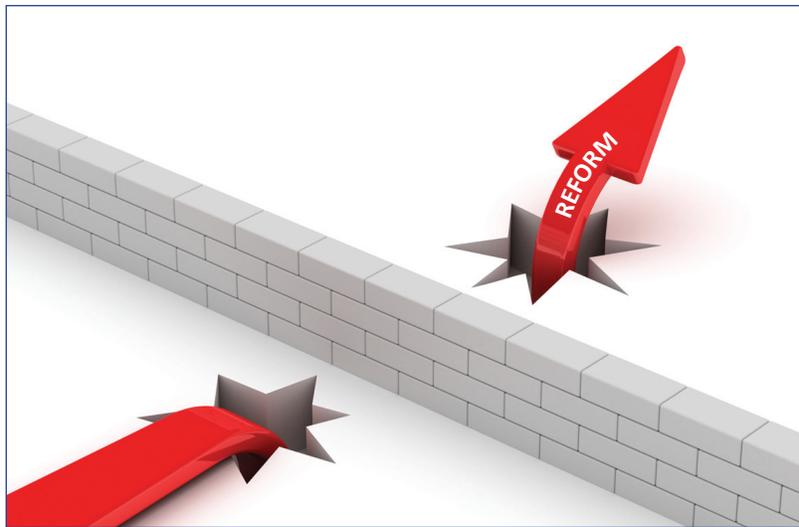


ROADBLOCKS TO REFORM

PERILS FOR GEORGIA'S CRIMINAL JUSTICE SYSTEM



SUBMITTED TO
THE GEORGIA CRIMINAL JUSTICE REFORM COUNCIL
NOVEMBER 2012

THE LAW OFFICE
OF THE
SOUTHERN
CENTER FOR
HUMAN
RIGHTS

Executive Summary

Georgia has the highest rate of adults under correctional control of any state in the country, and its corrections budget reflects this fact. The Special Council on Criminal Justice Reform, with its mandate to investigate problems, examine best practices, and make recommendations to the legislature that will decrease the corrections budget while prioritizing public safety, is an example of the type of thoughtful, careful attention that is required to address these challenges. Contracting out government responsibilities of running correctional facilities and probation supervision to private companies with little accountability, however, only worsens the problems, ultimately driving up costs while compromising public safety.

In evaluating current practices in Georgia and making recommendations for reform, the Special Council should examine the interests of private companies in the further growth of the state's correctional population and how they have failed to follow through on promised cost savings and standards of quality. The Special Council should also consider these companies' explicit incentives against criminal justice reform aimed at lowering crime rates while curbing the rise in incarceration rates. Finally, the Special Council should recommend common-sense reforms to cabin the perverse incentives of private companies: increasing transparency, enforcing accountability, and evaluating costs and performance, while also ensuring respect for the constitutional rights of those facing criminal charges or serving prison terms.

Founded in 1976, the Southern Center for Human Rights (SCHR) is a non-profit public interest law firm dedicated to enforcing the civil and human rights of people involved in the criminal justice system in Georgia and Alabama. SCHR has compelled county, state, and federal governments to make significant improvements in prisons and jails across the South—to reduce overcrowding, provide adequate medical and mental health care, abate violence and abuse, and thereby fulfill their constitutional obligations to protect the people in their custody. SCHR monitors conditions in dozens of jails and prisons and uses litigation and advocacy to ensure compliance with constitutional standards.

SCHR presents this report to the 2012 Criminal Justice Reform Council ("Council") and Georgia's citizens with suggested reforms to Georgia's current criminal justice policies. SCHR's recommendations are based on sound practices in other states as well as our own expertise over the last 35 years.

Overview

Georgia has the highest rate of adults under correctional control of any state

- Georgia has the fourth-highest incarceration rate
- Georgia is far ahead of any other state in adult probation rates

There are four private prisons in Georgia housing some 5,400 state prisoners

- Two of these prisons opened in the last year
- The other two were expanded in the last year

Private prison companies have a financial interest in sustained or increased incarceration rates

- The two biggest private prison companies have poured lobbying resources and campaign contributions into the state in the last decade
- The proposed state budget for FY 2013 includes \$35 million for 2,650 new private prison beds
- GDC cost analyses indicate that private prisons cost more per-inmate per-day than state-run prisons

There are 35 private probation companies in Georgia operating in over 600 courts

- These companies enjoy minimal oversight because of a state statute providing confidentiality for all of their information
- Many people are only placed on misdemeanor probation because they are too poor to pay fines at court

Common-sense reforms are possible

- Transparency is a prerequisite to accountability: cost and performance data should be made available and evaluated
- Precise contract terms and enforceable monitoring mechanisms should be implemented to define the performance standards private companies must meet and to equip regulators to enforce those standards
- State actors who interact with private companies in the performance of their duties should receive specialized training in order to increase consistency and fairness across the state
- As Georgia streamlines its correctional expenditures to bring costs in line with best practices, it should phase out profit-seeking companies' involvement in the criminal justice system because their business model is at odds with the goal of running effective and fair criminal justice and prison systems at the lowest reasonable cost

I. Introduction

The Southern Center for Human Rights applauds Governor Nathan Deal’s decision to reconvene the Special Council on Criminal Justice Reform to continue the efforts undertaken last year to address Georgia’s growing incarceration rate and corrections budget. These matters are of concern to all Georgians, not just those of us who face interactions with the courts and the correctional system. Because they implicate the state budget as a whole and are integrally related to public safety, they affect everyone.

