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Articles

Big Capital & the Carceral State

LAURA I APPLEMAN[†]

Who is accountable for the imposition of punishment in our carceral system? The answer used to be much simpler, as we held local, state, and federal government actors responsible. In recent decades, however, our correctional system has become increasingly privatized, with deeply troubling results. All aspects of the carceral state—whether prisons, jails, juvenile detention, rehabilitation, forensic hospitals, bail, or electronic monitoring—have dramatically increased their use of privatized correctional services.

With this new world of privatized corrections, we frequently don't know whom can be held accountable when wrongdoing occurs. The bulk of our correctional services are now provided by complicated web of private entities, some of them large and publicly held, some owned by private equity. I dub them "Big Capital."

Big Capital has invaded the carceral universe. Almost every aspect of correctional control has been outsourced to private companies somewhere. The normalization of private equity firms and enormous correction corporations partnering with public carceral institutions has resulted in a failure of basic incarceration services. Although private prisons, prison labor for private profit, and privatized services for inmates are nothing new, Big Capital's recent infiltration into the carceral state has no historical parallel.

This Article seeks to uncover these companies' incursion into the realm of public corrections and detail the disastrous results for those under correctional control. In so doing, I also explain why allowing complicated private entities to control our carceral system has made matters far worse, violating fundamental U.S. philosophies about punishment and rehabilitation, creating conflicts

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of interest, undermining democratic legitimacy, and ultimately corrupting the administration of justice.

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INTRODUCTION

For centuries, the American system of incarceration and rehabilitation has centered on the public provision of punishment that follows from community sanctions. Of course, there have always been entanglements of public service with the private sector. At all levels, the government must contract with private firms for certain goods and services.¹ In the carceral sector specifically, the bail system has extensively relied on private elements to make it work financially. Prisons have long sought to defray their cost of operations by selling the work and output of the incarcerated to private parties.²

Recently, however, something fundamental has changed. When federal, state, and local entities charged with punishment and rehabilitation began looking to the private sector to provide core services, a new set of for-profit entities emerged to bid on and perform it. Where there is a flow of public money, there is always a rush of capital flooding in to drink. There are, however, vastly different implications for privatizing correctional services than, for example, hiring private construction companies for public work, or contracting out the operation of highway rest stops.

Here, a core power of administration of justice is being contracted out, largely to save money. If that is the fiscal choice, holding both public and private players accountable for the quality of their services becomes extremely important. Although much attention has been paid to holding military services contractors publicly accountable,³ much less has been paid to holding accountable those to whom we entrust our carceral system.

In the for-profit corrections sector, we find that services are often being performed by “Big Capital” entities: subsidiaries of large publicly held corporations, privately-held portfolio companies held by secretive private equity firms, and large insurance companies. As I show in this Article, when things go wrong, it can be incredibly complicated to figure out who is accountable or determine how things have gone wrong. Moreover, the incentives to get things right are frequently missing. The carceral system was certainly imperfect before the large-scale privatization of its administration, but the influx of Big Capital into corrections has made life for justice-involved individuals (that is, those

1. Hadar Aviram discussed this aspect of privatized services in prisons, calling it “piecemeal privatization.” Hadar Aviram, *Are Private Prisons to Blame for Mass Incarceration and its Evils? Prison Conditions, Neoliberalism, and Public Choice*, 42 FORDHAM URB. L.J. 411, 411 (2014).

2. See generally Laura I Appleman, *Bloody Lucre: Carceral Labor & Prison Profit*, 2022 WIS. L. REV. 619 (2022) (evaluating the history and financial undercurrents of involuntary inmate servitude to better understand mass incarceration and eliminate it).

3. See Charles Mahoney, *How, and Why, to Hold Defense Companies Accountable*, DEF. NEWS (June 1, 2017), <https://www.defensenews.com/opinion/commentary/2017/06/01/how-and-why-to-hold-defense-companies-accountable-commentary>.

individuals affected by their interactions with the criminal justice system) even more difficult.

This Article is the first piece of scholarship to comprehensively detail and trace how Big Capital furtively purchases and combines private correctional service companies, thereby transforming the carceral landscape in pursuit of profit. By tracing the tangled webs of private financing that underly so much of modern public punishment, we will be better able to understand the way the profit incentive continues to drive the carceral state.

These complicated private entities should be forbidden from providing private services to public corrections, because allowing them to do so violates fundamental American philosophies about punishment and rehabilitation, creates conflicts of interest, and ultimately corrupts the administration of justice. Incarceration should be focused on holding individuals accountable for their actions and providing them with opportunities for rehabilitation, not on partnering with Big Capital to generate profits.

In Part I of this Article, I describe how our system of incarceration and rehabilitation has been privatized and the problems that emerge from that alone. Part II looks at different areas of the criminal justice system and exposes the complexity and diversity of the ownership of those entities that now provide the services. I discuss private prisons, treatment centers, juvenile services, mental health providers, and bail providers—and how private equity investors, publicly-held corporations, and large insurers have altered the structure of how we provide services and manage accountability.

Part III discusses the normalization of Big Capital partnerships with public carceral institutions, looking specifically at the results: not only a failure of basic correctional services, but also the relentless privileging of money-making over any other focus, benefiting only select private investors. In Part IV, I explain why having Big Capital take over correctional services violates fundamental American philosophies about punishment and rehabilitation, creates conflicts of interest, undermines democratic legitimacy, and ultimately corrupts the administration of justice.

We have lost some of our public voice to profit-focused Big Capital entities that are almost completely opaque. In doing so, we have tied together the choices of private investors and the results of criminal justice, at the expense of our social contract. I conclude that although structural change may be slow, bringing as much transparency as we can to our current system is our fastest route to accountability, though it may not ultimately suffice.

I. BIG CAPITAL'S INVESTMENT IN PUNISHMENT AND THE LOSS OF ACCOUNTABILITY

Private equity firms, insurance firms, and large publicly held corporations (to which I collectively refer as “Big Capital”) have deeply invested in the various private correctional companies providing services to a wide variety of corrections, ranging from juvenile justice institutions, forensic psychiatric hospitals and behavioral services, to almost every aspect of correctional control, including bail bonds, electric monitoring, private probation, and halfway houses. Big Capital Corrections (I have collectively labeled Big Capital-owned correctional services companies as “Big Capital Corrections” throughout the piece) routinely cuts staff and guards, fails to adequately maintain facilities, and eliminates needed safeguards and oversight, all in the name of increasing profit. The consequences for justice-involved individuals? Abuse, neglect, unsafe living conditions, serious health issues, and sometimes death. Although much attention has gone to the role of privatized prisons, far less has been paid to Big Capital’s consumption of entire areas of correctional services. Big Capital’s investment in corrections has largely flown under the radar, with troubling results.

A. TROUBLED YOUTH, QUICK PROFITS: JUVENILE JUSTICE AND YOUTH DETENTION CENTERS

Big Capital has been increasingly investing in services for troubled youth, including children enrolled in foster care, juvenile justice, troubled teen programs.⁴ Youth behavioral health services, whether in juvenile justice facilities or youth detention centers, are a hot investment in the business world, especially for private equity firms.⁵ The number of private equity deals to purchase health care companies almost tripled between 2010 and 2021,⁶ including youth behavioral health services.

The private equity model does not fit well with a child-welfare centered approach, however. For one, private equity companies frequently have goals of doubling or tripling their investment over the course of four to seven years.⁷ Chasing such large investment returns over a short period of time often requires

4. Michelle Conlin, *Private Equity's Latest Play: The Troubled Kids Industry*, REUTERS (Feb. 17, 2022, 6:34 AM PST), <https://www.reuters.com/business/private-equitys-latest-play-troubled-kids-industry-2022-02-17>.

5. See Fred Schulte, *Sick Profit: Private Equity's Stealthy Takeover of Health Care in Multiple Cities*, SPECIALITIES, USA TODAY (Nov. 13, 2022, 6:00 AM ET), <https://www.usatoday.com/story/news/health/2022/11/13/private-equity-firms-takeover-health-care/8294483001/?gnt-cfr=1>.

6. See *id.*

7. EILEEN O'GRADY, PRIV. EQUITY STAKEHOLDER PROJECT, THE KIDS ARE NOT ALRIGHT: HOW PRIVATE EQUITY PROFITS OFF OF BEHAVIORAL HEALTH SERVICES FOR VULNERABLE AND AT-RISK YOUTH 3 (2022), https://pestakeholder.org/wp-content/uploads/2022/02/PESP_Youth_BH_Report_2022.pdf.

cost-cutting in the institutions, which damages the type and quality of care provided.⁸ Additionally, private equity's use of leverage to enhance returns requires high debt levels, which can divert available spending money from the actual daily operation of these institutions to the pockets of the private equity owners, who expect frequent interest payments and dividends.⁹

Private equity companies have made significant inroads in two different types of justice-involved youth services providers: juvenile justice and immigrant youth detention. As I reveal below, the change has not been salutary for the children involved.

1. *Juvenile Justice*

Residential programs for children involved in the juvenile justice system have been a tempting area of investment for private equity firms. For several of these private equity companies, however, the programs that they took over resulted in abuse and neglect of the youth, forcing states to either close facilities or sever contracts.¹⁰ The impact on the children involved appears largely negative, posing a unique and significant risk to them.¹¹

One repeat private equity-owned player has been Sequel Youth & Family Services, a leading provider of youth residential services, which includes housing children residing in juvenile justice facilities.¹² Recently serving up to nine thousand youth at forty-four separate locations in nineteen states, Sequel is currently owned by Altamont Capital Partners, which purchased Sequel in August 2017 from Canadian private equity firm Alaris Royalty.¹³ Alaris profited tremendously from its ownership of Sequel, harvesting \$71 million in profit—roughly 23 percent annual return—on its investment.¹⁴

State governments pay Sequel, and other for-profit, private-equity owned corrections companies, to house children who are involved in their juvenile justice systems.¹⁵ These companies have been associated with abuse, neglect, and death of youth for whose welfare they are responsible. For example, in April 2020, a teenager, Cornelius Frederick, was tackled and restrained by at least six staff members at Sequel's Lakeside Academy, a Kalamazoo, Michigan facility

8. *Id.* at 2–3.

9. *Id.* at 3.

10. *Id.* at 12.

11. See *Confining Youth for Profit*, NAT'L JUV. JUST. NETWORK (Sept. 2015), <https://www.njjn.org/our-work/confining-youth-for-profit-policy-platform> [hereinafter *Confining Youth for Profit*].

12. O'GRADY, *supra* note 7, at 12.

13. See *Altamont Capital Partners Invests in Sequel Youth & Family Services*, PR NEWSWIRE (Sept. 5, 2017, 10:00 AM ET), <https://www.prnewswire.com/news-releases/altamont-capital-partners-invests-in-sequel-youth-family-services-300513614.html>.

14. O'GRADY, *supra* note 7, at 12.

15. *Id.* at 14.

housing foster-care and juvenile-justice involved youth.¹⁶ The child's alleged offense? Throwing a sandwich.¹⁷ Two of the staff members, who held Frederick to the ground for several minutes, were charged with homicide, and a school nurse was charged with manslaughter for her failure to call 911 in a timely manner.¹⁸ The school nurse claims she thought the child was "faking his loss of consciousness."¹⁹

Sequel's response to this tragedy? They fired the staff members accused of killing the teen, but appeared to do little else to fix the problems at the facility.²⁰ Indifference to children's well-being seems to be an issue at Sequel facilities, where numerous juvenile justice detainees criticized the actions of Sequel staff members in multiple states, noting that they used inappropriate physical restraints to control their charges.²¹ Some restraint techniques were allegedly so violent that the children lost consciousness.²² The list of allegations against staff working in Sequel-owned and operated facilities is long and disturbing, including rape, sexual assault, injuries from severe restraint techniques, long-term seclusion, broken bones, and concussions.²³

Certainly, the public systems have problems, too.²⁴ What is different about Big Capital Corrections? In part, private equity-owned, for-profit facilities tend to use short-term or shift workers, who may not be properly trained to work with children who have serious behavioral challenges.²⁵ The more temporary workers working in Big Capital-funded juvenile justice may over-rely on restraint techniques for misbehaving children, frequently failing to follow the protocol required for proper behavioral interventions.²⁶

16. Tyler Kingkade, *Video Shows Fatal Restraint of Cornelius Frederick, 16, in Michigan Foster Facility*, NBC NEWS (July 7, 2020, 5:52 PM PDT), <https://www.nbcnews.com/news/us-news/video-shows-fatal-restraint-cornelius-fredericks-16-michigan-foster-facility-n1233122>.

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. *See* Hannah Rappleye, Eric Salzman & Kate Snow, 'They Told Me It Was Going to Be a Good Place': Allegations of Abuse at Home for At-Risk Kids, NBC NEWS (Mar. 26, 2019, 12:07 PM PDT), <https://www.nbcnews.com/news/us-news/they-told-me-it-was-going-be-good-place-allegations-n987176>.

22. *Id.*

23. *See* Lee Rood, *Clarinda Students Were Restrained and Injured as Punishment, Records Show*, DES MOINES REG. (Dec. 22, 2018, 12:35 PM CT), <https://www.desmoinesregister.com/story/news/investigations/readers-watchdog/2018/12/22/clarinda-academy-iowa-students-restrained-injured-punishment-investigation-woodward-academy/2387163002>.

24. Rikers Island, for example, was notoriously dangerous for juvenile detainees, leading to the permanent removal of young teens from the jail. *See* Christopher Robbins, *Raise the Age Moves All Young Teenagers off Rikers Island*, GOTHAMIST (Oct. 1, 2018), <https://gothamist.com/news/raise-the-age-moves-all-young-teenagers-off-rikers-island>.

25. Rappleye et al., *supra* note 21.

26. Rappleye et al., *supra* note 21.

The other problem with more involvement of Big Capital is the challenge of overseeing juvenile residential corrections, which involves complex and overlapping local, state, and federal regulation.²⁷ Because there are so many different regulatory entities, consistent oversight of their operations can sometimes fall through the cracks.²⁸ Private equity firms and other Big Capital companies have benefited from these gaps in oversight.

Privatized youth confinement facilities are a common feature throughout the United States, since almost half of the youth facilities in the country are privately operated.²⁹ Profitability targets lead to pressure to maintain or increase the head count of confined children, while simultaneously cutting costs.³⁰ The result is often is failure to meet the minimum standards normally required for state-run juvenile justice facilities, including benchmarks such as use of force standards, incident reporting, operating standards, minimum staffing ratios, medical standards, and emergency protocols.³¹

The absence of strong regulatory oversight has permitted companies like Sequel and their private equity investors to operate with limited restrictions. For the majority of Sequel's twenty-one years in operation, it neatly eluded public accountability.³² Although there were occasional news stories about individual abuses at various centers, "the full picture of the problems in Sequel's programs was obscured by a patchwork of oversight bodies spread across multiple states and local jurisdictions."³³ The company would simply close a facility when conditions deteriorated.³⁴

Part of the public problem is that Sequel, and companies like it, are willing to house and oversee the troubled children that other treatment and residential centers either cannot or will not.³⁵ This means that states are often reluctant to cut ties with them, despite knowledge of the abuse and mistreatment.³⁶ The ultimate result, then is a "business model that banks on governments' incapacity

27. O'GRADY, *supra* note 7, at 4.

28. *See id.*

29. *See* SARAH HOCKENBERRY, MELISSA SICKMUND & ANTHONY SLADKY, U.S. DEP'T OF JUST., NCJ NO. 247207, JUVENILE RESIDENTIAL FACILITY CENSUS, 2012: SELECTED FINDINGS 2 (Mar. 2015), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/247207.pdf>.

30. *See Confining Youth for Profit*, *supra* note 11.

31. *See* IN THE PUB. INTEREST, ESSENTIAL PUBLIC INTEREST PROTECTIONS FOR PRISON PRIVATIZATION CONTRACTS 7 (Oct. 2012), https://inthepublicinterest.org/wp-content/uploads/Prison_Privatization_FINAL.pdf (specifying that a facility operators should include these benchmarks in their contracts).

32. *See* Curtis Gilbert & Lauren Dake, 'Youth Were Abused Here', APM REPS. (Sept. 28, 2020), <https://www.apmreports.org/story/2020/09/28/for-profit-sequel-facilities-children-abused>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

to create safe places for their most vulnerable children.”³⁷ It is this precise business model that private equity firms have begun to monetize.

By 2018, approximately 40 percent of all residential youth detention centers were operated by private, for-profit companies.³⁸ A significant subset are controlled and owned by private equity firms.³⁹ A troubled sector, privately run residential youth detention centers tend to be “buried under . . . layer[s] of bureaucracy,” and do not have to comply with open records laws, like state-run centers.⁴⁰ Ultimately, the lack of accountability is the most dangerous factor for the children living in these centers.⁴¹ When there is an incident in state-run juvenile residential centers, there is usually a public investigation, and legislators and state government are quickly involved.⁴² With privately run juvenile residential centers, however, there is little oversight, and thus all but the most terrible incidents can be more easily concealed.⁴³ The primary type of oversight for private facilities is created through the licensure and contracting process; this, however, only normally requires general oversight, mostly up-front, with considerable inconsistency.⁴⁴

The lack of public oversight and state regulation can be deadly. At Lakeside Academy, where Cornelius Frederick was killed, the staff’s alleged casual abuse of the children residing there was chilling. Improper restraining of youth, like the hold that killed Frederick, was specifically taught to staff members to help “control” the residents.⁴⁵ These dangerous holds are common among residential programs, particularly those who are not well regulated: “What happened to [Frederick] happens in Sequel facilities, in juvenile justice facilities, in residential care facilities, in psychiatric facilities across the country multiple times a day . . . every day of the year.”⁴⁶ Similarly, due to lack of oversight, private equity-owned juvenile justice facilities have hired staff members without

37. *Id.*

38. See Franco LaTona & Jos Fox, ‘I Can’t Breathe’: Hidden Abuse in Some Private Detention Centers, NEWS21 (Aug. 21, 2020), <https://kidsimprisoned.news21.com/for-profit-juvenile-detention-centers>.

39. See generally EILEEN O’GRADY, THE KIDS ARE NOT ALRIGHT: HOW PRIVATE EQUITY PROFITS OFF OF BEHAVIORAL HEALTH SERVICES FOR VULNERABLE AND AT-RISK YOUTH 22–25 app. A (Feb. 2022), https://pestakeholder.org/wp-content/uploads/2022/02/PESP_Youth_BH_Report_2022.pdf.

40. See LaTona & Fox, *supra* note 38.

41. *See id.*

42. *Id.*

43. *See id.*

44. *See id.*

45. *Id.*

46. *Id.*

background checks.⁴⁷ In contrast, publicly owned juvenile detention centers normally screen their staff as a condition of hiring.⁴⁸

Although Michigan health services required corrective action plans for each abusive episode at Lakeside Academy, nothing was made public.⁴⁹ This secrecy, along with contracting with individually-run juvenile facilities, has allowed the existing private equity firms in charge to fly well under the radar.⁵⁰ For example, Sequel, fully owned by Altamont Capital Partners, operates approximately 40 residential juvenile justice facilities around the country.⁵¹ Because each of the facilities is registered under a separate, independent name, it is difficult to trace back to the ultimate owner: the private equity investment firm.

Moreover, the abusive treatment and lack of oversight tend to occur more frequently with high-needs children, who often have severe behavioral and psychological issues. Companies like Sequel focus on serving these particular children, who are often sent to out-of-state residential care facilities as a last resort. Because these children are far from home and struggle with behavior, often the abuse is ignored, or goes unreported.⁵² When abuse does happen, the entity who runs the residential homes is almost never publicly blamed or held to account.

The frequent sales and name changes of the private companies that run the troubled juvenile detention facilities makes tracking these entities difficult. For example, in 2022, Sequel, under fire for its abuse scandals, shut down approximately half of their centers, selling the rest to Vivant Behavioral Healthcare.⁵³ Vivant Behavioral Healthcare, however, was founded in 2021 by Jay Ripley, one of three 1999 founders of Sequel.⁵⁴ As Vivant, the company is

47. *See id.*

48. *See, e.g., Juvenile Justice Detention Officer I – 80053503*, STATE OF FLA. (Apr. 19, 2024), <https://jobs.myflorida.com/job/GAINESVILLE-JUVENILE-JUSTICE-DETENTION-OFFICER-I-80053503-FL-32609/1146252900> [<https://web.archive.org/web/20240516153852/https://jobs.myflorida.com/job/GAINESVILLE-JUVENILE-JUSTICE-DETENTION-OFFICER-I-80053503-FL-32609/1146252900>] (“All prospective candidates will be subject to a sex offender check, criminal background checks (state, local, and national) and pre-employment drug screening for direct care positions.”).

49. *See LaTona & Fox, supra* note 38.

50. *See id.*

51. *Id.*

52. *See id.*

53. *See* Curtis Gilbert, *Under Scrutiny, Company that Claimed to Help Troubled Youth Closes Many Operations and Sells Others*, APM REPS. (Apr. 26, 2022), <https://www.apmreports.org/story/2022/04/26/sequel-closes-sells-youth-treatment-centers>.

