

COMMERCIALIZED (IN)JUSTICE

CONSUMER ABUSES IN THE BAIL
AND CORRECTIONS INDUSTRY



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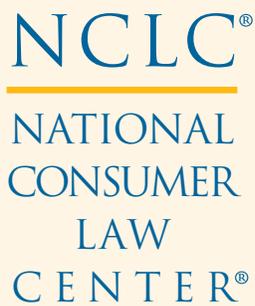
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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center[®] (NCLC[®]) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services; and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state governments and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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EXECUTIVE SUMMARY

This report discusses the growing problem of “commercialized injustice”—consumer abuses perpetuated by companies profiting from the criminal legal system and mass incarceration. Although not always visible to people who do not live in heavily-policed communities or who are protected by other forms of privilege, the scale of private industry’s involvement in the contemporary criminal legal system is staggering. These companies provide a wide range of products and services, and operate in various relationships with the government. Some contract directly with governments (e.g., private probation and prison phone services). Others sell directly to consumers, but under specific authority to administer criminal legal functions (e.g., commercial bail and certain rehabilitation and diversion programs). And others simply profit from the contours of our modern criminal legal system (e.g., pre-arrest diversion programs that contract with private retailers).

The expanding reach of the modern corrections industry represents the intersection of two troubling trends: (1) the outsourcing of the criminal legal system to the private sector, exemplified by the growth of the private prison industry; and (2) the imposition of fines and fees on mostly low-income defendants to fund the criminal legal system. States and local governments are outsourcing various core functions of their criminal legal systems—traditionally public services—to private corporations operating to maximize profit for their owners. At the same time, they have sought to shift the cost of operating the criminal legal system onto those who have contact with the system and their loved ones, particularly through the assessment of fines and fees on those accused of criminal activity. The corrections industry’s growth exacerbates these trends, combining the conflicts of interest endemic in so-called “user-funded” financing structures with the lack of public accountability that advocates have long criticized in the private prison context.

Every industry discussed in this report shares this common feature: each profits from financial extractions from individuals based on their exposure to the criminal legal system. The growth of the corrections industry accelerates the trend whereby the costs of our legal system are imposed on low-income, disadvantaged communities least able to shoulder such burdens, rather than shared as a collective public responsibility. The corrections industry operates for the primary purpose of maximizing profits for its owners—creating strong incentives to achieve *new* forms of monetary extraction in addition to shifting the burden of *existing* costs.

The corrections industry pitches itself to states as way to relieve fiscal pressure (created in part through mass incarceration)—but increases costs for consumers.

Due to the policy decisions that have driven mass incarceration, state and local governments have experienced sharp growth in costs associated with administering the criminal legal system in recent decades. At the same time, many local governments have seen

an erosion of state financial support for municipal services and new limitations on their ability to finance their justice systems through taxes. It is in this context that states and local governments have acted so aggressively both to offload core functions of their legal systems to private companies and to find ways outside of tax revenues to pay for the costs of the system.

The private corrections industry has sought to take advantage of these trends. Many of the industries described in this report have adopted a so-called “offender-funded” model, whereby the costs of administering criminal legal functions are shifted from public budgets to individuals who have contact with the legal system. Companies have aggressively marketed their services to states and localities as a way not only to achieve costs savings for existing corrections functions—but also, in many cases, to generate new revenue streams through kickback payments.

These arrangements almost inevitably have the effect of sharply increasing the financial costs that are imposed on economically fragile individuals processed through the criminal justice system. And while state agencies may indeed see budget savings from these arrangements, those “savings” are not achieved via efficiencies in service provision. The cost of those functions has instead simply shifted onto the individuals processed through the legal system and their loved ones. So while the corrections industry commonly represents itself to the public and to agencies as saving money, total costs to communities are likely to be significantly *higher* under commercialization, due to the combination of industry profit-seeking and contractual arrangements that share proceeds between the private company and the state.

Common problems throughout the bail and corrections industry lead to consumer abuses.

The corrections industry provides a wide range of products and services to vulnerable consumers facing impossible choices as a result of their contact with the criminal legal system. But common features across the industry create an operating environment ripe for consumer abuses and financial exploitation—undermining core goals of our criminal legal system.

- **The corrections industry operates largely without consumer regulation or government enforcement.** The industry is constructed to profit from an acute power imbalance—leveraging the threat of the state’s police powers while creating the terms of their services for consumers and their families. Given such imbalance, strong government regulation and oversight is needed to protect individuals from being taken advantage of. Unfortunately, that need has been ignored, and lax or non-existent regulatory regimes are common throughout the industry.
- **Companies take advantage of the threat of criminal consequences and consumers’ lack of knowledge about their rights.** People who have contact with the legal system face distinct uncertainty about what laws authorize and restrict these companies; what rights they have as consumers; and what the consequences are for non-payment or if

they are otherwise unable to meet imposed demands. Some companies have used this uncertainty to their advantage when they seek to coerce payment.

- **Corporate consolidation and weak competitive pressures have resulted in a handful of large conglomerates wielding market power across sectors.** The corrections industry is increasingly characterized by a small number of large corporations contracting with government agencies to provide different types of services, and leveraging power in one market to increase share in another. This creates effective monopolies that contribute to high consumer prices and abusive practices.
- **Companies face incentives to make decisions based on what is in their financial interest—which often directly conflicts with public policy goals.** The corrections industry operates under perverse incentives to increase the number of consumers, and the revenues that can be extracted from each consumer, through excessive supervision, punishment, or fees. This is especially pernicious when companies exercise decision-making authority affecting the consumers' criminal punishment at the same time as they stand to profit from extensions of such punishment.
- **In exchange for exclusive contracts, companies frequently offer kickback payments to cash-strapped corrections agencies.** Companies' arrangements with corrections agencies are commonly characterized by two unique features. First, companies compete for contracts by offering to make kickback payments to the corrections agency. These costs are passed directly to people who have contact with the criminal legal system. Second, companies require a promise that the state will limit consumer choices, so that the contracted service is provided by the company on exclusive terms—securing for them what is, in many cases, a literally “captive market.” This system encourages companies to compete on the basis of higher rates charged to consumers, even as the quality of the service is frequently poor.

The commercialized criminal legal system imposes its costs on vulnerable people least able to pay.

The inflated costs resulting from the exploitative practices in the corrections industry are borne by some of the most vulnerable people in our society. The burden of paying these higher costs is concentrated on a much smaller group (those who have contact with the legal system), compared to the broad group of taxpayers who pay for government operations under public financing models. And people in this smaller group are far more likely to be (1) people of color, due to discriminatory policing and sentencing practices, and (2) poor, in part because economically oppressed communities are frequently targeted by law enforcement, as well as the persistent racial wealth gap.

As a result, these financial obligations are more likely to turn into unaffordable debts, on which payment can be demanded under threat of criminal consequences. These excessive costs are imposed not only on those who are arrested or incarcerated, but also their loved ones and communities. Because so many low-income persons struggle to meet the most basic costs of living, the consequence of the exorbitant costs imposed by the corrections industry can be catastrophic, both individually and in the aggregate.

Further, commercialization can increase criminal involvement for individuals. Conflicts of interest can lead to longer supervision periods when, for example, private probation companies profit from increased numbers. And consumers' inability to pay the exorbitant costs can result in criminal sanctions.

Private companies extract wealth from communities at each step of our punishment continuum.

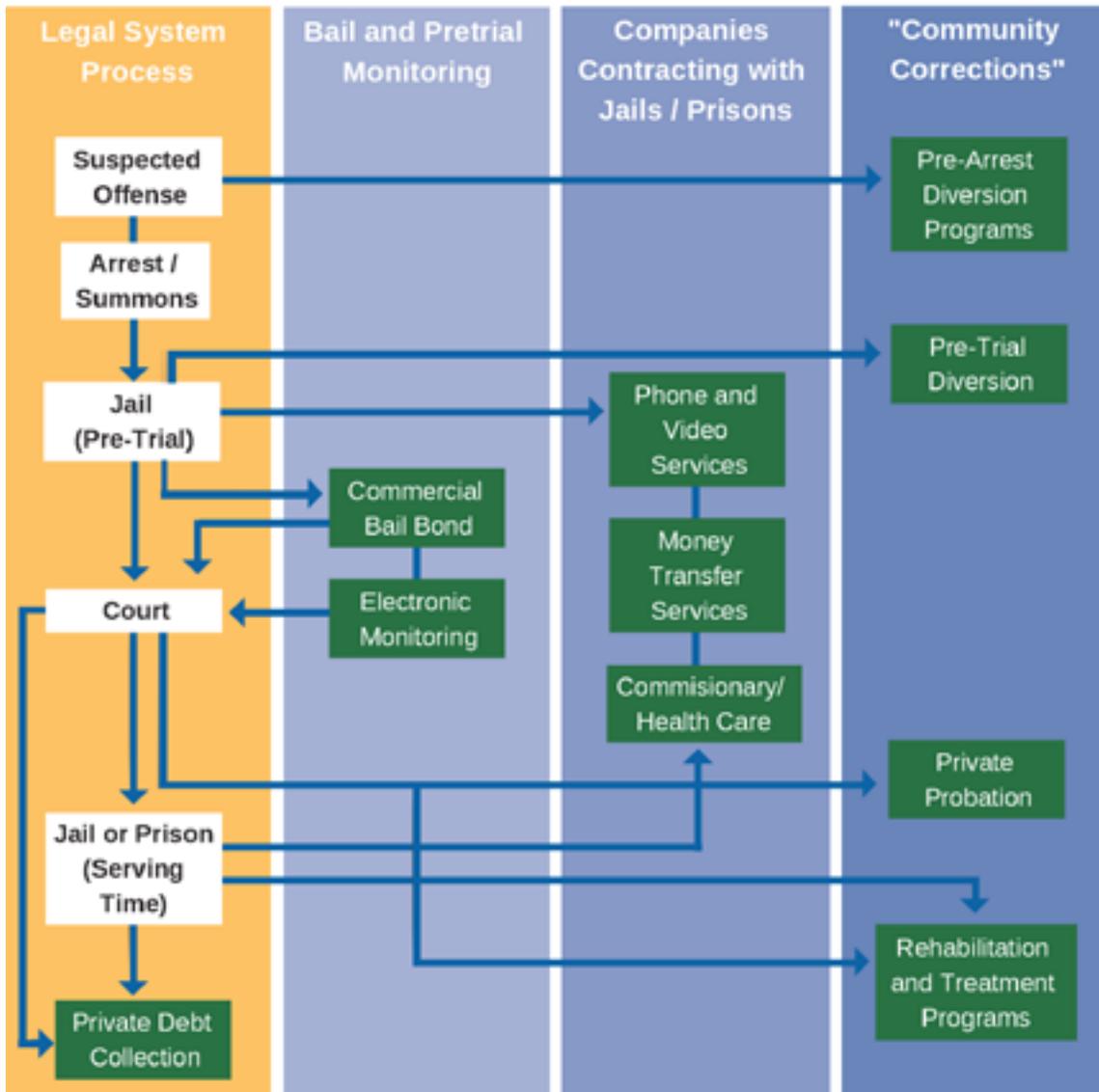
The culmination of these trends is a system where few criminal legal functions have *not*, in some way or in some jurisdiction, been commercialized by private industry. Americans are subjected to costs imposed by private industry from the moment of arrest (and sometimes even before), through the trial and sentencing process, during incarceration, and extending to post-release supervision and reentry programs. Although the services and business models vary, all of these commercial transactions push families deeper into poverty and make it harder for people who have interactions with the criminal justice system to get back on their feet.

- **Pre-arrest diversion programs.** Over the past several years, companies have emerged to offer people who are suspected by retailers of criminal activity (typically shoplifting) the opportunity to avoid possible referral to law enforcement by paying hefty fees. In reality, people are paying the fee because they are threatened with possible arrest if they do not—despite the fact that many of these cases would not be pursued by law enforcement, either because the amount at issue is minor or there is insufficient evidence to support prosecution.
- **Commercial bail.** Fees paid by consumers in the \$2 billion commercial bail market are kept by bail bond companies and their corporate partners—even in cases of false arrest, where the charges are dropped or the individual facing charges is determined to be innocent. This industry profits from taking advantage of people at their most vulnerable: when they—or their child or loved one—face a choice between making payment under the offered terms, or staying in jail. As a result of this business model, heavily policed communities find themselves trapped in a cycle of debt and fees related to the cost of commercial bail—often long after the courts have resolved their charges.
- **Post-arrest and pre-trial diversion programs.** In many jurisdictions, prosecutors have the authority to give people accused of certain criminal violations the option of completing an alternative program of treatment or restitution, in lieu of incarceration. But the recent emphasis on diversion has obscured a troubling new pattern: the outsourcing of pretrial diversion programs to private companies that charge excessive participation fees and operate beyond public scrutiny.
- **Electronic monitoring.** Increasingly, people who have been arrested or are under other forms of supervision are being required to wear electronic monitoring devices—typically accompanied by onerous fees. Electronic monitoring may be ordered by a court, or imposed as a condition of a private company's services. Providers frequently charge a one-time installation fee, typically \$50 to \$150; afterwards, defendants must pay for monitoring, typically assessed at a rate of around \$300-\$500 every month.

