

The Treatment-Industrial Complex: Alternative Corrections, Private Prison Companies, and Criminal Justice Debt

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Out of the 6.7 million adults caught up in the criminal legal system, approximately 4.5 million are under correctional control outside of prisons and jails. Within this hidden world of “alternative corrections,” people who are arrested, detained, imprisoned, put on probation or diversion, and even released are forced to pay a growing amount of money to various for-profit “criminal justice” actors. Alternatives to incarceration are conditioned on fines, fees, and other forms of wealth extraction, causing a vicious cycle of poverty and indebtedness that is virtually impossible to escape. This Article explores and analyzes the little-researched area of criminal justice debt arising from alternative corrections: how private corrections companies profit from supervising those individuals released, paroled, sent to rehabilitation or diversion, placed on probation, or subject to forensic or civil commitment. These under-examined forms of for-profit correctional supervision—the treatment-industrial complex—have turned supposedly progressive alternatives to incarceration into cash-register justice.

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INTRODUCTION

Alternatives to incarceration, including probation, work camps, electronic monitoring, required rehabilitation, diversion, civil commitment, and therapy, are largely unregulated in many states. Limited oversight enables for-profit alternative corrections companies to profit from the millions of people who must interact with the criminal legal system after they are released. These alternatives to incarceration add up to a cash-register justice system that extracts a growing stream of money from poor people and communities of color, contributing to a pernicious cycle of poverty, indebtedness, control, and supervision.¹ Individuals under privatized correctional supervision are all too frequently trapped in a chaotic treatment-industrial complex.²

The majority of people caught up in the criminal legal system are not currently incarcerated, but are instead supervised by a form of alternative corrections.³ Of the 6.7 million adults involved in the criminal legal system, approximately 4.5 million people—almost two-thirds—are under correctional control outside of jails or prisons.⁴ Within this largely hidden world of alternative corrections, people who are arrested, detained, imprisoned, put on probation or diversion, or even released must make steep payments to various for-profit “criminal justice” actors.

¹ See Alex Kornya et al., *Crimsumerism, Combating Consumer Abuses in the Criminal Legal System*, 54 HARV. C.R.-C.L. L. REV. 108, 110 (2019).

² See generally CAROLINE ISAACS, AMERICAN FRIENDS SERVICE COMM., *THE TREATMENT-INDUSTRIAL COMPLEX: HOW FOR-PROFIT PRISON CORPORATIONS ARE UNDERMINING EFFORTS TO TREAT AND REHABILITATE PRISONERS FOR CORPORATE GAIN* (Nov. 2014), https://www.afsc.org/sites/default/files/documents/TIC_report_online.pdf, archived at <https://perma.cc/5ZMP-585A>.

³ See WENDY SAWYER & PETER WAGNER, Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2019* (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2019.html>, archived at <https://perma.cc/E3GR-8E56>.

⁴ See *id.*

Today, for-profit corrections companies oversee under-examined parts of the criminal legal system, including electronic monitoring, diversion programs, work camps, rehabilitation and treatment curriculums, civil commitment, and forensic mental hospitals. Non-prison sentencing and treatment are a financial growth opportunity for private corrections companies, which are developing ways to monetize this type of correctional control.⁵

This Article explores and analyzes the under-researched area of alternative corrections: how private corrections companies profit off of, and impose harsh criminal legal debts on, people who are released, paroled, sent to rehabilitation or diversion, placed on probation, or subject to forensic or civil commitment. Part I investigates the ways that alternatives to incarceration impose high levels of criminal justice debt on people directly impacted by the criminal legal system. Part II examines the various policy choices that have allowed for-profit companies to thrive and expand. Part III explores potential solutions to the twinned issue of alternative corrections debt and the for-profit corrections industry that drives it.

I. WHERE CASH IS KING: HOW PRIVATE ALTERNATIVE CORRECTIONS BEGGARS THE POOR

Alternative corrections—correctional control imposed outside of jails and prisons—are increasingly popular.⁶ Approximately 3.6 million people are on probation⁷ and 840,000 more are on parole, compared to the roughly 2.3 million who are incarcerated in prisons and jails.⁸ Mass incarceration may appear to be on the decline.⁹ But the array of alternative corrections sanctions is increasing,¹⁰ thereby frustrating recent progressive attempts to end widespread imprisonment, surveillance, and control.¹¹

Alternatives to incarceration are not cheap. As a result, states and counties often try to shift the costs onto the defendants themselves, either by

⁵ See, e.g., Campbell Robertson, *Crime is Down, Yet U.S. Incarceration Rates Are Still Among the Highest in the World*, N.Y. TIMES (Apr. 25, 2019), <https://www.nytimes.com/2019/04/25/us/mass-incarceration-rate.html>, archived at <https://perma.cc/JY64-TD2S>.

⁶ See Greg Berman, *Alternatives to Incarceration Are Cutting Prison Numbers, Costs, and Crimes*, THE GUARDIAN (July 4, 2013), <https://www.theguardian.com/commentisfree/2013/jul/04/alternatives-incarceration-prison-numbers>, archived at <https://perma.cc/2TMN-DQGC>.

⁷ ALEXI JONES, PRISON POLICY INITIATIVE, CORRECTIONAL CONTROL 2018: INCARCERATION AND SUPERVISION BY STATE (Dec. 2018), <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html>, archived at <https://perma.cc/9M89-JTUN>.

⁸ SAWYER & WAGNER, *supra* note 3.

⁹ See Mark Berman, *Prison Populations Decline Again, Justice Department Report Shows*, WASH. POST (Apr. 25, 2019), https://www.washingtonpost.com/national/prison-and-jail-populations-declined-again-justice-dept-report-shows/2019/04/25/7a678c7a-6779-11e9-8985-4cf30147bdca_story.html, archived at <https://perma.cc/3JXC-KHCA>.

¹⁰ See SAWYER & WAGNER, *supra* note 3.

¹¹ Cf. Emily Verdugo, *Corporations Are Cashing in on the Movement to End Mass Incarceration*, AMERICAN FRIENDS SERVICE COMM. BLOG (Oct. 21, 2016), <https://www.afsc.org/blogs/news-and-commentary/how-private-prison-corporations-are-cashing-movement-to-end-mass>, archived at <https://perma.cc/TQH2-AV9F>.

charging them directly or outsourcing the provision of such services. Some defendants are thus required to foot the bill for their own government-imposed alternative punishment. Furthermore, defendants can rarely modify or eliminate criminal justice debt, even when they cannot pay the debt for reasons beyond their control.¹² A defendant cannot discharge a criminal justice debt through bankruptcy or avoid the potential interest or collection fees imposed for overdue payments.¹³ Criminal justice debt can last a lifetime, resulting in property takings, wage garnishment, or even arrest and imprisonment for failure to pay. Debt imposed by alternatives to incarceration can thus cycle defendants back into the criminal legal system.¹⁴

When states and counties outsource alternative corrections, defendants can owe criminal legal debt not only to the government, but also to a vast network of private companies. Numerous transitional and treatment services are now outsourced to for-profit residential and outpatient facilities managed by privately held companies.¹⁵ Public and private companies are taking advantage of defendants sentenced to correctional alternatives and are thus “profiteering from the criminalization of poverty and communities of color.”¹⁶

Finally, a remarkably high number of individuals with mental health and substance use disorders reside in or interact with the criminal legal system.¹⁷ Approximately 50% of individuals in correctional facilities experience both mental health and substance use disorders (compared to 1–3% in the general United States population).¹⁸ For-profit corrections companies impose harsh additional debt burdens on incarcerated people with substance use disorders.

A. *The Growth of Alternative Corrections*

The recent growth of alternative incarceration is both a reaction to and a symptom of mass incarceration. As crime rates fall, public attention has turned to the “astronomical financial and human costs of mass incarcera-

¹² Travis Stearns, *Legal Financial Obligations: Fulfilling the Promise of Gideon by Reducing the Burden*, 11 SEATTLE J. FOR SOC. JUST. 963, 965 (2013).

¹³ See *id.*

¹⁴ See Laura I Appleman, *Nickel and Dimed into Incarceration: Cash Register Justice in the Criminal System*, 57 B.C. L. REV. 1483, 1485 (2016).

¹⁵ See Michael Ostermann & Jordan Hyatt, *When Frontloading Backfires: Exploring the Impact of Outsourcing Correctional Interventions on Mechanisms of Social Control*, 43 L. & SOC. INQUIRY 1308, 1308–09 (2018).

¹⁶ Kornya et al., *supra* note 1, at 111.

¹⁷ See CATE GRAZIANI & ESHE COLE, GRASSROOTS LEADERSHIP, INCORRECT CARE: A PRISON PROFITEER TURNS CARE INTO CONFINEMENT 5 (Feb. 2016), http://grassrootsleadership.org/sites/default/files/reports/incorrect_care_grassrootsleadership_2016.pdf, archived at <https://perma.cc/QQZ9-6UEZ>.

¹⁸ See *id.*

tion.”¹⁹ Alternatives to incarceration may seem appealing to criminal justice reformers seeking to reduce lengthy prison sentences and divert people away from jail and prison time. States have also explored alternatives to traditional incarceration as a cost-saving measure,²⁰ as the cost of incarcerating individuals in jails and prisons rose to a staggering \$87 billion in 2015.²¹ Sentencing reform is unquestionably an overdue response to mass incarceration. But reliance on alternative corrections can still harm the people caught in the criminal legal system, including through surveillance, accrual of criminal justice debt, and abuse by private corrections companies.

Alternatives to incarceration are frequently both exploitative and costly for defendants. The alternative corrections market imposes harsh costs on individual criminal defendants, including many who are in poverty.²² In addition, alternative corrections still function as punishment, imposing serious demands on individuals’ time, money, and communities.²³ Alternative sentencing allows policymakers and politicians to pay lip service to disrupting mass incarceration, but may widen the criminal legal net by “bringing more people into the system, even if they’re not behind bars.”²⁴ Thus, the expansion of the alternative corrections realm, through probation, parole, diversion, electronic monitoring, and work camps, actually ends up keeping more people under some form of control by the criminal justice system as a whole.²⁵

Alternative corrections also impose myriad fees, fines, and costs on people caught in the criminal legal system. As this Article will explain, criminal legal debt has life-altering consequences for individuals who cannot afford to pay. Someone who fails to pay criminal justice debt could face the loss of liberty: their probation could be revoked; suspended sentences could be imposed; or the failure to pay high costs of probation and other treatment programs (including required residential or out-patient treatment) could land them in jail. People on probation and parole who fail to make payments on criminal legal debt can also face harsh collateral consequences, including

¹⁹ See Avlana K. Eisenberg, *Incarceration Incentives in the Decarceration Era*, 69 VAND. L. REV. 71, 86 (2016).

²⁰ See INCORRECT CARE, *supra* note 17, at 5, 8.

²¹ See Ava Kofman, *Digital Jail: How Electronic Monitoring Drives Defendants into Debt*, N.Y. TIMES (July 3, 2019), <https://www.nytimes.com/2019/07/03/magazine/digital-jail-surveillance.html>, archived at <https://perma.cc/7ZQP-6X3X>.

²² See *id.*

²³ See FAMILIES AGAINST MANDATORY MINIMUMS, ALTERNATIVES TO INCARCERATION IN A NUTSHELL 1, <https://fam.org/wp-content/uploads/FS-Alternatives-in-a-Nutshell.pdf>, archived at <https://perma.cc/SSL5-3KXX>.

²⁴ Joshua Holland, *Private Prison Companies Are Embracing Alternatives to Incarceration*, THE NATION (Aug. 23, 2016), <https://www.thenation.com/article/private-prison-companies-are-embracing-alternatives-to-incarceration/>, archived at <https://perma.cc/AMK5-TQ6V>.

²⁵ See *id.* (“Instead of moving people into the community, with some form of accountability,” the alternative corrections system may place “more and more people [] on ankle monitors” or similar forms of state control “who would otherwise just be left alone.”)

losing benefits such as Social Security, Electronic Benefit Transfer, Temporary Assistance for Needy Families, and Section 8 housing.²⁶

The following sections detail some of the worst abuses arising from the treatment-industrial complex, including private probation companies, rehabilitation and halfway houses, work camps, diversion programs, and long-term civil commitment.

B. *Private Probation Companies*

Probation is a common alternative to incarceration, particularly for minor crimes and nonviolent offenses.²⁷ The major goals of probation supervision are to provide rehabilitative services while ensuring that no further offenses are committed.²⁸ Misdemeanor probation, affecting a great number of citizens, is frequently perceived as a kinder, gentler sentence than jail or prison.²⁹ The major goals of probation supervision are to provide rehabilitative services while ensuring that no further offenses are committed.³⁰ Though numbers vary by state, growing numbers of people are on some version of probation.³¹ One in fifty-five U.S. adults, or nearly 2%, was on probation or parole in 2016—a population increase of 239% since 1980.³²

Ironically, probation has become a key driver of mass incarceration by funneling many people under supervision back into prisons and jails.³³ With its long supervision terms, strict conditions, and intense surveillance, probation is neither as easy nor as beneficial as some legislators and policy makers make it seem.³⁴ Only about half of people who exit parole or probation do so after successfully completing their supervision terms; the rest might be sen-

²⁶ See Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CAL. L. REV. 277, 293 (2014).

²⁷ See HUMAN RIGHTS WATCH, SET UP TO FAIL: THE IMPACT OF OFFENDER-FUNDED PRIVATE PROBATION FOR THE POOR 35 (Feb. 20, 2018), <https://www.hrw.org/report/2018/02/20/set-fail/impact-offender-funded-private-probation-poor>, archived at <https://perma.cc/S7JU-Q9V5>.

²⁸ See *id.* at 2.

²⁹ See Lewis Wallace, *Welcome to Georgia, The Epicenter of the Private Probation Racket*, THE OUTLINE (Aug. 17, 2017), <https://theoutline.com/post/2103/welcome-to-georgia-the-epicenter-of-the-private-probation-racket>, archived at <https://perma.cc/75TY-78FY>.

³⁰ See HUMAN RIGHTS WATCH, *supra* note 27, at 2.

³¹ See WENDY SAWYER, PRISON POLICY INITIATIVE, PUNISHING POVERTY: THE HIGH COST OF PROBATION FEES IN MASSACHUSETTS (Dec. 8, 2016), https://www.prisonpolicy.org/probation/ma_report.html, archived at <https://perma.cc/Z42G-HSZ3>. In 2015, one out of every fifty-three people was on probation or parole. See *Too Big to Succeed: The Impact of the Growth of Community Corrections and What Should Be Done About It*, COLUMBIA JUSTICE LAB. 2 (Jan. 29, 2018), https://justicelab.columbia.edu/sites/default/files/content/Too_Big_to_Succeed_Report_FINAL.pdf, archived at <https://perma.cc/QC8M-5QVY>.

³² PEW TRUST, PROBATION AND PAROLE SYSTEMS MARKED BY HIGH STAKES, MISSED OPPORTUNITIES (Sept. 25, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>, archived at <https://perma.cc/QSF2-XC97>.

³³ See *Too Big to Succeed*, *supra* note 31, at 7.

³⁴ See JONES, *supra* note 7.

tenced to jail or prison because their probation is revoked, or subject to continued supervision.³⁵

A large percentage of misdemeanor probation sentences transform into prolonged, expensive payment plans for those living around the poverty line.³⁶ Probation companies overtly characterize many of their supervision programs as “offender-funded”: in other words, states shift costs to people on probation and parole in the form of fees.³⁷ As a result, people who are sentenced to probation instead of jail time—as most misdemeanor defendants are—must pay heavily for the privilege.³⁸ Many individuals convicted of minor crimes, most of whom live at or under the poverty level, spend the rest of their lives trying to pay off their criminal justice debt.³⁹

Numerous courts have granted for-profit companies the right to supervise and collect fees from misdemeanor defendants.⁴⁰ State and local governments contract out probation programs to private probation companies that claim to inexpensively treat and rehabilitate defendants, while simultaneously keeping defendants out of costly state and local correctional facilities.⁴¹ Today, for-profit companies offer services such as drug testing, addiction services, and behavioral-therapy courses⁴² to people who have been released, all at little to no cost to local governments and courts.⁴³ For-profit companies have instead transferred the financial burden of probation directly to people impacted by the criminal legal system, all while taking their monetary cut.⁴⁴

Local governments that use private probation services essentially turn courts into debt-collection machines, with the profits going to the private companies.⁴⁵ States rarely regulate the fees charged by private probation

³⁵ See *id.*

³⁶ See Wallace, *supra* note 29.

³⁷ See Sarah Stillman, *Get Out of Jail, Inc.*, THE NEW YORKER (June 16, 2014), <http://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc>, archived at <https://perma.cc/27AR-GZMK>; *Too Big to Succeed*, *supra* note 31, at 4.

³⁸ See Tierney Sneed, *Private Misdemeanor Probation Industry Faces New Scrutiny*, U.S. NEWS (Feb. 6, 2015), <https://www.usnews.com/news/articles/2015/02/06/private-misdemeanor-probation-industry-faces-new-scrutiny>, archived at <https://perma.cc/9TPH-RSQE>.

³⁹ See generally Appleman, *Nickel and Dimed into Incarceration*, *supra* note 14.

⁴⁰ See Sharon Cohen, *Poor Offenders Pay High Price When Probation Turns on Profit*, THE SPOKESMAN-REVIEW (Mar. 12, 2016), <http://www.spokesman.com/stories/2016/mar/12/poor-offenders-pay-high-price-when-probation-turns/>, archived at <https://perma.cc/YYQ9-SZVJ>.

⁴¹ See Stillman, *supra* note 37.

⁴² For example, one private probation company in Alabama required offenders to attend a course in “Moral Reconciliation Therapy,” which cost offenders \$240. See Hannah Rappleye & Lisa Riordan Seville, *The Town That Turned Poverty into a Prison Sentence*, THE NATION (Mar. 14, 2014), <https://www.thenation.com/article/town-turned-poverty-prison-sentence/>, archived at <https://perma.cc/74P3-B5L8>.

⁴³ See Stillman, *supra* note 37.

⁴⁴ See Laura I Appleman, *Cashing in on Convicts: Privatization, Punishment, and the People*, 2018 UTAH L. REV. 579, 589–90 (2017).

⁴⁵ See *id.*

companies, allowing them to charge whatever amount they desire.⁴⁶ User charges for every aspect of probation, from required courses and treatment programs to monitoring devices and drug testing, are private probation companies' primary source of revenue.⁴⁷ The companies go to disturbing lengths to collect these fees—even requesting arrest warrants for those probationers who cannot pay.⁴⁸ For-profit companies thus prioritize their bottom line over the best interest of the defendant.⁴⁹

1. *Pay-Only Probation*

“Pay-only probation” similarly benefits private probation companies and harms the people convicted of a crime.⁵⁰ When someone on probation cannot pay their fine in full, courts will sometimes place them on a probation “term,” outsourcing the supervision and payment to a private probation company.⁵¹ People on pay-only probation must pay the company the fine owed to the state, plus interest and a supervision fee.⁵²

The longer it takes to pay off criminal debts, the longer the probation lasts. The longer someone is on probation, the more they pay in supervision fees and the greater the threat of imprisonment if they default on their payments.⁵³ In the end, people on probation often end up paying *more* in fees than the original fine amount—and may face incarceration on top of their fine.⁵⁴ Every year, courts grant numerous arrest warrants on behalf of corrections companies, to track down poor people who have not fully paid their private probation fees. These warrants bring probationers back to court for a probation revocation hearing, serving as a pressure tactic to force payment of the debt.⁵⁵

In *Bearden v. Georgia*, the Supreme Court held that imprisoning a probationer who was unable to pay off his legal debts violated the Fourteenth Amendment.⁵⁶ However, the *Bearden* ruling was quite narrow, concluding that an individual could be sentenced to imprisonment if they had the money and were “willfully” refusing to pay.⁵⁷ *Bearden* left the determination of an individual’s financial ability to pay in the hands of judges, with fairly arbi-

⁴⁶ See MIKAYLA COX, MARCUS HARRIS FOUND., MONETIZING FREEDOM THROUGH PRIVATE PROBATION (Aug. 11, 2018), <https://marcusharrisfoundation.org/blog/f/monetizing-freedom-through-private-probation>, archived at <https://perma.cc/Q5AF-347K>.

⁴⁷ See HUMAN RIGHTS WATCH, *supra* note 27, at 55.

⁴⁸ See *id.*

⁴⁹ See Stillman, *supra* note 37.

⁵⁰ See HUMAN RIGHTS WATCH, *supra* note 27, at 3.

⁵¹ See Jessica Pishko, *Locked Up for Being Poor*, THE ATLANTIC (Feb. 25, 2015), <http://www.theatlantic.com/national/archive/2015/02/locked-up-for-being-poor/386069/>, archived at <https://perma.cc/K7SE-5JC7>; HUMAN RIGHTS WATCH, *supra* note 27, at 3.

⁵² See Pishko, *supra* note 51.

⁵³ See HUMAN RIGHTS WATCH, *supra* note 27, at 4, 17.

⁵⁴ See *id.* at 32–33.

⁵⁵ See *id.* at 2–4.

⁵⁶ See *Bearden v. Georgia*, 461 U.S. 660, 668–69, 672–73 (1983).

⁵⁷ See *id.* at 668.

trary results.⁵⁸ Few courts even inquire into an individual's ability to pay.⁵⁹ *Bearden* has thus failed to protect impoverished individuals on probation from abusive criminal legal debt collection.

2. *Drug and Alcohol Testing*

Many courts require that defendants sentenced to probation and treatment pay for the full costs of required services such as drug testing and alcohol monitoring.⁶⁰ Most private probation companies offer courses, treatment, and monitoring device services as a package, and profit when courts mandate these services as conditions of probation.⁶¹

Even the cost of a single drug test, usually around \$20,⁶² can be too much for impoverished defendants—let alone long-term monitoring and treatment.⁶³ And it is almost never just a single drug test. Consider this illustrative example of how the drug testing business sets up misdemeanor defendants to fail: In Tennessee, Cindy Rodriguez pled guilty to shoplifting and received a sentence of private probation for eleven months and twenty-nine days.⁶⁴ She had to pay a \$35–45 monthly supervision fee to her private probation company, Providence Community Corrections—which also conducted random drug tests at \$20 per test, even though she was not charged with a drug-related offense.⁶⁵ Every time Rodriguez met with her probation officer, she was pressured to pay off her criminal justice debts.⁶⁶ She ultimately returned to jail for inability to pay, losing her van and her apartment as a result of the debt.⁶⁷

In several states, many probationers are frequently and routinely tested for drugs for the entire probationary term, even if their offense had nothing to do with narcotics.⁶⁸ In Alameda County, California, for example, commit-

⁵⁸ See Joseph Shapiro, *As Court Fees Rise, the Poor Are Paying the Price*, NPR (May 19, 2014) <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>, archived at <https://perma.cc/GW6G-9NY2>.

⁵⁹ See HUMAN RIGHTS WATCH, *supra* note 27, at 81.

⁶⁰ See HUMAN RIGHTS WATCH, PROFITING FROM PROBATION: AMERICA'S "OFFENDER-FUNDED" PROBATION INDUSTRY 33 (2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf, archived at <https://perma.cc/FKR8-WPUF>.

⁶¹ See HUMAN RIGHTS WATCH, *supra* note 27, at 3.

