR, which went into effect the following month.<sup>59</sup>

## Pennsylvania

*Centre County:* Centre County officials renewed their correctional health care contract with PrimeCare Medical Inc. in October 2015. The company will continue to provide health care services to inmates housed at the Centre County Correctional Facility in Bellefonte, PA, having done so since 2005.<sup>60</sup>

*Lawrence County:* Lawrence County officials renewed their correctional health care contract with PrimeCare Medical Inc. in June 2015. The company will continue to provide correctional health care services for inmates at the Lawrence County Correctional Facility in New Castle, PA.<sup>61</sup>

## Virginia

As noted in last year's APR, Corizon voluntarily terminated its contract with the Virginia Department of Corrections. Following Corizon's termination, the corrections department signed an emergency contract with Armor Correctional Health Services, Inc., and the company began providing services October 1, 2014.<sup>62</sup> Armor subsequently entered into a long-term contract with the Virginia Department of Corrections, effective November 1, 2015.<sup>63</sup>

*Virginia Beach:* The Virginia Beach City Council approved a new correctional health care contract with NaphCare, Inc. in March 2015. The \$16 million, three-year contract was awarded through a competitive bidding process to replace the former health care provider for the city jail, Correct Care Solutions. The city decided to replace the health care provider after concerns over the quality of inmate care, including the deaths of two inmates.<sup>64</sup>

*Riverside Jail Authority:* Corizon Health was awarded a three-year contract in March 2016 to provide comprehensive medical, dental, mental health, and pharmacy services to the jail's approximate 1,450 inmates.<sup>65</sup> The jail is a seven-member regional jail that serves four counties and three cities in Virginia.<sup>66</sup>

## Washington

*Spokane County:* In May 2016, Spokane County officials signed a six-month, \$2.6 million contract with Naphcare, Inc. to provide correctional health care services to roughly 975 inmates per day in the Spokane County Jail and Geiger Correctional Center. The contract came about after the county was unable to recruit

enough nurses at the county jail. “At this point, I fully expect that we’re probably going out for a longer-term bid for filling these positions,” County Commissioner Al French told *The Spokesman-Review*.<sup>67</sup>

### **West Virginia**

In March 2015, Wexford Health Sources, Inc. announced that the West Virginia Division of Corrections awarded a five-year, \$119 million contract to the company to provide comprehensive medical, dental, mental health, and pharmacy services to all sentenced adult offenders in the state prison system, covering roughly 4,700 sentenced inmates in 14 prisons across the state, including three new prison and regional jail facilities.<sup>68</sup>

### **Wyoming**

In May 2016, Corizon Health announced that the Wyoming Department of Corrections had renewed its health care contract with the company for another two years. Corizon has been providing comprehensive health care services to inmates housed in Wyoming correctional facilities since 1999.<sup>69</sup>

## E. ANALYSIS: Reforming Illinois' Nonviolent Class 4 Felony Statutes

By Lauren Krisai

In May 2016, Reason Foundation and the Illinois Policy Institute co-published a policy brief that highlighted problems with the way Illinois sentences low-level offenders, and made a series of recommendations for reform. The policy brief paid particular attention to the way individuals are sentenced for low-level drug offenses and theft offenses.

Between 1989 and 2014, 55% of the increase in prison admissions was due to more individuals convicted of Class 4 felonies—the lowest level felony offense—with a large number of these offenders having been convicted of low-level offenses such as drug possession, low-level retail theft, and driving with a revoked license. Today, these offenders account for the largest sector of admissions to prison in Illinois Class 4 felony offenders—37.7%.

Illinois prisons are among the most overcrowded in the nation, which is dangerous for both inmates and staff. In 2014, the average cost of incarcerating each inmate per year in Illinois was \$22,191, and the cost of maintaining the system ballooned to over \$1.37 billion per year. This figure does not include additional outside costs taxpayers bear, such as administrative costs, pension contributions, employee benefits and taxes, retiree health care contributions, and capital costs.

In Illinois, possession of certain controlled substances, no matter how little the amount, is considered a Class 4 felony offense that warrants prison time. Similarly, the thresholds for felony theft and felony retail theft are low.

An individual who commits retail theft of an object valued at less than \$300 will be charged with a Class 4 felony if he or she has been convicted of the offense previously. If an individual commits retail theft and the amount is \$300 or more, it is considered a Class 3 felony offense in Illinois. Similarly, theft of property from the person when the amount is between \$500 and \$10,000 is a Class 3 felony offense under Illinois law.

