



Reason Foundation  
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# Annual Privatization Report 2017

## Criminal Justice and Corrections

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Edited by Austill Stuart

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1. Prison Population Trends, 2000–2015
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(Note: Portions of this report have been published previously in various editions of Reason Foundation's *Privatization and Government Reform Newsletter* and related articles.)

## 1. Prison Population Trends, 2000–2015

According to the most recent data compiled by the Bureau of Justice Statistics, 2015 saw the largest decline in the total federal and state prison population since the population peaked in 2009.<sup>1</sup>

- The combined federal and state prison population declined from 1,570,406 in 2014 to 1,532,038 in 2015, a net decrease of over 38,000 inmates, or a 2.4% decline.
- Between 2014 and 2015, the total federal prison population declined by over 14,000 inmates, or 6.7%, while the state prison population fell by over 24,000 prisoners, or 1.8%.
- Over that same period, the total U.S. prison population housed in privately operated prisons decreased by 6.3%, from 140,142 in 2014 to 131,277 in 2015.
- Privately operated prisons bore a disproportionately higher share of inmate population declines in 2015 than did government-run facilities.

At the federal level, the total prison population rose from 145,416 in 2000 to 196,455 in 2015, an increase of 35.1%. The number of federal prisoners housed in private facilities has risen by over 125% during that same period (from 15,524 in 2000 to 34,934 in 2015), with the share of federal prisoners housed in private prisons increasing from 10.7% in 2000 to 17.8% in 2015. Shown in Table 1, this increase illustrates the trend in federal agencies' historical preference to rely on PPPs for new prison capacity, as opposed to developing government-run facilities.

At the state level, the overall share of offenders held in private facilities has also increased since 2000. The total state prison population rose from 1,248,815 in 2000 to 1,335,583 in 2015, a 6.9% increase. The number of those state prisoners housed in private facilities rose from 75,291 to 96,584 over that same time period, a 28.3% increase. Overall, the share of state prisoners housed in private prisons increased slightly from 6.0% in 2000 to 7.2% in 2015.

Taken together, the total federal and state prison population increased by 9.9% from 2000 to 2015, rising from 1.39 million to 1.53 million (see Table 2 and Figure 1); the total population has been on a declining trend since peaking at nearly 1.62 million in 2009. By comparison, the federal and state inmate population housed in private facilities increased by 45% between 2000 and 2014 and now accounts for 8.6% of the total prison population. While these data certainly reflect an increasing reliance on corrections PPPs by federal and state officials over the last decade, the vast majority of inmates—over 91%—continue to be housed in government-run prisons.

**Table 1: Federal and State Prison Population in Private Facilities (2000-2015)**

Year	Total Federal Prison Population	Federal Population in Private Facilities	% Federal Population in Private Facilities	Total State Prison Population	State Population in Private Facilities	% State Population in Private Facilities
2000	145,416	15,524	10.7%	1,248,815	75,291	6.0%
2005	187,618	27,046	14.4%	1,338,292	80,894	6.0%
2006	193,046	27,726	14.4%	1,375,628	85,971	6.2%
2007	199,618	31,310	15.7%	1,397,217	92,632	6.6%
2008	201,280	33,162	16.5%	1,407,002	96,320	6.8%
2009	208,118	34,087	16.4%	1,407,369	95,246	6.8%
2010	209,771	33,830	16.1%	1,404,032	104,361	7.4%
2011	216,362	38,546	17.8%	1,382,606	101,730	7.4%
2012	217,815	40,446	18.6%	1,352,582	105,674	7.8%
2013	215,866	41,159	19.1%	1,358,875	100,762	7.4%
2014	210,567	40,017	19.0%	1,359,839	100,125	7.4%
2015	196,455	34,934	17.8%	1,335,583	96,584	7.2%
Average annual % change, 2000-2010	3.3%	7.1%	n/a	1.1%	3.0%	n/a
Average annual % change, 2010-2015	-1.1%	0.5%	n/a	-0.8%	-1.3%	n/a
Percent change, 2014-2015	-6.7%	-12.7%	n/a	-1.8%	-3.5%	n/a

**Sources**

Total federal and state prison population data (2015): U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016, p. 3, <http://www.bjs.gov/content/pub/pdf/p15.pdf> (accessed November 16, 2017).

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

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

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

Federal and state private prison population data (2015): U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016, p. 28, <http://www.bjs.gov/content/pub/pdf/p15.pdf> (accessed November 16, 2017).

