



The Racial Implications of Private Prisons

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I. EXECUTIVE SUMMARY

Mass incarceration is a systemic crisis that disproportionately impacts communities of color, with private prison companies profiting billions annually from human confinement in the United States. This brief will examine how the for-profit prison model creates financial incentives that perpetuate racialized incarceration, and how these structural inequities can be addressed through comprehensive criminal justice reform.

II. OVERVIEW

In the United States, mass incarceration has become a problem that has led to the entrenchment of racism and has had a devastating impact on communities of color, often through the imposition of mandatory minimum sentences and the privatization of punishment. An individual may be stuck in a cycle of incarceration and poverty as a result of racism and systemic barriers to reentry. However, despite the fact that there is a general acknowledgment of the failure of the criminal justice system, as well as the need for reform, the prison population continues to rise as private companies make billions of dollars, partly because there is a financial incentive for longer sentences and occupancy rates rather than rehabilitation and successful reintegration into society. This paper, therefore, seeks to explore the intersection of private prison

business models and racism with the goal of understanding how these systems have been sustained and how reform can be used to break this cycle of racism from slavery, through convict leasing, to mass incarceration.

A. Relevance

The term “prison industrial complex” was coined by activist and scholar Angela Davis in the 1990s^[1], and it refers to the relationship that exists between the interests of the state and industry, especially in the way that surveillance and incarceration are used as a means of solving political problems. This was also the period in history that the debate over mass incarceration as a form of racialized control came to a boiling point, especially with the “War on Drugs” under the Reagan administration^[2]. This term describes how punishment became a lucrative business, and the industry has been able to see the potential for revenue generation in human incarceration and the effects on communities of color, such as family dislocation and economic ruin. The United States, which has merely 4% of the world’s population, has 25% of the world’s prisoners^[3], with Black men being incarcerated 5.5 times as frequently as white men^[3].

III. HISTORY

A. Current Stances

In order to understand the private prison system,

this represents a part of a centuries-long history of economic exploitation of racialized bodies in the United States. This history can be seen as a continuum of slavery pre-1865, where Black bodies were legally considered property and therefore a means to economic gain^[4]; convict leasing 1865–1940s, where the 13th Amendment’s exception for slavery allowed Southern states to arrest Black individuals on any pretense and lease them out to businesses under deplorable working conditions^[5]; and Jim Crow 1870s–1960s^[6], where vagrancy laws made it a crime to be Black and poor^[7], and chain gangs^[8] worked Black bodies for labor value—in each of these time periods, new ways were found to legally and economically exploit Black bodies, with a continued emphasis on racial hierarchy. The current era of mass incarceration continues this trend with new means of exploiting Black bodies, albeit under the false pretenses of colorblindness.

The 1986 Anti-Drug Abuse Act created a 100-to-1 sentencing ratio between crack (tied to the black community) and powder cocaine (tied to the white community)^[9], even though the usage of drugs is proportionate across racial lines. Prior to 1986, the black sentence was 11% longer than the white sentence, but after the mandatory minimums, the black sentence was 49% longer^[10]. Blacks are five times more likely to be stopped by police without reason and 34 times more likely to be convicted of felony murder laws^[11]. This deliberate targeting leads to a pipeline from the over-policed inner-city neighborhoods (which are largely black and Latino) to prisons, with private prisons often being built in rural white areas where they serve as a source of employment while the inmates are from the urban neighborhoods of color—a transfer of wealth

from poor neighborhoods of color through the bodies of inmates to rural white areas and corporate stockholders.

Private prison corporations have also become sophisticated in the maintenance of this system. CoreCivic and GEO Group spend millions lobbying for mandatory minimums, three-strikes laws, immigration prison expansions, and opposing sentencing reform^[12]. They are also members of groups such as ALEC, which writes legislation to raise incarceration rates. When released, the ex-offender has to bear many legal restrictions on employment, housing, and education, with 27% being unemployed^[13]—a revolving door to create more revenue for private prisons. Private prisons offer few services to inmates (only one in three receives rehabilitation or education), low staff ratios, and poor medical care to maximize profits. Even as research shows harsh sentences don't deter crime and may increase recidivism, the system persists because it serves powerful economic interests.