These \$300 and \$500 thresholds are incredibly low, and are much lower than even neighboring states such as Wisconsin, which has a \$2,500 threshold for theft. Despite having much higher thresholds for felony theft in the state, Wisconsin and Illinois have comparable rates of theft, which illustrates that increasing the felony theft threshold would not necessarily result in additional crime rates.

Indeed, many other states have much higher thresholds for theft. Since 2001, at least 33 states have increased their felony theft thresholds. Of those 33 states, 27 have increased their thresholds beyond Illinois' \$500 level. Some of these states have a threshold twice or more than four times as high as Illinois'. Such states

include Texas (\$2,500), South Carolina (\$2,000), Alabama (\$1,500), Mississippi (\$1,000), and Ohio (\$1,000).

The policy brief recognizes that Illinois does not effectively prioritize public safety by sentencing low-level offenders to prison, who take up space in place of more violent and higher-level offenders. It makes a series of recommendations for reform for both its drug statutes and theft statutes.

First, the brief recommends that Illinois decriminalize possession of small amounts of controlled substances for personal use. Decriminalizing the possession of a small amount of controlled substances would significantly reduce the number of individuals cycling through Illinois' prison system for low-level drug possession. If this is not politically possible, Illinois should at least increase the threshold necessary to trigger felony drug possession, effectively making possession of below a certain amount a misdemeanor offense.

Second, this policy brief recommends significantly increasing the threshold for both felony theft and felony retail theft offenses so Illinois is in line with other states, and low-level offenders aren't disproportionately punished.

While the reforms recommended in this policy brief are modest, they represent a promising first step in correcting some of Illinois' draconian sentencing laws by ensuring punishment is more proportionate to the crime committed.

*The full Reason Foundation/Illinois Policy Institute policy brief—Reforming Illinois' Nonviolent Class 4 Felony Statutes, by Lauren Krisai—is available at: <https://goo.gl/Zdaj8E>*

## F. ANALYSIS: Reforming Connecticut's Pre-Trial System

By Lauren Krisai

In March 2016, Reason Foundation and Connecticut's Yankee Institute for Public Policy co-published a policy brief that outlined the problems with Connecticut's pre-trial system, and made a series of recommendations for reform.<sup>70</sup>

As of September 2015, Connecticut had roughly 3,400 pre-trial inmates housed in a DOC facility, accounting for roughly 21% of the Connecticut prison and jail population—sentenced or unsentenced. This means that roughly one in five individuals housed in a DOC facility had not yet been convicted of a crime. Of those who were being held in jail because they were unable to post bail, 690 (19%) had a bond set at less than \$20,000, the lowest financial bonds threshold in Connecticut.<sup>71</sup>

Of those individuals housed in jail on a \$20,000 bond or less, many were charged with offenses that would not necessarily warrant a period of incarceration upon conviction, such as sixth-degree larceny, possession of a controlled substance, or misdemeanor prostitution. Housing inmates in Connecticut is no cheap endeavor, either. Taxpayers pay roughly \$408,000 each day to house Connecticut's pre-trial population of roughly 3,400 inmates, for a total of roughly \$148.9 million per year. These facts alone signal that Connecticut's pre-trial system has run amok.<sup>72</sup>

Ideally, bonds set for defendants correlate with the risk of flight and threat to public safety associated with the charged individual. However, according to a 2003 evaluation of bail services in Connecticut by the Legislative Program Review and Investigations Committee of the Connecticut General Assembly, the state's laws on bail are "vague and confusing, and in some procedural areas there are no statutory guidelines."<sup>73</sup>

Indeed, there is no standardized process in Connecticut for assessing an individual's risk to public safety before trial. Judges are often left to determine the appropriate pre-trial assessment for individuals with no data driving their decisions, which results in many defendants often facing pre-trial detention just because they cannot afford to post bond. The inverse is also true: Connecticut's cash bail system allows individuals who do pose a threat of committing violent acts to be released pre-trial if they can post bond.

Reason Foundation and the Yankee Institute argue that Connecticut's pre-trial system should be reliant on risk, not on how much money individuals possess. The brief offers a series of recommended reforms. First, the state should eliminate cash bail entirely, and replace it with a system that employs a pre-trial risk assessment tool to assign individuals into low-, moderate- and high-risk categories. Assessments would be based on objectively evaluated predictors of a defendant's risk of flight or reoffense.