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

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

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

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

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

Note: State-level private facility population totals differ from those reported by BJS due to its apparent exclusion of California inmates held in contracted beds in out-of-state private facilities for 2010-2015. Data for each year were adjusted to include California inmates held in contracted out-of-state correctional facilities, as reported in the year-end (December) population reports published by the California Department of Corrections and Rehabilitation ([http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Monthly/Monthly\\_Tpop1a\\_Archive.html](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html)).

**Table 2: Change in Private Prison Population (2000-2015)**

Year	Total Federal and State Prison Population	Federal and State Population in Private Facilities	% Federal and State Population in Private Facilities
2000	1,394,231	90,815	6.5%
2010	1,613,803	138,191	8.6%
2011	1,598,968	140,276	8.8%
2012	1,570,397	146,120	9.3%
2013	1,574,741	141,921	9.0%
2014	1,570,406	140,142	8.9%
2015	1,532,038	131,277	8.6%
Average annual % change, 2000–2010	1.3%	3.8%	n/a
Average annual % change, 2010-2014	-0.9%	-0.9%	n/a
Percent change, 2013-2014	-2.4%	-1.3%	n/a

**Sources:**

Total federal and state prison population data (2015): U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016, p. 3, <http://www.bjs.gov/content/pub/pdf/p15.pdf> (accessed November 16, 2017).

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

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

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

Federal and state private prison population data (2015): U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016, p. 28, <http://www.bjs.gov/content/pub/pdf/p15.pdf> (accessed November 16, 2017).

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

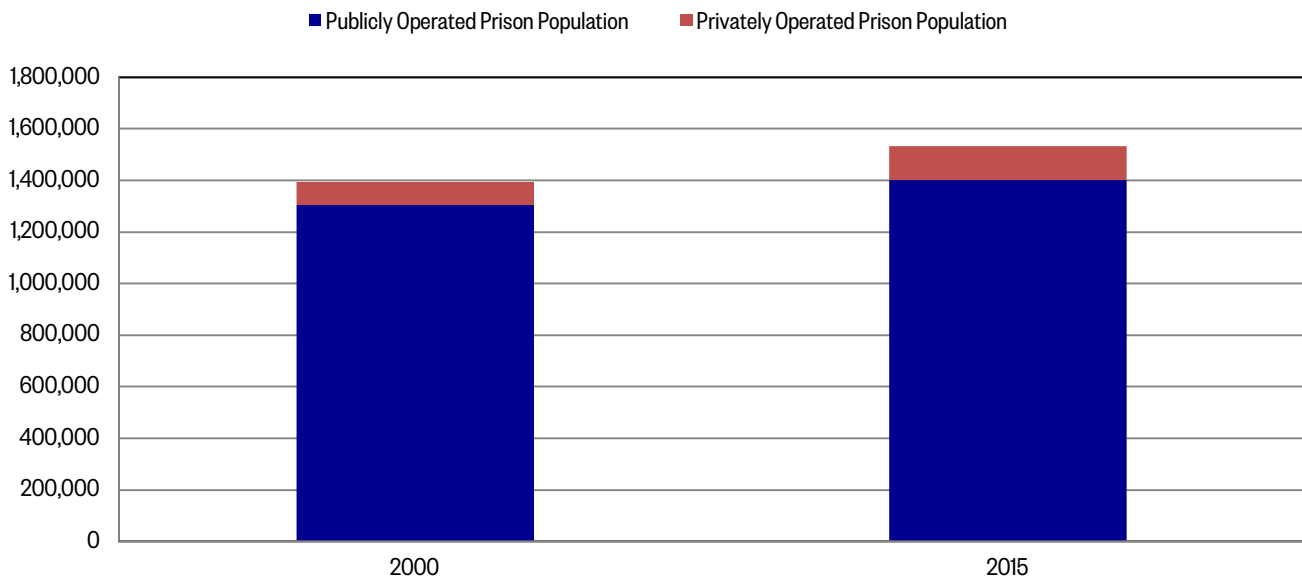
Federal and state private prison population data (2011-2013): U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2013, September 2014, p. 14, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed September 18, 2014).

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

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

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

Note: Private facility population totals differ from those reported by BJS due to its exclusion of California inmates held in contracted beds in out-of-state private facilities for 2010-2015. Data for each year were adjusted to include California inmates held in contracted out-of-state correctional facilities, as reported in the year-end (December) population reports published by the California Department of Corrections and Rehabilitation ([http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Monthly/Monthly\\_Tpop1a\\_Archive.html](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html)).