The Pew Center on the States found that Georgia currently has the highest rate in the U.S. of individuals under some form of correctional control – probation, parole, prison or jail. While the national average is 1 in 31, Georgia’s rate is 1 in 13.¹ Although Georgia ranks fourth in incarceration rates,² it has far and away the highest rate of adults on probation: 6,208 per 100,000.³ An estimated 53% of adults on probation in Georgia – some 244,661 people – are on misdemeanor probation, much of which is run through the 35 private probation companies operating in the state.⁴ It is not simply unfortunate that Georgia leads the nation along these metrics. It is something that can be changed.

In considering ways to improve the criminal justice system in Georgia, it is essential that the Council examine the privatization of criminal justice functions in the state. Corporations have a financial incentive to further expand the number of people under correctional control, an incentive directly at odds with Georgia taxpayers’ interest in reducing criminal justice spending while prioritizing public safety.⁵

Research into the performance of private entities in the criminal justice system shows that cost savings do not materialize, and purported efficiencies come at the expense of public safety. The Council should consider ways to cabin the role of private companies in shaping policy, curb the growth of private criminal justice institutions that depend on continual increase in the number of people under correctional control, and create systems of accountability to hold private entities to their promises of greater efficiency, quality of services, and cost effectiveness, as well as their contract terms. Moreover, the Council should encourage the state to adopt evidence-based practices and policies to manage public safety and the state budget.

This paper discusses privatization first in a national context, where other states can offer examples of what does and does not work. Next, the paper describes the role of private prisons and private probation in Georgia today. It sets out criteria for evaluating both the performance of private providers currently operating in the state and the merits of maintaining such public-private partnerships in the future. Finally, the paper offers common-sense recommendations on how to reduce the impact of improper financial incentives on Georgia’s criminal justice system and thereby improve both the cost-efficiency and public safety outcomes of the system.



II. Private Prisons in the United States

The Corrections Corporation of America (CCA) and the GEO Group (GEO), the two largest private prison operators in the United States, have become major players in correctional policy across the United States. CCA, GEO, and a small handful of other companies comprise the vast majority of private prison business. In 2010, there were more than 128,000 people held in private prison facilities in the U.S. Of these, 94,365 were in private state (non-federal) facilities.⁶ The companies, meanwhile, reap huge profits: in 2010, CCA and GEO Group took in nearly \$3 billion in revenue.⁷

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These companies have been successful in expanding their reach in part by promising cost savings to state and local governments, touting efficiencies that only the private sector can provide because the public sector is overly-bureaucratic and inefficient. For many years, stakeholders thought these claims might bear out. But as an increasing amount of research now demonstrates, the heralded cost savings of privatizing prisons are largely illusory. A 2009 analysis of privatization studies by researchers at the University of Utah concluded that “[c]ost savings from privatization are not guaranteed and quality of services is not improved. Across the board effect sizes were small, so small that the value of moving to a privately managed system is questionable.”⁸ A recent report from New Hampshire assessing the risks and benefits of privatization reviewed available research compiled over more than two decades and found “a clear consensus that when all cost factors are included in the analysis, the available evidence does not support the contention that private corrections are more cost-effective or efficient than those publicly operated.”⁹

In specific instances, states have found that private prisons are not only failing to save money for the state, but are actually costing more. Here in Georgia, the Department of Corrections (GDC) estimates that the cost in state funds is \$1.30 higher per inmate per day in private prisons than in state prisons.¹⁰ Elsewhere, in 2007, Florida sued CCA for \$3.6 million in excessive staffing and equipment charges, and the company eventually agreed to refund the state \$1.5 million.¹¹ A 2012 report by the American Friends Service Committee in Arizona found that privately operated prisons in the state are actually more costly than DOC facilities, estimating a loss to the state of \$10 million from 2008-2010, and projecting a loss of \$6 million per year if the state adds 2,000 new private prison beds, as it has proposed doing.¹² New Mexico also reportedly overpaid by millions during a six-year period in which private prison costs rose 57% while the inmate population increased by just 21%.¹³

To the extent that they cabin costs, CCA and GEO draw much of their “savings” from personnel and programming, paying undertrained correctional officers significantly less than their public sector counterparts.¹⁴ Turnover among staff in private prisons is also problematic. For example, in Texas in 2008, the rate of turnover among correctional officers in the state’s seven private prisons was 90%, compared to 24% in state prisons.¹⁵ This creates an environment in which new guards lack experienced mentors, inmate-staff tensions increase, and a culture of professionalism fails to take root.

Additionally, private prison companies have little incentive to provide skills training and other rehabilitative programming. While research comparing recidivism rates from private and public prisons is still scarce and studies to date have been inconclusive, programming is among the costlier elements of prison budgets.¹⁶ Prison companies have a financial incentive to keep programming costs as low as possible, and insufficient incentive to achieve quality benchmarks in these services. Indeed, private prison companies have a troubling financial interest in seeing released prisoners reoffend and return to their facilities, as their SEC filings indicate (see excerpts from annual reports below).

