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**Written Testimony of Brian Highsmith,  
Skadden Fellow at the National Consumer Law Center**

**Before the Judiciary Committee of the Connecticut General Assembly,  
2019 Regular Session**

**March 25, 2019**

Good morning. My name is Brian Highsmith, and I am an attorney at the National Consumer Law Center, which is based in Boston. My work aims to address the ways that interactions with our criminal legal system result in unfair and unaffordable financial obligations for low-income families. I'm testifying regarding HB 6714.

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. Limiting such contact and charging inflated prices for it is unfair and exploitative, and 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.

It is important to keep families connected, and to eliminate opportunities to exploit vulnerable Connecticut communities through the commercialization of prisoners' contacts with the outside world. The prison phone industry pitches itself as way to relieve fiscal pressures that are created in part through mass incarceration. But we know that the current system dramatically increases costs for Connecticut residents.

Through kickback payments and other forms of financial exploitation, costs of the criminal legal system are transferred onto the individuals processed through the system and their families—and then further inflated to generate private profits. These costs push families deeper into poverty and make it harder for people who have interactions with the criminal legal system to get back on their feet. This is a regressive tax on some of the most economically fragile members of our community. The system harms all Connecticut residents, and harms these vulnerable communities most.

## **Our clients are harmed by unaffordable phone costs imposed by Securus Technologies**

Just up the interstate, I am representing consumers challenging what we allege is an unlawful kickback scheme between a Massachusetts' Bristol County's sheriff and telecom giant Securus Technologies—the same company Connecticut has contracted with for prison phone services since 2012.<sup>1</sup> We allege that this arrangement is nearly doubling the cost of calls made by prisoners. In Bristol County as in Connecticut, prisoners who want to communicate by phone with family, friends, and legal representatives have only one option available: they must use the privatized calling system operated by phone vendor Securus. These calls are a lifeline for vulnerable families—and an issue of economic justice for consumers.

For all of our clients, the excessive cost of Securus phone calls has created needless financial hardship—and prevented them from having more regular contact with their loved ones. One of our plaintiffs had no other option to communicate with his 95-year-old mother and disabled sister, both of whom live over 100 miles away; a medical issue prevented him from writing letters by hand. Another—who has not been convicted of any charge but was being held on bond while awaiting trial—must use the phone to coordinate his medical, financial, and legal needs.

As another client, Kellie Pearson, was dealing with her fiancé's pre-trial incarceration, the high cost of phone calls forced her family to navigate impossible decisions between meeting basic needs and maintaining contact. Ms. Pearson estimates that she spent thousands of dollars on charges to speak to her fiancé using the Securus phone system while he was incarcerated. In a typical month, Ms. Pearson spent between \$40 and \$100 on phone charges, severely straining the family budget. Her teenage daughter had to rush through conversations with her father so the call didn't get too expensive. As Ms. Pearson described it, "It was crushing to her." Ms. Pearson was overwhelmed with bills, and eventually had to break the news to her fiancé that they could no longer afford to continue talking regularly. As reported by the *Boston Globe*, he took his life just days later.<sup>2</sup>

So this issue goes further than basic marketplace fairness, and state support for exploitative monopolies. It is cruel and senseless to make prisoners' families pay for the running of a prison through their phone calls and to create unnecessary obstacles to continued contact. Why should a prisoner's child be denied her bedtime call, just because it's needlessly expensive? It makes no sense—particularly when we know that contact with family helps prisoners succeed on release. 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.*"<sup>3</sup>

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<sup>1</sup> See Complaint, 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>.

<sup>2</sup> Maria Cramer, *Lawsuit challenges the high cost of calling from jail*, 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>.

<sup>3</sup> Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* 246 (2006) (emphasis in original).

## **The prison phone industry results in systematic transfers of wealth from vulnerable 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—here, prisoners and their families—through additional charges. This led not only to higher prices for these vulnerable consumers but also to sharp consolidation in the industry as governments began to award exclusive contracts only to those companies that offered high commissions.<sup>4</sup>

The companies that provide prison 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 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.<sup>5</sup> 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). In other words, many of the predatory practices in the prison phone industry are not connected to the site commission structure—which is why NCLC has recommended going beyond simply banning kickback payments, and ensuring that communication technology can be accessed during incarceration without cost to the consumer.