**Figure 1: Proportion of Publicly vs. Privately Operated Prison Population (2000–2015)****Sources:**

2015 data: U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016, p. 3 & p.28, <http://www.bjs.gov/content/pub/pdf/p15.pdf> (accessed November 16, 2016). BJS data adjusted to include 5,246 California inmates held in contracted out-of-state correctional facilities, as reported in the December 31, 2015 population report published by the California Department of Corrections and Rehabilitation ([http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Monthly/Monthly\\_Tpopla\\_Archive.html](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpopla_Archive.html)).

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

A total of 29 states held some inmates in privately operated prisons in 2015, though state usage of corrections PPPs varies considerably, as shown in Table 3. Some states have relatively large proportions of their inmate populations in privately operated facilities—including New Mexico (42.2%), Montana (40.4%), Oklahoma (26.1%), North Dakota (23.8%), Hawaii (22.8%) and Mississippi (20.9%)—while other states make limited use of corrections PPPs, including Alabama (1.3%), Pennsylvania (1.2%), South Dakota (0.6%), Maryland (0.1%), North Carolina (0.1%) and South Carolina (0.1%).

The number of inmates held in privately operated prisons held fairly steady in most states between 2014 and 2015. In terms of absolute numbers, the states with the highest numbers of inmates held in privately operated prisons are Texas (14,293), Florida (12,487), Georgia (7,953), Oklahoma (7,446), California (7,441) and Arizona (6,471). These six states account for nearly 60% of the total number of state inmates held in privately operated prisons in 2015.

**Table 3: Federal and State Prisoners in Private Facilities, by Jurisdiction, 2000–2015**

Jurisdiction	Inmates in Private Facilities (2000)	Inmates in Private Facilities (2010)	Inmates in Private Facilities (2011)	Inmates in Private Facilities (2012)	Inmates in Private Facilities (2013)	Inmates in Private Facilities (2014)	Inmates in Private Facilities (2015)	Percent of Total Jurisdictional Population (2015)
Alabama	0	1,024	545	538	554	481	398	1.3
Alaska	1,383	1,598	1,688	1,733	27	595	593	11.1
Arizona	1,430	5,356	6,457	6,435	6,405	6,955	6,471	15.1
Arkansas	1,540	0	0	0	0	0	0	0.0
California *	4,547	12,416	10,001	9,508	10,903	11,257	7,441	5.8
Colorado	2,099	4,498	4,303	3,939	3,898	3,782	3,987	19.8
Connecticut	n/a	883	855	817	725	647	524	3.3
Delaware	0	0	0	0	0	0	0	0.0
Florida	3,912	11,796	11,827	11,701	11,801	12,395	12,487	12.3
Georgia	3,746	5,233	5,615	7,900	7,900	7,901	7,953	15.2
Hawaii	1,187	1,931	1,767	1,636	1,421	1,425	1,340	22.8
Idaho	1,163	2,236	2,332	2,725	2,745	639	545	6.8
Illinois	n/a	0	0	n/a	0	0	0	0.0
Indiana	991	2,817	2,952	4,251	4,438	4,420	4,204	15.4
Iowa	0	0	0	0	0	0	0	0.0
Kansas	n/a	0	74	83	95	105	0	0.0
Kentucky	1,268	2,127	2,050	812	0	0	0	0.0
Louisiana	3,065	2,921	2,951	2,956	3,158	3,142	3,152	8.7
Maine	11	0	0	0	0	0	0	0.0
Maryland	127	70	78	27	29	30	30	0.1
Massachusetts	n/a	0	0	0	0	0	0	0.0
Michigan	449	0	0	0	0	0	0	0.0
Minnesota	0	0	0	0	0	0	0	0.0
Mississippi	3,230	5,241	4,669	4,334	4,394	4,114	3,946	20.9
Missouri	0	0	0	0	0	0	0	0.0
Montana	986	1,502	1,418	1,418	1,459	1,432	1,490	40.4
Nebraska	0	0	0	0	0	0	0	0.0
Nevada	508	0	0	n/a	n/a	0	0	n/a
New Hampshire	0	0	0	0	0	0	0	0.0
New Jersey	2,498	2,841	2,887	2,717	2,735	2,761	2,863	14.0
New Mexico	2,132	2,905	2,853	2,999	2,984	3,072	3,026	42.2
New York	0	0	0	0	0	0	0	0.0
North Carolina	330	208	30	30	30	30	29	0.1
North Dakota	96	0	0	0	319	371	427	23.8
Ohio	1,918	3,038	3,004	5,343	5,487	5,370	6,050	11.6
Oklahoma	6,931	6,019	6,026	6,423	7,051	7,367	7,446	26.1
Oregon	0	0	0	0	0	0	0	0.0
Pennsylvania	0	1,015	1,195	1,219	546	636	605	1.2
Rhode Island	n/a	0	0	0	0	0	0	0.0
South Carolina	13	17	20	16	15	15	14	0.1
South Dakota	45	5	11	15	16	10	22	0.6

