

# Equity for Whom?

How Private Equity and the  
Punishment Bureaucracy  
Exploit Disabled People



Disability Rights Education & Defense Fund

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Disability Rights Education and Defense Fund (DREDF) is a leading national civil rights law and policy center directed by individuals with disabilities and parents who have children with disabilities. Founded in 1979, DREDF works to advance the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development.

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## Content Warning

This report mentions or discusses ableism, disablism, child abuse, death, policing, racism, self-harm, sexual assault, suicide, and violence. This report also includes detailed stories of death and harm resulting from incarceration.

## A Note About Language

This report uses a capital “D” for Disabled people in recognition of disability as an identity and culture. We acknowledge that not every person who experiences disability identifies with the disability community in this way.

DREDF currently uses person-first language and identity-first language interchangeably. Continuing the evolution toward person-centered language (both identity-first and person-first), in this series of reports, when referring to the disability community, unhoused people, and people who are incarcerated or formerly incarcerated, we use terms that emphasize personhood rather than status, diagnosis, or condition, e.g., “people experiencing mental illness” rather than “the mentally ill.”

## Acknowledgments

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# Executive Summary

In this report, we invite readers to explore the historical, racialized, disablist, and political economic contexts of mass incarceration, including the ways that incarceration has expanded beyond prisons, jails, and correctional supervision in the 21<sup>st</sup> century. As well, publics often think of incarceration narrowly, such that they make invisible the containment of Disabled people in institutional and extracarceral systems. This report is in part a corrective and counterpoint to policy papers on disability and criminal legal reform published by non-disability advocacy and mental health advocacy<sup>1</sup> organizations in recent years. Because the ideologies of eugenics, ableism, and disablism are thriving in the 21<sup>st</sup> century, disability is often used as a rhetorical frame arguing for the restriction of carceralism for certain groups and its expansion for others. Mass incarceration in the 21<sup>st</sup> century includes physical confinement, but also accounts for the rapidly expanding, technocratic industries of e-carceration and psychotropic incarceration. Our conceptions of physical confinement must go beyond prisons and jails, and include detention centers, psychiatric hospitals, nursing homes, and residential treatment facilities. One cannot replace the other. Recognition of incarcerated people must similarly be expanded to include detained immigrants, people under electronic monitoring and surveillance, and people experiencing involuntary psychiatric commitment.<sup>2,3</sup> Black people and Indigenous people continue to be disproportionately impacted by policing and carceralism, particularly in the increased criminalization of poverty, houselessness, and mental illness, and the ways that these statuses intersect with racism and disablism.

## Private Equity

Though the average person may have no knowledge of or experience with private equity investing, almost every person in the United States has been impacted in some way by private equity's encroachments into healthcare, education, retail, housing, and other sectors that provide essential services to

the public. Private equity's leveraged buyouts have resulted in millions of jobs, pensions, homes, and lives collectively lost over the past four decades. In the healthcare industry, including correctional healthcare, private equity ownership has been linked to tens of thousands of preventable deaths in congregate care settings, jails, and prisons.<sup>4</sup> The two largest providers of correctional healthcare services in the United States, YesCare and Wellpath, are both owned by private equity firms. Despite thousands of lawsuits filed against these companies within the past decade, they continue to retain, renew, and win contracts with hundreds of city and county governments across the country. In many cases, private equity firms that profit from physical incarceration also profit from alternatives to incarceration, especially through their investments in surveillance tech.

## **A Lack of Transparency**

A lack of transparency, record keeping, and publicly available data create persistent barriers for researchers, journalists, advocates, and policymakers to document trends and incidents of abuse and neglect in prisons, jails, and detention centers. There is no national database tracking the deaths that occur in every prison, jail, and detention center, or the number of complaints and lawsuits filed against each facility. Public records requests can be costly, and state and local governments may be slow to respond or can restrict access to this information. Private equity similarly operates under a veil of secrecy that allows firms to evade government regulation and public accountability. Because private equity ownership is often hidden behind multiple business structures, with control of management and property split among different sub-entities, it is difficult to hold private equity firms accountable through litigation, let alone to grasp the true extent of private equity's involvement in mass incarceration and its expansion.<sup>5,6</sup>

## **Correctional Healthcare**

There are currently no federal laws that establish minimal standards of care at correctional facilities, and there have been no academic studies comparing the



quality of privatized correctional healthcare to government-provided services. A recent study by *Reuters* analyzing data from over 500 large jails found that out-contracted correctional healthcare was associated with 18 to 58 percent higher risk of death for people incarcerated at those facilities.<sup>7</sup> We conducted our own analyses using the *Reuters* data and found that the mortality rate at jails with publicly managed healthcare decreased 2.4 percent from 2015 to 2019, while the mortality rate at jails that contracted out healthcare to private companies increased 20.2 percent in that same time period. For all jails, the mortality rate has increased about 70 percent since 2008.<sup>8</sup>

## From Medicalization to Criminalization<sup>9</sup>

In the introductory section of this report, we provide some background information on the disproportionate numbers of Disabled people and racialized and minoritized people, particularly Black people, impacted by mass incarceration, including alternatives to incarceration. We also describe the political economy of mass incarceration, which is a principal lens through which we map and contextualize the activities of private equity in this report. We argue that prison policy in the United States is a form of wealth redistribution for mostly white, male constituents who benefit from the carceral bureaucracy's expansion.

In part one of this report, we discuss the history of mass incarceration as a racialized project of criminalization, disinvestment, and disenfranchisement of Black people. We also argue against the “Prisons and jails are the new asylums” fallacy, which has been propagated and perpetuated by the mainstream media, and we caution against deceptively alluring “alternatives to incarceration” that appeal to popular misconceptions of mental illness as a precursor to crime, and which expand rather than replace systems of physical confinement.

In part two, we discuss the modern history of immigration detention as an expansion of mass incarceration, and how the securitization of immigration in the decades after 9/11 reframed immigrants as an internal security threat and criminalized undocumented immigrants as permanent outsiders inside the borders of the United States. It's also not a coincidence that the economy and

immigration were among the most pressing issues for voters in the 2024 presidential election, giving the edge to Donald Trump, who has pledged to intensify mass deportation at an unprecedented scale once he retakes the White House. However, it is vital that we understand the criminalization and scapegoating of immigrants as a racialized project that has long preceded the Trump administration, with the complicity of both political parties.

In part three, the final section of this report, we tie together the issues of racism, disablism, and the political economy of mass incarceration by focusing on private equity's role in manufacturing mass housing insecurity and the subsequent profiting off of false solutions to houselessness, including medicalization, criminalization, surveillance, and incarceration of unhoused people. Understanding these interconnections is important, as a post-election *NBC News* analysis reveals that Trump had some of the largest electoral gains in 2024 compared to 2020 in counties that experienced the most challenging housing markets.

For forty years, politicians have repeatedly victim-blamed, scapegoated, and criminalized unhoused people, but the problem of mass housing insecurity remains entrenched in large cities across the country, mainly because politicians refuse to tackle its root problems—unaffordable housing and rampant income inequality. While it's important to recognize that houselessness is a housing problem, however, we also ask readers to be wary of homeless advocates whose main argument boils down to “Not all homeless people are mentally ill.” In our advocacy efforts, it is important that we not further marginalize and stigmatize one group for another. It is important not to invisibilize, pathologize, or victim blame the significant subset of unhoused people who are disabled or experiencing mental illness, which can be a lifelong identity or impermanent response to precarity and living on the margins of society. As the historian and disability scholar, Douglas C. Baynton, has argued, “This common strategy for attaining equal rights, which seeks to distance one's own group from imputations of disability and therefore tacitly accepts the idea that disability is a legitimate reason for inequality, is perhaps one of the factors responsible for

making discrimination against people with disabilities so persistent and the struggle for disability rights so difficult.”<sup>10</sup>

# Introduction

In her seminal book, *The New Jim Crow*,<sup>11</sup> Michelle Alexander states that a contemporary analysis of mass incarceration must go beyond a mere accounting of the staggering numbers of Americans in prisons and jails. We must account for the twice amount of people under community supervision (probation and parole),<sup>12</sup> and we must acknowledge the lifelong impacts of being marked as “criminal,” which create a vicious cycle of poverty and alienation. A critique of mass incarceration must also explain the reduction in the nation’s prison populations that occurred during the past decade simultaneously with an explosive expansion of immigration detention and mass deportation. For example, tracing the history of immigration enforcement in the United States, Hernández (2011) shows how the political and racialized construct of “illegal alien” was built up and codified in successive layers of federal laws beginning in the 19<sup>th</sup> century, culminating in today’s permanently criminalized and *excluded* caste of undocumented noncitizens.<sup>13</sup> This occurred in parallel to the creation of a caste of permanently criminalized and *confined* Black Americans that officially began with the United States’ War on Drugs, though in effect continued a historical pattern of legalized alienation and exploitation of Black Americans originating in slavery and extending through the Black Codes of the 19<sup>th</sup> century, and the Jim Crow laws that followed.<sup>14, 15</sup>

This story of permanent exclusion for one group and permanent containment for another is an oversimplification, but provides a striking sense of the sheer and terrible expansiveness of mass incarceration in the United States. As a step towards completing this picture, Liat Ben-Moshe observes that disability as a frame for analysis is often missing in contemporary critiques of mass incarceration despite being central to its history, rhetorics, and political and economic construction.<sup>16</sup> The historian, Douglas Baynton, notes that the attribution of disability to connote defect or deficiency has been weaponized throughout United States history against marginalized groups, including immigrants and women, to justify their disenfranchisement, discrimination,

exclusion, and of course, confinement. The earliest immigration laws, for example, excluded foreigners who were labeled as “convicts,” “lunatics,” “idiots,” “imbeciles,” “epileptics,” “beggars,” “feeble-minded persons,” and “those liable to become public charges.”<sup>17, 18, 19</sup> “While disabled people can be considered one of the minority groups historically assigned inferior status and subjected to discrimination,” Baynton writes, “disability has functioned for all such groups as a sign of and justification for inferiority.”<sup>20</sup> It has therefore been incumbent upon all these marginalized groups throughout history to deny disability or difference, or to assert their likeness or proximity to whiteness and cisheteronormative behavior in order to gain political power, rather than question the categorical denigration of disability as an attribute connoting defectiveness or deserving of exclusion.

Hence, when disability *is* discussed in critiques of mass incarceration, it is often framed through a medical and pathologizing lens, as “something in need of correction” rather than “a nuanced identity from which to understand how to live differently, including reevaluating responses to harm and difference.”<sup>21</sup> This medicalization of disability serves to legitimize carceralism in all its present forms by manifesting the construct of the “deviant, criminal mind” in need of correction, punishment, or containment that critics of mass incarceration otherwise assert to be a fiction.<sup>22</sup> In other words, most critiques of mass incarceration begin and end with the proposition that specific marginalized groups are not impaired and therefore do not deserve to be incarcerated, without questioning or only minimally challenging the fallacy that Disabled people need to be institutionalized, medicated, or incarcerated for their safety or the safety of others, whether in prisons, jails, psychiatric hospitals, residential treatment facilities, or through psychotropic restraint. Disabled people, especially people experiencing mental illness, are the current manifestation of the “monstrous other” in need of containment.<sup>23</sup> This is dangerous, because Disabled people exist among every identity, class, and status, and because the fallacy establishes disability, and mental illness in particular, as a discursive object with which elites can (and do) argue for the expansion of the carceral state across practically any category of people, but mostly against poor, racialized people, e.g., by loosening the criteria for coercive mental health

intervention. Imani Barbarin has said that “blaming violent behavior on mental illness only excuses white people while criminalizing black people.”<sup>24</sup> Talila A. Lewis, the founder of HEARD,<sup>25</sup> observes, “disability is one of the *most* fluid and complex marginalized identities... In fact, ableism has been used for generations to degrade, oppress, control, and disappear disabled and non-disabled people alike—especially those who are Black/Indigenous (e.g., scientific racism). Relatedly, all oppression is rooted in and dependent on ableism—especially anti-Black/Indigenous racism.”<sup>26</sup>

Following historical patterns, we can anticipate that the expansion of the carceral state through ableist impulse and rhetoric will most severely impact those who live at the intersections of disability, poverty, and racial marginalization. Policing is “opportunistic and predatory,” Kimberly Jones writes, “They brutalize a bunch of poor people because they know they are economically disadvantaged and do not have the financial power to fight back.”<sup>27</sup> Law enforcement also has a history of targeting and entrapping racially marginalized people with intellectual, developmental, and psychosocial disabilities who live in socioeconomically disadvantaged communities—a deplorable practice that should be considered a human rights violation. As Human Rights Watch reports, during the “War on Terror,” law enforcement agents and their informants “often chose targets who were particularly vulnerable—whether because of mental disability, or because they were indigent and needed money that the government offered them.”<sup>28</sup>

Approximately 30 percent of cases reviewed by Human Rights Watch involved government agents or informants targeting, grooming, and cajoling a Disabled person and providing the material support to commit a terrorist act. Again, we see how the national security state and the criminal legal system use Disabled bodyminds as discursive objects for their expansion and as exploitable objects for their profit.

As the scholar, Ruby Tapia, recently observed at a symposium at University of Michigan, the carceral state is more than its prisons and jails; it’s a system of “logics, ideologies, practices, and structures, that invest in tangible and sometimes intangible ways in punitive orientations to difference, to poverty, to

struggles to social justice and to the crossers of constructed borders of all kinds.”<sup>29</sup> This system includes surveillance, policing, civil detention, probation, and diversion programs, as well as psychiatric forms of incarceration, including institutionalization and psychotropic restraint. As this report will make clear, the firms that are invested in prisons and jails are the same firms invested in immigration detention and alternatives to incarceration, including expansion of mental health courts. But, neither must a focus on political economy and the role of private prison companies erase the fundamental role of ideology, including white supremacy and eugenics, in establishing and maintaining mass incarceration.<sup>30</sup> As Ijeoma Oluo writes, “Health care discrimination, job discrimination, the school-to-prison pipeline, educational bias, mass incarceration, police brutality, community trauma—none of these issues are addressed in a class-only approach.”<sup>31</sup>

Michelle Alexander blends racial and political economic analyses of mass incarceration, and demonstrates how these strands can be mutually constitutive, writing that “politicians in the early years of the drug war competed with each other to prove who could be tougher on crime by passing ever harsher drug laws—a thinly veiled effort to appeal to poor and working-class whites who, once again, proved they were willing to forego economic and structural reform in exchange for an apparent effort to put blacks back ‘in their place.’”<sup>32</sup> Therefore, using an intersectional lens and the frameworks established by the aforementioned scholar-activists, including Michelle Alexander and Liat Ben-Moshe, as well as Ruth Wilson Gilmore, Alec Karakatsanis, and Marta Russell, we describe the ways that racism, disablism, and political and economic forces have shaped and expanded mass incarceration for their profit and to the detriment of marginalized communities.<sup>33</sup>

As Upton Sinclair famously said, “It is difficult to get a man to understand something when his salary depends on his not understanding it.”<sup>34</sup> In a political economy of mass incarceration, readers should become familiar with both the specific and tangible ways that private equity firms and other investors profit from carceral systems and rhetorics, and the more high-level and practically invisible ways that private equity firms shape mass incarceration through

lobbying and other outsized political and economic influence. Although racism and eugenics play an indubitable part in mass incarceration, and although private equity firms are not the sole villains in this story, their role here—as in other industries where private equity has taken root—is important as it represents in many ways the peak of capitalism, naked avarice, and unabashed political self-interest.

