

Is jailing people for profit a good idea? We'll soon find out - AvvoStories

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The United States has the dubious distinction of the highest [incarceration rate](#) in the world—both per capita and in total numbers. Our prison population is more than one million people larger than that of Russia, and six times the per capita rate of China.

At least partially fueled by the [“War on Drugs”](#), the US prison population boom led to overcrowding in the 1980s and ‘90s, and that in turn led to the rise of private prisons. Private prisons, which are paid per prisoner, have a [financial incentive](#) to keep prison populations high—a conflict of interest when imprisonment is supposed to help deter recidivism.

Dealing with mass incarceration was not one of President Barack Obama's campaign promises, but in recent years, the federal government has quietly acted to reduce the population of federal prisons. The United States took a step in the long walk away from mass incarceration in August with the announcement that the Justice Department would phase out private prison contracts over the next five years.

Now with the election of Donald Trump, who campaigned as a law-and-order candidate and an advocate for the privatization of government services, it seems likely that private prisons will get a reprieve. But should they?

Reducing private prison contracts

The federal prison population and the proportion of federal prisoners in private facilities peaked in 2013, with approximately 15 percent of federal prisoners, or nearly 30,000 inmates, in privately operated prisons. That same year, the Department of Justice launched its Smart on Crime Initiative, which adjusted enforcement and prosecution priorities to focus on more serious crimes. Since then, the number of privately-housed prisoners has dropped over 12 percent.

In August, Deputy Attorney General Sally Yates announced that the Bureau of Prisons had been directed to either decline the renewal, or substantially reduce the scope, of each private prison contract as it reaches the end of its term. The stated objective was to reduce the bureau's inmate population.

Why close private prisons?

A Department of Justice report issued in August 2016 helps explain the focus on eliminating private prisons. It includes findings from a study that was initiated in response to several disturbances in federal contract prisons that resulted in extensive property damage, bodily injury, and the death of an officer.

The study found that in most key areas, contract, or private, prisons incurred more safety and security incidents per capita than comparable public institutions. Site visits conducted as part of the study revealed overcrowded conditions with new inmates housed in Special Housing Units normally used for disciplinary segregation, in violation of American Correctional Association standards.

Determining whether private or public prisons are more cost effective is a methodological challenge that has been considered an "apples-to-oranges comparison." But in her memo, Yates concluded that:

"Private prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource—and these services are essential to reducing recidivism and improving public safety."

Federal versus local institutions

The announced changes in the federal approach to incarceration are welcome news to activists and taxpayers alike, but they aren't sufficient to determine the future of private prisons. Only around 20 percent of the nation's prisoners are in federal prisons; the rest are in state and local jails, which continue to contract with private companies.

Each jurisdiction is authorized to make its own determination about whether to privatize, and the economics may play out differently in different locations.

A reset under Trump?

In the wake of the federal announcement, [stock prices](#) for the three major prison corporations plummeted. However, immediately after election day, stocks of private prison companies soared; Corrections Corporation of America's stock, for instance, jumped [40 percent](#).

Much of that confidence results from Trump's well-publicized intent to [incarcerate](#) undocumented immigrants; private prisons hold two-thirds of these detainees. But there is little doubt that Trump supports privatization of public functions in general, and on the issue of prisons in particular, he told MSNBC political commentator [Chris Matthews](#), "I do think we can do a lot of privatizations and private prisons. It seems to work a lot better."

Although Trump has yet to take office, the Department of Justice seems to be acting on his behalf already. Ignoring its own advice, in mid-November the department's Federal Bureau of Prisons quietly [renewed](#) its contract with CoreCivic to manage the McRae Correctional Facility in McRae, Georgia for another two years.

It's possible that some state and local governments will be reconsidering their stance on privatization in light of the Inspector General's condemnation of private prisons, but for now, it looks like the federal government is hanging on to its private contracts.

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