**Table 3: Federal and State Prisoners in Private Facilities, by Jurisdiction, 2000–2015**

Jurisdiction	Inmates in Private Facilities (2000)	Inmates in Private Facilities (2010)	Inmates in Private Facilities (2011)	Inmates in Private Facilities (2012)	Inmates in Private Facilities (2013)	Inmates in Private Facilities (2014)	Inmates in Private Facilities (2015)	Percent of Total Jurisdictional Population (2015)
Tennessee	3,510	5,120	5,147	5,165	5,103	5,116	5,172	18.4
Texas	17,432	19,155	18,603	18,617	14,538	14,368	14,293	8.7
Utah	208	0	0	0	0	0	0	0.0
Vermont	0	562	522	504	499	431	n/a	n/a
Virginia	1,571	1,560	1,569	1,559	1,554	1,570	1,568	4.1
Washington	0	0	0	0	0	0	0	0.0
West Virginia	0	0	0	0	0	0	0	0.0
Wisconsin	4,349	50	36	18	0	0	0	0.0
Wyoming	275	217	245	236	252	255	267	11.0
State Total *	75,291	104,361	101,730	105,674	100,762	100,692	96,343	6.9
Federal Total	15,524	33,830	38,546	40,446	41,159	40,017	34,934	17.8
U.S. Total *	90,815	138,191	140,276	146,120	141,921	140,709	131,277	8.6

**Sources:**

2014-2015 data: U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016, p. 28, <https://www.bjs.gov/content/pub/pdf/p15.pdf> (accessed November 16, 2017).

2013 data: U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2014, September 2015, p. 14, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed September 30, 2016).

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

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

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

\* Totals differ from those reported by BJS due to its apparent exclusion of California inmates held in contracted beds in out-of-state private facilities for 2010-2015. Data for each year were adjusted to include California inmates held in contracted out-of-state correctional facilities, as reported in the year-end (December) population reports published by the California Department of Corrections and Rehabilitation ([http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Monthly/Monthly\\_Tpop1a\\_Archive.html](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html)).

## 2. Federal Criminal Justice Reform Update

by Lauren Krisai and Austill Stuart

A slow year for federal criminal justice reform, 2017 saw new versions of two bills that failed in the 114<sup>th</sup> Congress introduced in the fall, now awaiting committee consideration, with no House versions available at press time.

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

### 2.1 The Sentencing Reform and Corrections Act of 2017 (S.1917)<sup>2</sup>

The Sentencing Reform and Corrections Act of 2017 was introduced on October 4, 2017 by Senate Judiciary Committee Chairman Chuck Grassley (R-IA), Senators John Cornyn (R-TX), Lindsey Graham (R-SC), Mike Lee (R-UT), Sheldon Whitehouse (D-RI), Richard Durbin (D-IL), Patrick Leahy (D-VT), Cory Booker (D-NJ), Tim Scott (R-SC), Dianne Feinstein (D-CA), Roy Blunt (R-MO) and Amy Klobuchar (D-MN), with no further actions as of press time.

Like its Senate predecessor (S.2123) covered in Reason Foundation's *Annual Privatization Report 2016: Corrections*, S.1917 contains many different reforms relating to sentencing as well as inmate risk assessment, programming, and employment:

#### ***Mandatory Minimum Sentences***

- Reduces the mandatory minimum sentence for drug offenders who have a prior conviction for a “serious violent felony” or “serious drug felony” from 20-years to a mandatory minimum of 15 years. This aspect of the law allows for retroactivity, except for those with prior “serious violent felony” convictions.
- Reduces the mandatory life without parole sentence for drug offenders who have two or more prior convictions for a “serious violent felony” or a “serious drug felony” to a mandatory minimum of 25 years. This aspect would also be made retroactive with the bill’s passage.
- Limits the application of a 25-year mandatory minimum for a second or subsequent conviction for possession of a gun during the commission of a gun crime or crime of violence. The 25-year mandatory minimum would apply only to convictions that were final prior to the commission of the current offense, not for subsequent charges brought during a single indictment. This aspect would



also be made retroactive, but not for those who have a “serious violent felony” conviction, among other restrictions.