## Race, Disability, and Incarceration

*In 2021, Clifford Farrar, a 51-year-old Black man with diabetes, died at the Stafford Creek men’s prison in Aberdeen, Washington, just several months after arriving at the facility. Farrar ran out of insulin supplies, which had previously been covered by his medical insurance. Prison medical staff repeatedly rejected his request for new supplies of insulin for his insulin pump, and Farrar eventually succumbed to hypoglycemia. He died shortly after his body was found, collapsed by the prison phones, perhaps trying to reach out one last time for help.<sup>35</sup>*

The United States has the third largest population in the world, but holds more incarcerated people than any other country. There are currently 1,932,000 people incarcerated by the United States in prisons, jails, immigration detention centers, and under civil commitment.<sup>36,37</sup> Between 40 and 66 percent of the state and federal prison population is disabled—that’s approximately 511,600 to 844,140 Disabled people who are incarcerated, just counting people in prisons.<sup>38</sup> Disabled people are overrepresented in both prisons and jails across almost every type of disability, including visual, hearing, physical, and cognitive,<sup>39</sup> substantiating critiques of the pervasive criminalization of disability through its interaction with socioeconomic factors such as poverty, housing, unemployment, and education.

Although Indigenous Americans and Black Americans report the highest prevalence of disability in the general population, white people were the most frequent group to report disability in the jail and prison populations.<sup>40,41</sup> This suggests that disability by itself is markedly criminalized in the United States,



and a disability lens could be constructively employed when examining the disparities experienced by Black people and Indigenous people in the criminal legal system, specifically through the ways that racism intersects with disablism for multi-marginalized people.<sup>42, 43, 44, 45, 46</sup> For example, according to one survey study, Disabled white people are 12 percent more likely to be arrested than nondisabled white people by their late twenties, but Black men have a 25 percent higher risk of being arrested. Disabled Black men have a 38 percent higher likelihood of being arrested than nondisabled white people.<sup>47</sup> Since 2015, Black people have been killed by police at 2.6 times the rate as white people, and Black Americans experiencing mental health crises have been killed at almost twice the rate as white people in crisis, adjusting for population size and prevalence of mental illness by race.<sup>48, 49</sup>

Racialized inequities are maintained throughout the criminal legal system. For example, Black people comprise 32 percent of the state and federal prison populations<sup>50</sup> and 35.4 percent of the total jail population<sup>51</sup> even though they represent only 13 percent of the total United States population.<sup>52</sup> The lifetime risk of incarceration for Black males is 16 percent, and was as high as 50 percent at the start of the century. Meanwhile, the lifetime risk of incarceration for Native American males remains extremely high at 50 percent.<sup>53</sup> Between 2020 and 2021, the risk of mortality due to COVID-19 in Texas prisons was higher for Hispanic people and Black people compared to the incarcerated white population.<sup>54, 55</sup> These and other findings corroborate the existence of systemic racialized inequity in delivery of and access to healthcare services within prison and jail systems that mirrors racialized inequities throughout society, and these inequities may be aggravated during natural disasters, public health emergencies, and by consolidation and privatization of health services.<sup>56, 57</sup>

The 2019 mortality rate in state and federal prisons reported by the U.S. Department of Justice was 3.1 per 1,000 people,<sup>58, 59</sup> while the reported mortality rate in jails was 1.6 per thousand people.<sup>60, 61</sup> These higher mortality rates in prisons could reflect the aging population of people serving long-term or life sentences, as there are over 200,000 people currently serving life sentences in federal and state prisons.<sup>62</sup> Although there are greater percentages of Disabled

people in jails than prisons, the percentage of people ages 55 and older is higher in prisons (15.7 percent, or 186,147 people, in prisons compared to 8.3 percent, or 55,300 people, in jails in 2022).<sup>63, 64, 65</sup> Because disability is more prevalent among incarcerated people ages 50 and older (44.2 percent to 59.7 percent in prisons and jails),<sup>66</sup> there is urgent concern about the quality of healthcare for the aging prison population.<sup>67</sup>

Although there has been a gradual decrease in the overall prison population in the United States during the past decade, the number of people ages 55 and older in prisons has not followed that trend, and comprises a growing portion of the total prison population.<sup>68</sup> The needs of older Disabled people who are incarcerated are less likely to be adequately met by privatized and private equity-owned correctional healthcare systems that have reduced staffing, have less oversight, and offer less individualized attention to patients. Parole hearing data analyzed by UnCommon Law,<sup>69</sup> an advocacy group for incarcerated people, found that Disabled people, including people with ambulatory disabilities, are granted parole at rates much lower (4.7 percent to 11.4 percent) than the general incarcerated population (17 percent).<sup>70</sup>

Disabled people who are incarcerated are the most vulnerable to inappropriate or substandard levels of care, as they have higher support needs or require specialty care that may be ignored or go unnoticed by unqualified staff, or staff that are instructed by management to minimize treatment. *CNN* documented numerous cases where Disabled people were jeopardized by privatized correctional healthcare, including the death of a woman whose diabetes went untreated by correctional healthcare staff despite her diagnosis being included in her medical history; people with HIV at the Gwinnett County Jail who were not given their medications; a person whose wheelchair was appropriated, necessitating an ER visit; people experiencing mental illness who were denied their prescribed medications; and at least two cases of people with cancer being given only over-the-counter pain medications in lieu of proper cancer treatment.<sup>71</sup>

Title II of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12132) states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>72</sup> The ADA thus applies to Disabled people who are incarcerated in state and federal correctional facilities and guarantees their right to access all correctional services and common spaces through the provision of reasonable accommodations or modifications if necessary. However, a 2016 report by Amplifying Voices of Inmates with Disabilities (AVID) found numerous ADA violations at prisons across the country, including inaccessible toilets, showers, and exercise spaces.<sup>73</sup> Moreover, the hostile, raucous, and unaccommodating environments in prisons and jails can be especially difficult for people with environmental sensitivities, including hyperacusis and electromagnetic hypersensitivity.<sup>74</sup> These diagnoses may be unrecognizable to medical staff, and even if they are acknowledged, the only alternative location to hold people in these facilities is often solitary confinement. The indiscriminate use of solitary confinement in prisons, jails, and detention centers severely aggravates mental health conditions and debilitates people with physical disabilities. The sensory deprivation, social isolation, and physical idleness for weeks or months on end all contribute to an increased risk of suicide.<sup>75</sup>

Diversion programs and other alternatives to incarceration, often based on coercive psychiatric treatment, are increasingly being touted by criminal legal reform advocates, “liberal” policy organizations, and mainstream mental health advocacy groups. This uncritical support has abetted the expansion of mental health courts in cities experiencing unprecedented levels of inequality and mass housing insecurity such as New York and Sacramento.<sup>76,77</sup> In 2022, the same year that California Governor Gavin Newsom signed the CARE Act into law,<sup>78</sup> New York City’s Mayor Eric Adams issued a directive that authorizes “the removal of a person who appears to be mentally ill and displays an inability to meet basic living needs, even when no recent dangerous act has been observed.”<sup>79</sup> Both the laws in New York City and California are poorly disguised attempts to demonize, target, and scapegoat unhoused people and people experiencing

mental illness for their governments' failures to rein in housing costs and rampant housing insecurity. In other words, these are modern versions of the "ugly laws" masked as public health and public safety initiatives.<sup>80</sup> While such programs may divert people experiencing mental illness from jails, they also increase rather than lessen people's involvement in the criminal legal system through case management and court-ordered treatment for low-level offenses that should not be criminalized or handled through the criminal legal system in the first place.<sup>81</sup>

About 44 percent of mental health court participants and about half of drug court participants fail their treatment programs and are sent back to jail or go to trial, often with worse charges against them.<sup>82, 83</sup> The lack of data made available to the public by state and city governments makes the efficacy of mental health courts in reducing recidivism difficult to evaluate, which warrants caution in the funding and expansion of such programs.<sup>84</sup> A 2020 literature review on mental health courts by the Council on Psychiatry and Law of the American Psychiatric Association, concluded, "Even after over two decades of research, questions remain regarding how MHCs meet their stated goals of reducing recidivism and improving psychiatric functioning. There are difficulties with sound experimental design in many of the published studies, a lack of transparency and detail about the specific procedures of the MHC(s) being studied, a lack of consistency about definitions of core outcome variables, and a publication bias toward 'positive' results."<sup>85</sup>

It is clear that the expansion of the carceral state through court-mandated treatment, including psychotropic incarceration, is both a violation of human rights and self-defeating as a rehabilitation strategy.<sup>86</sup> Without government provision of housing, employment, and community-based services, such interventions only replicate the carceral logics of the 1960s, according to which the advent of antipsychotic medications were conceived as an operative replacement for asylums, in effect substituting physical restraint with chemical restraint.<sup>87</sup> The urgent fight against coercive intervention must therefore be heeded as part of the ongoing struggle for disability rights, and within the historical context of deinstitutionalization in face of the ever present threat of

reinstitutionalization.<sup>88</sup> As the late disability rights advocate and co-founder of the American Association of People with Disabilities (AAPD), Justin Dart Jr., said a few years before his death, “No forced treatment ever.”<sup>89</sup>

## The Political Economy of Incarceration

*“A lot of people are talking about ‘criminal justice reform.’ Much of that talk is dangerous. The conventional wisdom is that there is an emerging consensus that the criminal legal system is ‘broken.’ But the system is ‘broken’ only to the extent that one believes its purpose is to promote the well-being of all members of our society. If the function of the modern punishment system is to preserve racial and economic hierarchy through brutality and control, then its bureaucracy is performing well”*  
(Karakatsanis 2019).<sup>90</sup>

When critiquing the racialized and ideological project of mass incarceration, we often neglect to consider the political economy of the carceral industry even though these analyses are mutually constructive.<sup>91, 92</sup> The political economy includes the media narratives and political rhetoric that scapegoat, pathologize, and stigmatize Disabled people, as well as the public policies that direct taxpayer dollars to criminalize, medicalize, surveil, manage, confine, and punish poor and Disabled people, who are inconvenient reminders of the brutality of capitalism and white supremacy, or who are deemed unproductive or “surplus” members of society.<sup>93, 94, 95</sup> The ever-shifting carceral state finds ways to extract wealth from objectified and dehumanized people through forced labor and the creation of carceral and extra-carceral industries<sup>96</sup> that need managers, administrators, enforcers, and of course a fearful public that is willing to redistribute wealth to these constituencies.<sup>97</sup>

Prison policy in the United States can be considered a form of wealth redistribution towards, or more correctly, wealth hoarding by a class of mostly white, male constituents who are invested in maintaining or expanding a large carceral bureaucracy.<sup>98, 99</sup> In a globalized, multicultural society in which average white men have lost the most status and constitute the largest growing political

threat,<sup>100, 101, 102</sup> it becomes economically and politically rational to “slap a uniform on them and assign them some minor or unnecessary task... at least that way, [the government] can keep an eye on them.”<sup>103</sup> Indeed, federal government spending that disproportionately allocates taxpayer dollars to law enforcement and national security makes racism and criminalization extremely lucrative for U.S. politics’ largest base of constituents.<sup>104</sup> (Congress itself is 75 percent white.) In the context of post-9/11 immigration securitization as well, “while the forces of globalization lead to a natural loosening of nation state borders and the transnational flow of labor back and forth between nations, the criminalization of immigration attempts to act as a counterforce to these powerful movements, with the aim of closing the American border to the free flow of labor.”<sup>105</sup> In other words, criminalization not only redistributes wealth towards white people, but blocks the criminalized, racially marginalized populations from attaining wealth and status. In Alabama, for example, HB 56 not only enhanced police authority to stop and check an immigrant’s status, but also made it harder for undocumented immigrants to work in the state.<sup>106</sup>

U.S. “intelligence”<sup>107</sup> and national “security” agencies are about 74 percent white, and their offices are among the least diverse workspaces in the United States.<sup>108</sup> This is also true in the private tech sector, where executive teams are 83 percent white, and 80 percent male.<sup>109</sup> Federal defense contractors such as Lockheed Martin, which collectively receive several hundred billion taxpayer dollars per year from the federal government,<sup>110</sup> have historically tried to limit public access to their corporate diversity data despite requirements for federal contractors to abide by U.S. Equal Employment Opportunity Commission (EEOC) reporting procedures. Estimates based on preliminary diversity reports obtained by *Reveal* through public records requests indicate that the executive ranks at these companies are disproportionately white and male.<sup>111</sup> As Fraser and Penzenstadler (2023) note, “The disparities highlight how tax dollars can reinforce gaps in wealth and opportunity for women and people of color.”<sup>112</sup> The defense contractor, Palantir, had zero women in its executive ranks just a few years ago, and in 2017, Palantir agreed to a \$1.7 million settlement with the U.S. Labor Department for discriminating against Asian applicants during the resume screening process.<sup>113, 114</sup> According to the original lawsuit, there was one

instance where 77 percent of 730 equally qualified candidates applying for seven engineering positions were Asian, and only one Asian applicant was hired.<sup>115</sup> Palantir's co-founder, Peter Thiel, has argued that the company's lack of diversity helps to reduce the "'threat' of subversion from workers."<sup>116</sup>

These facts further reflect the tendency for these polities to seek wealth redistribution for themselves—both non-college-educated white men holding down blue-collar jobs, and the "privileged, white suburbanites walking around the streets in Southern California"<sup>117, 118</sup>—and to expand the carceral state by targeting and containing racialized and otherized groups, particularly Black people and brown people, as well as Disabled people.<sup>119, 120</sup> It's not a coincidence that the economy, including concerns about inflation, and immigration were among the most pressing issues for voters in the 2024 presidential election, giving the edge to Donald Trump who won 80 percent of the voters who named the economy as the most important issue, and 90 percent of the voters who mentioned immigration as the most important issue.<sup>121</sup> Trump has pledged to intensify mass deportation at an unprecedented scale once he retakes the White House.<sup>122</sup>

In 2017, under the Trump administration, ICE launched its Extreme Vetting Initiative, since rebranded as the Visa Lifecycle Vetting Initiative, which initially planned to use artificial intelligence to monitor targeted immigrants' social media accounts to determine whether they would become "contributing members of society"<sup>123</sup> or criminals. ICE hoped to generate 10,000 investigative leads per year, i.e. they were intentionally seeking to find 10,000 new people to target every year.<sup>124</sup> The program is run by the Counterterrorism and Criminal Exploitation Unit of Homeland Security Investigations (HSI) and is under contract with General Dynamics, one of the largest defense contractors in the world. General Dynamics' corporate executive board is 90 percent white.<sup>125</sup>

Through the War on Drugs, local police departments have become militarized and incentivized to increase drug-related arrests targeting Black people and brown people under a federal disbursement scheme that made their funding contingent on meeting arrest quotas.<sup>126</sup> As Alexander notes, "The officers were

under tremendous pressure from their commander to keep their arrest numbers up, and all of the officers were aware that their jobs depended on the renewal of a federal grant.”<sup>127</sup> Karakatsanis explains, “As the bureaucracy expands, it employs larger and larger numbers of police officers, prosecutors, probation officers, defense attorneys, prison guards, contractors, and equipment manufacturers. People working in the system become dependent on its perpetuation for their livelihoods and even their identities.”<sup>128, 129</sup>

Exploring the relationship between crime and incarceration, the MIT economist, Peter Temin, found greater explanatory power by mathematically modeling crime rates as a function of incarceration (rather than incarceration rates as a function of crime), noting that incarceration, particularly in economically disadvantaged and racially marginalized communities, *increases* crime.<sup>130</sup> Removing just two or three breadwinners, caregivers, or elders in a community can starve neighborhoods out of social and financial capital, disrupt networks, separate families, increase alienation, and have other subversive effects on families and neighborhoods that increase reliance on policing, which in turn increases rates of incarceration.<sup>131, 132, 133</sup> In this era of mass incarceration, billions in taxpayer dollars have been invested into law enforcement and carceral infrastructure simultaneously with disinvestment from subsidized housing, public education, and community health services. Furthermore, incarcerated people and people who are formerly incarcerated are permanently stigmatized and legally excluded from opportunities for education, housing, and employment.<sup>134, 135</sup> Mass incarceration thus not only targets poor, racially marginalized people, but further entrenches crime and poverty in the United States while enriching white people.<sup>136</sup> The model of crime as a function of incarceration helps to explain how policing is a self-sustaining industry. It manufactures crime, which increases demand for more policing.