- **Private probation.** At least ten states (most in the South) allow counties and municipalities to contract with private companies to administer their probation systems for misdemeanor and lower offenses. Under these arrangements, the government extends exclusive contracts to supervision companies, which are then allowed to enforce probation requirements against probationers. In Georgia alone, probation companies received at least \$40 million in revenue from fees charged to probationers.
- **Corrections contracting in telecommunications.** The corrections telecommunications industry contracts with prison and jail systems (and immigration detention centers) to provide the exclusive means for prisoners to maintain contact with the outside world. The companies that provide these phone services charge rates many times higher than the rates outside of correctional facilities. The high cost of calls particularly burdens the families of the incarcerated, creating systematic transfers of wealth from already struggling families and communities to private companies.
- **Corrections contracting in financial services.** In recent years, facilities have outsourced payment and money transfer systems to private companies that charge prisoners and their loved ones a range of high fees—including for financial services traditionally provided by the correctional facilities at no cost. For example, people newly released from correctional facilities may be given access to their funds only through a prepaid “debit release cards,” rather than as cash. The money on these cards is subject to steep usage and maintenance fees that eat into the balance.
- **Other corrections contracting: healthcare and commissary.** Prisoners are increasingly being asked to bear costs for healthcare and basic amenities sold through commissaries. The prices charged for these basic necessities are often inflated above retail, exacerbating the financial burden on incarcerated people.
- **Reentry, rehabilitation, and treatment programs.** The growing community corrections industry offers various “back-end” treatment and reentry programming, including residential halfway houses and work release centers. Over the past decade, the modern private prison industry has moved to take advantage of states’ newfound interest in rehabilitation and alternatives to incarceration by aggressively expanding into providing these services. They have profited from participation fees that sharply limit the availability of these services for economically distressed populations while also creating unaffordable debts for participants.
- **Private debt collection.** Many states and local governments contract with private debt collection agencies—which are often authorized to charge significant collection costs—to try to collect from those with criminal justice debt. Collection firms are often paid through fees added on top of the original balance, to be paid by the debtor.

Advocates can work to address these abuses by raising awareness, strengthening oversight, enforcing existing laws, and pushing for new reforms. They should work to strengthen public and private accountability for the unfair and unlawful practices that are now widespread in the modern corrections industry—with the goal of ultimately moving toward eliminating exploitative profiteering and other economic injustices from our criminal legal system.

Private companies extract wealth from poor, heavily-policed communities at each step of the U.S. criminal legal system



This simplified graphic depicts how people charged with offenses may be subjected to onerous costs imposed by private companies operating in the bail and corrections industry. Actual experiences vary and will depend on a range of factors, including the jurisdiction and nature of the charge. The green boxes depict the industries of focus in *Commercialized (In)Justice*.

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INTRODUCTION

Since the U.S. Department of Justice completed its investigation of the Ferguson police department in 2015,¹ a clear picture has emerged: People who have contact with our criminal legal system are frequently left with unaffordable debts that create acute hardship for vulnerable families and extract resources from poor communities. The Ferguson report, and much subsequent advocacy, focused on fines and fees assessed by courts and government entities. But these costs are only part of the story. Today, many of the financial obligations imposed on families as a result of interactions with the legal system are owed to private companies, operating either by contract or in coordination with the state to commercialize nearly every segment of our modern punishment continuum.

In recent decades, core functions of our criminal justice system have been transferred from public oversight to unaccountable private actors, companies whose financial incentives often directly conflict with important policy goals including reducing poverty, crime, and incarceration. These companies engage in commercial transactions that transpire in the shadow of criminal law, imposing unaffordable costs on the people processed through the legal system and their loved ones. From commercial bail to supervisory monitoring and from prison services to court-ordered rehabilitation programs, the corrections industry—estimated to exceed \$74 billion as of 2012²—now provides a range of high-cost services and financial products to low-income people facing extreme pressures and limited or no choices. This is a toxic recipe for abuse.

The expanding reach of the modern corrections industry represents the intersection of two troubling trends: (1) the outsourcing of the criminal legal system to the private sector, exemplified by the growth of the private prison industry; and (2) the imposition of fines and fees on mostly low-income defendants to fund the criminal legal system.³ States and local governments are outsourcing various core functions of their criminal legal systems—traditionally public services—to private corporations operating to maximize profit for their owners. At the same time, they have sought to shift the cost of operating the criminal legal system onto heavily-policed communities, particularly through the assessment of fines and fees on those accused of criminal activity. The corrections industry’s growth exacerbates these trends, combining the conflicts of interest endemic in so-called “user-funded” financing structures with the lack of public accountability that advocates have long criticized in the private prison context.

As a result, people who have contact with the legal system⁴—including loved ones of the accused—are also, increasingly, unwitting consumers in predatory commercial transactions. They take on onerous loans advanced by bail bond companies following an arrest; heavy fees levied by private companies providing diversion, rehabilitation, or probation services; and egregious rates charged by monopolistic phone vendors to stay

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in touch with incarcerated loved ones. Many of the practices common in the corrections industry violate not only constitutional protections but also federal and state legislation designed to protect consumers and ensure fairness in financial marketplaces. Indeed, consumers in the corrections industry experience some of the most devastating abuses that the National Consumer Law Center's (NCLC) advocates have observed, across all of our work. But with lax regulation, disinterested (or nonexistent) public oversight and obstacles to private litigation, harmful practices all too frequently escape scrutiny and legal accountability.

This report discusses the growing problem of “commercialized injustice”—consumer abuses perpetuated by companies profiting from the criminal legal system and mass incarceration. It seeks to identify common trends and problems across the corrections industry that lead to unfair and unaffordable costs for low-income families as well as to provide deeper dives into how these problems play out in specific types of service and product areas. It is intended to be a resource for advocates, policymakers, and members of the public to better understand the scope and interrelatedness of the problems—and to use in engaging in the important work of reform.

Mining information from court filings, investigative journalism, academic research, and advocacy pieces, this report draws connections between the stories of consumer abuses by companies profiting from the criminal legal system. It aims to trace all the different ways that private corporations are involved in our criminal legal system: from the moment of arrest, through trial and then incarceration, to the conclusion of state supervision. In doing so, the report highlights how abuses in a particular industry are connected to wider trends in the criminal legal system—and how these have all come together to harm vulnerable consumers.

The report begins with an overview of the trends that have resulted in governments partnering with private companies to offload costs associated with administering the criminal legal system. It next discusses common factors across the corrections industry contributing to consumer abuses. It then identifies several of the specific industries within the broader corrections sector and highlights specific ways that commercialization in these industries negatively affects consumers. The report concludes by arguing that a combination of policy reforms and vigorous enforcement of existing consumer protection laws can reduce the predatory practices that are currently widespread in the modern corrections industry—and ultimately move toward eliminating exploitative profiteering and other economic injustices from our criminal system altogether.

This work is part of NCLC's growing, multipronged campaign to end practices in the criminal legal system that are harmful or abusive to low-income consumers. Although these issues have typically been analyzed from the perspective of criminal justice policy and civil rights law, the problems of unaffordable debts and harmful collection practices are a core focus of consumer protection advocates. Consumer law promises an important and complementary approach for advocates seeking to confront these abuses, in ways that public interest lawyers are only starting to understand and take advantage of in their practices.⁵

THE CORRECTIONS INDUSTRY HAS GROWN IN RECENT DECADES, THE RESULT OF SEVERAL TRENDS

The scale of private industry's involvement within the contemporary criminal legal system is staggering. A recent report by Worth Rises (formerly the Corrections Accountability Project) identifies more than 3,100 corporations that directly profit from mass incarceration, most frequently by contracting with government entities—typically correctional agencies—at the local, state, and federal levels.⁶ But in addition to these companies there are others, like the bail bond industry, that may not directly contract with the government but nevertheless are invested in the status quo of the criminal legal system and mass incarceration.⁷

These companies—described further in the last section—provide a wide range of products and services, and operate in various relationships with the government. Some companies contract directly with governments (e.g., private probation and contracting with correctional facilities for services like phone calling). Others sell directly to consumers, but under specific authority to administer criminal legal functions (e.g., commercial bail and certain rehabilitation and diversion programs). And others simply profit from the contours of our modern criminal legal system (e.g., pre-arrest diversion programs that contract with private retailers).

But every industry discussed in this report shares this common feature: each profits from financial extractions from individuals based on their exposure to the criminal legal system. The growth of the corrections industry thus accelerates the trend whereby the costs of our legal system are extracted from heavily-policed communities, rather than shared as a collective public responsibility. Although public entities face pressure to supplement their appropriated budgets, the corrections industry operates for the primary purpose of maximizing profits for its owners—creating strong incentives to achieve *new* forms of monetary extraction in addition to shifting the burden of *existing* costs.

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Rising fiscal pressures for state and local governments

Whether measured as a share of population or in total numbers, the United States incarcerates more of its citizens than any other country in the world.⁸ In the 25 years following 1980, the number of people incarcerated in America increased from roughly 500,000 to over 2.2 million. Nationwide, 4.5 million people are on probation or parole—twice the incarcerated population.⁹ Today, 1 in every 37 adults in the United States is under some form of correctional supervision.¹⁰ This is mass incarceration, a term that as used here includes not only the number of people currently behind bars but also those who as a result of their contact with the legal system have seen their liberty restricted through other means, like government probation and supervision programs.

Unsurprisingly, state and local governments have experienced sharp growth in costs associated with administering the criminal legal system in recent decades. Between 1993 and 2012, real per-capita spending on the criminal legal system grew by 40 percent nationwide. Local governments saw their total real costs approximately double, rising faster than state expenses.¹¹ Outside of health and education expenditures, one in every nine dollars spent by state governments goes towards corrections.¹² Including both government expenditures and direct costs to people involved in the justice system and their families, the American system of mass incarceration

costs at least \$182 billion every year, according to the Prison Policy Initiative.¹³ And together, state and local governments are responsible for 90 percent of direct correctional expenditures.¹⁴

At the same time, many local governments have seen an erosion of state financial support for municipal services and new limitations on their ability to finance their court and corrections systems through taxes.¹⁵ For example, beginning in the 1970s and continuing to the present, many states have adopted constitutional limits on property taxes that have sharply reduced funding for local services.¹⁶ And pressures on state and local tax revenues continue. One report predicted that the federal tax changes enacted in 2017 would, by substantially limiting the ability to deduct state and local taxes from federal taxable income, encourage states and localities “to shift their revenue sources to more regressive fees and fines.”¹⁷

National economic trends have also contributed to state and local fiscal pressures. The Great Recession and its aftermath took a toll on state and local budgets, resulting in sharp declines in tax revenue that caused shortfalls totaling well over half a trillion dollars¹⁸—even as corrections expenditures continued on trend. Additionally, rising inequality has resulted in income gains accruing disproportionately to a small number of very high-income earners and corporations who are mostly located in a handful of large cities, and thus out of reach for many local jurisdictions.¹⁹

It is in this context that states and local governments have acted so aggressively both to offload core functions of their legal systems to private companies and to find ways outside of tax revenues to pay for the costs of the system.

The corrections industry pitches itself to states as a way to relieve fiscal pressure—but increases costs for consumers

The emergence of the private corrections industry is driven by many of the same factors that have contributed to governments’ increasingly aggressive efforts to raise revenue from fines and fees: the combination of state and local fiscal constraints and rising costs of mass incarceration, as well as perverse incentives created by the timing of upfront revenue gains and delayed or hidden economic costs (including the impact of higher incarceration on families and government budgets) and the political powerlessness of the accused. Facing these political and economic pressures, governments across the country

The United States incarcerates more of its citizens than any other country in the world; 1 in every 37 American adults is under some form of correctional supervision.

have constructed elaborate systems to extract onerous payments from families already living on the margins.²⁰

Indeed, University of New Hampshire School of Law Associate Dean Leah A. Plunkett has identified budget constraints as being one of three key drivers in the trend of correctional facilities' increasingly adopting policies to bill prisoners and family members for their room and board. As she notes, these budget pressures come into play "when the intersection of mounting incarceration costs with shrinking government coffers (more strapped at some points than others) [leaves] officials searching for new sources of revenue in the area of corrections and criminal justice more broadly."²¹ Plunkett concluded that correctional facilities' increasingly aggressive efforts to shift costs are "part of a broader shift in criminal justice toward placing many costs of the system on defendants through fees and other required payments."²²

The private corrections industry has responded to these pressures and trends by aggressively marketing its services to states and localities as a way not only to achieve costs savings for existing corrections functions—but also, in many cases, to generate new revenue streams through kickback payments. Indeed, "fiscal pressure" was the first of five "central themes" discussed in a 2012 investment analysis report—"A Wall Street Handbook"—on the future of the private corrections industry.²³

This tactic was pioneered by the private prison industry. Beginning in the 1980s, private prisons began pitching themselves to states as a way to control costs. For example, the website of Corrections Corporation of America (now known as CoreCivic) noted that "state and federal budgets [are] stretched" and asserted that "Creating a partnership with CCA... allows governments to care for hardworking taxpayer dollars, while protecting critical priorities like education and health care."²⁴ The rest of the corrections industry has since followed suit²⁵; indeed, private prisons have been described as the "standard-bearers of innovation" for the whole industry.²⁶

Private prisons have long been criticized for a lack of transparency and engaging in aggressive cost-cutting measures that endanger prisoner safety and well-being, in addition to other problems inherent in profiting off increases in mass incarceration. In all but a few states, private prisons are not subject to open records laws that allow the public to access information about public agencies—preventing communities from ever learning even the most basic information about what life is like inside these facilities. And although private prisons pitch themselves to states as a cheap fix for overcrowding, there is little evidence that cost savings (where they are achieved in the first instance) result from efficiencies. For as long as it has been in existence in its modern form, the private prison industry has been criticized for aggressive cost shedding, political corruption, outright fraud, and abuse of individuals in their care.²⁷

All of these problems are also true of the more recent entrants into the emerging corrections industry discussed in this report. But the revenue model of private prisons differs from the other portions of the corrections industry in important ways that directly

Between 1993 and 2012, real per-capita spending on the criminal legal system grew by 40% nationwide.

contribute to consumer abuses. Private prisons own and operate physical buildings; they are paid a per diem by the state for each individual incarcerated. Traditionally, at least, private prisons have derived their primary revenue stream from costs directly-billed to the governments with whom they contract.²⁸ (Like public facilities, private prisons also have taken steps to shift costs to individuals in their care—even as they continue to receive funding from general state and federal revenues.) By contrast, many of the industries described in this report have now adopted a so-called “offender-funded” model, whereby the costs of administering criminal legal functions are shifted *entirely* from public budgets to individuals who have contact with the legal system.