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Cutting corners for both inmates and staff fosters an environment where violence, riots, and escapes are prone to occur.¹⁷ Research has found a “differentially high rate of violence at privately operated prisons when compared to those operated by the state.”¹⁸ In Texas in 2007, inmate-on-staff assaults were reported to be 49% higher and inmate-on-inmate assaults 65% higher in private facilities.¹⁹ A private prison in Ohio reported 13 stabbings, 2 murders, and 6 escapes in a 14-month period, prompting one state official to note, “There is nothing in Ohio’s history like the violence at that prison.”²⁰

Another method the companies use to maximize profits is contracting to house only certain types of inmates, those who are least costly to incarcerate. This leaves state-run facilities in charge of prisoners who may have mental health problems, costly medical conditions, or high security classifications, artificially bolstering the apparent “savings” of private facilities versus public ones.²¹

Meanwhile, private prison companies maintain a major financial stake in ensuring that more and more prison beds are built. The companies are not responding to a public need by continuing to build their business, but rather they are working to create that need in the interest of their shareholders.

“Privately operated facilities have a much higher rate of inmate-on-inmate and inmate-on-staff assaults and other disturbances”

Private companies have noticed that criminal justice reform efforts aimed at reducing government correctional spending are a threat to their bottom line:

- CCA’s 2010 Annual Report stated: “The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. . . . [R]eductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities.”²²

- The GEO Group stated in a 2011 SEC filing: “Our growth depends on our ability to secure contracts to develop and manage new correctional, detention and mental health facilities, the demand for which is outside our control . . . [R]eductions in crime rates could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities.”²³

In FY 2011, private prisons cost Georgia \$45.81 per inmate per day while state-run prisons cost the state \$44.51.

Mismanagement in private prisons has given rise to a number of lawsuits across the country, resulting in millions of dollars in settlements and damages. A class action brought by prisoners in Ohio against CCA in 1999 settled for \$1.65 million. Ten years later, CCA reached a \$1.3 million settlement with the Equal Employment Opportunity Commission in a lawsuit alleging that male workers at a Colorado facility forced female workers to perform sex acts to keep their jobs and retaliated against those who complained.²⁴ In 2011, a class action brought against CCA for its mismanagement of a facility in Idaho dubbed the “Gladiator School” led to a comprehensive settlement agreement ordering dramatic changes in how the facility is run. One person at that facility was viciously beaten by other inmates after warnings to guards about the impending risk went unheeded; he filed an individual action seeking \$55 million, though the terms of the final financial settlement were sealed.²⁵

The GEO Group has likewise paid enormous sums in settlements and damages. In 2004, the company reached a \$98,000 settlement with a prisoner who prematurely gave birth at a San Antonio jail due to inadequate medical care.²⁶ In 2010, the Texas Court of Appeals upheld a \$42.5 million verdict against the GEO Group and the warden of one of its facilities on behalf of the family of a prisoner who was beaten to death by other inmates at the facility.²⁷ The same year, a class action brought by prisoners at six separate GEO Group prisons regarding routine strip searches of nonviolent, nondrug offenders settled for \$2.9 million.²⁸ In 2012, a GEO Group-run youth facility in Mississippi was brought under federal consent decree due to the “systemic, egregious and dangerous practices” that the Justice Department reported there. These practices included sexual relations between youth and staff, beatings by staff, drug use, and the use of chemical restraints. Following the court order, GEO quickly withdrew from all three Mississippi facilities it was operating.²⁹

The companies themselves acknowledge the financial implications of litigation. CCA’s 2010 Annual Report stated: “[W]e experienced an increase in legal expenses at managed-only [privately managed but not privately owned] facilities during 2009 compared with 2008. Expenses associated with legal proceedings may fluctuate from quarter to quarter based on new or threatened litigation, changes in our assumptions, new developments, or the effectiveness of our litigation and settlement strategies.”³⁰ While share prices may suffer, taxpayers shoulder the burden for costly litigation, either directly or through increased costs for future contracts.³¹

The expansion of Georgia’s private prison sector stands at odds with the Special Council’s objective of reducing Georgia’s prison population and corrections budget.

The traits endemic in private prisons – poorly trained staff, inadequate services, higher rates of violence and other infractions – dovetail with one another and are mutually reinforcing. Financially, the cost savings of paying smaller salaries with fewer benefits, for instance, might be offset down the road by costly lawsuits stemming from poorly trained guards’ behavior. With respect to public safety, the costs of poor prison management can be serious too. This situation is made even more dangerous, both financially and for the staff and people incarcerated in private prisons, by the difficulty in maintaining effective oversight. Across the country, monitoring efforts fall short of even modest goals, and a lack of transparency that the companies encourage presents a risk that the problems and the costs of private prisons are even greater than what research has yet shown.

III. Private Prisons in Georgia

The expansion of Georgia’s private prison sector stands at odds with the Special Council’s objective of reducing Georgia’s prison population and corrections budget. CCA and GEO have opened two prisons in Georgia in the past year, doubling the number of private facilities with which the GDC contracts. The two already-present facilities expanded in the last year to add more beds. (Five other facilities in Georgia owned by CCA or GEO contract with the federal government.)