To provide some perspective on just how much United States culture and its economy are centered around carcerality, an article in *The Hollywood Reporter* reveals that crime and law enforcement procedurals comprise nearly 20 percent of scripted television programming, outnumbering all other genres.<sup>137</sup> A scathing 2020 report by Color of Change notes that “the crime genre glorifies,



justifies and normalizes the systematic violence and injustice meted out by police, making heroes out of police and prosecutors who engage in abuse, particularly against people of color.”<sup>138</sup> Alexander observes, “These television shows, especially those that romanticize drug-law enforcement, are the modern-day equivalent of the old movies portraying happy slaves.”<sup>139</sup> According to the Urban Institute, in 2021, state and local governments spent \$274 billion, or 7.5 percent of total expenditures, on police, corrections, and courts, which is four times the amount spent on housing and community development. Between 1977 and 2021, spending on the correctional industry, which includes prisons and jails, increased 346 percent, which is higher than any other category of expenditure increase except for public welfare.<sup>140</sup>

Private equity firms are increasingly using their financial clout and political connections both to take advantage of our society’s reliance on carcerality and to expand the carceral state. For example, the President of the National School Safety and Security Services, Ken Trump, wrote that private equity firms have recently started buying up businesses that provide security technology and services to K-12 schools. Trump observed that investors are “dumping millions into security hardware, product, and technology companies that the investors believe will flourish by capitalizing on public fears of school shootings.”<sup>141</sup> Ed tech companies like Bark,<sup>142</sup> Gaggle,<sup>143</sup> and Securly,<sup>144</sup> which are digital surveillance platforms extremely embedded in K-12 schools, are all private equity-owned or backed. As Higdon and Butler write in *Teen Vogue*, “These technologies have been sold to K-12 schools across the US with promises of greater safety and improved academic outcomes... But these technologies have failed to deliver on their promises. Worse, what they *have* delivered is a blow to some of the most basic requirements of quality education and an unprecedented violation of student privacy. The impact is particularly acute on communities of color, who are far more likely to attend high-surveillance high schools than white students.”<sup>145</sup>

The private equity company, H.I.G. Capital, which owns the prison healthcare company, Wellpath, also owns Symplicity, which is the second largest student case management software company in the United States.<sup>146</sup> Contracted with

over 1,000 institutions in higher education, Symplicity helps university administrations to deputize community members to surveil students and report “suspicious” behaviors, a mandate which often targets neurodivergent, Disabled students, and other marginalized students.<sup>147</sup> Private equity firms also control approximately a third of United States methadone clinics, and are leveraging their market share to lobby Congress to prevent other medical providers from being able to dispense methadone (a drug used to treat opioid addiction), thus limiting access to treatment that can save lives as well as help people to stay out of the criminal legal system.<sup>148</sup>

Agencies like the U.S. Department of Homeland Security (DHS) continuously seek ways to use technology to expand the carceral state, and tech companies like Amazon, Microsoft, and GitHub will always jump at the opportunity to supply these technologies to the government for a piece of those taxpayer dollars.<sup>149</sup> The only limits to the expansion of these bad policies and harmful technologies are what an informed public will tolerate, which is why it is important for disability advocacy organizations to remain vigilant and to work in cross-movement and cross-racial solidarity with other civil rights and social justice groups.<sup>150, 151</sup>

Although less costly and more effective alternatives to incarceration, policing, and mass surveillance exist, these systems are maintained so that all the benefits go to those invested in these institutions, while marginalized people, including Disabled people, are treated as objects for their profit making.<sup>152</sup> Transformative justice approaches that reimagine how communities prevent and respond to harm can help to ensure that root causes of violence are addressed; that state tools are never brought into the justice process to replicate oppressive power dynamics; and that nobody is excluded or treated as disposable in the seeking of safety and accountability.<sup>153</sup> However, transformative justice is a community-based approach that requires commitment from all parties involved to seek alternative ways of healing. The largest barriers to transformative justice are the people who are materially or emotionally invested in systems of punishment, exclusion, and restoration.

# I. Correctional Healthcare

Privatization and the policies that abetted mass incarceration since the 1980s are interlinked. More punitive and mandatory minimum sentencing under President Reagan's War on Drugs and its escalation under subsequent administrations put hundreds of thousands of Black people in prison. Correctional healthcare costs skyrocketed as the prison population expanded and grew older.<sup>154, 155</sup> Concurrent with President Reagan's demonization of government and taxes, and public indifference towards the growing proportion of Black people in prisons and jails in the 1980s,<sup>156</sup> privatization of correctional facilities became "politically permissive" and accelerated in the 1990s under subsequent administrations.<sup>157</sup> The Violent Crime Control and Law Enforcement Act, also known as the 1994 Crime Bill, passed by the Clinton administration, provided federal money for states to build more prisons and incentivized states to incarcerate more of their populations.<sup>158</sup> The now-debunked "superpredator" theory that was concocted by Princeton University professor John Dilulio and eagerly propagated by politicians, academics, and news publishers in the years following, legitimized the increased policing and incarceration of young Black men.<sup>159</sup>

The private correctional health industry that emerged, "a system that facilitates the illegal treatment of citizens in the custody of the state," was not propelled solely by economic forces, but was rather "a deliberate decision by local government legislative bodies to subject a particular constituency to market forces."<sup>160</sup> In this system, contractors are incentivized to provide the minimum care due to fixed reimbursement schemes, while the indemnification clauses in their contracts shield government agencies from costly lawsuits and disincentivize the provision of effective oversight. Meanwhile, corporations and private equity firms are better equipped to game the legal and regulatory system to survive lawsuits and evade damage to their reputations, both through limited liability and bankruptcy laws and by nature of being private entities.<sup>161</sup> Saldivar and Price (2015) note that private contractors are not bound by

Freedom of Information Act (FOIA) laws, and all attempts to pass legislation in Congress to remove private prison companies from FOIA exemption have been foiled by private prison industry lobbyists.<sup>162</sup> Because private equity firms, as opposed to publicly traded firms, are not even accountable to shareholders, this removes further layers of transparency, making these companies fairly immune to shareholder activism, for example.

Over 60 percent of United States jails currently use private contractors to deliver healthcare services to incarcerated people.<sup>163</sup> County governments, particularly in smaller counties, are often lured by contractors' promises of minimizing the risks and mitigating the costs involved with correctional healthcare, especially from potential lawsuits.<sup>164, 165, 166</sup> As Deitch (2020) notes, "the desire to avoid litigation is a major motivator" for county sheriffs, "since county officials hold the purse strings for the sheriff's department as well as the ultimate financial liability for any lawsuits."<sup>167</sup> In practice, however, some county jails have been more exposed to lawsuits by outsourcing healthcare even while the contractors remain shielded.<sup>168</sup> A study by *Reuters* of recent deaths at over 500 city and county jails found that facilities that contracted with private correctional healthcare companies had higher mortality rates than jails with publicly operated healthcare.<sup>169</sup>

One of the most egregious examples of the ways that private equity-owned prison companies shield themselves from liability is the case of Corizon Health, now known as YesCare, which has had multiple private equity owners since 2007.<sup>170</sup> There are currently over 500 active lawsuits against Corizon for a litany of issues, with a variety of claimants including state governments, hospitals, formerly incarcerated people, and former employees, as well as a former Corizon CEO. The claimants allege unpaid invoices, neglect, wrongful injury, wrongful death, and unlawful termination among other violations.<sup>171, 172</sup>

In 2022, Corizon split into two companies, with its assets including all its government contracts worth hundreds of millions of dollars transferred to YesCare, and its liabilities, including the money owed to creditors, shifted to a shell company, Tehum, which immediately filed for bankruptcy.<sup>173</sup> If the

bankruptcy is approved by the federal courts, it would essentially shield Corizon's assets from creditors and vastly reduce the settlements awarded to the claimants. And, as noted by Schwartzapfel (2023), the indemnity clause that would have protected government agencies from lawsuits would no longer hold, because Corizon was split into two companies.<sup>174</sup> Corizon's "bad faith" tactics have already left state and local government agencies with liabilities in the hundreds of thousands of dollars, and is just one example of how troubled companies, under private equity management, will attempt to avoid their contractual obligations.<sup>175</sup> In 2024, the Department of Justice supported a motion to dismiss Corizon's bankruptcy case, suggesting that maybe Corizon has pushed the envelope a bit too far even for an industry that routinely pushes the limits of shady business practices.<sup>176</sup>

It's clear that the business model for private contractors in the correctional healthcare system is not much different from that in other healthcare sectors. Companies may seek to maximize margins by taking advantage of flat fee contracts that incentivize them to provide the minimal services, including denying or delaying medical care to people in custody.<sup>177</sup> Per-prisoner fee contracts can also result in delivery of services that are not scaled to patients' needs, as in the case of the Illinois Department of Corrections' decades-long history of "shoddy care" with the private company, Wexford Health Services, which "may have cut short the lives of some inmates."<sup>178</sup> For example, because contracts often stipulate that the companies must pay a share of the cost for emergency care and other off-site medical care, providers are incentivized to treat patients in the jail infirmary even when a higher level of care is necessary.<sup>179</sup> Senior medical staff at these companies have corroborated that they have been told by upper management to avoid sending patients to the emergency room. Corizon also allegedly paid bonuses to doctors anytime they averted an ER visit.<sup>180, 181</sup> A report by The Pew Charitable Trusts noted, "Because of the potential to incur substantial and unpredictable expenses, vendors can be apprehensive about assuming financial responsibility for patient hospitalizations."<sup>182</sup> A recent *Reuters* study examining the differences between private correctional healthcare and publicly managed correctional care found a

53 percent decrease in costs related to hospital visits one year after Corizon took over at one jail.<sup>183</sup>

## Private Equity in Prisons and Jails

*In 2014, 26-year-old Madaline Pitkin died at Washington County Jail in Oregon. The jail had contracted out its medical services to Corizon Health. According to depositions for the lawsuit, the jail was chronically understaffed, and unqualified staff were assigned to the sickest patients. Medical staff minimized Pitkin's symptoms and failed to adequately monitor her vital signs during the seven days that Pitkin was held in the jail, where she was detoxing from heroin. Pitkin requested help on four separate occasions, writing in her last request, "I feel like I am very close to death. Can't hear, seeing lights, hearing voices. Please help me." She died the next morning of severe dehydration. It was determined that a simple administration of I.V. fluids would have saved her.*<sup>184</sup>

*In 2016, Henry Clay Stewart died at the Hampton Roads Regional Jail in Portsmouth, Virginia, after waiting almost 30 days to receive medical attention for a perforated ulcer.<sup>185</sup> Twenty-five more incarcerated people have died there since 2015, and the jail was finally closed this year.<sup>186</sup> A scathing 45-page report by the U.S. Department of Justice found that Hampton Roads Jail, which was contracted with Correct Care Solutions (CCS), now part of Wellpath, had violated people's constitutional rights by failing to provide adequate medical care, and violated the ADA by placing prisoners experiencing mental illness in prolonged solitary confinement, which exacerbates mental health conditions.*<sup>187</sup>

The two largest providers of correctional healthcare services in the United States are YesCare and Wellpath,<sup>188</sup> both currently owned by private equity. YesCare, formerly known as Corizon Health, Inc., was acquired by the private equity firm,

Blue Mountain Capital Group, from Beecken Petty O’Keefe & Company, also a private equity firm, in 2017; was then sold to the holding firm, Flacks Group, in 2020,<sup>189</sup> which subsequently sold Corizon to the holding company, Perigrove, in 2021.<sup>190</sup> The frequent changes in ownership are very much a part of the private equity playbook. Although firms extract as much capital as they possibly can from these companies before selling them off, the companies often retain value for the next buyer, because industries like correctional healthcare operate in low competition markets with captive audiences and steady revenue streams from government contracts.<sup>191</sup>

Private equity firms frequently buy out distressed companies that have accumulated long lists of lawsuits and creditors. To help those companies stay solvent, private equity firms will resort to cost cutting, bankruptcy proceedings, or other legal maneuvers. In every case, rebranded companies continue to receive new government contracts, often claiming that they are not the same company despite often retaining the company’s management, standard operating procedures, and assets.<sup>192</sup> In 2022, for example, the Alabama Department of Corrections extended its contract, worth \$125 million, with YesCare despite three other companies that placed bids.<sup>193</sup> This year, Maryland opted not to renew its jail and prison healthcare contract with YesCare, despite the company’s claims that they are “not affiliated in any way” with Corizon.<sup>194, 195</sup> Arguably, private equity firms, like dung beetles, may be performing an important ecological function in the economy, by recycling distressed companies. But, it’s also plausible that private equity firms enable highly problematic business practices by helping these companies and the people that manage them to avoid financial, legal, and moral accountability.