Although prison and corrections outsourcing—through increasing privatization—has received significant attention, many consumer abuses are driven by the *cost-shifting* that privatization facilitates. Almost all of the companies discussed in this report assess costs exclusively from individuals who have contact with the criminal legal system, rather than from the state. (Indeed, where payments are made between government agencies and these companies, they tend to go in the opposite direction—processed in the form of kickback payments, paid by the company to the state.) This single “innovation” is at the heart of so many abuses in the modern corrections industry.

For example, the website of Sentinel Advantage, a company that provides GPS monitoring devices, describes how it has helped correctional agencies shift costs onto families:

Managing ever-growing offender populations with ever-shrinking fiscal resources is forcing correctional agencies to re-examine the current direct-billing model that holds them singularly accountable for the costs of offender supervision and monitoring programs. Realizing that this situation was untenable, Sentinel created the first ever Offender-Funded electronic monitoring program in 1993. [. . .] For the correctional agency, this funding model removes the cost associated with any of the Sentinel programs and services they implement.²⁹

As the Wall Street Handbook noted, cost-shifting facilitated by the corrections industry is “becoming increasingly popular due to an agency’s ability to shift the funding burden from the taxpayer to the offender.”³⁰ But while state agencies may indeed see short-term budget savings from these arrangements, those supposed “savings” are not achieved via efficiencies in service provision. The cost of those functions has not fallen as a result of privatization—it has instead simply shifted onto the individuals processed through the legal system and their loved ones. And this newly burdened population is among the worst-positioned to pay. This funding structure is a central driver of consumer abuses.

Indeed, these arrangements almost inevitably have the effect of sharply *increasing* the financial costs that are imposed on economically fragile individuals processed through the criminal justice system. One reason for this is that corrections companies frequently compete for public contracts by promising to send the government regular kickback payments, extracted from the individuals under care and their loved ones. These arrangements, described in the next section, drive up prices for consumers and families, but have nothing to do with the underlying service for which families are required to pay.

So while the corrections industry commonly represents itself to the public and to agencies as saving money, total costs to communities are likely to be significantly *higher*

under commercialization, due to the combination of industry profit-seeking and contractual arrangements that share proceeds between the private company and the state. In this way, the modern corrections industry combines the transparency and accountability problems endemic to private prisons, with the cost-shifting that has been observed in the context of public fines and fees. For consumers and communities, it can represent the worst of both worlds.

COMMON PROBLEMS THROUGHOUT THE BAIL AND CORRECTIONS INDUSTRY LEAD TO CONSUMER ABUSES

The corrections industry provides a wide range of products and services to vulnerable consumers facing impossible choices as a result of their contact with the criminal legal system. But although the specifics or the services and abuses vary, common features across the industry create an operating environment ripe for consumer abuses and financial exploitation. Together, these features undermine core goals of our criminal legal system.

The corrections industry operates largely without consumer regulation or government enforcement

Our modern commercial bail and corrections industry is constructed to profit from an acute power imbalance—leveraging the threat of the state’s police powers while creating the terms of their services for consumers and their families. Given the strong likelihood of consumer abuses, governments should establish strong guidelines that clarify consumers’ legal rights, as well as vigorous oversight to ensure compliance.³¹ Indeed, it is difficult to imagine an industry where robust consumer protection oversight could be more important. Unfortunately, the opposite is true: this industry is characterized by a distinct lack of certainty about consumers’ legal rights, and regulation is lax—if it exists at all.³²

Federal, state, and local agencies often allow corrections companies, including those an agency contracts with, to operate with minimal oversight or regulation of consumer charges or other interactions. For example, one report about private probation noted that “[l]ocal governments and courts rarely monitor these . . . firms, making them free to impose fees and fines in a largely unregulated manner.”³³ An academic review of laws authorizing private probation in several states concluded that “[t]here are no requirements in Missouri’s statutes to provide any verification of fees collected.”³⁴ A study about electronic monitoring similarly observed that “most jurisdictions operate without any detailed guidelines or principles.”³⁵ Most courts or governments do not even attempt to track how much the companies they contract with collect in fees and other charges.³⁶ According to press reports, one Missouri court system that outsourced its misdemeanor probation services to a private firm neglected to keep track of such basic information as the number of people participating in the program under its own judges’ orders.³⁷

The charges imposed by lightly-regulated companies operating in this industry add up for low-income families and heavily-policed communities. For example, since the Federal Communications Commission (FCC) capped the fees that prison phone vendors could charge for credit card purchases (to a still significant \$3.00), consumers collectively have saved \$48 million every year. Indeed, the FCC has described these ancillary fees as “the chief source of consumer abuse” in the interstate prison phone calling industry.³⁸ But companies have found ways around these limits. Although charges on credit card fees are capped, the Prison Policy Initiative has found that prison phone vendors are working with money transfer companies to evade these limitations by sharply hiking fees on transfers made to prison phone vendors—revenue that is then shared between the companies under agreements resembling site commissions. As a result of these arrangements, companies like Western Union and MoneyGram roughly double the standard price of sending a payment—charging unbanked families as much as \$12 dollars to make a \$25 payment towards their phone calling vendor.³⁹ These charges disproportionately affect the poorest families who are the least likely to have access to bank and credit card accounts.

But even where legal regimes exist, their protections are rarely enforced. For example, investigative reporting into privatized juvenile facilities in Florida uncovered evidence of companies repeatedly fabricating the minimal required paperwork for state quality assurance evaluations.⁴⁰

State regulation of the commercial bail industry provides another example of regulation unsupported by any meaningful oversight or enforcement. In 2014, New Jersey’s Commission of Investigation released the findings of a lengthy investigation into the state’s bail-bond system. The investigation determined that, as a result of “poor government oversight,” the state’s industry had come to be “dominated by an amalgam of private entrepreneurs who profit from the process but are subject to weak controls easily manipulated or ignored with little or no consequence.”⁴¹ Although New Jersey had a licensing and regulatory body in place, the report found that its requirements could “be ignored and circumvented with impunity . . . because scant resources are devoted to oversight [and the state banking and insurance agency’s] posture toward bail matters is predominantly reactive.”⁴² There is no reason to suspect that New Jersey is an outlier: Minnesota’s commerce commissioner has stated that “too many people in the bail bond industry thought they were in the Wild West and the rules didn’t apply to them.”⁴³

There are many other holes in the patchwork of potential consumer protection laws and regulations as applied to the corrections industry. For example, some critical consumer protections lack a private right of action, making state failure to engage in enforcement especially problematic. In New York, for example, courts have determined that there is no private right of action to pursue violations of the Insurance Law provision that limits the premium that can be charged for issuance of bail bonds.⁴⁴ That is the case even though charging consumers for unauthorized fees is one of the most common—and most harmful—abuses encountered. And even where there is a private right of action, it is typically very difficult for harmed individuals to bring litigation to enforce their rights, either because of binding arbitration agreements, limited knowledge of legal

Companies take advantage of the threat of criminal consequences and consumer's lack of knowledge about their rights

People who have contact with the legal system face distinct uncertainty about what laws authorize and restrict these companies; what rights they have as consumers; and what the consequences are for non-payment or if they are otherwise unable to meet imposed demands. As in other areas of financial services targeted at low-income consumers, companies routinely take advantage of consumers by charging inflated fees that cannot be avoided—for example by charging consumers to load money onto or deduct from their accounts. But unlike those other industries, consumers frequently do not know whether a late payment or other lapse will have criminal consequences—uncertainty that companies use to their advantage, in seeking to coerce payment. Particularly in the context of commercial bail and community corrections (including private probation and diversion programs), this often takes the form of an ultimatum: pay what is charged, or head to jail.

For example, one 2018 class action lawsuit alleged that two private probation companies, acting together with a Tennessee county, threatened people with arrest, jail time, and extended probation supervision simply because they were too poor to pay the various fines, fees, and surcharges that the companies demanded. Under this “user funded” probation system, Giles County and the companies generated profits by extorting impoverished people through threats to jail them if they could not pay, or extending the length of their probation and thus increasing the probation fees charged. As a result, the most vulnerable people faced a cycle of probation violation, extension of supervised probation, extra fees, and repeated jailing.

One plaintiff, Ms. McNeil, a 53-year-old woman living in a mobile home and subsiding on Supplemental Security Income and food stamps, pled guilty to driving on a revoked license. She was sentenced to probation for a year, and assessed \$426 in fines and fees and ordered to pay an additional \$100 a month in court costs, \$45 a month in supervision fees, and \$45 for each drug test (ordered not by the court but by the private probation company). When she could not make these payments in full and was arrested for a misdemeanor offense, the company filed an affidavit with the court that McNeil had violated a condition of her parole. She was sentenced to 45 days in jail without any inquiry into her ability to pay. Caught in this system due to her inability to make the onerous demanded payments, she ultimately was sent to jail on four different occasions in three years.¹

¹ Complaint, Karen McNeil, et al. v. Community Probation Services, LLC, et al., No. 1:18-CV-00033, (M.D. Tenn. July. 13, 2018), available at <https://cdn.buttercms.com/OfiTteU4S8eTEQDPYBDr>.

rights and the legal system, or the often prohibitive cost of working with a lawyer and pursuing claims.

Moreover, companies have aggressively challenged efforts to regulate the corrections industry. For example, providers of prison phone services have declared themselves exempt from many state telecommunications regulatory regimes. In Massachusetts,

the Department of Telecommunications and Cable (DTC) issued an order limiting the amount that prison phone vendors could charge for in-state calls; just two weeks later, Securus Technologies notified the DTC that it intended to withdraw and cancel its tariff with the agency, stating that the technology it uses is exempt from regulation. Since then, the company has charged consumers for telephone calls far in excess of what is permitted by the DTC. Previously, when the FCC attempted to regulate the prices of calls (through an extended regulatory process that changed how the commission considered site commissions), prison phone providers immediately filed a legal challenge—ultimately resulting in a partial stay of the order, leaving intrastate calls uncapped by the FCC.

Although different industries within this broader ecosystem are governed differently, nearly all of them are characterized by lax regulation and unclear legal protections. The failure of governments—at all levels—to effectively regulate the private companies that profit from mass incarceration and other inequities in the criminal legal system has the direct result of harming people who have contact with those systems.

Corporate consolidation and weak competitive pressures have resulted in a handful of large conglomerates wielding market power across sectors

The corrections industry is increasingly characterized by a small number of large corporations contracting with government agencies to provide different types of services, and leveraging power in one market to increase share in another. Many companies operate different lines of business under distinct names that are connected through common ownership structures.⁴⁵ This consolidation creates effective monopolies that contribute to high consumer prices and abusive practices.

The corrections industry is increasingly characterized by a small number of large corporations contracting with government agencies to provide different types of services, and leveraging power in one market to increase share in another.

One report on the privatization of community corrections services made note of “the dominance of larger, for-profit industries . . . [that] can easily out-compete small, local, nonprofit organizations for contracts due to their political influence and cash flow.”⁴⁶ In this sector (like others in the corrections industry), for-profit prison corporations—including CoreCivic and GEO Group—have moved aggressively to acquire smaller

companies that provide electronic monitoring, supervisory centers, and residential reentry programming.⁴⁷

These increasingly large, powerful companies seek continued growth by expanding the range of corrections services they seek to provide. For example, a subsidiary of Securus Technologies, Satellite Tracking of People (STOP), leases tracking devices around the country. This includes the private prison industry: in 2010, the GEO Group acquired a large producer of electronic monitoring products, including ankle bracelets and alcohol monitors for home confinement. The private prison company now is organized into two divisions, one for “Corrections and Detentions” and another for “Community

Services”—including everything from juvenile programs to monitoring equipment to reentry services.⁴⁸

Community corrections is hardly an outlier in this respect: approximately 90 percent of the market for prison phone calling services in state departments of correction is controlled by just three companies: GTL (formerly Global Tel*Link), Securus Technologies, and CenturyLink.⁴⁹ If the FCC approves a currently pending acquisition, as much as 90 percent of the prison calling market will be split between just two corporate giants.⁵⁰

The Prison Policy Initiative described the reasoning behind this strategy. Its recent report documented how the dominant prison phone companies sought to acquire non-telephone companies “in order to offer facilities packages of unrelated services in one huge bundled contract.”⁵¹ It determined that companies had used this strategy not only to lock in contracts, by making it more difficult to change vendors in the future, but also to “shift profits from one service to another, thereby hiding the real costs of each service from the facility.”⁵²

Many of these companies are, in turn, partly or completely owned by prominent private equity firms. For example, Securus Technologies is owned by the Platinum Equity group⁵³; GTL is owned by American Securities LLC.⁵⁴ Aladdin Bail Bonds, the largest for-profit bail company in the world, as well as Seaview Insurance, its affiliated surety, are both owned by Endeavour Capital.⁵⁵

As a result of this concentration, courts and corrections agencies wishing to contract for services have little choice in deciding which company to award contracts. This lack of competition in the corrections industry can facilitate high consumer prices and abusive behavior.⁵⁶ The effects were described by Worth Rises, writing about the effort of Securus (the second largest prison phone vendor) to acquire ICS (the third largest):

*With this expanded power, Securus will be free to deepen its exploitative practices. In regions where Securus has already squeezed out the competition, it can raise prices when extending or renewing contracts. Without a large field of companies to make counteroffers, facilities will not have the option of negotiating for better terms. And while officials sign the contracts, these increased costs will fall squarely on Securus' incarcerated customers and their loved ones, who have no voice in the contract bidding or negotiations.*⁵⁷

Even without consolidation, the vulnerability of corrections industry consumers and the lack of effective oversight creates an environment where anticompetitive behavior can often take root. For example, a recently filed class action lawsuit alleges that surety companies that underwrite bail bonds in California have broken antitrust law by conspiring to fix the prices of the premiums paid for commercial bail bonds. According to the complaint, surety companies and industry groups in the state have coordinated to inflate the percentage of the bond required as a non-refundable premium, refusing to compete to offer lower prices even though discounting is clearly permitted by law.⁵⁸

Companies face incentives to make decisions based on what is in their financial interest—which often directly conflicts with public policy goals

This lack of effective regulation directly fuels what is perhaps the central policy failure characterizing most forms of corrections contracting: the perverse incentives that directly encourage companies to increase the number of “consumers” through excessive punishment, the period of time that individuals are subject to such punishment, and the fees extracted from them during that time.