### ***Fair Sentencing Act of 2010 Retroactivity***

In 2010, President Obama signed the Fair Sentencing Act, which reduced the disparity between sentences for crack and powder cocaine from 100:1 to 18:1. S. 1917, would make the Fair Sentencing Act Retroactive, which would likely impact the sentences of roughly 5,800 currently incarcerated individuals who were sentenced before the passage of this law.

### ***Drug “Safety Valve”***

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

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

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

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

## *Prison Reform*

- The bill would require the Bureau of Prisons (BOP) to use a new risk assessment tool to place prisoners into categories of high, medium, or low risk of reoffending, as well as allow certain categories of prisoners to earn additional credits toward a reduction in their sentences for completing rehabilitative programming. However, it does not authorize funding for these programs.
- S.1917 directs the Bureau of Prisons, subject to appropriations, to offer recidivism reduction programming and/or work opportunities to all inmates, allowing contracting out to public or private entities to provide services. It also directs the attorney general to eventually conduct assessments of programs and training, working alongside with officials in the BOP and in federal courts.

Finally, the bill would create new sentencing guidelines for the following offenses:

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

Though introduced too late in the year for any action beyond introduction in 2017, 2018 could bring floor action to S.1917, as well as the introduction of House companion bills.

## **2.2 The Smarter Sentencing Act of 2017 (S. 1933)<sup>3</sup>**

The Smarter Sentencing Act was introduced in the U.S. Senate (S. 1933) by Senators Richard Durbin (D-IL) and Mike Lee (R-UT) on October 5, 2017. As noted last year with the 114<sup>th</sup> Congress’ Senate version of this bill (S.502, “The Smarter Sentencing Act of 2015”) the proposed law would:

- Make the Fair Sentencing Act of 2010 retroactive.
- Reduce the currently required five-, 10-, and 20-year mandatory minimum sentences for certain drug crimes to two-, five-, and 10-year mandatory minimum terms, respectively. It would also require the U.S. Sentencing Commission to alter the drug sentencing guidelines to reflect these lower sentences shortly after the bill becomes law.
- Reduce mandatory life without parole sentences for a third or higher drug felony conviction to a 25-year mandatory minimum sentence.

- Expand the existing “safety valve” exception for federal drug offenses to include individuals who fall into Criminal History Categories I or II under the U.S. Sentencing Guidelines, in addition to meeting other criteria. Currently, only individuals that fall into Criminal History Category I, and who meet other criteria, are eligible.
- Require the U.S. Department of Justice, as well as other federal agencies, to list all federal laws and regulations that carry criminal penalties, as well as the intent required to violate those provisions, publicly on their websites.

## 3. U.S. Corrections Privatization Update

by Austill Stuart

New developments in correctional public-private partnerships in the past year include:

### Alabama

As with other states (see Kansas, Kentucky below), many of Alabama's prisons are old and deteriorating, with the state's oldest prison—Draper Correctional Facility, built in the 1930s—vacated recently because its conditions were deemed unlivable.<sup>4</sup> Lawmakers have rejected bills asking for a combined \$800 million for new facilities in recent years, leaving corrections officials to contemplate public-private partnerships for an alternative form of finance that would not need legislative approval.<sup>5</sup> The state currently seeks outside help in developing a master plan to upgrade and rebuild its prison infrastructure. “Many of our facilities are on the brink of failure,” lamented Alabama Department of Corrections Commissioner Jeff Dunn.<sup>6</sup>

### Arizona

**Tucson/Pima County:** In November, officials for Pima County and the city of Tucson contemplated resolutions banning the use of private corporations for operating prisons, inmate health care services, probation programs, and rehabilitation programs.<sup>7</sup> Pima County operates one prison in-house, but the state's Department of Corrections houses about a quarter of its inmates—8,234 of 33,392 as of late November 2017—in private prisons.<sup>8</sup> No further updates were available at press time.

### Colorado

Colorado currently faces overcrowding issues prompted by a continuing increase in prison sentences. To relieve this overcrowding, in September, the state legislature approved \$10.6 million allowing Colorado's Department of Corrections (CDOC) to lease a privately owned prison to house 250 inmates, initially intended as a temporary measure while upgrading Centennial Correctional Facility-South.<sup>9</sup> However, the legislature declined to fund upgrades for the now-vacant Centennial Correctional Facility-South and to lift a current ban on housing inmates there.<sup>10</sup> Management and operations of the private facility will remain in-house.