Private Prisons in Georgia	CCA	GEO Group	Other
Under contract with GDC	Jenkins Correctional Center (Millen): 1,150 beds Coffee Correctional Facility (Nicholls): 3,032 beds Wheeler Correctional Facility (Alamo): 3,028 beds	Riverbend Correctional Facility (Milledgeville): 1,500 beds	
Under contract with federal government	McRae Correctional Facility (McRae): 1,524 beds North Georgia Detention Center (Gainesville): 502 beds Stewart Detention Center (Lumpkin): 1,752 beds	Robert A. Deyton Detention Facility (Lovejoy): 768 beds D. Ray James facilities (Folkston): Correctional Facility: 2,507 beds; Detention Facility: 340 beds	Irwin County Detention Center (Ocilla): 1,201 beds [Municipal Corrections LLC/ Detention Mgmt LLC] ³²

The proposed budget for FY2013 allocates \$35,274,014 to “annualize the cost of” 2,650 new private prison beds.³² However, the GDC itself found that in FY 2011, private prisons cost the state \$45.81 per inmate per day while state-run prisons cost the state \$44.51.³³ In other words, the state is slated to pay an additional \$35 million per year going forward, even though by its own calculations, it will pay \$1,257,425 more each year for the 2,650 new beds (or \$4,132,895 more per year for the total 8,710 GDC-contracted private prisons beds).

In a sense, private prison companies are getting a return on their investment, having poured campaign contributions and lobbying expenditures into the state for at least a decade. Georgia ranked third among US states in campaign contributions from the largest private prison companies from 2003-2012, taking in \$382,333.³⁴ During the same period, CCA, GEO, and Cornell Companies (formerly the third-largest private prison company in the US; acquired by GEO in 2010) employed 16 lobbyists in the state.³⁵

While this information on CCA and GEO’s financial activity in Georgia politics is publicly accessible, oversight of the facilities themselves is more problematic. Although GDC has embedded monitors at each private prison “overseeing the facility’s operations to ensure that all contract conditions are met and that the facility operates with a continuous focus on sanitation, safety and security,”³⁶ the terms of the contracts between the corporations and GDC are not public, making it difficult for outside advocacy groups and other stakeholders to assess conditions within the prisons or the efficacy of the GDC monitors. While the GDC notes that CCA and GEO facilities in Georgia have been accredited by the American Correctional Association (ACA),³⁷ the ACA’s accreditation system is based on a review of on-paper

policies and procedures, rather than an assessment of how those policies and procedures are implemented and what outcomes emerge.³⁸ This difficulty in oversight heightens the potential for unchecked abuse. The sort of concrete comparisons between privately and publicly run prisons necessary to inform Georgia's future policy and budget decisions are hard to develop where there are so few mechanisms for oversight. This dynamic works to the benefit of the prison companies, since once a facility is built and operational, public agencies may feel compelled to keep it fully occupied over the long term.

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The problem of excessive power in the hands of private prison companies affects all Georgians and our state budget, but its negative consequences especially threaten rural parts of the state where private prisons might be built.

This problem is complicated because the present economy is deeply troubled and unemployment is a major issue across the state. In this environment, the promise of a couple hundred jobs can be appealing – even low-paying, dangerous jobs like being a poorly trained employee in a private prison earning meager pay. But rural communities that place their economic hopes in prisons are likely to be disappointed.³⁹

Towns like Littlefield, Texas,⁴⁰ and Hardin, Montana,⁴¹ have been all but completely devastated after pouring scant municipal resources into private prison contracts, only to have the promised facilities never open. The towns are left deep in debt, their economic prospects even more grim, while the private prison companies pull up stakes to seek more lucrative contracts elsewhere. With each expansion of private prisons – especially as the state deliberately seeks to reduce its prison population – we risk this happening in Georgia too.

Already, one privatized jail in the state that contracts with the federal government, the Irwin County Detention Center in Ocilla, has found itself in dire financial straits as ongoing empty beds have forced it into bankruptcy proceedings and efforts to bring in federal detainees from out of state have been stymied.⁴² That facility is owned and operated by two small companies with little political clout, Municipal Corrections and Detention Management LLC. With powerful companies like CCA and GEO, in contrast, Georgia runs the risk of having its correctional policy be driven by the financial need to incarcerate rather than sound policies regarding punishment and sentencing. Either way, long-term economic development in rural parts of the state will be difficult.

These towns' stories are not unique instances of failure in otherwise successful ventures. In fact, CCA reported a 1.3% decline in state revenues from 2009 to 2010.⁴³ The company reported a 4.8% increase in federal contracts over the same period, but to the extent that state-level business is declining, it is not in Georgia's interest to try to uphold or grow it at the expense of implementing evidence-based best practices regarding crime control, punishment, and sentencing.

IV. Private Probation in Georgia

Improper financial incentives affect not just the number of prison beds in Georgia, but other aspects of the criminal justice system as well, especially in the area of misdemeanor probation. Georgia is unique among the states in the size and scope of its private probation system. This industry has operated at the margins of the law since its inception. Former Chairman of the Georgia Board of Pardons and Paroles Bobby Whitworth was convicted of influence peddling and accepting a \$75,000 bribe for his role in passing S.B. 474, the private probation legislation.⁴⁴ Former Representative Clay Cox, who was both a state legislator and owner of one of the largest private probation companies in Georgia, Professional Probation Services, proposed a bill in 2009 to abolish the small probation oversight body, the County and Municipal Probation Advisory Council (CMPAC).⁴⁵ Given these circumstances – at best conflicting and at worst corrupt – this Council should recommend reforms to the private probation industry in the state. In this context, increased transparency is a prerequisite to accountability for the infringement of rights.