In 2018, Correct Care Solutions (CCS) merged with the private equity-owned Correctional Medical Group Companies (CMGC), and the newly formed conglomerate was rebranded as Wellpath, which is owned by the private equity firm, H.I.G. Capital.<sup>196</sup> Prior to its acquisition by H.I.G., there had been nearly 1,400 lawsuits filed against CCS.<sup>197</sup> A *CNN* investigation of over 120 facilities contracted with Correct Care Solutions found widespread lack of training among its employees and chronic understaffing issues that led to substandard care and

upwards of 70 preventable deaths between 2014 and 2018.<sup>198</sup> The Pierce County Jail in Tacoma, Washington, terminated its contract with CCS after a little over a year, noting that “[CCS] performance under the contract was morally reprehensible” with frequent instances of improperly licensed medical professionals working at the clinic, lost or missing medical records, and weekly turnover of staff.<sup>199</sup> Other jails that are currently contracted with Wellpath continue to spawn lawsuits, including a recent case involving a 25-year-old’s suicide at Davidson County Jail in Nashville, Tennessee.<sup>200</sup>

The majority of Wellpath’s business is in providing healthcare services to jails, but H.I.G. Capital also owns TKC Holdings, which provides cafeteria, commissary, and telecommunication services to correctional facilities and detention centers.<sup>201</sup> In his book, *Plunder: Private Equity’s Plan to Pillage America*, Brendan Ballou describes how private equity firms exploit incarcerated people as a “captive audience” by providing bare minimum food and phone services and gouging people in prisons and jails on service fees.<sup>202</sup> Ballou found instances of people being charged upwards of \$12 for 15-minute phone calls, forcing cash-strapped people, the majority of whom cannot afford lawyers,<sup>203</sup> to either forgo communication with their families for months on end or have their meager wages garnished by these private companies. The legal scholar, Alec Karakatsanis, equates these practices to a modern-day form of convict leasing, where “[incarcerated people] work long hours every day in often dangerous conditions with miniscule wages to produce products for private corporations and government entities so that prisoners can afford to purchase basic necessities sold by other private corporations inside prison walls.”<sup>204</sup>

Just as disturbing perhaps is the surveillance capabilities that are built into the telecommunications services provided by private equity-owned contractors like Telmate. Prisons, jails, and ICE detention facilities that use Telmate’s video call technology record the conversations and user data of people on both sides of a call, including their dates of birth, home addresses, and Social Security numbers, and provide this information to law enforcement.<sup>205</sup> In 2017, Telmate was acquired by the private equity-backed company, ViaPath Technologies, formerly known as Global Tel Link (GTL).<sup>206, 207</sup> In 2020, Telmate’s data was breached, and



the personally identifiable information of thousands of incarcerated people and their families were posted on the dark web.<sup>208</sup>

Often, meals provided by private contractors are not just the bare minimum quality, but actually unsafe to eat, including rotten, moldy, and maggot-infested food. The companies providing cafeteria services spend about \$1.29 per meal, and often try to cut costs by serving questionably sourced food.<sup>209</sup> In some cases, contractors were discovered to be sourcing food from suppliers who explicitly marked their products as “not fit for human consumption” or “for further processing only.” But, because private equity firms often own both the cafeteria and commissary services at these facilities, it doesn’t matter to the contractors if the food served is inedible, as it encourages people to buy food from the commissary at a great markup.<sup>210</sup> David Fathi, of the American Civil Liberties Union, observes that “Market forces don’t operate in the prison context for the reason that prisoners have absolutely no consumer choice.”<sup>211</sup>

There are no existing academic studies comparing the quality of privatized correctional healthcare to government-provided services,<sup>212</sup> but a recent study by *Reuters* analyzing data from over 500 large jails found that contracting with private correctional healthcare companies was associated with 18 to 58 percent higher risk of death for incarcerated people.<sup>213</sup> The mortality rate at jails with publicly managed healthcare *decreased* 2.4 percent from 2015 to 2019, while the mortality rate at jails that contracted out healthcare to private companies *increased* 20.2 percent in that same time period. For all jails, the mortality rate has increased about 70 percent since 2008. (See Figure 1 below.)

Although Wellpath and YesCare are the largest correctional healthcare companies in the U.S., it’s far from the case that they hold a monopoly on abuse, corruption, and neglect in the correctional healthcare industry. Other for-profit, non-private equity-owned companies, such as Advanced Correctional Healthcare (ACH) and NaphCare Inc., are also competing for these lucrative contracts with county jails and state prisons and are equally plagued with histories of wrongful deaths in custody.<sup>214</sup> At the Washoe County Jail in Reno, Nevada, ten people who were incarcerated died within the two years that

NaphCare took over responsibilities for the jail’s healthcare services after winning a \$5.9 million per year, no-bid contract. The death rate was 400 percent over the national average for county jails.<sup>215</sup> The *Reuters* study mentioned earlier looked at data for the five largest private contractors, and the analysts found that two non-private equity-owned private companies, NaphCare and Armor, had the worst outcomes in the three year period from 2016 to 2018.

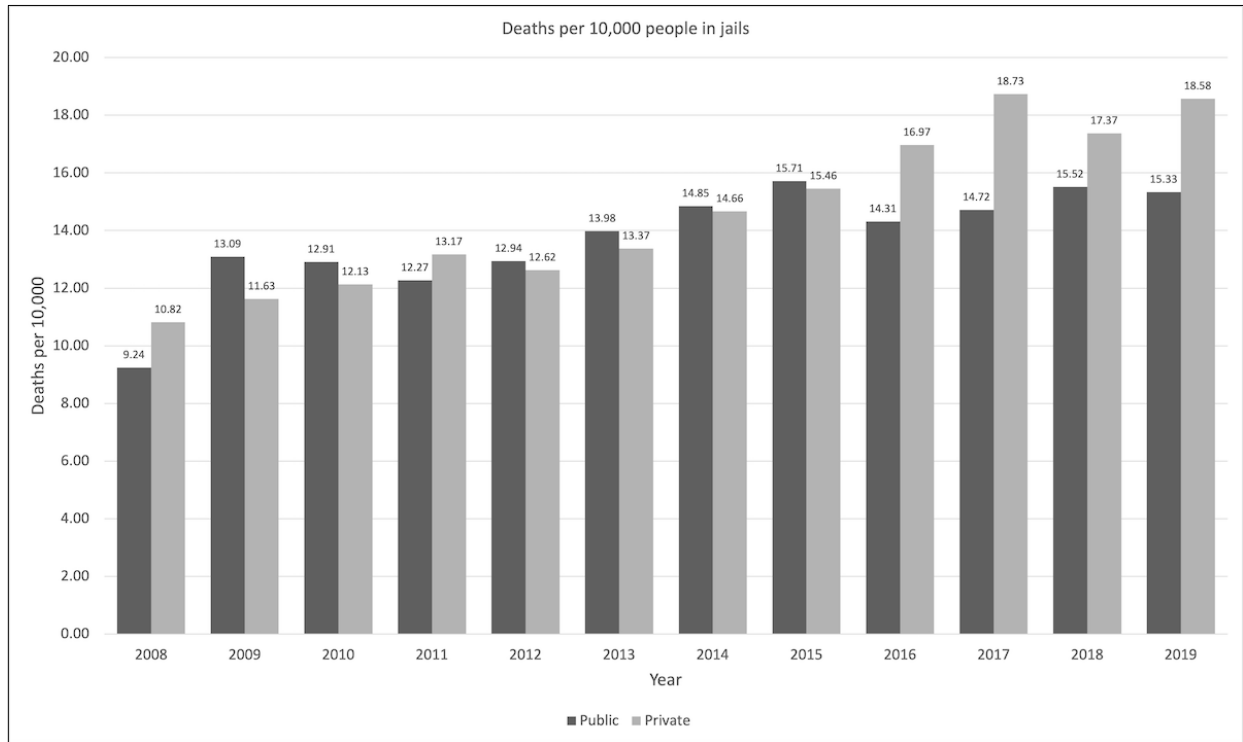


Figure 1. Number of deaths per 10,000 people in United States jails. Through public records requests, *Reuters* journalists gathered data on 7,571 deaths that occurred at 523 jails between 2008 and 2019. The yearly death rate was calculated by dividing the number of deaths by the average daily population. Image description: A clustered bar chart showing the number of deaths per 10,000 people in jails with publicly run healthcare (left bars) and jails with privatized healthcare (right bars) for each year between 2008 and 2019. There is a generally increasing trend in the number of deaths from 2008 to 2019 for jails with privatized healthcare and for both jail types combined. Data source: *Reuters*.<sup>216</sup>

Because consolidation has reduced competition in the correctional healthcare market, it can be a challenge for city and county agencies to find alternative providers when companies like Wellpath may be the only provider available in an area. This was the case in Forsyth County Jail in Winston-Salem, North Carolina, where two preventable deaths occurred in the span of a month in

2017.<sup>217</sup> When it came time to find a new contractor that year, Correct Care Solutions was the only bidder.<sup>218</sup> The Pierce County Sheriff’s Department in Tacoma, Washington, also cited consolidation as the reason its hand was forced into signing a contract with Wellpath/Correct Care Solutions, noting that “with CCS buying out so many other correctional healthcare companies, Pierce County’s options for a contracted health care provider were significantly diminished.”<sup>219</sup> The Montgomery County Jail in Conroe, Texas, did manage to find another contractor, Southwest Correctional Medical Group (SWCMG), when it discontinued its contract with CCS in 2017, only to be forced to work with CCS again when Wellpath (formerly CCS) acquired SWCMG in 2018.<sup>220</sup>

In recent years, some counties that did not renew their contracts with private correctional healthcare companies have opted instead to collaborate with local university medical centers, and others are looking to establish publicly managed services, but it can take years for government agencies to build up the necessary infrastructure and staffing to replace the private contractors that have been operating at these sites for years or even decades.<sup>221, 222, 223</sup> State prisons, as well, often have a bleak choice of contracting between private equity-owned contractors or other privately owned companies like Centurion, Wexford Health Sources, and VitalCore Health Strategies, among just a handful of other companies. In response to public pressure, the Massachusetts Department of Correction dropped Wellpath this year and awarded a five-year, \$770 million contract to VitalCore Health Strategies even though, as *The Boston Globe* reports, VitalCore’s record is hardly spotless.<sup>224</sup>

## Prisons and Jails Are Not the New Asylums

*“Whenever I hear somebody say that mental health is the issue when it comes to violence, I know inherently they are not interested in solving the problem at all” (Barbarin 2023).<sup>225</sup>*

According to 2011 federal survey data, about 15 percent of people in state or federal prisons, and 26 percent of people in jails reported experiencing serious psychological distress.<sup>226</sup> In total, between 37 and 44 percent of incarcerated people are experiencing mental illness,<sup>227</sup> and almost half of incarcerated

Disabled people have previously received services in congregate care settings.<sup>228, 229</sup> Since the very beginnings of mass housing insecurity in the 1980s, the predominant narrative deployed by politicians and mainstream criminal legal reform advocates to explain these troubling statistics has been that prisons and jails have become de facto warehouses for people experiencing mental illness, along with a perfunctory acknowledgment that these institutions are not adequate places for Disabled people who need healthcare and shelter.<sup>230, 231, 232,</sup>  
<sup>233</sup> The commonly peddled thesis about why there have been increasing numbers of unhoused people and incarcerated people with mental illness is that as we began shutting down the asylums in the 1950s, Disabled people ended up on the streets or in jails, because they presumably need to be in psychiatric hospitals.<sup>234, 235</sup>

Deinstitutionalization as a movement was already underway by the 1950s. The Community Mental Health Act of 1963, signed by President Kennedy, formalized the nation's transition from custodial institutionalization to community-based treatment centers. Although these community services were never properly funded, many of the people released from psychiatric institutions in the 1950s through the 1970s never ended up on the streets, although some did end up in nursing homes, group homes, and single-room occupancy (SRO) units, which are a type of affordable housing.<sup>236, 237, 238</sup> Conjecturing a causal link between deinstitutionalization and mass incarceration requires taking as fact the erroneous assumption that the same population was transferred from one carceral system to another, but this is not borne out in demographic studies of the populations held in these different systems.<sup>239, 240, 241</sup> A 1986 study of the unhoused population in Los Angeles, for example, found that less than 30 percent had ever been institutionalized, but because of methodological flaws, even these early studies tended to oversample the subpopulations of unhoused people who were experiencing mental illness and using substances.<sup>242</sup>

Houselessness, and mass housing insecurity more broadly, didn't become a national issue until the 1980s when Reagan- through Bush-era policies that dismantled social safety nets based on racialized discourses of the "welfare queen," combined with laws that expanded policing and prison systems based

on discourses of “Willie Horton” and the “dangerous Black man,” targeted different populations to fill the void left when one carceral system (the asylum) shut down and others expanded, creating new generations of incarcerated people.<sup>243, 244, 245, 246, 247</sup> In the 1970s and 1980s, the mass demolition or conversion of SRO buildings, where some formerly institutionalized people resided, into luxury apartments, certainly displaced many people into homelessness.<sup>248</sup> Munshi and Willse (2007) note how, immediately following Reagan’s welfare retrenchment, policing and mass incarceration expanded in order “to manage the social unrest and disorder that results from the dismantling of the social safety net.”<sup>249</sup> During this same time period, Harvard University scholars, George L. Kelling and James Q. Wilson, as well as journalists like Malcolm Gladwell, author of *The Tipping Point: How Little Things Can Make a Big Difference*, popularized the narrative of “broken windows” policing,<sup>250</sup> which rationalized aggressive policing of Black people, including the use of stop-and-frisk, and the criminalization of minor offenses as necessary to prevent crime from spreading.<sup>251, 252</sup>

Critics of deinstitutionalization often take a narrow and ahistorical perspective by failing to consider how lack of community services, housing, and employment increase the risk of entanglement with the criminal legal system, particularly through interactive effects with stigma and racism, and how marginalization, poverty, criminalization, policing, and incarceration are inherently debilitating and (re)traumatizing. Criminal legal reform organizations and mainstream political advocacy groups that receive funding from billionaire philanthropists, such as the Koch brothers, are perhaps also inclined to propagate narratives of individual blame and pathology to deflect from the political manufacturing of the affordable housing crisis and mass incarceration.<sup>253</sup> While the importance of investment in community-based services must not be understated, a singular focus on the lack of mental health services can be as misleading as other critiques of deinstitutionalization, particularly in its purported relations to crime and homelessness, in that it overly medicalizes the sociopolitical problems of mass housing insecurity and unaffordable housing in the United States.<sup>254, 255</sup> As the anthropologist, Arline Mathieu writes, “Broadly speaking, the administration’s continued identification

of homelessness as a medical problem of individuals served to divert attention from homelessness as a systemic economic and housing problem.”<sup>256</sup>

While President Reagan repealed major provisions of the Mental Health Systems Act of 1980, further gutting funding for community-based mental health services, his administration also cut public assistance benefits and funding for low-income housing by 80 percent. In New York City during the 1980s, the availability of apartments renting for \$300 or less per month decreased by 72 percent, and the number of unhoused people more than doubled by the end of the decade.<sup>257</sup> Unhinged greed and wealth accumulation became culturally celebrated in films like *Wall Street*, and criminalization of poor and Black people intensified, as evidenced by the staggering 115 percent growth in the New York Police Department budget, a rate not even matched in the following decades.<sup>258</sup> Schermerhorn (2023) observes that “a prison sentence could devastate a Black family economically, slashing its wealth by two-thirds. Fines, fees, lost income, and family debts crushed Black Americans.”<sup>259</sup> In addition to Reagan’s tough-on-crime policies that disproportionately targeted Black Americans, the administration was instrumental in destroying unions and constricting the role of the Equal Employment Opportunity Commission, both important apparatuses that provided a safety net for Black workers.<sup>260</sup> The sociologist, Robert B. Hill, writes that “the sharp increases in unemployment, poverty and one-parent families among [Black Americans] were due, in large part, to the structurally discriminatory effects of major economic forces and policies” that erased “the social and economic gains achieved by black families during the 1960s.”<sup>261</sup>

Beyond the medicalizing narratives of treatment or lack thereof, the dismal outcomes for people experiencing mental illness and houselessness during the past four decades, particularly people who became criminalized and incarcerated, must be considered in context of the far more consequential impacts of racism and poverty.<sup>262</sup> As the late author and University of California neuroscientist, James Fallon, explained as he contemplated the trajectory of his own life as a well-regarded psychopath, what largely separates incarcerated, neurodivergent people from those who become doctors, politicians, and

corporate executives<sup>263</sup> is the latter group's access to social and financial capital. Rapidly growing income inequality in the 1980s that coincided with Reagan-era neoliberalism and tough-on-crime policies that especially targeted Black families almost guaranteed that prisons and jails would be filled in the following decades.<sup>264, 265</sup> As the author and activist, Kimberly Jones, wrote a year after the police killing of George Floyd, "One of the things one must consider about being Black in America is how LUCKY any of us has to be to get to adulthood without so much trauma and so many scars we can barely function."<sup>266</sup> It should not be a surprise that there is a high prevalence of disability among the marginalized and criminalized populations that are trapped in these systems, as that was always the intended impact of mass incarceration.<sup>267, 268</sup>

Studies on the health impacts of detention on refugees and asylum seekers are helpful in shedding light on the causal link between incarceration and disability since studies on migrant populations remove any supposed links and possibly confounding associations between mental illness and crime/arrest. A recent meta-analysis found that depression is present in about 68 percent of immigrant detainees while PTSD has a prevalence rate of 42 percent.<sup>269</sup> Because of experiences with pre-migration trauma and peri-migration insecurity, policing, and stigma, migrants generally experience depression and PTSD at high rates,<sup>270</sup> but studies consistently find that prevalence rates of mental illness for detained immigrants are much higher than rates in the non-detained migrant population.<sup>271, 272</sup> Because undocumented immigrants are generally arrested or detained for reasons distinct from the non-immigrant population, the research findings suggest that incarceration by itself negatively impacts mental health.<sup>273</sup> One study of Iranian and Afghani refugees found that these effects persisted after being released from detention.<sup>274</sup> Collectively, these findings on the impacts of detention on immigrants' mental health suggest that incarceration is in and of itself debilitating and that criminalization leads to incarceration. Together, criminalization and incarceration contribute in no small part to the higher rates of mental illness and disability among incarcerated people. This is why we need to stop saying that "the largest treater of mental health is the U.S. criminal justice system,"<sup>275</sup> because the evidence is abundant and clear that there is no healing or treatment that can occur in a system where marginalized

people are constantly exposed to policing, surveillance, arrest, trauma, erasure, and containment.

