

# NATIONAL JUVENILE JUSTICE NETWORK

## Policy Platform\*

### CONFINING YOUTH FOR PROFIT

SEPTEMBER 2015

#### Youth in Trouble with the Law are a Public Responsibility

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American public agencies often work with private business to achieve goals that we as a society have all agreed are for the common good, such as repairing our highways, delivering power to our homes, or collecting the trash. That said, we must remember that our government and businesses exist for different reasons. While businesses exist to turn a profit, not everything profitable is good for our communities. One only has to look around to see that a business can be quite profitable without contributing to the social good. This is why our public agencies play a crucial role: our libraries, law enforcement, fire departments, health and safety agencies, parks, and public schools exist because they serve the public good — but few would exist if we expected them to be profitable.

So, while it can make sense to have for-profit businesses provide a service that we as citizens have identified as a priority, giving control of public services to private business can be a mistake. This is because the purpose of a for-profit business is to maximize profits for its shareholders. In many contexts, this can be a powerful engine for success and prosperity. But when it comes to incarcerating people, giving this responsibility to for-profit businesses is a bad idea.

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\* National Juvenile Justice Network (NJJN) policy platforms are developed by a committee of NJJN members and approved by the full NJJN membership body by a majority vote. Policy platforms do not necessarily represent the recommendations of each individual NJJN member organization. To view additional NJJN policy platforms, visit [www.njjn.org/our-work/our-positions](http://www.njjn.org/our-work/our-positions). NJJN thanks the following national experts for their insightful feedback and guidance throughout the development of this platform: Paul Ashton, Michele Deitch, Mishi Faruquee, and Amanda Petteruti.

## Confining Youth for Profit Does Not Keep Youth and Communities Safe

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The privatization of youth confinement facilities<sup>1</sup> is now widespread in the United States; almost half of the youth facilities in the country are privately operated.<sup>2</sup> While many of these private facilities are owned or operated by non-profits, we focus this policy platform on for-profit facilities, which pose a unique and significant risk to youth. Government agencies and non-profits are often under-resourced, but their mission is to help youth and protect the community. By contrast, for-profit youth confinement companies are driven by the bottom line, which means pressure is high to increase the number of youth confined, and to keep costs severely pared down – not for the public benefit, but for their own profit. Unfortunately, achieving this goal often conflicts with a goal we all agree on: safely providing youth with needed services and rigorous programming in the least restrictive environment possible, to ensure they re-enter society as law-abiding citizens, thereby keeping our neighborhoods safe.

We know from research that confining youth is generally ineffective and can even increase the likelihood that they will commit new crimes.<sup>3</sup> Given this, it is counterproductive to create a profit incentive to increase the number of youth confined or lengthen the term of their incarceration. Furthermore, research has shown that we can help youth change their behavior with quality programming delivered by well-trained staff.<sup>4</sup> Yet for-profit prisons have an incentive to maximize profits by cutting programming costs, staff, and training budgets, which undermines the goal of rehabilitating the youth in their care. For these reasons, we believe that youth confinement should remain the responsibility of the public sector, whose purpose is to work for the good of the youth and the community.

Years of experience with for-profit juvenile and adult facilities has demonstrated that privatization often leads to a variety of outcomes that are very harmful to the welfare of youth and the community. We have summarized these dangers below.<sup>5</sup>

### Harmful Conditions and Violations of Human Rights

- Companies confining youth for-profit have an incentive to spend less money rehabilitating and protecting confined individuals in order to maximize profits — even at the expense of public safety and humane conditions. Research suggests that for-profit prisons are associated with heightened levels of violence toward prisoners.<sup>6</sup>
- Examples of abusive treatment and unsafe conditions in for-profit youth confinement facilities abound – including excessive force involving beatings, kicking, and punching of handcuffed and defenseless youth, frequent use of pepper spray, guard-instigated “gladiator-style” fights between youth, unsanitary and insect-infested food, and regular sexual assaults and rapes of youth by guards, as well as higher rates of death at private facilities throughout the country.<sup>7</sup>

- Efforts to maximize profits have also led for-profit youth confinement companies to provide youth with inadequate rehabilitative programming, education, and food, as well as poor training and very low pay to staff, resulting in personnel unqualified for the work and high levels of staff turnover.<sup>8</sup>
- Auditors have repeatedly cited two of the largest private prison companies— Wackenhut (since renamed GEO) and CCA (Corrections Corporation of America) -- for additional problems, including chronic understaffing, insufficient prisoner work programs resulting in widespread idleness, failure to comply with proper procedures for classifying inmates, substandard medical treatment, and inadequate mental health care.<sup>9</sup>
- Putting for-profit companies in charge of confining youth creates many barriers to ensuring that the human rights of youth confined in private facilities are protected, including a lack of independent monitoring and oversight, lack of transparency regarding data on the conditions of confined youth, facility-imposed restrictions on family visitation, and difficulty for legal counsel, families and oversight bodies to visit youth, especially when facilities are located out-of-state.