There are currently 35 private probation companies operating in over 600 courts throughout the state.⁴⁶ Some have as few as one employee and operate in just one county, while others are comparatively massive. Sentinel Offender Services LLC, for example, has 79 contracts with Georgia Courts. According to the Private Probation Association of Georgia, a membership professional organization to which about half of the 35 private probation companies belong, as of fiscal year 2008 there more than 254,000 people on private probation.⁴⁷ Private probation companies charge these individuals some \$30-45 per month in supervision fees. With the recent passage of many of this Council's legislative recommendations, reclassifying some low-level crimes as misdemeanors, the number of people on private probation stands to grow.

Courts may have specific reasons to want to contract out the work of collecting court fines, but the industry as it exists today enjoys very little oversight. The lack of transparency and consistency across courts contributes to the fact that, in large part, this industry makes money off the backs of poor people – those that are not financially able to pay their fines in full on the day they appear in court – and avoids accountability. In courts across the state that contract with private probation companies, there exists a striking lack of consistency, and a lack of uniformity even within specific courts, regarding whether and how indigency determinations are made before a person is put into private probation, and how the terms of probation are altered (if at all) when the person is indigent.⁴⁸ These responsibilities do not clearly reside with either the courts or the probation companies, and in many instances are taken up by neither. People placed on probation, meanwhile, are informed of the monthly sum they are ordered to pay, but seldom have awareness of their rights regarding inability to pay and the threat of jail.

The lack of transparency within the system is directly a result of statute. O.C.G.A. § 42-8-106 “declare[s] . . . confidential” “[a]ll reports, files, records, and papers of whatever kind relative to the supervision of probationers by a private corporation. . . .” O.C.G.A. § 42-8-101(e)(8) states that the annual report that CMPAC sends to the legislature “shall not contain information identifying individual private corporations . . . or their contracts.” This lack of transparency makes it difficult to identify problem companies as well as situations where individuals' rights are being infringed.

The “offender-funded” model that dominates the private probation industry in Georgia fails to adequately consider the indigency of many probationers and in essence piles on the punishment meted out by the courts by wringing additional meager dollars, including from people whose only reason for being on probation is that they were too poor to pay their court fees up front. In some cases, people are sent to jail as a result of their inability to pay their monthly private probation fees in full.⁴⁹

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V. Accountability for private prisons & private probation

Privatization has not demonstrated significant benefits to the state of Georgia, and has arguably hurt many citizens to the extent that it ramps up criminal punishment for the financial gain of company shareholders. Georgians should be able meaningfully and carefully to compare the services they are receiving from private companies to those that are administered by the state and its municipalities, and evaluate whether policies that serve private interests are actually benefitting the state.

The first step is oversight. Private companies carrying out criminal justice functions should not get special closed-door access to state lawmakers. Plans to expand Georgia’s prison population should not be developed in secret and presented to the public only when they are inexorably under way. Private probation records should not be “declared confidential.” Those secrecy provisions should be repealed.

Next, there should be transparent investigations of cost and performance comparisons between private and public prisons and probation companies currently operating in Georgia. The Council should use its power to examine contracts between GDC and CCA and GEO to learn what standards are in place, and use this information to evaluate whether privatized criminal justice is functioning appropriately. To the extent that there are future Requests for Proposals regarding new private prison beds, this Council should insist on transparent processes, specificity in contract terms, and effective accountability mechanisms in any future agreements.

But it should also develop a plan to draw down the number of private prison beds in the state as criminal justice reforms are implemented and the prison population begins to decline. Georgia over-relies on incarceration as a response to crime. Relying on private prisons to provide more and more prison beds reduces the state’s ability to implement evidence-based reforms to reduce crime. **In order to curtail this reliance, the Council should recommend that the state legislature:**

- Revise the policies that drove up Georgia’s prison population, including mandatory minimum sentences and the denial of discretion to sentencing judges; truth in sentencing and the curtailment of good-time credit; and sentence enhancements.
- Refocus on the rehabilitative potential of incarceration through evidence-based initiatives that drive down recidivism: skills training; reentry resources (that do not charge poor people infeasible sums); and the removal of obstacles to employment, housing, and other essentials.
- Craft more detailed contracts when agreements with private prison companies are renewed, establishing minimum standards for staff qualifications that meet or exceed state standards.

- Develop penalties that punish poor performance by prison companies in a way that spurs changes in their behavior and practices, specify these penalties in future contracts, and provide enough transparency for state lawmakers and outside groups to investigate the prison companies' performance of contract terms.

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These sorts of changes may not come cheap. In fact, bolstering minimum standards and implementing effective oversight could drive up the costs to CCA and GEO of running prisons in Georgia. That would be all the more reason to question the wisdom of continuing to allow private prisons to operate in the state. It is not a reason to allow the companies to shirk constitutional standards.