⁶² Fees can vary widely among states and counties. In California, for example, drug and alcohol tests costs range from \$5 to \$50 among different counties; the average cost is \$20. See TARA GAMBOA-EASTMAN, WESTERN CENT. ON LAW & POVERTY, THE PROBLEM WITH PROBATION: A STUDY OF THE ECONOMIC AND RACIAL IMPACT OF PROBATION FEES IN CALIFORNIA 9 (June 26, 2018), https://wclp.org/wp-content/uploads/2018/06/TheProblemWithProbation_GamboaEastman_ForWCLP_Final.pdf, archived at <https://perma.cc/4TUY-XDD5>.

⁶³ See Cohen, *supra* note 40.

⁶⁴ See HUMAN RIGHTS WATCH, *supra* note 27, at 1–3.

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ See GAMBOA-EASTMAN, *supra* note 62, at 13.

ting a crime in a “drug neighborhood” is often enough for drug testing to be required during probation.⁶⁹

When a defendant’s probation terms require participation in drug or alcohol treatment, the defendant is largely responsible for the cost.⁷⁰ For example, someone convicted of a DUI in Florida is likely to see their license revoked.⁷¹ To have their driver’s license reinstated after a DUI conviction, they must complete a costly course called “DUI school.” Sometimes DUI school is even a condition of probation.⁷² In one Florida county, DUI school costs \$284 for a first offense and \$430 for a second.⁷³ Some DUI defendants also need to take a Victim Impact Panel course, which costs an additional \$49.99.⁷⁴ In Missouri, DUI defendants may be required to take a Substance Abuse Traffic Offender Program (“SATOP”) to regain their licenses.⁷⁵ The SATOP initial assessment is \$375, and is a precursor to other required programs such as the basic education program, which costs \$130, or the intensive program, which costs \$1500.⁷⁶

When someone on probation tests positive for drugs, private probation companies can benefit even further. In Missouri, for example, Private Correctional Services requires probationers who have previously tested positive to enroll in an intensive drug testing program, which entails calling a hotline each morning to check whether they were selected to be tested.⁷⁷ Probationers are tested anywhere from several times a month to several times a week at \$20–\$50 per test, depending on the testing facility.⁷⁸

3. Long-term Private Monitoring

Longer-term private monitoring, in which an impacted person is electronically tracked for months at a time, is also expensive. According to Human Rights Watch, fees for devices like ankle monitors and other electronic tracking tools can range from \$400 to \$500 per month, plus an initial start-up fee of \$50 to \$150, varying by location.⁷⁹ These costs usually fall on the system-involved individual, as states and municipalities are unlikely to foot the bill themselves. These costs add up, making it even more difficult for low-income probationers to routinely pay the fees and remain on the

⁶⁹ See *id.*

⁷⁰ See Colgan, *supra* note 26, at 288.

⁷¹ See HUMAN RIGHTS WATCH, *supra* note 27, at 23.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *id.* at 43.

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See HUMAN RIGHTS WATCH, *supra* note 27, at 42.

⁷⁸ See *id.*

⁷⁹ See HUMAN RIGHTS WATCH, *supra* note 27, at 44.

outside.⁸⁰ Moreover, the electronic monitors are uncomfortable, and make many aspects of everyday life difficult.⁸¹

Georgia, for example, requires some people on probation to wear an ankle bracelet known as the Secure Continuous Remote Alcohol Monitor (“SCRAMX”).⁸² The monitors, which measure sweat for evidence of alcohol, are very costly for individuals required to wear them. To use a SCRAMX monitor, private probation companies demand a \$50 setup fee, a \$39 per month supervision fee, and setting up a landline in the defendant’s home—costs that can total over \$400 a month.⁸³

One of the worst offenders in the private probation world was Sentinel Offender Services.⁸⁴ Fred Slider, a former Sentinel client, illustrates the abuses he faced under the supervision of this private probation company. Slider was assigned to Sentinel’s private probation after being charged with three offenses over the course of two years: failure to stop at a stop sign, driving without a license, and a DUI.⁸⁵ At the outset, Slider’s fines totaled \$3,385, and Sentinel was simply supposed to ensure that the fines were paid.⁸⁶ Instead, Sentinel hobbled Slider with a bulky ankle bracelet to check his sweat for alcohol every half hour, even though his probation didn’t forbid him from drinking.⁸⁷ The cost for the device was \$330 a month, which was added to the \$708 per month required to pay his fines.⁸⁸ Ultimately, unable to pay his fees, Slider ended up back in court in late 2015 over non-payment and a monitoring violation, which sent him back to jail.⁸⁹

Sentinel was ultimately driven out of business after Georgia prohibited for-profit probation companies from charging “more than three months of fees to people who were only on probation because they could not pay a fine.”⁹⁰ However, there are still plenty of other private probation companies to take its place.⁹¹ Twenty-nine separate private probation companies still

⁸⁰ *See id.*

⁸¹ *See* Shannon Heffernan, *Bill Would Drastically Reduce Use of Electronic Monitors in Illinois*, NPR (Apr. 29, 2019), <https://www.npr.org/local/309/2019/04/29/717555796/bill-would-dramatically-reduce-the-use-of-electronic-monitors-in-illinois>, *archived at* <https://perma.cc/JK88-7QDN>.

⁸² *See* Joseph Shapiro, *Measures Aimed at Keeping People Out of Jail Punish the Poor*, NPR (May 24, 2014), <http://www.npr.org/2014/05/24/314866421/measures-aimed-at-keeping-people-out-of-jail-punish-the-poor>, *archived at* <https://perma.cc/C8SL-HEXH>.

⁸³ *See id.*

⁸⁴ *See* Wallace, *supra* note 29.

⁸⁵ *See id.*

⁸⁶ *See id.*

⁸⁷ *See id.*

⁸⁸ *See id.*

⁸⁹ *See id.*

⁹⁰ *See* Beth Schwartzapfel, *Probation-for-Profit Just Got Less Profitable*, THE MARSHALL PROJECT (Apr. 13, 2017), <https://www.themarshallproject.org/2017/04/13/probation-for-profit-just-got-less-profitable>, *archived at* <https://perma.cc/74N2-HSLK>.

⁹¹ *See id.*

operate in the state of Georgia alone,⁹² attesting to the profitability of such services.

Private corrections companies are investing heavily in probation. GEO Group currently provides both treatment programs and community reentry services.⁹³ In 2011, GEO Group purchased a large electronic-monitoring firm, BI Incorporated, for \$415 million.⁹⁴ Similarly, Correctional Healthcare Companies acquired Judicial Correction Services in 2011, providing pre-custody, in custody, and post-custody services.⁹⁵

Private probation companies offer a wide array of “services” to the courts, including drug treatment courses, probation monitoring, electronic ankle monitors,⁹⁶ behavior classes and even domestic violence classes.⁹⁷ These for-profit companies also help oversee community service requirements and halfway houses.⁹⁸ Halfway houses, which are frequently a mandatory part of a defendant’s post-release sentence, often require that the resident purchase an insurance policy from a private actor for the duration of their stay.⁹⁹

C. *Drug Rehabilitation and Halfway Houses*

For-profit corrections companies have aggressively expanded into the world of alternate corrections, including halfway houses and rehabilitation programs.¹⁰⁰ The private companies running alternative corrections are often the same entities that oversee private prisons, have similar profit motives, and frequently use the same business models.¹⁰¹

Both transitional and treatment service obligations have been increasingly farmed out to nongovernmental residential facilities run by privately held, for-profit companies.¹⁰² Agencies such as state parole and probation

⁹² See *id.*

⁹³ See Stillman, *supra* note 37.

⁹⁴ See *id.*

⁹⁵ See *id.*

⁹⁶ Private corrections companies have rapidly expanded into all aspects of probation regulation. In 2015, GEO Group purchased Soberlink, Inc., which describes its services as “accountability for sobriety through a comprehensive alcohol system.” *About Soberlink*, SOBERLINK, <https://www.soberlink.com/about-us/>, archived at <https://perma.cc/Y5RW-GPUA>. Soberlink makes smartphone breathalyzer tests complete with facial recognition and wireless connectivity. All of this technology just makes it easier for for-profit companies to control the entire probation process—often at a substantial cost to the offender.

⁹⁷ See Wallace, *supra* note 29.

⁹⁸ See Appleman, *Nickel and Dime into Incarceration*, *supra* note 14, at 1497.

⁹⁹ See *id.* See also Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1193 (2014) (noting that private insurance may be required under community service sentences as well).

¹⁰⁰ See Verdugo, *supra* note 11.

¹⁰¹ See Joshua Holland, *Private Prison Companies Are Embracing Alternatives to Incarceration*, *The Nation* (Aug. 23, 2016), <https://www.thenation.com/article/private-prison-companies-are-embracing-alternatives-to-incarceration/>, archived at <https://perma.cc/UV3W-BTM2>.

¹⁰² See Ostermann & Hyatt, *supra* note 15, at 1308–09.

boards, unable to provide a full range of reentry assistance or therapeutic programming, look to these external service providers to fill in the gap.¹⁰³

1. *Drug and Alcohol Rehabilitation*

Drug and alcohol rehabilitation are big business. In recent years, private equity investors have invested heavily in companies that provide treatment and rehabilitation.¹⁰⁴ For-profit drug and alcohol rehabilitation companies seek to take advantage of the opioid epidemic, shrinking jail and prison populations,¹⁰⁵ and progressive advocacy for treatment over incarceration.¹⁰⁶

Some states, like California, now divert people convicted in drug court to treatment programs rather than sending them to prison.¹⁰⁷ Lawmakers and advocates may intend for diversion programs to be progressive and anti-carceral.¹⁰⁸ However, these reforms fall short of progressive goals: because of the treatment-industrial complex, people sentenced to treatment rather than incarceration still remain hostage to the state. Residents of court-mandated treatment facilities face daily medical bills, covering everything from detoxification monitoring to psychological counseling.¹⁰⁹

The bills from for-profit addiction rehabilitation centers can run into the hundreds of thousands of dollars per patient.¹¹⁰ People sentenced to treatment centers are often forced to declare bankruptcy; parents report taking out second and third mortgages to finance their child's court-mandated treatment.¹¹¹ Moreover, these largely unregulated recovery centers have a pattern of financial abuse that ends up costing millions, coming from both public and private pockets.¹¹²

¹⁰³ See *id.* at 1310.

¹⁰⁴ See Deborah Becker, *The Opioid Treatment Business is Booming*, WBUR (Mar. 1, 2016), <https://www.wbur.org/commonhealth/2016/03/01/opioid-treatment-business>, archived at <https://perma.cc/76ZV-K5ZD>.

¹⁰⁵ See Nicole Lewis, *The U.S. Prison Population is Shrinking*, THE MARSHALL PROJECT (Apr. 24, 2019), <https://www.themarshallproject.org/2019/04/24/the-us-prison-population-is-shrinking>, archived at <https://perma.cc/RDV5-B7E7>.

¹⁰⁶ See Teri Sforza et al., *How Some Southern California Drug Rehab Centers Exploit Addiction*, ORANGE CTY. REGISTER (Nov. 5, 2018), <https://www.oregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction/>, archived at <https://perma.cc/E6CJ-6YY2>.

¹⁰⁷ See, e.g., Cal. Penal Code §§ 1210(a)—(d); 3063.1 (establishing alternative form of sentencing for persons found guilty of drug crime offense, calling for qualifying drug defendants to have criminal charges or convictions dismissed if they can successfully complete court-approved drug treatment programs).

¹⁰⁸ See Don Thompson, *California Lawmakers Continue Shift from Mass Incarceration*, U.S. NEWS (Sept. 9, 2018), <https://www.usnews.com/news/best-states/California/articles/2018-09-09/California-lawmakers-continue-shift-from-mass-incarceration>, archived at <https://perma.cc/5VJY-NGCB>.

¹⁰⁹ See Sforza et al., *supra* note 106.

¹¹⁰ See *id.*

¹¹¹ See *id.*

¹¹² See Sforza et al., *supra* note 106.

The private corrections industry has begun investing in rehabilitation and treatment services, recognizing a relatively unregulated growth area. In New England, for-profit treatment centers create hundreds of new treatment beds every year.¹¹³ Recovery Centers of America, among other for-profit companies, is investing in addiction treatment and recovery centers.¹¹⁴ American Addiction Centers, one of the largest treatment and recovery companies, was the first business focused solely on addiction to go public, raising \$75 million in an IPO in 2015.¹¹⁵

Since 2005, private corrections companies have also collectively spent over \$680 million buying halfway houses and residential re-entry services.¹¹⁶ These private companies have little to no government oversight, and are required to seek profit by their very organizational structure.¹¹⁷ For example, in 2013, CCA (now CoreCivic) purchased Correctional Alternatives, a company specializing in prisoner re-entry programs such as treatment programs, work furloughs, and home confinement.¹¹⁸ GEO Group now owns a variety of “community re-entry services” and treatment programs, having purchased the country’s largest electronic-monitoring firm, BI Incorporated, in 2011.¹¹⁹ CoreCivic has recently acquired halfway houses in Georgia, North Carolina, and Colorado for nearly \$22 million.¹²⁰

Although sometimes state governments will foot the bill for defendants’ often-mandatory addiction treatment program, states increasingly require defendants to pay at least part of the cost themselves. In Tennessee, the list of approved transitional or halfway houses all require either a deposit, a weekly or monthly fee, or both.¹²¹ Likewise, in Florida, approximately 20% of all residents pay for some of their treatment in halfway houses or other community corrections institutions.¹²² Georgia requires all residents in its transi-

¹¹³ See Becker, *supra* note 104.

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ See Jeremy Mohler, *Keep Private Industry Out of Prison Reform*, USA TODAY (Jan. 4, 2017), <https://www.usatoday.com/story/opinion/policing/spotlight/2017/01/04/keep-private-industry-out-prisoner-reform-column/96118228/>, archived at <https://perma.cc/6J6L-M6JR>.

¹¹⁷ See Steve Coll, *The Jail Health-Care Crisis*, THE NEW YORKER (Feb. 25, 2019), <https://www.newyorker.com/magazine/2019/03/04/the-jail-health-care-crisis>, archived at <https://perma.cc/9RR4-53T4>.

¹¹⁸ See David Seagal, *Prison Vendors See Continued Signs of a Captive Market*, N.Y. TIMES (Aug. 29, 2015), <http://www.nytimes.com/2015/08/30/business/prison-vendors-see-continued-signs-of-a-captive-market.html>, archived at <https://perma.cc/P7SK-XEC6>.

¹¹⁹ See Stillman, *supra* note 37.

¹²⁰ See Geert de Lombaerde, *CoreCivic Buys Halfway Houses in Three States*, NASHVILLE POST (Nov. 9, 2017), <https://www.nashvillepost.com/business/area-stocks/article/20982163/corecivic-buys-halfway-houses-in-three-states>, archived at <https://perma.cc/GGQ2-CKNE>.

¹²¹ See TENN. DEP’T OF CORR., APPROVED TRANSITIONAL HOUSING PROVIDER LIST (May 10, 2019), <https://www.tn.gov/content/dam/tn/correction/documents/TransitionalHousingList.pdf>, archived at <https://perma.cc/EF7F-MMAB>.

¹²² See Karol Lucken, *Privatizing Discretion: “Rehabilitating” Treatment in Community Corrections*, 43 CRIME & DELINQUENCY 243, 250 (1997).

tional centers to pay a portion of their wages for room and board.¹²³ The federal system requires a defendant to pay a halfway house fee that is 25% of the defendant's gross income.¹²⁴

When a court orders more intensive treatment—such as residential treatment—the defendant is usually financially responsible.¹²⁵ Often state and local regulations are very vague and do not define when a court should order intensive rehabilitation treatment.¹²⁶ For example, one Missouri defendant was ordered to undergo inpatient alcohol treatment, even though his monitor showed minimal alcohol consumption over the previous sixteen months: because his monitor results did not show that he abused alcohol, no treatment center would accept the probationer, thus causing him to violate his probation order.¹²⁷

Proponents of such outsourcing tout cost effectiveness, net capacity, and efficiency of such private, for-profit facilities. But in reality, these supposed benefits come at great human cost.¹²⁸ Private treatment facilities use different techniques than the public sector in order to maintain profitability.¹²⁹ As a result, “[i]ndividual-level reductions in recidivism or behavioral change, which are notoriously difficult to measure consistently, are replaced with market-based factors (such as price, location, capacity, and pseudo-outcomes like discharges and escapes), as the primary outcomes of interest.”¹³⁰

In addition, private, for-profit halfway houses and treatment facilities do a poorer job of reinforcing the stricter standards of behavior fostered by more traditional, treatment-based approaches, because more rigorous treatment programs simply cost more money to implement.¹³¹ Further, halfway houses and other addiction treatment centers are plagued by systemic fraud and abuse.¹³² Practices such as extremely high billing for simple urine tests, combined with fraudulent practices that extract millions of dollars from both individuals and insurance companies, have led to a virtual Wild West of unregulated treatment.¹³³

¹²³ See *Transitional Centers*, GA. DEP'T OF CORR., <http://www.dcor.state.ga.us/Divisions/Facilities/Transitional>, archived at <https://perma.cc/7FBC-CLE4>.

¹²⁴ See FAMILIES AGAINST MANDATORY MINIMUMS, FREQUENTLY ASKED QUESTIONS ABOUT FEDERAL HALFWAY HOUSES & HOME CONFINEMENT 5 (Apr. 24, 2012), <https://fammm.org/wp-content/uploads/FAQ-Halfway-House-4.24.pdf>, archived at <https://perma.cc/Y77M-9EL5>.

¹²⁵ See *id.* See also MO. STAT. § 478.005 (1)—(3) (2018) (“Each treatment court within a treatment court division shall establish criteria upon which a person is deemed eligible for that specific treatment court and for determining successful completion of the treatment court program.”).

¹²⁶ See HUMAN RIGHTS WATCH, *supra* note 27 at 43.

¹²⁷ See *id.* at 23.

¹²⁸ Ostermann & Hyatt, *supra* note 15, at 1310.

¹²⁹ See *id.*

¹³⁰ *Id.* at 1312.

¹³¹ *Id.* at 1313.

¹³² See Zachary Rothenberg, *Trends in Combating Fraud and Abuse in Substance Use Disorder Treatment*, 20 J. HEALTH CARE COMPLIANCE 13, 14 (2018).

¹³³ See *id.*

One infamous private, for-profit company, Community Education Centers (“CEC”), runs 30% of all halfway houses nationwide.¹³⁴ The recidivism rate for inmates graduating from their halfway houses hovers around 67%.¹³⁵ At least eight residents of CEC’s halfway houses died from drug overdoses from 2016 to 2017.¹³⁶

New Jersey’s experience with CEC is an illuminating example. In the 1990s, CEC took over New Jersey’s prisoner re-entry and halfway houses.¹³⁷ The result was client neglect, abuse, and outright chaos.¹³⁸ About 10,000 people leaving prison or on parole in New Jersey were assigned to halfway houses, and CEC controlled most of those facilities.¹³⁹ Conditions were abysmal—far worse than those in halfway houses run by the state. Life within the centers was dangerous and unregulated; gang activity and assaults often went unchecked.¹⁴⁰ Within just two years, 185 people ran away from the residences.¹⁴¹

CEC halfway houses across the country still have inhumane conditions today. In 2011, an Indiana CEC resident died from untreated pregnancy complications.¹⁴² CEC-run halfway house residents in Colorado described assaults, gang violence and rampant drug use.¹⁴³ Administrators in Colorado’s largest halfway house also staged fake classes during inspections, bribing residents with candy bars if they would fake participation in counseling and job placement sessions.¹⁴⁴

In 2015, California hired CEC to oversee the expansion of the state’s halfway houses to accommodate an increase in people newly released from prison.¹⁴⁵ CEC halfway houses are supposed to provide secure housing, job placement, and other social services for people on parole as they prepare to

¹³⁴ LAUREN SUKIN, *THE CENTURY FOUND., WHEN JAIL IS THE BETTER OPTION: THE FAILURE OF HALFWAY HOUSES* (June 23, 2015), <https://tcf.org/content/commentary/when-jail-is-the-better-option-the-failure-of-halfway-houses/>, archived at [HTTPS://PERMA.CC/KGK4-SJ2C](https://perma.cc/KGK4-SJ2C).

¹³⁵ See *id.*

¹³⁶ See Lydia O’Neal, *As the Criminal Justice System Changes, So Does a Private Prison Giant*, INTERL BUS. TIMES (Dec. 5, 2017), <https://www.ibtimes.com/political-capital/criminal-justice-system-changes-so-does-private-prison-giant-2623569>, archived at [HTTPS://PERMA.CC/X4VK-NLE2](https://perma.cc/X4VK-NLE2).

¹³⁷ See Sam Dolnick, *As Escapees Stream Out, a Penal Business Thrives*, N.Y. TIMES (June 16, 2012), <http://www.nytimes.com/2012/06/17/nyregion/in-new-jersey-halfway-houses-escapees-stream-out-as-a-penal-business-thrives.html>, archived at [HTTPS://PERMA.CC/7G63-86RE](https://perma.cc/7G63-86RE).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Anat Rubin, *A Record of Trouble*, THE MARSHALL PROJECT (Apr. 11, 2015), <https://www.themarshallproject.org/2015/04/11/a-record-of-trouble>, archived at <https://perma.cc/QU3Q-ZV5S>.

¹⁴⁴ *Id.*

¹⁴⁵ Anat Rubin, *California Relies on Halfway House Operator with Troubled Past*, SF-GATE (Apr. 11, 2015), <https://www.sfgate.com/crime/article/California-relies-on-halfway-house-operator-with-6193752.php>, archived at [HTTPS://PERMA.CC/Q7AX-674J](https://perma.cc/Q7AX-674J).

return to society.¹⁴⁶ The state signed a contract despite the fact that, shortly beforehand, CEC had lost a preexisting contract to supervise halfway houses in Long Beach, California.¹⁴⁷ Long Beach cited systemic failures, including inadequate clinical programs, persistent violence, and drug and alcohol abuse by residents.¹⁴⁸ Even when residents failed drug testing, CEC did not discharge them in order to keep beds full.¹⁴⁹ Nonetheless, California rehired CEC on a \$30 million contract to arrange housing, substance abuse treatment, and mental health services for people returning from incarceration to Los Angeles County.¹⁵⁰

CEC is one of many private, for-profit halfway houses with abysmal track records in safety and rehabilitation. For example, at Avalon Correctional Services, one of the country's largest for-profit halfway house companies, guards notoriously staged fights in which halfway house residents were forced to brawl until blood was shed.¹⁵¹ The fights were allegedly driven by the company's bottom line: instead of punishing residents by returning them to state corrections, which would cost Avalon money, facility administrators relied on "informal discipline" to ensure that defendants remained at the halfway house, making more money for the company.¹⁵² Several female inmates have also sued Avalon for sexual abuse during work-release, alleging that their complaints were ignored by administrators.¹⁵³

The for-profit addiction treatment industry (of which halfway houses are simply one lucrative part) has exploded in the last ten years, expanding to include residential rehabilitation programs, outpatient facilities, drug and alcohol counseling, and sober living housing.¹⁵⁴ The growth in the addiction treatment industry has been driven by the increase in opioid-based substance abuse disorders.¹⁵⁵ As opioid use has continued to grow, an influx of addiction treatment programs have opened their doors in response.¹⁵⁶ Further, there are many people in need of drug treatment and rehabilitation once they have been released—incarcerated people receive little treatment while imprisoned, and often revert back to drug use upon release.¹⁵⁷ Approximately 58% of state prisoners and 63% of sentenced jail inmates have a substance use disorder, compared to 5% of the general population.¹⁵⁸ Of these individu-

¹⁴⁶ *Id.*

¹⁴⁷ *See id.*

¹⁴⁸ *See id.*

¹⁴⁹ *See id.*

¹⁵⁰ *Id.*

¹⁵¹ Stillman, *supra* note 37, at 16.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *See* Rothenberg, *supra* note 132, at 13.