#### Reforms Designed to Reduce Overincarceration are Sidelined

- When states privatize youth confinement facilities in an attempt to reduce the high costs of incarceration, it can divert the attention of policy-makers from making more effective and meaningful structural changes to the juvenile justice system. Structural reforms<sup>10</sup> could significantly decrease youth incarceration, ultimately leading to better outcomes for youth and longer term public safety benefits and cost savings.

#### Companies' Profit Interests Compete Directly with the Liberty Interest of Youth

- For-profit confinement facility operators have a vested interest in keeping their facilities full, which can lead them to base decisions regarding the length of stay and release dates of youth on the companies' needs to meet their bottom line by filling as many beds for as long as possible, rather than meeting the rehabilitative needs of the youth and the safety needs of the community.<sup>11</sup>
- For-profit youth confinement companies have been known to skirt the ethical line on monetary payments to government officials, which can lead to youth being unnecessarily locked up for financial gain.<sup>12</sup> A case in point is that of Judge Mark Ciaverella in Luzerne County, Pennsylvania, who was convicted in a conspiracy involving accepting nearly one million dollars from a private juvenile facility developer after sending scores of youth to two private, for-profit facilities.
- For-profit confinement facility companies have engaged in aggressive political strategies, including spending millions on lobbying campaigns and making sizable campaign

contributions to promote policies that will lead to higher rates of incarceration.<sup>13</sup> Examples include for-profit company involvement in influencing and drafting “three-strikes” and “truth-in-sentencing” laws.<sup>14</sup>

## Confining Youth for Profit Carries Hidden Risk and Costs for the Public

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While evidence of cost-savings from for-profit facilities is mixed at best, many studies have shown that private prisons save the public little to no money and may even end up costing more money than public facilities.<sup>15</sup> Even if some cost savings are realized, cutting costs by shortchanging youth through overcrowded, unsafe conditions and failing to provide needed services is a bad deal for youth and the community. Youth are unlikely to return to the community with the skills and education they need to be successful and not recidivate when provided with scant programming and abusive conditions.

Additionally, for-profit privatization involves some “hidden” costs that are often not taken into account when comparing public and private facilities. Governments also face significant additional financial risks when utilizing for-profit facilities. When all these additional costs and risks are considered, it is unlikely that the government actually spends fewer total dollars outsourcing youth confinement to for-profit youth confinement facilities.

- Many for-profit confinement facility contracts contain “guaranteed profit” or “bed occupancy” requirements. This means that the government guarantees that a certain percentage of facility beds – sometimes as high as 80 - 100% – will be filled, which leads to taxpayers giving millions of dollars to private companies for extra beds that often are not needed.<sup>16</sup>
- Continual public monitoring of for-profit youth confinement facilities is necessary to ensure that the contractors are held accountable for providing the services stated in their contracts, and to ensure the youth are being treated safely and getting the services they need.<sup>17</sup> The cost to the government and taxpayers for monitoring contract performance is often not considered when determining whether for-profit privatization will be less costly.
- Some contracts with for-profit facilities shift service costs to the public sector. For example, in Arizona, the medical costs for prisoners in private prisons were capped at \$10,000 at one point, allowing the company to charge the state for any extra costs or to transfer prisoners to a public facility.<sup>18</sup>