Low-risk defendants who are unlikely to commit additional crimes and are likely to return for their court dates could be released on their own recognizance. Medium-risk defendants can be managed with tools such as supervision, electronic monitoring, or other interventions as an alternative to issuing a financial bond. This offers an opportunity for the private sector to get involved with these alternatives. Finally, the relatively small group of individuals who are determined to present a high risk to public safety should remain in detention until trial.

*The full Reason Foundation/Yankee Institute for Public Policy policy brief— Reforming the Constitution State’s Pre-Trial System, by Lauren Krisai and Thurston Powers—is available at: <https://goo.gl/lZZ3Yp>*

## G. ANALYSIS: Abolishing Civil Asset Forfeiture in Mississippi

By Lauren Krisai

A forthcoming policy brief to be co-published by Reason Foundation and the Mississippi Center for Public Policy calls for reining in the practice of civil asset forfeiture in the state.

In Mississippi, law enforcement and other government agencies may seize the property of innocent citizens without charging them with committing a crime through use of civil asset forfeiture. In order for an innocent individual to get his seized property back, he must file a response to the state's petition for forfeiture, and the state then has to prove by a preponderance of the evidence that the property was used during the commission of a crime, which is a lower burden of proof prosecutors must meet than necessary to convict defendants at a criminal trial. In most instances, if no petition is filed within 30 days, the property is forfeited.

Even more, law enforcement in Mississippi is allowed to keep 80% of the proceeds of these forfeitures in most cases, and have used them to supplement basic budget items, including salaries. Recognizing the problems of these laws, some states have in recent years abolished civil asset forfeiture or reined in its excesses by instituting a number of safeguards, but it remains on the books in many states, including Mississippi, and the federal government.

Between 2004 and 2014, Mississippi law enforcement agencies netted over \$52 million through the federal equitable sharing program alone. It's unclear how much money they seized through state law, since there is no requirement that law enforcement track how often they use civil asset forfeiture and for what purposes.

This brief makes several tiered recommendations to rein in the excesses of civil asset forfeiture in Mississippi and strengthen property rights of innocent Mississippians. First, it recommends requiring a criminal conviction before an individual's property may be forfeited, as other states such as New Mexico and Montana have recently done. If this is not politically possible, and the practice of civil asset forfeiture remains, this brief recommends instituting a number of safeguards to strengthen protections of innocent Mississippians. Such safeguards would include:

- Increasing the burden of proof necessary to forfeit an individual's property.
- Requiring that the state deposit forfeited property into a general fund instead of directly into the hands of law enforcement. Instituting reporting requirements for any government agency in the state that utilizes asset forfeiture—in order to increase transparency and to allow lawmakers and citizens to understand how often the practice is being used, for what purposes, and how proceeds are being spent by law enforcement.

- Setting a de minimis value to forfeit property, which would ensure that innocent individuals do not have to spend more on challenging a forfeiture than their property is worth.

While the property rights of innocent Mississippians would be most strengthened by requiring a criminal conviction before a forfeiture can take place, instituting any number of these above recommendations would be a modest first step in reining in excesses of civil asset forfeiture in the Magnolia State.