## Mental Health Courts and “Alternatives to Incarceration”

*Reginald “Neli” Latson is an autistic Black man, now in his thirties, who lives in Virginia. In 2010, when he was 18, he was sitting outside the Stafford County library, where he liked to hang out. It was still early morning, so Latson was waiting for the building to open. That’s when someone saw him and called the sheriff’s office, reporting that there was a “suspicious male, possibly in possession of a gun.” When the school resource officer came by to investigate, he didn’t find a gun, but he was assaulted as he tried to grab Latson, who was trying to leave. Latson was arrested, charged, and sentenced to ten years in prison. After five years in prison and hundreds of days in solitary confinement, he was released on parole in 2015, and was granted a pardon in 2021, though Latson still has a felony conviction on his record. When Governor Terry McAuliffe pardoned Latson, he correctly observed that Latson “never should have been sent to jail,” but curiously added that, “He needed medical care for his autism.”<sup>276, 277, 278</sup>*

Diversion programs, “problem-solving courts,” mental health courts, and most recently, CARE courts, were initially conceived in the 1990s as an alternative to incarceration for people with disabilities. As a relatively new industry with scant science behind its development, diversion programs vary widely in their implementation, including qualifications for entry, duration of treatment, availability of community services, and operationalization and measurement of success or completion.<sup>279</sup> Despite having a semblance of voluntariness about participation, the common thread in all diversion programs is coercive treatment with the threat of reincarceration or conservatorship for noncompliance.



People held within the criminal legal system traditionally have had two entryways into diversion programs. Pre-booking diversion occurs when police detain an individual without charging the person with a crime. Post-booking diversion occurs either in court or in jail, after the person has been charged.<sup>280</sup> The intent of post-booking diversion programs and mental health courts is to help people who have been arrested for low level offenses to avoid jail or prison time. In 2022, the Mental Health Diversion law in California was revised by Governor Gavin Newsom to require that judges now presume that mental illness is a factor in all crimes being considered for prosecution and to consider eligible cases for pretrial diversion.<sup>281, 282</sup> Under the revised law, the number of petitions granted for mental health diversion increased 395 percent, from 947 in 2020 to 4,687 in 2023.<sup>283</sup> In San Francisco alone, over 300 petitions have been granted since 2020, but without an attendant decrease in the number of people incarcerated in the city's jails. These dismal results prompted the MacArthur Foundation this year to suspend its Safety and Justice Challenge grants to the District Attorney's Office, which have totaled over \$3 million since 2021.<sup>284</sup> In its letter to the San Francisco District Attorney, the MacArthur Foundation noted that it was "particularly concerned about the increases in [San Francisco's] jail population and racial and ethnic disparities."<sup>285</sup>

With only a handful of mental health courts in the 1990s expanding to over 655 today,<sup>286</sup> diversion programs have grown slowly and retain a small but noticeable footprint within the United States' expansive criminal legal system.<sup>287</sup> For 2024, Congress allocated \$40 million in federal grants to the development of mental health courts and other diversion programs.<sup>288</sup> In 2018, \$200,000 of that year's federal grant money was used to establish a mental health court in Nashville, Tennessee, which only diverted fourteen people in the four years since the court was established. One case involved a group of four men who violently assaulted and robbed a teenager in a parking lot. Prosecutors reduced the charges against the four men from felony to misdemeanor so they would be eligible for diversion. Allegedly, the judge, Rachel Bell, was well acquainted with the defendants' families and even received a \$500 political donation from one of the families while the case was being adjudicated.<sup>289</sup>

The above case and others raise questions about whether diversion is actually reducing jail populations, and how mental health courts are potentially being abused to help privileged and politically connected individuals avoid prison or jail time for violent offenses rather than diverting people experiencing mental illness as intended. In 2023, a California radiologist, Dr. Dharmesh Patel, drove his Tesla carrying his wife and two children off a cliff. Because everyone survived, the doctor was only charged with attempted murder, and was eligible for diversion through the mental health court, because he was allegedly experiencing depressive symptoms. Patel was committed to home custody for two years with mandated psychiatric treatment and ankle monitoring.<sup>290</sup> Ironically, under current law in California, if a person experiencing mental illness commits attempted murder, they would be eligible for diversion and would have a clean record upon completion of the program. If a person steals a loaf of bread, because they were hungry, they would not be eligible for diversion and would be branded a criminal for life.<sup>291</sup>

Arguments in favor of a separate system for incarcerated Disabled people are inherently racist and ableist. For example, in their position statement in support of diversion programs for people experiencing mental illness, Mental Health America argues that “Such diversion also enhances public safety by making jail and prison space available for violent offenders.”<sup>292</sup> This statement is troubling, because it implies that some people deserve the debilitating and alienating confinement, punishment, and disenfranchisement meted out by the criminal legal system, while others deserve leniency on account of disability. However, just as disability rights advocates correctly argue that accessible design, such as curb-cuts, improves quality of life for everyone, so should disability rights and mental health advocates be focused on dismantling all systems of incarceration, which are inherently debilitating and nonrehabilitative.<sup>293, 294</sup> People experiencing mental illness are no more (or less) deserving of diversion and understanding than other people who have been criminalized and incarcerated.

California’s recently implemented CARE Courts function similarly to pre-booking diversion, except that judges are authorized to mandate up to two years of psychiatric intervention even when no crime has been committed. The CARE

Court system, which was established by Governor Gavin Newsom with overwhelming bipartisan support in 2022 through the Community Assistance, Recovery, and Empowerment (CARE) Act, significantly expands the scope for court-ordered Assisted Outpatient Treatment (AOT) in California by extending authority to civilians—including family members, acquaintances, and service providers—to file a petition for a hearing against a person experiencing mental illness. After receiving a clinical evaluation, if the person is determined to be eligible, they would receive a treatment plan under court supervision and would be required to check in with the court at regular intervals. After a year, a judge may order another year of treatment or release the person from the program. Although medication cannot be forcibly administered, people can be coerced by threat of conservatorship to follow their treatment plans.<sup>295, 296, 297</sup>

AOT, also known as outpatient civil commitment, was established in California in 2002 under Laura’s Law, and similar programs are active in 46 other states, mainly as a result of intense lobbying since the 1990s by the Treatment Advocacy Center.<sup>298</sup> New York’s own version of AOT, known as Kendra’s Law, was established under the state’s Mental Hygiene Law in 1999.<sup>299</sup> An analysis of over 30,000 AOT petitions filed between 1999 and 2021 in the state of New York found that 65 percent of all petitions were filed against either Black people (38 percent) or Hispanic people (27 percent).<sup>300</sup> The legal scholar, Victoria Rodríguez-Roldán, observes that because AOT laws get passed through opportunistic media coverage and politicization of murders committed by people experiencing mental illness, it is safe to infer that the intent of these laws rests primarily upon concerns about crime, not health and wellbeing. And because people subject to AOT experience a severe loss of rights and civil liberties, and because people of color are disproportionately impacted, Rodríguez-Roldán concludes that “it should be easier to view the practice more akin to criminal probation or parole than therapy. Thus, the conclusion that any overrepresentation of minorities in the AOT program is harmful is inescapable.”<sup>301</sup> Much like probation, which was originally conceived as an alternative to incarceration, but instead has become an expansion of the carceral state,<sup>302</sup> Rodríguez-Roldán determines that AOT is essentially an extension of correctional supervision.

Because no crime has been committed in cases brought to the CARE Courts, alternatives to incarceration can reasonably be considered an expansion of the carceral state through literal criminalization of mental illness and the deputizing of civilians to expand such policing of mental illness. When treatment is packaged with policing, surveillance, and court supervision, it risks further eroding trust in the mental health profession, and diverts public funding from housing, education, and community programs that demonstrably improve people's material security and wellbeing.<sup>303, 304, 305</sup> As well, the administration of antipsychotic drugs in court-ordered outpatient treatment regimes, and in nursing homes and other congregate care settings for behavioral control suggests a widespread and longstanding repurposing of psychotropic drugs for less than therapeutic goals.<sup>306, 307, 308, 309, 310</sup> Therapeutic claims are further unsubstantiated given studies that indicate questionable efficacy, permanent brain damage, and harmful side effects that can result from long-term usage of these drugs.<sup>311, 312, 313, 314, 315</sup>

In 2023, Disability Rights California and other civil rights groups filed a petition against the state and the Health and Human Services Agency challenging the constitutionality of the CARE Courts on the grounds that they violate the constitutional right to due process. The petition was declined by the federal court, but the issues raised about the CARE Courts remain apropos, which is that they coerce people into treatment, "not because they are a danger to themselves or others, but because a judge has speculated they are 'likely' to become so in the future."<sup>316</sup> Because the criteria for court-ordered treatment are vague, and because civilians and police are authorized to petition for a court hearing, the CARE Act casts a wide net that is likely to entangle more people in the criminal legal system, particularly Black people with disabilities, who are more frequently misdiagnosed with schizophrenia due to clinicians' racial biases.<sup>317, 318</sup>

A recent investigation by *Bloomberg Law* on the first several months since California CARE Courts were implemented has found poor utilization by the public and little of the promised government support for participants to find housing. Between October 2023 and March 2024, among seven of the eight

counties participating in the initial rollout, only 321 petitions were filed for a combined population of 16.9 million in those counties. Unfortunately, the state is not making detailed data available to the public to assess outcomes.<sup>319</sup> In June, Governor Newsom indicated his intention to cut \$340 million from the CARE Court's main housing program on top of \$737 million in cuts to California's affordable housing programs this year, which would make the CARE Act a bit of a bait-and-switch, since the mandated treatment component remains intact while the housing provision is being stripped away. When a reporter at *CalMatters* asked Governor Newsom about the planned cuts, his response was, "these are tough days."<sup>320</sup>

Mental health courts and CARE Courts are founded on two erroneous presumptions. The first is that coercive intervention is not also a form of incarceration. All manifestations of these alternatives to incarceration entail some form of curtailment of freedom, such as physical containment, case management including mandatory check-in, chemical incarceration, and geographic monitoring and circumscription through ankle monitors. Coercive intervention goes against current mental health guidance from the World Health Organization and the United Nations, which have declared a need to move beyond such practices. As Gregg Bloch, a professor of medical ethics at Georgetown University Law Center, once observed, "It is not ethical or legal to take difficult-to-handle people, even violent criminals, and drug them to make them less violent. It would be like a doctor riding around with the police and injecting violent offenders."<sup>321</sup> Although diversion programs are not inherently problematic in their general intent, the coercive aspects in their design and implementation, including the threat of conservatorship, are a human rights violation.<sup>322</sup>

The second presumption is that mental illness, particularly untreated mental illness, is a sufficient explanation and/or predictor for crime or violence. Because a diagnosis is not required to be eligible for diversion, almost everyone who commits a crime could be considered by the courts to be mentally ill, and the Mental Health Diversion law essentially conflates mental illness with criminality. One doctor testified recently that she could find a diagnosis in every case

brought before the mental health courts.<sup>323</sup> This shouldn't be surprising, given the high lifetime prevalence of mental illness, and given the trends of psychiatric expansionism and overdiagnosis since the publication of the third edition of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* in 1980.<sup>324</sup> It is also important to understand that what constitutes "criminal behavior" is politically and socially constructed by elites in ways that excuse their own transgressions, and punish and pathologize othered, poor, and racialized people.<sup>325</sup> Mental illness is similarly politicized, weaponized, and criminalized, especially against Black people.<sup>326</sup>

A retrospective analysis conducted in 2006 by mental health clinicians found that among a group of people experiencing mental illness who were diverted to community-based mental health treatment, less than four percent of the criminal offenses for which they were arrested could be directly attributed to mental illness. The authors of the study concluded, "Persons with serious mental illness may be overrepresented in jails and prisons, but we can offer little evidence from our postbooking sample that it was their illness that got them there."<sup>327</sup> The study corroborates two important findings in the research literature that suggest firstly that when people experiencing mental illness are caught up in the criminal legal system, it is more likely that co-occurring substance use is a mediating factor in their criminalized behaviors.<sup>328</sup> Secondly, that situational factors, such as being poor, unemployed, and/or unhoused, are more proximate explanations for crime than an individual's mental illness per se.<sup>329</sup>

In this light, diversion programs decriminalize mental illness only to the extent that they may help certain eligible people to avoid prison or jail, while concurrently they legally codify stigma and discrimination against people experiencing mental illness by legitimizing stereotypes associating mental illness with crime and violence.<sup>330</sup> Unfortunately, many criminal legal reformists, including well-intentioned organizations that provide legal assistance and advocacy for incarcerated people, perpetuate these harmful, pathologizing stereotypes in defense of their clients, because the criminal legal system rewards individual pathologization. For example, commenting for an article

about widespread abuse of incarcerated people by the Illinois Department of Corrections, the executive director of the Uptown People's Law Center, Alan Mills, recently told a reporter, "If you look at the misconduct as a symptom of an illness, the first reaction should be, 'How do we up the amount of treatment that somebody is getting?' Because clearly they're not getting either enough or the right kind of treatment."<sup>331</sup> Mills added that correcting the behavior is like giving aspirin to a person with a fever until their temperature goes down, which is biologically reductionistic and contradicts what psychiatrists actually understand about psychopharmacology.<sup>332</sup> For example, when a person engages in self-injurious behavior, if we're not asking, *When did the behavior begin, and what might it be a reaction to?*, then an overly reductionist approach that assumes mental illness as the root of the problem becomes a justification for using psychotropic medication as a tool for increasing incarcerated people's tolerance to being held in inherently debilitating carceral environments, which can include food deprivation, social isolation, loss of phone privileges, restriction from physical activities, assault, gaslighting, and even goading into self-harm by staff and other inmates.<sup>333</sup>

While individual clients who would like to avoid sentencing may benefit from these reductionist and stereotyping arguments, however, the effect on the overall Disabled community is more criminalization. Because stigma and discrimination have multiple adverse effects on quality of life, such as creating barriers to housing, employment, and social inclusion,<sup>334</sup> the codification and legitimization of societal prejudices against people experiencing mental illness exacerbates existing social and economic disadvantages and hence increases the number of people who have contact with the criminal legal system by way of interaction with these other life outcomes. To be clear, it's important to acknowledge that there are cases where disease can affect behavior, but to the extent that "social problems become erroneously simplified as psychiatric problems" by situating the blame on individuals and their mental health,<sup>335</sup> diversion programs may have the unfortunate consequence of diverting public attention and resources from fixing urgent societal problems such as income inequality and mass housing insecurity, which can have more direct impacts on the material security and wellness of people who experience mental illness.