54. *Id.* Ripley was also the original founder of another abuse scandal-ridden youth behavioral services company, Youth Services Industries, which finally ceased operations in 2016. *See* John Kelly, *Is Youth Services International Finally Out of Business?*, IMPRINT (Mar. 21, 2016, 10:13 AM), <https://imprintnews.org/justice/juvenile-justice-2/is-youth-services-international-finally-out-of-business/16785>.

using its technical change of ownership to fight litigation against treatment centers formerly owned by Sequel.⁵⁵

The privatization rate of juvenile detention centers has risen, from 33 percent of facilities in 1999 to 40 percent in 2016.⁵⁶ Outcomes for the minors assigned to their care and supervision have not improved. For instance, the death rate for juveniles detained in juvenile justice residential facilities was higher in private facilities as opposed to public (2.8% vs. 2.3%).⁵⁷ The numbers are twice as worse in juvenile detention centers, where the death rate was 5.8 percent for privately-run detention centers compared to 3.1 percent for public detention centers. Though we cannot discern precisely why these results are so much worse, we should be able to know more.

This baseline neglect and disturbing record of abuse is no surprise. As one observer has pointed out, “[p]rivate equity’s goal isn’t to provide a safe and comfortable environment for those in its care, it’s to make outsized returns.”⁵⁸ Indeed, understaffing, lack of proper training, poor living conditions, physical and sexual abuse, and underreported use of restraints in these facilities continue apace. These problems are the specific “by-product of the private equity business model,” which increases profits by running unmonitored shoestring operations.⁵⁹

One reason juvenile justice residential facilities are so appealing to private equity is due to the increasing amount of public subsidy directed at it over the past decade, courtesy of the Affordable Care Act.⁶⁰ The revenue stream makes this segment of criminal justice ripe for private equity takeover.⁶¹ But what has been profitable for private investors has not proven beneficial for those children under correctional control.

2. *Juvenile Pre-Trial Detention Services*

Large, publicly traded companies have also rolled up⁶² and invested in various private corrections companies which provide youth pre-trial detention

55. Gilbert, *supra* note 53.

56. Caitlin Curley, *Why Is No One Paying Attention to Private Juvenile Detention Centers*, GENBIZ (Sept. 14, 2016), <https://genbiz.com/no-one-paying-attention-private-juvenile-detention-centers>.

57. See HOCKENBERRY ET AL., *supra* note 29, at 13.

58. David Dayen, *Rollups: Private Equity Eyes Youth Treatment Centers as a Takeover Target*, AM PROSPECT (Feb. 17, 2022), <https://prospect.org/power/rollups-private-equity-eyes-youth-treatment-centers-as-takeover-target>.

59. *Id.*

60. *Id.*

61. *Id.*

62. A roll up, or roll-up merger, is when “an investor . . . buys up companies in the same market and merges them together. Roll-up mergers, also known as a ‘roll up’ or a ‘rollup,’ combine multiple small companies into a larger entity that is better positioned to enjoy economies of scale.” James Chen, *Roll Up Merger: Overview, Benefits and Examples*, INVESTOPEDIA (Sept. 11, 2022), <https://www.investopedia.com/roll-up-merger-definition-4683958>.

services. In 2019, for example, CoreCivic, a multi-billion dollar publicly-held corrections corporation, entered into a five-year, \$29-million contract with the U.S. Department of Justice for detention and transportation services at Otay Mesa Detention Center.⁶³

Otay Mesa Detention Center provides pre-trial detention for juvenile offenders, among other services, and has been criticized for their poor treatment of individuals relegated to their care. Otay Mesa has recently come under fire for use of pepper spray on its juvenile detainees, despite San Diego commission requests for officers to limit and eventually eliminate its use.⁶⁴ Additionally, the Center had limited nursing and clerical staff to help treat and document illnesses, and only minimally necessary medical equipment, potentially hampering emergency responses.⁶⁵ Finally, there was little to any tracking of the juvenile detainees after release, making it hard to ensure that they got proper rehabilitation and re-entry services.⁶⁶

Given that CoreCivic is known for cost-cutting in the correctional facilities they serve,⁶⁷ it is hardly a surprise that their pre-trial detention services for juveniles appear troubled.

B. PSYCHIATRIC HOSPITALS & BEHAVIORAL SERVICES

Behavioral health, psychiatric care, and forensic hospitals have also been attractive investment targets for Big Capital companies, as they are seen as ripe for purchase, streamlining, and profit extraction. The expansion of Big Capital into behavioral health has often been ruinous for the patients involved, who are frequently mentally fragile by the time they arrive at these institutions. Instead of providing assistance, proper forensic care, or comfort, however, the corrections behavioral health companies often have worsened an individual's situation.⁶⁸ Private provision of these public services again hampers our ability

63. See *DOJ Contract with CoreCivic*, USA SPENDING, https://www.usaspending.gov/award/CONT_AWD_15M40021FA3500007_1544_70CDCR20D00000007_7012 (last visited Feb. 24, 2024).

64. See Jill Castellano, *Youth in SD Detention Said Locked in Rooms Without Written Justification*, TIMES SAN DIEGO (Apr. 21, 2022), <https://timesofsandiego.com/politics/2022/04/21/youth-in-sd-detention-said-locked-in-rooms-without-written-justification>.

65. *Id.*

66. *See id.*

67. See Laura I Appleman, *Cashing in on Convicts: Privatization, Punishment, and the People*, 2018 UTAH L. REV. 579, 600 (2018).

68. See CAROLINE ISAACS, TREATMENT INDUSTRIAL COMPLEX: HOW FOR-PROFIT PRISON CORPORATIONS ARE UNDERMINING EFFORTS TO TREAT AND REHABILITATE PRISONERS FOR CORPORATE GAIN 14, 17 (2014), https://www.prisonpolicy.org/scans/afsc/tic_report_online.pdf.

to monitor the provision of healthcare services, and oversee minimum levels of competence.⁶⁹

1. *Psychiatric Care for At-Risk Youth*

Behavioral services for teens and younger children have also been markets for investment for private equity firms, resulting in troubling provision of services for youth in need of psychiatric care. In Alabama, Sequel ran four child psychiatric residential treatment facilities, all of which were found to be “violent and chaotic places where youth are physically and emotionally abused by staff and peers, subjected to wretched living conditions, provided inadequate supervision and medical care, and subjected to illegal seclusion and restraint,”⁷⁰ as alleged by the Alabama Disabilities Advocacy Program.

In 2019, for example, the Sequel-run teen facility in Courtland, Alabama, allegedly failed to prevent repeated employee attacks on a boy under their care, possibly leading to his suicide attempt.⁷¹ Sequel’s services in housing foster youth and teens charged with crimes have been nothing short of a failure, as evidenced by the forced shutdown of fourteen out of thirty-six residential facilities, including five facilities closed in 2021.⁷² After complaints of child sexual abuse by staff members, ignored by Sequel, eventually reached police, the media, and disability advocates, Sequel is essentially no more.⁷³

Similarly, the Cornell Abraxas Group, a subsidiary of Geo Group, runs various juvenile treatment and detention centers, with a division entitled Abraxas Youth and Family Services.⁷⁴ Abraxas Youth and Family Services owns and runs the Abraxas Youth Center in South Mountain, Pennsylvania, a residential juvenile treatment center providing “[s]ecure youth treatment” on “the secluded grounds of the state owned, South Mountain Restoration

69. See EILEEN O’GRADY, PRIV. EQUITY STAKEHOLDER PROJECT, UNDERSTAFFED, UNLICENSED, AND UNTRAINED: BEHAVIORAL HEALTH UNDER PRIVATE EQUITY 3 (2020), <https://pestakeholder.org/wp-content/uploads/2020/09/PESP-behavioral-health-9-2020.pdf>.

70. Letter from Nancy Anderson, Assoc. Dir., Ala. Disabilities Advoc. Program; Michael J. Tafelski, Senior Supervising Att’y, S. Poverty L. Ctr.; & Christina Remlin, Lead Couns., Child.’s Rts., to Nancy Buckner, Comm’r, Ala. Dep’t Hum. Res.; Stephanie Azar, Comm’r, Ala. Medicaid Agency; Lynn Beshear, Comm’r, Ala. Dep’t Mental Health; & Scott Harris, Comm’r, Ala. Dep’t Pub. Health (July 6, 2020), https://adap.ua.edu/uploads/5/7/8/9/57892141/letter_to_state_re_sequel.pdf.

71. Caroline Klapp, *Attorney: Abuse at Sequel Courtland Led Child to Attempt Suicide*, WAFF48 (Dec. 17, 2020, 9:11 PM PST), <https://www.waff.com/2020/12/17/attorney-abuse-sequel-courtland-led-child-attempt-suicide>.

72. See O’GRADY, *supra* note 7, at 16.

73. See Gilbert, *supra* note 53.

74. See *About Us*, ABRAXAS YOUTH & FAM. SERVS., <https://abraxasyfs.org/about.html> (last visited Feb. 24, 2024) (“Abraxas is a national leader in providing residential, community based and in home services for youth, adults and families.”).

Center.”⁷⁵ The treatment provided includes secure residential treatment for male youth and secure detention services,⁷⁶ and operates as a custodial facility for juvenile court adjudicated male youths, ages 12-to-18.⁷⁷

According to allegations in a recent class action lawsuit, however, services provided at Abraxas may have been harmful. According to the complaint filed in March 2022, staff repeatedly abused children at the Abraxas Western Pennsylvania juvenile detention center.⁷⁸ The class action alleges physical, mental, and sexual abuse of the children while they were in custody of Abraxas.⁷⁹ Specifically, the suit claims that the children residing at the Abraxas juvenile detention center in Pennsylvania were subjected to both physical and emotional abuse, excessive use of force, and abuse from staffers hired and trained by Abraxas.⁸⁰

The South Mountain facility claimed to provide a rehabilitative base program for juveniles, and was lauded as “the Harvard of reform schools.”⁸¹ Partially based on this reputation, children from a variety of states were placed at the school.⁸² This reputation left out the myriad of abuses perpetuated on its juvenile residents, according to the plaintiffs. Children were abused sexually, physically, and mentally by staff members, repeatedly and over long periods of time.⁸³ As the lawsuit alleges:

Under its veneer of civility, there is a Dickensian “culture of violence” and intimidation at the School that has severely impacted the plaintiffs . . . through systematic excessive force, threats of longer sentences for those who report the abuse, and detention beyond commitment dates for those students with injuries that would be noticed upon release from the School.⁸⁴

Violent restraints were used on the children routinely and abusively, despite the requirement that they be used only as a last resort.⁸⁵ This behavior

75. *South Mountain, Pennsylvania: Abraxas Youth Center*, ABRAXAS YOUTH & FAM. SERVS., <https://abraxasyfs.org/abraxas-youth-center.html> (last visited Feb. 24, 2024).

76. *Id.*

77. Class Action Complaint at 5, *Van Buren vs. Abraxas Youth & Fam. Servs.*, No. 2:22-cv-499 (W.D. Pa. Mar. 28, 2022).

78. *See New Class Action Alleges Abuse at Pa. Juvenile Detention Center*, LEGAL INTELLIGENCER (Mar. 31, 2022, 10:47 AM), <https://www.law.com/thelegalintelligencer/2022/03/31/new-class-action-alleges-abuse-at-pa-juvenile-detention-center/?slreturn=20220611231359>.

79. *Id.*

80. *See* Class Action Complaint, *supra* note 77, at 4.

81. *Id.* at 6 (internal quotation marks omitted).

82. *Id.*

83. *Id.*

84. *Id.* at 8.

85. *See* Carley Bonk, *Inside the Alleged Abuse of At-Risk Youth in Pa. Treatment Centers*, PUB. OP. (Apr. 30, 2020, 6:25 AM PDT), <https://www.publicopiniononline.com/in-depth/news/local/2020/04/30/pennsylvania-youth-treatment-centers-have-been-accused-abusing-kids-south-mountain/4084874002>.

allegedly continued on despite news reports,⁸⁶ lawsuits,⁸⁷ internal complaints,⁸⁸ and reports from court monitors.⁸⁹

As the pleading points out:

The School, by contract and legislation in Pennsylvania, has been delegated a critical and legislatively mandated public function: (a) to provide a custodial setting for children adjudicated delinquent in juvenile court proceedings, as well as children at risk for delinquency or criminal conduct; and (b) to carry out legislatively mandated control and related services, and to provide appropriate sanctions and rehabilitation under the laws governing punishment and treatment of juveniles for criminal acts.⁹⁰

Accordingly, whatever abuses were committed by the Pennsylvania detention center, which was run and staffed by Abraxas, the Commonwealth of Pennsylvania should absorb some responsibility, since it had delegated its job to an outside, private corrections company.

Nowhere in any of the media reports or allegations, however, is there anything that indicates that Abraxas is part of Cornell Abraxas LLC, which is part of GEO Group, one of the two largest private correctional services companies in the United States.⁹¹ Although the class action suit filed in 2022 names Cornell Abraxas LLC and the GEO Group in its class action complaint, there is no other indicator of Abraxas Youth and Family Services is part of a giant correctional control corporation. Looking at the lawsuit alone will not tell you the full scope of the complicated ownership structure. Indeed, there is not even any mention of the GEO Group on the Abraxas Youth and Family Services website.⁹² As I explore in Part II, the GEO Group is another large, publicly traded corporation.⁹³

The GEO Group's ownership of Abraxas Youth and Family Services, and thus its responsibility for what happened at the youth detention center, should have been front and center in the expose of the horrors occurring at South Mountain Facility, but was never once mentioned. It is another way that the invisible hand of Big Capital Corrections hides in plain sight.

86. *Id.*

87. See generally Complaint, Disability Rts. Pa. v. Pa. Dep't Hum. Servs., No. 1:19-cv-00737-CCC (M.D. Pa. Apr. 30, 2019) (seeking to redress physical and emotional harm to youth with mental health and developmental disabilities living in Pennsylvania's development centers).

88. See Bonk, *supra* note 85.

89. See Class Action Complaint, *supra* note 77, at 9.

90. *Id.* at 1.

91. See Laura I Appleman, *The Treatment-Industrial Complex: Alternative Corrections, Private Prison Companies, and Criminal Justice Debt*, 55 HARV. C.R.-C.L. L. REV. 1, 40 (2020).

92. See *About Us*, *supra* note 74.

93. See *infra* Part II.

C. PSYCHIATRIC HOSPITALS

Despite repeated abuse and neglectful behavior, the private equity-owned companies running psychiatric facilities continually close and reopen. For example, “Sequel briefly reopened a psychiatric hospital in Ohio that had shut down in 2020 under state pressure after a nurse there was charged with assaulting a resident. The company rebranded Sequel Pomegranate as Torii Behavioral Health, but within months it notified the state that the facility was closing again.”⁹⁴

The expansion of private equity-owned correctional health companies should give us pause. In New Hampshire, for example, five children’s health organizations have asked the state to reconsider permitting Wellpath, a correctional healthcare company owned by private equity firm H.I.G. Capital,⁹⁵ to take over a children’s psychiatric hospital, given its troubling track record in providing care at Bridgewater State Hospital. Wellpath has contracted with Bridgewater State to provide mental health services to those under correctional control.⁹⁶ Among the issues regarding Wellpath’s running of the hospital were allegedly dangerous levels of mold growth, “illegal chemical and physical restraint and seclusion practices; [and] the pervasive culture of punishment and intimidation,” as alleged by Disability Law Center.⁹⁷

In particular, Wellpath’s repeated use of isolation tactics, punitive restraint through physical and chemical means, and overmedication of patients transferred from correctional facilities allegedly created an unsafe and untherapeutic facility, a status quo that persisted for over eight years.⁹⁸ And yet this level of alleged malfeasance has not stopped Wellpath from continuing to expand into new areas of mental health provision for state forensic hospitals and correctional services. Indeed, despite protests from various organizations, Wellpath still won the contract to run Hampstead Hospital in New Hampshire.⁹⁹

94. Hana Ikramuddin & Curtis Gilbert, *Sequel to Close New Mexico Youth Facility Amid More Abuse Allegations*, APM REPS. (Dec. 3, 2021), <https://www.apmreports.org/story/2021/12/03/sequel-bernalillo-academy-abuse-allegations>.

95. *Wellpath*, H.I.G. PRIV. EQUITY, <https://higprivateequity.com/portfolio/company/403> (last visited Feb. 25, 2024).

96. See Annmarie Timmins, *Organizations Call on Executive Council to Reconsider Wellpath Contract for Hampstead Hospital*, N.H. BULL. (May 3, 2022, 1:21 PM), <https://newhampshirebulletin.com/briefs/organizations-call-on-sununu-councilors-to-reject-wellpath-contract-for-hampstead-hospital>.

97. *Disability Law Center Finds Serious Health and Safety Concerns at Bridgewater State Hospital, Confirming Widespread Mold and Improper Use of Restraint*, DISABILITY L. CTR. (Feb. 9, 2022), <https://www.dlc-ma.org/2022/02/09/disability-law-center-finds-serious-health-and-safety-concerns-at-bridgewater-state-hospital-confirming-widespread-mold-and-improper-use-of-restraint>.

98. See *id.*

99. See Annmarie Timmins, *After Assurances From AG, Council Approves Wellpath Contract for Hampstead Hospital*, N.H. BULL. (May 4, 2022, 2:06 PM), <https://newhampshirebulletin.com/briefs/after-assurances-from-ag-council-approves-wellpath-contract-for-hampstead-hospital>.

Likewise, GEO Care, a wholly-owned subsidiary of GEO Group, has also allegedly mistreated incarcerated patients in forensic psychiatric hospitals. According to the American Civil Liberties Union, GEO Care provided substandard care for the patients at the Montgomery County Mental Health Treatment Facility in Texas, including overuse of restraints without appropriate physician's orders, neglect of mentally disturbed patients, and repeatedly keeping patients in the facility for months after they had been found competent to stand trial.¹⁰⁰ This privately-run, publicly-funded psychiatric hospital, focused on treating mentally incompetent defendants, racked up multiple violations of state law, such as improper restraints and insufficient monitoring.¹⁰¹ Nonetheless, GEO Care was the only company to bid for the contract, and as the state insisted privatizing one state hospital and cutting costs by 10 percent, it was essentially the only option.¹⁰²

Despite the poor showing in Texas, Geo Care continues to run private psychiatric hospitals for states. In Florida, for example, the Treasure Coast Forensic Treatment Center ("TCFTC"), which houses those found not guilty by reason of insanity and rehabilitates arrestees' mental health in order to undergo felony trial, was reportedly plagued by GEO Group's typical understaffing and neglectful care.¹⁰³ Within seven years of Geo Care assuming responsibility for the forensic hospital, one patient had died from assault by another patient.¹⁰⁴ Several more had been maimed, including one patient who hit other inmates in the face, poked them in the eye, and bit off chunks from their ears.¹⁰⁵ This operation was profitable, however; the TCFTC produced an estimated annual revenue of \$547 million under Geo Care's supervision.¹⁰⁶

100. See Ryan Meltzer, *Is Patient Care – Or Profits – The Priority at Privatized Montgomery County Mental Health Treatment Facility in Conroe?*, ACLU TEX. (Aug. 2, 2012, 12:25 PM), <https://www.aclutx.org/en/news/patient-care-or-profits-priority-privatized-montgomery-county-mental-health-treatment-facility>.

101. See Lomi Kriel, *Conroe Psychiatric Hospital May Face Big Fines*, CHRON (July 26, 2012, 10:16 PM), <https://www.chron.com/news/houston-texas/article/Conroe-psychiatric-hospital-may-face-big-fines-3739104.php>.

102. See *id.*

103. See Lucas Daprile, *Dangerous Detention: Treasure Coast Mental Hospital Lacks Staff, Training, Licensing, Funding*, TREASURE COAST PALM (Jan. 26, 2018, 1:04 PM ET), <https://www.tcpalm.com/story/news/investigations/2018/01/21/treasure-coast-mental-hospital-not-enough-staff-training-equipment-funding-tcpalm-investigation-find/921183001>.

104. Emily Bohatch, *After Nearly Two Years, Man Charged with Murder at Indiantown Mental Health Facility*, TREASURE COAST PALM (Oct. 31, 2017, 5:31 PM ET), <https://www.tcpalm.com/story/news/crime/martin-county/2017/10/31/after-nearly-two-years-man-charged-murder-indiantown-mental-health-facility/818284001>.

105. See Leonora L. Anton, Michael Braga & Anthony Cormier, *Insane. Invisible. In Danger.*, TAMPA BAY TIMES & HERALD-TRIB. (Oct. 29, 2015), <https://projects.tampabay.com/projects/2015/investigations/florida-mental-health-hospitals/cuts>.