## Endnotes

- <sup>1</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2014*, September 2015, p. 14, <https://goo.gl/IolXzM> (accessed September 30, 2016).
- <sup>2</sup> Office of the Inspector General, Department of Justice, “Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons,” August, 2016, p. 44.
- <sup>3</sup> Department of Justice, Office of Deputy Attorney General Sally Q. Yates, “Memorandum for the Acting Director, Federal Bureau of Prisons, SUBJECT: Reducing our Use of Private Prisons,” August 18, 2016.
- <sup>4</sup> “Statement by Secretary Jeh C. Johnson on Establishing a Review of Privatized Immigration Detention,” Department of Homeland Security Press Release, August 29, 2016. <https://goo.gl/Jkx3Qh>
- <sup>5</sup> Craig Harris, “Private Prison deal cuts \$1.5M from Mohave County, schools as operator gets \$2.5M state subsidy,” *Arizona Republic*, July 24, 2016.
- <sup>6</sup> State of California, 2015–2016 Regular Legislative Session, “SB 1289: An Act to add Section 1670.9 to the Civil Code, relating to immigration.” <https://goo.gl/HQ6UMh>
- <sup>7</sup> Kathleen Wilson, “Private investor would profit if recidivism goes down,” *Ventura County Star*, May 17, 2016.
- <sup>8</sup> Ibid.
- <sup>9</sup> Rebecca Boone and Cynthia Sewell, “Feds will not charge former private Idaho prison operator over falsified timecards,” Associated Press, May 20, 2015.
- <sup>10</sup> Rebecca Boone, “Federal court upholds contempt ruling against prison company,” Associated Press, May 23, 2016.
- <sup>11</sup> Jonathan Oosting, “Report links prison food privatization with gangs,” *Detroit News*, March 30, 2016.
- <sup>12</sup> Ibid.
- <sup>13</sup> Paul Egan, “Michigan to clamp down on privatized prison deals,” *Detroit Free Press*, January 7, 2016.
- <sup>14</sup> Aaron Boehm, “Bill requiring prison kitchen inspections approved by committee,” WLUC, June 10, 2016. <https://goo.gl/RsBMTe>
- <sup>15</sup> Paul Egan, “Plan would close 2 Michigan prisons, lease another,” *Detroit Free Press*, April 4, 2016.
- <sup>16</sup> Ibid.
- <sup>17</sup> Ibid.
- <sup>18</sup> Andy Mannix, “Minn. Legislature considers reopening private prison amidst overcrowded state prisons,” *Minneapolis Star Tribune*, April 14, 2016.
- <sup>19</sup> Ibid.
- <sup>20</sup> Emily Wagster Pettus, “Mississippi closing private prison with history of abuse,” Associated Press, September 14, 2016.
- <sup>21</sup> Associated Press, “Jail privatization provision struck from Ohio House budget,” April 20, 2015.
- <sup>22</sup> Tiffany Parks, “Proposed bill would allow counties to privatize jails,” *The Daily Reporter*, March 24, 2015.

- 23 Kate Carlton Greer, “Department of Corrections Begins Restructuring With State-Run Private Facility,” KGOU, July 5, 2016. <https://goo.gl/b3zKcS>
- 24 Ibid.
- 25 Kate Carlton Greer, “Department of Corrections Slow to Address Private Prison Contract Breaches, Records Show,” KGOU, June 13, 2016. <https://goo.gl/Be6DSE>
- 26 Pennsylvania Department of Corrections, “PRESS RELEASE: Performance-Based Contracts Continue to Positively Affect Recidivism,” August 25, 2015.
- 27 Ibid.
- 28 Ibid.
- 29 Dave Boucher, “Aramark lone bidder for Tennessee prison food contract,” *The Tennessean*, August 12, 2016.
- 30 Ibid.
- 31 Paul Leach, “County invests over \$500,000 in effort to privatize its jail,” *Chattanooga Times Free Press*, May 5, 2016.
- 32 Shelly Bradbury, “Overcrowded and understaffed Hamilton County jail leaves inmates without basic necessities,” *Chattanooga Times Free Press*, May 5, 2016.
- 33 Linda A. Moore, “Shelby County Approves \$3.65 million contract to outsource correctional center food service,” *The Commercial Appeal*, March 31, 2015.
- 34 Bill Dries, “County Commission Considers \$3.6 Million Prison Food Contract With Aramark,” *Memphis Daily News*, March 30, 2016.
- 35 “NaphCare Awarded New Contract to Provide Medical Services at Federal Correctional Institution, Miami, FL,” NaphCare, Inc. Press Release. May 2, 2016. <https://goo.gl/E7JB5V>
- 36 Brian Lawon, “Madison County ends contract with jail health care provider over handling of lawsuits,” Alabama Media Group. April 22, 2015. <https://goo.gl/wS9lue>
- 37 Rachel Swan, “After Deaths, Alameda County replaces jail inmate health provider,” *San Francisco Gate*, August 5, 2016.
- 38 “NaphCare Awarded New Contract with County of San Bernardino, CA,” NaphCare, Inc. Press Release. February 3, 2016. <https://goo.gl/wTGycy>
- 39 Mary Ellen Klas, “Corrections agrees to temporary new contract with prison healthcare company, Centurion,” *Miami Herald*, February 1, 2016. <https://goo.gl/v1hWqj>
- 40 Ibid.
- 41 “Welcome Collier County, Florida to the Armor Family,” Armor Correctional Health Services, Inc. website. <https://goo.gl/ZIy7Gd>
- 42 “Contract with Southern Health Partners for Inmate Health Care to Save Taxpayers Money, According to Sheriff Crenshaw,” Oconee County Sheriff’s Office News Release. June 2015. <https://goo.gl/Zfohla>
- 43 “Armor Extends a Warm Welcome to Lake County, Illinois,” Armor Correctional Health Services, Inc. website. <https://goo.gl/1s3hpM>
- 44 Virginia Black, “Prison health-care companies eye Indiana contract,” *South Bend Tribune*, October 14, 2016.
- 45 “PCM Starts in Maryland with Cecil County!,” PrimeCare Medical, Inc. Press Release. July 1, 2015. <https://goo.gl/SVjmKx>
- 46 “Corizon Health Wins Michigan, Expands Services,” Corizon Health Press Release, March 3, 2016. <https://goo.gl/RPTqTi>