IV. POLICY PROBLEM

A. Stakeholders

The major stakeholders in the issue of racial disparities in private prisons include the prisoners themselves, particularly those from racial communities who are disproportionately found in private prisons. These individuals experience higher levels of violence, poor healthcare, and a lack of access to educational and rehabilitative programs that could assist them in their re-entry into society. Communities of color are also major stakeholders because mass incarceration robs their neighborhoods of economically productive members, causing disruptions in families and

communities that contribute to cycles of poverty.

The overincarceration of young Black and Latino males also deprives their communities of economic stability and the accumulation of wealth over time. Families of the incarcerated, particularly children, are also a major stakeholder group. One in four Black children has an incarcerated parent, compared to one in 25 white children, placing them at higher risk for experiencing emotional, behavioral, and academic problems that can contribute to intergenerational involvement in the criminal justice system.

Private prison companies like CoreCivic and GEO Group are stakeholders who have a substantial financial stake in keeping the incarceration rates high. These companies make money from contracts that include provisions for maintaining a certain level of occupancy, which creates perverse incentives for these companies to keep their prisons full rather than working towards rehabilitation.

B. Risks of Indifference

The consequences of failing to address the racial disparities in private prisons are serious and widespread. In terms of human rights, the lack of action is simply the continuation of what has been termed a “form of terrorism and torture” against communities of color^[14]. The militarization of the police in communities of color creates a state of constant fear and trauma, in which police brutality sends a message to communities of color that they are not safe even when they are engaged in legally protected activities^[14]. The conditions in many prisons, including the prevalence of solitary confinement,

tolerance of sexual violence, overcrowding, and denial of basic needs, constitute systematic torture that disproportionately affects people of color due to their overrepresentation in the system. There are nearly 50,000 people in prolonged solitary confinement in U.S. prisons, with people of color comprising the majority in many cities, despite decades of evidence proving the horrific psychological effects it has^[14].

Research documents extensive racial discrimination throughout the criminal justice system, from policing to sentencing to parole decisions^[15]. Black Americans face arrest rates more than twice those of white Americans despite similar rates of criminal behavior, with arrest rates of 4,223 per 100,000 for Black Americans compared to 2,092 per 100,000 for white Americans^[15]. In the prosecution phase, racial biases influence charging decisions, plea bargain offers, and sentencing recommendations. Within prisons, Black inmates receive disciplinary write-ups at significantly higher rates than similarly situated white inmates^[15]. Research from New York State found that 226 employees who issued 50 or more misbehavior reports issued them exclusively to non-white incarcerated individuals^[15]. These disparities compound at each stage, resulting in Black individuals being far more likely to serve longer sentences and face barriers to successful reentry.

The economic consequences of indifference extend beyond individual defendants to entire communities. When young people of color are incarcerated at a disproportionate rate, their communities are deprived of potential employees, business owners, and taxpayers. Studies show that 27% of ex-offenders are unemployed, and the

economic cost of incarceration, including lost productivity, attorney costs, and the indirect consequences of incarceration that restrict employment opportunities after release, drains economic resources from already disadvantaged communities^[13]. At the same time, for-profit prison companies and rural communities that house the prisons experience economic gain as a result of this racialized system of incarceration, a transfer of economic resources from urban communities of color to white recipients^[16]. For-profit prisons operate with perceived economies of scale, not through efficiency, but by selecting younger and healthier inmates while excluding those who require costly medical care^[16].

For children and families, the risks of inaction are particularly devastating. Parental incarceration is highly detrimental to children's development and wellbeing, with research showing elevated risks for emotional, behavioral, and academic issues^[15]. Research has also found that residing in counties with greater jail incarceration inequity is associated with increased risk of severe maternal morbidity for Black and Hispanic birthing people, demonstrating how mass incarceration creates cascading health consequences across generations^[15]. The disproportionate impact on Black families means these harms are not distributed equally across society but rather concentrated in communities that already face systemic disadvantages.