106. See Daprile, *supra* note 103.

The level of care at TCFTC did not improve when CorrectCare (also owned by H.I.G. Capital) came to take over from GEO Group, retaining many of the same staff and management.¹⁰⁷ “Half the fines, a third of the reported assaults and two of the four patient deaths” occurred between 2015 and 2018.¹⁰⁸ The officer-to-patient ratio was low, with uncertified officers and high staff turnover.¹⁰⁹ In addition, starting in 2017 and continuing, the TCFTC was not registered with the Florida Agency for Health Care Administration (“HCA”), as required by state law.¹¹⁰ This meant that Correct Care (now Wellpath)¹¹¹ was not subject to the HCA’s annual inspections and \$25,000 maximum fines for violations not swiftly remedied.¹¹²

Correct Care ran the South Florida state hospital in a similar fashion, resulting in multiple patient deaths in 2011 and 2013 due to poor staffing and neglect of patients.¹¹³ Despite these tragedies, Wellpath still runs this particular psychiatric hospital today, along with three others in the state of Florida.¹¹⁴

Correct Care/Wellpath’s chronic understaffing may have been dangerous for both staff and patients, but it has been profitable for H.I.G. Capital: in a year and a half’s worth of time, the company saved \$545,801 from payroll, even after paying fines to the state.¹¹⁵ For every \$1 it spends on fines, Correct Care/Wellpath saves \$4 in payroll savings from hiring fewer employees, thus making profit on the backs of the mentally ill.¹¹⁶

Florida entered into contracts with both Geo Care and Correct Care/Wellpath because they were the cheapest operators available to run a forensic psychiatric hospital.¹¹⁷ Due to chronic underfunding for mental health services, Florida and a number of other states look for the lowest bidder to

107. *See id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *See* Joel Stinnett, *One of Nashville’s Largest Private Companies Merges with California Firm, Changes Name*, NASHVILLE BUS. J. (Nov. 8, 2018, 3:02 PM CST), <https://www.bizjournals.com/nashville/news/2018/11/07/one-of-nashvilles-largest-private-companies-merges.html>.

112. Daprile, *supra* note 103.

113. *See* Leonora L. Anton, Michael Braga & Anthony Cormier, *Death on the Wards: 14 People Who Didn’t Have to Die in Florida’s Mental Hospitals*, TAMPA BAY TIMES & HERALD-TRIB. (Oct. 29, 2015), <https://projects.tampabay.com/projects/2015/investigations/florida-mental-health-hospitals/14-patients-died>.

114. *See* *South Florida State Hospital Receives Full Accreditation from the Joint Commission*, PR NEWSWIRE (Jan. 9, 2018, 9:00 AM ET), <https://www.prnewswire.com/news-releases/south-florida-state-hospital-receives-full-accreditation-from-the-joint-commission-300579881.html>.

115. Lucas Daprile, *Correct Care Solutions Profited \$546,000 by Understaffing in Violation of State Contract*, TREASURE COAST PALM (Jan. 21, 2018, 12:45 PM ET), <https://www.tcpalm.com/story/news/investigations/2018/01/21/dangerous-detention-treasure-coast-mental-hospital-profits-understaffing-despite-fines-workers-comp/922682001>.

116. *See id.*

117. Daprile, *supra* note 103.

provide these services.¹¹⁸ Since 2009, Florida has cut \$100 million from their psychiatric hospital budget,¹¹⁹ allowing private equity owned companies to run their hospitals for the monetary savings. As a Florida state audit admitted, “[t]he absence of sufficient (DCF) oversight may also have contributed to the deficiencies.”¹²⁰

Time after time, facility after facility, Big Capital Corrections companies such as Wellpath or Geo Care have wreaked havoc on state forensic psychiatric hospitals. In Massachusetts, Wellpath’s operation of Bridgewater State Hospital, a facility for mentally ill men who are incarcerated, involuntarily committed or awaiting pretrial evaluations, has been continually substandard.¹²¹ By January 2022, conditions had become so bad at the hospital that the Disability Law Center called for its closure.¹²² According to reports, Wellpath had allowed the hospital to become a “broken facility,” riddled with toxic mold, potential asbestos, and filth, which endangered patients and staff.¹²³

In addition, Wellpath was charged with abusive and cruel behavior in its treatment of patients sentenced to Bridgewater State Hospital.¹²⁴ The company’s methods allegedly included repeated use of chemical and physical restraints where there was no threat of imminent harm, which violates Massachusetts law.¹²⁵ Wellpath also allegedly forced the use of psychotropic medication on patients in unsanctioned circumstances and non-emergency situations, according to Disability Law Center.¹²⁶ In addition, Wellpath allegedly imposed improper and unnecessary seclusion on many patients for infractions such as throwing a glass of water, despite the lack of any recorded imminent threat of physical harm.¹²⁷ As the Disability Law Center noted in their detailed report, a culture of intimidation pervaded the hospital: “Even [patients] who simply express frustration, anger, or distress are likely to face [staff] outfitted in tactical

118. *See id.*

119. *See* Anton et al., *supra* note 113.

120. Daprile, *supra* note 103 (internal quotation marks omitted).

121. *See* Haley Cornell, *Safety Report Calls for Shutdown of Bridgewater State Hospital*, PATCH (Feb. 9, 2022, 4:22 PM ET), <https://patch.com/massachusetts/brockton/safety-report-calls-shut-down-bridgewater-state-hospital>.

122. *Id.*

123. *See* Shira Schoenberg, *Pervasive Mold Plagues State Hospital for Mentally Ill Detainees*, COMMONWEALTH BEACON (Feb. 8, 2022), <https://commonwealthmagazine.org/courts/pervasive-mold-plagues-state-hospital-for-mentally-ill-detainees>.

124. *Id.*

125. *See* DISABILITY L. CTR., MASS. PROT. & ADVOC., PUBLIC REPORT: EFFICACY OF SERVICE DELIVERY REFORMS AT BRIDGEWATER STATE HOSPITAL (BSH) AND CONTINUITY OF CARE FOR BSH PERSONS SERVED 16 (2022), <https://www.mamh.org/assets/files/DLC-BSH-January-2022-Public-Report-2-9-2022.pdf> [hereinafter BRIDGEWATER STATE HOSPITAL].

126. *Id.* at 17, 21.

127. *Id.* at 22–23.

gear prepared to force them into submission through the use of ETOs, manual holds, mechanical restraint, and seclusion.”¹²⁸

Finally, Wellpath allegedly limited access to medical care for patients,¹²⁹ presumably to save money. Patients were not allowed to seek out the medical staff on their own.¹³⁰ If seeking medical care or advice, a patient had to approach a staff member in the middle of other duties to report symptoms or request facility medical staff, which created a low likelihood that their medical issue would be reported or addressed.¹³¹ Their other option was to file a formal written grievance to the Person Served Advocate, a non-medical staff member who processes all the grievances for the forensic hospital, which has a low likelihood of response.¹³²

The level of care and proper treatment of patients sentenced to forensic mental hospitals run by privately owned big correctional companies has been simply shameful. Even given the often low level of care provided at state forensic hospitals, the services provided by Wellpath/Correct Care and Geo Group are inferior. Big Capital Correction’s takeover of correctional psychiatric treatment is likely poised to grow from here; between 2010 and 2019, these types of private equity deals in health care in general almost tripled in value, growing from \$42 billion to \$120 billion.¹³³ Indeed, the “profit-making goals of private equity are . . . at odds with the needs of patients and the rules of government-financed health care programs.”¹³⁴ Whether owned by private equity firms or large, publicly traded companies, the private correctional companies providing forensic psychiatric services to patients under correctional control seem focused on profits, not care.

D. CORRECTIONAL CONTROL

Big Capital has also expanded into the ever-growing field of correctional control: the oversight and surveillance of those individuals still involved in the corrections system. Correctional control encompasses everything from bail bonds to electronic monitoring after release to mandatory rehabilitation services, and as this sector grows, so too does the investment by private equity. None of this is beneficial to the people under the yoke of profit.

128. *Id.* at 25.

129. Cornell, *supra* note 121.

130. See BRIDGEWATER STATE HOSPITAL, *supra* note 125, at 30.

131. *Id.*

132. *Id.* at 30–31.

133. Jeanne A. Markey & Raymond M. Sarola, *Private Equity, Health Care, and Profits: It’s Time to Protect Patients*, STAT NEWS (Mar. 24, 2022), <https://www.statnews.com/2022/03/24/private-equity-health-care-profits-time-to-protect-patients>.

134. *Id.*

1. *Bail Bonds*

Despite the recent movement towards eliminating money bail,¹³⁵ the bail bond industry is still alive and well. Most courts assign cash bail as a condition of pre-trial release.¹³⁶ A substantial majority of individuals arrested for alleged crimes, however, cannot afford to pay their bail in order to be released from jail before trial.¹³⁷ The commercial bail bond industry helps to secure the release of some of these pre-trial detainees, loaning them the necessary bail amount in return for specific collateral, such as a car, house, or valuables.¹³⁸ In exchange for a premium fee, the commercial bail agents enter into an agreement with the court that they will pay an individual's full bail amount if they fail to appear.¹³⁹ This non-refundable fee is usually 10 to 15 percent of the bond amount.¹⁴⁰ Since courts frequently set bail amounts quite high, many borrowers must pay back the sum in installments, which come with high interest rates.¹⁴¹

The commercial bail bond industry is almost entirely unregulated and frequently corrupt.¹⁴² This is because "bail bondsmen hold an immense amount of power over the bailees, despite the bondsmen's lack of legal, political, or police authority."¹⁴³ There is little to no regulation on the power of bail bondsmen to revoke bail and return the arrestee to jail, which can cost the individual thousands of dollars.¹⁴⁴ The lack of supervisory authority means that bail bond companies are not held accountable for any poor decisions by their employees in revoking bail or surrendering an arrestee, all of which means profit for the company.¹⁴⁵

135. See Will Snowden, *Money Bail Is Unjust and Should End*, FORBES (Oct. 1, 2021, 10:00 AM EDT), <https://www.forbes.com/sites/forbeseq/2021/10/01/money-bail-is-unjust-and-should-end/?sh=652bec366f06>.

136. See Allie Preston & Rachael Eisenberg, *Profit Over People: Primer on U.S. Cash Bail Systems*, CTR. FOR AM. PROGRESS (July 6, 2022), <https://www.americanprogress.org/article/profit-over-people-primer-on-u-s-cash-bail-systems>.

137. See Laura I Appleman, *Justice in the Shadowlands: Pretrial Detention, Punishment, & the Sixth Amendment*, 69 WASH. & LEE L. REV. 1297, 1305 (2012).

138. See Sara E. Murphy, *Reforming the Cash Bail System Benefits Both the Accused and Taxpayers*, BEACON MAG. & SAVANNAH MORNING NEWS (Feb. 9, 2021, 11:51 PM PST), <https://www.savannahnow.com/in-depth/special/2021/02/09/reforming-cash-bail-system-benefits-both-accused-and-taxpayers/3948807001>.

139. Will Kenton, *Bail Bond: Definition, How It Works with Posting Bail*, INVESTOPEDIA (July 31, 2023), <https://www.investopedia.com/terms/b/bail-bond.asp#toc-what-is-a-bail-bond>.

140. See Murphy, *supra* note 138.

141. See ACLU SMART JUST., PROFITING OFF MISERY: ENDEAVOUR CAPITAL AND THE PREDATORY BAIL INDUSTRY 3 (2019), https://www.aclu.org/wp-content/uploads/publications/aladdin_bail_report_-_final.pdf.

142. Appleman, *supra* note 137, at 1307.

143. *Id.*

144. *Id.*

145. *Id.* at 1310.

Given that the commercial bail bond industry “traps people who cannot afford cash bail premiums in a predatory cycle of debt and incarceration,”¹⁴⁶ it is unsurprising that private equity has stepped in to invest. Aladdin Bail Bonds, the largest bail bond company in the country, operating in nine states, was owned by private equity firm Endeavour Capital from 2012 to 2020.¹⁴⁷ During its period of acquisition, Endeavour Capital expanded its bail bond company to several additional states, spending millions on lobbying to expand the bail bond industry to states where it is currently illegal.¹⁴⁸ In addition, Endeavour Capital pushed back hard against any efforts to reform the bail bond industry in general.¹⁴⁹ After considerable negative press, however, Endeavour Capital sold Aladdin Bail Bonds, disliking the controversy that accompanied the industry.¹⁵⁰

Randall & Quilter, a global non-life specialty insurance company, apparently has not been deterred by this controversy. In 2014, Randall & Quilter acquired Accredited Surety, one of the nine main bail bond insurance companies that underwrite the bail bond companies.¹⁵¹ Accredited Surety, as a major backer of many commercial bail bond companies, was sued by the National Consumer Law Center in 2019 for price-fixing and maintaining a long-running anticompetitive conspiracy to keep bail bond premiums artificially high.¹⁵² As the complaint details, the surety co-conspirators, through the bail agents they control, required an inflated percentage of the bond—up to 10 percent—as a non-refundable premium, and refused to compete to lower prices.¹⁵³ In California alone, the bail bond companies collected \$308 million from non-refundable premium fees, from the poorest and most vulnerable individuals

146. Allie Preston & Rachael Eisenberg, *Profit Over People: The Commercial Bail Industry Fueling America's Cash Bail Systems*, *CTR. FOR AM. PROGRESS* (July 6, 2022), <https://www.americanprogress.org/article/profit-over-people>.

147. See *Following ACLU Report, Endeavour Capital Exits Bail Bond Investment*, *PRIV. EQUITY STAKEHOLDER PROJECT* (Mar. 5, 2020), <https://pestakeholder.org/news/following-aclu-report-endeavour-capital-exits-bail-bond-investment>.

148. *Id.*

149. *Id.*

150. See Laura Kusisto, *Criminal-Justice Changes Are Squeezing the Bail-Bond Industry*, *WALL ST. J.* (Feb. 21, 2020, 12:57 PM ET), <https://www.wsj.com/articles/criminal-justice-reforms-are-squeezing-the-bail-bond-industry-11582299332>.

151. See Udi Ofer, *9 Major Insurance Companies Are Profiting the Most Off the Broken Bail System*, *ACLU* (Feb. 12, 2018), <https://www.aclu.org/news/smart-justice/9-major-insurance-companies-are-profiting-most-broken-bail-system>.

152. See generally Class Action Complaint, *Crain v. Accredited Surety & Causal Co.*, No. RG19004509 (Cal. App. Dep't Super. Ct. Jan. 29, 2019) (suing Accredited Surety in a class action lawsuit alleging the company price fixed and maintained an anti-competitive conspiracy to keep Bond rates high).

153. See *Insurance Companies Conspired to Inflate Bail Bond Premiums Contends Lawsuit Brought by Lieff Cabraser and Public Interest Groups*, *BUS. WIRE* (Jan. 29, 2019, 4:59 PM EST), <https://www.businesswire.com/news/home/20190129005934/en/Insurance-Companies-Conspired-to-Inflate-Bail-Bond-Premiums-Contends-Lawsuit-Brought-by-Lieff-Cabraser-and-Public-Interest-Groups>.

involved in the criminal justice system.¹⁵⁴ The class action “seeks damages for many thousands of Californians who allege they have overpaid for unlawfully inflated bail bond premiums due to the elimination of competition in the market for bail bonds.”¹⁵⁵

Between bail bond companies and insurance backers, the commercial bail industry collects somewhere around \$1.4 billion to \$2.4 billion a year.¹⁵⁶ And who else can claim profit? Large international insurance companies, another kind of Big Capital Corrections. There are nine large insurance companies that dominate the underwriting of the U.S. bail bond industry.¹⁵⁷ Of these nine companies, the biggest, Fairfax Financial Holdings Ltd.,¹⁵⁸ is a large international holding company. These global insurance companies often have structures and reinsurance arrangements that make it difficult to clarify the specifics of their involvement.

There is minimal state or federal regulation of the bail bond insurance industry; because the bail bond insurance industry is a relatively small part of the insurance business regulated by state insurance divisions, it tends to get little notice.¹⁵⁹ Thus, abuses that occur are often ignored.¹⁶⁰ Moreover, the piecemeal regulatory system overseeing the bail bond industry, which varies from state to state, means that many detrimental policies and practices fall between the cracks.¹⁶¹ In part, this is because bail bond companies and their insurers exist in an nebulous middle ground between criminal courts and state insurance departments.¹⁶² Although states are usually charged with regulating them, they seldom do.¹⁶³

154. *See id.*

155. *Id.*

156. *See* ACLU, SELLING OFF OUR FREEDOM: HOW INSURANCE CORPORATIONS HAVE TAKEN OVER OUR BAIL SYSTEM 7 (2017), https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf [hereinafter SELLING OFF OUR FREEDOM].

157. *See* Bryce Covert, *America Is Waking Up to the Injustice of Cash Bail*, NATION (Oct. 19, 2017), <https://www.thenation.com/article/archive/america-is-waking-up-to-the-injustice-of-cash-bail>.

158. Fairfax Financial Holdings Limited, a Canadian-owned holding company, states that its “corporate objective is to achieve a 15% growth in book value per share over the long term [and] . . . to differentiate itself by combining disciplined underwriting and investing its assets on a value oriented total return basis, believing that this approach will provide above-average returns over the long term.” *About Fairfax Financial*, FAIRFAX FIN. HOLDINGS, <https://www.fairfax.ca/about-fairfax> [<https://web.archive.org/web/20240516162032/https://www.fairfax.ca/about-fairfax>] (last visited May 16, 2024). All of Fairfax’s investments are managed by their own in-house investment company, Hamblin Watsa Investment Counsel Ltd. *Id.*

159. *See* SELLING OFF OUR FREEDOM, *supra* note 156, at 36.

160. *See id.*

161. *See id.*

162. Jessica Silver-Greenberg & Shaila Dewan, *When Bail Feels Less Like Freedom, More Like Extortion*, N.Y. TIMES (Mar. 31, 2018, 12:37 PM EST), <https://www.nytimes.com/2018/03/31/us/bail-bonds-extortion.html>.

163. *Id.*

The loose regulation and high profits from bail bond companies and their insurers has unsurprisingly resulted in Big Capital investments.¹⁶⁴ These insurance companies, with help from the bail bond industry, collect approximately \$2 billion a year, primarily from the poor and disadvantaged.¹⁶⁵ Because there is so little risk—many bail bond insurance underwriters have had no losses for decades—the industry is extremely profitable.¹⁶⁶ The gross profit margin of bail bonds averages around 83 percent, after claims and related expenses are paid.¹⁶⁷ In 2019, bail insurers increased their premium income by 8 percent,¹⁶⁸ a significant jump.

In an arena where liberty is at stake, especially for those who have not been convicted of a crime, the presence and incentives for profit may distort incentives away from pure notions of justice and fairness. Again, the companies make it purposely difficult to see who specifically profits from this system and how.

2. *Electronic Monitoring*

One recent investment area for Big Capital is in the growing field of electronic monitoring. In 2017, Apax Partners, a private equity firm, acquired Attenti from 3M for \$200 million dollars.¹⁶⁹ Attenti provides a variety of electronic monitoring technologies for those individuals under correctional control, including Global Positioning Systems (GPS), Radio Frequency (RF), and alcohol verification monitoring and tracking services.¹⁷⁰ As I have discussed elsewhere, the cost of electronic monitoring is frequently foisted on individuals under probation or post-release supervision, since many courts require them to pay for the full costs of GPS monitoring, drug testing, and alcohol monitoring.¹⁷¹

164. *See id.*

165. *See* SELLING OFF OUR FREEDOM, *supra* note 156, at 9.

166. *See* Silver-Greenberg et al., *supra* note 162.

167. *See* Alwyn Scott & Suzanne Barlyn, *U.S. Bail-Bond Insurers Spend Big to Keep Defendants Paying*, REUTERS (Mar. 26, 2021, 3:48 AM PDT), <https://www.reuters.com/article/us-usa-insurance-bail-jails-insight/us-bail-bond-insurers-spend-big-to-keep-defendants-paying-idUSKBN2BI1BP>.

168. *Id.*

169. *See* JIM BAKER, CONTINUING INCARCERATION: APAX PARTNERS' DIGITAL SHACKLES 1 (2019), <https://pestakeholder.org/wp-content/uploads/2019/10/Continuing-Incarceration-Apax-Partners-PESP-100319.pdf>.

170. *See Funds Advised by Apax Partners to Acquire 3M's Electronic Monitoring Business*, APAX PARTNERS (June 1, 2017), <https://www.apax.com/news-views/funds-advised-by-apax-partners-to-acquire-3m-s-electronic-monitoring-business/#:~:text=Traffic%20Safety%20an-,Funds%20advised%20by%20Apax%20Partners%20today%20announced%20a%20definitive%20agreement,and%20LONDON%2C%201%20June%202017>.

171. Laura I Appleman, *Nicked and Dimed into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C. L. REV. 1483, 1508 (2016); *see also* HUM. RTS. WATCH, PROFITING FROM PROBATION: AMERICA'S "OFFENDER-FUNDED" PROBATION INDUSTRY 33 (2014) (describing interviews with people who have experienced abuse and financial hardship due to privatized probation).