¹⁵⁵ *Id.*

¹⁵⁶ *See* Danielle L. Liberman, *Not Too Sunny in the Sunshine State: The Need to Improve Florida's Opioid Abuse Treatment Centers to Combat the National Public Health Crisis*, 31 *GEO. J. LEGAL ETHICS* 723, 732 (2018).

¹⁵⁷ *See* O'Neal, *supra* note 136.

¹⁵⁸ *Id.*

als, 25% reported repeatedly using heroin or opiates.¹⁵⁹ Today, substance abuse treatment is a vastly profitable business, with profits of approximately \$34 billion per year, which is likely to increase over time.¹⁶⁰

The criminal legal system as a whole treats drug and alcohol addiction as a problem that requires treatment as a measure of social control, with little focus on an defendant's rehabilitation or well-being.¹⁶¹ This emphasis has consequences for the kind of rehabilitative treatment that defendants receive.¹⁶² "Balanced against medical constructs of addictive illness, addictions treatment emerges, much like the criminal justice system, as a fragmented approach to status and conduct, rehabilitation and retribution, and, finally, compassion and punishment."¹⁶³ Defendants are invariably blamed if addiction treatment fails, then may face drastic consequences in the form of probation violation, re-arrest, and even imprisonment.¹⁶⁴ The criminal legal system views relapse not as a medical problem but as a refusal to follow the law, so typically addresses it with increased criminal sanctions.¹⁶⁵

The privatization and profit motives of residential treatment centers and halfway houses thus harms people with substance use disorders. The companies' incentives are to control both costs and people as much as possible, while spending as little as feasible.¹⁶⁶ Their primary concerns are executive salaries, shareholder returns, lobbying expenditures, and campaign expenditures, but not the residents themselves.¹⁶⁷ Thus, for-profit corrections companies waste an important opportunity to help people with substance use disorders recover, while imposing punitive costs on other people involved in the criminal legal system.

2. *Rehabilitation in Free Labor: Forced Labor as Treatment*

As an alternative to incarceration, some drug courts direct defendants to serve as unpaid labor in rehabilitation centers that are "little more than lucrative work camps for private industry."¹⁶⁸ These faux rehabilitation centers, which are located all over the country, force people to labor for a wide

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Cf. Sarah Lustbader, *Should Relapse Be Treated Like A Crime?*, THE APPEAL (Oct. 25, 2019), <https://theappeal.org/should-relapse-be-treated-like-a-crime/>, archived at <https://perma.cc/2V6W-KE45>.

¹⁶² *See id.*

¹⁶³ *Id.* at 310.

¹⁶⁴ *Id.* at 337—38.

¹⁶⁵ Marsha Weissman, *The Criminal-Involved Drug Addict: Public Policy and Sentencing Advocacy*, in NAT'L CONFERENCE OF SENTENCING ADVOCACY 179, 185—86 (1991).?

¹⁶⁶ *See* O'Neal, *supra* note 136.

¹⁶⁷ *See id.*

¹⁶⁸ Amy Julia Harris & Shoshana Walter, *They Thought They Were Going to Rehab. They Ended Up in Chicken Plants*, CTR. FOR INVESTIGATIVE REPORTING (Oct. 4, 2017), <https://www.revealnews.org/article/they-thought-they-were-going-to-rehab-they-ended-up-in-chicken-plants/>, archived at <https://perma.cc/NL7Z-P9WG>.

range of companies, from local businesses to Fortune 500 companies.¹⁶⁹ Many of these rehabilitation work camps do not pay people serving their sentences at the camps, forcing them to work for free to ensure they stay out of jail or prison.¹⁷⁰

Christian Alcoholics & Addicts in Recovery (“CAAIR”), an Oklahoma-based rehabilitation program, provides just one disturbing example. Defendants are sent to CAAIR’s so-called rehabilitation program in lieu of jail time.¹⁷¹ CAAIR’s model is quite simple: it requires participating defendants to work full-time in chicken plants for no pay.¹⁷² Approximately 200 men live at a northeastern Oklahoma CAAIR campus, many working full time at Simmons Foods Inc. slaughtering and processing chickens for some of America’s largest retailers and restaurants.¹⁷³ Other chicken plants that use CAAIR labor include Tyson and Crystal Lake Foods.¹⁷⁴ Work at the Simmons chicken plant is dangerous, with long hours and brutal conditions.¹⁷⁵ Workers commonly suffer acid burns, machine injuries, and bacterial infections.¹⁷⁶ If workers get hurt or work too slowly, CAAIR supervisors threaten them with prison—a threat they have not hesitated to carry out numerous times in the past.¹⁷⁷

Rather than providing effective substance abuse treatment, CAAIR “treats” people sentenced to its work camps with “work and prayer.”¹⁷⁸ Drug courts in Oklahoma, Arkansas, Texas, and Missouri send defendants to the CAAIR work camps, where the men receive a bed, meals, Alcoholics Anonymous or Narcotics Anonymous meetings, and the occasional meeting with a counselor or class on anger management or parenting.¹⁷⁹ Church attendance is required the first four months of residence.¹⁸⁰ Probationers are forbidden to have a cellphone or any money.¹⁸¹ CAAIR only has one properly licensed counselor per work camp, has no trained medical staff, and forbids psychiatric medicine.¹⁸² Many probationers experienced withdrawal

¹⁶⁹ See *id.* As the authors note, offenders have worked everywhere from a Coca-Cola bottling plant in Oklahoma, to a construction firm in Alabama, to a nursing home in North Carolina. See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

¹⁷² See *id.*

¹⁷³ See *id.*

¹⁷⁴ See *Oklahoma Rehab Facility as Alternative for Prison is a Slave Labor Camp for Poultry Industry*, DAILY KOS (Oct. 4, 2017), <https://www.dailykos.com/stories/2017/10/4/1704119/-Oklahoma-Rehab-Facility-As-Alternative-For-Prison-Is-Just-A-Slave-Labor-Camp-For-Poultry-Indust>, archived at <https://perma.cc/9RLB-BP8T>.

¹⁷⁵ See Harris & Walter, *Chicken Plants*, *supra* note 168.

¹⁷⁶ See *id.*

¹⁷⁷ See *id.*

¹⁷⁸ See Cory Doctorow, *Prisoners Sent to Christian “Rehab” Diversion Programs Find Themselves in Forced-Labor Camps*, BOING BOING (Oct. 5, 2017), <https://boingboing.net/2017/10/05/exactly-what-jesus-would-do.html>, archived at <https://perma.cc/7MCW-T5B3>.

¹⁷⁹ See Harris & Walter, *Chicken Plants*, *supra* note 168.

¹⁸⁰ See *id.*

¹⁸¹ See *Oklahoma Rehab Facility*, *supra* note 174.

¹⁸² See *id.*

symptoms and other serious health issues after being unable to access prescribed treatment and needed medical care.¹⁸³

Under these harsh conditions, few people sentenced to the work camp successfully complete their so-called rehabilitation. In 2014, only 26% completed CAAIR's recovery program.¹⁸⁴ If people forced to work at CAAIR do manage to make it through their term—and without any problems or “bad behavior”—the only compensation these workers receive is a \$1,000 payment.¹⁸⁵ Even when workers get injured, CAAIR files their workers-comp claims—but keeps the money for itself.¹⁸⁶ Although former participants have filed two federal lawsuits against CAAIR for violations of labor law, human trafficking, and racketeering, CAAIR is still in operation.¹⁸⁷ Along with CAAIR, there are at least four other work camps/recovery programs that accept defendants from drug courts and require them to work in dangerous chicken processing factories without recompense.¹⁸⁸

North Carolina's Recovery Connections Community, a drug recovery program, uses a scheme similar to CAAIR's indentured servitude program. Recovery Connections Community is an unlicensed, non-profit rehabilitation program for people who need drug rehabilitation, including many defendants sentenced from drug courts as part of their plea agreements.¹⁸⁹ Clients were promised counseling and drug addiction recovery, but were instead sent to work at various adult care homes for the elderly and disabled for sixteen hour shifts.¹⁹⁰ Clients working as personal care aides were almost completely untrained and were not licensed to dispense medication.¹⁹¹ Some were tasked with dispensing the very prescription drugs which they were addicted to, and ended up stealing the patients' medicine.¹⁹² None were paid

¹⁸³ See *id.*

¹⁸⁴ See Amy Julia Harris & Shoshana Walter, *Rehab or Work Camp? Addicts Labor for Business*, COLUMBUS DISPATCH (Oct. 7, 2017), <https://www.dispatch.com/news/20171007/rehab-or-work-camp-addicts-labor-for-businesses>, archived at <https://perma.cc/3YG4-HHHY>.

¹⁸⁵ See Harris & Walter, *supra* note 168.

¹⁸⁶ See *id.*

¹⁸⁷ See Amy Julia Harris & Shoshana Walter, *Rehab Work Camps in Oklahoma Were About to be Regulated. Then a Friend at the Capitol Stepped In*, TULSA WORLD (Oct. 17, 2017), https://www.tulsaworld.com/news/state-and-regional/rehab-work-camps-in-oklahoma-were-about-to-be-regulated/article_74bc3885-baf9-5317-b05c-220747f5583f.html, archived at <https://perma.cc/2M9Y-92KW>.

¹⁸⁸ See Amy Julia Harris & Shoshana Walter, *These Are the Rehabs That Make People Work in Chicken Plants*, CTR. FOR INVESTIGATIVE REPORTING (Oct. 5, 2017), <https://www.revealnews.org/blog/these-are-the-rehabs-that-make-people-work-in-chicken-plants/>, archived at <https://perma.cc/KCZ7-UZYJ>.

¹⁸⁹ See Amy Julia Harris & Shoshana Walter, *All Work. No Pay: She Said She'd Free Them from Addiction. She Turned Them into Her Personal Servants*, CTR. FOR INVESTIGATIVE REPORTING (May 21, 2018), <https://www.revealnews.org/article/drug-users-got-exploited-disabled-patients-got-hurt-one-woman-benefited-from-it-all/>, archived at <https://perma.cc/E75D-MR48>.

¹⁹⁰ See *id.*

¹⁹¹ See *id.*

¹⁹² See *id.*

for their work.¹⁹³ The only therapy provided were sessions in which the program's founder would assemble participants and have each client take a turn being screamed at by the other participants.¹⁹⁴ After numerous allegations and investigations, the North Carolina Department of Public Safety finally banned its probation officers from sending probationers to Recovery Connections Community in May of 2018.¹⁹⁵ Several investigations into Recovery Connections are now pending in the state of North Carolina.¹⁹⁶

Another work camp, the Drug and Alcohol Recovery Program ("DARP"), sends drug defendants and probationers to work at a plastics factory owned by Arkansas State Senate Majority Leader Jim Hendren.¹⁹⁷ Working in the plastics factory can be dangerous; workers routinely risk serious burns from molten plastic.¹⁹⁸ Because DARP has continually refused to pay its workers minimum wage, the Arkansas Department of Community Correction revoked the program's license to house people on parole.¹⁹⁹ Nonetheless, DARP is still in operation and Arkansas courts continue to sentence people to the program.²⁰⁰ In October 2017, the Oklahoma ACLU filed a class action lawsuit against DARP, alleging a human trafficking scheme and various labor violations.²⁰¹ The suit claims that the DARP participants were minimally fed, were denied payment for their work, were housed in unsuitable conditions, and received no drug or alcohol treatment.²⁰²

Another exploitative rehabilitation work camp is owned by a retired drug court judge. For the past ten years, retired Oklahoma Judge Thomas Landrith has volunteered on the drug court while running his own rehabilitative work camp, Southern Oklahoma Addiction Recovery ("SOAR").²⁰³ SOAR claims to provide a "therapeutic work program for men who have

¹⁹³ See *id.*

¹⁹⁴ See *id.*

¹⁹⁵ See Amy Julia Harris & Shoshana Walter, *Response to NC Rehab Investigation: 'This Is a Horrific Scheme That Preys on People at Their Lowest'*, CTR. FOR INVESTIGATIVE REPORTING (May 21, 2018), <https://www.revealnews.org/blog/impact-officials-take-action-on-rehab-work-camp-in-response-to-reveal-investigation/>, archived at <https://perma.cc/RX35-2QMV>.

¹⁹⁶ See *id.*

¹⁹⁷ See Amy Julia Harris, *Top Arkansas Politician Uses Labor from Rehab Work Camp*, KGOU (Oct. 31, 2017), <https://www.kgou.org/post/top-arkansas-politician-uses-labor-rehab-work-camp>, archived at <https://perma.cc/K53Q-Q8SB>.

¹⁹⁸ See *id.*

¹⁹⁹ See *id.*

²⁰⁰ See *id.*

²⁰¹ See *Norrid v. D.A.R.P.*, No. 17-CIV-401-RAW, 2018 WL 2977384, at *1 (E.D. Okla. June 13, 2018). See also *Fochtman v. CAAIR, Inc.*, No. 5:17-CV-5228, 2018 WL 1092345, at *3 (W.D. Ark. Feb. 27, 2018); Jessica Remer, *ACLU Files Suit Against Oklahoma, Arkansas Rehab Program Calling It Slave Labor*, KTUL (Nov. 1, 2017), <https://ktul.com/news/local/aclu-files-suit-against-oklahoma-arkansas-rehab-program-calling-it-an-unpaid-labor-camp>, archived at <https://perma.cc/WVJ8-6WW7>.

²⁰² See Remer, *supra* note 201.

²⁰³ See Amy Julia Harris & Shoshana Walter, *Inside a Judge's Rehab: Unpaid Work at a Local Coca-Cola Plant*, CTR. FOR INVESTIGATIVE REPORTING (Dec. 4, 2017), <https://www.revealnews.org/article/inside-a-judges-rehab-unpaid-work-at-a-local-coca-cola-plant/>, archived at <https://perma.cc/43S9-EZ4F>.

been convicted of drug and alcohol offenses,” working with drug courts “to place people in jobs rather than in jail or prison.”²⁰⁴ In reality, defendants assigned to SOAR work without pay for factories,²⁰⁵ including the local Coca-Cola bottling plant and a local car wash—and if they refuse, incarceration is the only alternative.²⁰⁶ Like the work programs detailed above, the only rehabilitative aspects of SOAR are weekly group counseling sessions and twice-weekly church services.²⁰⁷ Clients are eligible for a mere \$500 stipend at the end of the six-month course if they do not break any rules.²⁰⁸

In addition, SOAR applied for food stamp cards on behalf of each participant, and then confiscated the benefits to buy food for the entire rehabilitative program.²⁰⁹ The Oklahoma Department of Human Services considers this kind of food stamp use fraudulent.²¹⁰ After the media revealed SOAR’s practices, Coca-Cola suspended its use of SOAR workers, and the program’s alleged food stamp theft is currently being investigated; otherwise, SOAR is still operating as a recovery/rehabilitation program in the state of Oklahoma.²¹¹

The Cenikor Foundation, a nationally known drug rehabilitation center based in Texas and Louisiana, has sent thousands of people to grueling work sites such as oil refineries, oil platforms, and Walmart warehouses without air-conditioning.²¹² A variety of subcontractors dispatch Cenikor rehabilitation clients to major companies with minimal training, protective equipment, or job preparation.²¹³ On the job, many workers lack proper supervision, resulting in routine injuries; nearly two dozen men have suffered serious injuries on site.²¹⁴ Many of the workers labor eighty hours a week, leaving minimal time for required therapy, and counselors falsify their therapy records.²¹⁵

²⁰⁴ See *The Program*, SOUTHERN OKLA. ADDICTION RECOVERY, <http://www.soarrehab.org/theprogram>, archived at <https://perma.cc/7HBE-6XGT>.

²⁰⁵ The women assigned to SOAR are paid for their work, but the men are not. See Harris & Walter, *Inside a Judge’s Rehab*, *supra* note 203.

²⁰⁶ See *id.*

²⁰⁷ See *id.*

²⁰⁸ See *id.*

²⁰⁹ See *id.*

²¹⁰ See *When Forced Labor Masquerades as Rehab*, OMAHA WORLD HERALD (Dec. 31, 2017), https://www.omaha.com/edition/sunrise/articles/when-forced-labor-masquerades-as-rehab/article_5d896d34-baf7-54ac-8464-d5890444346a.html, archived at <https://perma.cc/2TY4-D9P7>.

²¹¹ See Amy Julia Harris & Shoshana Walter, *Response to Work Camp Investigation: ‘Nothing Short of Slavery’*, CTR. FOR INVESTIGATIVE REPORTING (Oct. 4, 2017), <https://www.revealnews.org/blog/response-to-labor-camp-investigation-i-cant-imagine-how-this-is-legal/>, archived at <https://perma.cc/WE4M-D49P>.

²¹² See Amy Julia Harris & Shoshana Walter, *They Worked in Sweltering Heat for Exxon, Shell and Walmart. They Didn’t Get Paid a Dime*, CTR. FOR INVESTIGATIVE REPORTING (Apr. 24, 2019), <https://www.revealnews.org/article/they-worked-in-sweltering-heat-for-exxon-shell-and-walmart-they-didnt-get-paid-a-dime/>, archived at <https://perma.cc/4GQT-G6ZB>.

²¹³ See *id.*

²¹⁴ See *id.*

²¹⁵ See *id.*

In theory, Cenikor’s program may seem better than prison; after 18 months participation, clients can begin receiving wages and can graduate with employment, a car and the ability to restart their lives.²¹⁶ But fewer than 8% of Cenikor’s clients graduate the program.²¹⁷ Like other for-profit rehabilitation programs, workers received no payment for their grueling hours of labor.²¹⁸

In part, drug courts send defendants to work camp rehabilitation and recovery centers, like CAAIR and Recovery Connections, due to the lack of beds in other, more reputable alternatives.²¹⁹ States and counties could limit these egregious abuses by providing more spaces in legitimate rehabilitation and recovery services for those who need them.

D. Mental Illness and Forensic Mental Healthcare

The need for so-called “forensic health services”—mental health treatment within the criminal legal system—is growing.²²⁰ Forensic mental healthcare formally refers to criminal court-ordered mental health treatment or commitment, and includes those individuals found incompetent to stand trial or not guilty by reason of insanity.²²¹ As the number of individuals with mental illnesses in the criminal justice system has increased, so too has the need for various treatment centers and hospitals for defendants. Private prison companies are exploiting this need by rebranding themselves as “humane treatment providers,”²²² including by expanding into mental health and civil commitment centers.²²³ As investor-owned enterprises, for-profit medical companies prioritize maximizing profits and stock prices, often advancing shareholder interests even at the expense of patient needs.²²⁴

In 2019, approximately 22,000 forensic patients were civilly detained through involuntary commitment.²²⁵ Many people held in involuntary commitment had not yet been convicted: approximately 9,000 were being evaluated pre-trial or treated for incompetency to stand trial.²²⁶ Six thousand people detained in involuntary commitment were found not guilty by reason of insanity, or guilty but mentally ill.²²⁷ Some will be detained indefi-

²¹⁶ See *id.*

²¹⁷ See *id.*

²¹⁸ See Harris & Walter, *Exxon, Shell and Walmart*, *supra* note 212.

²¹⁹ See Harris & Walter, *Chicken Plants*, *supra* note 168.

²²⁰ See Graziani & Cole, *Incorrect Care*, *supra* note 17, at 2.

²²¹ See *id.*

²²² See *id.* at 3.

²²³ See *id.*

²²⁴ See E. FULLER TORREY ET AL., MENTAL ILLNESS POLICY ORG, FRAUD, WASTE AND EXCESS PROFITS: THE FATE OF MONEY INTENDED TO TREAT PEOPLE WITH SERIOUS MENTAL ILLNESS 29 (Nov. 18, 2015), <https://mentalillnesspolicy.org/wp-content/uploads/wastereport.pdf>, archived at <https://perma.cc/E634-26JN>.

²²⁵ See Sawyer & Wagner, *supra* note 3.

²²⁶ See *id.*

²²⁷ See *id.*

nately.²²⁸ In 2019, 6,000 people convicted of sex crimes were either involuntarily committed or detained after completing their prison sentences.²²⁹

Despite being involuntarily committed, people detained in forensic mental healthcare centers must sometimes pay for some of the cost of their (civil) incarceration. In Oregon, for example, the state looks at an involuntarily committed individual's income, property, and resources to determine whether and how much they are able to pay for hospital care.²³⁰ If the state decides that an involuntarily detained individual should be able to pay for some or all of their hospital care, the state issues an ability to pay order—imposing a harsh financial burden on the individual.²³¹ Utah,²³² Florida,²³³ and Nevada²³⁴ have similar laws.

For-profit prison companies are capitalizing off of involuntary civil detention.²³⁵ As the number of people involuntarily committed to forensic psychiatric facilities grows, states have privatized the programs to cut costs.²³⁶

In particular, psychiatric facilities are extremely profitable for private prison companies.²³⁷ Advocates argue that for-profit prison companies see forensic psychiatric facilities or civil commitment centers as profitable investments because people can be detained there for life—guaranteeing revenue to the for-profit prison companies expanding into civil detention.²³⁸ Just as for-profit prisons have a financial interest in mass incarceration, private

²²⁸ See *id.*

²²⁹ See *id.*

²³⁰ See DISABILITY RIGHTS OREGON, MENTAL HEALTH LAW IN OREGON 55 (4th ed. 2012), <http://droregon.org/wp-content/uploads/Mental-Health-Law-in-Oregon-Fourth-Edition.pdf>, archived at <https://perma.cc/U745-F66U>.

²³¹ See *id.*

²³² See UTAH CODE ANN. § 62A-15-607 (2008) (“The division shall estimate and determine, as nearly as possible, the actual expense per annum of caring for and maintaining a patient in the state hospital, and that amount or portion of that amount shall be assessed to and paid by the applicant, patient, spouse, parents, child or children who are of sufficient financial ability to do so.”).

²³³ See FLA. STAT. § 916.107(2)(a) (2019) (“[E]very reasonable effort to collect appropriate reimbursement for the cost of providing services to clients able to pay for the services, including reimbursement from insurance or other third-party payments, shall be made.”).

²³⁴ See NEV. REV. STAT. § 433A.600 (2013) (“A person who is admitted to a division facility or to a program of community-based or outpatient services operated by the Division and not determined to be indigent and every responsible relative . . . of the person shall be charged for the cost of treatment and is liable for that cost.”).

²³⁵ See Lisa Cromwell, *Why Privatizing Mental Health Services Won't Help Patients in State Care*, Bangor Daily News (Jan. 4, 2017), <https://bangordailynews.com/2017/01/04/opinion/contributors/why-privatizing-mental-health-services-wont-help-patients-in-state-care/>, archived at <https://perma.cc/2VA9-S6MD>.

²³⁶ See CATE GRAZIANI, A STATE MENTAL HEALTH SYSTEM IN CRISIS: RECOMMENDATIONS TO REDUCE THE FORENSIC MENTAL HEALTH POPULATION IN TEXAS 18 (Aug. 2014) (unpublished Masters report, University of Texas at Austin), <https://repositories.lib.utexas.edu/handle/2152/26497>, archived at <https://perma.cc/PP5W-KWJU>.