Laura I. Appleman, Associate Dean of Willamette University College of Law, described this overriding dynamic which presents itself when private, for-profit entities are allowed to take on the traditional societal function of imposing and regulating societal punishment:

[P]rivatizing corrections means that decisions are not focused on the best choice for the offenders or institution, but instead, the best choice for the company—or, in the case of the largest privatized correction companies, what is best for the shareholder. . . . [P]ublicly traded companies [in the corrections industry] are legally and ethically required to focus on profit as the primary motivation for each action they take. . . . Privatizing corrections risks serious conflicts between public and private interests, with public interest losing out to the profit motive.⁵⁹

This is especially pernicious in contexts like diversion and probation, where the company exercises decision-making authority affecting the consumers’ criminal punishment at the same time as it stands to profit from extensions of their punishment. This can take many forms. For example, the American Friends Service Committee has documented the way that the profit motive can shape determinations made by private community corrections companies about program completion. Due to opaque decision-making structures and the absence of standardized guidelines or operating procedures for these programs, this dynamic will present itself even when—on paper—these decisions appear to be tied to seemingly-objective program requirements.⁶⁰

These deep conflicts pervade corrections contracting. In its study of private probation in the South, Human Rights Watch concluded that “the central problem . . . is this: the longer it takes offenders to pay off their debts, the longer they remain on probation and the more they pay in supervision fees.”⁶¹ Indeed, this is specifically part of the industry’s pitch: in marketing to courts and local governments, probation companies openly acknowledge the central importance of financial returns (shared with governments under the sort of arrangement previously described), as opposed to traditional notions of probation supervision.⁶² As one researcher summarized in the context of private probation, the corrections industry frequently results in “decision-making [shifting] from ostensibly neutral courts to for-profit companies, ones that use probation not only as a tool to extract fees from offenders, but also to extend offenders’ time under supervision, ultimately increasing profits.” Although these observations were made in the context of private probation, the entire corrections industry is replete with similar perverse incentives.

Due to this profit motive, companies often have an incentive to curtail a defendant’s rights, including the right to counsel or waivers, or exceed the authority given to them

by a court. One investigation into a private juvenile detention and treatment program called Youth Services International found that the company would routinely hold the children past their release dates, in order to make more money.⁶³ This sort of abuse can take various—almost unimaginable—forms. For example, one investigation found evidence that employees of Avalon Correctional Services, one of the country’s largest for-profit halfway house companies, had forced resident offenders to “beat each other bloody.” Why was this done? Avalon had a contract that guaranteed more than thirty dollars a day for each bunk occupied at the facility. And administrators allegedly had decided to rely on this form of “informal discipline” to punish residents who broke the terms of supervision, rather than taking formal steps that would likely have resulted in their being sent back to prison, because losing residents would have cost the company money in lost revenue.⁶⁴

These conflicts of interest create perverse incentives for both the company and the state, which frequently result in consumer abuses; these systems also undermine public policy interests. For example, social science research suggests that the best practices in community corrections will tailor interventions to provide the lowest level of security or surveillance necessary for the shortest amount of time.⁶⁵ But where cost-shifting is facilitated through private contracts, companies and the state alike will inevitably face incentives to “widen the net” of people under ever-increasing levels of social control.

For example, one Mississippi Delta town decided to outsource its cash-strapped probation system after a company told town officials that contracting with them would not only eliminate these costs from its budget but actually result in a new revenue stream, achieved via kickback payments extracted from participants. *The Atlantic* reported that only eight months later, “nearly 10 percent of the town’s 15,000 population was on probation for minor offenses like traffic violations and owing fees to the company.”⁶⁶ Similarly, it is likely no coincidence that Georgia is both the state with the most extensive system of private probation—with 80 percent of its courts sentencing defendants to private programs—and also the state that leads the nation, by a significant margin, in the share of people on any form of probation (private or public).⁶⁷

There are still other ways that these conflicts of interest can undermine public policy goals. For example, private companies providing telecommunications services frequently pressure facilities to reduce inmates’ and families’ access to other forms of communication—or even demand such reductions as a contract term.

According to the Prison Policy Initiative, around three-quarters of correctional facilities that implement videocalling either reduce in-person visits or eliminate them altogether.⁶⁸ That is the case even though, as one researcher summarized, “Every known study that has been able to directly examine the relationship between a prisoner’s legitimate community ties and recidivism has found that feelings of being welcome at home and the strength of interpersonal ties outside prison help predict postprison adjustment.”⁶⁹

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Private Probation, Public Accountability, and the Problems of Commercialized Injustice in Craighead County, Arkansas

A 2017 lawsuit illustrates both the disconnect between the public and private interest in corrections contracting, as well as the length to which companies will go to ensure that their profits are not threatened. Starting in 1997, Arkansas' Craighead County had contracted with private probation company Justice Network, Inc. (JNI). The company was entrusted with the exclusive authority to administer and collect all misdemeanor probation fees in the county, in exchange for monthly fees paid by probationers. Each year, JNI collected over a half million dollars from thousands of largely poor and disproportionately minority Arkansans in Craighead County alone. For those who could not afford to pay, the company worked with the court system to secure arrest warrants, impose additional fines, and ensure their imprisonment.

Responding to local reporting about abuses by JNI, two individuals ran for judicial office on a platform of ending the local courts' relationship with JNI. Their campaign and position on the issue was extensively covered in local press, which also published editorials supporting reform. In March 2016, the citizens of Craighead County elected the two judges, who discovered upon taking office that the claims of abuses they had made during the campaign were, if anything, understated. There were 50,000 outstanding warrants, covering more than 8,000 people, in the misdemeanor court there—nearly one outstanding warrant for every two people in the entire county. According to *Marshall Project*, on a single day in August 2016, one judge saw 34 defendants—only 6 of whom were accused of crimes. All the others were there for having run afoul of JNI.

The two judges followed through on their campaign promise by moving to end the contract with JNI and implementing an “Amnesty Day” program to offer payment plans and, in some instances, waivers for offenders who had outstanding fines. In response, JNI sued the County and two district court judges in federal court to recoup the fees—asserting that the program illegally infringed upon JNI's constitutional rights and that the Judges had tortiously interfered with the contracts between JNI and their probationer clients. And the company asked the court to enjoin the Judges from waiving any other fees allegedly owed by probationers to JNI.

The case was ultimately dismissed, but it nevertheless illustrates many of the problems of commercialization, for consumers and the public at large. Following privatization, the county's probation system had gone deeply awry—driving thousands of low-income Arkansans into unaffordable debts as a result of their contact with the criminal legal system. Directly to blame was the profit motive of the private company to which the county had outsourced administration, and the perverse incentives and conflicts of interest this created. But precisely because of the private nature of the county's probation system, citizens attempting to act collectively to correct these injustices faced legal obstacles that could have stymied their efforts to achieve reform. This is commercialized injustice.

In many ways, the corrections industry creates—and responds to—incentives to raise costs and extend supervision, not for any public policy reason but rather to drive industry profits. The structure of these arrangements directly harms vulnerable consumers while also undermining other important public policy goals. In the same way that advocates have observed in the context of fines and fees, these conflicts of interest increase incentives to overcharge and pervert the neutral administration of justice. This can result in an additional unanticipated adverse consequence: increasing community corrections expenditures driven by people navigating through impossible cycles of poverty, incarceration, and debt.

In exchange for exclusive contracts, companies frequently offer kickback payments to cash-strapped corrections agencies

Not all companies active in the corrections industry contract directly with governments, but many do. And whenever companies are in contract with corrections agencies to administer functions of the criminal legal system, the arrangements very commonly are characterized by two unique features:

- **First:** companies compete for these contracts by offering to make prearranged kickback payments (sometimes called “site commissions”) to the corrections agency, drawing from costs charged to consumers. These costs are passed directly to consumers, sharply increasing prices for people who have contact with the criminal legal system—regardless of indigence.
- **Second:** in exchange for these payments, companies require a promise that the state will limit consumer choices such that the contracted service is provided by the company on exclusive terms—securing for them what is, in many cases, a literally “captive market.” The exclusive contracts demanded by companies ensure that they can act as monopolies within specific markets.

These kickbacks function as de facto taxes or government fees—often assessed without authorization by any legislative body and seized from vulnerable families who are ill-positioned to pay.⁷⁰ This business model creates perverse incentives for *both* the agency and the company, and is largely responsible for the aggressive cost-shifting that characterizes the corrections industry.

The business model of kickback payments by private companies to government creates perverse incentives for both the government agency and the company, and is largely responsible for the aggressive cost-shifting to vulnerable families that characterizes the corrections industry.

- **For companies,** the exclusive terms of these contracts allow companies to aggressively raise prices on a vulnerable population—while providing poor service—without fear of competition. And the kickback payment structure encourages them to do precisely that, not only to pad their profits but also to finance extravagant payments to the corrections agency and increase their chances of maintaining the contract.
- **For cash-strapped government agencies,** promises of kickback payments encourage decision makers to award contracts to the company that promises to extract the most wealth from heavily-policed communities, rather than to the company that appears

best able to advance the agency’s public mission. For example, when Arizona’s Department of Corrections solicited bids for a five-year phone contract, its bidding system awarded 1,250 “points” to the company that proposed paying the highest commission rate, while all other factors—including technical requirements—were worth 300 points combined.⁷¹

In other words, the commission system encourages companies to compete on the basis of higher rates charged to consumers—even as the quality of the service is frequently unreliable and inferior to what is available outside the corrections industry.⁷² For example, the Federal Communications Commission (FCC) conducted a multiyear study of prison phone calling, focusing in part on the role of site commissions in driving higher

costs. The FCC released its official conclusions in 2015, which determined: “The record is clear that site commissions are the primary reason [prison phone calling] rates are unjust and unreasonable and ICS compensation is unfair. . . .”⁷³ The research on the effects of site commissions was recently summarized by advocate Peter Wagner: “[F]amilies pay high costs because the companies compete not on the basis of low prices or high quality, but [rather] on which company will share the most revenue with the facility that awarded the company the monopoly contract.”⁷⁴

For precisely this reason, a number of states—including California, Michigan, Nebraska, New Mexico, New York, Rhode Island, and South Carolina—have taken steps to ban the practice of collecting “site commissions” for prison phone calling, with no resulting decrease in quality. After making this reform, these

states saw immediate and drastic price decreases with no impacts on service availability. For example, prior to banning commissions in 2001, New Mexico charged \$10.50 for a 15-minute collect interstate call. But 12 years after the state eliminated site commissions, its rate for the same type of call had fallen to 65 cents — a 94 percent decrease. In South Carolina and New York, prices dropped 80 percent and 69 percent, respectively, after commissions were prohibited.⁷⁵

But although the dynamic caused by kickbacks has received attention in the context of prison phone calling—in part because there is the ready comparison of non-prison call rates—its growth throughout other segments of the corrections industry has too often been overlooked. These problems may arise whenever a private company contracts with the government to provide corrections services. For example, private diversion and probation programs have adopted this contract structure, commonly deriving their revenue entirely from fees imposed on consumer-participants—which are then divided, per agreement, between the company and the court or prosecutor’s office. In these programs, just as in prison telecommunications, these payments drive up prices for vulnerable consumers and skew public decision-making.

Michigan, Nebraska, New Mexico, New York, Rhode Island, and South Carolina have moved to ban the practice of collecting “site commissions” for prison phone calling, and saw immediate and drastic price decreases with no impacts on service availability.

THE COMMERCIALIZED CRIMINAL LEGAL SYSTEM IMPOSES ITS COSTS ON VULNERABLE PEOPLE LEAST ABLE TO PAY

The inflated costs resulting from the constellation of factors driving exploitative practices in the corrections industry are borne by some of the most vulnerable people in our society. The burden of paying these higher costs is concentrated on a much smaller group (those who have contact with the legal system), compared to the broad group of taxpayers who pay for government operations under public financing models. And people in this smaller group are far more likely to be people of color,⁷⁶ due to discriminatory policing and sentencing practices.