- 47 Nathan Clark, "County approves new, \$500,000-plus contract for medical services at jail," MLive Media Group. November 19, 2015. <https://goo.gl/bsjdDi>
- 48 Anne Polta, "Kandiyohi County to contract out jail health services," *West Central Tribune*, September 1, 2015.
- 49 Glenn Howatt, "Breakdown: In rural Minnesota, mental health safety net is in limbo," *Minneapolis Star-Tribune*, December 27, 2013.
- 50 Kandiyohi County, Minnesota Sheriff's Office, "Kandiyohi County Jail: Annual Report, 2015." <http://goo.gl/ccLQ1Q>
- 51 Howatt, "Breakdown."
- 52 "Centurion Selected To Provide Comprehensive Correctional Healthcare In Mississippi," Press Release. April 8, 2016. <https://goo.gl/iuQC2v>
- 53 "NaphCare Awarded New Contract with Washoe County, NV, Sheriff's Office," NaphCare, Inc. Press Release. July 27, 2015. <https://goo.gl/jdI0dC>
- 54 "NaphCare Awarded New Contract with New Hampshire Department of Corrections (NHDOC)" NaphCare, Inc. Press Release. February 3, 2016. <https://goo.gl/PR94UX>
- 55 "RCDOC renews with PrimeCare Medical!," PrimeCare Medical, Inc. Press Release. November 9, 2015. <https://goo.gl/IrjOaH>
- 56 Justin Horwath, "Centurion wins 1-year inmate care contracts worth \$52M," *Santa Fe-New Mexican*. May 23, 2016. <https://goo.gl/URbF8B>
- 57 "Health and Hospitals Corporation To Run City Correctional Health Service," Press release, The Official Website of the City of New York. June 10, 2015. <https://goo.gl/9LG7iV>
- 58 Ibid.
- 59 "NaphCare Awarded New Contract to Provide Medical Services at the Washington County Jail in Hillsboro, OR," NaphCare, Inc. Press Release. May 28, 2015. <https://goo.gl/ziiMTo>
- 60 "Centre County Renews with PrimeCare Medical," PrimeCare Medical, Inc. Press Release. October 24, 2015. <https://goo.gl/6GPMe0>
- 61 "Lawrence County renews with PrimeCare Medical!," PrimeCare Medical, Inc. Press Release. June 15, 2015. <https://goo.gl/niQJLt>
- 62 Lauren Galik and Len Gilroy, "Annual Privatization Report 2015: Criminal Justice and Corrections," May 2015. P. 22. <https://goo.gl/bYKRwV>
- 63 "Armor Enters into Long-term Contract with Virginia DOC," Armor Correctional Health Services, Inc. Press Release. <https://goo.gl/1sqZyg>
- 64 Kathy Hieatt, "Va. Beach jail chooses new health provider for inmates," *The Virginian-Pilot*. March 26, 2015. <https://goo.gl/a2axac>
- 65 "Riverside Regional Jail Authority Chooses Corizon Health," Corizon Health Press Release. March 3, 2016. <https://goo.gl/hQdQHa>
- 66 Information derived from the "Riverside Regional Jail About Us" Page: <https://goo.gl/D1VIX8>
- 67 Kip Hill, "Spokane County contracts with Alabama firm to provide jail medical services for \$2.6 million," *The Spokesman-Review*, May 18, 2016. <https://goo.gl/EDyKjt>

<sup>68</sup> “Wexford Health signs new contract with long-term partner, State of West Virginia,” News Release. Wexford Health Sources Incorporated. March, 2015. <https://goo.gl/15nlO> <https://goo.gl/15nlOM> M

<sup>69</sup> “Wyoming DOC Continues Partnership,” Corizon Health Press Release. May 2, 2016. <https://goo.gl/Us2fRu>

<sup>70</sup> Lauren Krisai and Thurston Powers. “Reforming the Constitution State’s Pre-Trial System,” Reason Foundation and Yankee Institute for Public Policy, Policy Brief. March 2016. <https://goo.gl/N2Elev>

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.