²³⁷ See Erin Fuchs, *For-Profit Prison Companies Have a Worrying Plan for Boosting Profits*, Bus. Insider (Nov. 20, 2014), <https://www.businessinsider.com/for-profit-psych-facilities-2014-11>, archived at <https://perma.cc/8MRK-X2HX>.

²³⁸ See *id.*

corrections companies may be similarly motivated to keep patients committed in psychiatric wards for the long term.²³⁹

GEO Group, a private prison company,²⁴⁰ has already expanded into civil psychiatric commitment through its subsidiary Correct Care.²⁴¹ Correct Care is a privately held company owned by two private equity funds with annual revenues estimated at \$1.2 billion.²⁴² Private health-management companies like Correct Care oversee many hospitals and healthcare providers for people who are currently incarcerated in prisons, jails, or immigrant detention centers, and for people who have been civilly committed.²⁴³ Companies such as Correct Care have a perverse incentive to cut costs to pad profit margins.²⁴⁴ Correct Care, which has won government contracts in thirty-four states, provides dangerously substandard services to individuals under its care, leading to preventable deaths.²⁴⁵

In 2018, Correct Care merged with Correctional Medical Group Company and rebranded as Wellpath Recovery Solutions.²⁴⁶ Wellpath is now the biggest player in the U.S. correctional health care sector²⁴⁷ and plans to grow its presence in for-profit behavioral health programs, including services to treat mental illness and substance use disorders.²⁴⁸ At least fourteen additional, smaller companies have contracts to provide for-profit correctional medical and health care.²⁴⁹

Wellpath recently began taking over state psychiatric hospitals in order to run them privately, with the support of state funds.²⁵⁰ Massachusetts al-

²³⁹ See *id.*

²⁴⁰ GEO GRP., INC., <https://www.geogroup.com/>, archived at <https://perma.cc/A43N-CLJV>.

²⁴¹ See Eshe Cole, *GEO Group Subsidiary, Correct Care Solutions, Bids to Re-purpose the Bill Clayton Detention Center as a New Civil Commitment Facility*, GRASSROOTS LEADERSHIP: BLOG (Oct. 2, 2014), <https://grassrootsleadership.org/blog/2014/10/geo-group-subsidiary-correct-care-solutions-bids-re-purpose-bill-clayton-detention>, archived at <https://perma.cc/B3QY-AWH2>.

²⁴² See Ken Silverstein, *Leading For-Profit Prison and Immigration Detention Medical Company Sued At Least 1,395 Times*, HUFFPOST (Oct. 29, 2018), https://www.huffpost.com/entry/correct-care-solutions-detention-center-lawsuits_n_5bd755fce4b07427610a0ccf, archived at <https://perma.cc/N5RY-WXK6>.

²⁴³ Blake Ellis & Melanie Hicken, 'PLEASE HELP ME before it's too late', CNN (June 25, 2019), <https://www.cnn.com/interactive/2019/06/us/jail-health-care-ccs-invs/>, archived at <https://perma.cc/48SJ-PWY7>.

²⁴⁴ See *id.*

²⁴⁵ See *id.*

²⁴⁶ WELLPATH, <https://wellpathcare.com/>, archived at <https://perma.cc/6YD3-LURK>.

²⁴⁷ See Davide Scigliuzzo et al., *Bad Press and Lawsuits Are No Obstacle to a \$610 Million Prison Loan*, BLOOMBERG (Sept. 21, 2018), <https://www.bloomberg.com/news/articles/2018-09-21/bad-press-and-lawsuits-no-obstacle-to-a-610-million-prison-loan>, archived at <https://perma.cc/NGY8-TMQN>.

²⁴⁸ See *id.*

²⁴⁹ See PRISON LEGAL NEWS, U.S. For-Profit Privatized Correctional Services (Jan. 2017), https://www.prisonlegalnews.org/media/publications/Other%20privatized_1.pdf, archived at <https://perma.cc/2HXB-Z5GK> (listing medical/mental health care services).

²⁵⁰ See Kevin Baird, *No-bid Contract for Psychiatric Institute Raises Questions*, PENINSULA CLARION (Feb. 9, 2019), <https://www.peninsulaclarion.com/news/no-bid-contract-for-psychiatric-institute-raises-questions/>, archived at <https://perma.cc/Z55S-X3Y2>.

lowed Wellpath to assume control of one of its mental health hospitals, which had previously been overseen by the federal Department of Health and Human Services, and paid the company to run it with state funds.²⁵¹ Over the past 10 years, Wellpath has fought over 1,351 federal lawsuits over its provision of substandard care in various correctional health settings.²⁵² Lawsuits accuse Wellpath of committing malpractice, causing injury and even death to people housed at facilities where the company is contracted to provide health care.²⁵³

In 2015, a Florida state paper exposed serious violence and neglect at three Florida state psychiatric hospitals overseen by Correct Care.²⁵⁴ Approximately 60% of the residents at Correct Care's psychiatric hospitals were sent there by the criminal legal system because they were deemed mentally unfit to stand trial.²⁵⁵ These "forensic" patients are committed until they are deemed competent and are able to return to court to face charges.²⁵⁶

Conditions became so bad at Florida's Treasure Coast Forensic Treatment Center that one resident was killed and several staff maimed, allegedly due to insufficient staffing for the facility.²⁵⁷ The hospital failed to report assaults and employee misconduct.²⁵⁸ It also lacked sufficient staff, training, licensing, and funding.²⁵⁹ Over an eleven-year period, there were eighty-seven reported batteries; according to former staff, assaults were underreported and many more took place.²⁶⁰

The Center's dangerously low staffing level was good for its bottom line: over eighteen months, Correct Care saved an estimated \$546,000 by understaffing and paying token fines, which functioned at best as a slap on the wrist.²⁶¹ Moreover, the Center did not comply with Florida fire and build-

²⁵¹ See *id.*

²⁵² See Sandy Hodson, *Medical Care Company for Augusta Jail Settles Lawsuit on Eve of Trial*, AUGUSTA CHRON. (Feb. 11, 2019), <https://www.augustachronicle.com/news/20190211/medical-care-company-for-augusta-jail-settles-lawsuit-on-eve-of-trial>, archived at <https://perma.cc/9KSN-NZUX>.

²⁵³ See *id.*

²⁵⁴ See Leonora LaPeter Anton et al., *Insane. Invisible. In Danger.*, TAMPA BAY TIMES & SARASOTA HERALD TRIBUNE (Oct. 9, 2015), <http://www.tampabay.com/projects/2015/investigations/florida-mental-health-hospitals/cuts/>, archived at <https://perma.cc/KKZ4-G6GT>.

²⁵⁵ See *id.*

²⁵⁶ See *id.*

²⁵⁷ See Editorial, *State Must Fix Perverse System That Led to Abuses at Mental Hospital*, TREASURE COAST PALM (Feb. 8, 2018), <https://www.tcpalm.com/story/opinion/editorials/2018/02/08/state-and-private-owners-must-fix-perverse-system-allows-dangerous-conditions-mental-hospital-our-vi/311510002/>, archived at <https://perma.cc/34FB-LACN>.

²⁵⁸ See *id.*

²⁵⁹ See *id.*

²⁶⁰ See Lucas Daprile, *Dangerous Detention: Treasure Coast Mental Hospital Lacks Staff, Training, Licensing, Funding*, TREASURE COAST PALM (Jan. 21, 2018), <https://www.tcpalm.com/story/news/investigations/2018/01/21/treasure-coast-mental-hospital-not-enough-staff-training-equipment-funding-tcpalm-investigation-find/921183001/>, archived at <https://perma.cc/3Q8T-52JC>.

²⁶¹ Correct Care made this savings over a seventeen-month period, from July 2015 to December 2016. See Lucas Daprile, *Correct Care Solutions Profited \$546,000 by Understaffing in Violation of State Contract*, TREASURE COAST PALM (Jan. 21, 2018), <https://www>

ing codes, which would also cost the company money.²⁶² Cost savings were thus purchased at the expense of patient wellbeing.

Texas provides another example of how Correct Care/Wellpath mismanaged a forensic mental health facility using state funds.²⁶³ In its first year of operating the Montgomery County Mental Health Facility, GEO Care (the parent company) was fined \$53,000 for serious violations to its operating contract, including “unauthorized restraint and seclusion of patients, incomplete medical records, failure to show patient consent for medications, and failure to report serious injuries to the state.”²⁶⁴

In Maine, Correct Care operated the Columbia Regional Care Center from 2014–18; in January 2019, newly elected Democratic Governor Janet Mills blocked the renewal of Correct Care’s \$5.4 million contract to run the Bangor Psychiatric Facility.²⁶⁵ Mills ended the contract largely thanks to the objections of a judicial watchdog tasked with overseeing the state’s mental health care system which exposed disturbing abuses at Correct Care’s facility.²⁶⁶ As the head of the Maine Prisoner Advocacy Program observed, “Correct Care Solutions has been under fire from advocates for many years because we have received so many complaints from prisoners about medical treatment.”²⁶⁷ In March 2018, for example, the Maine ACLU sued Correct Care in federal court under the Fourteenth Amendment for its “deliberate indifference” to the medical needs of an eleven-year-old held in juvenile detention.²⁶⁸

Despite Correct Care/Wellpath’s long history of denying patients adequate care, Alaska recently signed a contract giving the company control over the only state-run psychiatric institution.²⁶⁹ Beginning on July 1, 2019, Alaska began paying Wellpath approximately \$43 million per year to run the

.tcpalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-profits-understaffing-despite-fines-workers-comp/922682001/, archived at <https://perma.cc/7EN2-TED5>.

²⁶² See *State Must Fix Perverse System*, *supra* note 257.

²⁶³ See Graziani & Cole, *Incorrect Care*, *supra* note 17, at 6–7.

²⁶⁴ See *id.* at 7.

²⁶⁵ See Charles Eichacker, *Tennessee Company Didn’t Sign Contract to Run Bangor Psychiatric Facility at Mills’ Request*, BANGOR DAILY NEWS (Jan. 7, 2019), <https://bangordailynews.com/2019/01/07/news/bangor/at-mills-request-firm-lepage-recruited-to-run-bangor-psychiatric-facility-didnt-sign-contract/>, archived at <https://perma.cc/A7FH-RJVT>.

²⁶⁶ See *id.*

²⁶⁷ See Jake Bleiberg, *Youth Prison Watchdog Calls for Audit of Medical Contractor*, WGME (May 28, 2018), <https://wgme.com/news/local/youth-prison-watchdog-calls-for-audit-of-medical-contractor-05-28-2018>, archived at <https://perma.cc/6AP5-QWC9>.

²⁶⁸ See Amanda Curcio, *New Provider of Medical Services at Arkansas Youth Lockups Named in Past Lawsuits*, ARK. DEMOCRAT GAZETTE (July 2, 2018), <https://www.arkansasonline.com/news/2018/jul/02/firm-takes-over-youths-jail-care-201807/>, archived at <https://perma.cc/5KVJ-FFYR>. See also *Sadiya Ali v. Long Creek Development Center*, Complaint and Demand for Jury Trial, No. 2:18-cv-00109-JAW, (D. Me. Mar. 14, 2018).

²⁶⁹ See Daniella Rivera, *State Paying Contractor One Million a Month to Avoid ‘Catastrophic’ API Closure*, KTVA (Feb. 14, 2019), <https://www.ktva.com/story/39967577/state-paying-private-contractor-dollar1-million-monthly-to-avoid-catastrophic-closure-of-api>, archived at <https://perma.cc/TP68-L9U9>.

state hospital.²⁷⁰ Some Alaska state legislators have raised concerns that a for-profit company like Wellpath will “profitize [sic] people[] who have mental illness, and desperately need help and are being forced into an institution where a company is going to be making profits, and incentivized to be making profits off treating these individuals.”²⁷¹ These legislators fear that neither the state nor its citizens’ best interests will be served by hiring a health-care company that stands to profit off of Alaska residents with severe mental illnesses.²⁷²

Mental health experts have discouraged privatization of forensic psychiatric treatment, given the persistent understaffing and overall poor quality of care.²⁷³ While public forensic hospitals sometimes also provide poor care, they are at least generally subject to stronger oversight.²⁷⁴ The privatized, punitive approach that for-profit corrections companies bring to forensic mental health treatment has had disastrous consequences.²⁷⁵

E. For-Profit Diversion Programs

Diversion and probation can be a critical alternative to incarceration for misdemeanor defendants. First gaining popularity in the 1970s, diversion programs have made a resurgence as states search for alternatives to prison time and have begun reducing various nonviolent felonies to misdemeanors.²⁷⁶ In lieu of jail or prison time, diversion programs send defendants to treatment that addresses the root causes of their conduct, such as substance abuse or mental illness.²⁷⁷ Successfully completing the diversion program permits people to ultimately avoid conviction.²⁷⁸ However, for-profit corrections companies have undermined these programs’ anti-carceral promise by operating diversion programs for profit that extract wealth from people caught in the criminal legal system—and sometimes incarcerate people who are unable to pay their criminal legal debt.

Corrective Solutions is a for-profit diversion company operating in seventeen states and 140 districts nationwide.²⁷⁹ Many district attorney’s offices

²⁷⁰ See *id.*

²⁷¹ See Baird, *supra* note 250.

²⁷² See Rivera, *Catastrophic API Closure*, *supra* note 272.

²⁷³ See Graziani, *A State Mental Health System in Crisis*, *supra* note 236, at 5–6.

²⁷⁴ See *id.* at 5–6, 9–10.

²⁷⁵ See CAROLINE ISAACS, GRASSROOTS LEADERSHIP, THE TREATMENT-INDUSTRIAL COMPLEX: HOW FOR-PROFIT PRISON CORPORATIONS ARE UNDERMINING EFFORTS TO TREAT AND REHABILITATE PEOPLE FOR CORPORATE GAIN 17 (Nov. 2014), https://grassrootsleadership.org/sites/default/files/reports/TIC_report_online.pdf, archived at <https://perma.cc/WYU2-LJXY>.

²⁷⁶ See Lee Romney, *Diversion Programs Are Failing Those Who Need Help the Most*, REVEAL NEWS (May 31, 2017), <https://www.revealnews.org/article/private-diversion-programs-are-failing-those-who-need-help-the-most/>, archived at <https://perma.cc/7M8C-ZAKE>.

²⁷⁷ See *id.*

²⁷⁸ See *id.*

²⁷⁹ Prosecutors in approximately twenty-two states use Corrective Solutions and BounceBack, another for-profit diversion program. See Rebecca Burns, *Diversion Programs Say They Offer a Path Away from Court, but Critics Say the Tolls Are Hefty*, PROPUBLICA ILL.

divert complaints of bounced checks to Corrective Solutions, which then pressures defendants into paying for the company's "voluntary" programs.²⁸⁰ For example, the company charges defendants who write bad checks \$175 for a "financial accountability" class.²⁸¹ Corrective Solutions' primary focus is extracting money from probationers, not rehabilitation or community services.²⁸² As a report by the Center for Investigative Reporting revealed, the Corrective Solutions diversion programs layered on "extra fees for drug tests, class rescheduling, payment plans, late payments, underpayments and even overpayments," all extorted from people with so little wealth that their checks bounced.²⁸³

There is little to no oversight of such diversion programs by the prosecutors and courts that send them criminal justice defendants.²⁸⁴ Corrective Solutions and similar companies may themselves send out letters insinuating that unless defendants—who have not yet been sentenced—pay for and take their courses, they could end up in jail.²⁸⁵ Prosecutors allow debt-collection companies to send these letters on local district attorney's office letterhead, knowing the company will try to collect both the check and high fees, "some of which go[] back to the district attorney's offices."²⁸⁶ The company routinely fails to assess the defendants directed to its programs for ability to pay, though it has promised to do so in several jurisdictions.²⁸⁷ Instead, Corrective Solutions just threatens indigent defendants to pay or go to jail.²⁸⁸ Despite Corrective Solutions' claims,²⁸⁹ it provides little proof that participation in its programs reduces recidivism.²⁹⁰

Simply enrolling in a Corrective Solutions diversion program costs probationers money that they often do not have.²⁹¹ With enrollment fees ranging

(Nov. 13, 2018), <https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions>, archived at <https://perma.cc/9YT7-EBP8>; see also Denise Grollmus, *Corrective Solutions Will Make You Pay*, CITY PAGES (Jan. 23, 2013), <http://www.citypages.com/news/corrective-solutions-will-make-you-pay-6765186>, archived at <https://perma.cc/J9E4-KM6V>; Romney, *supra* note 276.

²⁸⁰ See Grollmus, *supra* note 279.

²⁸¹ See *id.*

²⁸² See Romney, *supra* note 276.

²⁸³ See *id.*

²⁸⁴ See *id.*

²⁸⁵ See Jessica Silver-Greenberg, *In Prosecutors, Debt Collectors Find a Partner*, N.Y. TIMES (Sept. 15, 2012), <http://www.nytimes.com/2012/09/16/business/in-prosecutors-debt-collectors-find-a-partner.html>, archived at <https://perma.cc/6P34-ZZH4>.

²⁸⁶ See *id.*

²⁸⁷ See Kimberly King, *News 13 Investigates: Questions Raised About For-Profit Company Running Indigent Fund*, NEWS 13 WLOS (Oct. 11, 2016), <https://wlos.com/news/local/news-13-investigates-questions-raised-about-for-profit-company-running-indigent-fund>, archived at <https://perma.cc/K333-3RTY>.

²⁸⁸ See *id.*

²⁸⁹ See *Diversion/Deferred Prosecution Programs*, CORRECTIVE SOLUTIONS, <http://correctivesolutions.org/diversion-programs>, archived at <https://perma.cc/J2HW-NJDE>.

²⁹⁰ See Romney, *supra* note 276.

²⁹¹ See Burns, *supra* note 279.

from \$200 to \$500 just to enter diversion,²⁹² these types of entry barriers already put a large number of misdemeanor defendants, who are largely poor or working class,²⁹³ at a disadvantage. Such diversion programs privilege wealthier probationers, who receive diversion and a clean record, over more financially distressed ones, who must accept a conviction and often jail time.²⁹⁴

Defendants who can scrape together the money to pay for a diversion program may then face a long series of costly fees. Corrective Solutions requires people sentenced to probation to pay a multitude of fees and to pay for classes related to their criminal charges.²⁹⁵ Prosecutors sometimes also add conditions like community service or drug or alcohol testing, all of which Corrective Solutions provides for a price.²⁹⁶ The collected money is typically split between the diversion program and the prosecutor's office, with the bulk of the fees going to the company.²⁹⁷ People must pay their criminal legal debt in full before their misdemeanor can be expunged from their record.²⁹⁸

If a defendant agrees to participate by paying into the program, then they must sign an agreement that usually includes a guilty plea.²⁹⁹ If the defendant then defaults at a later time because they are unable to continue to pay the required fees, the waiver of their right to trial still stands.³⁰⁰ These conditional guilty pleas require the impoverished defendant to go to jail, simply because they cannot afford the price.³⁰¹

In Maryland, for example, state prosecutors allowed private companies like Corrective Solutions to issue official threats of prosecution, using prosecutors' official letterhead.³⁰² Corrective Solutions, among other diversion programs, was permitted to make such allegations even when prosecutors had not meaningfully reviewed the claim.³⁰³ The letters told defendants they could avoid prosecution for charges such as "bad check passing" by paying

²⁹² See Kimberly King, *Corrective Solutions: News 13 Investigation Leads to Program Termination*, NEWS 13 WLOS (Sept. 5, 2017), <https://wlos.com/news/local/buncombe-county-to-end-use-of-crime-diversion-program-corrective-solutions>, archived at <https://perma.cc/K8L4-LR2E>.

²⁹³ See Burns, *supra* note 279.

²⁹⁴ See *id.*

²⁹⁵ See *id.*

²⁹⁶ See *id.*

²⁹⁷ See *id.*

²⁹⁸ See King, *Corrective Solutions*, *supra* note 292.

²⁹⁹ See Roman Gressier, *Who Profits from Pay-for-Treatment Diversion*, THE CRIME REP. (Mar. 11, 2019), <https://thecrimereport.org/2019/03/11/who-profits-from-pay-for-treatment-diversion-programs>, archived at <https://perma.cc/4YQW-T33A>.

³⁰⁰ See *id.*

³⁰¹ See *id.*

³⁰² See *ACLU Questions State's Attorneys About Authorizing Private Companies to Threaten Prosecution for Profit*, ACLU MD. (Jan. 14, 2013), <https://www.aclu-md.org/en/press-releases/aclu-questions-states-attorneys-about-authorizing-private-companies-threaten>, archived at <https://perma.cc/547M-2KN9>.

³⁰³ See *id.*

fees to attend the company's "financial accountability" classes.³⁰⁴ For their part, the prosecutor's office received a small part of the fees, though the diversion programs collected the majority of the money.³⁰⁵

Companies like Corrective Solutions provide diversion programs for a variety of other charges, including trespassing, theft, driving under the influence (DUI), drug and alcohol offenses, and domestic violence.³⁰⁶ Advocates and experts have raised concerns that allowing private, for-profit companies to run these diversion programs results in the possibility of prosecution for profit.³⁰⁷

These abuses are made possible by a loophole in the Fair Debt Collection Practices Act (FDCPA), which bars collection agencies from threatening jail time and deceiving consumers.³⁰⁸ The Fair Debt Collection Practices Act was passed to eliminate abusive, deceptive, and unfair debt collection practices committed by third-party debt collectors.³⁰⁹ But Congress carved out an exception for state officials and collectors of state and local debt, believing they had less incentive to use unscrupulous tactics.³¹⁰

In reality, this loophole provides legal cover for abusive practices committed by collection agencies working on behalf of law enforcement.³¹¹ In other words, a third-party, private debt collector such as Corrective Solutions can ignore the mandates of the FDCPA simply because it intermittently collects debts on behalf of a state entity.³¹² Therefore, collection agencies such as Corrective Solutions, BounceBack, American Corrective Group, and Check Diversion Program can send out legal notices on local district attorney letterhead, threatening people with jail time for non-payment of their debts, all while collecting approximately \$200 in fines per person.³¹³ Moreover, district attorneys are helping these companies collect their fines.³¹⁴

Many diversion companies split the collected administrative fees with district attorneys to make themselves a more valuable partner.³¹⁵ This arrangement can provide some serious revenue to prosecutors. Los Angeles

³⁰⁴ See *id.*

³⁰⁵ See *id.*

³⁰⁶ See Burns, *supra* note 279.

³⁰⁷ See *id.*

³⁰⁸ See Grollmus, *supra* note 279.

³⁰⁹ 15 U.S.C. § 1692 (2012).

³¹⁰ 15 U.S.C. § 1692a(6)(C) (2012).

³¹¹ See Mosi Secret, *District Attorneys Can Keep on Cashing In on Check Fees*, PROPUBLICA (Apr. 7, 2009), <https://www.propublica.org/article/district-attorneys-can-keep-cashing-in-on-debt-collection-fees-0407>, archived at <https://perma.cc/PB7B-EGGN>.

³¹² See *Brief Amici Curiae of 5 Consumer Law Professors in Support of Respondents, Sheriff v. Gillie*, 136 S. Ct. 1594 (2016) (No. 15-338), at 7, https://www.scotusblog.com/wp-content/uploads/2016/03/15-338_amicus_resp_ConsumerLawProfessors.authcheckdam.pdf, archived at <https://perma.cc/ZY7Q-Y2GG>.

³¹³ See Grollmus, *supra* note 279.