They are also far more likely to be poor. People who have contact with the criminal legal system are overwhelmingly poor in part because oppressed communities are frequently targeted by law enforcement. A 2002 Bureau of Justice Statistics report found that more than half of those entering the criminal justice system live at or below the poverty line, and two-thirds of those in jail earned less than \$12,000 in the year before their arrest.⁷⁷ According to the Prison Policy Initiative, black men and women ages 23 to 39 held in local jails had median earnings of between \$568 and \$900 the month prior to their arrest.⁷⁸ As a result, these financial obligations are more likely to turn into unaffordable debts, on which payment can be demanded under threat of criminal consequence.

These costs are imposed not only on those who are arrested or incarcerated, but also their loved ones and communities. For example, the price of phone calls is frequently borne by family members who receive collect calls. They may also be asked to dip into their own meager savings to deposit money on prisoners' commissary accounts. Additionally, bail contracts frequently require the signature of an indemnitor—i.e., family members or other loved ones who agree to take on certain responsibilities under the bail contract, including payment of various fees and the amount of a forfeited bond—or necessitate other forms of borrowing within communities, thus extending the economic costs across entire communities.⁷⁹

Because so many low-income persons struggle to meet the most basic costs of living, the consequence of the exorbitant costs imposed by the corrections industry can be catastrophic, both individually and in the aggregate. For the individual family, the additional costs can cause a sudden and precipitous decline in a family's economic stability. More broadly, the effects of these obligations, extended across entire communities in heavily-policed neighborhoods, play a very real role in reducing the ability of families to acquire any savings or reinvest in communities—and generally works to keep poor people poor.

Further, commercialized justice can increase criminal involvement for individuals—both as a result of conflicts of interest that can lead, for example, to longer supervision periods when private probation companies profit from increased numbers, and as a result of criminal enforcement of court-ordered financial obligations. Involvement with the criminal system can cause lifelong negative consequences—from the traumas of arrest and pre-trial jail (for the individual arrested and their consequences on the consumer's

children), to additional onerous court costs that can often be imposed regardless of the outcome of the case, to interference with maintaining a current job and threats to future employment opportunities. Incarceration in particular often entails a broad array of significant and costly harms, including psychological harms, lost employment, reduced wages, and extended time away from loved ones.

In short, abusive practices by companies operating in the corrections industry impose significant financial and social costs on already vulnerable families and communities.

INDUSTRIES OF FOCUS

The culmination of these trends is a system where few criminal legal functions have *not*, in some way or in some jurisdiction, been commercialized by private industry. Americans are subjected to costs imposed by private industry from the moment of arrest (and sometimes even before), through the trial and sentencing process, during incarceration, and extending through to post-release supervision and reentry programs. As a result, a person in jail who wants to make bail or to communicate with a spouse or partner, or a parent who wants to make sure her son has basic necessities while in prison, or a teenager who was just ordered to attend a rehabilitation program, all face the potential trauma and barrier to success not just of incarceration but also of spiraling indebtedness.

This section provides a brief overview of some of the different industries that impose costs on people who have contact with the legal system through what can be seen as predatory commercial transactions. It also highlights how predatory and harmful these services can be to individuals who have interactions with the criminal legal system, to their families, and to the already vulnerable communities that are disproportionately targeted by the criminal legal system. Although the services and business models vary, all of these commercial transactions—just like public fines and fees—push families deeper into poverty and make it harder for people who have interactions with the criminal justice system to get back on their feet.

Pre-arrest diversion programs

Although the criminal legal process typically begins with an arrest (or summons or citation), the potential for consumer abuses begins even before this step—thanks to the growing private diversion industry. These programs offer people who are suspected by retailers of criminal activity (typically shoplifting) the opportunity to avoid possible referral to law enforcement by paying hefty fees, ostensibly for the “service” of anti-shoplifting or other supposedly rehabilitative programs provided through short online or video courses. In reality, people are paying the fee because they are threatened with possible arrest if they do not—despite the fact that many of these cases would not be pursued by law enforcement, either because the amount at issue is minor or there is insufficient evidence to support prosecution. Major retailers, including Bloomingdale’s, Walmart, and Burlington Coat Factory, have contracted with pre-arrest diversion companies. In the typical arrangement, the person suspected of shoplifting pays a hefty fee to

the diversion company to avoid referral to law enforcement, and the diversion company pays a smaller fee to the retailer for each person who pays them—akin to a referral fee or kickback.⁸⁰ This practice can amount to extortion. (Other diversion firms contract with local courts and district attorneys, almost always under revenue-sharing schemes.)

Debra Black’s story is typical of the pre-arrest diversion business model. In 2013, she was shopping at a Goodwill thrift shop and says she inadvertently neglected to pay for a pack of napkins, a headband, and a small purse together worth \$6.97. Stopped by a security guard, Black was taken to a room and shown a video about the adverse consequences that result from having a criminal record. She was then given a choice: sign a confession and agree to pay the diversion company (Utah-based Corrective Education Company, or CEC) \$500, or be turned over to law enforcement by the retailer and risk criminal prosecution for shoplifting. Black signed a confession but—due to her poverty—was unable to pay the \$500, and thereafter received multiple harassing calls and letters warning her to “Contact us immediately to prevent the filing of a criminal complaint.”⁸¹

For these practices, CEC was sued in 2016 by the San Francisco City Attorney’s Office for extortion, false imprisonment, and unfair practices under California’s Unfair Competition Law. According to documents filed in the litigation, about 90 percent of accused people, when faced with the threat of possible criminal prosecution, agree to participate in CEC’s diversion program.⁸² Once enrolled, the company matches the participant with a “personal coach” who is, in fact, a CEC debt collector.⁸³ When participants have trouble paying the agreed-upon fees, as was the case for Ms. Black, the companies again threaten them with criminal prosecution. In August 2017, the Superior Court of San Francisco held that CEC’s business practices amounted to unlawful extortion.⁸⁴

But this sort of “pay-to-play” diversion scheme is far from the only example of how private companies seek to earn profits by extracting coerced payments from people ensnared in our legal system.

Commercial bail

Every year, bail bond agents across the country bring in as much as an estimated \$2 billion dollars from bond premiums and fees.⁸⁵ Like the other industries discussed in this report, this industry profits from taking advantage of people at their most vulnerable: when they—or their child or loved one—face a choice between making payment under the offered terms, or staying in jail.

In states that allow commercial bail, the industry operates as part of the pretrial process—the period between arrest and the resolution of the criminal case, either through the plea bargain process or at trial. The ostensible purpose of money bail is to ensure a defendant’s appearance at trial.⁸⁶ Under this system, people of means deposit the bail amount with the court, which they can expect to receive back when their cases conclude. But fees paid by consumers in the commercial bail market—commonly

Every year, bail bond agents across the country bring in as much as an estimated \$2 billion dollars from bond premiums and fees.

the family members and friends of individuals facing charges—are kept by bail bond companies and their corporate partners. This is true even in cases of false arrest, where the charges are dropped or the individual facing charges is determined to be innocent.

As a result of this business model, heavily policed communities find themselves trapped in a cycle of debt and fees related to the cost of commercial bail—often long after the courts have resolved their charges. In New York City alone, an estimated \$16 to \$27 million in nonrefundable fees was extracted in 2017 from people arrested and their family and friends.⁸⁷ Moreover, numerous studies and investigative reporting⁸⁸ confirm that the American bail industry is rife with illegal practices that harm low-income consumers and undermine the goals of the criminal legal system. These abusive practices reflect a lack of accountability for corporate wrongdoing, and include charging undisclosed or illegal fees or excessive rates of interest; misleading consumers about the terms of their bail agreements or about their legal options; engaging in harassing and abusive collection practices, such as threatening to send arrestees back to jail without a legal basis to do so; forcing bail bond cosigners to turn over property that was used as collateral in cases where the arrestee complied with the terms of the bail; operating off-the-system without state-required licenses; and failing to comply with reporting obligations.⁸⁹

For example, one of NCLC’s New Orleans clients, Ronald Egana, was required to pay a variety of nonrefundable and hidden fees. As a result of these unauthorized fees, Mr. Egana, his mother, and a family friend ended up paying more than \$6,000 over the course of a year—far beyond the \$3,275 bail bond fee the company said it would charge. When Mr. Egana couldn’t make payments on his bail bond fee, a bounty hunter arrested him at work. His mother had to empty her savings account to pay the money. Even after the three had paid almost twice what the company originally said it would charge, a bounty hunter took Mr. Egana to jail, claiming that he had not paid what he owed.⁹⁰

Mr. Egana’s experience is not uncommon. Bail contracts commonly levy fees for various (often ambiguous) expenses, beyond the bond premium itself. In the formation of these contracts, the consumer has almost zero bargaining power. Contracts are negotiated at the bail agent’s office—and an accused who does not sign the agreement under the proffered terms can be taken back to jail. Bail agents have little incentive to ensure that consumers understand the terms to which they are agreeing.

Many bail agents allow the defendant or a guarantor to pay the bond premium in installments, often in return for charging financing fees and costs. The terms and cost of this extension of credit may be murky and devoid of the types of disclosures typically required in consumer contracts. In addition, financing costs may cause the premiums to exceed the jurisdiction’s rate cap. Even where bond premiums are not financed, bail contracts contain a wide array of common contractual provisions that may violate state and federal consumer protection laws, and thus may be unenforceable. For example, many commercial bail contracts include provisions warning the arrestees that they can be taken back to jail if they fail to make their premium payments—even though failing to make a premium payment is not generally a legally valid reason for returning a person to jail.

Other contract terms impose invasive, abusive, and unfair terms that are arguably unconscionable. For example, some contracts require the principal—and even sometimes indemnitors (typically a family member or close friend)—to consent to any force necessary to return them to custody, or to authorize the surety to enter their home without notice and at any time. And because many bail agents also act as private enforcers when an arrestee violates a bail agreement, the line between bail enforcement and debt collection often becomes blurred. Indeed, bondsmen are notorious for engaging in harassing and abusive practices to collect bail premiums, including placing intimidating phone calls and making threats to send arrestees back to jail without a legal basis to do so.⁹¹

Post-arrest and pre-trial diversion programs

In many jurisdictions, prosecutors have the authority to provide people accused of certain criminal violations with the option of completing an alternative program of treatment or restitution, in lieu of incarceration. These diversion programs come in different forms, but typically allow—at the state’s discretion—selected individuals to avoid criminal charges if they follow a prescribed program of treatment, restitution, or community service. Generally speaking, these programs can often have much to recommend them. The ACLU’s Smart Justice Project has summarized the evidence:

Put plainly, diversion is a positive tool that should be used in our nation much more frequently. By targeting the underlying problems that led to the crime in the first place, effective diversion programs can improve long-term community safety and reduce recidivism far more effectively than warehousing someone in a prison cell before turning them back onto the streets.⁹²

But the recent emphasis on diversion as a means to unwinding mass incarceration has obscured a troubling new pattern: the outsourcing of pretrial diversion programs to private companies charging excessive participation fees and operating beyond public scrutiny.

A 2019 *ProPublica* story described how these programs frequently work.⁹³ In Illinois, 24 counties have contracted with a for-profit company called CorrectiveSolutions, which describes itself as “the leading administrator of pre-charge, pre-file and deferred prosecution programs for adults and juveniles.”⁹⁴ The diversion program requires people who are suspected of some criminal violation—though, again, not convicted by any public court of law—to pay participation fees to the company and take courses related to their charges.

Prosecutors also have discretion to add conditions such as community service or drug or alcohol testing, which are also offered by CorrectiveSolutions (see graphic below). The fees paid by participants are collected by the company but some portion is shared with the prosecutor’s office under the terms of the exclusive contract. This creates conflicts of interest. A *New York Times* investigation found that “prosecutors who grant diversion often benefit directly from the fees, which vary widely from town to town and can reach \$5,000 for a single offense.”⁹⁵

CorrectiveSolutions for You

Offender Programs that fit your needs

CorrectiveSolutions offers offender funded offender program administration and monitoring services for every phase of the criminal justice system. We are the leading nation-wide administrator and manager of alternatives to prosecution and incarceration programs.

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Source: Screenshot from the website of CorrectiveSolutions, a leading community corrections vendor (Feb. 26, 2019), <http://correctivesolutions.org>.

These fees can be substantial, particularly for low-income families. The *ProPublica* investigation found that class fees in Illinois ranged from \$125 to \$175; administrative fees added another \$25 to \$35. Companies also charge additional fees for conveniences like rescheduling a missed class—or even, enrolling in a payment plan. All of those amounts are assessed in addition to the amount of the bounced check and any convenience fee merchants charge. As a result, *ProPublica* found, people who had bounced checks for as little as \$5 can end up paying upward of \$300.

For example, in New Orleans, diversion programs are sometimes offered by the district attorney’s office, but only if those charged can afford the steep participation fees. These diversion programs are commonly offered to individuals charged with driving while intoxicated offenses. The private company that operates these systems requires individuals to pay \$120 to install an ignition interlock system and \$285 for a portable breathalyzer; those costs are assessed in addition to the steep fees required for participation. New Orleans also operates various specialty courts for people struggling with mental health issues, drug addiction, or homelessness. Although those interventions can provide benefits to participants, the programs typically involve some sort of private company that charges for enrollment; sometimes individuals are also required to plead guilty in order to qualify.⁹⁶

Failure to comply with any condition or pay any of the required fees may result in threats of expulsion from the diversion program and renewed prosecution. One diversion company in Atlanta said that one in four of its cases was returned to court, often for inability to pay.⁹⁷ Those who are denied entry to private diversion programs (on account of prosecutors’ discretion) or who are expelled due to a missed payment may have no legal recourse to challenge the determination. And program participants who cannot make a payment may not receive any hearing on their ability to pay, or be offered any

alternatives to payment, or have any process for appeal. As a result, public defenders must counsel clients not to take diversion offers that they cannot afford. But faced with the possibility of incarceration, many people nevertheless decide to enter the program—and then later find themselves being forced to make impossible decisions about whether to pay the fees or afford basic necessities. Should they miss payments, they may find themselves right back where they began: in court.