Finally, a lack of concern for these racial inequities casts doubt on the integrity of the criminal justice system and democracy in general. If communities of color come to believe—and they are correct—that the system is operating in a

racially discriminatory manner, it will undermine confidence in the legal system, lead to a lack of cooperation with law enforcement, and contribute to societal instability^[14]. The continued existence of a system that racially imprisons people for the economic gain of for-profit companies is a direct affront to the ideals of equal justice and human rights. As philosopher Jessica Wolfendale has argued, “Police militarization involves the perpetual infliction of or threat of violence against civilians in everyday life, which meets the threshold for many definitions of terrorism.”^[14]

C. Nonpartisan Reasoning

Closing the racial gap in private prisons should be a concern for all political ideologies because it promotes several ideals that are not partisan in nature. From an economic standpoint, mass incarceration is an inefficient use of resources. The United States currently spends more than \$80 billion a year on incarceration, with private prisons adding to this expense while offering substandard results compared to public prisons. Studies have shown that private prisons do not operate in a cost-efficient manner by cutting expenses but by “cherry-picking” the younger and healthier inmates while excluding those with costly medical needs—who are disproportionately older and white^[16]. Comparative studies between private and public prisons in nine states revealed that private prisons had substantially lower percentages of inmates over the age of 50 (the demographic most costly to house), creating a false sense of cost efficiency while actually housing a prisoner demographic that is younger and more representative of people of color^[16]. By exempting themselves from housing inmates with

costly medical needs, private prisons indirectly avoid housing white inmates as well, since older demographics of prisoners have a higher percentage of white inmates^[16].

The profit incentive that propels the private prison industry is a perverse motive that does not correlate with public safety and rehabilitation goals. The private prison industry lobbies policies that contribute to increased incarceration rates, including mandatory minimum sentencing, three-strike laws, and immigration detention^[12]. They also benefit from occupancy guarantee contracts that require states to maintain high incarceration rates regardless of crime rates and justice needs. These incentives are not aligned with public safety but rather with stock performance and have contributed significantly to the overrepresentation of communities of color in prisons. CoreCivic and GEO Group are major lobbyists against sentencing reform and are members of groups such as ALEC, which writes legislation to increase incarceration rates^[12].

From a public health point of view, the current system causes a great deal of harm that trickles down through families and communities. The "War on Drugs" has traditionally focused on crack cocaine, linked with Black users, with sentences 100 times stronger than those for powder cocaine, although both have been used at the same rates in white and Black communities, and both forms of cocaine carry the same public health risks^{[9][10]}. Before 1986, Black sentences were 11% longer than those of whites, but after the implementation of mandatory minimums, Black sentences were 49% longer^[10]. This is indicative of how the policy, which is purportedly aimed at public health, actually serves to

criminalize Black Americans at a vastly disproportionate rate. Although using and selling illicit drugs at the same rate as whites, Black Americans are more likely to be arrested, incarcerated, and referred to law enforcement by medical professionals for substance use^[15]. A shift in policy to treat substance use disorder as a health issue, rather than a criminal justice issue, would be more in line with public health needs and would help to close the racial gaps.

The effect on children is another area of nonpartisan concern. Children with incarcerated parents experience issues of education, mental health, and economic issues that impact their future well-being and productivity. Studies have found that for Black and Hispanic women, living in counties with high incarceration inequity was linked to a higher risk of severe maternal morbidity than living in low-inequity counties^[15]. When these effects are experienced by Black children because of the racialized impact of incarceration, the potential contributions of an entire generation are lost to society. Spending on alternatives to incarceration, especially for nonviolent crimes, would be in the better interest of children and families regardless of race and would specifically address the concentrated effects currently experienced by Black families.