Research also shows that “when people are offered permanent housing without requiring services, they not only accept and thrive but are more likely to accept treatment.”<sup>336</sup>

The true extent of private equity’s role in the alternatives to incarceration industry is still unclear, but in 2014, the American Friends Service Committee wrote a report—one of the earliest critical analyses of the “Treatment Industrial Complex”—in which they cautioned that privatized community correctional “treatment” had the potential to expand the carceral state by financially incentivizing the placement of “more people on stricter forms of supervision than is necessary, for longer than is warranted.”<sup>337</sup> According to the Prison Policy Initiative, one in 61 adults were under some form of correctional supervision last year.<sup>338</sup> SCRAM Systems, the largest supplier of electronic monitoring solutions for correctional agencies, including ankle monitors and case management software, was acquired by the private equity firm, Riverside, in 2021.<sup>339</sup> Other suppliers, including Attenti and Sentinel, are also backed by private equity firms like Apax Partners.<sup>340</sup> One of the largest correctional healthcare providers in the United States, the private equity-owned Wellpath, provides stabilization services for the criminal courts, running clinics that help restore incarcerated people to competency to stand trial. Government agencies need to improve transparency and the public needs to know the extent to which companies like Wellpath are profiting from provision of case management and intervention services for the courts. In the conclusion of this report, we discuss other ways that private equity directly and indirectly influences and profits off of these industries, particularly through the criminalization of homelessness.

## The Regulatory Environment

To deny medical care to people who are incarcerated is cruel and unusual punishment. In 1976, the Supreme Court ruled in *Estelle v. Gamble* that incarcerated people have a constitutional right under the Eighth Amendment to have their medical needs met in prisons and jails. But, as Ellis and Hicken (2019) observe, “What adequate care actually means... has been left open for



interpretation.”<sup>341</sup> There are currently no federal laws that establish minimal standards of care at correctional facilities.<sup>342, 343, 344</sup>

There have been positive developments towards establishing some federal oversight and state-level regulation of prisons in the past decade, as well as some steps backwards.<sup>345</sup> In 2012, the U.S. Department of Justice began certifying auditors to conduct facility inspections to ensure compliance with the federal Prison Rape Elimination Act (PREA) Standards. In 2017, Colorado became the first state to prohibit solitary confinement beyond fifteen days, and other states have followed suit.<sup>346, 347</sup> California Assembly Bill 2632, which passed the state Legislature, would have limited the use of solitary confinement in all prisons, jails, and detention facilities in the Golden State, but was vetoed by Governor Newsom in 2022.<sup>348</sup> The Civil Rights of Institutionalized Persons Act of 1980 gives power to the Department of Justice to investigate the treatment of Disabled people in public institutions, including prisons and jails, but “the fact that a growing number of law suits now challenge the lack of mental health treatment in state prisons seems more an indicator of their failure than their success.”<sup>349</sup>

Europe has the highest standards of correctional oversight in the world, including protections against torture established through the European Convention on Human Rights. All member countries of the Council of Europe must follow the standards established by the European Prison Rules and must allow access to their correctional facilities for inspection by the European Committee for the Prevention of Torture (CPT). The United States is exceptional among Western nations in that it does not abide by international standards for human rights and has not established a permanent independent federal authority to routinely monitor the treatment of incarcerated people. Instead, the United States has historically relied on litigation through the federal courts, taking a reactive approach to remedy very specific instances of harm.<sup>350, 351</sup>

In response to recent litigation and negative media coverage of prison and jail conditions, there have been a handful of new oversight entities created at the local and state levels since 2010, including in Hawaii, Minnesota, New Jersey,

and Washington. As of 2020, fifteen states have such prison oversight mechanisms, which may include Ombuds offices or other monitoring and investigative agencies. However, state regulations are rarely enforceable and generally fall short of improving transparency and increasing accountability.<sup>352</sup>

In Nevada, state law requires county commissioners to inspect facilities and the health of people who are incarcerated every three months, taking “all necessary precautions against escape, sickness, infection, suicide and death.”<sup>353</sup> In total, twenty-eight states have established a minimum set of standards for their county jails, but it can be difficult for state governments to exert control at the county level, as many jails are run by sheriffs who are locally elected and therefore have some level of autonomy. As well, the minimal standards for regulating county jails are usually vague, and states have little authority to enforce compliance.<sup>354</sup> At the Washoe County Jail in Reno, commissioners were not even aware that the state laws existed until it was brought to their attention by the *Reno Gazette Journal*.<sup>355</sup>

Although incarcerated people could once rely on the courts to impose some oversight on correctional institutions, attempts to reform state prison healthcare through the federal courts have been hampered by the Prison Litigation Reform Act (PLRA), signed by Bill Clinton in 1996. The PLRA severely limited the conditions under which incarcerated people could bring a lawsuit to court and severely decreased the probability of successful litigation.<sup>356</sup> The law was passed concomitantly with tough-on-crime policies, and it was certainly suspect for Congress to deliberately curb the number of lawsuits that could be brought by incarcerated people at a time when facilities were experiencing overcrowding from the rapidly expanding incarcerated population.<sup>357, 358</sup> The PLRA was so effective that there was a 44 percent decrease in the number of lawsuits filed in federal district courts in the ten years after the law was passed compared to the ten years prior.<sup>359</sup>

Just this year, when a federal judge ruled that the healthcare provided in Louisiana prisons amounted to “abhorrent cruel and unusual punishment” and appointed federal monitors to oversee reforms in the state prison system, the

state filed an appeal claiming that the ruling violated the PLRA.<sup>360, 361</sup> Other states have proven similarly recalcitrant to enacting meaningful reforms, averse to the idea that federal judges can “meddle in how [their] prisons are run.”<sup>362</sup> In Illinois, a settlement reached in 2019 between the Illinois Department of Corrections (IDOC) and Uptown People’s Law Center stipulated that a federally appointed monitor would supervise reforms to its prison healthcare system, noting that people who were incarcerated had suffered irrevocable harm under its care.<sup>363</sup> However, IDOC just renewed its contract, worth \$4.16 billion, with privately owned Wexford Health Sources, which has provided medical services for Illinois state prisons for the past three decades “despite multimillion-dollar lawsuits against the firm and statewide complaints alleging substandard care.”<sup>364</sup>

## II. Immigration Detention

*“The systems of mass incarceration and mass deportation may seem entirely unrelated at first glance, but they are both deeply rooted in our racial history, and they both have expanded in part because of the enormous profits to be made in controlling, exploiting, and eliminating vulnerable human beings”*  
(Alexander 2010).<sup>365</sup>

Immigration detention is the federally authorized confinement of asylum seekers who are awaiting an interview, or undocumented noncitizens who have been apprehended or charged, and are waiting for a court hearing or waiting to be deported. The roots of the modern immigration industrial complex can be traced to the Reagan administration,<sup>366</sup> which initiated mass detention and deportation in the 1980s as a tool for deterring undocumented immigration.<sup>367</sup> Such policies of exclusion and containment in reaction to perceived threats from different immigrant groups have long been part of United States history, but the criminalization and targeting of immigrants as a national security threat truly escalated after 9/11, particularly for people from Middle East and North Africa countries, and Latin America.<sup>368, 369</sup>

The Immigration Reform and Control Act of 1986 (IRCA) was historically significant legislation that updated United States immigration law and enforcement. IRCA increased funding for border security and made it illegal for United States employers to hire undocumented immigrants. Although IRCA would grant permanent residence to 2.7 million undocumented people, it would also help set the stage for the increasing criminalization and detention of immigrants in the following decade, which saw Reagan’s escalation of the War on Drugs, and the subsequent passage of the Antiterrorism and Effective Death Penalty Act, and the Illegal Immigration Reform and Immigrant Responsibility Act, both under the Clinton administration.<sup>370, 371, 372, 373</sup> Between 1986 and 2012,

federal spending on immigration enforcement increased by 1,400 percent to almost \$18 billion.<sup>374</sup>

It's not insignificant that the two largest private prison companies, Corrections Corporation of America (now known as CoreCivic) and GEO Group, obtained their first federal contracts to operate United States immigration detention facilities in the 1980s. In the next decade, the United States prison population would reach a milestone of one million incarcerated people, and the carceral industry would begin shifting from a focus on the individual to the aggregate, from an orientation of reform to social control and warehousing.<sup>375, 376</sup> This "new penology," exemplified by the Anti-Drug Abuse Act of 1986 and the nation's turn to an overly punitive orientation to crime, was built for privatization and consolidation, with an emphasis on "efficiency, management, and control."<sup>377</sup> The degree of privatization of national security functions in the following decades would be unprecedented, particularly in the ways it interlinked criminal law enforcement and immigration control.<sup>378, 379</sup>

It's within this context that immigration detention was ready to explode under the Bush and Obama administrations in the decades following 9/11, during which the U.S. Department of Homeland Security (DHS) budget grew 556 percent and outside focus shifted to the policing and warehousing of immigrants inside the border. Although the securitization of immigration involved framing border control as a security issue, prior to 9/11 it was the spaces outside the borders that were perceived to be in need of United States protection, whereas post 9/11 the threats were perceived to be internal to the country.<sup>380, 381</sup>

In addition to the massive rates of incarceration and permanent alienation of Black people and brown people, one of the harmful legacies of the War on Drugs is the pseudoscientific "drug-courier profiles" created by the Drug Enforcement Agency (DEA) during the 1980s, which helped law enforcement conduct indiscriminate drug sweeps and have become the legal basis for other racial profiling used today in the school-to-prison pipeline and in the "War on Terror."<sup>382, 383, 384</sup> These profiles are less about helping law enforcement agencies

to reliably identify people possibly carrying out criminal activity than about providing justification and legal cover for cops to stop “anybody and everybody,” often masking the racial biases behind such targeting.<sup>385, 386</sup>

Alexander notes that a drug-courier profile might, for example, instruct law enforcement to regard as suspicious someone who is the first to get off a plane, someone who is last to deboard, or someone who gets off anytime in between. Any of the aforementioned reasons could be used to justify reasonable suspicion that a crime is being committed, so it’s not surprising that 95 to 99 percent of people targeted for drug searches using the drug-courier profiles were false positives.<sup>387</sup> Criminal profiling and risk assessments that are being applied increasingly in schools and other community settings have disproportionately caused harm to Disabled people, especially racialized Disabled people.<sup>388, 389, 390, 391</sup> The embedding of law enforcement within schools and mental health services, usually involving case management, surveillance, and risk assessment based on pseudoscientific theories of radicalization, has been most often deployed in immigrant communities and has particularly targeted Muslim and Arab students, worsening the marginalization and criminalization they experience.<sup>392, 393</sup>

Immigration control has historically been a civil matter under federal authority, but under the task force program of Section 287(g) of the Immigration and Nationality Act of 1996, these powers were granted to non-federal law enforcement departments. The Homeland Security Act of 2002 replaced the U.S. Immigration and Naturalization Service (INS) with the Department of Homeland Security (DHS), and codified the merging of the criminal legal system and immigration enforcement as a matter of national security and public safety.<sup>394, 395</sup> After 9/11, state and local police could use these available new powers to conduct immigration status checks, apprehend and detain immigrants, and begin deportation proceedings under pretext of public safety. These new law enforcement powers helped to significantly increase the number of detentions, arrests, and deportations in the 2000s. In North Carolina, for example, over 80 percent of immigration detentions under § 287(g) were initiated by arrests for misdemeanors and 50 percent of deportations stemmed from arrests for minor infractions.<sup>396</sup>

The proportion of detained immigrants in the federal prison population reached 12 percent by 2010,<sup>397</sup> and by the end of the aughts, almost half a million immigrants were being detained every year.<sup>398</sup> Immigration-related prosecutions, over 90 percent of which are related to charges of illegal entry and re-entry, would account for more than half of all federal criminal prosecutions.<sup>399</sup> Federal detention sites, once run by INS, were replaced by facilities owned or run by GEO Group and CoreCivic, which now hold over 90 percent of detained immigrants.<sup>400</sup>

## Private Prison Companies and Immigration Detention

*In 2017, ICE agents were conducting stings at Washington state's Long Beach Peninsula, which has an almost 90 percent white population, but is also home to many undocumented immigrants like Baltazar "Rosas" Aburto Gutierrez, who works 10-hour shifts harvesting clams and helps to sustain the Peninsula's time-honored seafood economy. Accessing a database of license-plate scans to trace Rosas' driving patterns, the agents waited outside Okie's Thriftway Market, knowing that Rosas would arrive a few minutes before 8:00 to pick up his morning coffee. The agents intercepted Rosas before he could pull into the parking lot, and as they apprehended him, one of them commented slyly, "You are the one from the newspaper." Several weeks earlier, Rosas' girlfriend and the mother of his two children, who are United States citizens, had been deported to Mexico, and Rosas had spoken about the ordeal as well as other recent disappearances in their community for an article in The Seattle Times. The ICE agents filed a Field Operations Worksheet for Rosas, establishing him as their next target, just seven days after the article was published.<sup>401, 402</sup>*

The Intelligence Reform and Terrorism Prevention Act of 2004 authorized federal funding for additional border protections and mandated the creation of thousands of new beds at detention centers, vastly expanding immigration

detention.<sup>403</sup> The U.S. Immigration and Customs Enforcement (ICE) would establish arrest quotas and conduct militarized raids that were orchestrated mainly for optics.<sup>404</sup> The ICE raids as media spectacles helped DHS to persuade Congress and the public to continue funneling taxpayer dollars into its massive coffers (\$46 billion budget in 2008). The raids never significantly reduced the size of the undocumented immigrant population in the United States, which currently stands at 11 million,<sup>405</sup> though they destroyed many immigrant families and communities.<sup>406</sup> Golash-Boza (2009) thus expands the conceptualization of the political economy of immigration criminalization and detention by entreating us to consider the media that profits off of news stories that fearmonger about “illegal aliens,” and politicians who scapegoat immigrants to advance their careers by appealing to voters’ basest prejudices, anxieties, and self-interests. She writes, “The constant propagation of hate-filled rhetoric serves to dehumanize undocumented immigrants and renders them appropriate targets for law enforcement activities.”<sup>407</sup>