CorrectiveSolutions has an affiliate, Victim Services, Inc., that offers diversion programs for bad checks. Operating under a contract with local district attorneys, the companies send consumers letters, on official letterhead, threatening them with prosecution and potential incarceration if they do not pay the company various fees and participate in a program administered by the company. Although the letters bear the seal and signature of the local district attorney's office, the letters actually are from the debt-collection companies. Prosecutors "rent out" their letterhead to those companies, which try to collect not only the unpaid check but also the high fees demanded for the program (see sidebar). Some portion of those proceeds then goes back to the district attorneys' offices.

Even though, as a practical matter, unintentionally bouncing a check rarely results in prosecution, these tactics often pressure the consumer to pay the company its fees. Diversion companies have a financial interest in making consumers believe that the program is the only or best way to avoid incarceration.

In addition to the coercive financial consequences, these programs can contribute to deeper inequities in the legal system. Although diversion companies sometimes profit off cases in which the accused would likely never be prosecuted, the system also allows people accused of a crime that might be prosecuted to buy their way out of criminal consequences. The result of these programs is that two people suspected of the same offense can end up bearing wildly different consequences, based entirely on their ability to pay the onerous user fees demanded by diversion companies. For the individual who can afford to pay, the deal is straightforward: pay the required program and supervision fees, attend a few classes, and the charges are dismissed. But poor people are excluded from participating in these "pay to participate" diversion programs, or enter them but then are unable to make all the payments and are prosecuted anyway.

Private Diversion Schemes Profit by Confusing Vulnerable Consumers

In 2013 Roz Terrill wrote a \$41 check to buy clothes for her children; because of a banking mix-up, her check did not clear. Several months later, she received an official-looking letter alleging that she had been accused of a crime and instructing her, in large type, that, "to avoid the possibility of criminal charges being filed," she had to pay the amount of the check plus \$185 in fees. As is typical in these schemes, the letter was actually sent by a Missouri-based debt collection company (Bounceback, Inc.); the actual prosecutors in Ms. Terrill's jurisdiction were not involved and had not reviewed any evidence about her check. In fact, there was not even any legal basis for the assessed fees. But Ms. Terrill ultimately ended up paying to stop the threats and gain peace of mind.

Source: Complaint at *8–10, *Cavnar v. Bounceback*, No. 2:14-cv-00235, 2014 WL 3686809 (E.D.Wash. July 18, 2014)

This system penalizes individuals for their poverty, and disproportionately leads to conviction and incarceration for those unable to purchase a less punitive system of justice. (Moreover, these arrangements compound systemic bias in other ways: one study found that Black and Latinx defendants are significantly less likely than White defendants to be offered diversion in the first place.⁹⁸)

Electronic monitoring

Other industry players have arisen in recent years to occupy new roles in the commercial bail market, including providers of electronic monitoring services. This sort of monitoring—typically accompanied by onerous fees—is becoming increasingly common for people during the pretrial period or while on parole or probation. Electronic monitoring

may be ordered by a court, or imposed as a condition of a private company’s services. For example, in order to be eligible for installment payments related to his bail, Mr. Egana was required by his bail bondsman to wear an ankle monitor that monitored his location. Under that contract, Mr. Egana had to pay \$10 a day for this monitoring in addition to the premium on his bond—even though the judge did not order any monitoring.

The four largest e-monitoring corporations together receive annual revenues exceeding \$200 million.

As of 2017, all jurisdictions but Hawaii and Washington, D.C. either allow or require defendants to pay for electric device monitoring (e-monitoring) costs.⁹⁹ Providers frequently charge a one-time installation fee, typically \$50 to \$150; afterwards, defendants must pay for monitoring, typically assessed at a rate of around \$300-\$500 every month.¹⁰⁰ Additional fees, in the range of \$50 to \$150, are often assessed for device calibration and removal. Although states have different probation systems, the national average for all probation sentences is three years¹⁰¹—meaning that typical fees can add up to thousands of dollars. The spread of electronic monitoring has resulted in a massive wealth transfer from impoverished communities to a small number of companies: the four largest e-monitoring corporations together receive annual revenues exceeding \$200 million.¹⁰²

In addition to location-tracking ankle bracelets (sometimes referred to as e-shackles), other e-monitoring services include sweat-based alcohol monitors and ignition interlock devices that are installed in consumers’ vehicles. One advocacy organization described electronic monitoring as “a form of technological mass incarceration, shifting the site and costs of imprisonment from state facilities to vulnerable communities and households.”¹⁰³

Private probation

At least ten states (most in the South) allow counties and municipalities to contract with private companies to administer their probation systems for misdemeanor and lower offenses. Under these arrangements, the government extends exclusive contracts to supervision companies, which are then allowed to enforce probation requirements against consumer defendants. Human Rights Watch has extensively studied private probation in the South and summarized the basic business model: “Probation companies

charge all probationers flat monthly supervision fees, and courts are contractually obligated to sentence all probationers to pay these fees.¹⁰⁴ These supervision fees—what the organization describes as “the financial cornerstone of the private probation business”—are assessed separate and apart from any fines owed as part of the punishment.

The Human Rights Watch has estimated that in Georgia alone, probation companies earned at least \$40 million in revenue from fees charged to probationers.¹⁰⁵ Their investigators estimated that a single company, Judicial Correction Services, earned over \$1 million *every year* from a single court (handling mostly traffic-related offenses) in Dekalb County, Georgia. The typical fee in Georgia is \$35 per month; in Montana, the fees can be as high as \$100 per month.

The Human Rights Watch has estimated that in Georgia alone, probation companies earned at least \$40 million in revenue from fees charged to probationers.

Electronic monitoring fees are a major source of revenue for private probation companies. Other common fees are payments for drug testing, rehabilitative courses, or other treatment programs. These conditions are sometimes required not by courts but by the company, particularly for drug testing.¹⁰⁶

Some jurisdictions assess these fees on a sliding scale based on the individual’s determined ability to pay—but in some cases, those who fall behind on payments face incarceration.¹⁰⁷ For example, Tom Barrett, a Georgia man experiencing alcohol addiction, spent a full year in jail following an arrest for stealing a can of beer from a convenience store—not as a part of his criminal sentence, but because he didn’t have the money for the more than \$400 a month assessed by the provider of his monitoring device, a condition of his probation. Before Barrett was sent to jail for nonpayment he was unemployed, using food stamps to meet basic needs and living in subsidized housing; at the time of his initial arrest he was homeless. During the period when he was on probation and required to pay hundreds of dollars in fees for monitoring, Barrett earned his entire cash income by selling blood plasma. He recounted the experience to NPR: “Basically what I did was, I’d donate as much plasma as I could and I took that money and I threw it on the leg monitor—[and still,] it wasn’t enough.”¹⁰⁸ In a different case involving the same e-monitoring company, Sentinel Offender Services, a veteran was incarcerated after falling behind by \$187 in fees.¹⁰⁹

These supervisory systems lack transparency, both to consumers and to the public at large. The prices for their supervision “services” often vary widely, even within the same state, and are billed to consumers with little clarity or explanation. Consumers are frequently deceived about the costs involved. For example, Human Rights Watch found that where probation is offered in exchange for plea deal, neither the lawyers (prosecutor or defense) or the judge would explain the financial burden of private probation, and the companies may not make their fee schedules available to the public. And private probation companies frequently fail to inform low-income probationers about their ability to waive supervision fees (where available), or other legal rights.¹¹⁰ And most courts do not track how much their probation companies collect in fees from the probationers assigned to them—indeed, companies have argued that these figures are trade secrets and refused to publish them on that basis.¹¹¹

Many Abusive Corrections Industry Practices Are Spreading to our Immigration System

It is becoming increasingly common for low-income people who are released from immigration detention to be required—either by a court or under the terms of private contracts—to shoulder the costs of their supervision. Members of immigrant communities often lack financial collateral and therefore face pressure to enter into contracts with private companies that agree to co-sign for their immigration bonds. For an additional fee, these companies may operate to procure bonds (from a third-party bail agent) for defendants,¹ provide GPS monitoring devices,² and perform other consumer services that may be required as “collateral” or a condition of allowing the accused to pay the immigration bond in installments. Those contracts are often deceptive and exploitative, and frequently result in hundreds or even thousands of dollars of unaffordable fees and consumer debts.

For example, Libre by Nexus procures immigration detention bonds for those in immigration custody in exchange for payment of a secured bond and electronic monitoring services. The company requires consumers released on immigration bond to sign a contract agreeing to a nonrefundable \$620 initial fee plus a \$420 monthly rental fee for a tracking bracelet.³ Over several months these fees can add up to more than the actual amount of the bond. According to civil complaints and other investigations, the company has attempted to secure payment from low-income families through a range of abusive and harassing practices, including suggesting—misleadingly—that failure to pay will result in deportation.⁴ The company was recently sued in California for false and deceptive advertising—“prey[ing] on detainees’ vulnerability and limited understanding of English to foist crushing financial terms and GPS shackles on detainees in exchange for its ‘service’ of arranging for a third

¹ Michael E. Miller, “This Company Is Making Millions From America’s Broken Immigration System,” *The Washington Post* (March 9, 2017), available at https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.a69946ef8827.

² Southern Poverty Law Center, “SPLC Lawsuit: Bail Bond Companies Charged Illegal Fees, Used Bounty Hunters To Kidnap Clients, Extort Money” (June 19, 2017), available at <https://www.splcenter.org/news/2017/06/19/splc-lawsuit-bail-bond-companies-charged-illegal-fees-used-bounty-hunters-kidnap-clients>.

³ Adolfo Flores, “Immigrants Desperate to Get Out of US Detention Can Get Trapped by Debt,” *BuzzFeed News* (July 23, 2016), <https://www.buzzfeednews.com/article/adolfoflores/immigrant-detainees-and-bail-bond-terms>.

⁴ Michael E. Miller, “This Company Is Making Millions From America’s Broken Immigration System,” *The Washington Post* (March 9, 2017), available at https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.a69946ef8827.

party to post detainees' bonds.”⁵ The Consumer Financial Protection Bureau initiated an investigation of Libre for unfair and deceptive practices, though the investigation was at least temporarily suspended after a change in Bureau leadership.⁶

Meanwhile, immigration detention is increasingly being outsourced to private facilities administered by companies like GEO Group and CoreCivic.⁷ Both of these companies generated hundreds of millions of dollars—around a quarter of their total revenue in 2017—from contracts with U.S. Immigration and Customs Enforcement. (In the months immediately after the announcement of the “zero tolerance” immigration policy in April 2018, stock prices for these two companies jumped by nearly 20 percent.) In every facility where immigrants are detained, telephone services are provided—sometimes at exorbitant cost—by a for-profit company that enjoys a monopoly for that site. And like other correctional facilities, immigration detention facilities charge marked-up prices for basic necessities like food and toiletries. One report noted that a can of tuna sold at a GEO Group facility commissary cost \$3.25, four times the retail price at a nearby store—despite the fact that immigrant detainees earn only \$1 a day. And when relatives send money electronically to fund their loved ones' commissary accounts, the fees charged by the private vendor can reach as high as 10 percent of the amount deposited.⁸

⁵ Second Amended Class Action Complaint, *Vasquez v. Libre by Nexus, Inc.*, No. 4:17-cv-00755-CW (N.D. Cal. Jun. 9, 2017).

⁶ C. Ryan Barber, “CFPB Suspends 1 Investigation as Mulvaney, at Helm, Reviews Pending Cases,” *The National Law Journal* (Dec. 4, 2017), available at <https://www.law.com/nationallawjournal/sites/nationallawjournal/2017/12/04/cfpb-suspends-one-investigation-as-mulvaney-at-helm-reviews-pending-cases/?sreturn=20171105163740>.

⁷ Worth Rises, “Immigration Detention: An American Business,” available at <https://worthrises.org/immigration>.

⁸ Michelle Conlin & Kristina Cooke, “\$11 Toothpaste: Immigrants Pay Big for Basics at Private ICS Lock-Ups,” *Reuters*, available at https://www.reuters.com/article/us-usa-immigration-detention/11-toothpaste-immigrants-pay-big-for-basics-at-private-ice-lock-ups-idUSKCN1PCODJ?utm_source=applenews.

Corrections contracting: communications

Just as private companies have enlisted states and municipalities in schemes to extract fees from people who are on probation or under other forms of supervision, they have also devised various ways to charge individuals during their incarceration. A good example of this is the corrections telecommunications industry, which contracts with prison and jail systems (and immigration detention centers) to provide the exclusive means for prisoners

to maintain contact with the outside world. This unfair and exploitative system weakens family bonds by reducing the frequency of contact between prisoners and their families, which is known to reduce reentry success. The high cost of calls particularly burdens the families of the incarcerated, creating systematic transfers of wealth from already vulnerable families and communities to private companies profiting off their struggle.

The corrections communications industry goes back to the 1970s, when state and federal prisons began installing commercial telephone services after a series of studies showed that maintaining inmate-community connections decreased the likelihood of inmate recidivism.

Initially, prisoners could choose between several providers and place and receive calls at rates similar to consumers on the outside. This changed when companies began to include “site commissions”—payments to the prison system—in their bids. These commissions were paid for by consumers through additional charges. This led not only to higher prices for consumers but also to sharp consolidation in the industry as governments began to award exclusive contracts only to those companies that offered high commissions.¹¹²

This dynamic has even been acknowledged by industry participants: prison telecom giant Securus Technology, Inc., recently stated—in a lawsuit it initiated against Florida’s Department of Corrections—that “[w]ithout having to pay commissions, vendors can provide lower inmate telephone call rates to inmates’ families and friends.”