Finally, addressing racial disparities in the criminal justice system advances the fundamental American principle of equal treatment under law. When ostensibly race-neutral policies—such as contracting with private prisons that have age-based medical exclusions—result in dramatically different impacts by race, they undermine the constitutional guarantee of equal

protection^[16]. As research demonstrates, the states where private versus public racial disparities are most pronounced also happen to be the states where private versus public age disparities are most salient, revealing how colorblind policies can produce racially explicit outcomes^[16]. Citizens across the political spectrum share an interest in ensuring that government systems operate fairly and do not systematically disadvantage particular racial groups, even when discrimination is not explicitly intended.

V. TRIED POLICY

In 2018, New Jersey joined a handful of states that have enacted the requirement of Racial Impact Statements for proposed criminal legislation. This practice requires an examination of the potential effects of new legislation on racial and ethnic disparities in the prison population before the legislation is passed. While this practice forces lawmakers to consider the potential effects of their legislation in terms of its discriminatory impact, it is contingent on whether lawmakers are influenced by the data in terms of adjusting or voting down problematic legislation, and it appears that political considerations can supersede concerns about racial equity.

The 2009 New Jersey law that repealed mandatory minimum sentences for drug-free school zone offenses is another example of reform efforts that specifically took into account the issue of racial impact. The harsher sentencing that resulted from these enhanced charges had a disparate impact on individuals living in the densely populated urban areas where schools are more common, which resulted in African Americans and Latinos being subjected to harsher charges and sentences for the same offense that

would have received a less severe sentence in less densely populated areas with a majority of white residents.

The state's decriminalization and subsequent legalization of marijuana was also driven in part by the stark racial inequities in enforcement. While rates of use were similar across racial lines, Black people in New Jersey were disproportionately arrested for possession of marijuana before the law changed. By taking a crime off the books for marijuana possession, the state has eliminated one major cause of racialized contact with the criminal justice system. But in the rollout of legal sales of marijuana, there are new questions about equity, and who is benefiting from the newly legal industry.

However, despite these efforts at reform, New Jersey has still been faced with challenges in closing the racial disparity gap in incarceration rates. Although the overall prison population in New Jersey has been declining, the percentage of this population that is black remains disturbingly high. This indicates that reforms that target specific policies are not enough without broader reforms that target the way in which the criminal justice system functions. Racially disparate outcomes continue to be experienced despite the reform of specific discriminatory laws.

Lessons from New Jersey and other states that have sought criminal justice reform are numerous. First, spot reforms targeting particular policies can help with specific causes of disparity but are not helpful in systemic reform where discretionary decision-making at various points still causes racially disparate outcomes. Second, political sustainability is vital, where reforms can be undone if political will shifts or if reforms are

mistakenly identified as causes of rising crime rates. Third, data is key to understanding which reforms are effective and where disparities remain. Lastly, effective reform requires not only a shift in policy but also a shift in organizational culture to ensure that new policies are reflected in new practices.

VI. POLICY OPTIONS

Phasing Out Private Prison Contracts Through Federal and State-Level Prohibition

The best way to solve the problems of private prisons is to end the government's dependence on private incarceration facilities by legislative ban and executive order.^[12] The Biden administration signed an executive order in 2021 to order the Department of Justice not to renew contracts with private prison companies, although this only applies to federal prisons and not to immigration detention or state-run prisons. California, Illinois, New York, and Nevada have enacted legislation to limit and phase out private prison contracts, as it is understood that the profit motive driving private prisons creates an incentive that is at odds with rehabilitation and racial justice. But stopping private prison contracts without addressing the root causes of mass incarceration may simply relocate prisoners from private to public prisons without changing the rates of incarceration or the racial disparities of incarceration.^[17] To effectively put an end to private prisons, it is necessary to couple the ban on private prisons with decarceration policies, public prison renovations, and policies that decrease the overall incarceration rate. States must set up transition periods to transfer prisoners from private to renovated public prisons while simultaneously enacting sentencing policies that decrease the need for mass

incarceration.