For example, a GPS-enabled electronic monitoring device can cost hundreds of dollars a month.¹⁷²

As electronic monitoring technology profits are derived from such costs, “the more monies created by exorbitant fees, . . . the better the bottom line for the company itself.”¹⁷³ And since so much of the profit is extracted from those under correctional control, there is little incentive to stop it.¹⁷⁴

3. *Alternative Corrections Services*

Private equity firms have also invested in companies providing alternative corrections services, often mandatory parts of prisoners’ sentences upon release. Alternative corrections services such as probation, rehabilitation and halfway houses, and diversion programs have been outsourced to private companies, many of which have been purchased by various private equity firms and other global investment firms.¹⁷⁵ I describe a few examples below.

a. *Private probation*

State and local governments routinely use private probation companies to provide services such as drug testing, addiction services, and behavioral-therapy to those individuals who have been released from formal incarceration but are still under correctional supervision.¹⁷⁶ These private probation companies are popular because many of the costs of misdemeanor probation are shunted to the probationers themselves, thus saving state and local considerable monies.¹⁷⁷ Private equity firms have invested in private probation companies, most notably Sentinel Offender Services, which partners with community corrections, courts, and law enforcement.¹⁷⁸ Sentinel is owned by Bison Capital Asset Management, a private equity firm.¹⁷⁹

172. BAKER, *supra* note 169, at 2.

173. See Appleman, *supra* note 171, at 1509.

174. See *id.* at 1508–09.

175. See Appleman, *supra* note 91, at 6.

176. See Sharon Cohen, *Poor Offenders Pay High Price When Probation Turns on Profit*, SPOKESMAN-REV. (Mar. 12, 2016), <http://www.spokesman.com/stories/2016/mar/12/poor-offenders-pay-high-price-when-probation-turns>.

177. Appleman, *supra* note 91, at 7.

178. See Jim Baker, *Fact Sheet: Private Equity-Owned Firms Dominate Prison and Detention Services*, PRIV. EQUITY STAKEHOLDER PROJECT (Sept. 17, 2018), <https://pestakeholder.org/reports/fact-sheet-private-equity-owned-firms-dominate-prison-and-detention-services>.

179. See *Sentinel Offender Services*, BISON CAP., <https://bisoncapital.com/portfolio-items/sentinel-offender-services> (last visited Feb. 28, 2024).

b. *Drug and alcohol rehabilitation*

Big Capital has also begun acquiring drug and alcohol rehabilitation centers, with a wave of investments in recent years.¹⁸⁰ This new interest is largely due to the growing need for more recovery services, both in and outside of the carceral context, and private equity is inevitably drawn to a “hole in the market.”¹⁸¹ According to private equity analysts, addiction treatment remains an “incredibly immature market,” but with “great opportunity” remaining, especially for those firms who aren’t afraid to buy up distressed assets for pennies on the dollar.¹⁸²

Some states, including California, “now divert people convicted in drug court to treatment programs rather than sending them to prison.”¹⁸³ Oregon gives people caught with small amounts of illegal drugs a ticket and a reference to rehab.¹⁸⁴ This push towards rehabilitation rather than incarceration means that the market for treatment programs is increasing, a state of affairs about which Big Capital is well aware.

The aforementioned Wellpath is the biggest provider of correctional rehabilitation, both in and outside of prisons and jails, in the United States.¹⁸⁵ Its owner H.I.G. Capital is one of the largest private equity investors in corrections companies.¹⁸⁶ Wellpath has gained notoriety even among correctional healthcare and rehabilitation services for its shoddy dealings and poor service. In March 2022, its CEO and founder Gerald Boyle pled guilty to federal bribery charges

180. See Phil Albinus, *Alcohol and Drug Treatment Centers Draw Private Equity Backing*, MIDDLE MKT. GROWTH (Mar. 10, 2021), <https://middlemarketgrowth.org/the-round-alcohol-and-drug-treatment-centers-draw-private-equity-backing>.

181. *Id.* (internal quotation marks omitted).

182. *The Pitfalls Private Equity Firms Need to Avoid When Evaluating an Addiction Treatment Center*, CIRCLESOCIAL INC. (Dec. 21, 2018), <https://www.circlesocialinc.com/the-pitfalls-private-equity-firms-need-to-avoid-when-evaluating-an-addiction-treatment-center>.

183. Appleman, *supra* note 91, at 13.

184. In 2020, Oregon passed Measure 110, which decriminalized simple possession of drugs, including cocaine, methamphetamine, heroin, and other controlled substances. Instead of being charged with a misdemeanor, people caught in possession of these drugs are issued a civil citation, along with a small fine. Penalties are waived if the person underwent a health assessment at an addiction-recovery center. See Sophie Quinton, *Oregon’s Drug Decriminalization May Spread, Despite Unclear Results*, STATELINE (Nov. 3, 2021, 12:00 AM), <https://stateline.org/2021/11/03/oregons-drug-decriminalization-may-spread-despite-unclear-results>. In March of 2024, however, Measure 110 was modified, making it drug possession a misdemeanor, although rehabilitation is still the first choice for treatment. See Conrad Wilson, *Oregon Governor Signs Bill Criminalizing Drug Possession*, OPB (Apr. 1, 2024), <https://www.opb.org/article/2024/04/01/drug-possession-oregon-kotek-sign-bill>.

185. “Headquartered in Nashville, Tennessee, and maintaining a strong presence in San Diego, California, Wellpath provides localized, high-quality, compassionate healthcare to nearly 300,000 patients daily in more than 550 health clinics and hospitals across nearly 40 U.S. states and Australia.” *Wellpath*, H.I.G. CAP., <https://higcapital.com/portfolio/wellpath> (last visited May 10, 2024).

186. See *Founder of HIG Capital-Owned Wellpath Indicted on Federal Bribery Charges*, PRIV. EQUITY STAKEHOLDER PROJECT (Dec. 5, 2019), <https://pestakeholder.org/news/founder-of-hig-capital-owned-wellpath-indicted-on-federal-bribery-charges-2>.

for participating in a 12-year bribery scheme with the sheriff of the Norfolk, Virginia jail in order to obtain the jail's medical services contracts.¹⁸⁷ Between 2014 and 2018, Wellpath was sued for its negligence in contributing to at least seventy deaths for those under correctional control.¹⁸⁸ When operating under its former name pre-merger, CorrectCare, it was sued 1395 times in federal court from 2003 to 2018.¹⁸⁹

Halfway houses and re-entry centers are also tempting targets for large, publicly owned corrections corporations. Geo Group, for example, now owns a collection of "community re-entry services" and treatment programs, having purchased the country's largest electronic-monitoring firm, BI Incorporated, in 2011.¹⁹⁰ Likewise, in 2017, CoreCivic acquired halfway houses in Georgia, North Carolina, and Colorado for nearly \$22 million.¹⁹¹

Over 30 percent of all halfway houses nationwide are owned and operated by Community Education Centers ("CEC"),¹⁹² a private company recently acquired by Geo Group.¹⁹³ Halfway houses are supposed to provide safe housing, job placement assistance, and other social services for people on parole as they prepare to leave correctional control.¹⁹⁴ CEC halfway houses across the country, however, are notorious for their inhumane conditions.¹⁹⁵ In 2011, for example, an Indiana CEC inhabitant died from problems arising from an untreated pregnancy.¹⁹⁶ CEC-run halfway houses in Colorado have suffered from assaults, gang violence, and rampant drug use.¹⁹⁷ Likewise, CEC halfway

187. See Brian Farrell, *Man to Spend 3 Years in Prison, Pay \$35K After Bribing Former Norfolk Sheriff Bob McCabe*, 13NEWS NOW (Feb. 25, 2022, 2:59 PM EST), <https://www.13newsnow.com/article/news/crime/ceo-sentenced-former-norfolk-sheriff-bob-mccabe-bribery-case/291-22a0b296-fd5f-45ef-aab6-a1f0b9fc109e>.

188. See Blake Ellis & Melanie Hicken, *'Please Help Me Before It's Too Late'*, CNN (June 25, 2019), <https://www.cnn.com/interactive/2019/06/us/jail-health-care-ccs-invs/>.

189. See Heidi Beedle, *A Look at Suicide and Death Statistics in Colorado Jails*, COLO. SPRINGS INDY (Feb. 3, 2021), https://www.csindy.com/news/local/a-look-at-suicide-and-death-statistics-in-colorado-jails/article_b285ff5e-6585-11eb-81de-bb2024f40e8e.html.

190. Appleman, *supra* note 91, at 14.

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

192. Lauren Sukin, *When Jail Is the Better Option: The Failure of Halfway Houses*, CENTURY FOUND. (June 23, 2015), <https://tcf.org/content/commentary/when-jail-is-the-better-option-the-failure-of-halfway-houses>.

193. *The GEO Group Announces \$360 Million Acquisition of Community Education Centers*, BUS. WIRE (Feb. 22, 2017, 6:55 AM EST), <https://www.businesswire.com/news/home/20170222005729/en/The-GEO-Group-Announces-360-Million-Acquisition-of-Community-Education-Centers>.

194. Anat Rubin, *California Relies on Halfway House Operator with Troubled Past*, SFGATE, <https://www.sfgate.com/crime/article/California-relies-on-halfwayhouse-operator-with-6193752.php> (last updated Apr. 11, 2015, 6:41 PM).

195. Appleman, *supra* note 91, at 16.

196. Anat Rubin, *A Record of Trouble*, MARSHALL PROJECT (Apr. 11, 2015, 4:00 PM EDT), <https://www.themarshallproject.org/2015/04/11/a-record-of-trouble>.

197. *Id.*

houses in California have been plagued by inadequate clinical programs, routine violence, and residential drug and alcohol abuse.¹⁹⁸

The halfway houses run by Avalon Correctional Services, owned by CoreCivic, appear no better. Avalon owns and manages private halfway houses through subsidiaries in Oklahoma, Texas, and Wyoming, with a gross profit margin of 36.3 percent, as compared to the industry average of 32.3 percent.¹⁹⁹ Allegations of mismanagement include reports of “insufficient security, unqualified staff, falsified drug tests, sexual relations between staff and prisoners, and inadequate record-keeping.”²⁰⁰ Today, these same halfway houses, currently run by CoreCivic itself, have a high failure rate in preventing residents from recidivating.²⁰¹

The privately-owned intensive residential treatment programs in Colorado suffer from many of the same problems. One in five residents in Colorado’s halfway houses are serving a sentence related to substance abuse.²⁰² The treatment they receive at the court-ordered halfway houses is often rudimentary, however, with ineffective programs which capture residents in a revolving door of prison and residential treatment stays, increasing profits for the companies that own the programs.²⁰³ Additionally, 38 percent of the residents in diversion programs failed out in 2020 due to minor technical violations, such as breaking curfew or violating other minor rules.²⁰⁴ In other words, there is financial incentive for keeping inmates in a cycle of treatment and incarceration.²⁰⁵ Of the twenty-nine residential community correction facilities in the state, twenty-four are privately run.²⁰⁶

Unsurprisingly, two of the publicly held corporations involved in managing Colorado’s halfway houses are Geo Group and CoreCivic.²⁰⁷ Geo Group and CoreCivic run the majority of the halfway houses in Colorado, excluding the

198. Rubin, *supra* note 194.

199. *Avalon Correctional Services Inc.*, AM. FRIENDS SERV. COMM., <https://investigate.afsc.org/company/avalon-correctional-services> (last visited Feb. 12, 2024).

200. *Id.*

201. See Moe Clark, “Another Place to Warehouse People”: The State Where Halfway Houses Are a Revolving Door to Prison, PROPUBLICA (Sept. 16, 2022, 5:00 AM EDT), <https://www.propublica.org/article/colorado-halfway-houses-prison-community-corrections>.

202. *Id.*

203. *Id.*

204. Moe Clark, *Colorado’s Halfway Houses Receive Millions in State Fund Every Year Despite Poor Outcomes*, COLO. NEWSLINE (Apr. 20, 2021, 11:30 AM), <https://coloradonewsline.com/2021/04/20/colorados-halfway-houses-receive-millions-in-state-funds-every-year-despite-poor-outcomes>.

205. Clark, *supra* note 201.

206. Clark, *supra* note 204.

207. *Id.*

city of Denver.²⁰⁸ Denver stopped using the private prison industry to run its halfway houses in 2019, because of their terrible track record including poor sanitary conditions, lack of sufficient food, and forced labor.²⁰⁹ Moreover, the high rate of recidivism for released residents—50 percent vs. 40 percent—demonstrates the failure of the privatized halfway house system in Colorado.²¹⁰

CoreCivic and the Geo Group appear to have serious challenges managing and operating halfway houses around the nation. Incidents at halfway houses in Denver and Boulder, Colorado, Oklahoma City and Tulsa, Oklahoma, and Casper, Wyoming, all run by the two private corrections giants, have included rampant drug use, incessant fighting, violent attacks, several escapes, and numerous medical emergencies.²¹¹ The fiscal bottom line of having a state correctional halfway house run by Big Capital Corrections may be positive, but the short- and long-term effects on the residents are certainly not.

E. CORRECTIONAL HEALTHCARE

Inmate healthcare has been another primary focus of expansion for Big Capital.²¹² A majority of states have outsourced their correctional healthcare to private companies in an attempt to cut costs.²¹³ Private healthcare in the correctional space is notoriously poor, and hundreds of lawsuits have been filed as a result.²¹⁴ Despite the litigation, however, data on private prison healthcare has been difficult to obtain.²¹⁵

Wellpath is the largest of the private correctional health care providers.²¹⁶ Among correctional healthcare providers, Wellpath is notorious for abuse and neglect.²¹⁷ Wellpath was created by private equity firm H.I.G. through purchasing and combining two separate prison health companies, CorrectCare Solutions and Correctional Medical Group Companies.²¹⁸ This was part of a

208. See Ali Budner, *Denver Didn't Want the Private Prison Industry to Run Its Halfway Houses. Now Who's Going to Do It?*, KRCC (Mar. 6, 2020, 12:43 PM), <https://www.cpr.org/2020/03/06/denver-didnt-want-the-private-prison-industry-to-run-its-halfway-houses-now-whos-going-to-do-it>.

209. *Id.*

210. *Id.*

211. Chad Marks, *Private Halfway Houses Plagued with Escapes, Drugs, Sex and Violence*, PRISON LEGAL NEWS (May 3, 2019), <https://www.prisonlegalnews.org/news/2019/may/3/private-halfway-houses-plagued-escapes-drugs-sex-and-violence>.

212. See Alan Greenblatt, *America Has a Health-Care Crisis — in Prisons*, GOVERNING (July 29, 2019), <https://www.governing.com/archive/gov-prison-health-care.html>.

213. *Id.*

214. *Id.*

215. Victoria Law, *Health Care in Jails and Prisons Is Terrible. The Pandemic Made It Even Worse*, VOX (June 28, 2022, 7:00 AM EDT), <https://www.vox.com/23175978/health-care-prison-jail-covid-pandemic>.

216. Micaela Gelman, Note, *Mismanaged Care: Exploring the Costs and Benefits of Private vs. Public Healthcare in Correctional Facilities*, 95 N.Y.U. L. REV. 1386, 1396–97 (2020).

217. See Ellis & Hicken, *supra* note 188.

218. O'GRADY, *supra* note 69, at 8.

larger trend of private equity companies making equity deals in health care, at the expense of those who need medical care and treatment.²¹⁹ Indeed, “[w]hen private equity buys a health care company, patients often pay the price.”²²⁰

This has certainly been the case with Wellpath.²²¹ Over the past several years, there have been repeated concerns about the private company’s provision of sufficient and adequately trained healthcare staff at facilities it serves.²²² Wellpath’s substantial correctional healthcare footprint includes jails, detention centers, state and federal prisons, and state psychiatric hospitals.²²³ It is currently the largest private entity in the correctional healthcare market, and has been subject to at least fourteen hundred lawsuits from 2018 onward,²²⁴ alleging, among other things, negligence and lack of timely access to health care.²²⁵

In 2021, the U.S. Department of Justice (DOJ) issued a stinging report of Wellpath’s failures in its provision of medical care at the San Luis Obispo County Jail in California.²²⁶ The DOJ concluded that Wellpath’s practices failed to provide basic medical care or mental health care to prisoners, used excessive force, overused restrictive housing, and failed to properly accommodate prisoners with disabilities.²²⁷ In part, this was in reaction to the sixteen prisoner deaths in jail custody between 2012 and 2020.²²⁸ The DOJ investigation found that prisoners suffered substantial risk of serious harm from Wellpath’s failure to provide adequate medical care, including lack of screening, little continuity of care, poor medication management, and significant delays and deficiencies in what minimal care was provided.²²⁹ The DOJ also concluded that Wellpath inadequately staffed, monitored, and oversaw the medical care provided at the

219. See Markey & Sarola, *supra* note 133.

220. *Id.*

221. See Vanessa Murphy, *I-Team: Mother Files Lawsuit Following Daughter’s Death in Las Vegas Jail Cell*, 8 NEWS NOW (July 22, 2022, 11:53 AM PDT), <https://www.8newsnow.com/investigators/i-team-mother-files-lawsuit-following-daughters-death-in-a-las-vegas-jail-cell>.

222. *Jails and Prisons Served by H.I.G. Capital-Owned Wellpath Face COVID-19 Outbreaks, Deaths, Concerns Regarding Staffing Levels*, PRIV. EQUITY STAKEHOLDER PROJECT (July 8, 2020), <https://pestakeholder.org/news/jails-and-prisons-served-by-h-i-g-capital-owned-wellpath-face-covid-19-outbreaks-deaths-concerns-regarding-staffing-levels-2>.

223. JIM BAKER, PRIV. EQUITY STAKEHOLDER PROJECT, HIG CAPITAL’S AND WELLPATH’S CORRECTIONAL HEALTHCARE INVESTMENT RISKS 1 (2019), <https://pestakeholder.org/wp-content/uploads/2019/07/HIG-Capitals-Correctional-Healthcare-Investment-Risks-PESP-070819.pdf>.

224. Andy Pierrotti, *‘It Could Have Been Prevented’: Medical Staff Didn’t Take Inmate’s Complaints Seriously, He Died Hours Later, Officer Says*, 11 ALIVE (Nov. 23, 2021, 9:29 AM EST), <https://www.11alive.com/article/news/investigations/the-reveal/medical-staff-did-not-take-inmates-complaints-seriously/85-b3600969-f619-4113-b603-b2719a3a6731>.

225. See BAKER, *supra* note 223, at 1–2.

226. See generally U.S. DEP’T OF JUST. C.R. DIV., INVESTIGATION OF THE SAN LUIS OBISPO COUNTY JAIL (2021), <https://www.justice.gov/crt/case-document/file/1429036/download> (noting Wellpath’s failures to provide adequate care to prisoners).

227. *Id.* at 1.

228. *Id.* at 3.

229. *Id.* at 6–13.

San Luis Obispo County Jail.²³⁰ Perhaps most damningly, the DOJ found that Wellpath did all of these things intentionally.²³¹

Denying or limiting healthcare boosts profit. By controlling when corrections residents are seen by doctors and sent to the hospital, a private company can cut many costs.²³² The fewer hospital trips, the more money saved.²³³ This has resulted in inadequate and untimely health care, where prisoners are refused anything but the most minor aspects of basic health care, with little follow-up care and sometimes even failure to follow basic sanitary procedures.²³⁴ The motivations to curb costs by denying medical procedures and limit hospital and emergency room trips are strong.²³⁵ Sometimes Wellpath will even try to cut a deal with the correction facility, offering to split the savings made by curbing off-site medical care, in order to fully incentivize them.²³⁶ The end results have led to severe illness, injury, and death for those prisoners under Wellpath's medical care.²³⁷

Public records laws do not apply to private corrections health care companies, so there is little oversight or regulation about the health care provided in correctional settings.²³⁸ Granted, the Vermont Supreme Court recently held that Wellpath might be subject to the state's public records law given that it was working for the state.²³⁹ That decision is an outlier, however, and represented six years of litigation by the Human Rights Defense Center to obtain Wellpath records.²⁴⁰ Even so, the Vermont Supreme Court didn't decisively rule that the documents sought were in the public record, instead sending the case back down to the lower court to determine what is eligible for public release.²⁴¹

230. *Id.* at 14, 18, 26.

231. *Id.* at 18, 26.

232. See Pierrotti, *supra* note 224.

233. Private corrections health providers are infamous for denying or delaying health care for prisoners, which is frequently profit-motivated. See Susan Sharon, 'It's Horrible' — Report Alleges Improper Care by Private Health Provider in Maine State Prison, ME. PUB. RADIO (Mar. 8, 2021, 5:33 PM EST), <https://www.maine-public.org/health/2021-03-08/its-horrible-report-alleges-improper-care-by-private-health-provider-in-maine-state-prison>.

234. *Id.*

235. See Beth Healy & Christine Willmsen, *Pain and Profits: Sheriffs Hand Off Inmate Care to Private Health Companies*, WBUR (Mar. 24, 2020), <https://www.wbur.org/news/2020/03/24/jail-health-companies-profit-sheriffs-watch>.

236. *Id.*

237. *Id.*

238. *Id.*

239. See Alan J. Keays, *High Court Finds Private Health Care Contractor for State Subject to Public Records Law*, VT. DIGGER (Sept. 5, 2021, 6:06 PM), <https://vtdigger.org/2021/09/05/high-court-finds-private-health-care-contractor-for-state-subject-to-public-records-law>.