The companies that provide these phone services charge rates many times higher than the rates outside of correctional facilities, even as phone rates generally have fallen sharply as wireless service replaces landlines. In addition to the minute rate, hidden fees

The High Cost of Exorbitant Prison Phone Calling Rates

Kellie Pearson spent between \$40 and \$100 on phone charges each month to accept calls from her fiancé, Michael T. Ray, who ultimately took his own life while incarcerated at a Massachusetts jail facility. Prior to his death in 2017, Mr. Ray called regularly to speak to Ms. Pearson and their daughter, a talented sprinter who received encouragement from her father before her track meets. The high cost of phone calls strained Ms. Pearson’s finances, forcing her to make difficult decisions between paying to receive calls and making payments on other bills and expenses. In total, Ms. Pearson spent around \$2,000 on phone charges to Securus Technologies over the nearly two years in which her fiancé was incarcerated.

Sources: See Complaint *4, *Pearson et al v. Hodgson et al*, No. 1:18-cv-11130 (D.Mass. July 30, 2018), available at <http://www.nclc.org/images/pdf/litigation/securus-complaint.pdf>; “Lawsuit Challenges the High Cost of Calling From Jail,” Maria Cramer, *The Boston Globe* (May 3, 2018), available at <https://www.bostonglobe.com/metro/2018/05/03/lawsuit-challenges-high-cost-calling-from-jail/q17v1CL0bZBhxOXd9qOBRP/story.html>.

often equal or exceed the base cost of a call—constituting as much as 40 percent of the average consumer bill. For example, Securus Technologies has charged fees for opening, maintaining, and even closing an account, including a \$2.49 fee for bill processing by mail and \$5.00 by phone. The Prison Policy Initiative estimates that these additional fees generate up to \$386 million a year for the phone vendors.¹¹³ And there are reports that companies have tried to get around limits on per minute calling rates by charging exorbitant connection fees and then routinely dropping calls (requiring families to pay the connection fee again).

The business model of these companies is to create exclusive rights to provide contact with the outside world, so that prisoners and their families wishing to see or communicate with loved ones will have no choice but to pay whatever price is demanded. As a result, for most American families with loved ones awaiting trial or serving jail or prison sentences, there is but one option available: they must pay exorbitant costs to use privatized calling systems. The cost of these calls can add up to thousands of dollars in a single year, creating needless financial hardship and forcing families to make impossible decisions between meeting basic needs or maintaining connections with their loved ones.

A similar trend involving these and other companies is emerging in the growing market to provide prisoners with email, video conferencing, electronic media, and books.¹¹⁴ For example, JPay recently offered tablets to 52,000 prisoners at New York DOC facilities at no cost to the state.¹¹⁵ But although the state pays nothing, prisoners are charged “stamps” for sending short emails at \$0.35 each.¹¹⁶

Corrections contracting: financial services

Correctional facilities have increasingly commercialized access not only to the outside world, but also to prisoners’ own limited financial assets. In recent years, facilities have outsourced payment and money transfer systems to private companies that charge prisoners and their loved ones a range of high fees—including for financial services traditionally provided by the correctional facilities at no cost. The most prominent example is the use of “debit release cards”: people newly released from correctional facilities are given access to their funds only through a pre-paid card, rather than as cash. The money on these cards is subject to steep usage and maintenance fees that eat into the balances. This includes money the person possessed when arrested, money the person earned from working in the facility, or money sent from friends and family.¹¹⁷

There is substantial overlap in contracting practices and business models between these providers and the prison telecommunications industry. Indeed, the largest players in each sector—Securus and JPay—are active in both industries, and commonly offer both services during public bidding processes.¹¹⁸

Approximately 650,000 prisoners are released from state and federal prisons in the United States each year, along with an estimated 12 million from local jails.¹¹⁹ At least

About 650,000 prisoners are released from state and federal prisons in the United States each year, along with an estimated 12 million from local jails. Industry leader JPay operates in 33 state prison systems and earned \$53.9 million in revenue from payment services in 2014.

17 state prison systems and the Federal Bureau of Prisons, as well as many county jails, issued release prepaid cards to reentering incarcerated people in 2014. Industry leader JPay operates in 33 state prison systems and earned \$53.9 million in revenue from payment services in 2014. For many families, the only way to support their loved one is to transfer money through JPay; the company provides that service to 71 percent of state prisoners.¹²⁰

Abusive fees also affect the accounts in which prisoners' money is held during their incarceration. When someone is arrested, funds in their possession are confiscated by law enforcement. Upon conviction, those funds are typically deposited into an account linked to the prisoner. In jurisdictions where prisoners can earn wages for labor, those wages will also be deposited into the account—as will funds transferred by family or friends, for living expenses.

But the balance on these prisoner accounts is eaten up by various abusive fees, including charges for:

- having an account (up to \$3.50 each week),
- making purchases (up to \$0.95 per transaction),
- checking account balances (as much as \$3.95),
- closing the account (between \$10 to \$30), and
- account inactivity.¹²¹

The sum of these fees must be considered in the context of prisoners' poverty prior to their contact with the legal system and their limited earning capacity during incarceration. Even small dollar charges can amount to high percentages of meager balances. The Prison Policy Initiative described what this looks like in practice for prisoners and their loved ones:

If someone is released with \$125, a \$2-per-week maintenance fee is equivalent to a finance charge of 77% per year. If that same hypothetical cardholder makes ten purchases of \$12 each, then a \$0.50 per-transaction-fee would amount to \$5, or 4% of the entire card balance (on top of maintenance fees). If the cardholder wishes to convert a prepaid card into cash, he or she must pay \$10 to \$30 (8% to 24% of the entire deposit amount) merely to close the account.”¹²²

As is true in other sectors discussed in this report, a portion of the fee may be kicked back to the correctional authorities. For example, JPay paid the Florida Department of Correction \$2.50 for every money transfer initiated, with a mandatory minimum of \$100,000 in commissions each year.¹²³

Other corrections contracting: healthcare and commissary

In addition to communications and financial services, prisoners are increasingly being asked to bear other costs for healthcare and basic amenities sold through commissaries. In both of these sectors, corrections facilities are seeking to shift the costs of providing basic necessities from the public and onto incarcerated people—and by extension,

their families. The prices charged for these basic necessities are often higher than retail, despite the fact that incarcerated people face significant obstacles to earning disposable income.

The Prison Policy Initiative found that incarcerated people in Illinois and Massachusetts spent an average of over \$1,000 per person at the commissary during the course of a year, mostly on food and basic hygiene products.¹²⁴ These are not luxury purchases: prison and jail cafeterias are notorious for serving small portions of unappealing food, and commissary purchases can help supplement a lack of calories. The report analogized these arrangements—in which prisoners' meager earnings went right back into the commissary for basic necessities—to sharecroppers and coalminers being forced to use the company store. It also noted that, like in other forms of corrections contracting, "commissary operators have a legal monopoly, so they don't have to worry about price competition. . . ."

Even where commissary prices do not initially appear to be excessive compared to retail, they nevertheless represent a significant share of prisoners' limited incomes and meager savings. Prisoners who earn income from work are typically paid between 14 to 62 cents per hour. For a prisoner who was paid at this rate, \$80 on toiletries and hygiene products could easily represent almost half of the annual wages.

For the same reason, even nominal medical co-pays can create major obstacles for prisoners, preventing them from accessing necessary care. As of 2018, facilities operated by 42 state departments of corrections, plus the federal Bureau of Prisons, charged co-pays.¹²⁵ The Prison Policy Initiative has documented that in some states, a single visit to the doctor could cost almost an entire month's pay. Even though most co-pay programs have carve-outs for inmates who can't afford to pay, as well as exceptions for certain chronic and communicable conditions, there are reports that these exceptions are frequently ignored or applied unevenly.¹²⁶

Reentry, Rehabilitation, and Treatment Programs

In addition to the private diversion and probation programs, the community corrections industry offers various "back-end" treatment and reentry programming, including residential halfway houses and work release centers. Other forms of privatized incarceration alternatives include specialty courts and so-called "day reporting centers," where individuals under supervision can check in and participate in rehabilitative programming.

The American Friends Service Committee (AFSC) has documented the aggressive efforts of the modern private prison industry to rebrand and expand into such forms of sub-contracted, court-sanctioned alternatives to incarceration—a trend that it has termed the "Treatment Industrial Complex."¹²⁷ Their report documented how, beginning around 2010, some of the largest private prison operators sought to take advantage of states' newfound interest in rehabilitation and alternatives to incarceration. If not diverted to support other forms of private supervision, proposed state and federal sentencing reforms threatened the contracts of those companies. To adapt, they began to shift their

Since about 2010, some of the largest private prison operators sought to take advantage of states' newfound interest in rehabilitation and alternatives to incarceration by shifting their marketing and communications away from claims about security and cost savings, and instead emphasizing provided treatment and rehabilitative services.

marketing and communications away from claims about security and cost savings, and toward an emphasis on providing treatment and rehabilitative services. AFSC also found that one prominent organization pushing for sentencing reform had received significant funding from GEO Group at the same time as it was lobbying states to adopt reforms that would increase the number of people on monitoring devices and other services provided by the company.”

In an article about new investments in halfway houses by Corrections Corporation of America (now known as CoreCivic), a company representative explained their desire to enter this new space: “We see the re-entry space as attractive because states are placing an increased emphasis on reducing recidivism back into prisons and utilizing re-entry services more commonly.”¹²⁸ Accordingly, the private prison companies launched a major effort to acquire companies providing prisoner re-entry programming. For example, in 2013, CCA purchased Correctional Alternatives, which provides housing and rehabilitative services including residential re-entry programs and home confinement. The other dominant private prison company, GEO Group, likewise has now acquired a variety of “community reentry services” and treatment programs, including what

was previously the country’s largest electronic-monitoring firm, BI Incorporated, and JustCare, a medical and mental health service provider.

These programs also have been the site of unique abuses. One notorious example is the “Kids for Cash” scandal in Pennsylvania, where two judges were found to have received millions of dollars in bribes in exchange for sentencing children—many of whom were unrepresented or charged with petty offenses—to private diversion. The scheme began when one of the judges shut down the state juvenile detention centers in favor of a private, for-profit company facility.¹²⁹ Work-based diversion schemes also are frequently exploitative: individuals may work without pay,¹³⁰ sometimes illegally,¹³¹ in dangerous conditions,¹³² and they can be reincarcerated if they cannot or refuse to participate.

The possibility of abuse should give pause to reformers seeking to reduce sentences through increased reliance on these programs, particularly where they are paid for through participant fees. In a May 2018 letter urging Congress to oppose an early version of what would become the FIRST STEP Act, a now-implemented federal sentencing reform effort, a group of civil rights organizations highlighted this concern. The legislation had authorized only a small amount of funding to support the recidivism reduction programming it sought to expand, while also specifically providing that the federal Bureau of Prisons should enter into partnerships with private organizations and companies under policies developed by the Attorney General. The organizations cautioned that this effort “could privatize what should be public functions and could allow private entities to unduly profit from incarceration.”¹³³ The organizations reiterated these concerns in a letter to Senators prior to successful passage of the final legislation.¹³⁴

Private debt collection

Even where fines and fees are assessed by public courts, rather than private entities, the corrections industry has found a way to profit. That is because many states and local governments contract with private debt collection agencies—which are often authorized to charge significant collection costs—to try to collect from those with criminal justice debt.¹³⁵ The outsourcing of court debt collection to private contractors has created a market for collection contractors with nationwide scope. For example, Linebarger, Goggan, Blair, and Sampson LLP, one of the largest debt-collection firms, boasts of a portfolio of over \$10 billion in public debt¹³⁶ and over 2,300 public sector clients.¹³⁷

Collection firms are often paid through fees added on top of the original balance, to be paid by the debtor. Some of these fees are statutorily mandated, and many can be quite onerous: Florida, for example, provides for a fee of up to 40 percent of the balance owed.¹³⁸ This means, for example, that if a debtor in Florida has a \$1,000 debt to a local court, and that court hires a private debt collector to collect the debt, then the debt collector can theoretically collect \$1,400, with the extra \$400 going to the collector.

The combination of the outsourcing of government debt collection to private companies and the availability of hefty, user-funded collection fees to these companies both adds to the costs of these fees and fines and incentivizes aggressive debt collection techniques. Other conflicts of interest have been documented in this industry. For example, over 10 years starting in 2008, one individual simultaneously served as the district attorney for two Mississippi counties while also serving as the president (and 50 percent owner) of a private company that contracted to collect delinquent court fines and fees in at least 20 counties across the state.¹³⁹

The debt collection practices of these companies may involve “skip tracing”—that is, using sophisticated techniques to locate and gather other information about debtors—as well as sending collection letters and making phone calls; setting up payment plans; seeking orders allowing garnishment of wages and bank accounts; and even acting as a gatekeeper to reinstatement of driver’s licenses and other privileges in some jurisdictions.¹⁴⁰

The alliance between the debt collectors and the state criminal legal system also gives these private collection companies unusual leverage. For example, one report found that a San Francisco courthouse has installed a bank of telephones that goes directly to Alliance One, which is contracted with the City and County of San Francisco to collect on delinquent debt.¹⁴¹ Direct threats of incarceration or reincarceration are common, and often lead to onerous and unsustainable payment plans from otherwise collection-proof debtors driven by fear.¹⁴²

In some cases, these threats are made in situations where the law of the jurisdiction would not actually provide for incarceration under any theory. Unfortunately, collectors exploit gaps in consumer protection laws—which generally prohibit such false threats

Although court fines and fees court are generally not supposed to be reported by consumer reporting agencies, private debt collectors may fail to track the type of debt they are collecting and may impermissibly report unpaid court debt to credit bureaus, potentially affecting peoples’ credit scores and access to credit, housing, insurance, and jobs.

and misstatements of law—pertaining to collection of court-imposed fines.¹⁴³ Similarly, collectors may claim that bankruptcy law is inapplicable to criminal legal system debt, which is not accurate as a general statement, even though it may be true in the context of certain types of criminal legal debts.¹⁴⁴ And although fines and fees imposed by a court are generally not supposed to be reported by consumer reporting agencies,¹⁴⁵ private debt collectors may fail to track the type of debt they are collecting and may impermissibly report unpaid court debt to credit bureaus, potentially affecting peoples' credit scores and access to credit, housing, insurance, and jobs.