Implementing Race-Blind Charging Practices and Eliminating Discriminatory Jury Selection

Prosecutors exercise enormous discretion in charging decisions, plea bargaining, and sentencing recommendations—discretion that can perpetuate racial disparities even when laws themselves are facially neutral.^[17] Several states have implemented race-obscured charging, where prosecutors initially make charging decisions without access to information about the defendant's race, with California mandating this practice statewide by 2025. Washington State, California, and Arizona have reformed or eliminated peremptory challenges in jury selection, which have historically been used to exclude people of color from juries.^[17] The Vera Institute of Justice has worked with prosecutors to implement data-driven reforms, such as Milwaukee's elimination of disparate drug paraphernalia charges against Black defendants through required supervisory approval.^[17] Reform-oriented prosecutors in Los Angeles and Philadelphia have revised charging practices to avoid triggering harsh sentence enhancements and have instructed their offices to make plea offers below sentencing guidelines.^[17] However, these prosecutorial reforms face significant backlash, with recall campaigns removing some reform-oriented prosecutors and Republican governors attempting to override democratically elected progressive prosecutors.^[17] Sustaining these reforms requires building public understanding of how discretionary decisions perpetuate racial disparities and maintaining political support even when opponents falsely

blame reform for increases in crime.

Eliminating Cash Bail and Expanding Pretrial Release Programs

The cash bail system contributes significantly to racial disparities because people of color are more likely to have limited financial resources and thus more likely to remain jailed pretrial, which leads to worse case outcomes including higher conviction rates and longer sentences.^[17] Illinois became the first state to completely end cash bail in 2023, implementing reforms that limit pretrial detention to only those assessed as high flight risks or threats to their community while regulating risk assessment tools to prevent perpetuation of racial bias.^[17] New Jersey reduced its pretrial jail population by nearly half through its Criminal Justice Reform program, while New York's 2020 bail reform reduced pretrial populations by 40% and decreased re-arrest rates, though political backlash led to partial reversal.^[17] Local jurisdictions including Philadelphia and Harris County, Texas, have demonstrated that dramatically reducing pretrial detention does not compromise public safety while producing better outcomes for defendants and saving system costs.^[17] Harris County's reforms reduced future criminal system contact, decreased guilty pleas, and shortened sentences while saving millions in costs and increasing lifetime earnings for defendants. Sustaining these reforms requires combating false narratives linking them to crime increases, resisting bail bond industry opposition, and ensuring accurate media coverage of reform impacts.^[17] States should prioritize eliminating wealth-based detention while implementing validated risk assessment tools that do not perpetuate existing racial biases in criminal justice

contact.

VII. CONCLUSIONS

This brief has examined the relationship between the private prison industry and racial inequalities in the prison system, analyzing the ways in which the profit-driven industry perpetuates the overrepresentation of Black and Latino people behind bars. The private prison industry does not cause racial inequalities, but it certainly benefits from and perpetuates them through lobbying for tougher sentencing laws, “cherry picking” younger and healthier prisoners, and making money from the incarceration of people of color. Of the various policy solutions that have been discussed, the phase-out of private prison contracts through state and federal bans is the most straightforward, although it must be done in conjunction with other reforms related to prosecutorial bias, cash bail, public defense spending, and community supervision policies.

Solving the racial problems of the private prison industry means acknowledging that the current mass incarceration crisis is merely the latest manifestation of America's long history of exploiting the bodies of Black and brown people for economic gain. While there have been advances in bail reform, prosecutorial reform, and public defense spending in some places, these advances are currently facing intense political pushback.

Eliminating private prisons is necessary but not sufficient for achieving racial justice in criminal justice. Only through systematic implementation of evidence-based reforms, restriction of corporate influence on policy, and intentional dismantling of structures that produce racial

disparities can we break the cycle extending from slavery to the present and build a system that provides equal justice regardless of race.

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