240. *Id.*

241. *Id.*

Wellpath is not alone in its poor correctional health services. As of 2017, five corporations—Corizon Health, NaphCare, Wexford Health, Centurion Health, and Wellpath Holdings—are collectively responsible for prison health care in twenty-eight states and 62 percent of jail health care in the United States, pocketing 40 percent of all correctional spending.²⁴² The corporate focus on jail healthcare is growing.²⁴³ In part, this is because jails are attractive targets, since they frequently involve higher profit margins.²⁴⁴

Corizon Health is another corrections healthcare behemoth with many pending lawsuits and a troubling track record.²⁴⁵ From Mississippi to Maine, from Pennsylvania to Arizona, Corizon has had hundreds of lawsuits filed against it for faulty delivery of care to inmates and inhumane conditions.²⁴⁶ Owned until recently by BlueMountain Capital Management, a private equity firm, Corizon is now solely owned by Flacks Group, an investment firm that specializes in turnarounds.²⁴⁷ Flacks calls itself a “special situations” investor, focusing on acquiring struggling companies and increasing their profits.²⁴⁸ This may be great for investors, but has not proven particularly beneficial to inmates in Corizon-served corrections facilities.

A review of incarcerated deaths from 2016 to 2018 covering five hundred jails found that state jails using these five private correctional services companies for health care had far higher rates of death.²⁴⁹ “The death rates were 18% to 58% higher, depending upon the company.”²⁵⁰ In part, this is because private corrections companies often lack quantified standards for care in their contracts, leaving such critical aspects as staffing requirements, protocols for inmate health evaluations, and hospitalization policy vague.²⁵¹ Such vagueness allows Big Capital to make economies on prisoner health care so as to ultimately

242. WORTH RISES, *THE PRISON INDUSTRY: HOW IT STARTED. HOW IT WORKS. HOW IT HARMS* 76, 78 (2020).

243. See Marsha McLeod, *The Private Option*, ATLANTIC (Sept. 12, 2019), <https://www.theatlantic.com/politics/archive/2019/09/private-equitys-grip-on-jail-health-care/597871/+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-b-1-d>.

244. *Id.*

245. Sarah Solon & Jesse Lava, *Meet the Company Making \$1.4 Billion a Year Off Sick Prisoners*, ACLU (Oct. 8, 2013), <https://www.aclu.org/news/smart-justice/meet-company-making-14-billion-year-sick-prisoners>.

246. Dan Christensen, *Florida Prison Officials Didn't Ask, Companies Didn't Tell About Hundreds of Malpractice Cases*, FLA. BULLDOG (Oct. 2, 2013, 6:09 AM), <https://www.floridabulldog.org/2013/10/florida-prison-officials-didnt-ask-companies-didnt-tell-about-hundreds-of-malpractice-cases>.

247. See Matt Blois, *Investment Firm Acquires Corizon*, NASHVILLE POST (June 30, 2020), https://www.nashvillepost.com/investment-firm-acquires-corizon/article_eeba5a0a-486c-5779-886c-2d50b1befc5a.html.

248. *Id.*

249. Jason Szep, Ned Parker, Linda So, Peter Eisler & Grant Smith, *U.S. Jails Are Outsourcing Medical Care — And the Death Toll Is Rising*, REUTERS (Oct. 26, 2020, 6:42 AM PDT), <https://www.reuters.com/investigates/special-report/usa-jails-privatization>.

250. *Id.*

251. *Id.*

benefit the company's bottom line.²⁵² "It is a one to one, dollar to dollar, relationship between denying care and profit."²⁵³

There is unquestionably a low standard of medical care provided in America's state and federal corrections system.²⁵⁴ But private correctional healthcare providers tend to do an even poorer job providing medical services to those under correctional control.²⁵⁵ Big Capital Corrections healthcare providers, however, provide the most minimal healthcare of all. Given that goals of Big Capital—that is, extracting value—are largely antagonistic to the needs of both patients and correctional health care programs, this should come as no great surprise.²⁵⁶

II. WHO OWNS THIS STUFF? UNWINDING THE LABYRINTH

Although Big Capital invests in a variety of public corrections services, unwinding which for-profit entity owns what corrections company can be labyrinthine. As we saw in Part I, corrections services are often being performed by entities that are subsidiaries of large publicly held companies, or by privately held portfolio companies held by secretive private equity firms. We also saw how large global insurance companies, though not owners, provide the risk backing that enables the private bail system to work. When things go wrong, however, it can be a real struggle to figure out who is accountable, and to determine who is ultimately responsible when things have gone wrong.

Due to these complicated layers of ownership structure, we often do not know who ultimately is responsible for delivering the amount and quality of correctional services—services that enable retention of the public-private contracts—and what the incentives might be. We do not know to whom to complain, because critical correctional services are now provided by a byzantine web of private companies, some of them large and publicly-held corporations, some owned by private equity, and others floating on a financial system backed by international insurers.

In the public arena where punishment and correctional services are meted out, we normally hold state officials and elected officials accountable. Today, instead, we increasingly can hold them accountable only for those with whom they contract. But figuring out correctional accountability is extremely complex, what with private money, global financial structures, and frequent re-naming and restructuring of private correctional companies.

252. *See id.*

253. *Id.*

254. Appleman, *supra* note 67, at 600.

255. *Id.* at 599.

256. Markey & Sarola, *supra* note 133.

There are three main players in Big Capital Corrections, each with its own area of obfuscation and complexity: private equity firms; large, publicly held private companies; and international insurance firms. Below I seek to expose the complexity and diversity of correctional services company ownership, and how these large profit-seeking entities have fundamentally altered the structure of how we provide services and manage accountability.

A. PRIVATE EQUITY

Who are the private equity firms most invested in public corrections? The firms include BlueMountain Capital Management, H.I.G. Capital, American Securities, and Platinum Equity, all of which own portfolio companies that provide a wide range of services to prisons.²⁵⁷

H.I.G. Private Equity, the private equity arm of H.I.G. Capital LLC,²⁵⁸ is the creator and owner of Wellpath, the largest correctional healthcare company in the United States, serving 10 percent of counties nationwide.²⁵⁹ Wellpath was formed by rolling up three smaller correctional healthcare companies to create it: Correct Care, purchased by H.I.G. in 2018; Correctional Medical Group Companies, acquired by H.I.G. in 2013; and California Forensic Medical Group, which was previously acquired by Correctional Medical Group Companies.²⁶⁰

Recently, Moody's downgraded Wellpath's Corporate Family Ratings Inc. from a B3 to a Caa1, and Probability of Default Rating from a B3-PD to a Caa1-PD, although the ratings outlook remained stable.²⁶¹ This is because Moody's anticipates that Wellpath's earnings and cash flows will continue to be pressured due to the company's elevated expenses, stemming from labor shortages and wage inflation, as well as slower receivables collections.²⁶² Wellpath's thin margins and work in the highly volatile correctional healthcare market make it challenging to maintain a high level of profit, given that providing healthcare in myriad correctional facilities across the country continues to be an "ongoing

257. Mayra R. Valladares, *Private Equity Executives Should Not Profit from the Misery of Prisoners and Their Families*, FORBES (Oct. 1, 2019, 11:35 AM EDT), <https://www.forbes.com/sites/mayrarodriguezvalladares/2019/10/01/private-equity-executives-should-not-profit-from-the-misery-of-prisoners-and-their-families/?sh=6f9959803edd>.

258. *H.I.G. Private Equity Acquires Wellpath*, MERGR, <https://mergr.com/wellpath-holdings-overview> (last visited May 10, 2024).

259. McLeod, *supra* note 243.

260. MICHAEL FENNE, PRIV. EQUITY STAKEHOLDER PROJECT, PRIVATE EQUITY FIRMS REBRAND PRISON HEALTHCARE COMPANIES, BUT CARE ISSUES CONTINUE 5 (2022), https://pestakeholder.org/wp-content/uploads/2022/11/Wellpath_HIG_12-2022.pdf.

261. *See Moody's Downgrades Wellpath Holdings, Inc.'s Corporate Family Rating to Caa1, Outlook Stable*, MOODY'S (Mar. 14, 2023), https://www.moodys.com/research/Moodys-downgrades-Wellpath-Holdings-Incs-Corporate-Family-Rating-to-Caa1-Rating-Action--PR_474764.

262. *Id.*

challenge,” presenting “unique complexities.”²⁶³ These issues illustrate the problem with having such a behemoth company oversee any one individual correctional institution’s healthcare, since earnings and cash flow pressure can affect the level of care offered.

H.I.G. also controls TKC Holdings, a Delaware corporation and holding company that provides products and services to correctional and lodging markets,²⁶⁴ which has, as two of its wholly owned subsidiaries, Trinity Service Group and Keefe Group.²⁶⁵ Recently TKC Holdings took out a five-year, \$320 million pay-in-kind-toggle term loan, with the proceeds earmarked for a shareholder dividend.²⁶⁶ H.I.G. also owns Access Corrections, one of the three major money transfer services in the U.S.²⁶⁷ Access Corrections charges high rates to deposit money in an inmate’s bank account, ranging from 5 percent to 37 percent, thus squeezing money out of the impoverished.²⁶⁸ In addition, the Keefe group holds ICSolutions, a wholly-owned subsidiary providing telecom services to correctional facilities.²⁶⁹ In other words, ICSolutions is a wholly owned subsidiary of the Keefe Group, which is a wholly owned subsidiary of TKS Holdings, which is indirectly controlled by H.I.G. Capital LLC.²⁷⁰

Another private equity company, Platinum Equity, owns Aventiv, which contains three separate correctional companies, each of which are wholly owned subsidiaries.²⁷¹ First is Securus, which provides correctional monitoring, biometrics, and communication products for inmates.²⁷² Next is JPay, providing correctional technologies for prisoner payment, email, and tablet use.²⁷³

263. *Id.*

264. FENNE, *supra* note 260, at 5.

265. Ella Milburn, *Are Prison Services Companies the Next Frontier for Responsible Investment in the Age of Black Lives Matter?*, RESPONSIBLE INV. (Oct. 19, 2020), <https://www.responsible-investor.com/are-prison-services-companies-the-next-frontier-for-responsible-investment-in-the-age-of-black-lives-matter>.

266. Jonathan Hemingway, *TKC Holdings Completes Upsized \$320M Pay-In-Kind-Toggle Term Loan; Terms*, S&P GLOB. MKT. INTEL. (Feb. 8, 2022), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/tkc-holdings-completes-up-sized-320m-pay-in-kind-toggle-term-loan-terms-68800135>.

267. See Evan Weinberger, *Inmate Families Face Cash-Transfer Fees ‘Just to Stay Connected’*, BLOOMBERG L. (Jan. 11, 2022, 3:00 AM PST), <https://news.bloomberglaw.com/banking-law/inmate-families-face-cash-transfer-fees-just-to-stay-connected>.

268. *See id.*

269. *Application Filed For The Transfer Of Control Of CenturyLink Public Communications, Inc. to Inmate Calling Solutions, LLC d/b/a ICSolutions*, WC Docket No. 20-150, Public Notice, 35 FCC Red. 6538, 6539 (WCB/IB 2020), <https://docs.fcc.gov/public/attachments/DA-20-673A1.pdf>.

270. *Id.*

271. *See Aventiv*, PLATINUM EQUITY, <https://www.platinumequity.com/our-company/aventiv/> (last visited Jan. 21, 2024).

272. *See id.*

273. *See id.*

Aventiv's last wholly owned subsidiary is AllPaid, a government services provider that provides payment processing services for inmates.²⁷⁴

American Securities, another private equity firm, owns Global Tel Link ("GTL"), the largest correctional telecommunication provider.²⁷⁵ American Securities recently rebranded GTL into Viapath Technologies, which now provides communication services to incarcerated individuals and tablets to assist with re-entry.²⁷⁶ Nowhere on Viapath's website does it have any mention or reference to it being a wholly owned subsidiary of a private equity firm, however.²⁷⁷

BlueMountain Capital Management owned YesCare/Corizon, the second largest correctional healthcare company, until 2020, when it was sold to the Flacks Group, another private equity firm.²⁷⁸ Upon acquisition, the Flacks Group noted that it views itself as a "special situations" investor and focuses on acquiring struggling companies or divisions and turning them around.²⁷⁹ By the end of 2021, Corizon was insolvent and heading towards bankruptcy, so it restructured its organization through a Texas "divisional merger," dividing itself into two companies.²⁸⁰ After undergoing the divisional merger, Corizon Health survived, while also creating a new corporation, CHS TX, Inc., to which the bulk of the assets were assigned.²⁸¹ "Corizon retained all of its expired contracts and their corresponding liabilities."²⁸² Post divisional merger, YesCare, Inc. acquired CHS TX, and "CHS TX began informally doing business under its parent company's name."²⁸³ Nowhere on YesCare's website is there any mention of the Flacks Group or its previous life as Corizon.²⁸⁴

Finally, as noted earlier, Aladdin Bail Bonds, the largest bail bond company in the country, was owned by Endeavour Capital, a Portland, Oregon-based private equity firm, from 2012 to 2020.²⁸⁵

274. *Platinum Equity Still Owns Prison Phone Company Securus as It Embarks on Fundraising*, PRIV. EQUITY STAKEHOLDER PROJECT (Mar. 25, 2022), <https://pestakeholder.org/news/platinum-equity-still-owns-prison-phone-company-securus-as-it-embarks-on-fundraising-2/#:~:text=Private%20equity%20firm%20Platinum%20Equity,incarcerated%20people%20and%20their%20families>.

275. JIM BAKER, PRIV. EQUITY STAKEHOLDER PROJECT, AMERICAN SECURITIES' BIG BET ON PRISON PHONE CALLS 1 (2020), <https://pestakeholder.org/wp-content/uploads/2020/02/American-Securities-Big-Bet-on-Prison-Phone-Calls-PESP-022020.pdf>.

276. See Press Release, GTL, GTL Becomes ViaPath Technologies, Launches Expanded Reentry Services (Jan. 4, 2022), <https://www.gtl.net/about-us/press-and-news/gtl-becomes-viapath-technologies>.

277. VIAPATH TECHS., <https://www.viapath.com> (last visited Feb. 13, 2024).

278. See Blois, *supra* note 247.

279. *Id.*

280. *Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, at 2, (E.D. Mich. Nov. 1, 2022) (Order on plaintiff's motion for substitution).

281. *Id.* at 3.

282. *Id.*

283. *Id.* at 4.

284. ABOUT YESCARE, <https://www.yescarecorp.com/about> (last visited Feb. 13, 2024).

285. *Following ACLU Report*, *supra* note 147.

B. LARGE, PUBLICLY TRADED CORPORATIONS

The two largest corrections corporations in the U.S. are CoreCivic and Geo Group. Geo Group, a publicly traded international C corporation,²⁸⁶ has many shareholders and institutional investors. As of May 2024, institutional shareholders own 79.11 percent of the corporation,²⁸⁷ with the top twenty mutual fund owners holding 30.43 percent of shares.²⁸⁸ The three largest public owners are BlackRock Fund Advisors (14.16%), the Vanguard Group (9.96%), and FMR, LLC (6.13%).²⁸⁹ Geo Group recently changed its corporate structure from a pass-through REIT to a C corporation, in part to free up cash flow and address future debt maturities.²⁹⁰

Geo Group owns a large number of smaller private companies providing health care, juvenile justice, and other correctional services, making difficult for consumers and justice-involved individuals to ascertain true ownership. Until 2021, for example, Geo Group owned Cornell Abraxas, which runs juvenile justice centers for “hard-to-place” youth.²⁹¹ During that time, however, it was virtually impossible for the average person to find out who truly owned the company. Abraxas Youth and Family Services stated on its website that it is a “nonprofit provider of a diversified array of services to over 5000 youth, adults and families each year.”²⁹² Its legal name is “Cornell Abraxas Group, LLC,” and it is now incorporated as a non-profit company in Delaware, corporation number S52PMDBXDLW7.²⁹³ But nowhere on the website does it ever mention that Cornell Abraxas Group, LLC was recently a wholly-owned subsidiary of the GEO Group,²⁹⁴ or that its non-profit status is extremely new.

In addition, GEO Group is the biggest provider of alternative corrections, as it owns, leases, and manages forty-nine residential community corrections/reentry centers and eighty-four non-residential reentry centers or

286. *The GEO Group Announces Change in Corporate Structure*, BUS. WIRE (Dec. 2, 2021, 6:00 AM EST), <https://www.businesswire.com/news/home/20211202005319/en/The-GEO-Group-Announces-Change-in-Corporate-Structure>.

287. See *The GEO Group Inc.*, YAHOO!FINANCE, <https://finance.yahoo.com/quote/GEO/holders> [<https://web.archive.org/web/20240517043423/https://finance.yahoo.com/quote/GEO/holders>] (last visited May 16, 2024).

288. See *The GEO Group Inc.*, MORNINGSTAR, <https://www.morningstar.com/stocks/xnys/geo/ownership> [<https://web.archive.org/web/20240517042936/https://www.morningstar.com/stocks/xnys/geo/ownership>] (last visited May 16, 2024).

289. See *The Geo Group Inc.*, *supra* note 287.

290. *The GEO Group Announces Change in Corporate Structure*, *supra* note 286.

291. *The Geo Group Inc.*, AM. FRIENDS SERV. COMM., <https://investigate.afsc.org/company/geo-group> (last visited May 13, 2024).

292. See ABRAXAS YOUTH & FAM. SERVS., *supra* note 74.

293. See *Abraxas Youth and Family Services*, OPENGOVUS, <https://opengovus.com/sam-entirety/S52PMDBXDLW7> (last visited May 13, 2024).

294. See *The Geo Group, Inc., Subsidiaries*, SEC (July 26, 2022), <https://www.sec.gov/Archives/edgar/data/923796/000119312517056831/d320699dex211.htm>.

Day Reporting Centers (DRCs).²⁹⁵ It gained this position by purchasing both Cornell Companies²⁹⁶ and Community Education Centers (CEC).²⁹⁷ CEC owns and operates over 30 percent of all halfway houses nationwide.²⁹⁸

The Geo Group also owns the country's largest electronic-monitoring firm, BI Incorporated.²⁹⁹ BI Incorporated monitors justice-involved individuals through various technology products including radio frequency, GPS, and alcohol monitoring devices.³⁰⁰

CoreCivic, formerly the Corrections Corporation of American, is a publicly traded government solutions C corporation.³⁰¹ The largest correctional services company in America, CoreCivic is primarily owned by shareholders, with 84.77 percent institutional owners,³⁰² 52.74 percent of them mutual funds.³⁰³ In 2020, CoreCivic decided to change its corporate structure from a pass-through REIT to a C corporation, in order to reduce debt and then to return more capital to shareholders.³⁰⁴

Like Geo Group, CoreCivic has invested in community corrections companies, owning and operating twenty-six residential reentry centers around the country, including Correctional Alternatives Inc., Avalon Correctional Services Inc., Correctional Management Inc., and Rehabilitation Services Inc.³⁰⁵ CoreCivic has also acquired two electronic monitoring companies, Recovery Monitoring Solutions and Rocky Mountain Offender Management Systems.³⁰⁶

295. *The Geo Group, Inc.*, *supra* note 291.

296. See Tess Stynes, *GEO Group Agrees to Acquire Cornell in \$385 Million Deal*, WALL ST. J. (Apr. 19, 2010, 7:46 AM ET), <https://www.wsj.com/articles/SB10001424052748704671904575193643911801532>.

297. See *The GEO Group Closes \$360 Million Acquisition of Community Education Centers*, BUS. WIRE (Apr. 16, 2017, 6:55 AM EDT), <https://www.businesswire.com/news/home/20170406005543/en/The-GEO-Group-Closes-360-Million-Acquisition-of-Community-Education-Centers>.

298. Sukin, *supra* note 192.

299. Appleman, *supra* note 91, at 14.

300. See *Our Solutions*, BI, <https://bi.com/solutions> (last visited Feb. 13, 2024).

301. See *Investor FAQs*, CORECIVIC, <https://ir.corecivic.com/investor-faqs> (last visited Feb. 13, 2024).

302. See *CXW Institutional Holdings*, NASDAQ, <https://www.nasdaq.com/market-activity/stocks/cxw/institutional-holdings> [<https://web.archive.org/web/20240515164045/https://www.nasdaq.com/market-activity/stocks/cxw/institutional-holdings>] (last visited May 15, 2024); *CoreCivic Inc.*, AM. FRIENDS SERV. COMM., <https://investigate.afsc.org/company/corecivic> (last visited Feb. 13, 2024).

303. See *Institutional Ownership, CoreCivic*, CNN BUS., <https://money.cnn.com/quote/shareholders/shareholders.html?symb=CXW&subView=institutional> [<http://web.archive.org/web/20230224165754/https://money.cnn.com/quote/shareholders/shareholders.html?symb=CXW&subView=institutional>] (last visited Feb. 24, 2024).

304. Press Release, CoreCivic, *CoreCivic Announces Change in Corporate Structure and New Capital Allocation Strategy* (Aug. 5, 2020, 16:30 ET), <https://www.globenewswire.com/en/news-release/2020/08/05/2073709/0/en/CoreCivic-Announces-Change-in-Corporate-Structure-and-New-Capital-Allocation-Strategy.html>.

305. *CoreCivic Inc.*, *supra* note 302.