- For-profit prison companies often rely on private revenue bonds to finance their prison construction; these bonds are secured by local government entities or financing authorities. Private revenue bonds are premised upon a guarantee of incoming revenue, unlike government general obligation bonds, which are used for a variety of government revenue needs. Accordingly, investors in private revenue bonds demand much higher interest rates than would be required for a state general obligation bond. Yet the state can still be on the hook for repaying this more costly debt, or face a downgrade of its bond rating.
  - Louisiana legislators found this out in 2003, when they tried to shut down the Tallulah juvenile correctional center, in which there was widespread abuse of youth. The Standard & Poor’s rating agency informed them that if they quit financing the private prison, it would put Louisiana’s bond rating at risk. Youth were forced to stay confined at Tallulah for an extra year while the bond controversy was resolved and the state figured out a way to repurpose the facility so they didn’t appear to be paying debt on an empty prison.<sup>19</sup>
  - In several cases, private prison financiers have facilitated the construction of for-profit prisons in local jurisdictions using revenue bonds. When the supply of prisoners dried up and the for-profit prison company abandoned the project, the towns were left with huge amounts of debt. Finding prisoners has been an increasing problem for many towns as the crime rate has fallen and the total correctional population has been going down.<sup>20</sup>
- The potential costs of increased prison litigation due to the unsafe conditions in many private for-profit confinement facilities can also make for-profit privatization much more costly than the alternative.
- When comparing the costs to house youth in for-profit juvenile confinement facilities versus public facilities, it is important to make sure that you are comparing apples to apples when assessing the costs of public vs. private confinement facilities. For example, do they each include the costs of doing business, such as managing payroll, training new employees, and purchasing equipment?<sup>21</sup>

## Confining Youth for Profit is Morally Wrong

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In addition to the practical reasons not to confine youth for profit noted above, profiting from human bondage is morally reprehensible. Given our country’s history of legally enslaving and profiting from the labor of people of color, the United States has a special responsibility to avoid repeating the past; in this light, confining youth for profit — most of whom are youth of color, given the disparate rates at which youth of color are confined — is especially repugnant. So,

while we have a moral imperative to eliminate the profit motive when it comes to confining *all* youth, we also have a special obligation to avoid the echoes of slavery inherent in allowing companies to make money off of confined youth of color.

## Recommendation

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The National Juvenile Justice Network (NJJN) recommends ending the use of for-profit private youth confinement facilities. We believe that youth should be served in the least restrictive setting and confined only as a last resort and for the shortest time possible. Those youth who must be confined should be treated in safe, healthy environments — not operated for profit — that are conducive to their pro-social development and successful re-entry into the community. The for-profit youth confinement incentive structure works against these goals by encouraging the incarceration of youth and the minimization of needed services.

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<sup>1</sup> For the purposes of this policy platform, we use the term “confinement” to refer to any out-of-home placement of youth stemming from a delinquency or criminal charge, or an order of a delinquency or criminal court judge. Youth can be confined in detention and jail facilities, prison and incarceration facilities, long-term secure care confinement, reception and diagnostic centers, shelters, group homes, boot camps, treatment facilities, and ranch/wilderness camps. Click here for definitions of any of these terms: <http://1.usa.gov/1Nipf7Z>.

<sup>2</sup> Sarah Hockenberry, Melissa Sickmund, and Anthony Sladky, “Juvenile Residential Facility Census, 2012: Selected Findings” (Washington, DC: US Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, DC, March 2015): 2, <http://1.usa.gov/1GqMfza>.

<sup>3</sup> See the National Juvenile Justice Network, “The Truth about Consequences” (Washington, DC, 2012), at <http://bit.ly/1hGoy7e>; see also Tony Fabelo, PhD, Nancy Arrigona, MPA, Michael D. Thompson, *Closer to Home: An Analysis of the State and Local Impact of the Texas Juvenile Justice Reforms* (Council of State Governments Justice Center, January 29, 2015), <http://bit.ly/1FSE1fz>; Barry Holman and Jason Zeidenberg, “The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities,” (Washington, DC: Justice Policy Institute, Nov. 28, 2006): 2-4, <http://www.justicepolicy.org/research/1978>; “Arrested Development; Confinement Can Negatively Affect Youth Maturation” (October 2013): 2, <http://bit.ly/1VDMBeQ>.

<sup>4</sup> Mark W. Lipsey, et al., “Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice,” (Washington, D.C.: Center for Juvenile Justice Reform, December 2010), 27-28, <http://bit.ly/1LEoiYH>.

<sup>5</sup> Note that because less research has been done on private youth confinement compared to private adult prisons, our information is taken from both sources.