Similarly, as Georgia's private probation industry faces a possible expansion because of this Council's 2011 reforms, the Council has an opportunity to implement much-needed changes to the system as it already exists. **SCHR urges the Special Council to consider implementing the following recommendations in the interest of fiscal responsibility and fairness to Georgians:**

- Provide training about indigency determinations and respective responsibilities of the courts, the probation companies, and individuals under probation supervision, to judges who preside over misdemeanor adjudications.
- Create a statutory provision governing how indigency determinations are made in courts throughout the state. For instance, some conditions (receipt of public assistance, Social Security income or food stamps, e.g.) should constitute prima facie evidence of indigency. Indigent people should not be placed on probation for their inability to pay fines. Where they are placed on probation for other reasons, they should be exempted from supervision fees.
- Create a provision for how indigent probationers are handled while under private probation supervision that strictly limits supervision fees, encourages community service alternatives to payment, and enforces the U.S. Supreme Court's requirement that no one be imprisoned for failure to pay a fine or fee unless the court determines that the failure is willful.⁴³
- Allow non-indigent misdemeanor defendants a window of 30 days to pay fines and fees they owe the courts. It is wasteful to force people into probation for a reason as arbitrary as not having hundreds of dollars with them on the day they appear in court. Though some courts may choose to give defendants a short window of time to gather funds, there is little consistency in this practice throughout the state.
- Require that at least 50% of each probation payment go towards the original fine and cap monthly supervision fees. Companies should not be paying themselves at the expense of paying the courts.
- Reinstate yearly registration fees for Georgia's private probation companies in order to provide CMPAC with necessary funds. CMPAC itself recognizes the need for better training among private probation officers. It has cited the need for training in its annual reports to the legislature, at the front end and on a continuing basis, and has sought to implement it, but lacks the funding to adequately maintain a training regime that would prevent, among other problems, the "illegal arrest of citizens."⁴⁴

The Council should address the serious oversight deficiencies within the industry as well. Most importantly, the secrecy provisions in O.C.G.A. §§ 42-8-101(e)(8) and 42-8-106 should be repealed. Individuals' probation information, which is part of their public court records, should not be concealed as business secrets. The existing statutory provisions do little besides providing cover to private probation companies to operate with almost no oversight.

Another straightforward means to make the system more fair and functional is to disseminate a list of probationers' rights and responsibilities. SCHR has observed that many of the problems people face with private probation companies stem from a lack of information. This list could be posted in every private probation office and distributed to people in court as they enter the probation system as well as at initial supervision appointments. The list could include, for example, that people on probation are responsible for fulfilling all probation requirements; must report to all probation supervision appointments; must make all scheduled payments in full when able to do so; and must keep probation officers informed of their current address. Probation officers, in turn, should provide probationers with itemized receipts for payments made; may not threaten probationers with jail time for inability to pay monthly balance in full; and may not issue an arrest warrant solely for a probationer's inability to pay a monthly balance. Providing clarity and concreteness on these points will go a long way to reducing confusion and wasted resources in Georgia's misdemeanor probation system.

VI. Conclusion

The Special Council on Criminal Justice Reform is uniquely capable of investigating, evaluating, and reshaping Georgia’s criminal justice policies. In performing its duties, the Council will be remiss if it does not examine the role of corporate interests and improper financial incentives in expanding the size and scope of our criminal justice system. Likewise, the Council should consider evidence-based reforms that lessen the influence of private interests in the ongoing expansion of that system. It should seek to reduce Georgia’s incarcerated population as well as private companies’ stake in the state’s policies – two objectives that not only go hand in hand, but in fact are interdependent. To the extent that privatized criminal justice is not saving taxpayer money over the long term; is infringing individual rights in the present; is not delivering contracted-for services; and is exacerbating problems that are best addressed through municipal solutions, it should be phased out of Georgia.

Endnotes

¹ONE IN 31: THE LONG REACH OF AMERICAN CORRECTIONS 45, Pew Center on the States, March 2009.

²ONE IN 31, at 43. According to the Pew Center on the States, the District of Columbia, Louisiana, and Mississippi had higher rates of adult incarceration (prison and jail) than did Georgia as of 2007, although Georgia's rate was nearly identical to Mississippi's: 1 in 70 versus 1 in 69 (while DC's rate was 1 in 50).

³PROBATION AND PAROLE IN THE UNITED STATES, 2010, Bureau of Justice Statistics, at 30. Idaho is next-highest with 4,602 probationers per 100,000 adults, followed by Rhode Island with 3,010.

⁴PROBATION AND PAROLE IN THE UNITED STATES, at 37. While it is publicly known that 35 private probation companies operate in over 600 Georgia courts, the number of people on private versus municipal misdemeanor probation is not known. The Private Probation Association of Georgia, however, estimates the number of people on private probation in Georgia to be 254,000 as of 2008.

⁵See Section II, Private Prisons in the United States.

⁶Christopher Hartney & Caroline Glesmann, *Prison Bed Profiteers: How Corporations Are Reshaping Criminal Justice in the U.S.*, National Council on Crime and Delinquency, May 2012, at 5.

⁷*Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies*, Justice Policy Institute, June 2011, at 6-8.

⁸Brad Lundahl et al., *Prison Privatization: A Meta-Analysis of Cost and Quality of Confinement Indicators*, 19(4) *Research on Social Work Practice* 383 (2009). A 2012 analysis of private prison costs in Arizona by the American Friends Service Committee found that, between 2008 and 2010, the state overpaid private prison companies by an estimated \$10 million as compared with state-operated prisons.

⁹Elaine Rizzo, Ph.D., and Margaret Hayes, Ph.D., RN, *An Assessment of the Risks and Benefits of Prison Privatization*, Prepared for the Citizens' Advisory Board of the New Hampshire State Prison for Women, Jan. 30, 2012, at 2.

¹⁰*Georgia Department of Corrections FY2011 Allocation of Cost to Inmates, Probationers, Etc.*, Feb. 28, 2012, available at <http://www.dcor.state.ga.us/pdf/CorrectionsCosts.pdf>.