306. *Id.*

Also in CoreCivic's portfolio is TransCor America, one of the largest private providers of prisoner and detainee transportation.³⁰⁷

C. INTERNATIONAL INSURANCE CONGLOMERATES

Major insurance firms back the bail bond industry. These major insurance firms are themselves owned by enormous investment companies. For example, Randall & Quilter, a global insurance company, acquired Accredited Surety & Casualty Co. in 2014, one of the nine main bail bond insurance companies that underwrite the bail bond industry.³⁰⁸ Other bail bond insurance companies include Fairfax Financials Holdings LTD, which owns Crum & Forster and Bail USA, and IAT Insurance Group, which owns AIA Surety.³⁰⁹ These corporate "holdings are often murky because global insurers build in several layers of opaque corporate structures between their corporate brand, bond-insurance operations, and bail-bonds storefronts."³¹⁰ It is extremely difficult to determine who is the ultimate owner of any one bail bond company, especially for the unsophisticated consumer.

Ultimately, by allowing these secretive, for-profit entities to provide a substantial segment of correctional services, a core power of administration of justice is being bid out, with little recourse when they fail. If delegating correctional services to for-profit enterprises is the desired fiscal choice, then being able to hold the public and private players accountable for the quality of their services becomes extremely important.

III. PROFITS OVER PEOPLE: BIG CAPITAL'S GROWING ROLE IN CRIMINAL JUSTICE

The recent, overwhelming expansion of Big Capital into the services and operational sector of the incarceration and correctional control landscape has no parallel. The rise of enormous corporations and private equity firms as owners and operators of a realm of correctional services means oversight and regulation of these companies is increasingly important. And yet there is little supervision over what these companies actually do and how they are structured.

Private equity firms in particular are uniquely situated to extract profits from the carceral world. Private equity firms do not have stockholders and are not publicly traded. Instead, they are privately funded by institutions or wealthy

307. *Id.*

308. Ofer, *supra* note 151.

309. *Factbox: Major Insurers of U.S. Bail Bonds*, REUTERS (Mar. 26, 2021, 3:48 AM PDT), <https://www.reuters.com/article/us-usa-insurance-bail-jails-factbox/factbox-major-insurers-of-u-s-bail-bonds-idUSKBN2BI1DR>.

310. Gillian B. White, *Who Really Makes Money Off of Bail Bonds*, ATLANTIC (May 12, 2017), <https://www.theatlantic.com/business/archive/2017/05/bail-bonds/526542>.

individuals, and invest their money in buying, restructuring, merging, and selling other companies within a short period of time.³¹¹ Private equity funds frequently purchase controlling interests in companies for a short time, then implement drastic cost-cutting measures, including loading them with debt, selling off company assets, charging high fees, and ultimately selling the stripped-down companies at a profit.³¹² Since private equity firms are structured as private partnerships, this gives them important tax and regulatory advantages over public companies.³¹³

In addition, the regulation of Big Capital Corrections, by either state or federal government, is fairly minimal.³¹⁴ This ensures that the dominance of Big Capital Corrections is poised to grow, and as well as their penchant of “cutting costs and corners and jobs to extract financial gain.”³¹⁵ Given that private equity companies and large, publicly-traded corporations own a majority share in a huge segment of the corrections industry,³¹⁶ this is a troubling oversight. Ultimately, Big Capital Corrections utilize their dominant market power to profit from millions made off of individuals under correction control, their families, and their communities.³¹⁷

The profit-making affiliation between Big Capital and public corrections has become standard throughout the entire criminal justice system, from bail to jail, arrest to incarceration, and throughout all aspects of correctional control.³¹⁸ Big Capital threads through every level of criminal process as well, from the local to the state and federal.³¹⁹ In short, private industry’s investment of money into carceral services has ballooned over the last ten to fifteen years.³²⁰

Private equity firms, large, publicly traded corporations, and insurance conglomerates all have several advantages in the financial market, including the potential for monopolies in specified areas, lack of transparency, minimal

311. See Felix Barber & Michael Goold, *The Strategic Secret of Private Equity*, HARV. BUS. REV., Sept. 2007, at 53, 54, <https://hbr.org/2007/09/the-strategic-secret-of-private-equity>.

312. Letter from Elizabeth Warren, U.S. Sen., Mark Pocan, U.S. Cong. Rep. & Alexandria Ocasio-Cortez, U.S. Cong. Rep., to Andrew Feldstein, Co-Founder & Chief Inv. Officer, BlueMountain Cap. Mgmt., LLC, Stephen Siderow, Co-Founder & Co-President, BlueMountain Cap. Mgmt., LLC, & Michael Liberman, Co-Founder & CEO, BlueMountain Cap. Mgmt., LLC (Sept. 30, 2019), <https://www.warren.senate.gov/imo/media/doc/2019-09-30%20Letters%20to%20PE%20Firms%20re%20Prison%20Services.pdf>.

313. Barber & Goold, *supra* note 311, at 53–54.

314. See Hannah Levintova, *The Smash and Grab Economy*, MOTHER JONES (May-June 2022), <https://www.motherjones.com/politics/2022/05/private-equity-buyout-kkr-houdaille>.

315. *Id.*

316. Hannah Levintova & Tim Murphy, *Everything Everywhere All at Once: How Private Equity Rules Your World*, MOTHER JONES (May-June 2022), <https://www.motherjones.com/politics/2022/05/private-equity-city-pensions-burger-king-roark-liverpool-yale>.

317. Warren et al., *supra* note 312, at 4.

318. Jacob Swanson & Mary Fainsod Katzenstein, *Turning Over Keys: Public Prisons, Private Equity, and the Normalization of Markets Behind Bars*, 19 PERSPS. ON POL. 1247, 1249 (2021).

319. *Id.* at 1249.

320. *Id.* at 1248.

income tax, and huge amounts spent in governmental lobbying and campaign contributions. Over the past twenty years, Big Capital-owned correctional services companies have become “a quasi-oligopolistic market force across the carceral economy.”³²¹ Below I discuss how and why.

A. MONOPOLISTIC CONDITIONS

Private equity firms and large, publicly traded corporations have long been a force for consolidation, higher prices, and fewer choices for the captive consumer.³²² The frequent mergers and acquisitions of similar companies by Big Capital has become a systemic problem.³²³ Big Capital controls a large part of U.S. corrections, and its reliance on the “extractive business model” means it gobbles up more and more companies each year.³²⁴

The private equity industry in particular has a protracted history of adding on and rolling up companies into a single entity, a practice that has been criticized for contributing to monopolistic conditions in various industries.³²⁵ Private equity works through buying up various independent companies in the same sector, extracting value from them by restructuring, frequently firing existing workers, hiking prices, avoiding regulation, and diverting the revenue directly back to the PE firm.³²⁶ In addition, the PE industry consolidates its profits by acquiring numerous similar companies, and placing them in a portfolio, draining revenues from all of them.³²⁷ This results in poorer services for clients and fewer options for alternate providers.³²⁸ All too frequently, clients have no choice but to submit to the market power wielded by private equity firms in hyper local markets,³²⁹ particularly when that market is an highly specialized one, such as correctional services. This often results in the creation of a dominant player in the market, with a substantial market share and the ability to exert significant control over prices and other market conditions.

The private equity industry’s “practice of ‘add on and roll up’” bundles fragments of competing local or regional players into consolidated entities.

321. *Id.* at 1247.

322. See Natalia Renta, *Blog: Antitrust Authorities Turn Focus to Private Equity Role in Monopolies*, AMS. FOR FIN. REFORM (July 13, 2022), <https://ourfinancialsecurity.org/2022/07/blog-antitrust-authorities-turn-focus-to-private-equity-role-in-monopolies>.

323. See Letter from Ams. for Fin. Reform, Ctr. for Econ. & Pol’y Rsch., & United for Respect to FTC & DOJ 3 (Apr. 21, 2022), https://ourfinancialsecurity.org/wp-content/uploads/2022/04/4.21.22-PE_AFR-CEPR-UFR-Comment-DOJ-FTC-mergers.pdf.

324. *Id.* at 1.

325. David Dayen, *Cut Off Private Equity’s Money Spigot*, AM. PROSPECT (July 28, 2022), <https://prospect.org/economy/cut-off-private-equitys-money-spigot>.

326. Ams. for Fin. Reform et al., *supra* note 323, at 2.

327. *See id.* at 3.

328. *See id.*

329. *See id.* at 4.

Accordingly, through both vertical and horizontal consolidation, a private equity-owned corporation can “forge near-monopolistic conditions.”³³⁰ Specifically, company acquisitions by private equity firms frequently bundle complementary services into a larger, interconnected dominant firm.³³¹

We see similar practices when it comes to large, publicly-owned corporations, such as CoreCivic and Geo Group, who dominate the correctional-services market.³³² Over the last twelve years, these for-profit corrections corporations have rolled up the smaller private correctional services companies into larger, wholly owned subsidiaries, which then have been structured into the two behemoths.³³³

Roll-ups are often viewed as efficient ways to streamline services.³³⁴ With correctional services, however, “the most common expression of this efficiency is simply abusive market power over consumers.”³³⁵ Although the underlying theory for roll-ups is a gain of efficiency through economies of scale, in reality the result is usually lower-quality service.³³⁶ Both private equity firms and large public corporations often look to extract value from the companies they acquire through cost-cutting measures, such as layoffs and asset stripping.³³⁷ In the world of corrections, profits are extracted not only from public sites of incarceration, but also from the incarcerated individuals themselves.

Private equity particularly enables the expansion of private corrections companies.³³⁸ H.I.G. Capital, for example, which manages over \$30 billion in assets, has helped consolidate small corrections-industry companies into huge entities that dominate their markets.³³⁹ The role of private equity firms in helping broker rollups has transformed the private correctional-services industry.³⁴⁰ These practices can erase any competition between companies, allowing private equity-owned corrections companies to create a “vicious cycle of monopolization.”³⁴¹ For example, the market for corrections healthcare has been consolidating rapidly over the last ten years, eliminating the smaller rivals.³⁴²

330. Swanson & Katzenstein, *supra* note 318, at 1249.

331. Ams. for Fin. Reform et al., *supra* note 323, at 9.

332. See Tim Requarth, *How Private Equity Is Turning Public Prisons into Big Profits*, NATION (Apr. 30, 2019), <https://www.thenation.com/article/archive/prison-privatization-private-equity-hig>.

333. *See id.*

334. *See* Ams. for Fin. Reform et al., *supra* note 323, at 9.

335. *Id.*

336. *Id.*

337. See Eileen Applebaum & Rosemary Batt, *Private Equity Buyouts in Healthcare: Who Wins, Who Loses?* 6–8 (Ctr. for Econ. & Pol’y Rsch., Working Paper No. 118, 2020), https://www.cepr.net/wp-content/uploads/2020/03/WP_118-Applebaum-and-Batt.pdf.

338. Appleman, *supra* note 91, at 41.

339. Requarth, *supra* note 332.

340. *Id.*

341. Ams. for Fin. Reform et al., *supra* note 323, at 3.

342. McLeod, *supra* note 243.

Private ownership of correctional services companies has made the services provided far worse, because the monopolies and duopolies created simply do not provide any competition.³⁴³ The massive consolidation created by Big Capital in the correctional services space has translated into worse services at higher prices for incarcerated individuals.³⁴⁴

B. LACK OF TRANSPARENCY

Transparency is key to proper operation of correctional facilities, because public scrutiny is essential to ensure that public institutions are accountable to the community, not “hidden, mysterious places at the far edge of democracy.”³⁴⁵ Privatized operations of public corrections have even more need for transparency, to make sure that the private companies operating the carceral sites further such critical goals like rehabilitation, safety (for both the public and those incarcerated), health, and reduction of recidivism.³⁴⁶

Most private correction companies, however, do not comply with the Freedom of Information Act (FOIA)³⁴⁷ or state reporting statutes because they claim it does not apply to them. They claim that FOIA’s section 4 exempts any private companies from FOIA’s reporting requirements.³⁴⁸ FOIA’s section 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.”³⁴⁹ The majority of section 4 exemptions fall under confidential commercial and financial information, which tends to be widely interpreted.³⁵⁰

Private corrections companies tend to make similar arguments regarding state open records laws. The majority of private correctional companies refuse to comply with state open records law as well.³⁵¹ This means that documentation that used to be available for public review and examination is now frequently

343. Milburn, *supra* note 265.

344. *Id.*

345. See Sarah Geraghty & Melanie Velez, *Bringing Transparency and Accountability to Criminal Justice Institutions in the South*, 22 STAN. L. & POL’Y REV. 455, 456 (2011).

346. *Id.* at 473.

347. 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

348. See Beryl Lipton, *Your Annual Reminder: FOIA Still Doesn’t Apply to Private Prisons*, MUCKROCK (July 24, 2017), <https://www.muckrock.com/news/archives/2017/jul/24/foia-still-doesnt-apply-private-prisons>.

349. *Id.* § 552(b)(4).

350. See OFF. INFO. POL’Y, U.S. DEP’T OF JUST., DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT: EXEMPTION 4 266–67 (2009), https://www.justice.gov/archive/oip/foia_guide09/exemption4.pdf.

351. See Stephen Rahe, *The Business of Punishing: Impediments to Accountability in the Private Corrections Industry*, 13 RICH. J.L. & PUB. INT. 209, 240–47 (2010).

hidden behind the walls of private corrections companies.³⁵² When private corrections companies are running or providing services for prisons and jails, the records are frequently inaccessible, in part because the goals of private correctional companies are often oppositional to the purpose of public records laws.³⁵³

In addition, private equity operations in particular are far from transparent themselves, with limited reporting requirements, whether to the Securities Exchange Commission or to a formalized stockholder entity.³⁵⁴ Because the growth of private equity correction services companies has been largely administrative, much of their expansion has gone relatively unnoticed.³⁵⁵ Thus much of the expansion of private equity operations have been out of the public spotlight, unhampered by most reporting requirements.³⁵⁶ This has resulted in private equity companies making decisions about services in public correctional facilities that are not subject to either accountability statutes or any public investigatory body.³⁵⁷

Private equity usually acquires businesses below the federal regulatory radar.³⁵⁸ One investigation found that more than 90 percent of private equity takeovers or investments fall underneath the transaction threshold, the level that initiates an antitrust review by the FTC and the DOJ.³⁵⁹ Under the Hart-Scott-Rodino Antitrust Improvement Act,³⁶⁰ any proposed merger must be reported to the FTC and the Justice Department antitrust division for review, in order to prevent deals that could hinder marketplace competition.³⁶¹ But such deals must be above \$101 million at the time of closing to meet the reporting threshold,³⁶² a number that private equity firms carefully avoid.³⁶³

Private equity firms have long been accused of operating with impunity, largely immune from consequences for their actions. This is particularly evident

352. See Matthew D. Bunker & Charles N. Davis, *Privatized Government Functions and Freedom of Information: Public Accountability in an Age of Private Governance*, 75 JOURNALISM & MASS COMMUN Q. 464, 466 (1998).

353. See *id.*

354. Swanson & Katzenstein, *supra* note 318, at 1249.

355. See *id.*

356. *Id.*

357. See Andrea Headley & Jean-Claude Garcia-Zamor, *The Privatization of Prisons and its Impact on Transparency and Accountability in Relation to Maladministration*, 8 INT'L J. HUMANS. SOC. SCIS. & EDUC. 23, 28 (2014).

358. Schulte, *supra* note 5.

359. *Id.*

360. 15 U.S.C. § 18(a).

361. See *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, FTC, <https://www.ftc.gov/legal-library/browse/statutes/hart-scott-rodino-antitrust-improvements-act-1976> (last visited May 10, 2024).

362. See *HSR Threshold Adjustments and Reportability for 2022*, FTC (Feb. 11, 2022), <https://www.ftc.gov/enforcement/competition-matters/2022/02/hsr-threshold-adjustments-reportability-2022>.

363. See Schulte, *supra* note 5.

when it comes to investigations or fraud lawsuits brought by the federal government.³⁶⁴ Despite facing allegations of wrongdoing, few private equity firms actually end up paying fines in these cases. This is because the private equity-owned companies themselves pay the fines.³⁶⁵

Private equity firms are notoriously difficult to regulate.³⁶⁶ They operate in a largely opaque and secretive manner, making it difficult for regulators to gather sufficient evidence to pursue enforcement action.³⁶⁷ Additionally, private equity firms often have complex corporate structures and offshore subsidiaries, which can make it difficult to track and hold them accountable for their actions.³⁶⁸

Nonetheless, even with false billing complaints, most private equity firms manage to avoid scrutiny.³⁶⁹ From 2013 to 2021, although twenty-five private equity-backed health care companies paid \$573 million in government fraud settlement, there were only three private equity firms themselves that paid any fines at all.³⁷⁰ Furthermore, even when regulators are able to build a case against a private equity firm, the firms often have the resources and legal expertise to drag out the process for years.³⁷¹ This effectively wears down the regulatory agency, making it less likely that a fine will be imposed.³⁷²

Likewise, publicly traded corporations such as CoreCivic and Geo Group have fought any transparency into their workings, refusing to share data on any incidents,³⁷³ covering up dangerous living conditions,³⁷⁴ collecting private data

364. *See id.*

365. *Id.*

366. *See* Leah Nylén & Todd Shields, *US Is Focused on Regulating Private Equity Like Never Before*, BLOOMBERG (Nov. 22, 2022, 2:00 AM PST), <https://www.bloomberg.com/news/articles/2022-11-22/private-equity-regulation-becomes-biden-administration-focus?leadSource=verify%20wall>.

367. *Id.*

368. *See* Renee Ann Butler, *Grasp the Accounting of Private Equity Funds*, INVESTOPEDIA (May 31, 2021), <https://www.investopedia.com/articles/active-trading/121015/understanding-accounting-private-equity-funds.asp>.

369. *See* Sabrina Willmer, *Private Equity Loses Its Shield as U.S. Cracks Down on Fraud*, BLOOMBERG L. (Feb. 22, 2021, 5:00 AM PST), <https://news.bloomberglaw.com/private-equity/the-feds-pierce-private-equitys-defenses-against-whistleblowers>.

370. *Id.*

371. *See id.*

372. *See id.*

373. *See, e.g., Scathing State Audit Slams Tennessee Prisons, CoreCivic for Staffing, Sexual Assaults, and Deaths in Jails*, NEWSCHANNEL5 NASHVILLE (Jan. 21, 2020, 5:19 PM), <https://www.newschannel5.com/news/scathing-state-audit-slams-tennessee-prisons-corecivic-for-staffing-sexual-assaults-and-deaths-in-jails>.

374. *Advocacy Groups Submit Records Requests Seeking Transparency in Troubled Torrance Detention Center*, ACLU N.M. (May 13, 2022, 11:30 AM), <https://www.aclu-nm.org/en/news/advocacy-groups-submit-records-requests-seeking-transparency-troubled-torrance-detention-center>.

from their electronic monitoring companies without supervision or regulation,³⁷⁵ and ignoring multiple OSHA workplace safety violations.³⁷⁶ Their fierce opposition to FOIA requests³⁷⁷ and other basic information about their inner workings is simply antithetical to entities working in a public system of punishment.

This lack of transparency is particularly troubling. The relentless privatization of correctional services makes it difficult to find reliable data on their size and profit margins.³⁷⁸ Additionally, the ultimate ownership of these correctional services companies by both private equity firms and public corporations is shielded information, extremely difficult to obtain and clarify. In general, Big Capital Corrections is too often a “black hole of information.”³⁷⁹

Federal FOIA reporting requirements are usually inapplicable to private correctional services companies, despite their operating in the service of the justice system.³⁸⁰ Although there have been several attempts to expand FOIA to include information from private correctional companies, most recently in November 2021.³⁸¹ So far, such efforts have not been successful.³⁸² State FOIA

375. See Johana Bhuiyan, *Poor Tech, Opaque Rules, Exhausted Staff: Inside the Private Company Surveilling US Immigrants*, GUARDIAN (Mar. 7, 2022, 7:48 EST), <https://www.theguardian.com/us-news/2022/mar/07/us-immigration-surveillance-ice-bi-isap>.

376. See Press Release, OSHA, *The GEO Group Must Address Workplace Violence Hazards as a Result of Corporate-Wide Settlement with US Department of Labor* (Feb. 27, 2014), <https://www.osha.gov/news/newsreleases/region4/02272014-0>.

377. See Press Release, Ctr. for Const. Rts., *Supreme Court Rules in Favor of Government Transparency Against Private Prison Corporations* (Apr. 18, 2019), <https://ccrjustice.org/home/press-center/press-releases/supreme-court-rules-favor-government-transparency-against-private>.

378. See Lily Chahine & Afia Akosah Bempah, *Distortion on the Inside: How Commissary Privatization Skews the Worth of Time*, COLL. HILL INDEP. (Apr. 29, 2022), <https://www.theindy.org/article/2693>.

379. Todd C. Frankel, *The Search for Oligarchs' Wealth in U.S. Is Hindered by Investment Loopholes*, WASH. POST (Mar. 16, 2022, 10:35 PM EDT), <https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap>.

380. Matt Stroud, *Updated: Private Prisons Are Exempted from Federal Disclosure Laws; Advocates Say That Should Change*, FORBES (Feb. 7, 2013, 2:33 PM EST), <http://www.forbes.com/sites/mattstroud/2013/02/07/private-prisons-are-exempted-from-federal-disclosure-laws-advocates-say-that-should-change/#31bbd463>.