## Kansas

Kansas looks to rebuild its Lansing Correctional Facility, the state's largest prison, which was first opened in 1868, contemplating both bond and private lease options.<sup>11</sup> In November, the state's Department of Corrections recommended the state work with CoreCivic in a lease agreement to rebuild the 150-year-old Lansing facility. While all parties agree that new facilities are needed, critics questioned the hurried pace at which officials moved toward favoring the lease option.<sup>12</sup>

Informing the decision to pursue private lease options was an audit of the public and private options, published earlier in the year and the response to it. The audit found leasing from a private entity to be more expensive than bond financing, urging critics to demand ending the pursuit of a private lease, but as two authors of this report noted in August, the financial analysis includes questionable assumptions regarding construction costs and the purchase of the facility after the lease, while also using limited available data to make in-depth comparisons.<sup>13</sup>

The audit also found private contracted maintenance to result in deferred maintenance problems, which runs counter to the experiences of other states—in prisons, highways, and universities. Indeed, one main advantage of the performance-based contracts that govern outsourced maintenance agreements is *avoiding* deferred maintenance problems by including significant language specifying standards of maintenance in facilities, resulting in financial penalties to contractors if not met.<sup>14</sup>

## Kentucky

Facing overcrowding and deterioration at the Kentucky State Reformatory, the state elected in November to re-open a previously closed private prison and move 800 inmates from the La-Grange-based Reformatory to the CoreCivic-operated Lee County Reformatory in Beattyville.<sup>15</sup> The contract with CoreCivic—which runs through July 2019 and allows for up to two one-year renewals—includes strict measures concerning staffing levels, as well as state monitoring and access, with penalties up to \$5,000 per day, per inmate, for violating various contract terms.<sup>16</sup>

The strain of overcrowded state prisons resulted in Kentucky spending millions in overtime, as well as lodging and travel expenses for having to rely on workers elsewhere in the state. Officials see this as making up for the costs of re-opening the private prison, where CoreCivic will keep inmates at a rate of \$54.68 per day, per inmate, slightly lower than a similar state prison's \$64.09 rate.<sup>17</sup>

## New York State

**Franklin County:** In June, the county announced it would enter a one-year, \$152,500 contract with the office of attorney Kevin F. Nichols, to handle over 600 assigned-council cases.<sup>18</sup> The county hopes to save money and streamline operations by assigning a large amount of cases to a single firm in advance. New state rules require counsel for indigent defendants at their initial arraignment, which resulted in Franklin County spending \$1.2 million in 2016, mostly to hire counsel on a case-by-case basis.<sup>19</sup> Last year, the county created an “alternate conflict defender” to fill much of that void, but faced troubles with turnover and recruiting.

## Ohio

In December, Gov. John Kasich signed HB. 185, which includes a provision allowing private contracting out of prison operation and management, as well as health care, and other specialized services.<sup>20</sup> The state’s prisons currently sit mostly at or over capacity, and the federal Bureau of Prisons left space available when it abandoned contracts to house inmates in private prisons in Ohio, including the CoreCivic-owned and operated Northeast Ohio Correctional Center (NOCC), in Youngstown. In September, the state entered a contract with CoreCivic to house up to roughly 1,000 inmates at NOCC—with the first 300 moving in by the end of September—which currently sits only about 30% occupied from a lone U.S. Marshals’ contract to house up to 580 inmates that expires at the end of 2018.<sup>21</sup>

## Tennessee

An audit report released in November by the state’s Department of Treasury revealed problems at CoreCivic facilities in the state, including low staffing, and poor monitoring of CoreCivic contractors by the state, especially at the Trousdale Turner Correctional Center, the state’s newest prison.<sup>22</sup> The report also blamed the state Department of Corrections for poor contract monitoring, including its failure to assess financial penalties on the operator for noncompliance.

The audit also noted that the two-year-old Trousdale Turner facility includes a high number of inmates affiliated with security threat groups—violent gangs within prison systems—as well as inmates from other state prisons with violent histories while in prison.<sup>23</sup> The Department of Corrections and operator largely agreed with the audit’s findings and recommendations and are working to improve operations.