City and local governments also sought to court immigration detention contractors as they expected these facilities to bring jobs and economic growth.<sup>408</sup> Counties and cities in the United States, such as Eloy, Arizona, have entire economies that are dependent on state funding and tax revenues that are generated by the prison and immigration detention centers and the people held inside them.<sup>409</sup> Political campaigns built on anti-immigration platforms “were able to reinforce the social portrayal of noncitizens as the raw materials that will bring large profits to those who detain them.”<sup>410</sup> But Doty and Wheatley (2013) also observe how the detention facility “operates well below the public radar and often obfuscates how the system works, who benefits, and who is accountable to whom.”<sup>411</sup> The residents who live in the communities where these facilities are located find ways to psychically block out their presence, thus avoiding any reckoning with the moral costs of these detention sites. One resident who lived near a detention site explained their relation to the facilities by admitting, “I don’t think of the building... it is just like another mountain... just gray matter.”<sup>412</sup>



According to Martin (2017), “economic logics of financial gain and political logics of deterrence and enforcement are entangled.”<sup>413</sup> Private prison companies reaped huge profits from mass incarceration in the 1990s and began investing in new facilities in anticipation of continuous growth. By the early 2000s, however, the growth of the prison population began to stagnate, causing Corrections Corporation of America’s stock to drop to 18 cents from a high of \$44 in 1998. (See Figure 2 below.) The private prison companies were able to turn their fortunes around by capitalizing on 9/11 and contracting with federal agencies to house federal prisoners *and* immigrant detainees.<sup>414</sup>

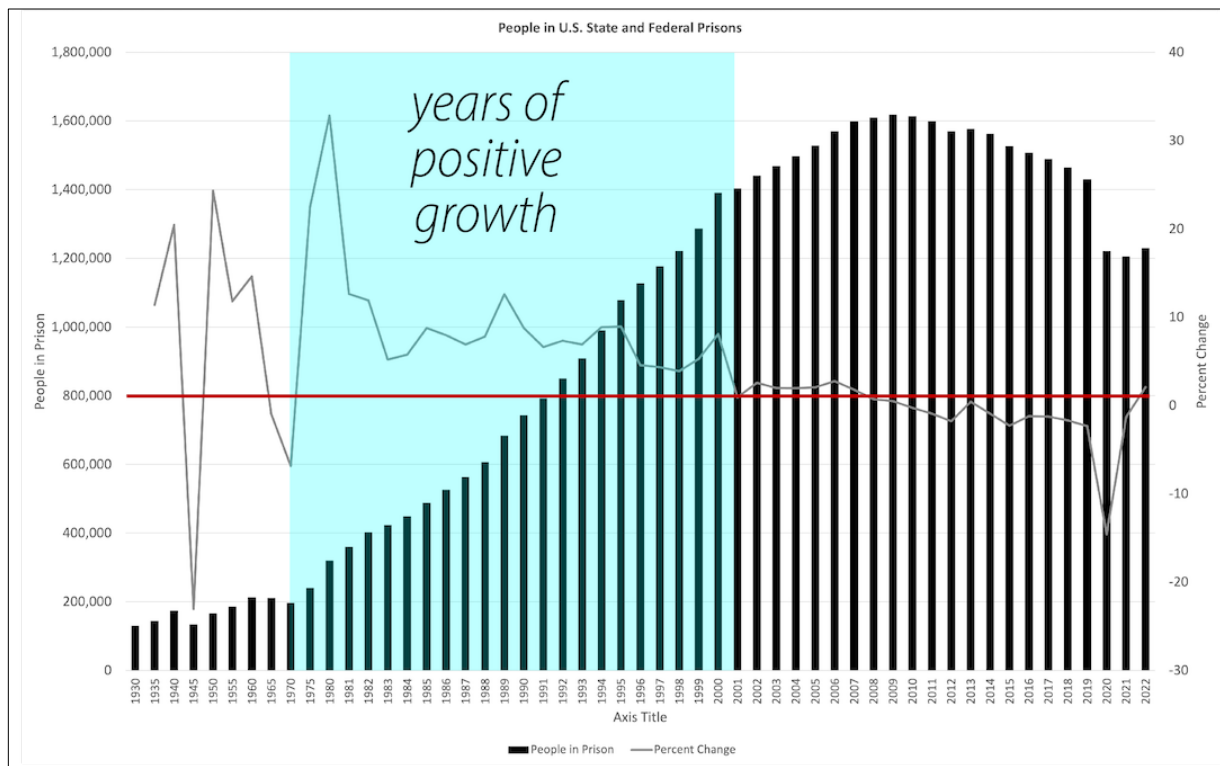


Figure 2. A combined bar and line chart indicates the rise and fall of the United States prison population from 1930 to 2022. Image description: The bars show the annual numbers (on the left axis) of people incarcerated in state and federal prisons in the United States for each year, and the line shows the percent change in the prison population (on the right axis) by year. The prison population increased curvilinearly from 1930 to 2009, when it reached a maximum. After 2009, the prison population decreased. The area on the chart that is shaded in light blue indicates the period of explosive growth in the United States prison population, between 1970 and 2001. Between 2001 and 2008, growth had slowed to barely above 0 percent. After 2008, the rate of change was negative as the prison population began to decline. Data source: Bureau of Justice Statistics.<sup>415</sup>

Under the Obama administration, ICE contracted with GEO Group and Corrections Corporation of America to build new detention centers due to an “unprecedented rise” in undocumented immigrants.<sup>416</sup> The Congressional appropriations bill established a quota (later abolished in 2017), requiring that DHS keep 34,000 beds filled each day in order to retain funding, which was 10,000 over the bed capacity in GEO Group and CCA facilities combined. The appropriation therefore guaranteed that GEO Group and CCA would fill their beds and make a profit. A CEO of GEO Group even boasted that the federal appropriations provided a reliable stream of revenue.<sup>417</sup> In 2012, an historical high of over 464,000 immigrants were held in detention facilities, even as the administration started expanding the use of electronic monitoring.<sup>418</sup> A proliferation of state laws, such as Alabama’s HB 56 and Arizona’s SB 1070, also helped to increase demand for private detention centers by criminalizing almost every aspect of immigrants’ everyday lives, increasing the likelihood that undocumented immigrants would be arrested and detained. In 2009 alone, 1,500 anti-immigration bills were introduced across 44 state legislatures.<sup>419</sup>

The rapidly increasing number of immigrants detained in recent decades and the explosive growth of the immigration detention industry have created deplorable conditions similar to those in other privately managed prisons and jails. This includes inadequate staffing, lack of access to medical and legal services, and in at least one case, an asylum seeker who was forcibly drugged with the antipsychotic medication, Thorazine, in order to restrain him for deportation.<sup>420</sup> Although immigration detention is a civil matter, Disability Rights Advocates et al. (2019) observed that “most Detention Facilities are built and operated like correctional institutions—and many of them are, in fact, currently operative penal institutions.”<sup>421</sup>

## Alternatives to Detention (ATD)

*Macarena had just received another call from BI Inc., who were alerted that she might have been tampering with the ankle monitor that was placed on her in 2021, as part of requirements of the Intensive Supervision Appearance Program (ISAP), an*

*electronic tracking system for undocumented immigrants. Macarena immigrated to the United States as a teenager from Honduras. Seventeen years later, she was married and raising two children in Virginia. She was arrested during a domestic incident when police learned that she was undocumented. During the ten months since the ankle monitor was attached, the device has occasionally overheated and burned her skin, and she has been repeatedly flagged by BI. It is difficult to find employment, because the ankle monitor marks her as a criminal. When Macarena is outside with her family, she is anxious that people are staring at her.<sup>422</sup>*

In 2018, the Trump administration passed the First Step Act, which marginally decreased mandatory minimum sentences to help reduce the federal prison population.<sup>423</sup> But the Trump administration was also a boon for private prison companies who were contracted with the federal government to operate immigration detention sites. In 2019 alone, the for-profit prison company, CoreCivic, raked in \$574 million from its contracts with the U.S. Immigration and Customs Enforcement (ICE), while GEO Group's revenue from ICE surpassed \$700 million.<sup>424</sup>

Although President Biden issued an executive order suspending the use of private prison contractors for federal prisons in 2021, private prison companies have since exploited loopholes allowing them to continue placing people in privately operated detention facilities through pass-through arrangements with city and county officials.<sup>425</sup> These companies also thrived by shifting their business models to extra-carceral systems that expanded rather than replaced immigration detention. Hence, under the Biden administration, the number of immigrants held in detention facilities has reached pre-pandemic levels while the Alternative to Detention (ATD) program has vastly increased the number of people electronically monitored by ICE.<sup>426, 427</sup> Almost 200,000 people were enrolled in ISAP under the Biden administration, "making it the largest supervision program of any United States law enforcement agency."<sup>428</sup> In 2022, approximately 41,000 immigrants were placed under house arrest with GPS

ankle monitors while waiting hearings to determine if they would be deported.<sup>429</sup> The electronic monitoring program is being operated by Behavioral Interventions Incorporated (B.I. Inc.), a subsidiary of GEO Group that was founded as an industrial agriculture company that uses Radio-Frequency transponders to tag dairy cows to monitor and regulate their feedings.<sup>430, 431</sup>

Liberals have touted ATD and its enabling technologies as humane, “community-based” alternatives to incarceration and family separation, and its implementation allows the for-profit incarceration industry to claim that it is making “impactful detention reforms.”<sup>432</sup> Bernie Sanders, the Democrat senator who co-sponsored the Dignity for Detained Immigrants Act, endorsed ATD and said, “We must promote and implement these cheaper, more effective and more humane alternatives to keeping children and families detained in overcrowded, understaffed and ad-hoc facilities.”<sup>433</sup> But just as carceral supervision (probation and parole) and alternatives to incarceration can mask the true scale and impacts of mass incarceration, thus allowing liberal politicians to appear to be reining in mass incarceration while they are actually expanding it, one of the dangers of ATD is that it minimizes the full population under “intensive supervision” of immigration enforcement, the majority of whom are not held in detention.<sup>434, 435</sup> There were 194,427 people being monitored under ATD programs compared to 37,000 held in detention facilities at the end of last year.<sup>436, 437</sup> There are currently over 3.7 million active cases in the Immigration Court.<sup>438</sup>

The implementation of ATD through electronic monitoring could be viewed as a cost-saving measure for the federal government, as it costs about \$150 per day for each immigrant held in a detention facility compared to \$8 per day for each immigrant placed on electronic monitoring.<sup>439</sup> Logistically, however, because ICE lacks the resources to physically detain all five million immigrants currently awaiting deportation hearings, ATD can more reasonably be understood as an expansion of ICE’s capacity to surveil and manage the undocumented population.<sup>440</sup> The appeal of electronic monitoring and other ATDs for policymakers could be built on similar carceral logics that (mis)construed the introduction of antipsychotic drugs like Haldol in the 1950s and 1960s as

obviating the need for psychiatric institutions as sites of physical containment (as opposed to expanding incarceration through chemical restraint), as well as expanding the capacity to be “deployed against people who were previously not subject to methods of control.”<sup>441, 442</sup> Last year, at an earnings call for GEO Group, an investor who anticipated huge profits from ATD’s expansion, expressed the quiet part out loud: “I mean, we’re talking five million people that could potentially be monitored” under ICE’s Release and Reporting Management program.<sup>443</sup>

In addition to the 41,000 immigrants being surveilled with ankle monitors in 2022, over 250,000 immigrants were being tracked through SmartLINK, which is a face recognition mobile app that requires registered users to submit geotagged selfies to case managers employed by B.I. Inc. to verify immigrants’ locations.<sup>444</sup> In 2023, ICE and B.I. Inc. launched VeriWatch, a GPS-enabled wrist monitor device for tracking immigrants scheduled for deportation.<sup>445</sup> Its utilization has grown 4,206 percent since the technology was released last year under a pilot program.<sup>446</sup> As the American Friends Service Committee has noted, “ATD’s are an expansion of detention, not an alternative to it.”<sup>447</sup>

Ghandehari (2022) observes that case management incorrectly frames immigration as a problem of individual compliance rather than a set of systemic problems in immigration law, while Del Valle (2022) notes that in lieu of electronic surveillance, free legal representation could be provided for non-detained immigrants to facilitate their attendance at court hearings.<sup>448, 449</sup> A report by Eagly and Shafer for the American Immigration Council found that 83 percent of non-detained immigrants voluntarily attend their court hearings, while 96 percent of immigrants with legal representation have attended all of their hearings.<sup>450</sup> These statistics suggest that electronic monitoring is a boondoggle; the only winners are private prison companies.

## Impacts on Immigrants’ Health

There are multiple parallel and crossing strands between the securitization of immigration and the securitization of mental health after 9/11, particularly in discursive productions of “the mentally ill, Muslim terrorist.”<sup>451</sup> Yet only 1.4

percent of noncitizens commit violent crimes compared to 8.5 percent of the citizen population.<sup>452</sup> Similarly, results from a large-scale epidemiological study found no statistically significant association between violence and mental illness without other co-occurring factors such as substance use.<sup>453</sup> Despite these facts, both of these marginalized groups (immigrants and people experiencing mental illness) are the frequent objects of weaponized political discourse concerning public safety, and both are consequently overpoliced and overrepresented in the incarcerated population.

Prior to 9/11, immigrants were primarily framed as a threat to the economy, whereas after 9/11 the framing on immigration shifted to crime and border security issues.<sup>454, 455</sup> Under § 287(g), surveillance, policing, and the threat of deportation have become part of everyday life for United States immigrants in ways that didn't exist prior to 9/11. Routine encounters with local police, including traffic stops, neighbor noise complaints, and school disciplinary actions can all initiate deportation proceedings. As with most types of policing, increased perceptions of safety for the non-immigrant, white population have come at the cost of daily insecurity in the lives of the United States immigrant population, along with the consequent toll on their mental health. This type of targeted policing as a tool of disablement leads to what Coleman and Kocher (2011) call "migrant precarity," or the constant social, material, and legal insecurity of being an immigrant in the United States under perpetual threat of deportation.<sup>456</sup> Migrant precarity is functionally related to stigma, in that it places a literal marker, or target, on immigrants that reduces opportunities for employment, housing, and social inclusion. At its extreme, immigrants may self-deport or "voluntarily" leave the country when living under such constant policing becomes unbearable.<sup>457, 458</sup>

In 2019, Disability Rights Advocates (DRA) and other organizations filed a lawsuit against ICE and the U.S. Department of Homeland Security (DHS) for unlawful confinement conditions in detention centers operated by ICE and private prison contractors, including GEO Group and CoreCivic, in violation of Section 504 of the Rehabilitation Act.<sup>459</sup> According to their report, there have been cases of Disabled detainees either dying in these facilities or being forced to accept

deportation in order to access needed medical care. Plaintiffs in the lawsuit included two people with diabetes who were routinely denied access to insulin; people experiencing mental illness who were kept in prolonged isolation; a Deaf person who was denied access to an ASL interpreter; and people who were denied access to mobility aids, including a person with cerebral palsy.