³¹⁴ See *id.*

³¹⁵ See Secret, *supra* note 311.

County, for example, received two million dollars in 2008.³¹⁶ Likewise, in Maricopa County, Arizona, the prosecutor's office received fifteen million dollars over ten years from its marijuana diversion program, operated jointly with a for-profit diversion company.³¹⁷ District attorney's offices may find these private diversion programs too remunerative to give up.³¹⁸ Kickbacks to prosecutors raise a serious conflict of interest when criminal misdemeanor investigations are outsourced to for-profit diversion companies that have financial stakes in the ultimate outcome.³¹⁹ Equally disturbing, this system allows unaccountable companies to administer critical aspects of the criminal legal system.³²⁰

When private debt collectors use a law enforcement agency's letterhead, they create a false impression about who the sender of the letter is, potentially violating the FDCPA.³²¹ The FDCPA has been interpreted to forbid a "range of implications" beyond the direct representation that the debt collector is a government agent.³²² Similarly, the FDCPA should be construed to prohibit the misleading impression created by a private collection company's use of a district attorney's letterhead on an official notice sent to the debtor. Private third-party debt collectors should not be allowed to pass as exempt state collectors.

As a whole, for-profit diversion and treatment programs exist largely on revenue from fines and fees imposed on defendants by the criminal legal system.³²³ These programs are a "net widener of mass incarceration, and a pipeline to debtors' prison that most adversely affects poor communities of color."³²⁴ For-profit diversion programs thus primarily benefit their holding companies and local prosecutors, undermining the goal of ending mass incarceration.

F. *Sex Offender Post-Release Treatment and Civil Commitment*

The for-profit corrections industry has also begun expanding its reach into civil commitment facilities and post-offense treatment for sex offenders. People convicted of sex offenses are sometimes subject to nearly indefinite detention: even when they are not technically serving prison sentences, they

³¹⁶ See Drew Griffin & David Fitzpatrick, *Bounced-Check Collection Deals Draw Fire*, CNN (Mar. 2, 2009), <http://www.cnn.com/2009/US/03/02/siu.bad.checks/index.html>, archived at <https://perma.cc/29HA-VLTT>.

³¹⁷ See Gressier, *supra* note 299.

³¹⁸ See *id.*

³¹⁹ See ACLU Md., *supra* note 302.

³²⁰ See Burns, *supra* note 279.

³²¹ See 15 U.S.C. §1692e(1) (2012); *Gammon v. GC Services*, 27 F.3d 1254, 1257 (7th Cir. 1994).

³²² *Gammon*, 27 F.3d at 1257 ("[T]he FDCPA forbids a range of implications wider than merely the direct representation that the debt collector is or is a part of state or federal government.").

³²³ See Gressier, *supra* note 299.

³²⁴ *Id.*

are still subject to strict control by the criminal legal system. The criminal justice debt imposed on those convicted of sex offenses is another troubling facet of the treatment-industrial complex.

1. *Costs of Civil Registration*

The state generally requires people convicted of sex offenses to register for a public sex-offender registry. Registry requirements can impose a great deal of criminal justice debt on sex offenders. States repeatedly require sex offenders to pay to be listed on the sex offender registry,³²⁵ and failing to register is a criminal offense in itself. Sex offenders may be required to remain on the registry for fifteen years or even for life, depending on the conviction.³²⁶ Caught between accumulating fees, additional fines, and the risk of re-incarceration if they cannot make payments related to sex offender registration, many people become trapped in a vicious cycle of treatment, prison, and criminal justice debt. The treatment-industrial complex is fatally easy to enter, but can be almost impossible to leave.

Individuals convicted of sex offenses frequently must also pay for state-required treatment, polygraphs, and GPS monitoring.³²⁷ For people convicted of Level Three sex offenses, GPS monitoring can be life-long and entail fees to private providers.³²⁸ Moreover, many states do not provide a waiver of the monitoring fee for low-income individuals convicted of sex offenses.³²⁹

Even convictions for minor sex offenses can result in extremely expensive treatment. Seattle, Washington requires a \$900, ten-week course on toxic masculinity for men convicted of soliciting prostitution.³³⁰ The class, “Stopping Sexual Exploitation,” is run by the Organization for Prostitution Survivors, a Seattle-based non-profit.³³¹ The ten-week course tries to teach men about “the . . . roots of prostitution: patriarchy, male privilege, and the

³²⁵ See Wright & Logan, *supra* note 99, at 1191.

³²⁶ See Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1087 (2012).

³²⁷ See *Another Reason Why Sex Offender Registration Fees are a Bad Idea*, FLA. ACTION COMM. (Jan. 17, 2018), <https://floridaactioncommittee.org/another-reason-why-sex-offender-registration-fees-are-a-bad-idea/>, archived at <https://perma.cc/HZJ5-Z7L6>.

³²⁸ See Rhonda Cook, *Sex Offender Argues Mandatory Ankle Monitors are Unconstitutional*, ATLANTA J.-CONST. (Dec. 5, 2016), <https://www.ajc.com/news/local/sex-offender-argues-mandatory-ankle-monitors-are-unconstitutional/SaXCToWMJ3wgmFm2mvMuzN/>, archived at <https://perma.cc/L83C-TDBP>. The Georgia Supreme Court recently held that lifetime ankle monitoring for sex offenders is unconstitutional. See Bill Rankin, *Court Strikes Down Lifetime Electronic Monitoring of Sex Offenders*, ATLANTA J.-CONST. (Mar. 4, 2019), <https://www.ajc.com/news/local/court-strikes-down-lifetime-electronic-monitoring-sex-offenders/FiuHbWK5Nf0pOTcgqD8IMO/>, archived at <https://perma.cc/J5QF-3NSK>.

³²⁹ See *id.*

³³⁰ See Elizabeth Nolan Brown, *The Truth About the Biggest U.S. Sex Trafficking Story of the Year*, REASON, (Oct. 5, 2017), <https://reason.com/2016/09/09/the-truth-about-us-sex-trafficking/>, archived at <https://perma.cc/REN3-HE9P>.

³³¹ See ORG. FOR PROSTITUTION SURVIVORS, <http://seattleops.org/what-we-do/mens-accountability/>, archived at <https://perma.cc/25ZS-W8C9>.

barriers to healthy relationships.”³³² Similar men’s accountability classes, required by the courts, are used in other Washington State cities such as Tacoma and Everett.³³³

Colorado requires people convicted of sex offenses to pay a whole host of fees and fines. First, everyone who is convicted of a sex offense must pay for a psychosexual evaluation, which costs approximately \$1,000 to \$2,000.³³⁴ Next, people required to undergo treatment for committing sex offenses typically must attend five treatment sessions per month.³³⁵ Four of the treatments consist of group therapy, costing \$50 a session, and one is individual therapy, at \$75 a session.³³⁶ Therefore, just attending treatment will cost a defendant \$275 per month.³³⁷

Treatment plans can go on for months or even years, depending on the severity of the sex offense.³³⁸ Nationally, the average sex offender treatment program lasts about eighteen months, according to Elizabeth Letourneau, the president of the Association for the Treatment of Sexual Abusers.³³⁹ Although the Colorado Department of Probation does provide treatment financial assistance to some individuals convicted of sex offenses, every person must sign a contract agreeing to pay the costs in full.³⁴⁰ If they default on the payments, the individuals are not just in violation of the treatment contract but have violated their probation as well.³⁴¹

Treatment is just the beginning of fees for individuals convicted of sex offenses. In Colorado, some individuals also must pay a private “tracker,” usually an off-duty police officer, who ensures that the person is where she claims she is going when she leaves the house.³⁴² These private services charge \$15 to \$30 an hour, paid by the defendant.³⁴³ In addition, some individuals convicted of sex offenses in Colorado must pay for two or more polygraphs per year, which cost approximately \$250 per test.³⁴⁴ Defendants considered sexually violent must register every quarter.³⁴⁵ Colorado also im-

³³² See Brooke Jarvis, *Can We “Cure” the Men Who Pay For Sex?*, GQ (Feb. 2, 2017), <https://www.gq.com/story/cure-men-who-pay-for-sex-end-prostitution>, archived at <https://perma.cc/GJ3P-NUBM>.

³³³ See Sara Lerner, *Seattle “John School” Educates Men Who Pay for Sex*, KUOW (June 4, 2013), <http://archive.kuow.org/post/seattle-john-school-educates-men-who-pay-sex>, archived at <https://perma.cc/4647-B3UX>.

³³⁴ See FREAKONOMICS, *Making Sex Offenders Pay—and Pay and Pay and Pay (Ep. 208): Full Transcript* (June 10, 2015), <http://freakonomics.com/2015/06/10/making-sex-offenders-pay-and-pay-and-pay-and-pay-full-transcript/>, archived at <https://perma.cc/T6Z8-UBUH>.

³³⁵ See *id.*

³³⁶ See *id.*

³³⁷ See *id.*

³³⁸ See *id.*

³³⁹ See *id.*

³⁴⁰ See FREAKONOMICS, *Making Sex Offenders Pay*, *supra* note 334.

³⁴¹ See *id.*

³⁴² See *id.*

³⁴³ See *id.*

³⁴⁴ See *id.* Wisconsin and Minnesota have similar requirements. See Wis. Stat. § 51.375(2)(a) (2019); Minn. Stat. Ann. §609.3456(a)(2019).

³⁴⁵ See Colo. Rev. Stat. § 16-22-108(1)(d)(I) (2019).

poses a general surcharge ranging in cost from \$500 to \$3,000, depending on the class of felony.³⁴⁶ Sometimes, people convicted of sex offenses are also required to pay for room and board at a group home where they are ordered to live.³⁴⁷ In total, a Colorado resident convicted of a sex offense will likely pay approximately \$10,000 the first year they are charged and convicted, according to one treatment provider's estimate.³⁴⁸

In 2018, Kentucky proposed a bill requiring all individuals convicted of sex offenses to pay for the cost of keeping a sex offender registry, roughly \$100 per person per year.³⁴⁹ Anyone failing to pay would be fined up to \$250 for the first offense, and for the second offense, would be charged with a misdemeanor.³⁵⁰ Illinois has a similar fee structure, charging a \$100 initial fee and a \$100 annual fee, and West Virginia charges \$40 annually.³⁵¹ Residents of Jackson County, Indiana who have been convicted of sex offenses must pay \$50 annually and a \$5 fee every time they change address.³⁵² Georgia charges \$250 annually, a substantial expense for those living at or below the poverty line.³⁵³

In Wyoming, someone convicted of a sex offense must pay \$150 to initially register for the sex-offender registry and, if they leave town, pay \$31.25 to "de-register."³⁵⁴ Each time a defendant enters a new town, she must pay the \$31.25 to re-register.³⁵⁵ Individuals must also report every "life change," such as new cars, new tattoos, or new employers, and pay to have each of these changes recorded.³⁵⁶ If people convicted of sex offenses fail to pay registration fees, they can face a misdemeanor charge punishable by up to \$750 and six months' jail time.³⁵⁷ Failing to report changes within three days is a felony, punishable by up to \$1,000 and five years in prison.³⁵⁸

Likewise, Louisiana imposes a complex set of requirements and fees on every newly released individual convicted of a sex offense, which can total up to \$1,300 in the first thirty days after release from prison.³⁵⁹ Along with a

³⁴⁶ See Colo. Rev. Stat. § 18-21-103(1) (2019).

³⁴⁷ See Philip Cherner, *Felony Sex Offender Sentencing*, 33 COLO. LAW. 11, 16 (2004).

³⁴⁸ See FREAKONOMICS, *Making Sex Offenders Pay*, *supra* note 334.

³⁴⁹ See James Mayse, *Bill Would Create Annual Fee for State's Sex Offender Registry*, KY. NEW ERA (Feb. 3, 2018), http://www.kentuckynewera.com/news/ap/article_f8e9bc4e-0893-11e8-9a93-cf1483aaf333.html, *archived at* <https://perma.cc/CCP8-F2EA>.

³⁵⁰ See *id.*

³⁵¹ See *id.*

³⁵² See Maira Ansari, *Sex Offenders Will Soon Have to Pay to Be on Registry*, WAVE 3 NEWS (Apr. 23, 2019), <http://www.wave3.com/2019/04/23/sex-offenders-will-soon-have-pay-be-registry/>, *archived at* <https://perma.cc/PK4K-4Z6M>.

³⁵³ See Justin DiCharia, *The Plight of the Unpopular Poor: Sex Offender Registration and Notification Costs to Indigent Offenders in Louisiana*, 79 LA. L. REV. 519, 533 (2018).

³⁵⁴ See Emily Mieux, *Sex Offenders Now Pay the Cost of Supervision*, JACKSON HOLE NEWS & GUIDE (July 26, 2017), https://www.jhnewsandguide.com/news/cops_courts/article_67079980-6c69-5cbc-ad2a-5604c5f955d3.html, *archived at* <https://perma.cc/5QGK-8SRS>.

³⁵⁵ See *id.*

³⁵⁶ See *id.*

³⁵⁷ See *id.*

³⁵⁸ See *id.*

³⁵⁹ See DiCharia, *supra* note 353, at 531.

\$60 initial registration fee, defendants must obtain a new driver's license (\$32.25 to \$38.25) and state identification card (\$18 to \$24) within the first three days of their release.³⁶⁰ Louisiana's short timeline, complicated list of requirements, and associated fees make compliance extremely difficult for those individuals who are homeless, indigent, or near the poverty line.³⁶¹

In addition, individuals convicted of sex offenses in Louisiana must notify every residence within the legally required radius around their home by post; in urban areas, this can cost up to \$1,000.³⁶² They must also pay for two days of newspaper advertisements delineating their new address, which typically costs about \$200.³⁶³ Failure to comply with either the registration or notification requirements can result in prosecution for failure to properly register.³⁶⁴

All states have laws requiring sex offenders to update their registration after a change of residence.³⁶⁵ Failure to register in a timely manner can carry steep penalties.³⁶⁶ Under federal law, an individual convicted of a sex offense is supposed to register a change of address before a move.³⁶⁷ But people convicted of sex offenses often have great difficulty finding legal housing and thus experience severe housing instability.³⁶⁸ This is made worse by the restrictive housing laws some states impose on people on the registry. In Georgia, for example, a registered sex offender may not "reside, be employed, or linger within 1000 feet of a school; child care facility; church; public or private park, recreation facility or playground; skating rink; neighborhood center; gymnasium; community swimming pool; or school bus stop."³⁶⁹ Any violation of these restrictions is a felony punishable by ten to thirty years in prison.³⁷⁰ These types of restrictions "effectively bar registered sex offenders from residing in some high-density areas," such as large towns or cities.³⁷¹ When people convicted of sex offenses are evicted, they may be in violation of federal law unless they manage to register a change of address before an eviction occurs.³⁷² Many states subject homeless

³⁶⁰ See *id.*

³⁶¹ See *id.* at 545.

³⁶² See *id.* at 532.

³⁶³ See *id.*

³⁶⁴ See *id.*

³⁶⁵ See Catherine Wagner, Note, *The Good Left Undone: How to Stop Sex Offender Laws from Causing Unnecessary Harm at the Expense of Effectiveness*, 38 AM. J. CRIM. L. 263, 281 (2011).

³⁶⁶ See *id.*

³⁶⁷ See 34 U.S.C.A. § 20913 (West 2017); see also OFF. OF THE ATT'Y GEN., U.S. DEP'T OF JUST., THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION (2007), at 30.

³⁶⁸ See Wagner, *supra* note 365, at 286.

³⁶⁹ Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531, 531 (2007).

³⁷⁰ See *id.*

³⁷¹ Abigail E. Horn, Note, *Wrongful Collateral Consequences*, 87 GEO. WASH. L. REV. 315, 333 (2019).

³⁷² See Wagner, *supra* note 365, at 282.

people on the registry to even more stringent reporting requirements, increasing the attendant risk of prosecution and incarceration.³⁷³ Some states also have extremely rigid vacation reporting requirements, mandating that sex offenders re-register after they have been gone from their home state for as few as five days.³⁷⁴ Each registration or re-registration costs money.

In addition to registration and notification fees, other states require sex offenders to pay to submit DNA samples to state and federal databases.³⁷⁵ For example, Arkansas charges \$250 for DNA processing, in addition to the \$250 initial registration fee.³⁷⁶ On top of this, people who become eligible to remove their name from the sex offender registry may have to pay to do so. Utah, for example, imposes a fee to apply for the certificate permitting the removal of one's name from the registry, and then a separate fee to actually issue the certificate.³⁷⁷

There is little reliable empirical evidence supporting claims that state sex offender registration laws are effective at reducing recidivism.³⁷⁸ In fact, the emerging consensus among experts is that registration laws may ultimately increase recidivism by "exacerbating the risk factors" of those subject to such constant regulation.³⁷⁹ All of these fees, either piecemeal or in total, can make it impossible for people who have been convicted of sex offenses and served their sentences to support themselves and stay out of jail or prison.³⁸⁰ To successfully rehabilitate people who have been convicted of sex offenses, states should try to limit the type and number of fees imposed on sex offenders after their release.

2. *Post-Release Civil Commitment*

Approximately twenty states have civil commitment laws and facilities.³⁸¹ People convicted of sex offenses in those states can sometimes be civilly confined even after completing their prison sentences, sometimes in-

³⁷³ See Elizabeth Esser-Stuart, *The Irons Are Always in the Background: The Unconstitutionality of Sex Offender Post-Release Laws as Applied to the Homeless*, 96 TEX. L. REV. 811, 816 (2018).

³⁷⁴ See Wagner, *supra* note 365, at 282.

³⁷⁵ See David A. Makin, Andrea M. Walker, & Christopher M. Campbell, *Paying to Be Punished: A Statutory Analysis of Sex Offender Registration Fees*, 37 CRIM. JUST. ETHICS 215, 227 (2018).

³⁷⁶ See *id.*

³⁷⁷ See Petition to Remove Name from Sex Offender and Kidnap Offender Registry (May 31, 2019), UTAH COURTS, https://www.utcourts.gov/howto/criminallaw/petition_registry_removal.html, archived at <https://perma.cc/455G-CDPT>.

³⁷⁸ See J. J. Prescott, *Portmanteau Ascendant: Post-Release Regulations and Sex Offender Recidivism*, 48 CONN. L. REV. 1035, 1039–40 (2016).

³⁷⁹ *Id.* at 1040.

³⁸⁰ See DiCharia, *supra* note 353, at 520, 522.

³⁸¹ See *A Profile of Civil Commitment Around the Country*, N.Y. TIMES (Mar. 3, 2007), https://archive.nytimes.com/www.nytimes.com/imagepages/2007/03/03/us/20070304_CIVIL_GRAPHIC.html?action=click&contentCollection=U.S.&module=RelatedCoverage&pgtype=article®ion=EndOfArticle, archived at <https://perma.cc/69SH-Q2GQ>.

definitely, if they are deemed likely to recidivate.³⁸² Although it is a form of long-term incarceration, the government classifies civil commitment as a “therapeutic,” rather than punitive, intervention.³⁸³ People confined in civil commitment tend to have indefinite sentences until state officials decide they have been rehabilitated.³⁸⁴ In theory, civil commitment aims to ensure sex offenders have access to treatment and are prepared for release.³⁸⁵

Civil commitment can cost the state almost four times more than confining someone in state prison.³⁸⁶ Accordingly, states have begun shifting the costs of detention onto the very people who are detained. Texas and Florida, for example, confiscate part of civilly committed people’s incomes.³⁸⁷ States have also begun using private corrections companies to help save money on the operation of civil commitment facilities and the provision of sex offender treatment.

Private, for-profit prison companies have taken over publicly funded facilities that lie “somewhere at the intersection of incarceration and therapy.”³⁸⁸ In Texas, where individuals sentenced to civil commitment must shoulder some of the costs, their money is given directly to the privately run detention centers.³⁸⁹ For example, in 2015, Correct Care Solutions was awarded the management of the Texas-based Bill Clayton Detention Facility, which houses approximately 200 people civilly committed for sex offenses who have already served their prison sentences.³⁹⁰ The state gave Correct Care a \$24 million contract to run the facility.³⁹¹ Since the facility’s opening, only five men have been released, and four of them were instead sent to hospitals directly preceding their death.³⁹² Although the purported function of the Civil Commitment Center is to rehabilitate individuals convicted of sex offenses, the residents receive few services in what is a for-profit prison in all but name, exiled to a remote location on the state’s outskirts, far away from most of their families.³⁹³

Like other facilities run by Correct Care, staff turnover is high and medical care is frequently delayed.³⁹⁴ Individual counseling sessions (re-

³⁸² See Fuchs, *supra* note 237.

³⁸³ Toshio Meronek & Erica R. Meiners, *Beyond the Carceral Logic of Civil Commitment*, THE NEXT SYSTEM (Nov. 10, 2017), <https://thenextsystem.org/learn/stories/beyond-carceral-logic-civil-commitment>, archived at <https://perma.cc/T8GX-HA4Q>.

³⁸⁴ See *id.* (Introduction).

³⁸⁵ See *id.* (Rushville).

³⁸⁶ See *id.* (Rushville).

³⁸⁷ See TEX. HEALTH AND SAFETY CODE ANN. art 11, § 841.047 (West 2017); FLA. STAT. § 394.928 (1999).

³⁸⁸ See Michael Barajas, *A Prison by Any Other Name*, TEX. OBSERVER (Feb. 12, 2018), <https://www.texasobserver.org/a-prison-by-any-other-name/>, archived at <https://perma.cc/SFR2-NRKK>.

³⁸⁹ See *id.*

³⁹⁰ See Graziani & Cole, *supra* note 17, at 10.

³⁹¹ See Barajas, *supra* note 388.

³⁹² See *id.*

³⁹³ See *id.*

³⁹⁴ See *id.*

quired by the state) have been reduced from every two weeks to once every three months.³⁹⁵ The constant staff rotation means that it is very difficult to “graduate” from the program; the patient must start over from scratch with each new therapist.³⁹⁶ The facility does everything it can to extract extra cash from the residents. For example, any packages sent to residents must contain a receipt, so the facility may charge the sender one-third of its worth.³⁹⁷ Many residents must pay part of the cost of their ankle monitors, despite being held in a secure facility.³⁹⁸

Florida and South Carolina also have civil commitment centers run by Correct Care.³⁹⁹ Florida’s civil commitment center has been plagued by many of the same problems as Texas, with insufficient staffing, undertrained workers, and minimal treatment.⁴⁰⁰ Only about 15% of the residents complete the therapy treatment by the time they are released, obviating much of the point of the civil commitment, which is to provide therapy to prevent recidivism.⁴⁰¹ Florida is the only state to have a private, for-profit company entirely in charge of their Involuntary Civil Commitment for Sexually Violent Predators’ Treatment and Care Act.⁴⁰² The full contract between Florida and Correct Care, which ran until 2014, paid the company a total of \$272 million.⁴⁰³

Private, for-profit companies do not have a good track record in running civil commitment centers.⁴⁰⁴ In 2004, the safety director of a Florida civil commitment center managed by Liberty Healthcare Company erased video evidence after a resident jumped off the roof.⁴⁰⁵ The entire center was dramatically mismanaged, with high staff turnover, abusive behavior from staff and residents, crumbling facilities, and little rehabilitative treatment.⁴⁰⁶ All of this created a “cesspool of despair and depression and drug abuse.”⁴⁰⁷

³⁹⁵ See *Weekend Read: They Served Their Prison Sentences, But They’re Still Locked Up*, SOUTHERN POVERTY LAW CENTER (Feb. 16, 2018), <https://www.splcenter.org/news/2018/02/16/weekend-read-they-served-their-prison-sentences-theyre-still-locked>, archived at <https://perma.cc/8E6G-SZ6P>.