## Vermont

In December 2016, GEO Group announced it did not want to renew its contract to house some of Vermont’s inmates in a Michigan-based GEO facility. After seeking bids, Vermont chose the state of Pennsylvania to house the 270 prisoners at State Correctional Facility Camp Hill, in a three-year, \$21-million contract where Pennsylvania charges Vermont a rate of \$26,280 per inmate, per year—much lower than the \$60,000 per year it costs Vermont to house an inmate.<sup>24</sup>

Since Pennsylvania started housing prisoners, Vermont staff—in Corrections, and in the defender general’s office—and the press report having difficulty gaining access to the Vermont inmates compared to the Michigan prison agreement with GEO and other private companies. “[T]his Pennsylvania placement has been far and away the most difficult to get access to the inmates to find out what’s going on down there and address whatever needs they might have, or...their ongoing legal issues that they have in Vermont” noted Vermont Defender General Matthew Valerio.<sup>25</sup>

Despite the problems for the state of Vermont and its inmates, Vermont corrections officials admit that there’s little that can be done from a legal standpoint to improve inmate access. As Defender General Valerio said of State Correctional Institution Camp Hill, which at 3,272 inmates operates at 107% capacity as of the end of November:<sup>26</sup> “This is not a private facility, this is a Pennsylvania [state] facility, and so the contract is subject to the interstate compact, and it basically allows the home state—wherever the inmates are held, not Vermont in this case—to make rules regarding access (to inmates) and what you have to do to get access to them.”<sup>27</sup>

## Wyoming

As the Wyoming State Penitentiary in Rawlins continues to deteriorate, the state has entered into conditional contracts with CoreCivic that allow the transfer of inmates out of state if the state penitentiary becomes uninhabitable. The original contract was signed in August 2016, and was renewed in May 2017.<sup>28</sup> At press time, the state hadn’t committed to whether Rawlins would be upgraded or replaced, but will use the CoreCivic contract as a backup plan to house inmates until it makes a decision.

## 4. State and Local Correctional Health Care Privatization Update

by Austill Stuart and Nicholas DeSimone

Last year's developments in privately provided correctional health care include:

### Alabama

In December, the state announced that it would enter negotiations with Wexford Health Services to provide health care services for its state-run prisons, with a resulting contract expected around \$100 million.<sup>29</sup> The state's prison system currently faces a lawsuit over inmate health care services, which Corizon will continue to handle until the new contract begins. The state expects negotiations for the contract—which includes a 25% increase in health care and mental health staffing—will be complete in February, with Wexford taking over in April 2018.<sup>30</sup>

### Arkansas

Private companies handle approximately 50% of inmates' medical care in Arkansas' 70 county jails, with a couple of counties switching to private operations in 2017. Turn Key—a private company that provides medical services to inmates—received a \$3.7-million yearly contract from the Pulaski County Jail in December 2016, replacing the jail's previous \$4.45-million medical budget and saving the county \$750,000 annually.<sup>31</sup> The next month, Saline County's jail chose Turn Key to take over health care services for its inmates. Pulaski County, which includes the capital of Little Rock, is the state's most populous county, while neighboring Saline is the sixth most populous.<sup>32</sup>

In Pulaski County, early figures indicate Turn Key doubled the number of hours physicians spend on site, increased the number of full-time health staff from 19 to 36, and applied the use of electronic health records.<sup>33</sup> Additionally, from January to September, Turn Key's approach resulted in a 70% reduction in medical-related grievances filed by inmates in Pulaski County—198 compared to 641—over the same period in 2016.<sup>34</sup>

Lastly, earlier this year, Union County Sheriff Ricky Roberts issued a request for proposals from other health firms to provide inmate health services at Union County Jail, but found the annual costs too high.<sup>35</sup>



## Florida

In April 2017, due to a recent report from the Correctional Medical Authority that cited the “apparent lack of psychotropic medications prescribed and administered” to patients receiving mental health services at a South Florida prison, state officials are terminating the Florida DOC’s contract with private health care provider Wexford Health Sources months before it was set to expire.<sup>36</sup>

Wexford addressed the allegations by accusing the Florida Department of Corrections Secretary Julie Jones of not allowing the company to respond before terminating the contract and stated “isolated cases involving inmates with histories of mental problems would not appear to be the basis for termination of an entire contract.”<sup>37</sup>

“It is extremely disappointing that the department acted without consulting with our psychiatric providers regarding the affected inmates, in order to determine why our personnel, relying on their professional judgment, pursued the chosen course of treatment. Instead, the department relied on CMA’s non-psychiatric auditors who—without being licensed psychiatrists—told the department how they thought these patients should have been treated. These allegations led to the declaration of an emergency situation,” a Wexford spokesperson said.<sup>38</sup>

As previously written in Reason Foundation’s *Annual Privatization Report 2014: Criminal Justice and Corrections Privatization*, in December 2012 the Florida DOC signed a contract with Wexford Health Sources to provide private health service delivery for 15,000 inmates in the state’s South Florida facilities. The \$48-million contract was expected to save the state \$1 million a month.