¹¹Associated Press, *State Settles Financial Dispute with Private Prison Company*, Dec. 12, 2007, available at <http://jacksonville.com/apnews/stories/121207/D8TG53JO0.shtml>.

¹²*Report Reveals Widespread Problems in Arizona's Private Prisons: Cites Safety Issues, Lack of Accountability, and Cost*, American Friends Service Committee, Feb. 8, 2012, at 1.

¹³Associated Press, *N.M. Pays More For Private Prisons, Report Says*, May 24, 2007, available at <http://www.abqtrib.com/news/2007/may/24/nm-pays-more-private-prisons-report-says/>.

¹⁴Staff turnover rates in private prisons have been as high as four times those in public facilities in recent years. Average turnover rates for state CO's in 1999 were 16% in public facilities and 53% in private ones. Joshua Miller, *Worker Rights in Private Prisons, in Capitalist Punishment: Prison Privatization & Human Rights* at 142, Andrew Coyle et al. eds., 2003. The rates in 2002 were nearly identical. Nick Hudson, *High Turnover and Unique Security Problems Created by Private Prisons*, 2009, available at http://www.grassrootsleadership.org/_publications/CPJ_Second_Ed.pdf.

¹⁵Rizzo & Hayes, at 7.

¹⁶See, e.g., Cody Mason, *Too Good to Be True: Private Prisons in America*, The Sentencing Project, January 2012, at 10.

¹⁷A study by the Department of Justice found that "privately operated facilities have a much higher rate of inmate-on-inmate and inmate-on-staff assaults and other disturbances," while a Bureau of Prisons study found that private prisons "had much higher escape rates from secure institutions, and much higher random drug hit rates" than public counterparts. James Austin & Garry Coventry, Bureau of Justice Assistance, *Emerging Issues on Privatized Prisons* at 52 (2001); Scott D. Camp & Gerald G. Gaes, Federal Bureau of Prisons, *Growth and Quality of U.S. Private Prisons: Evidence from a National Survey* 9 (2001).

¹⁸Rizzo & Hayes, at 6.

¹⁹*Id.*

²⁰ *Id.*

²¹ *Id.*, at 3.

²² Corrections Corporation of America, *2010 Annual Report on Form 10-K*, at 19-20 (2010).

²³ The GEO Group, Inc., *Form 10-K Annual Report for the Fiscal Year Ended January 2, 2011* at 33 (2011).

²⁴ Associated Press, *Private Prison Reaches \$1.3M Settlement with EEOC*, Oct. 15, 2009, available at http://articles.boston.com/2009-10-15/news/29260730_1_private-prison-female-officer-settlement.

²⁵ Rebecca Boone, *Idaho Inmates Settle Lawsuit over Prison Violence*, ASSOCIATED PRESS, Sept. 20, 2011, available at <http://www.businessweek.com/ap/financialnews/D9PSH4DG0.htm>.

²⁶ Guillermo Contreras, *Former Inmate to Collect \$98,000*, SAN ANTONIO EXPRESS-NEWS, Aug. 12, 2004, at B-03.

²⁷ Associated Press, *Family of Slain Texas Inmate Reaches Settlement*, Jan. 8, 2010, available at http://www.raymondvillechroniclenews.com/news/2010-01-13/News/Family_of_slain_Texas_inmate_reaches_settlement.html. Note: the court upheld the civil verdict of \$42.5 million, but GEO Group settled with the family for an undisclosed amount.

²⁸ Alex Rose, *Settlement Reached in Strip-Search Lawsuit*, DELAWARE COUNTY DAILY TIMES, May 21, 2010.

²⁹ John Burnett, *Miss. Prison Operator Out; Facility Called A 'Cesspool'*, NPR, Apr. 24, 2012, available at <http://www.npr.org/2012/04/24/151276620/firm-leaves-miss-after-its-prison-is-called-cesspool>.

³⁰ Corrections Corporation of America, *2010 Annual Report on Form 10-K*, at 53 (2010).

³¹ *Gaming the System*, at 33.

³² Jeremy Redmon, "ICE Detention Center Struggling Financially," Atlanta Journal-Constitution, Apr. 23, 2012, available at <http://www.ajc.com/news/ice-detention-center-struggling-142001.html>.

³³ Governor Nathan Deal & Debbie Dlugolenski Alford, *The Governor's Budget Report: Fiscal Year 2013*, at 152.

³⁴ Georgia Department of Corrections *FY2011 Allocation of Cost to Inmates, Probationers, Etc.*, Feb 28, 2012, available at <http://www.dcor.state.ga.us/pdf/CorrectionsCosts.pdf>.

³⁵ National Institute on Money in State Politics, "Lobbyist Link – Corrections Corp. of America: Lobbying and Contributions from 2003 to 2012," available at <http://www.followthemoney.org/database/lobbyistclient.phtml?lc=100552&y=All&s=GA#link>; National Institute on Money in State Politics, "Lobbyist Link – GEO Group: Lobbying and Contributions from 2003 to 2011," available at <http://www.followthemoney.org/database/lobbyistclient.phtml?lc=100516&y=All&s=GA#link>; National Institute on Money in State Politics, "Lobbyist Link – Cornell Companies: Lobbying and Contributions from 2008 to 2010," available at <http://www.followthemoney.org/database/lobbyistclient.phtml?lc=103304&y=All&s=GA#link>.