³⁹⁶ See Barajas, *supra* note 388.

³⁹⁷ See *id.*

³⁹⁸ See *id.*

³⁹⁹ See *id.*

⁴⁰⁰ See *Violent Sexual Predators Held Indefinitely - For a Profit*, NBC2, (June 9, 2015), <https://www.nbc-2.com/story/29230766/violent-sexual-predators-held-indefinitely-for-a-profit>, archived at <https://perma.cc/8XH9-Q45L>.

⁴⁰¹ See *id.*

⁴⁰² See *id.*

⁴⁰³ See *id.*

⁴⁰⁴ See Barajas, *supra* note 388.

⁴⁰⁵ See David Sherfinski, *Virginia Considers Two Jail Firms with Sketchy Pasts*, WASH. TIMES (Apr. 30, 2012), <https://www.washingtontimes.com/news/2012/apr/30/virginia-considers-2-jail-firms-with-sketchy-pasts/>, archived at <https://perma.cc/JK7Z-LUVR>.

⁴⁰⁶ See Abby Goodnough and Monica Davey, *A Record of Failure at Center for Sex Offenders*, N.Y. TIMES (Mar. 5, 2007), <https://www.nytimes.com/2007/03/05/us/05civil.html>, archived at <https://perma.cc/884W-G58A>.

⁴⁰⁷ See *id.*

Despite the myriad problems it had in Florida, Liberty Healthcare Company currently runs an Illinois civil commitment center called Rushville.⁴⁰⁸ As of May 2016, only eighty-three residents out of hundreds had been released from the program.⁴⁰⁹

The for-profit corrections industry also offers a variety of services to civil commitment centers. Massachusetts uses a private company, MHM Correctional Services, to run release evaluations for those incarcerated in its civil commitment center.⁴¹⁰ Although these examiners are supposed to be appointed by the court, there is little oversight or transparency, and most evaluations are done by MHM.⁴¹¹

Like all other aspects of the treatment-industrial complex, criminal justice debt arising from civil commitment is most frequently levied by private corrections companies.⁴¹² The result is to further impoverish those individuals who are most vulnerable, imposing often unpayable amounts on them and their families. This relatively unexplored corner of alternative corrections can no longer be ignored.

II. THE PROFIT MOTIVE: THE CORRECTIONS INDUSTRY, TAXATION & PRIVATE EQUITY

The treatment-industrial complex, and the criminal legal debt it creates, are the result of public policy choices. States imposed fees and fines before the arrival of private corrections companies.⁴¹³ Nonetheless, the astronomical increase of criminal justice debt in alternative corrections is linked to the parallel rise of for-profit prison behemoths. Thus, to fully understand how and why alternative corrections debt has grown, it is important to investigate the financial underpinnings of the companies that foster it.

Throughout the criminal justice system, a handful of privately held companies—most notably GEO Group and CoreCivic—dominate the correctional-services market.⁴¹⁴ These for-profit corrections companies are themselves funded by private-equity firms.⁴¹⁵ There are almost 4,000 compa-

⁴⁰⁸ See Meronek & Meiners, *supra* note 383 (discussing Rushville Treatment and Detention Center).

⁴⁰⁹ See *id.*

⁴¹⁰ See Christian M. Wade, *Sex Offenders Examiners' Oversight Questioned*, THE SALEM NEWS (June 14, 2018), https://www.salemnews.com/news/local_news/sex-offender-examiners-oversight-questioned/article_4b142ae8-8b65-5439-b967-cabbd3951fe8.html, archived at <https://perma.cc/7CPU-AAKJ?type=image> (explaining the role of the private company MHM Correctional Services Inc. in Massachusetts).

⁴¹¹ See *id.*

⁴¹² See Barajas, *supra* note 388.

⁴¹³ See Appleman, *Nickel and Dimed into Incarceration*, *supra* note 14, at 1492–98, 1506–13.

⁴¹⁴ See Tim Requarth, *How Private Companies Are Turning Public Prisons into Big Profits*, THE NATION, (Apr. 30, 2019), <https://www.thenation.com/article/prison-privatization-private-equity-hig/>, archived at <https://perma.cc/8M7U-QCQX>.

⁴¹⁵ See *id.*

nies with a financial stake in the corrections industrial complex.⁴¹⁶ Within the alternative corrections universe, the list includes well-known names like Amazon, Microsoft, and Hewlett-Packard.⁴¹⁷ Many high-profile companies have their fingers in the alternative corrections pie.⁴¹⁸

Some private corrections companies profit off the real estate used in the alternative corrections and treatment-industrial complex, as it is far easier to build and locate halfway houses, substance abuse treatment centers, and other alternative corrections facilities than private prisons and jails.⁴¹⁹ Private corrections companies may also view alternative corrections as a way to maintain earnings if activists succeed in reducing mass incarceration, which may undercut profits from private prisons. Private corrections companies are thus repositioning themselves as providers of “evidence-based” re-entry services.⁴²⁰ The more people that are released from mass incarceration, the more private corrections companies can profit from their alternative corrections programs.

Private equity enables the growth of private corrections companies. HIG Capital, for example, which manages over \$30 billion in assets, has helped consolidate small corrections-industry companies into behemoths that dominate their markets, including alternative corrections.⁴²¹ The role of private equity firms in helping broker “rollups”—i.e., bundling fragmented smaller corrections companies into national corrections behemoths—has transformed the correctional-services industry.⁴²²

A. REIT Structuring: Geo Group and CoreCivic

Wall Street banks finance CoreCivic and GEO Group, the two primary multibillion-dollar private prison companies that dominate the alternative

⁴¹⁶ See *The Prison Industrial Complex: Mapping Private Sector Players*, WORTH RISES 1 (Apr. 2019), <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5cc7c27b9e3a8d00018649c5/1556595324791/The+Prison+Industrial+Complex+-+Mapping+Private+Sector+Players+-+2019.pdf>, archived at <https://perma.cc/39HB-VS3Z>.

⁴¹⁷ See *id.* at 4.

⁴¹⁸ The list of companies includes Amazon, Equivant, Hexagon Safety, Microsoft, Northrop Grumman, Palantir, Tyler Technologies, Berkshire Hathaway, Bob Barker, Hewlett Packard, Ingersoll Rand, Stanley Black & Decker, Vista Outdoors, VF Corp., Keefe/Access Corrections, Citigroup, Securix/JPay, NIC, Global Tel Link/TouchPay, Western Union, WEX, 3M, Dauphin, Corrective Education Co., Houghton Mifflin Harcourt, Milliken & Co., MTC, and Pearson/Certiport. See *id.* at 4–6.

⁴¹⁹ See, e.g., CoreCivic, Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (FORM 10-K), at 14 (Dec. 31, 2016), <https://www.sec.gov/Archives/edgar/data/1070985/000119312517053982/d310578d10k.htm#toc>, archived at <https://perma.cc/VCU9-ZUWK> [hereinafter CoreCivic, Inc., FORM 10-K (2016)] (noting that CoreCivic has three categories of facilities: correctional, detention, and community corrections).

⁴²⁰ See Liliana Segura, *The First Step Act Could Be a Gift to CoreCivic and the Private Prison Industry*, THE INTERCEPT (Dec. 22, 2018), <https://theintercept.com/2018/12/22/first-step-act-corecivic-private-prisons/>, archived at <https://perma.cc/E4UL-4Y8P>.

⁴²¹ See Requarth, *supra* note 414.

⁴²² See *id.*

corrections arena.⁴²³ These multinational banks⁴²⁴ grant loans and extend other financing agreements that are key components in expanding the private alternative corrections industry.⁴²⁵ GEO Group and CoreCivic require debt financing both to fund their daily business and to expand.⁴²⁶ Each of these companies achieve debt financing through a combination of credit, loans, and bonds.⁴²⁷

GEO Group and CoreCivic both have agreements with multiple banks for revolving lines of credit, which allow them to borrow and repay funds at will, up to their credit limit.⁴²⁸ Private corrections companies also enter into term loan agreements, which permit them to borrow a certain amount from a combination of banks, to be repaid according to a determined schedule.⁴²⁹ Finally, banks underwrite the corporate bonds issued by private corrections companies, which are then purchased by private banks and resold on the secondary market.⁴³⁰ The banks receive millions of dollars in interest and fees in return.⁴³¹ This kind of debt financing enables the private corrections industry's continued growth.⁴³²

The for-profit corrections industry relies heavily on debt financing because the corrections companies are structured as real estate investment trusts (REITs).⁴³³ The REIT structure requires the companies to pass on income to investors, limiting available cash and forcing a reliance on borrowing.⁴³⁴ REITs are an investment vehicle created for companies investing in and obtaining revenue from real estate holdings, like hotel chains, and are traded on the stock market.⁴³⁵ To qualify as REITs, private corrections companies contend that renting cells and rooms to the government is similar to

⁴²³ See Shahrzad Habibi et al., *2019 Data Brief: The Wall Street Banks Still Financing Private Prisons*, IN THE PUBLIC INTEREST (Apr. 5, 2019), <http://www.inthepublicinterest.org/wp-content/uploads/Updated-2019-Data-Brief-The-Wall-Street-Banks-Still-Financing-Private-Prisons-FINAL-EMBARGOED-UNTIL-4-8-19-1030am.pdf>, archived at <https://perma.cc/9SWS-8C39>.

⁴²⁴ Banks such as Fifth Third, Citizens, PNC, Pinnacle Bank, First Tennessee Bank, Synovus Bank, and NOUS Bank. See *id.* at 2.

⁴²⁵ See *id.* at 1.

⁴²⁶ See *id.*

⁴²⁷ See *id.*

⁴²⁸ See *id.*

⁴²⁹ See Habibi et al., *supra* note 423, at 3

⁴³⁰ See *id.*

⁴³¹ See *id.*

⁴³² See *id.* at 5.

⁴³³ See *id.* at 2.

⁴³⁴ See *id.*

⁴³⁵ See Matt Stroud, *Why Would a Prison Corporation Restructure as a Real Estate Company?*, FORBES (Jan. 31, 2013), <https://www.forbes.com/sites/mattstroud/2013/01/31/why-would-a-prison-corporation-restructure-as-a-real-estate-company/#214bb67b6caa>, archived at <https://perma.cc/FBK8-TCBL>.

charging tenants rent, thus making the private corrections industry a real estate venture.⁴³⁶

By transforming their companies into entities called Taxable REIT Subsidiaries, the companies can separate the operational aspect of their corrections business from the real estate side of owning and generating income from buildings, such as correctional facilities, re-entry facilities, day-reporting centers, and halfway houses.⁴³⁷ When private prison and alternative corrections companies restructure as REITs, they can take advantage of significant REIT tax benefits.⁴³⁸ REITs generally pay no income tax and must distribute at least 90% of their income as shareholder dividends.⁴³⁹ The dividends can be distributed as a combination of cash and stock.⁴⁴⁰

For example, CoreCivic was subject to a 36% corporate tax rate before its conversion to an REIT in 2013. After the reorganization, it paid an effective tax rate of 3% in the first quarter of 2015.⁴⁴¹ For-profit corrections companies structured as REITs have benefitted tremendously from the 2017 Trump tax law.⁴⁴² The law cut taxes on investments in REITs by 25%, from 39.6% to 29.6%.⁴⁴³

Tax laws also encourage private corrections companies to build and lease their own facilities, rather than manage state or county facilities.⁴⁴⁴ This incentive aligns with the private corrections industry's new interest in halfway houses, substance abuse treatment centers, and other alternative corrections facilities,⁴⁴⁵ which can be developed more easily than private prisons or jails. There is far less regulation and bureaucratic paperwork in building and running a single halfway house or treatment center than in building and managing a jail or prison.⁴⁴⁶

⁴³⁶ See Jamiles Lartey, *Private Prison Investors Set for Giant Windfall from Trump Bill*, GUARDIAN (Dec. 28, 2017), <https://www.theguardian.com/us-news/2017/dec/28/private-prisons-investors-trump-tax-bill>, archived at <https://perma.cc/P4KN-KHFV>.

⁴³⁷ See Stroud, *supra* note 435. REITs are complicated investment vehicles; “at least 95 percent of a REIT’s income ‘must be derived from “passive” financial investments . . . as opposed to “active” income from business activities,’ and ‘at least 75 percent of a REIT’s income must be derived from real estate sources . . .’ according to the IRS. Further, a REIT cannot have over 25 percent of its assets invested in non-qualifying securities or stock of taxable REIT subsidiaries.” *Id.*

⁴³⁸ See Lartey, *supra* note 436.

⁴³⁹ See *id.*

⁴⁴⁰ See *id.*

⁴⁴¹ See LAUREN-BROOKE EISEN, *INSIDE PRIVATE PRISONS: AN AMERICAN DILEMMA IN THE AGE OF MASS INCARCERATION* 132 (2017).

⁴⁴² See Lartey, *supra* note 436.

⁴⁴³ See *id.*

⁴⁴⁴ See Rob Urban & Kristy Westgard, *It’s a Great Time to Be a Prison Landlord, Thanks to the IRS*, BLOOMBERG (Aug. 9, 2018), <https://www.bloomberg.com/news/articles/2018-08-09/private-prison-companies-expand-empires-thanks-to-tax-advantages>, archived at <https://perma.cc/3ZRB-XB88>.

⁴⁴⁵ See, e.g., CoreCivic, Inc., FORM 10-K (2016), *supra* note 419, at 14.

⁴⁴⁶ See, e.g., *Three-Quarter Houses: The View From the Inside*, PRISONER REENTRY INSTITUTE (Oct. 2013), at v, vi, <http://johnjaypri.org/wp-content/uploads/2016/04/PRI-TQH-Report.pdf>, archived at <https://perma.cc/9KZS-CQLW> (pointing out how “no government agency oversees or regulates the programs”); Susan Martin, *Felons, Drug Dealers Run Halfway*

In 2018, CoreCivic realized earnings of \$1.84 billion, an increase of \$7 million from 2017.⁴⁴⁷ More than 90% of CoreCivic’s 2018 revenue resulted from its “safety” business—that is, its facilities for incarceration, detention, and alternative corrections.⁴⁴⁸ As of December 31, 2018, CoreCivic had an \$800 million line of credit from a syndicate of major banks, and had borrowed \$201 million under that line of credit.⁴⁴⁹ Similarly, as of December 31, 2018, GEO Group had a \$900 million line of credit with a syndicate of banks, borrowing \$490.8 million under this line of credit.⁴⁵⁰

Some politicians have criticized the ability of the private corrections industry to operate as REITs; both Senator Ron Wyden (D-Or.) and Representative Gregory Meeks (D-N.Y.) have introduced legislation to prevent private corrections companies from receiving REIT tax subsidies, but these bills have not yet passed either chamber of Congress.⁴⁵¹

B. Pension Investments and Stock Holdings

Private corrections companies are deeply involved in alternative corrections, and the industry has expanded its focus to cover all aspects of the criminal system. These companies often brand alternative corrections divisions differently, disguising their links to controversial for-profit prison conglomerates like GEO Group.⁴⁵²

Many investment and pension funds are invested in private corrections REITs, placing millions of dollars in holdings in these vehicles. Vanguard and Fidelity, the two leading investment companies in the United States, own significant stock in CoreCivic and GEO Group.⁴⁵³ Additionally, many

Houses for Addicts, TAMPA BAY TIMES (Nov. 18, 2012), <https://www.tampabay.com/news/publicsafety/felons-drug-dealers-run-halfway-houses-for-addicts/1261881/>, archived at <https://perma.cc/ED22-CSK6?type=image> (noting that “[a]lmost anyone can open a halfway house in Florida because there’s almost no regulation or accountability”); Jenny Wagner, *Recovery Road: The Road for Many Begins in Recovery Houses*, BURLINGTON TIMES (Apr. 17, 2016), <https://www.burlingtoncountytimes.com/article/20160417/NEWS/304179641>, archived at <https://perma.cc/8Z22-ZT7E> (reporting that in New Jersey, there is no training, certification, third party oversight, or standards required to run recovery houses).

⁴⁴⁷ See John Egan, *How One Private Prison REIT Is Trying to Diversify*, NAT’L REAL ESTATE INVESTOR (Mar. 22, 2019), <https://www.nreionline.com/reits/how-one-private-prison-reit-trying-to-diversify>, archived at <https://perma.cc/U4NC-22WV>.

⁴⁴⁸ See *id.*

⁴⁴⁹ See Habibi et al., *supra* note 423, at 3.

⁴⁵⁰ See *id.* at 4.

⁴⁵¹ See Urban & Westgard, *supra* note 444.

⁴⁵² For example, GEO Group’s treatment and rehabilitation facility in Lancaster, California, is called “Antelope Valley Day Reporting Center”—the Geo Group connection is not advertised. See GEO GROUP, INC., ANTELOPE VALLEY DAY REPORTING CENTER, <https://www.geogroup.com/FacilityDetail/FacilityID/252>, archived at <https://perma.cc/Y6DF-UPU4>. Likewise, the “Aurora Day Reporting Center and Electronic Monitoring”, in Aurora, California has little to indicate to the outsider that Geo Group is the parent company. See GEO GROUP, INC., AURORA DAY REPORTING CENTER, <https://www.geogroup.com/FacilityDetail/FacilityID/130>, archived at <https://perma.cc/5MYU-PXWJ>.

⁴⁵³ See Morgan Simon, *What Do Big Banks Have to Do with Family Detention? #FamiliesBelongTogether Explains*, FORBES (Sept. 18, 2018), <https://www.forbes.com/sites/>

passively-managed index funds, often incorporated into mutual funds or 401Ks, own stock in private corrections companies as well.⁴⁵⁴ On top of private investment, twenty-four states owned over \$75 million in stock in private prison companies as of February 2019.⁴⁵⁵ The investors include state pension funds, teacher retirement funds, and public employee funds in states such as New York, Ohio, and California.⁴⁵⁶ Many universities hold stock in private corrections companies as well.⁴⁵⁷

Advocacy groups, including the American Federation of Teachers (AFT), have begun demanding that public pension funds divest from any holdings in private corrections companies.⁴⁵⁸ Specifically, AFT argues that investing in private prisons creates moral and political risks.⁴⁵⁹ AFT also argues that investment in private corrections companies carries financial risks, including the multiple lawsuits against major private prison companies filed every year and potential changes in state and federal law that would reduce mass incarceration.⁴⁶⁰ As a result of such pressure, the New Jersey Pension Fund, the Chicago Teachers Fund, and the California State Teachers' Retirement System have all gotten rid of their direct holdings in private prisons.⁴⁶¹ As of publication, Canada's pension fund, the Canadian Pension Plan Investment Board, is under pressure to drop the private corrections companies from their investment portfolio, given the size of the investment (\$6.1

morgansimon/2018/09/25/what-do-big-banks-have-to-do-with-family-detention-families-belong-together-explains/#538e5bec2b6a, archived at <https://perma.cc/PT9T-Z5Q8>.

⁴⁵⁴ The top ten mutual funds holding CoreCivic stock include Vanguard REIT Index Fund, Vanguard Small Cap Index Fund, Vanguard Total Stock Market Index, Vanguard Small Cap Value Index Fund, Fidelity Japan Fidelity US REIT, Vanguard Extended Market Index Fund, the SPDR S&P Mid Cap 400 ETF Trust, and Fidelity Low Priced Stock Fund. See *id.*

⁴⁵⁵ See Liz Farmer, *These Pension Funds Invest Millions in Private Prisons*, GOVERNING (Feb. 8, 2019), <https://www.governing.com/week-in-finance/gov-pension-funds-investing-millions-private-prisons.html>, archived at <https://perma.cc/RQB4-MERL>.

⁴⁵⁶ See *id.*

⁴⁵⁷ See Sarah Brodsky, *Investors Question Private Prison Holdings*, IMPACT INVESTIGATING EXCHANGE (Apr. 11, 2019), <https://www.impactinvestingexchange.com/investors-question-private-prison-holdings/>, archived at <https://perma.cc/32LK-8EZW>.

⁴⁵⁸ See *Private Prisons and Investment Risks, Part II: How Private Prisons Fuel Mass Incarceration, and How Public Pension Funds Are at Risk* 3, AMERICAN FEDERATION OF TEACHERS (2019), <https://www.aft.org/sites/default/files/private-prisons-invest-2019-part2.pdf>, archived at <https://perma.cc/LBG5-ZUDQ>.

⁴⁵⁹ See *id.* at 8–9.

⁴⁶⁰ See *id.* at 9; Evie Fordham, *\$229 Billion California Teacher Retirement Program Cites 'Human Rights' Violations When Divesting from Private Prisons but Lists None*, DAILY CALLER (Nov. 8, 2018), <https://dailycaller.com/2018/11/08/california-state-teachers-retirement-system-divest/>, archived at <https://perma.cc/KFE4-3V82>.

⁴⁶¹ See Farmer, *supra* note 455. Various holders of state pensions argue that a pension fund's foremost duty is to maximize wealth for its holders, not get caught up in political battles. Pension fund managers have a fiduciary responsibility to grow assets, something particularly important for underfunded state pension funds, which are often the only source of income for retirees. See Christopher Burnham, *Politicization of CalSTRS Hurts Returns, Harms Retirees*, San Francisco Chronicle (Nov. 6, 2018), <https://www.sfchronicle.com/opinion/openforum/article/Politicization-of-CalSTRS-hurts-returns-harms-13368391.php?psid=NCqn>, archived at <https://perma.cc/JDW5-NP84>.

million dollars in GEO Group and \$1.65 million in CoreCivic).⁴⁶² A few universities have also followed suit, divesting their stock holdings. In 2015, Columbia University sold its shares in CoreCivic and G4S after student outcry.⁴⁶³ But most universities, including Harvard and Princeton, have held onto their private corrections stock, resisting student pressure to divest.⁴⁶⁴

C. Federal Funds

Approximately 19% of all federal prisoners are incarcerated in private prisons, run predominantly by GEO Group and CoreCivic.⁴⁶⁵ These two companies are also in the market of private federal alternative corrections, private federal probation supervision, and federal post-prison release, along with companies like Management & Training Corporation, Emerald Correctional Management, LCS Corrections Services, and Community Education Centers/CiviGenics.⁴⁶⁶ Moreover, approximately 70% of federal immigration detention camps are also run by private corrections companies; the most recent estimate was that private prison companies receive \$800 million from the federal government for immigrant detention centers alone.⁴⁶⁷ But federal contracts are not the only way the federal government has encouraged the growth of the for-profit corrections industry.

First, private corrections companies are exempt from taxpayer oversight because Congress has failed to pass legislation requiring federal disclosure of their processes.⁴⁶⁸ For example, since the Freedom of Information Act (FOIA) does not apply to private corrections companies, the public is unable to access any of their operations records.⁴⁶⁹ Without access to operational and personnel information, it is difficult to discover misconduct at private

⁴⁶² See Leyland Cecco, *Canada Pension Fund Investment into US Detention Firm Larger Than Reported*, THE GUARDIAN (Dec. 3, 2018), <https://www.theguardian.com/world/2018/dec/03/canada-pension-fund-investment-into-us-detention-firm-larger-than-reported>, archived at <https://perma.cc/CQW5-VU6X>.

⁴⁶³ See Brodsky, *supra* note 457.