NEXT STEPS FOR ADVOCATES AND POLICYMAKERS

This report discusses some of the ways that the commercialization of the criminal legal system—abetted by the long-term trends of privatization and cost-shifting to “users” of the system—has resulted in widespread consumer abuses. The industries highlighted here are only some of the most prominent examples of these trends; others exist, and more will arise as companies and governments work together to further commercialize public legal functions.

Advocates should work to address these consumer abuses by documenting and raising awareness of the problem, strengthening oversight, enforcing existing laws, and pushing for new reforms. This work will advance efforts to empower individuals who have been assessed financial obligations by private actors and to hold those actors accountable for unlawful conduct. Over the long term, these efforts will strengthen public and private accountability for the unfair and unlawful practices that are now widespread in the modern corrections industry—and ultimately move toward eliminating exploitative profiteering and other economic injustices from our criminal system altogether.

1. Collect information and raise awareness

Due to the vulnerability of the affected populations and the lack of transparency characterizing transactions involving the private corrections industry, many of the abusive practices in the industry have escaped widespread public consciousness. Civil-rights advocates, public defenders, consumer lawyers, local organizers, and directly-impacted communities should work together to understand what problems are affecting individuals and families facing costs from contact with the criminal legal system.

- Convene community meetings and identify other opportunities to listen to, collect, and share stories from impacted people, including through the media and in policy-making spaces.
- Initiate public records requests for information about contracts involving the criminal legal system between government agencies (including counties, municipalities, states, and correctional facilities) and private companies. Search these contracts for any terms that may be concerning—including provisions that allow for shifting the cost of public functions onto “users” of the system or for kickbacks—and for terms that may be helpful, such as provisions requiring that information be made public, clarifying

consumers' ability to waive or contest fees, or restricting the company's ability to impose fees or penalties absent court order.

- Document findings in public reports, through op-eds or letters to the editor in local media, and in letters to and meetings with government officials.

2. Demand effective public supervision

Advocates can also demand effective oversight of companies profiting from the criminal legal system, including oversight by agencies charged with industry regulation, consumer protection, and civil rights enforcement.

- Encourage people who have been harmed by the corrections industry to file complaints with relevant public enforcement authorities, which may include state or local regulators, the Consumer Financial Protection Bureau, or the Federal Trade Commission.
- Request a meeting or a hearing with public regulators—including state attorney general offices, insurance commissions (who supervise the commercial bail industry), and consumer protection officials—to encourage them to exercise their supervisory and enforcement authorities.

Example: In response to public pressure, representatives from relevant New York state agencies—the Department of Financial Services, the Division of Consumer Protection, and the Division of Criminal Justice Services—hosted three listening sessions in June 2018 about consumer abuses in the bail bond industry.

3. Represent individuals with legal system contact and initiate impact litigation

Lawyers can work to protect consumers' rights against abuses from private companies in the criminal legal system. Understanding the changing landscape of the criminal legal system through the lens of consumer protection law can help identify ways to apply existing laws—even those not often applied in the criminal context—to stop harmful and unlawful practices.

- Forge partnerships and collaborations between consumer, criminal defense, and civil rights attorneys to provide robust representation to individuals harmed by consumer abuses in the criminal system. Advocates should begin by seeking to understand how the services offered by these companies are analogous to the high-fee services offered by industries operating in other areas of the marketplace.

Example: In San Francisco and Baltimore, advocates with offices of the Lawyers' Committee for Civil Rights have started clinics that offer legal services to families struggling with bail debt. Through demand letters and impact litigation, these clinics have successfully discharged nearly \$100,000 of bail debt.

- Use impact litigation, as well as legislative and regulatory reform efforts, to apply consumer protection statutes to financial charges imposed by companies operating in the criminal legal system as well as resulting debts.

4. Push for new policy reforms

Addressing these abuses demands more than simply applying existing consumer protections—advocates must go further, to secure new reforms. The recommendations in this section are designed to serve as a starting point for advocates and policymakers, but more work must be done to develop comprehensive reforms that can eliminate consumer abuses and civil rights violations perpetuated by the bail and corrections industry.

- Prohibit commission payments in all of their forms and require that agencies negotiate contracts based on delivering the best value to consumers and providing services in a manner that furthers the public interest.
- Prohibit “offender-funded” contracts. Align companies’ incentives with positive outcomes and eliminate the temptation to subvert important policy goals in order to extract additional wealth from low-income communities.
- Eliminate other conflicts of interest that tie a company’s profits to the financial obligations shouldered by program participants or the length of time individuals remain under supervision.
- Fund the full cost of the criminal justice system, including services provided by private companies, from government general revenues, rather than pushing it onto individuals processed through the system. Eliminate participation and supervision fees for community corrections programs, and consider requiring that correctional facilities provide more consumer services free of charge.

Example: In response to an advocacy campaign, the New York City Council voted in August 2018 to stop charging people for making calls from jails and prisons, which had previously cost impacted families \$5 million per year.

- Reform policies concerning imposition and collection of financial obligations on individuals impacted by the criminal legal system so that that such obligations do not trap people in poverty or lead to harsher punishment for defendants simply because they are poor. Reforms should include waiving and reducing charges for those unable to afford to pay, and prohibiting penalties for nonpayment for those unable to afford to pay.
- Demand transparency from state and local governments concerning contracts with private companies and costs imposed on individuals by these companies. Companies that perform functions of our criminal legal system should be subject to the same, or substantively similar, records requirements as government agencies.
- Advocate for transformational change that will end mass incarceration and eliminate opportunities for companies to profit from poor people caught in an unfair and oppressive legal system.

ADDITIONAL RESOURCES

■ Pre-arrest diversion

- “Restorative Justice for Shoplifting? A Court Calls It Extortion,” Jessica Pishko, *The Nation* (Oct. 30, 2017), available at <https://www.thenation.com/article/restorative-justice-for-shoplifting-a-court-calls-it-extortion/>

■ Commercial bail industry

- Brian Highsmith, Testimony before New York State’s Department of Financial Services, Division of Consumer Protection and Division of Criminal Justice Services, Bail Bond Reform Listening Session (June 11, 2018), available at <https://www.nclc.org/images/pdf/criminal-justice/testimony-highsmith-ny-bail-bond.pdf>
- *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System*, Color of Change and ACLU (2017), available at <https://www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system>
- *For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial*, Justice Policy Institute (Sept. 2012), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/_for_better_or_for_profit_.pdf
- “When Bail Feels Less Like Freedom, More Like Extortion,” Jessica Silver-Greenberg and Shaila Dewan, *New York Times* (March 31, 2018), available at <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>
- “Inside the Wild, Shadowy, and Highly Lucrative Bail Industry,” Shane Bauer *Mother Jones* (May/June 2014), available at <http://www.motherjones.com/politics/2014/06/bail-bond-prison-industry/>
- “This Company Is Making Millions From America’s Broken Immigration System,” Michael E. Miller, *Washington Post* (March 9, 2017), available at https://www.washingtonpost.com/local/this-company-is-making-millions-from-americas-broken-immigration-system/2017/03/08/43abce9e-f881-11e6-be05-1a3817ac21a5_story.html?utm_term=.a69946ef8827

■ Electronic monitoring

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- “The Newest Jim Crow,” Michelle Alexander, *The New York Times* (Nov. 8, 2018), available at <https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html>

■ Private probation

- *Community Cages: Profitizing community corrections and alternatives to incarceration*, Caroline Isaacs, American Friends Service Committee (Aug. 2016), available

at https://www.privateci.org/reports_files/Profitizing%20community%20corrections%20and%20alternatives%20to%20incarceration.pdf

- “Set up to Fail”: *The Impact of Offender-Funded Private Probation on the Poor*, Komala Ramachandra, Human Rights Watch (Feb. 20, 2018), available at <https://www.hrw.org/report/2018/02/20/set-fail/impact-offender-funded-private-probation-poor>
- “Get Out Of Jail, Inc.,” Sarah Stillman, *The New Yorker* (June 23, 2014), available at <https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc>
- “The For-Profit Probation Maze,” J.Weston Phippen, *The Atlantic* (Dec. 16, 2015), available at <https://www.theatlantic.com/politics/archive/2015/12/the-for-profit-probation-maze/433656/>

■ Telecommunications

- *State of Phone Justice: Local jails, state prisons and private phone providers*, Peter Wagner and Alexi Jones, The Prison Policy Initiative (Feb. 2019), available at https://www.prisonpolicy.org/phones/state_of_phone_justice.html
- *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry*, Drew Kukorowski, The Prison Policy Initiative (Sep. 11, 2012), available at https://static.prisonpolicy.org/phones/price_to_call_home.pdf
- *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone System*, Drew Kukorowski, Peter Wagner and Leah Sakala, The Prison Policy Initiative (May 8, 2013), available at https://static.prisonpolicy.org/phones/please_deposit.pdf
- *Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails*, Bernadette Rabuy and Peter Wagner, The Prison Policy Initiative (Jan. 2015), available at https://static.prisonpolicy.org/visitation/ScreeningOutFamilyTime_January2015.pdf
- “Making Profits on the Captive Prison Market,” Eric Markowitz, *The New Yorker* (Sept. 4, 2016), available at <https://www.newyorker.com/business/currency/making-profits-on-the-captive-prison-market>

■ Financial services

- *Release Cards* (updated 2018), The Prison Policy Initiative, available at <https://www.prisonpolicy.org/releasecards/>
- “Lawsuit Reveals How Tech Companies Profit Off The Prison-Industrial Complex,” Katie Rose Quandt, *ThinkProgress* (Feb. 9, 2018), available at <https://thinkprogress.org/prison-technology-companies-inmates-9d4242805363/>
- “How Private Bankers Cash In On Released Prisoners,” German Lopez, *Vox* (Nov. 3, 2015), available at <https://www.vox.com/explainers/2015/11/3/9661554/prison-bank-prepaid-card>

■ **Organizations working to challenge commercialization**

- Human Rights Defense Center: <https://www.humanrightsdefensecenter.org/>
- Prison Phone Justice: <http://prisonphonejustice.org/>
- Stop Prison Profiteering: <http://www.stopprisonprofiteering.org/>
- Private Prison News: <http://www.privateprisonnews.org/>
- Prison Policy Institute: <https://www.prisonpolicy.org>
- Worth Rises (formerly the Corrections Accountability Project): <https://worthrises.org/>
- In the Public Interest (Programs Not Profits): <https://www.inthepublicinterest.org/programs-not-profits/>
- Fines and Fees Justice Center: <https://finesandfeesjusticecenter.org/>
- Southern Center for Human Rights: <https://www.schr.org/our-work/debtors-prisons/private-probation>
- Southern Poverty Law Center: <https://www.splcenter.org/our-issues/economic-justice>
- American Civil Liberties Union: <https://www.aclu.org/issues/mass-incarceration/privatization-criminal-justice>

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2. Jeffrey C. Nahley et al, *The U.S. Corrections Industry State of the Union: "A Wall Street Handbook,"* Signal Hill Capital Group LLC (July 2012), available at https://www.privateci.org/reports_files/Signal%20Hill_Corrections%20Handbook.pdf.
3. See Rebecca Burns, *Diversion Programs Say They Offer a Path Away From Court, but Critics Say the Tolls Are Hefty*, ProPublica (Nov. 13, 2018), available at <https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions> ("The expansion of private, for-profit diversion programs comes as states struggle with the costs of their prison populations and counties grapple with their own financial woes. But it concerns criminologists and others who see in it the intersection of two troubling trends: the outsourcing of crucial operations of the criminal justice system to the private sector, and the growing imposition of fees on mostly low-income defendants.").
4. This report refers to people who "have contact" (or "interactions") with the criminal legal system. This phrasing captures the full range of these systems and interactions, from policing to arrest to incarceration to supervision. The phrasing also is intended to recognize the reality that people in and from certain communities are more likely to have such interactions not solely because of anything that they, uniquely, have done—but rather, as the result of differential treatment by law enforcement and our legal system. The terminology further recognizes that these costs are imposed not just on the people who are themselves arrested or convicted but often, rather, on their loved ones who pay to receive a phone call or transfer money to a commissary account, or cosign a bail contract.
5. NCLC launched our Criminal Justice Debt Project in 2016 with the release of an extensive, three-part report produced in collaboration with Harvard Law School's Criminal Justice Policy Program (CJPP), including an NCLC-authored guide for litigators representing clients on criminal justice debt matters. See <http://www.nclc.org/issues/confronting-criminal-justice-debt.html>.
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7. A report issued by the ACLU and Color of Change estimates the number of bail bond agents nationally to be as many as 25,000. Color of Change and The American Civil Liberties Union, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System* at 9 (2017), available at <https://www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system>, archived at <https://perma.cc/Y3UV-FL6C>.
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