381. See Press Release, Jamie Raskin, Cardin, Leahy, Raskin Introduce Legislation to Improve Transparency for Prisoners and Detainees in Private Facilities (Nov. 4, 2021), <https://raskin.house.gov/2021/11/cardin-leahy-raskin-introduce-legislation-to-improve-transparency-for-prisoners-and-detainees-in-private-facilities>.

382. The Private Prison Information Act of 2021 was introduced on Nov. 4, 2021. It was immediately referred to the Judiciary Committee, and was later referred to the Subcommittee on Crime, Terrorism, and Homeland Security on Nov. 1, 2022. Private Prison Information Act of 2021, H.R. 5853, 117th Cong. (2021); *All Actions: H.R. 5853 — 117th Congress (2021-2022)*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/5853/all-actions?s=1&r=19> (last visited May 10, 2024).

reporting laws and other open records laws usually also do not apply to such PE-run companies.³⁸³

For example, in Texas, the state government has the ability to remove prison wardens and demand prison transparency and accountability in its state prisons.³⁸⁴ For correctional facilities run by private equity firms, however, there is no such power.³⁸⁵ Only Connecticut, Florida, and South Carolina require their private corrections companies to disclose information under public records laws.³⁸⁶

Regulating these large private corrections companies is extraordinarily challenging. One prime example is Sequel Youth and Family Services, a behavioral health services company owned/funded by Altamont Capital. Sequel has proven to be difficult to regulate, in part because so many different governmental entities oversee different aspects:

Because it operates in so many states, Sequel is overseen by a dizzying array of government agencies: state departments of human services, corrections, health and education, county probation, social services and courts, local police and sheriff's offices, and the federal Centers for Medicare and Medicaid Services, to name just a few. But each agency regulates only a sliver of the company's operations. The full picture is visible to none of them.³⁸⁷

Because Big Capital Corrections companies are paid with public funds for providing services to public corrections, at minimum their work should fall under governmental accountability services. As more and more private correctional service companies fulfill public criminal justice functions—thereby acting as a government proxy—it is all the more important that there is public access to the information revealing the inner functioning of these companies.³⁸⁸

Overall, the lack of consequences for Big Capital Corrections when it comes to investigations undermines the integrity of their financial system, leaving those reliant on their private correctional companies vulnerable to abuse.

383. See Michelle Rindels, *Transparency Advocates Concerned About Nevada's New Partnership with Private Prison, Which Is Exempt from Public Records Law*, NEV. INDEP. (Oct. 22, 2017, 2:00 AM), <https://thenevadaindependent.com/article/transparency-advocates-concerned-about-nevadas-new-partnership-with-private-prison-which-is-exempt-from-public-records-law>.

384. TEX. CRIM. JUST. COAL., *PRIVATIZATION OF CORRECTIONAL OPERATIONS & SERVICES HANDING OVER CONTROL TO PRIVATE BUSINESSES IS DANGEROUS FOR TEXAS* 3 (May 2011), <https://www.texasjc.org/system/files?file=publications/Privatization%20of%20Correctional%20Operations%20Services%20%28May%202011%29.pdf>.

385. *Id.*

386. Lauren-Brooke Eisen, *Private Prisons Lock Up Thousands of Americans with Almost No Oversight*, BRENNAN CTR. FOR JUST. (Nov. 8, 2017), <https://www.brennancenter.org/our-work/analysis-opinion/private-prisons-lock-thousands-americans-almost-no-oversight>.

387. Gilbert & Dake, *supra* note 32.

388. Geraghty & Velez, *supra* note 345, at 487.

Regulators must take steps to increase transparency and accountability, including the imposition of more substantial penalties for wrongdoing.

C. DESTRUCTION/DISMANTLING OF SERVICES FOR PROFIT

The speed in which Big Capital Corrections often purchases and then dismantles or strips companies providing services in the incarceration space means that many justice-involved individuals pay the price, all while profits stream into the pockets of private equity fund investors. Simply put, obtaining a good deal for investors does not mean that other stakeholders in incarceration services are being equally well-served.³⁸⁹ Indeed, in the market for incarceration, justice-involved individuals are almost always the loser.

As discussed in Part I, Big Capital has homed in on several different areas of private corrections services, including juvenile justice, behavioral and psychiatric services, correctional control, and correctional healthcare. The private equity firms, large corporations, and insurance conglomerates in each of these areas have purchased and consolidated various smaller private businesses to create far larger enterprises. This is cause for concern, especially given that Big Capital Corrections has a “history of purchasing companies, stripping them of assets while loading them with debt, and extracting exorbitant fees before selling them for a profit.”³⁹⁰ The investors make money, but those under correctional control suffer.

Private equity firms in particular tend to buy up assets on the cheap, frequently targeting companies that are struggling, and holding on to them for a while before selling them.³⁹¹ When corrections businesses are taken over by private equity firms, they inevitably raise prices while providing fewer services and diminished quality of care.³⁹²

For example, Endeavor Capital purchased Aladdin Bail Bonds in 2012, along with Seaview Insurance, a related insurer.³⁹³ After purchase, Endeavor expanded Aladdin to several more states,³⁹⁴ spending an enormous amount of

389. See Emily Stewart, *What Is Private Equity, and Why Is It Killing Everything You Love?*, VOX (Jan. 6, 2020, 7:00 AM EST), <https://www.vox.com/the-goods/2020/1/6/21024740/private-equity-taylor-swift-toys-r-us-elizabeth-warren>.

390. Matthew Clarke, *Members of Congress Investigate Private Equity Firms that Own Companies Providing Prison Services*, PRISON LEGAL NEWS (Feb. 4, 2020), <https://www.prisonlegalnews.org/news/2020/feb/4/members-congress-investigate-private-equity-firms-own-companies-providing-prison-services>.

391. Ben Protess & Ari Isaacman Bevacqua, *A Primer on Private Equity*, N.Y. TIMES (June 25, 2016), <https://www.nytimes.com/2016/06/26/business/dealbook/what-is-private-equity.html>.

392. Fred Schulte, *supra* note 5.

393. *Following ACLU Report, supra* note 147; see also Ted Sickinger, *ACLU Urges Oregon to Leave Bail Bond Industry Out of Pension Investments*, OREGONIAN (Sept. 20, 2018, 12:00 PM), https://www.oregonlive.com/politics/2018/09/oregon_pension_managers_ask_to.html.

394. *Id.*

money in order to defeat California's Senate Bill 10, which in 2018 granted judges much more discretion in setting terms of pretrial release for most defendants, all but the ones charged with crimes of serious violence.³⁹⁵ This massive reduction of cash bail was fiercely opposed by the bail bond industry, who backed a voter referendum to overturn the law.³⁹⁶ Triton Management, also largely owned by Endeavor, was the largest contributor, donating almost \$800,000.³⁹⁷

Where did the money come from to fund the referendum to reinstate cash bail in California? From the heavy costs imposed on criminal defendants by the bail bond companies (as discussed in Part I), all of which eventually redounded to Endeavor. After the California bail bond reform law was repealed,³⁹⁸ Endeavor ultimately sold its stake in Aladdin in 2020, having extracted as much profit as was possible.³⁹⁹ Other major investors in bail bond companies have followed suit by divesting, now that the industry is not reaping profits as it once used to.⁴⁰⁰

Likewise, H.I.G. Capital has purchased and consolidated a large subset of private correctional services companies, exploiting justice-involved individuals in areas as diverse as food, communications, and healthcare.⁴⁰¹ Through this consolidation, H.I.G.'s correctional services companies have taken over their markets while lowering the quality of the services and increasing prices for the incarcerated and their families.⁴⁰² Over the past eighteen years, H.I.G. has consolidated prison telephony, correctional food services, and correctional health care, creating private companies that dominate all three industries and have reshaped the correctional landscape.⁴⁰³ By dramatically cutting staffing and increasing prices for the incarcerated, H.I.G. has made the correctional service industry simultaneously more profitable for its investors and worse for its actual consumers, both in terms of financial costs and quality of service, whether food, communication, or healthcare.⁴⁰⁴

395. Michael Hiltzik, *Column: Facing Eradication, the Bail Industry Gears Up to Mislead the Public About Its Value*, L.A. TIMES (Oct. 4, 2019, 6:00 AM PT), <https://www.latimes.com/business/story/2019-10-04/hiltzik-bail-industry-eradication>.

396. *Id.*

397. *Id.*

398. See Scott Rodd, *Cash Bail Survived the Ballot, but Reformers Say the Battle to End It Isn't Over*, CAP RADIO (Nov. 12, 2020), <https://www.capradio.org/articles/2020/11/12/cash-bail-survived-the-ballot-but-reformers-say-the-battle-to-end-it-isnt-over>.

399. See Laura Kusisto, *Criminal-Justice Changes Are Squeezing the Bail-Bond Industry*, WALL ST. J. (Feb. 21, 2020, 12:57 PM ET), <https://www.wsj.com/articles/criminal-justice-reforms-are-squeezing-the-bail-bond-industry-11582299332>.

400. *Id.*

401. Dayen, *supra* note 58.

402. Requarth, *supra* note 332.

403. *See id.*

404. *Id.*

Wellpath, H.I.G.'s correctional healthcare company, made approximately \$1.6 billion in revenue as of 2019. The Wellpath healthcare actually provided to carceral institutions, however, has been abysmal.⁴⁰⁵ The complaints about minimal or non-existent correctional staffing and training, abusive practices, both physical and mental, and ever-increasing use of restraints, isolation, and neglect have continued to multiply over the years.⁴⁰⁶ Private equity firms like H.I.G. have extracted billions of dollars from these industries, funneling the money to dividend and management payments.⁴⁰⁷ All of this is a "by-product of the private equity business model."⁴⁰⁸ This is because private equity's primary goal is to make large returns for investors.⁴⁰⁹

The merging of companies ends up creating even more consolidation.⁴¹⁰ In part, this is because Big Capital Corrections tends to operate by buying up and rolling up industries, to make them hyper-efficient.⁴¹¹ Private equity firms, to take one example, do so by creating a platform company and then purchasing several similar companies to run as one.⁴¹² For a company like H.I.G., the goal is to double or triple profits from the initial investment to the sale of the newly consolidated industry.⁴¹³ Many of these profits are obtained by slashing staffing, which can be some of the highest costs.⁴¹⁴ By providing low wages for labor and cutting many staff positions, private equity firms are able to extract high returns for their investors.⁴¹⁵ In doing so, however, the individuals who are served by private equity-owned correctional services companies suffer from "inadequate staffing and training, substandard living conditions, physical and sexual abuse, and the use of restraints and solitary confinement."⁴¹⁶

All this is seen simply as a regrettable byproduct of private equity rollups.⁴¹⁷ These roll-ups, combining smaller and more fragmented regional companies into much larger conglomerates, have dramatically reshaped the world of private correctional services.⁴¹⁸ None of this has been for the benefit of justice-involved individuals.

405. See discussion *supra* Parts I.B & I.D.

406. See Dayen, *supra* note 58.

407. *Id.*

408. *Id.*

409. *Id.*

410. McLeod, *supra* note 243.

411. *Id.*

412. Dayen, *supra* note 58.

413. McLeod, *supra* note 243.

414. Dayen, *supra* note 58.

415. *Id.*

416. *Id.*

417. *Id.*

418. See Requarth, *supra* note 332.

D. PURCHASING POLITICAL FAVORABILITY

Part of Big Capital's ability to quickly dominate the privatized corrections market is due to their influence in Congress. The federal government's extremely limited regulation of political money essentially permits Big Capital Corrections to purchase influence over correctional policymaking. Through campaign contributions and lobbying, private corrections companies can massage criminal justice policy to eradicate any type of challenge to policies supporting mass incarceration.⁴¹⁹ For example, in the 2016 election cycle, Geo Group donated \$1.2 million to various politicians, and CoreCivic contributed \$1.1 million to lobby against then-President Obama's effort to withdraw from private federal prisons.⁴²⁰ In 2022, CoreCivic spent \$1.84 million on federal lobbying, employing twelve lobbyists to push issues as varied as law enforcement and crime, finance, and homeland security.⁴²¹ Likewise, Geo Group spent \$960,000 on federal lobbying in 2022, employing twelve lobbyists on pending bills such as the 2023 Homeland Security Appropriations Act and Commerce, Justice, Science, and Related Agencies Appropriations Act.⁴²²

As for the private equity industry, it employs almost two hundred lobbyists and has paid over \$600 million in campaign contributions over the last ten years,⁴²³ making it highly unlikely that any real scrutiny of their carceral strategies will happen. Because private equity firms do not directly lobby any groups, leaving that to the companies they own and control, their power is largely anonymous, allowing them to apply pressure to government under the radar.⁴²⁴

Wellpath, for example, makes considerable donations through the Wellpath PAC.⁴²⁵ Since 2015, the Wellpath PAC has given out over one hundred payments to various groups and individuals, including vendor fees, other PAC

419. See CHRISTOPHER HARTNEY & CAROLINE GLESSMAN, NAT'L COUNCIL ON CRIME & DELINQ, PRISON BED PROFITEERS: HOW CORPORATIONS ARE RESHAPING CRIMINAL JUSTICE IN THE U.S. 13–14 (May 2012), <https://www.issuelab.org/resources/12426/12426.pdf>.

420. See Sara Swann, *For-Profit Prisons Background*, OPENSECRETS (May 2017), <https://www.opensecrets.org/industries/background.php?cycle=2018&ind=G7000>.

421. See *Client Profile: CoreCivic Inc.*, OPENSECRETS, <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2022&id=D000021940> (last visited May 10, 2024).

422. See *Client Profile: GEO Group, Bills Lobbied by GEO Group, 2022*, OPENSECRETS, <https://www.opensecrets.org/federal-lobbying/clients/bills?cycle=2022&id=D000022003> (last visited May 10, 2024).

423. See *Private Equity and Investment Firms Summary*, OPENSECRETS, <https://www.opensecrets.org/industries/totals.php?cycle=2020&ind=F2600> (last visited May 15, 2024).

424. Ben Protess, Jessica Silver-Greenberg & Rachel Abrams, *How Private Equity Found Power and Profit in State Capitols*, N.Y. TIMES (July 14, 2016), <https://www.nytimes.com/2016/07/15/business/dealbook/private-equity-influence-fortress-investment-group.html>.

425. FENNE, *supra* note 260, at 17.

contributions, and donations to judicial, legislative, and executive candidates at both state and local levels.⁴²⁶

Payment and attention to state legislatures also continues apace, greasing the wheels for the continued takeover of the correctional market. In Texas, for example, a 2006 amendment to the Texas Local Government Code allowed profits that Texas jails made from a lucrative private phone provider contract to be spent on jailhouse operations, not inmate welfare, as the law had formerly required.⁴²⁷

Individual private equity firms ensure that their specific companies can continue to operate for profit in state correctional systems by focusing on not only state legislatures but also the state executive. For example, Apax Partners, which owns electronic monitoring company Attenti, utilizes widespread lobbying to ensure their products continue to be used in state corrections. In Florida between 2017 and 2019, Apax paid Southern Strategy Group, their registered lobbyist, up to \$30,000 for their executive branch work and between \$20,000 and \$50,000 for their legislative branch work.⁴²⁸ In Michigan, Apax's lobbyist spent nearly \$48,000 total on the state's legislature and executive branches during 2017 and 2018.⁴²⁹ Apax paid \$30,000 to its Mississippi lobbyist in 2018.⁴³⁰

Such lobbying also extends to ensuring that FOIA laws continue to be inapplicable to private corrections companies. Between 2007 and 2014, for example, CoreCivic spent about \$7 million successfully lobbying against legislation that would have subjected its prisons to FOIA reporting obligations.⁴³¹

Many of these Big Capital Corrections companies have engaged in various forms of pay to play to support their contracting efforts. Wellpath, for example, has a long and clearly reported pay for play history using campaign contributions to secure government contracts, including bribing a Norfolk, VA sheriff to ensure Wellpath got the contract to provide medical services for Norfolk City Jail;⁴³² and donating heavily to a Loudoun County, Virginia, sheriff's 2014 re-election campaign to maintain their contract providing medical and mental

426. *Id.*

427. Swanson & Katzenstein, *supra* note 318, at 1250.

428. BAKER, *supra* note 169, at 7.

429. *Id.*

430. *Id.*

431. See ACLU, WAREHOUSED AND FORGOTTEN: IMMIGRANTS TRAPPED IN OUR SHADOW PRIVATE PRISON SYSTEM 58 (June 2014), <https://www.aclu.org/sites/default/files/assets/060614-aclu-car-reportonline.pdf>.

432. Margaret Kavanagh, *Former Norfolk Sheriff Indicted on Public Corruption Charges*, WTKR (Oct. 25, 2019, 6:44 PM), <https://www.wtkr.com/2019/10/24/former-norfolk-sheriff-indicted-on-public-corruption-charges>.

health care to detainees at the Loudoun County Adult Detention Center.⁴³³ Indeed, at least six Virginia sheriff candidates have taken approximately \$41,000 in contributions from Wellpath and its predecessors between 2007 and 2019.⁴³⁴

Lobbying is also a familiar path for bail bond insurance companies. In the lucrative bail bond insurance industry, for example, there is an insurance industry group, the American Bail Coalition (ABC), which has lobbied heavily against any attempts to eliminate or restrict for-profit bail.⁴³⁵ ABC's efforts were crucial in derailing California's attempt to eliminate cash bail. In 2018, California passed a law replacing cash bail with a system that allowed judges, with help from a computer algorithm, to determine flight risk.⁴³⁶ The new system no longer required cash bail for most misdemeanors.⁴³⁷

Since this new law was directly against the financial interests of both the bail bond providers and their insurance backers, ABC quickly went to work. ABC spent \$2.8 million, raised primarily from their enormous surety underwriters, to gather enough signatures for a ballot initiative which would let voters to decide on the bill.⁴³⁸ After ABC spent over \$7 million more, donated from bail bond companies and their sureties, to persuade voters to say no, the initiative was defeated, keeping cash bail in place for most crimes within California.⁴³⁹

The bail bond industry has done similarly in other states to defeat the elimination of cash bail, spending over \$23 million on lobbying, campaigns, and candidate contributions over the past ten years.⁴⁴⁰ ABC alone has 234 lobbyists working in fourteen states.⁴⁴¹

The time and money invested by Big Capital to ensure that it is awarded state and federal corrections contracts is one reason why these private entities are so hard to eliminate.

433. David M. Reutter, *Major Prison Health Care Companies Funnel Campaign Contributions to Sheriffs, Get Rewards*, PRISON LEGAL NEWS (Mar. 3, 2020), <https://www.prisonlegalnews.org/news/2020/mar/3/major-prison-health-care-companies-funnel-campaign-contributions-sheriffs-get-rewards>.

434. Aaron Morrison, *Virginia Sheriff Seeking Re-election Took Campaign Donations from Healthcare Provider for Jail He Oversees*, APPEAL (Oct. 17, 2019), <https://theappeal.org/virginia-sheriff-loudoun-county-campaign-money>.

435. Scott & Barlyn, *supra* note 167.

436. *Id.*

437. *Id.*

438. *Id.*

439. *Id.*

440. *Id.*

441. Ciara O'Neill, *Bail Bond Businesses Buck for Bookings*, FOLLOWTHEMONEY.ORG (June 7, 2018), <https://www.followthemoney.org/research/institute-reports/bail-bond-businesses-buck-for-bookings>.

E. DIFFICULTY DIVESTING

Although much press has covered the recent divestment movement of retirement funds, universities, and individuals from private prison stocks, a similar call for the public to divest from private equity firms controlling privatized correction services will be far harder to achieve. Eliminating such industries would affect not only private equity firms such as H.I.G. Capital or DC Capital, but also many retirees and pension owners from across the country.

This is because defined contribution retirement plans are now permitted to indirectly invest in private equity companies,⁴⁴² many of which provide private prison services. For example, in 2020, Vanguard began allowing institutional clients like pension funds to access private-equity investments through HarbourVest Partners, an \$85 billion, independent global private markets investment firm.⁴⁴³ Fidelity and Schwab have done likewise.⁴⁴⁴ Courtesy of the Labor Department, mutual plan sponsors are now permitted to allow private-equity investments within defined-contribution plans as part of professionally managed asset-allocation funds, generally known as target-date funds.⁴⁴⁵

Given how hard private equity firms are pushing to be part of defined contribution retirement plans, it seems inevitable that their reach will soon extend to many more 401(k) retirement accounts.⁴⁴⁶ In 2021, for example, the average state and local pension fund had 11.9 percent of its assets allocated to private equity, a little more than double the amount allocated in 2011, which was 5.6 percent.⁴⁴⁷ For example, CalPers, the California pension plan, one of the largest state pension plans in the nation, is invested in H.I.G. Europe, with \$105,753,821 committed in state funds as of the September 2023 report.⁴⁴⁸

442. Todd A. Solomon & Brian J. Tiemann, *DOL Creates Path for 401(k) Plans to Offer Private Equity Investment Options*, NAT'L L. REV. (Sept. 11, 2020), <https://www.natlawreview.com/article/dol-creates-path-401k-plans-to-offer-private-equity-investment-options>.