⁴⁶⁴ See *id.*

⁴⁶⁵ See *The Private Prison Industry, Explained*, THE WEEK (Aug. 6, 2018), <https://theweek.com/articles/788226/private-prison-industry-explained>, archived at <https://perma.cc/S7Q4-874F>.

⁴⁶⁶ See CHRISTOPHER HARTLEY & CAROLINE GLESMANN, Nat'l Council on Crime & Delinquency, *Prison Bed Profiteers: How Corporations Are Reshaping Criminal Justice in the U.S.* 5 (May 2012).

⁴⁶⁷ See Spencer Ackerman & Adam Rawnsley, *\$800 Million of Taxpayer Money Went to Private Prisons Where Migrants Work for Pennies*, THE DAILY BEAST (Dec. 27, 2018), <https://www.thedailybeast.com/dollar800-million-in-taxpayer-money-went-to-private-prisons-where-migrants-work-for-pennies>, archived at <https://perma.cc/6LR3-42JF>.

⁴⁶⁸ See Christina Fialho and Grisel Ruiz, *Costly, Inefficient, and Unaccountable: The Case for Outlawing Private Prisons*, FORBES (Sept. 19, 2016), <https://www.forbes.com/sites/ashoka/2016/09/19/the-case-for-outlawing-for-profit-prisons/#3db2d6f31dad>, archived at <https://perma.cc/MT6J-7A9R>.

⁴⁶⁹ See *id.*

corrections companies.⁴⁷⁰ Indeed, “the private prison industry operates in secrecy while being funded almost entirely with public taxpayer money.”⁴⁷¹ Privatized alternative corrections facilities operate with an almost complete lack of transparency, as they are not subject to the kind of oversight required of state and federal prisons.⁴⁷² No transparency means little, if any, accountability.

The federal government’s limited regulation of money in politics allows private corrections companies to buy influence over policymaking. Through campaign contributions and lobbying, private corrections companies can distort criminal justice policy to blunt activist attacks on mass incarceration.⁴⁷³ For example, in 2015 and 2016, private corrections companies donated \$2.75 million to lobby against President Obama’s effort to withdraw from private federal prisons.⁴⁷⁴

Like the private prison industry, the for-profit alternative corrections industry also makes major political contributions to federal lawmakers. Campaign contributions allow these companies to wield considerable power in Congress, developing and maintaining relationships that help in obtaining the contracts for federal prisons, probation programs, and halfway houses.⁴⁷⁵ In the 2018 election cycle, private corrections companies donated almost \$1.2 million to members of Congress alone.⁴⁷⁶ The private corrections industry also spent \$3.8 million on federal lobbying and \$1.9 million on campaign contributions in the 2018 campaign cycle.⁴⁷⁷

This monetary support has policy consequences. For example, the First Step Act, which became law on December 21, 2018,⁴⁷⁸ garnered strong support from both GEO Group and CoreCivic.⁴⁷⁹ The First Step Act enacted

⁴⁷⁰ See Mike Tartaglia, *Private Prisons, Private Records*, 94 B.U. L. REV. 1689, 1694 (2014).

⁴⁷¹ See Liliana Segura, *With 2.3 Million People Incarcerated in the US, Prisons Are Big Business*, THE NATION (Oct. 1, 2013), <https://www.thenation.com/article/prison-profiters/>, archived at <https://perma.cc/5G9C-J75L>.

⁴⁷² See *id.*

⁴⁷³ See HARTLEY & GLESMANN, *supra* note 466, at 13–14.

⁴⁷⁴ See Sara Swann, *For-Profit Prisons: Background*, OPEN SECRETS (May 2017), <https://www.opensecrets.org/industries/background.php?cycle=2018&ind=G7000>, archived at <https://perma.cc/2T6K-WX2K>.

⁴⁷⁵ See Hartley & Glesmann, *supra* note 466, at 13.

⁴⁷⁶ *For Profit Prisons: Long Term Contribution Trends*, OPEN SECRETS (Feb. 1, 2019), <https://www.opensecrets.org/industries/totals.php?cycle=All&ind=G7000>, archived at <https://perma.cc/R4BY-3WF8>.

⁴⁷⁷ See Sue Sturgis, *As Bankers Back Away, For-Profit Prison Companies Step Up Political Spending*, FACING SOUTH (Mar. 8, 2019), <https://www.facingsouth.org/2019/03/bankers-back-away-profit-prison-companies-step-political-spending>, archived at <https://perma.cc/WD6U-RL5U>.

⁴⁷⁸ See Van Jones & Jessica Jackson, *Ten Reasons to Celebrate the First Step Act*, CNN (Dec. 21, 2018), <https://www.cnn.com/2018/12/21/opinions/ten-reasons-to-celebrate-first-step-act-jones-and-jackson/index.html>, archived at <https://perma.cc/U6C9-G7L2>.

⁴⁷⁹ See Karl Evers-Hillstrom, *For-Profit Prisons Strongly Approve of Bipartisan Criminal Justice Reform Bill*, Open Secrets, December 20, 2018, <https://www.opensecrets.org/news/2018/12/for-profit-prisons-approve-of-bipartisan-criminal-justice-reform/>, archived at <https://perma.cc/WC3T-JVDY>.

several sentencing reforms, including retroactively reducing the federal crack-cocaine disparity, permitting federal judges more discretion at sentencing, and eliminating the “three strike rule.”⁴⁸⁰ The Act’s stated purpose is to “to provide for programs to help reduce the risk that prisoners will recidivate upon release from prison.”⁴⁸¹

Putting the First Step Act into motion, however, will require quite a bit of infrastructure.⁴⁸² This provides a new business opportunity for private corrections companies, which have been rapidly expanding into alternative corrections and re-entry services.⁴⁸³ For example, the First Step Act encourages contracting with for-profit companies for post-prison services,⁴⁸⁴ in part by making way for both privatized in-prison programming and electronic monitoring.⁴⁸⁵ Additionally, the First Step Act requires a \$375 million expansion of post-prison services for convicted individuals re-entering society, something upon which companies like CoreCivic and GEO Group are ready to capitalize.⁴⁸⁶

Nimble private corrections companies such as CoreCivic and GEO Group can and do adapt easily to changes in the legal, tax, and regulatory landscape. Using private-sector corrections companies might “pervert prison reform into a neoliberal variation of convict leasing, in which industry and state collude to ‘redeem’ society’s undesirables.”⁴⁸⁷

III. SOLUTIONS AND SAFEGUARDS

Private, for-profit companies are deeply embedded in the American criminal legal system. Accordingly, this Article identifies short-term ways to regulate, control, and limit the work of private corrections companies in the alternative corrections sphere, particularly in their imposition of criminal justice debt. This Part provides an overview of potential solutions and strategies to safeguard defendants caught in the web of criminal justice debt and for-profit corrections, including controlling criminal justice debt, divesting from the private corrections industry, increasing transparency, promoting public watchdogs, improving media access to alternative corrections sites, en-

⁴⁸⁰ See *id.*

⁴⁸¹ H.R. Cong. Res. 5682, 115th Cong. (2018).

⁴⁸² See Segura, *supra* note 420.

⁴⁸³ See *id.*

⁴⁸⁴ See Steve Cortorno, *Why is a Florida For-Profit Prison Company Backing Bipartisan Criminal Justice Reform?*, TAMPA BAY TIMES (Dec. 7, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/12/07/why-is-a-florida-for-profit-prison-company-backing-bipartisan-criminal-justice-reform>, archived at <https://perma.cc/VR97-HELJ>.

⁴⁸⁵ See Peniel Ibe, *The Problems with the First Step Act*, AM. FRIENDS SERV. COMM. (Dec. 14, 2018), <https://www.afsc.org/blogs/news-and-commentary/first-step>, archived at <https://perma.cc/J3GD-9X4F>.

⁴⁸⁶ See Cortorno, *supra* note 484.

⁴⁸⁷ Michelle Chen, *How Prison Reform Could Turn the Prison-Industrial Complex into the Treatment-Industrial Complex*, THE NATION (Nov. 20, 2015), <https://www.thenation.com/article/how-prison-reform-could-turn-the-prison-industrial-complex-into-the-treatment-industrial-complex>, archived at <https://perma.cc/F6YK-MY3L>.

forcing punitive fines on companies that break the law, returning decisions about probation violations to courts, and reforming tax structures to prevent corrections companies from organizing as REITs.

Although these short- and medium-term reforms are important, the ultimate solution is to fully abolish for-profit actors in the criminal legal system. This type of exploitative industry, driven primarily by profit, should have no place in our justice system.

A. *Controlling Criminal Justice Debt*

People caught in the criminal legal system may face fines, fees, and surcharges at every stage of the criminal process.⁴⁸⁸ Debt from alternative corrections is most frequently imposed on people of color who are disproportionately criminalized, and people with low incomes who often struggle to make payments.⁴⁸⁹ To reduce the harms of the criminal legal system, states should take a number of steps to limit the criminal justice debt imposed on low-income communities of color.

First, states should exempt indigent individuals from alternative corrections fees,⁴⁹⁰ including probation, drug and alcohol testing, electronic monitoring, and any other payments commonly exacted from defendants, whether collected by the state or private companies. In addition, municipalities, counties, and states should adopt specific written standards for judging a defendant's ability to pay and should grant waivers to those who receive public benefits or have incomes below the federal poverty line.⁴⁹¹ Second, individuals should no longer be forced to work in "rehabilitative" labor camps that require labor in dangerous factories or work conditions for no pay. Third, all states and counties should ensure that no diversion programs are run for profit. As discussed in Part I, diversion programs risk becoming an alternative to incarceration only for people with the wealth to pay the excessive fees imposed by for-profit diversion programs, while defendants who cannot afford the fees must accept a conviction and often jail time. We cannot have a system in which only people with money can afford a second chance.⁴⁹² For-profit diversion programs are especially unfair because fees are hardly ever waived for indigent defendants.⁴⁹³

⁴⁸⁸ See ALICIA BANNON, MITALI NAGRECHA, & REBEKAH DILLER, BRENNAN CTR., CRIMINAL JUSTICE DEBT: A BARRIER TO REENTRY 4 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf>, archived at <https://perma.cc/RTW7-H396>.

⁴⁸⁹ *Id.* at 9.

⁴⁹⁰ *See id.* at 32.

⁴⁹¹ *See id.*

⁴⁹² See Shaila Dewan & Andrew W. Lehman, *After a Crime, the Price of a Second Chance*, N.Y. TIMES (Dec. 12, 2016), <https://www.nytimes.com/2016/12/12/us/crime-criminal-justice-reform-diversion.html>, archived at <https://perma.cc/5Y5R-J4T6>.

⁴⁹³ *See id.*

Additionally, states should pay the costs of complicated civil registration and treatment requirements for defendants convicted of sex offenses. Placing the burden of an endless array of registration fees, treatment fees, polygraph fees, monitoring fees, and other repeated, required payments on individuals who may not have the ability to pay achieves little in either community safety or general deterrence. Rather than promoting community safety in the long term, debt from alternative corrections and aggressive collection practices creates barriers to successful community reintegration after any formal punishment has ceased.⁴⁹⁴ Indeed, “the widespread practice in American law is to impose economic penalties with uncertain chances of collection and with insufficient concern for their long-term impact on defendant reintegration, recidivism, and public safety.”⁴⁹⁵

The burden of alternative corrections debt is compounded by the seemingly never-ending statute of limitations. In many places, a court’s jurisdiction to collect and enforce nonpayment of the debt may last for decades or even a lifetime, long after the person was last charged, convicted of an offense, or completed her rehabilitation or probation.⁴⁹⁶ To truly reintegrate individuals back into the community after conviction and release, we must free them from the shackles of alternative corrections debt.

B. Divestment

One way to limit the role of private alternative corrections is to pressure financial entities to divest from the private corrections industry. Protesters have already successfully pushed lenders and pension holders to abandon private prison companies and refuse to provide financing for new facilities.⁴⁹⁷

Recently, several major banks have divested from the private corrections industry, including JPMorgan Chase, Wells Fargo, PNC, Barclays,⁴⁹⁸ U.S. Bank,⁴⁹⁹ SunTrust Banks/BBT,⁵⁰⁰ BNP Paribas,⁵⁰¹ and Bank of

⁴⁹⁴ See Jessica M. Eaglin, *Improving Economic Sanctions in the States*, 99 MINN. L. REV. 1837, 1838 (2015).

⁴⁹⁵ Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 99 MINN. L. REV. 1735, 1739 (2015).

⁴⁹⁶ See Nick Allen, Alex Kornya & Rhona Taylor, *Tackling Criminal Justice Debt*, CLEARINGHOUSE COMMUNITY (May 2017), <https://www.povertylaw.org/clearinghouse/article/tacklingdebt>, archived at <https://perma.cc/B4R4-YX4S>.

⁴⁹⁷ See *id.*

⁴⁹⁸ See Renae Merle, *Wall Street pulled its financing. Stocks have plummeted. But private prisons still thrive.*, WASH. POST (Oct. 3, 2019), <https://www.washingtonpost.com/business/2019/10/03/wall-street-pulled-its-financing-stocks-have-plummeted-private-prisons-still-thrive/>, archived at <https://perma.cc/R4Z2-FWXM>.

⁴⁹⁹ See *Private Prison Companies on the Ropes Following Banks’ Withdrawal Announcements*, PRISON INDUSTRY DIVESTMENT MOVEMENT (Mar. 14, 2019), <https://prisondivest.com/2019/03/14/private-prison-companies-on-the-ropes-following-banks-withdrawal-announcements>, archived at <https://perma.cc/74DV-NAV8>.

America.⁵⁰² As a result of such scrutiny, GEO Group and CoreCivic shares have come under immense pressure.⁵⁰³ CoreCivic's stock price dropped approximately 8% and GEO Group's declined about 15%.⁵⁰⁴ Each stock plunged more than 10% in July 2019 alone.⁵⁰⁵ Pressure to divest from GEO Group and CoreCivic intensified last year after activists targeted the companies for running immigrant detention centers.⁵⁰⁶ Outrage over President Trump's immigration policy has increased pressure on Wall Street to drop financial support for private companies working with ICE to detain non-citizens.⁵⁰⁷

Divestment is especially effective in combatting the private corrections industry because these companies are organized as REITs and therefore depend heavily on debt structuring.⁵⁰⁸ The way REITs are structured means they generally have very little cash on hand, and the companies must go to the banks any time they wish to grow their businesses.⁵⁰⁹ As fewer banks are willing to provide loans, borrowing has become more expensive, and the REIT structure will be more difficult to maintain.⁵¹⁰

New York State has been on the front lines of private prison divestment. Not only has New York forbidden private prisons from operating within the state, it has also divested state pension funds away from GEO Group and CoreCivic. In addition, the New York State Senate passed Bill S5433 in June 2019,⁵¹¹ prohibiting New York State-chartered banks from

⁵⁰⁰ See Paul R. La Monica, *Suntrust Is the Latest Bank to Stop Lending to Detention Centers*, CNN BUSINESS (July 8, 2019), <https://www.cnn.com/2019/07/08/investing/suntrust-banks-migrant-detention-centers/index.html>, archived at <https://perma.cc/7LB8-9JBM>.

⁵⁰¹ See Phil Serafino, *BNP Paribas Plans to End Financing of Private Prisons*, BLOOMBERG (July 13, 2019), <https://www.bloomberg.com/news/articles/2019-07-13/bnp-paribas-plans-to-end-financing-of-private-prison-operators>, archived at <https://perma.cc/W7R6-VNAN>.

⁵⁰² See Lananh Nguyen, *Bank of America Will Stop Lending to Private Prison Firms*, BLOOMBERG (June 26, 2019), <https://www.bloomberg.com/news/articles/2019-06-26/bank-of-america-will-stop-lending-to-private-prison-companies>, archived at <https://perma.cc/P3QF-AA9L>.

⁵⁰³ See La Monica, *supra* note 500.

⁵⁰⁴ See *Private Prison Companies on the Ropes*, *supra* note 499.

⁵⁰⁵ See La Monica, *supra* note 500.

⁵⁰⁶ See Arvind Dilawar, *Anti-ICE Activists Target PNC Bank for Funding Private Detention Centers*, PAC. STANDARD MAG. (July 17, 2019), <https://psmag.com/social-justice/anti-ice-activists-target-pnc-bank-for-funding-private-detention-centers>, archived at <https://perma.cc/HCU9-3RDW>; see also Jeremy Redmon, *Georgia's Largest Bank to Sever Ties With Private Prison Industry*, ATL. J. CONST. (July 8, 2019), <https://www.ajc.com/news/breaking-news/georgia-largest-bank-sever-ties-with-private-prison-industry/iPYNleDfLy7vM1qWq5lpoK>, archived at <https://perma.cc/VB2Z-AJPT>.

⁵⁰⁷ See Redmon, *supra* note 506.

⁵⁰⁸ See *Private Prison Companies on the Ropes*, *supra* note 499.

⁵⁰⁹ See Madison Pauly, *The Private Prison Industry Just Suffered a Major Blow. And It Could Just Be the Beginning*, MOTHER JONES (Mar. 7, 2019), <https://www.motherjones.com/crime-justice/2019/03/jp-morgan-chase-divestment-private-prisons-lauren-brooke-eisen>, archived at <https://perma.cc/2YF2-JAWJ>.

⁵¹⁰ See *Private Prison Companies on the Ropes*, *supra* note 499.

⁵¹¹ See Morgan Simon, *New York Could Become First State to Be Completely Done with Private Prisons*, FORBES (June 18, 2019), <https://www.forbes.com/sites/morgansimon/2019/06/>

“investing in and providing financing for private prisons.”⁵¹² This prohibition would also apply to foreign banks.⁵¹³ If this bill becomes law, it could have a significant impact on private correction company financing, starving the companies of capital.⁵¹⁴ Because the companies running private prisons and private alternative corrections are frequently one and the same, this should significantly chill the work of private alternative corrections in New York State. There has also been recent movement in Congress to scrutinize the role of major banks investing in the private prison industry, with calls for oversight hearings⁵¹⁵ and discussions of divesting altogether from private corrections companies.⁵¹⁶ Additionally, Representative Alexandria Ocasio-Cortez (D-N.Y.) has vowed to use her seat on the Financial Services Committee to oversee private corrections companies.⁵¹⁷

Because the private corrections companies running the alternative corrections industry are the very same ones maintaining private prisons and detention centers, divesting from these companies kills two birds with one stone. American citizens have collectively invested millions of dollars in private corrections companies.⁵¹⁸ Public worker funds have invested at least \$67 million in GEO Group and CoreCivic, according to filings from the first quarter of 2019.⁵¹⁹ Divestment could thus have a big impact.

Nonetheless, these companies are in little danger of going out of business any time soon.⁵²⁰ Several banks facing pressure to divest from private prison companies, including Regions, Citizens, Pinnacle, First Tennessee, and Synovus, have not publicly committed to divestment.⁵²¹ Even with the abovementioned banks’ divestment, Wall Street banks still provide a total of \$2.692 billion in credit arrangements.⁵²² In addition, banks that have publicly said they would no longer finance private prison firms are not keeping their commitments equally: Bank of America extended an additional \$90 million

18/new-york-to-become-first-state-to-be-completely-done-with-private-prisons, *archived at* <https://perma.cc/WHQ7-TXXX>.

⁵¹² S. 5433A, 2019–20 Leg., Reg. Sess. (N.Y. 2019).

⁵¹³ See Simon, *First State*, *supra* note 511.

⁵¹⁴ See *id.*

⁵¹⁵ See Pauly, *supra* note 509.

⁵¹⁶ See Austin Weinstein, *Maxine Waters Has a Plan to Get What She Wants from Wall Street*, BLOOMBERG (May 6, 2019), <https://www.bloomberg.com/news/articles/2019-05-06/maxine-waters-has-a-plan-to-get-what-she-wants-from-wall-street>, *archived at* <https://perma.cc/TV8C-U2W4>.

⁵¹⁷ See Colin Wilhelm, *Waters, Ocasio-Cortez, and Democrats Prepare to Push Financial Services Committee into Social Issues*, WASH. EXAMINER (Jan. 17, 2019), <https://www.washingtonexaminer.com/policy/economy/waters-ocasio-cortez-and-democrats-prepare-to-push-financial-services-committee-into-social-issues>, *archived at* <https://perma.cc/6GZH-9QXR>.

⁵¹⁸ See Max Siegelbaum, *Millions in U.S. Taxpayers’ Money Invested in Private Prison Firms*, THE GUARDIAN (July 11, 2019), <https://www.theguardian.com/us-news/2019/jul/11/private-prison-firms-profiting-trump-immigration-policy>, *archived at* <https://perma.cc/4H4A-JV6D>.

⁵¹⁹ See *id.*

⁵²⁰ See Merle, *supra* note 498.

⁵²¹ *Id.*

⁵²² See Habibi et al., *supra* note 423, at 2.

revolving credit line to GEO Group shortly before announcing that it would stop offering new financing.⁵²³

Likewise, university pension funds and general retirement account holders may not even be aware of their funds' investment in private corrections companies.⁵²⁴ The majority of U.S. universities have resisted calls from students to divest from private corrections holdings, and the universities that have divested only held a small amount of private corrections company stock.⁵²⁵ Although a few universities have divested approximately \$10 million in holdings, this is a minor amount for a \$5 billion industry.⁵²⁶

The highest-impact blow to the for-profit corrections industry would be if money management funds such as the Vanguard Group, the country's second-largest management firm, renounced their interests.⁵²⁷ Today, Vanguard owns approximately 12% of GEO Group stocks and 9% of CoreCivic.⁵²⁸ The best outcome to hope for is that the current divestment by banks and universities has a domino effect, spurring a wholesale condemnation of the private corrections industry.⁵²⁹

C. Transparency

For the most part, private, for-profit companies can continue to run alternative corrections with little oversight and accountability. All fifty states, as well as the District of Columbia, have open records laws.⁵³⁰ However, unless private contractors are specifically included in the statutory language, entities run by private corrections companies are generally not subject to state open access records laws.⁵³¹ Aside from a few states, such as Connecti-

⁵²³ See Rachel Ensign, *Bank of America Cut Off Private Prisons Weeks After Lending to One*, WALL ST. JOURNAL (July 2, 2019), <https://www.wsj.com/articles/bank-of-america-cut-off-private-prisons-weeks-after-lending-to-one-11562059804>, archived at <https://perma.cc/Y4JY-DJKH>.

⁵²⁴ Rich Duprey, *Are There Private Prison Stocks in Your Portfolio You Don't Know About?*, MOTLEY FOOL (Oct. 16, 2016, 10:01 AM), <https://www.fool.com/investing/2016/10/16/are-there-private-prison-stocks-in-your-portfolio.aspx>, archived at <https://perma.cc/SD7B-QUBS>.

⁵²⁵ See Haimy Assefa, *An Uphill Battle': Harvard Students Urge School to Pull Investments That Support Prisons*, NBC NEWS (Sep. 3, 2019), <https://www.nbcnews.com/news/us-news/uphill-battle-harvard-students-urge-school-pull-investments-support-prisons-n1038686>, archived at <https://perma.cc/P4YQ-ME9X>.

⁵²⁶ See Lauren-Brooke Eisen, *What's the Best Way to Hold Private Prisons to Account?*, BRENNAN CTR., (Dec. 13, 2017), <https://www.brennancenter.org/blog/what-best-way-hold-private-prisons-account>, archived at <https://perma.cc/B5C2-9FLR>.

⁵²⁷ See *id.*

⁵²⁸ *Id.*

⁵²⁹ See Pauly, *supra* note 509.