³⁶ National Institute on Money in State Politics, "Lobbyist Link – Corrections Corp. of America: Lobbying and Contributions from 2003 to 2011," available at <http://www.followthemoney.org/database/lobbyistclient.phtml?lc=100552&y=All&s=GA#link>; National Institute on Money in State Politics, "Lobbyist Link – GEO Group: Lobbying and Contributions from 2003 to 2011," available at <http://www.followthemoney.org/database/lobbyistclient.phtml?lc=100516&y=All&s=GA#link>; National Institute on Money in State Politics, "Lobbyist Link – Cornell Companies: Lobbying and Contributions from 2008 to 2010," available at <http://www.followthemoney.org/database/lobbyistclient.phtml?lc=103304&y=All&s=GA#link>.

³⁷ Georgia Department of Corrections, *Private Prisons*, accessed July 26, 2012, <http://www.dcor.state.ga.us/Divisions/Corrections/PrivatePrisons.html>.

³⁸ *Id.*

³⁹ Hartney & Glesmann, at 24.

⁴⁰ See, e.g., Terry L. Besser & Margaret M. Hanson, *Development of Last Resort: The Impact of New State Prisons on Small Town Economies in the United States*, 35 Journal of the Community Development Society, 2004 (finding that "new state prison towns experienced less growth than non-prison towns except that prison towns had a greater increase in unemployment [and] poverty. . ." and concluding that "[t]he assumption that prisons represent a solution to distressed small town economies and a boost for community development should be reexamined by community leaders").

⁴¹ “In 2000, the town of Littlefield, Texas borrowed \$10 million to build a prison that would be operated by The GEO Group and filled with contract beds from Idaho and Wyoming. But, given [its] ongoing state budget crisis, Idaho removed all out-of-state prison contracts and the prison is now empty. GEO abandoned the prison too, which is now for sale or contract. As of early 2011, Littlefield was paying \$65,000 per month against the original loan for construction.” *Gaming the System*, at 33.

⁴² “In Hardin, Montana the city entered into a deal with a group of private investors to finance the construction of a private prison in 2006. The idea behind footing the bill for the prison was that opening such a facility would bring jobs and revenue to the small town of 3,600 people. However, since construction was completed in 2007 the facility has remained vacant, leading to a technical default on \$27.4 million in revenue bonds, further devastating the town’s economic development prospects.” *Gaming the System*, at 33. See also *Banking on Bondage: Private Prisons and Mass Incarceration*, American Civil Liberties Union, Nov. 2011, at 22-23 (providing a more complete description of the Hardin story).

⁴³ Hannah Rappleye and Lisa Riordan Seville, “How One Georgia Town Gambled Its Future on Immigration Detention,” *THE NATION*, Apr. 10, 2012, available at <http://www.thenation.com/article/167312/how-one-georgia-town-gambled-its-future-immigration-detention#>.

⁴⁴ Corrections Corporation of America, *2010 Annual Report on Form: 10-K*, at 10(2010).

⁴⁵ *Whitworth v. State*, 622 S.E.2d 21, 23-24 (2005).

⁴⁶ Cameron McWhirter & Bill Rankin, *Lawmaker Writes Bill That Affects Own Private Probation Industry*, *ATLANTA JOURNAL-CONSTITUTION*, Mar. 11, 2009. The bill was subsequently withdrawn.

⁴⁷ County and Municipal Probation Advisory Council, Private Probation Providers Approved to Provide Services to the Courts of Georgia, June 5, 2012, available at <http://w2.georgiacourts.org/cmpac/files/2012-2013%20WEB%20REGISTRY%20PRIVATE%2006052012.doc>.

⁴⁸ Private Probation Association of Georgia, Current Facts about the Private Probation Industry in Georgia (FY 2008).

⁴⁹ Based on observations of Southern Center for Human Rights staff in various Georgia courts, 2011-2012, on file. O.C.G.A. § 42-8-102(b)(8) provides that contracts between courts and probation companies must state “[p]rocedures for handling indigent offenders to ensure placement of such indigent offenders irrespective of the ability to pay,” but the Code does not stipulate how the threshold determination is to be made of whether someone is indigent.

⁵⁰ See, e.g., Carlos Campos, “Poverty Keeps Woman Jailed, Lawsuit Says; Day Job Off-Site Not Enough for Expenses and \$75 Fine,” *ATLANTA JOURNAL-CONSTITUTION*, Sept. 19, 2006, at B1; Sandy Hodson, “Critics Say Private Probation Punishes Poor Unfairly,” *AUGUSTA CHRONICLE*, Nov. 15, 2009, available at http://chronicle.augusta.com/stories/2009/11/15/met_555844.shtml; Sandy Hodson, “Attorneys Challenge Legality of Private Probation,” *AUGUSTA CHRONICLE*, Jan. 26, 2010, available at http://chronicle.augusta.com/stories/2010/01/26/met_564699.shtml; see also PROFITING FROM THE POOR: A REPORT ON PREDATORY PROBATION COMPANIES IN GEORGIA, Southern Center for Human Rights, July 2008, available at <http://www.schr.org/node/52>. This practice has also been observed by Southern Center for Human Rights staff in various Georgia courts in 2011-2012; information on file.

⁵¹ *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁵² County and Municipal Probation Advisory Council, FY2008 Biennial Report to the Legislature, O.C.G.A. § 42-8-102(d), at 3.