## Indiana

In February, the state announced it entered into a three-year, \$309-million contract with Wexford Health Solutions to manage inmate health services in all its state prisons.<sup>39</sup> Wexford replaces Corizon Health, after the state opted to not renew its three-year contract with Corizon, which faced 178 lawsuits in Indiana from 2011 to 2016, with the state settling close to 50 for a combined \$1.2 million in awards.<sup>40</sup>

## Illinois

In June, Gov. Bob Rauner vetoed SB19, which would have prohibited the Illinois Department of Corrections from contracting out with private health care providers.<sup>41</sup> The legislation came in response to an order from Gov. Rauner calling for the layoff of 124 state-employed nurses in March, which was rescinded in May.

Though the state's nurses are state employees, Illinois outsources much of its inmate health care delivery in state prisons to Wexford Health Services, which faces a lawsuit over health care delivery in Illinois prisons. *Lippert v. Baldwin* was granted class-action status in April, alleging that health care delivery in Illinois state prisons is systematically inadequate.<sup>42</sup> Wexford last signed a contract with the state in 2011, a 10-year deal worth over \$1.3 billion.<sup>43</sup>

## Louisiana

**East Baton Rouge:** In November 2016, the city's metro council approved a one-year, \$5.3-million contract—which can be extended up to an additional two years—for CorrectHealth, LLC to provide health care services to inmates in the East Baton Rouge Parish prison.<sup>44</sup> All prison health care workers were offered jobs with the new contractor, which took over duties at the beginning of 2017. At press time, the metro council had not indicated whether it intends to extend the contract with CorrectHealth.

In September 2017, Maria Olga Zavala filed a lawsuit against state officials and CorrectHealth over the death of her son, stating that state and contractor staff were inadequately trained to care for her son, who committed suicide in February after struggling with mental illness.<sup>45</sup>

## Tennessee

In July, Tennessee announced a new contract with Centurion of Tennessee to provide inmate health care services in the state's prisons at a cost of around \$460 million over five years, according to department spokeswoman Neysa Taylor.<sup>46</sup>

The renewal comes after a couple of health issues in Tennessee prisons grabbed headlines in 2016. A *USA Today Network* investigation conducted with the state of Tennessee revealed in May that only eight of its 3,487 inmates infected with hepatitis C in state prisons received treatment, subsequently leading two infected inmates to file a federal lawsuit.<sup>47</sup> Incidentally, in November, the Department of Corrections requested \$4 million from the state to treat the current hepatitis C epidemic plaguing the state correctional system.<sup>48</sup> In May 2017, U.S. District Chief Judge Waverly Crenshaw granted the lawsuit class-action status, opening the door to require treatment for the rest of the infected inmates.<sup>49</sup>

Additionally, in July, about 17 employees were infected with a widespread scabies outbreak at the privately run Nashville-based Metro-Davidson County Detention Facility in Antioch, operated by CoreCivic. The prison is the subject of at least three pending lawsuits in Davidson County regarding its failure to treat scabies, which subsequently led to hundreds of inmates, courthouse staffers, and their families becoming infected with scabies as well.<sup>50</sup> Updates on the lawsuits were not available at press time.

## Washington

**Skagit County:** In October 2017, the Skagit County Jail Finance Committee—comprising a representative from each city, three representatives from the county and a representative from the Skagit County Sheriff's Office—agreed to a contract with NaphCare to provide medical services for the county's inmates, beginning in February 2018.<sup>51</sup> Estimates from last year showed in-house operations to be a bit less costly—\$1.9 million annually versus \$2.1 million from NaphCare—but the NaphCare numbers assume higher inmate populations and significant increases on per-inmate spending per year, from \$3,000–\$4,000 to around \$8,000.<sup>52</sup> Additionally, Chief of Corrections Charlie Wend says it will be a benefit to rely on an employer capable of paying higher wages, as the county has had trouble attracting experienced staff and maintaining adequate staffing levels.<sup>53</sup>

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