⁵³⁰ See CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, PRIVATE PRISONS: BASTIONS OF SECRECY 19 (2012).

⁵³¹ See Chung Kao, *Transparency Lacking in Private Prisons*, SAN QUENTIN NEWS (Oct. 29, 2014), <https://sanquentinnews.com/transparency-lacking-private-prisons>, archived at <https://perma.cc/M5PP-U3HX>.

cut,⁵³² Florida,⁵³³ Tennessee,⁵³⁴ and South Carolina,⁵³⁵ where legislation extends public records disclosures to private corporations taking government money, FOIA requests are largely inapplicable to private corrections companies and their operations.⁵³⁶ Indeed, in 2006, Georgia passed a state statute making “all reports, files, records, and papers of whatever kind relative to the supervision of probationers by a private corporation” a confidential state secret.⁵³⁷

In response to the lack of transparency in private corrections, Representative Sheila Jackson (D-Tex.) introduced H.R. 1980, the Private Prison Information Act of 2017 (PPIA).⁵³⁸ PPIA would require greater transparency and FOIA access to the dealings of private prison companies.⁵³⁹ Under PPIA, a record relating to any prison, correctional, or detention facility that incarcerates federal prisoners would be subject to FOIA.⁵⁴⁰ The bill was referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, where it remained as of the end of 2019.⁵⁴¹ In 2017, Senator Ben Cardin (D-Md.) introduced S. 1728, which would likewise require federal for-profit prisons to hew to the same disclosure requirements as publicly run federal facilities.⁵⁴² Specifically, S. 1728 would apply Freedom of Information statutes to private companies that manage prisons,⁵⁴³ opening the door to records of all sorts of alternative corrections practices. This bill was referred to the Senate Committee on the Judiciary, and then failed on December 31, 2018.⁵⁴⁴

Several lawsuits have attempted to force private corrections companies to disclose records. In Vermont, Tennessee, and Texas, the ACLU and Prison Legal News brought lawsuits against CCA (now a part of CoreCivic) to

⁵³² CONN. GEN. STAT. § 1-200(1)(C) (2018) (defining agency, for the purpose of public records disclosure, as “any implementing agency”); CONN. GEN. STAT. § 32-222(k) (2015) (defining an implementing agency as any entity “designated and authorized by a municipality to undertake a project”).

⁵³³ FLA. STAT. § 119.011(2) (2013) (covering any “public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency”).

⁵³⁴ TENN. CODE § 10-7-503(6) (2015) (“A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity.”).

⁵³⁵ S.C. CODE ANN. § 30-4-20(a) (1976) (stating that a body “supported in whole or in part by public funds or expending public funds” is subject to the Act).

⁵³⁶ See Lauren-Brooke Eisen, *Private Prisons Lock Up Thousands of Americans With Almost No Oversight*, BRENNAN CTR. (Nov. 8, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/private-prisons-lock-thousands-americans-almost-no-oversight>, archived at <https://perma.cc/HCK6-DBLF> [hereinafter Eisen, *No Oversight*].

⁵³⁷ GA. CODE ANN. § 42-8-109.2 (2010).

⁵³⁸ See H.R. 1980, PRIVATE PRISON INFORMATION ACT OF 2017, 115th Congress.

⁵³⁹ See *id.*

⁵⁴⁰ See *id.*

⁵⁴¹ See *id.*; Eisen, *No Oversight*, *supra* note 536.

⁵⁴² See Beryl Lipton, *Senate Bill 1728 Would Make Private Prisons Subject to Freedom of Information Act*, MUCKROCK (Aug. 7, 2017), <https://www.muckrock.com/news/archives/2017/aug/07/senate-bill-1728-private-prison-foia/>, archived at <https://perma.cc/TP5M-LW5J>.

⁵⁴³ S. 1728, PRIVATE PRISON INFORMATION ACT OF 2017, 115th Congress.

⁵⁴⁴ *Id.*

force it to release its records under the states' open records laws. The Vermont case settled, with CCA agreeing to release records of lawsuits filed against it by the state's inmates.⁵⁴⁵ Tennessee's Court of Appeals ultimately ruled that CCA was required to produce documents under the state records law because it was the functional equivalent of a government agency.⁵⁴⁶ Lawsuits reached similar results in Texas⁵⁴⁷ and Louisiana.⁵⁴⁸

Private corrections companies' widespread refusal to share information creates barriers to justice for those caught up in the system of privatized alternative corrections. Defendants, public defenders, and civil rights attorneys rarely have a right to information about the for-profit operations.⁵⁴⁹ This lack of transparency continues to bolster the frequent mismanagement, neglect, and other types of abuse in private, for-profit alternative corrections facilities.⁵⁵⁰ Moreover, the privatizing of the vast alternative corrections industry has negated any public accountability.

The need for more transparency also applies to state alternative corrections, where most of the business for private corrections companies lies.⁵⁵¹ Only a few states, such as California, require for-profit corrections companies to hand over their operational data. California enacted the Public Records Act in 1968 to support transparency and accountability and to proclaim that secrecy and democracy were incompatible.⁵⁵² California takes the public right to access records so seriously that in 2004, the right was incorporated into California's state constitution.⁵⁵³ California courts have interpreted this provision to require broad disclosure, allowing only narrow privacy exemptions.⁵⁵⁴

⁵⁴⁵ See Elizabeth Hewitt, *Legal settlement extends public records laws to out-of-state prison contractor*, VT. DIGGER, Nov. 5, 2015, <https://vtdigger.org/2015/11/05/legal-settlement-extends-public-records-laws-to-out-of-state-prison-contractor/>, archived at <https://perma.cc/G62V-8KAH>.

⁵⁴⁶ See CITIZENS FOR RESPONSIBILITY AND ETHICS, *supra* note 530, at 17.

⁵⁴⁷ See *Private Prison Must Provide Information*, COURTHOUSE NEWS SERVICE (Mar. 20, 2014), <https://www.courthousenews.com/Private-Prison-Must-Provide-Information/>, archived at <https://perma.cc/W8HR-5U3U>.

⁵⁴⁸ See Fritz Esker, *MacArthur Justice Center Settles Public Records Lawsuit with Private Prison*, LA. WKLY. (Aug. 17, 2017), <http://www.louisianaweekly.com/macarthur-justice-center-settles-public-records-lawsuit-with-private-prison/>, archived at <https://perma.cc/6D5Y-DGFJ>.

⁵⁴⁹ See Eisen, *No Oversight*, *supra* note 536.

⁵⁵⁰ See *id.*

⁵⁵¹ See Caroline Isaacs, *Community Cages: Profitizing Community Corrections and Alternatives to Incarceration*, AMERICAN FRIENDS SERVICE COMMITTEE 5 (Aug. 2016), <https://afscarizona.files.wordpress.com/2016/08/communitycages.pdf>, archived at <https://perma.cc/KA4C-KC9H>.

⁵⁵² See Zoe Loftus-Farren, *A Battle Over California's Public Records Law*, UNDARK (Apr. 15, 2019), <https://undark.org/article/battle-public-records-california/>, archived at <https://perma.cc/87T4-FFFE>.

⁵⁵³ See CAL. CONST. art. I, § 3.

⁵⁵⁴ See LEAGUE OF CALIFORNIA CITIES, *THE PEOPLE'S BUSINESS: A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT 6* (2017), <https://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx>, archived at <https://perma.cc/NF8J-7PE6>.

In Florida, similarly, citizens have a statutory right to request and view Florida's public records using the state's Public Records Act: "All state, county, and municipal records are open for personal inspection and copying by any person."⁵⁵⁵ Florida residents are entitled to review the records of all state, county, or municipal units of government, as well as any other public or private entity acting on behalf of one of these agencies.⁵⁵⁶ This means that any private, for-profit corrections company running an alternative corrections program or entity is subject to Florida's public records act.⁵⁵⁷

States should be encouraged to interpret their current open records laws to require any private corrections entities to provide records since they are functional equivalents of a state or local agency. Private prison corporations should have to abide by the same disclosure requirements as government-run prisons, detention centers, and alternative corrections.⁵⁵⁸ Alternatively, separate legislation should require any private criminal justice entities, for-profit or non-profit, to provide any records requested under an open access policy.

D. *Public Watchdogs*

Both state and federal governments should require outside, independent monitors to drop in unannounced at all privately-run corrections facilities, including prisons, jails, private probation firms, halfway houses, work camps, detention facilities for sex offenders, and forensic mental health hospitals.⁵⁵⁹ An oversight corrections commission could help regulate and safeguard private prisons, jails, and private alternative corrections.⁵⁶⁰ By granting an independent entity broad and unhindered access to private facilities and programs, correctional personnel, defendants, and any data about these conditions and procedures, a more accurate view may emerge about their operations.

Public watchdogs have received increasing attention in recent years. The American Bar Association (ABA) endorsed oversight corrections commissions in 2010, urging states, the federal government, and counties to "establish public entities that are independent of any correctional agency to regularly monitor and report publicly on the conditions in all prisons, jails, and other adult and juvenile correctional and detention facilities operating

⁵⁵⁵ FLA. STAT. § 119.01(1) (2005).

⁵⁵⁶ *See id.* § 119.011(2).

⁵⁵⁷ Georgia has an Open Records Act very similar to Florida's, allowing access to the records of state, county, and municipal government entities, private entities that are performing a service for public agencies, and nonprofit organizations that receive more than one-third of their funding from tax funds. *See* GA. CODE ANN. §§ 50-18-70, 50-14-1 (2012).

⁵⁵⁸ *See Eisen, No Oversight, supra* note 536.

⁵⁵⁹ *See id.*

⁵⁶⁰ For an in-depth discussion of an oversight corrections commission, *see* Appleman, *Cashing in on Convicts, supra* note 44, at 612–20.

within their jurisdiction.”⁵⁶¹ In addition, the ABA Section on Criminal Justice recently called for independent public entities to monitor and publicly report on conditions in both public and private prisons, jails, and other correctional and detention facilities for both adults and juveniles in their jurisdictions.⁵⁶² Senator Elizabeth Warren, while seeking the Democratic nomination for president, called for an independent monitor for private corrections, including privatized alternative corrections, in a campaign platform.⁵⁶³ Senator Warren proposed appointing an independent Prison Conditions Monitor inside the Department of Justice, whose job would be to ensure enforceable quality standards, regularly audit and investigate contractors, and terminate their contracts if they fall short.⁵⁶⁴

Public watchdogs, whether independent or government-based, should be combined with random, surprise assessments of conditions by either independent watchdogs or a state Attorney General’s civil rights division, to ensure accurate observations from these for-profit corrections entities. Public watchdog investigations would help provide both transparency and accountability from the alternative corrections branch of the private corrections industry.

E. Media Access

Media should have automatic access to all private corrections entities, including alternative corrections.⁵⁶⁵ Journalists should be able to take tours, speak to incarcerated people, people on probation, and people detained by the treatment industrial complex, and observe the conditions of confinement.⁵⁶⁶

By their very nature, alternative corrections entities are almost entirely closed to the media.⁵⁶⁷ Federal, state, and local policies and practices generally make it difficult for journalists to report on prisons, jails, and other

⁵⁶¹ See Criminal Justice Section, *Report to the House of Delegates*, AMERICAN BAR ASSOCIATION (Aug. 2008), http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_am08104b.authcheckdam.pdf, archived at <https://perma.cc/K5RW-CZ3D>.

⁵⁶² See Criminal Justice Section, *Standards on Treatment of Prisoners, 23-11.2, External Regulation and Investigation*, AMERICAN BAR ASSOCIATION (Dec. 5, 2018), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners/#23-11.3, archived at <https://perma.cc/YZM6-3GEB>.

⁵⁶³ See Elizabeth Warren, *Ending Private Prisons and Exploitation for Profit*, MEDIUM (June 21, 2019) <https://medium.com/@teamwarren/ending-private-prisons-and-exploitation-for-profit-cb6dea67e913>, archived at <https://perma.cc/THL7-UPTU>.

⁵⁶⁴ See *id.*

⁵⁶⁵ However, people incarcerated in such entities must still be able to maintain their privacy.

⁵⁶⁶ See Eisen, *No Oversight*, *supra* note 536.

⁵⁶⁷ See Jessica Pupovac, *FOI Toolbox*, QUILL (Aug. 7, 2012), <https://www.quillmag.com/2012/08/07/foi-toolbox-31/>, archived at <https://perma.cc/MD7N-XQL6>.

criminal justice facilities.⁵⁶⁸ As a result, press access to correctional facilities is a chronic problem. Media access rules vary from state to state, and can be based on such varied sources as legislation, administrative regulation, individual cases, or some combination.⁵⁶⁹ Different states have different baselines for journalist entry, with some states generally allowing access and other states having a baseline of media denial.⁵⁷⁰ California, for example, has one of the most restrictive media access policies of any state.⁵⁷¹ Spurious security concerns or fear of negative publicity often ends up blocking media access.⁵⁷²

This is doubly true for private corrections companies, which have even less incentive to allow media access than government-run facilities. Although some private prison companies have press-access policies similar to government-run prisons, or simply follow state or federal regulations, several have tried to avoid media scrutiny by arguing that, as private entities, they need not allow access to journalists.⁵⁷³ This attitude is unacceptable. Journalists, watchdogs, and any other concerned members of the public must be allowed access to private alternative corrections, at a time of the media's choosing. "Access is a responsibility even if it has yet to be a guaranteed right."⁵⁷⁴

F. Enforcement of Punitive Fines Against Private Corrections Companies

Private corrections companies face, at best, limited sanctions for abuses in their facilities. Low fines are a small price to pay for companies that otherwise profit from illegal practices and inhumane conditions. State and federal governments must ensure that the fines charged to private, for-profit corrections entities are high enough that the industry "finds it cheaper to comply with a contract than to pay for noncompliance."⁵⁷⁵

⁵⁶⁸ See Jonathan Peters, *For Journalists Covering Prisons, the First Amendment is Little Help*, Colum. Journalism Rev. (July 3, 2018), https://www.cjr.org/united_states_project/first-amendment-reporters-jail.php, archived at <https://perma.cc/Q5H3-GYAM>.

⁵⁶⁹ See *id.*; see also Jessica Pupovac, *Prison Access Policies: Transparency in Progress*, SOC. PROF. JOURNALISTS, <https://www.spj.org/prisonaccess.asp#3>, archived at <https://perma.cc/QSR3-G8AH>.

⁵⁷⁰ See Pupovac, *supra* note 569.

⁵⁷¹ See Helene Vosters, *Media Lockout: Prisons and Journalists*, MEDIA ALLIANCE (May 13, 2016), <https://media-alliance.org/media-lockout-prisons-and-journalists-by-helene-vosters/>, archived at <https://perma.cc/XF68-LRQP>.

⁵⁷² See Caitlin Curley, *Shut Out: How Our Prison System Restricts Media Access*, GENFKD (May 23, 2016), <http://www.genfkd.org/shut-prison-system-restricts-media-access>, archived at <https://perma.cc/23R2-U56J>.

⁵⁷³ See Peters, *supra* note 568.

⁵⁷⁴ Heather Ann Thompson, *What's Hidden Behind the Walls of America's Prisons*, THE CONVERSATION (June 4, 2017), <http://theconversation.com/whats-hidden-behind-the-walls-of-americas-prisons-77282>, archived at <https://perma.cc/VD9R-46VQ>.

⁵⁷⁵ Eisen, *No Oversight*, *supra* note 536.

In New Mexico, for example, the private corrections healthcare company Centurion was first fined for providing poor medical care and then later fined over \$2.1 million for continued staffing shortages.⁵⁷⁶ New Mexico also contracted with MHM⁵⁷⁷ to provide behavioral healthcare for incarcerated defendants, but then ended up fining MHM almost \$500,000 for poor services.⁵⁷⁸ Yet both companies, Centurion and MHM, are part of the same larger company, Centurion Managed Care.⁵⁷⁹ A corrections company such as Centurion, which trades under the name Centene Corporation,⁵⁸⁰ is so large that these fines have little impact; for 2018, Centene's total revenues were over \$60 million.⁵⁸¹ Similarly, in Tennessee, CoreCivic was fined almost \$2 million in 2018 for poor management and significant staffing shortages issues.⁵⁸² This major fine, however, did not hinder the company's profit. Total revenue for CoreCivic for the fourth quarter of 2018 was \$482 million, up 9.4% from the year before.⁵⁸³

Until and unless these punitive fines really affect the bottom line of private corrections companies, there is little chance that imposing monetary punishments will work to change their practices.

G. *Returning Probation Violation Decisions to Courts*

For-profit corrections companies have privatized enforcement and usurped the local courts' role in monitoring probationer behavior. As discussed in Part II.A, in some jurisdictions, private corrections companies ask local courts to send defendants to jail or prison if they are unable to pay the weekly fee to the company. In some courts, employees of private corrections companies even prepare arrest warrants and give them to the court to sign without any review.⁵⁸⁴ As Human Rights Watch documented, some courts

⁵⁷⁶ See Marisa DeMarco, *State Fines Prison Health Care Companies Millions*, KUNM (Sept. 5, 2018), <https://www.kunm.org/post/state-fines-prison-health-care-companies-millions>, archived at <https://perma.cc/7JVK-NXXB>.

⁵⁷⁷ MHM is a provider of healthcare services to government agencies, including correctional facilities, state hospitals, and juvenile facilities. See *Our Services*, MHM SERVICES, INC., <http://www.mhm-services.com/about.html>, archived at <https://perma.cc/RU3H-RNQR>.

⁵⁷⁸ See DeMarco, *supra* note 576.

⁵⁷⁹ See MHM SERVICES, *supra* note 577.

⁵⁸⁰ See *Centene Corporation Reports 2018 Results and Increases 2019 Annual Guidance*, CENTENE CORPORATION (Feb. 5, 2019), <https://investors.centene.com/news-releases/news-release-details/centene-corporation-reports-2018-results-and-increases-2019>, archived at <https://perma.cc/KHH8-RWSW>.

⁵⁸¹ See *id.*

⁵⁸² See Dave Boucher, *Lawmakers Delay Tennessee Prison Authorization; CoreCivic Acknowledges \$2 Million in Fines in 2018*, THE TENNESSEAN (Apr. 10, 2018), <https://www.tennessean.com/story/news/politics/2018/04/10/lawmakers-delay-tennessee-prison-authorization-corecivic-acknowledges-2-million-fines-2018/501102002/>, archived at <https://perma.cc/9DQW-Z7VN>.

⁵⁸³ *CoreCivic Reports Fourth Quarter and Full Year 2018 Financial Results*, CORECIVIC (Feb. 19, 2019), <http://ir.corecivic.com/news-releases/news-release-details/corecivic-reports-fourth-quarter-and-full-year-2018-financial>, archived at <https://perma.cc/55U7-8A74>.

⁵⁸⁴ *Id.*

are so keen to delegate responsibility to private probation companies that they allow company employees to routinely threaten people on probation with jail time for failing to make payments or falling into arrears.⁵⁸⁵

In addition, some private probation companies determine employees' bonuses by considering how many probationers pay their fines in a timely manner.⁵⁸⁶ This structure creates an obvious conflict of interest, because these very employees determine whether a probationer is able to pay a weekly fee in the first place.⁵⁸⁷ Ability to pay determinations should only be made by a court, not a for-profit company.

H. Tax Reform

In 2016, Senator Ron Wyden (D-OR) introduced the "Ending Tax Breaks for Private Prisons Act."⁵⁸⁸ The bill would prevent private corrections companies from taking advantage of various IRS tax breaks and exclusions, specifically the REIT status of the private corrections companies discussed in Part II.⁵⁸⁹ Unfortunately, as of December 2019, the bill has languished in committee for three years.

REIT status was not intended to benefit private prison companies who claim to be "renting" space to people they incarcerate.⁵⁹⁰ Instead, REITs evolved during the 1960s to allow small investors to create real estate income, spurring community development.⁵⁹¹ REIT status has otherwise been used for senior living homes and community healthcare centers, allowing such real estate to receive tax advantages, such as paying no income tax.⁵⁹² Most of a company's profits from property-related operations—approximately 90%—must be distributed to shareholders through dividends.⁵⁹³ As long as this continues, the company continues to qualify for REIT status.⁵⁹⁴

⁵⁸⁵ See HUMAN RIGHTS WATCH, PROFITING FROM PROBATION, *supra* note 60, at 49.

⁵⁸⁶ *Id.* at 43.

⁵⁸⁷ See *id.* at 44.

⁵⁸⁸ See Ending Tax Breaks for Private Prisons Act, S.B. 3247, 114th Congress (2015–16).

⁵⁸⁹ See *id.* S.B. 3247 "amends the Internal Revenue Code to exclude from the definition of 'taxable REIT (Real Estate Investment Trust) subsidiary' any corporation which directly or indirectly: (1) operates or manages a prison facility or provides services at or in connection with a prison facility; or (2) provides to any other person (under a franchise, license, or otherwise) rights to any brand name under which any prison facility is operated, subject to specified exceptions." *Id.*

⁵⁹⁰ See Gregory Meeks, *Congress Must Stop Private Prisons from Receiving Tax Breaks*, THE HILL, (Dec. 1, 2017), <https://thehill.com/blogs/congress-blog/economy-budget/362658-congress-must-stop-private-prisons-from-receiving-tax>, archived at <https://perma.cc/639R-RD8Q>.

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ Morgan Simon, *In Wake of Wells Fargo Hearing, Private Prison Stocks Take Big Hit*, FORBES (Mar. 15, 2019), <https://www.forbes.com/sites/morgansimon/2019/03/15/in-wake-of-wells-fargo-hearing-private-prison-stocks-take-big-hit/#379ca55d1a3b>, archived at <https://perma.cc/X7E4-QRZS>.

⁵⁹⁴ See Rob Urban & Kristy Westgard, *It's a Great Time to Be a Prison Landlord, Thanks to the IRS*, BLOOMBERG (Aug. 9, 2018), <https://www.bloomberg.com/news/articles/2018-08->

Although CoreCivic and GEO Group have taken steps to mimic traditional REITs, including by leasing facilities instead of buying them,⁵⁹⁵ their core business is very far from what REIT status was intended to protect. REIT status should thus be prohibited for private corrections companies.

CONCLUSION

Criminal legal debt is a disturbingly common feature of alternatives to incarceration. To save money, many state and local governments have imposed the cost of alternative corrections on the very people whom alternatives to incarceration purport to benefit. As for-profit corrections companies, including GEO Group and CCA, expand into the alternative corrections arena, they have transformed many diversion and treatment programs into sources of revenue by imposing burdensome costs and fees on individuals caught in the criminal legal system. This criminal legal debt perpetuates poverty, hinders re-entry, and can even lead to re-incarceration.

Our ultimate goal should be to eradicate the criminal legal debt arising from alternative corrections. Until this happens, however, we must take as many steps as possible to control and monitor the actions of such privatized corrections companies, large or small. By demanding increased transparency, creating external watchdogs, insisting on more media access, pressuring the IRS to remove REIT status, increasing punitive fines on private companies, returning control to courts, and requiring means testing for all alternative corrections fees, the approximately 4.3 million Americans who undergo correctional control outside of imprisonment can have a fairer, safer, and actually rehabilitative experience post-conviction, free from the shackles of criminal legal debt.

09/private-prison-companies-expand-empires-thanks-to-tax-advantages, archived at <https://perma.cc/RUW6-A3UT>.

⁵⁹⁵ See Meeks, *supra* note 590.