<sup>6</sup> David Shapiro, “Banking on Bondage: Private Prisons and Mass Incarceration” (New York, NY: American Civil Liberties Union, Nov. 2, 2011): 23, <http://bit.ly/1HhDXLR>. A 2001 Bureau of Justice Administration (BJA) national survey found that “there were 65 percent more inmate-on-inmate assaults and 49 percent more inmate-on-staff assaults in private prisons than in comparable public prisons.” See Judith A. Greene, “Lack of Correctional Services: The Adverse Effect on Human Rights,” in *Capitalist Punishment: Prison Privatization and Human Rights*, eds. Andrew Coyle, Rodney Neufield, and Allison Campbell (Clarity Press, 2003); 12-13, <http://bit.ly/1f6mhbj>; citing Jane Austin and Garry Coventry, “Emerging Issues on Privatized Prisons,” (Washington, DC: National Council on Crime and Delinquency and U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Assistance, February 2001), <http://1.usa.gov/1HhEwFr>.

<sup>7</sup> Cristina Parker, Judy Greene, Bob Libal, and Alexis Mazon, “For-Profit Family Detention: Meet the Private Prison Corporations Making Millions by Locking Up Refugee Families” (Justice Strategies and Grassroots Leadership, October 2014): 5-6, 8, <http://bit.ly/1KaQcuh>.

<sup>8</sup> Shapiro, “Banking on Bondage” 27-9; Xochitil Bervera, “The Death of Tallulah Prison,” *Allnetnet*, June 24, 2004, <http://bit.ly/1fCd4rw>; A 2003 study found that the high turnover rate of prison guards in private prisons was reaching crisis proportions with a turnover rate of 52 percent in 2000 compared to 16 percent for public prisons. See Greene, “Lack of Correctional Services,” 10.

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<sup>9</sup> Greene, “Lack of Correctional Services,” 11.

<sup>10</sup> Examples of structural reforms can be found in NJJN’s policy platform “Reducing Youth Confinement” (August, 2014), at <http://bit.ly/Lucy0EI>.

<sup>11</sup> James Swift, “100 Percent Privatized,” *Uncommon Journalism* (Dec. 8, 2013): 3, <http://bit.ly/1GqN3Sr>.

<sup>12</sup> Shapiro, “Banking on Bondage,” 32-3.

<sup>13</sup> Paul Ashton and Amanda Patteruti, “Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies” (Washington, D.C., Justice Policy Institute, June 22, 2011): 2, <http://bit.ly/1HhEkWz>; Shapiro, “Banking on Bondage,” 38-40; Parker, et al., “For-Profit Family Detention,” 10.

<sup>14</sup> Ashton & Patteruti, “Gaming the System,” 3; Donald Cohen, “Jailing Teenagers and the Poisoning of Public Purpose,” *Huffington Post*, March 18, 2009, <http://huff.to/1LCnNwf>.

<sup>15</sup> Shapiro, “Banking on Bondage,” 19; Texas Criminal Justice Coalition, “Privatization of Correctional Operations and Services” (May 2011): 1, <http://bit.ly/1Iu8mYj>, citing Austin and Coventry, “Emerging Issues on Privatized Prisons.” Also see United States General Accounting Office, “Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service,” (Washington, D.C., Report to the Subcommittee on Crime, Committee on the Judiciary, House of Representatives 1996), <http://1.usa.gov/1f2V8qI>.

<sup>16</sup> In the Public Interest, “Criminal: How Lockup Quotas and ‘Low-Crime Taxes’ Guarantee Profits for Private Prison Corporations” (September 2013): 6, <http://bit.ly/1M7UQZd>.

<sup>17</sup> Austin and Coventry, “Emerging Issues on Privatized Prisons,” 16, <http://1.usa.gov/1HhEwFr>.

<sup>18</sup> Kevin Pranis, “Cost-Saving or Cost-Shifting: The Fiscal Impact of Prison Privatization in Arizona” (Justice Strategies, 2005): 13, <http://bit.ly/1GyZbQC>.

<sup>19</sup> Pranis, “Cost-Saving or Cost-Shifting,” 16; Kevin Pranis, “Opinion: Paying for Private Prisons, Part Two” *Pagosa Springs Daily News*, June 14, 2012, <http://bit.ly/1R5Xcyj>.

<sup>20</sup> Texas Criminal Justice Coalition, “Privatization,” 2, citing John Burnett, “Private Prison Promises Leave Texas Towns in Trouble,” National Public Radio, March 28, 2011, <http://n.pr/1CboooO>.

<sup>21</sup> For example, for a breakdown of some of the additional costs and revenues that can be associated with detention center operation, see National Juvenile Justice Network, “Fiscal Policy Center Toolkit: How to Calculate the Average Costs of Detaining a Youth” (Washington, DC: May 2013): 3, <http://bit.ly/1T7O7T8>.