443. Debbie Carlson, *As Vanguard Pushes Into Private Equity, Some Fans Get Queasy*, MARKETWATCH (Dec. 7, 2021, 5:00 PM ET), <https://www.marketwatch.com/story/as-vanguard-pushes-into-private-equity-some-fans-get-queasy-11638828074>.

444. See Brooke Southall, *Vanguard Group's Private Equity Retail Push Gets Real as It Launches Buyer-Beware Products This Summer to Its Brokerage Account as Prelude to Selection for 'Suitability' Through Its RIA*, RIABIZ (May 25, 2021, 7:42 PM), <https://riabiz.com/a/2021/5/26/vanguard-groups-private-equity-retail-push-gets-real-as-it-launches-buyer-beware-products-this-summer-to-its-brokerage-accounts-as-prelude-to-selection-for-suitability-through-its-ria>.

445. Carlson, *supra* note 443.

446. See Larry Swedroe, *Does Private Equity Belong in Defined Contribution Plans*, WEALTH MGMT. (Dec. 15, 2022), <https://www.wealthmanagement.com/alternative-investments/does-private-equity-belong-defined-contribution-plans>.

447. Lewis Braham, *Private Equity Is Coming to 401Ks. Be Aware of the Risks.*, BARRON'S (Oct. 25, 2022, 3:15 AM ET), <https://www.barrons.com/advisor/articles/private-equity-401k-investing-risk-51666648855>.

448. *Private Equity Program Fund Performance Review*, CALPERS, <https://www.calpers.ca.gov/page/investments/about-investment-office/investment-organization/pep-fund-performance> [<https://web.archive.org/web/20240515203814/https://www.calpers.ca.gov/page/investments/about-investment-office/investment-organization/pep-fund-performance>] (last visited May 10, 2024).

Likewise, in 2021, the New York State Teachers Retirement System allocated \$200M to H.I.G. Capital.⁴⁴⁹ And a collection of diverse organizations including “the Knight Foundation, the Sherman Fairchild Foundation, the Ford Foundation, the Police & Fire Pension Association of Colorado, and the Producer-Writers Guild of America Pension Plan” all are invested in H.I.G.⁴⁵⁰

Many analysts argue that 401(k) participants should be able to likewise invest in PE funds.⁴⁵¹ In addition, the Retirement Savings Modernization Act has been proposed to incentivize retirement investment in private equity funds.⁴⁵² As an amendment to ERISA, the bill would clarify that fiduciaries managing defined contribution plans can invest in a variety of assets.⁴⁵³ It is likely that the integration of private equity funds into 401(k) plans will continue to grow.⁴⁵⁴

The business of profitmaking can create some strange incentives for investors. For example, the stock of private prison companies can fluctuate wildly due to the actions of day traders, who often look for “heavily shorted stocks to pile into, forcing some [private prison] investors to buy back stock for higher prices and causing share values to rapidly soar.”⁴⁵⁵ In other words, money managers might hold onto private prison stocks hoping for a rise in prices from a short squeeze.⁴⁵⁶ Although this might be profitable for individual traders and money managers, and possibly even investors, it can be ruinous for those justice-involved individuals who suffer the downstream consequences of money being extracted from these private correctional companies.

In addition, many investment and pension funds are invested in Big Capital Corrections companies, placing millions of dollars in holdings in these vehicles. Vanguard and Fidelity, the two leading investment companies in the United States, own significant stock in CoreCivic and GEO Group.⁴⁵⁷ Passively

449. *New York State Teachers Retirement System Allocates \$200M to HIG Capital and \$100M to Comvest Credit*, PELTZ INT’L INC. (Apr. 27, 2021, 1:03 PM), <https://peltzinternational.com/new-york-state-teachers-retirement-system-allocates-200m-to-hig-capital-and-100m-to-comvest-credit>.

450. Requarth, *supra* note 332.

451. Braham, *supra* note 447.

452. Paul Mulholland, *New Bill Seeks to Encourage 401(k) Investment in Alternative Assets*, PLANADVISER (Oct. 5, 2022), <https://www.planadviser.com/new-bill-seeks-encourage-401k-investment-alternative-assets>.

453. *Id.*

454. See Austin R. Ramsey, *Private Equity Firms Are Winning the Fight for Your 401(k)*, BLOOMBERG L. (Jan. 31, 2022), <https://news.bloomberglaw.com/daily-labor-report/private-equity-firms-are-winning-the-fight-for-your-401k>.

455. Tana Ganeva, *Why “Woke” Asset Managers Are Still Loading up on Private Prison Stock*, BUS. BUS. (July 14, 2021, 6:25 AM), <https://www.businessofbusiness.com/articles/why-woke-asset-managers-are-still-loading-up-on-private-prison-stock-corecivic-geo-vanguard-fidelity-blackrock>.

456. *Id.*

457. Morgan Simon, *What Do Big Banks Have to Do with Family Detention? #FamiliesBelongTogether Explains*, FORBES (Sept. 25, 2018, 3:42 PM EDT), <https://www.forbes.com/sites/morgansimon/2018/09/25/what-do-big-banks-have-to-do-with-family-detention-familiesbelongtogether-explains/?sh=17c6c62d2b6a>.

managed index funds, often incorporated into mutual funds or 401Ks, own stock in Big Capital Corrections companies.⁴⁵⁸ In addition to private investment, twenty states own approximately \$75 million in stock in Geo Group and CoreCivic as of February 2019.⁴⁵⁹ The investors include state pension funds, teacher retirement funds, and public employee funds in states such as Florida⁴⁶⁰ and Oregon.⁴⁶¹ Many universities hold stock in Big Capital Corrections as well.⁴⁶²

It is becoming increasingly challenging to oversee, regulate, control, and divest from Big Capital Corrections. And yet continuing to let these private entities dominate the carceral world leads to increased suffering, violence, and sometimes even death. In a world of ever-increasing criminal punishment, allowing Big Capital Corrections to impose public punishment, in the name of the people, is antithetical to our basic understanding of justice.

IV. UNCONTROLLED PROFITEERING IN A WORLD OF PUBLIC PUNISHMENT

There is an essential disconnect when we allow Big Capital, whose focus is on creating high returns from investments, to run essential public functions such as juvenile justice centers, psychiatric hospitals, juvenile detention centers, prison healthcare, and so on. What does it mean when we abandon a traditionally governmental role to not just private actors, but to companies whose existence focuses on extracting profits for shareholders?

Big Capital Correction's move into administering fundamentally public amenities raises major issues about the role that governments must play in providing public services, particularly "public safety services."⁴⁶³ With few regulatory barriers or constraints, private equity firms, large, publicly held

458. The top ten mutual funds holding CoreCivic stock, for example, include iShares Core S&P Small Cap ETF, Fidelity Low Priced Stock Fund, Vanguard Small Cap Index Fund, Vanguard Total Stock Market Index, Vanguard Small Cap Value Index Fund, iShares Russell 2000 ETF, Vanguard Extended Market Index Fund, and AMG River Road Small Cap Value Fund. *Institutional Ownership, CoreCivic, supra* note 303.

459. See Liz Farmer, *These Pension Funds Invest Millions in Private Prisons*, GOVERNING (Feb. 7, 2019), <https://www.governing.com/archive/gov-pension-funds-investing-millions-private-prisons.html>.

460. See Steve Contorno, *DeSantis' Proposed New Rules for Pension Investments Push Florida into Fight Against Wall Street*, CNN POL. (Aug. 18, 2022, 8:50 AM EDT), <https://www.cnn.com/2022/08/17/politics/desantis-pension-rules-esg-investing/index.html>.

461. See Katie Shepherd, *Oregon's Public Pension Fund Invests in the Immigration Detention Centers that Residents and Politicians Say They Hate*, WILLAMETTE WK. (July 17, 2019, 5:31 AM PDT), <https://www.wweek.com/news/state/2019/07/17/oregons-public-pension-fund-invests-in-the-immigration-detention-centers-that-residents-and-politicians-say-they-hate>.

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

463. Danielle Ivory, Ben Protess & Kitty Bennett, *When You Dial 911 and Wall Street Answers*, N.Y. TIMES (June 25, 2016), <https://www.nytimes.com/2016/06/26/business/dealbook/when-you-dial-911-and-wall-street-answers.html>.

corporations, and global insurance conglomerates are gobbling up core functions of the criminal justice system, alienating this primary responsibility away from public government, whether state, local, or federal.⁴⁶⁴

Big Capital Corrections should not be allowed to provide private services to the criminal justice system, because allowing them to do so violates fundamental U.S. philosophies about punishment and rehabilitation, creates conflicts of interest, and ultimately corrupts the administration of justice. The role of the carceral state should be focused on holding individuals accountable for their actions and providing them with opportunities for rehabilitation, not on generating profits for private equity firm investors or mutual fund holders.

Additionally, allowing Big Capital Corrections to provide our core public correctional services violates our fundamental philosophies about punishment. American theories of punishment are intended to impose retribution, help reform, and rehabilitate justice-involved individuals, not used as a vehicle for generating profit. There are numerous financial and philosophical reasons why private equity firms should not be involved in providing essential public services, most of which go to the critical values of local democracy and community adjudication.

A. DIMINISHES THE PROVISION OF CORE PUBLIC SERVICES

Big Capital Corrections, which has taken over essential public functions such as state punishment, is profiting from the public weal. The private correctional services industries make their money off the backs of incarcerated individuals and those under correctional control.

Much of this profit is literally extracted from those who are incarcerated. Some profit is made from prisoner labor, which enriches the two largest private prison companies.⁴⁶⁵ Some of the profit is extracted from cutting staff, training, and salaries for behavioral and health services, as discussed in Part I. And some of the profit is generated by providing overpriced and/or substandard food, telephony, banking, monitoring, and electronic communications, both in and outside of carceral institutions.⁴⁶⁶

Big Capital Corrections profits from state and local taxpayers, who fund the carceral state.⁴⁶⁷ States spend enormous amounts of money on corrections,

464. See Bill Schubart, *Bill Schubart: Keep Private Investors Away from Nonprofits in Health Care, Journalism, Corrections*, VT DIGGER (Dec. 4, 2022, 7:42 AM), <https://vtdigger.org/2022/12/04/bill-schubart-keep-private-investors-away-from-nonprofits-in-health-care-journalism-corrections>.

465. See Appleman, *supra* note 2, at 675–76.

466. See Requarth, *supra* note 332; see also Rupert Neate, *Welcome to Jail Inc: How Private Companies Make Money Off US Prisons*, GUARDIAN (June 16, 2016, 6:00 PM EDT), <https://www.theguardian.com/us-news/2016/jun/16/us-prisons-jail-private-healthcare-companies-profit>.

467. Valladares, *supra* note 257.

between \$60 million to \$8 billion a year.⁴⁶⁸ The budget for incarceration and correctional control comes largely from state taxpayers.⁴⁶⁹ The taxes collected by the state usually come from personal income taxes and sales taxes, both primarily provided by in-state residents.⁴⁷⁰ Because of this, every state's citizens have a stake in how and on what the state budget is spent.⁴⁷¹ The same system applies to the federal budget as well, with the monies coming from federal government tax collection.⁴⁷² Thus the bulk of the profit flowing into Big Capital coffers comes directly from the wallet of the average taxpayer.

When Big Capital Corrections provides the bulk of public correctional services, this creates a serious conflict of interest, potentially corrupting the fair administration of justice. Private corrections entities are often influenced by their financial interests when making decisions about the release of inmates, rather than considering what is in the best interests of the individuals or society in general. This can result in a biased and unfair system that disproportionately harms marginalized communities and perpetuates systemic racism.

Big Capital Corrections also has an obligation to their investors to be profitable. This obligation, however, does not square with the government's obligation to those it imprisons, as well as to wider society.⁴⁷³

Accordingly, a core public service—incarceration and punishment—is now often controlled by profit-focused private entities, who provide substandard services with seemingly no remorse. Because mass incarceration is both so poorly regulated and so incredibly remunerative, these private correctional companies have little to no incentive to improve their services, notwithstanding the tremendous toll it takes on justice-involved individuals and their families. Big Capital Corrections has little motivation to act in the public interest, even though it extracts its profits from the community it is supposed to serve.

B. DEMOCRATIC CONCERNS

Our normative theories of democracy and democratic deliberation have always included public “involvement in all aspects of criminal justice.”⁴⁷⁴ It is the community's shared principles of justice that make the rule of law both

468. Ronnie K. Stephens, *Annual Prison Costs a Huge Part of State Federal Budgets*, INTERROGATING JUST. (Feb. 16, 2021), <https://interrogatingjustice.org/prisons/annual-prison-costs-budgets>.

469. *Policy Basics: Where Do Our State Tax Dollars Go?*, CTR. ON BUDGET & POL'Y PRIORITIES (July 25, 2018), <https://www.cbpp.org/research/state-budget-and-tax/where-do-our-state-tax-dollars-go>.

470. *State Budgets Basics*, CTR. ON BUDGET & POL'Y PRIORITIES (May 24, 2022), <https://www.cbpp.org/research/state-budget-and-tax/state-budgets-basics>.

471. *Id.*

472. See *How Much Has the U.S. Government Spent This Year?*, FISCAL DATA, <https://fiscaldata.treasury.gov/americas-finance-guide/federal-spending> (last visited May 14, 2024).

473. Hana M. Kiros, *'A Slow Motion Version of the Death Penalty': Why Harvard Shouldn't Invest In Prisons*, HARV. CRIMSON (Mar. 22, 2022), <https://www.thecrimson.com/article/2022/3/22/kiros-private-prisons>.

474. Appleman, *supra* note 67, at 621.

workable and legitimate.⁴⁷⁵ In a liberal democracy, legitimacy originates both from the rule of law and from the will of the people.⁴⁷⁶ Criminal law in particular helps uphold the moral agreement needed to maintain social norms in our diverse society.⁴⁷⁷

This delicate balance is completely upended when Big Capital Corrections is the one imposing punishment upon justice-involved individuals. Instead of decision-making deriving from the will of the people, or even the hand of the government, we get “ad hoc judgments of private actors,” who are largely uninterested with public concerns.⁴⁷⁸ Competitive profit seeking, eliminating competition, and meeting expectations of heightened returns over a short time period rarely tend to foster democratic legitimacy in the correctional context.

Allowing Big Capital Corrections to mint money from its monopoly of correctional services essentially changes the relationship between state and society in the criminal context.⁴⁷⁹ This is because outsourcing this work to private, profit-seeking companies removes the essence of being under correctional control from the local and state government, a task specifically delegated from the local community.⁴⁸⁰ Instead, it places these critical services in the hands of an industry that is solely focused on extracting profit, and has little interest in inculcating the public norms that underlie our basic assumptions of criminal justice.⁴⁸¹ By entrusting the decision-making and implementation of punishment to entirely private entities, we cede the authority over a critical societal function: the act of punishment.

When carceral institutions and alternative corrections centers contract out essential services to Big Capital corrections, those private companies have virtually no accountability to democratic concerns.⁴⁸² Given the distance and disconnect between the boardroom and the carceral site, the public aspect of such services—and the real needs of incarcerated people, families, and communities—is virtually eliminated.⁴⁸³

The regulation and administration of carceral institutions has long been a public task, because the political system currently assigns sole control over the

475. See LAURA I APPLEMAN, *DEFENDING THE JURY: CRIME, COMMUNITY, AND THE CONSTITUTION* 187–90 (Cambridge Univ. Press 2015).

476. Mary Sigler, *Private Prisons, Public Functions, and the Meaning of Punishment*, 38 FLA. ST. U. L. REV. 149, 156 (2010).

477. Laura I Appleman, *Local Democracy, Community Adjudication, and Criminal Justice*, 111 NW. L. REV. 1413, 1425 (2017).

478. Sigler, *supra* note 476, at 156.

479. See Ahmed A. White, *Rule of Law and the Limits of Sovereignty: The Private Prison in Jurisprudential Perspective*, 38 AM. CRIM. L. REV. 111, 112 (2001).

480. *Id.* at 112, 119.

481. *Id.* at 119.

482. FENNE, *supra* note 260, at 22.

483. See *id.*

legitimate use of force to the government.⁴⁸⁴ Using private, for-profit actors to administer correctional services can undermine the legitimacy of government action, since the public may suspect that the focus of such entities is private revenue-making, rather than the traditional purposes of criminal justice.⁴⁸⁵

Moreover, for a government to retain legitimate accountability for its correctional system, it must be able to “reclaim any privatized part of its prison system.”⁴⁸⁶ To do this, of course, it needs to have the ability to step in and take over if there is a problem.⁴⁸⁷ This can only be done if the government provides direct services to at least some of its correctional institutions.⁴⁸⁸ Completely outsourcing such services to Big Capital Corrections thus cuts the link between a government’s democratic legitimacy and the workings of its penal system.

C. WHO IMPOSES PUNISHMENT ?

We have a local, publicly funded system of criminal prosecution, and only local, public punishment should result from that. As Mary Sigler argued: “Punishment . . . effects a form of community censure that takes its meaning from the community’s values and conventions.”⁴⁸⁹ As detailed above, Big Capital corrections’ refusal to open up their processes or practices “bypasses local control of punishment,” something that is indivisible from our democratic decision-making.⁴⁹⁰

The power to punish and incarcerate are normally reserved to the local government.⁴⁹¹ While delegating punishment and imprisonment is technically legal, do we truly want to delegate the role of incarcerating, punishing, deterring, and rehabilitating justice-involved individuals to private companies primarily focused on reaping profits ? Given how long incarceration can last for many individuals—from pre-trial detention all the way to post-release correctional control— it is important that the bodies imposing the state-sanctioned punishment speak with the voice of the people.

In a liberal democracy, punishment must be inherently public, since it is inflicted for public wrongs in the name of the people and the community. By outsourcing some of the critical roles of correctional facilities to Big Capital corrections, the state is allowing a core state responsibility to be placed in private

484. Martha Minow, *Public and Private Partnerships: Accounting for the New Religion*, 116 HARV. L. REV. 1229, 1234 (2003).

485. *Id.*

486. Richard Harding, *Private Prisons*, 28 CRIME & JUST. 265, 282 (2001).

487. *Id.*

488. *Id.*

489. Sigler, *supra* note 476, at 173.

490. Appleman, *supra* note 67, at 626.

491. *Id.* at 630.

hands.⁴⁹² This is because all correctional personnel, from healthcare providers to psychiatric orderlies to alternative corrections staff, have considerable discretion and power in doing their jobs.⁴⁹³ This power can directly affect not just an inmate's quality of life, but also whether they live or die. Such fundamental rights as safety, liberty, and life are "inherently governmental," because those decisions reflect the power of the people.⁴⁹⁴ Such power should never be subcontracted outside to private, for-profit parties.

By allowing Big Capital to provide key correctional services, state and federal governments are transforming criminal justice into yet another commodity.⁴⁹⁵ Using private correctional service companies instead of the state to impose public punishment means that the public is unknowingly relinquishing a "momentous social task: depriving other human beings of their liberty on a daily basis."⁴⁹⁶ We do so at our peril.

CONCLUSION

It is hard to find a more destructive force than Big Capital Corrections.⁴⁹⁷ Private equity firms, large publicly traded corporations, and global insurance conglomerates all invest in and profit from the private corrections industry, which continues to fuel disturbing and degrading treatment within our system of mass incarceration. Big Capital's overwhelming focus on profits has led to violence, abuse, and death within the carceral system, perpetuating systemic injustices on justice-involved individuals, their families, and their communities. Continued Big Capital participation in public punishment and criminal justice harms both those in the system and society as a whole.

What can be done? As I have argued above, a major problem with the current system is the virtual lack of regulation of private correctional services. One way to maintain some control would be to require much stricter oversight of any for-profit entity working or contracting in the carceral system. Although this would be difficult to achieve, it is not impossible; under the proposed Senate Bill 1983, the Private Prison Information Act of 2023, all state or local correctional facilities, private or public, would be required to provide information under the Freedom of Information Act if they held federal

492. See Sigler, *supra* note 476, at 152–53.

493. *Id.* at 175.

494. Alfred C. Aman, *Private Prisons and the Democratic Deficit* 7 (Ind. Univ. Maurer Sch. L., Legal Stud. Rsch. Paper No. 160, 2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567129.

495. Sigler, *supra* note 476, at 176.

496. Jean Casella & James Ridgeway, "Outsourcing Punishment" and the Privatization of Justice, SOLITARY WATCH (Aug. 12, 2010), <https://solitarywatch.org/2010/08/12/outsourcing-punishment-and-the-privatization-of-justice>.

497. Dayen, *supra* note 325.

prisoners.⁴⁹⁸ This would grant us some small measure of transparency into workings of Big Capital's privatized correctional services. Of course, given that most criminal punishment is state punishment, this would only affect a small slice of the carceral world.

The ultimate solution may be to ban the private, for-profit world entirely from corrections. But as detailed above, this would be extremely difficult, given the level of investment the average American has made in Big Capital Corrections, often unwittingly, through their mutual funds, pensions, and other investments. Only through a strategy of major divestment and financial separation from private corrections companies will this problem ever be solved.

498. Private Prison Information Act of 2023, S.B. 1983, 118th Cong. (2023).