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. Moreover, 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.<sup>6</sup>

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<sup>4</sup> Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry* at 22, *Critical Studies in Media Communication*, no. 4, Oct. 2005, at 263-280, available at [https://sjackson.infosci.cornell.edu/Jackson\\_CompetitionandCollusioninPrisonPhoneIndustry\(CSMC2005\).pdf](https://sjackson.infosci.cornell.edu/Jackson_CompetitionandCollusioninPrisonPhoneIndustry(CSMC2005).pdf)

<sup>5</sup> Drew Kukorowski, Peter Wagner, and Leah Sakala, “Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry,” *Prison Policy Initiative* (May 2013), available at <https://www.prisonpolicy.org/phones/pleasedeposit.html>.

<sup>6</sup> Shannon Sims, “The End of American Prison Visits: Jails End Face-To-Face Contact – And Families Suffer,” *The Guardian* (Dec. 9, 2017), available at <https://www.theguardian.com/us-news/2017/dec/09/skype-for-jailed-video-calls-prisons-replace-in-person-visits>

## **The prison phone industry imposes its costs on vulnerable people least positioned 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,<sup>7</sup> due to discriminatory policing and sentencing practices. In short, abusive practices by prison phone vendors impose significant financial and social costs on already vulnerable families and communities.

They are also far more likely to be poor.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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 on their loved ones and communities. The price of phone calls, in particular, is frequently billed to—or otherwise 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. Other forms of borrowing within communities may be necessary, extending the economic costs across entire communities.<sup>11</sup>

Phone costs contribute to the broader problem of excessive fines, fees, and costs imposed on individuals processed through the criminal legal system—which add up far beyond the baseline punishment. 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 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 work to keep poor people poor.

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<sup>7</sup> Radley Balko, “There’s Overwhelming Evidence That the Criminal-Justice System Is Racist. Here’s The Proof,” *The Washington Post* (Sept. 18, 2018), available at [https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?noredirect=on&utm\\_term=.affb0e94860b](https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/?noredirect=on&utm_term=.affb0e94860b).

<sup>9</sup> James, Doris J. *Profile of Jail Inmates, 2002*, Bureau of Justice Statistics Special Report. 9. Jul. 2004.

<sup>10</sup> Bernadette Rabuy & Daniel Kopf, *Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time*, Prison Policy Initiative (May 10, 2016), available at <https://www.prisonpolicy.org/reports/DetainingThePoor.pdf>.

<sup>11</sup> DeVuono-Powell, et al., *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center for Human Rights (2015), available at <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> (describing the impact of collateral consequences of incarceration on family members of incarcerated people).

### **The prison phone industry exemplifies many problems of our modern corrections industry**

This is all part of a wider problem, whereby private companies have devised various ways to charge individuals as a result of their contact with the criminal legal system.<sup>12</sup> Increasingly, people who have contact with our criminal legal system are left with unaffordable debts that create acute hardship for families and extract resources from poor communities. And 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.

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.

The growth of the corrections industry thus 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. This is a system ripe for abuse.

### **Conclusion**

On behalf of our low-income clients, the National Consumer Law Center recently supported the advocacy effort that led the New York City to stop charging people for making calls from jails and prisons, which had previously cost impacted families \$5 million per year. Other states, including California and Massachusetts, are also considering reforms in this area. We are deeply concerned about consumer abuses in the prison phone industry and have called for reform—including by requiring that correctional facilities provide more consumer services free of charge. There is now momentum for far-reaching reforms, here in Connecticut and around the country.

The bottom line is this: Charging prisoners for phone calls creates needless hardship for prisoners and their loved ones, makes prisoner reentry to the community more difficult, and increases the cost of legal representation. Thank you for considering this important legislation.

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<sup>12</sup> See Brian Highsmith, *Commercialized (In)Justice: Consumer Abuses in the Bail and Corrections Industry*, National Consumer Law Center (March 2019), available at <http://bit.ly/2rUu2K9>.