

New Report Documents Growing Problem of Consumer Abuses Perpetuated by Companies Profiting from Mass Incarceration

National Consumer Law Center Recommends Reforms to Mitigate Harms to Families by Private Corporations Administering Our Criminal Legal System

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Download the full report, including an analysis of harms, a sector-by-sector overview, graphic on the Private Criminal Legal System Cycle, and complete list of policy recommendations at:

<http://bit.ly/2W7zq9E>

Boston - Across the nation, the creeping commercialization of the criminal legal system—abetted by the long-term trends of privatization and cost-shifting to “users” of the system and their families—has resulted in widespread abuses. 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 2012, the most recent year available—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.

Commercialized (In)Justice: Consumer Abuses In the Bail and Corrections Industry, a new report from the National Consumer Law Center, highlights how private companies are profiting from financial extractions taken from vulnerable individuals based on their exposure to the criminal legal system. As the report documents, the corrections industry operates largely without consumer regulation or government enforcement—even as companies often take advantage of the threat of criminal consequences and consumers’ lack of knowledge about their rights. In exchange for exclusive contracts, companies frequently offer kickback payments to cash-strapped corrections agencies. And corporate consolidation and weak competitive pressures have resulted in a handful of large conglomerates, leveraging power in one market to increase share in another.

“At each step of our modern punishment continuum, private companies are maneuvering to extract wealth from poor, heavily-policed communities,” **said attorney Brian Highsmith, National Consumer Law Center Skadden Fellow** and author of the report. “This system perpetuates harmful cycles of poverty and consumer debt for vulnerable families, and is especially devastating to low-income communities of color,” **said Highsmith.**

Key Findings

The report documents the many ways in which Americans who have contact with the criminal legal system 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. 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.

The report also frames the expanding reach of the modern corrections industry through the

intersection of two troubling trends: (1) the outsourcing of the criminal legal system to the private sector—traditionally public services, and (2) imposing fines and fees on mostly low-income defendants and their families to fund the criminal legal system. Per capita spending on the criminal legal system grew by 40% nationwide between 1993 and 2012. During this time, state and local governments 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. At the same time, they have outsourced various core functions of their criminal legal systems—traditionally public services—to private corporations operating to maximize profit for their owners and investors. 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.

Specifically, companies aggressively market their services to states and local governments as a way to achieve cost “savings” for existing corrections functions—and in many cases, to generate new revenue streams through kickback payments. But almost inevitably, these arrangements sharply *increase* the financial costs imposed on economically fragile individuals processed through the criminal justice system.

Private companies face incentives to make decisions based on what is in their and their investors’ financial interest—which often directly conflicts with public policy goals. For example, companies may exercise decision-making authority affecting the consumers’ criminal punishment at the same time as they stand to profit from extensions of such punishment.

Key Recommendations for Policymakers

- Prohibit commission payments in all forms and require that agencies negotiate contracts based on delivering the best value to consumers;
- Prohibit “offender-funded” contracts and align companies’ incentives with positive outcomes;
- 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 and their families;
- Reform policies concerning imposition and collection of financial obligations on individuals impacted by the criminal legal system so that that they do not trap people in poverty or lead to harsher punishment for defendants simply because they are poor; and
- Ensure that companies performing functions of our criminal legal system be subject to the same, or substantively similar, public records requirements as government agencies.

“Today, 1 in every 37 American adults is under some form of correctional supervision—more than any other nation in the world,” **said Highsmith**. “By pushing for reform, advocates can strengthen accountability for the unfair and unlawful practices that are now widespread, and ultimately move toward eliminating exploitative profiteering and other economic injustices from our criminal system.”

This report builds on NCLC’s work on the criminalization of poverty in various consumer law contexts. For more information, visit: <https://www.nclc.org/issues/criminal-justice.html>.