There have been over 200 deaths in ICE detention facilities in the past two decades. These detention centers include sites owned or run by private prison companies such as GEO Group and CoreCivic, as well as jails that are run by county or city governments. ICE regularly contracts with the two private equity-owned correctional healthcare companies discussed earlier in this report, Wellpath and YesCare, to provide medical services in immigration detention facilities. At these facilities, Disability Rights Advocates et al. (2019) stated that detained people were not adequately screened at intake for existing health conditions and disabilities; were routinely denied timely medical and emergency care; and were denied access to qualified medical personnel. Levels of medical staffing at these facilities were also stated to be inadequate. In 2016, one detained person with a leg injury died from a pulmonary embolism that developed while she waited five days to see a doctor.<sup>460</sup> Marquez et al. (2021) argue that normalization of systemic organizational failure and mismanagement at ICE detention facilities is racially motivated against Latinx immigrants and “ultimately pushes detainees to the edge, to poor mental health, and suicidality.”<sup>461</sup>

Parmar et al. (2021) examined 55 publicly available reports of 71 immigrant deaths that occurred in ICE detention between 2011 and 2018. Based on a qualitative review of the data, the authors found that bias and discrimination against the detained immigrants contributed to 13 percent of deaths, while willful indifference to patient suffering occurred in 25 percent of deaths. Bias and discrimination were defined as incidents where detained people were criminalized by medical staff or treated as “detainees” rather than patients, including one case where a nurse suggested that a patient who was complaining of back pain was faking in order to get narcotics. Willful indifference included cases where medical staff ignored patients’ obvious signs

of distress or refused to provide medical care when patients asked for help. In addition, the authors determined that in almost every case, a culture of shortcuts and regular delays in providing care contributed to unnecessary patient deaths. Overall, their analysis of the substandard healthcare administered at detention facilities reveals systemic problems similar to those with private equity-owned healthcare services provided at correctional facilities.<sup>462</sup>

A report by the Benjamin N. Cardozo School of Law found that ankle monitoring had pervasive impacts on immigrants' mental health by causing frequent disruptions to daily life including loss of sleep due to the device's noise and light displays; heightened anxiety and paranoia from the 24-hour surveillance; and increased feelings of criminalization, stigma, and isolation.<sup>463</sup> One undocumented immigrant from Honduras who has been in the United States for 17 years told *The Guardian* that since being shackled with an ankle monitor, she has had difficulty finding work and would feel distraught by people "pointing and staring" at her when out in public with her family.<sup>464</sup> Another person lost their job in construction when the site supervisor became concerned that the ankle monitor might clue law enforcement to the presence of other undocumented workers at the construction site.<sup>465</sup> Black immigrants may be disproportionately subject to ankle monitoring, with data from a convenience sample showing that 31 percent of Black immigrants were required to use ankle monitors even though they only represented 15 percent of the non-detained immigrants in the sample.<sup>466</sup> People with electromagnetic hypersensitivity may be especially distressed or debilitated by the forced proximity to the radiation from the ankle monitors.<sup>467</sup>



### III. The Housing Crisis

In the preceding sections of this report, we described the specific and extensive ways that private equity firms profit off of mass incarceration, including industries that police and confine Disabled people. In the final section of this report, we discuss the equally important but less tangible ways that private equity helps to manufacture problems like houselessness, and then uses its outsized political and economic influence to criminalize unhoused people and profit off of false solutions to the problems that they have created. It may seem unusual to include this content near the conclusion of our report, but it ties together many of the themes and issues discussed earlier. For example, we aim to illustrate how private equity leverages its enormous concentration of political and financial capital to covertly shape the national conversation and influence legislation and voter opinion on issues of grave public importance, such as mass housing insecurity. Understanding these interconnections is important, as a post-election *NBC News* analysis reveals that Donald Trump had some of the largest electoral gains in 2024 compared to 2020 in counties that experienced the most challenging housing markets through some combination of low availability of housing, high mortgage rates, and high home prices.<sup>468, 469</sup> These housing difficulties were notably experienced in battleground states, and according to *Fortune*, “Those differences likely proved decisive in key swing counties as many saw margins separating the parties that were just over 1 percentage point.”<sup>470</sup>

#### Manufacturing Houselessness

The public health scholar, Marion Moser Jones, notes that “unsheltered homelessness was virtually absent from the US social landscape during the mid-1970s.”<sup>471</sup> It wasn’t until the 1980s that mass housing insecurity became a national issue, when the Reagan administration initiated economic policies that helped to concentrate wealth among the upper percentiles of income earners, reversing decades of decreasing income inequality in the United States while

drastically cutting federal public assistance programs.<sup>472, 473</sup> Thanks to Reagan's tax cuts for the wealthy, the 1980s became a prosperous decade for Wall Street financiers, characterized by notorious leveraged buyouts and corporate raids. Private equity investors like Michael Milken rose to prominence and permanently changed the landscape of the United States economy. Although Reagan's "trickle-down economics" reduced unemployment and spurred economic growth, it had the overall effect of increasing housing prices and rents while simultaneously dismantling the social safety net, including housing subsidies, for millions of low-wage earners, especially in urban areas.<sup>474, 475</sup> Although no official counts of the unhoused population would be recorded by the U.S. Department of Housing and Urban Development (HUD) until 2007, it is estimated that the size of the unhoused population doubled under the Reagan administration.<sup>476</sup>

While Reagan was busy coddling the billionaire class and dismantling the social safety net, he did take some time out of his schedule to point his finger at unhoused people, famously asserting during an interview on national television that it is a choice to be unhoused.<sup>477</sup> As scholars have documented, Reagan's welfare retrenchment policies were implicitly understood and hence embraced by white voters as thinly veiled attacks on Black families, particularly via Reagan's infamous invocation of the "welfare queen" trope.<sup>478, 479</sup> As Cammett (2016) writes, "The strategy of shifting the discourse of growing structural inequality in our neoliberal state to the 'character defects' of poor black women was remarkably successful. It persuaded the electorate to accept the implementation of a political agenda of retrenchment."<sup>480</sup> Simultaneously, federal grant money was being poured into academic research that would shape and distort the research and policy agenda on homelessness for subsequent decades, abetting the political framing of mass housing insecurity as a problem of individual pathology rather than a problem of the housing markets. As Jones writes, "The unwavering belief of many mental health experts that deinstitutionalization was the sole cause of homelessness, along with the long legacy of sociological research that focused on the individual and cultural pathology of the poor rather than on the economic and political causes of poverty, formed the ideological bedrock for this individualization of a structural

problem."<sup>481</sup> While community-based mental health services are something that is needed, mental health services alone cannot remediate these larger structural housing issues.<sup>482</sup> Indeed, having a private and safe space to call home is a prerequisite for these community-based alternatives to work, or at least work well. And again, it's important to acknowledge that people experiencing mental illness and using substances are a fraction of the unhoused population. A relentless barrage of demonizing media coverage on houselessness does not center the voices of the most impacted, but rather frames and distorts issues of mental illness, crime, and substance use as being their most salient features, in order to manipulate public opinion.

The key finding of a landmark study on houselessness conducted by Colburn and Aldern (2022) is phrased succinctly in their book's title, *Homelessness is a Housing Problem*. Their research points to housing availability as the main determinant of interregional variation in the size of unhoused populations across the country. Of course, this doesn't mean that issues like poverty, substance use, and mental illness don't make people more vulnerable to losing their housing, but it does mean that individual-level factors can't explain why cities like Boston, New York City, and San Francisco experience disproportionate levels of houselessness compared to other cities around the country that have similar proportions of poverty, substance use, and mental illness in their populations.<sup>483</sup> These are also the cities where the media generates the most negative, demonizing coverage about unhoused people.<sup>484</sup> But, exactly why some cities in the United States have larger proportions of unhoused people than others has little to do with individual factors such as mental illness, and everything to do with housing availability and affordability, which are interrelated. A lack of available housing drives up rent in these cities, pricing out many low-income wage earners as those with more affluence "rent down," i.e. take the lower rental units that are available from those who have no other options.<sup>485, 486</sup> McChesney likens it to a game of musical chairs; there aren't enough chairs, and the people who get to sit down when the music stops are those who are faster (nondisabled) and more privileged (have more financial, social, and human capital).<sup>487</sup> The musical chairs analogy should help us to realize that blaming the people left standing is absurd.

For forty years, as politicians have repeatedly victim-blamed and scapegoated unhoused people, especially unhoused people experiencing mental illness, the problem of mass housing insecurity has remained entrenched across the United States. Under Reaganomics, although middle- and high-income earners fared well, the family poverty rate increased 44 percent, and the number of families who could afford to buy a mid-priced house decreased by almost 50 percent from the previous decade. Approximately four million people were converted to renters during this period, driving renting costs up 137 percent.<sup>488</sup> Seeking to reverse the “white flight” of previous decades, cities like Chicago, Los Angeles, and New York City provided tax incentives for owners of low-cost housing properties to convert their buildings into luxury apartments, spurring gentrification.<sup>489, 490</sup> Landlords often used brutish tactics to force tenants out of their buildings, in some cases resorting to arson. By the mid-1980s, New York City lost half of its low-cost housing units, known as single-room occupancy (SRO) housing, down 100,000 units from a peak of 200,000 in the mid-century.<sup>491</sup>

Fast forward twenty years to the 2007 subprime mortgage crisis, and we see again that capital has been redistributed upwards in the aftermath, with the government playing a key enabling role. Fannie Mae, or the Federal National Mortgage Association (FNMA), is a government-sponsored enterprise overseen by the Federal Housing Finance Agency (FHFA) that is responsible for securitizing mortgages and stabilizing the housing market. However, during the subprime mortgage crisis, the director of FHFA, Edward DeMarco, callously obstructed efforts that could have helped hundreds of thousands of people stay in their homes by reducing the principal on their mortgages.<sup>492</sup> *The New York Times* reported that over five million people ended up losing their homes to foreclosure or short sale, creating an “unprecedented supply of cheap housing in good neighborhoods.”<sup>493</sup> Prior to the crisis, the housing market was too heterogeneous to work for private equity’s business model, but FHFA’s decision to put millions of homes up for auction at once was a game changer, because it “precluded individual homeowners and likely all but the largest and most sophisticated institutional investors from participating” in the housing market.<sup>494</sup> Private equity investors were able to buy these properties in bulk, which drove up housing prices in previously affordable communities and

pushed many low- and middle-income families out of homeownership and into a permanent renter class.<sup>495</sup> Venerable institutions like Columbia University contributed millions of dollars to the real estate investment trusts of private equity-owned companies like Waypoint Homes, which raised \$20 billion to scoop up thousands of foreclosed homes in the wake of the crisis.<sup>496, 497</sup> In 2023, University of California invested \$4 billion into the real estate investment trust of the notorious private equity firm, Blackstone Group, drawing ire from community members.<sup>498, 499</sup> Neighborhoods with predominantly Black and Hispanic families have experienced among the highest rates of transformation into renter communities since the subprime mortgage crisis.<sup>500, 501</sup> The population proportion of Black homeowners is currently at its lowest point since the 1960s.<sup>502</sup>

In the years following the Great Recession, Freddie Mac (or The Federal Home Loan Mortgage Corporation), considered the “brother” of Fannie Mae, did its part to further intensify housing insecurity in the United States by lending money to private equity firms at low interest to buy up vast stocks of apartment housing, without any provisions to protect renters. *ProPublica* reports that between 2013 and 2021, private equity firms collectively borrowed over \$19 billion from Freddie Mac to acquire multifamily apartment buildings in cities across the United States, allowing private equity to become a major force in the apartment rental market. Private equity now controls many of the largest multi-unit apartment rental companies in the United States, representing about a million apartment units among them. The private equity-owned real estate companies manage these apartment assets like any other item in their investment portfolios, by squeezing new renters for every nickel and dime they have. This new breed of landlords has aggravated the housing insecurity crisis by charging exorbitant maintenance and other fees to tenants on top of yearly rent increases that have forced many people out of their apartments.<sup>503</sup> A 2019 study by the Joint Center for Housing Studies of Harvard University found that between 2012 and 2017, the number of apartments renting for less than \$600 per month decreased by 3 million.<sup>504</sup> In 2017, there were 1.4 million unhoused people who stayed in a shelter or other temporary housing at some point during the year.<sup>505</sup>

In August, the U.S. Department of Justice filed a lawsuit against the private equity-owned property management company, RealPage,<sup>506</sup> for using algorithms to help its clients collude and drive up apartment rents, which have increased 35 percent over five years.<sup>507</sup> A RealPage executive recently boasted that their software was boosting double-digit spikes in rents across the country.<sup>508</sup> Meanwhile, a 2020 report by the U.S. Government Accountability Office found that a mere \$100 increase in median monthly rents (or ten percent of \$1,000 per month) is correlated with a nine percent increase in the unhoused population.<sup>509</sup> In Washington, D.C. alone, RealPage allegedly affected rents for over 50,000 apartments, or almost a quarter of the District's entire rental stock of 207,000 apartment units.<sup>510</sup> Collectively, residents in D.C. have been overcharged by millions of dollars.<sup>511</sup>

## Criminalizing Unhoused People

Private equity is profoundly changing the economic landscape in America, increasing consolidation at a rapid pace and decreasing public oversight of the corporate economy. There are less than 4,000 publicly traded companies in the United States today compared to 8,000 in 1996, and because private equity now owns about 20 percent of corporate equity, "one-fifth of the market has been made effectively invisible to investors, the media, and regulators."<sup>512</sup> Earlier, we described how private equity firms have been acquiring a significant and rapidly growing portion of rental homes and apartments across the country, and have used their outsized wealth and influence "to transform the nature of housing in America," contributing to mass housing insecurity.<sup>513</sup>

In addition to the substantial influence that private equity investors exert on markets, they often have deep connections in Washington, having donated almost a billion dollars to political candidates since 1990.<sup>514</sup> At least seven of the ten currently living former U.S. Secretaries of the Treasury currently work or have worked for private equity firms, and two of the three currently living former Chairs of the Federal Reserve currently work or have worked for private equity, as well as the current Chair, Jerome Powell. In 2021 alone, private equity firms spent millions of dollars to defeat President Biden's plan to close the carried

interest loophole, which would have taxed private equity investors for a fairer share of their spoils.<sup>515</sup> In 2018, private equity firms helped to raise over \$80 million to defeat a California ballot measure that would have allowed local governments to implement rent controls for apartment units and single family homes.<sup>516</sup> Blackstone Group by itself contributed \$5.6 million.<sup>517</sup> Opposition groups raised over \$80 million again to defeat the measure when it reappeared on the ballot in 2020.<sup>518</sup> A similar ballot measure, Proposition 33 or the “Justice for Renters Act,” was again defeated in the November 2024 election.<sup>519</sup> The AIDS Healthcare Foundation and the Coalition for Humane Immigrant Rights of Los Angeles supported the measure, while the California Apartment Association (CAA), which has representatives from some of the country’s largest apartment owners on its board, including private equity-owned Greystar Management Services, SARES-REGIS Group, and Windsor Communities, spent \$131 million this year to defeat rent control measures on the November ballot.<sup>520, 521</sup>

Perhaps it should not be surprising that while private equity has played a fundamental role in manufacturing mass housing insecurity and homelessness in the United States, billionaire investors have also played an important role in demonizing and criminalizing unhoused people in recent years. In 2023, there were approximately 653,100 unhoused people in the United States, a 12 percent increase from the year before, and the highest number counted since HUD started collecting data in 2007.<sup>522</sup> For several years, homelessness has tracked nationally as a top concern for voters as the affordable housing crisis has worsened.<sup>523, 524, 525</sup> This year, in *Grants Pass v. Johnson*, the Supreme Court ruled that cities could remove unhoused people sleeping in public spaces even if they have no other options for shelter, overturning the U.S. Court of Appeals for the Ninth Circuit’s decision that such actions amounted to “criminalizing the status of being homeless.”<sup>526</sup> According to *Vox*, the ruling is “the most significant legal challenge to the rights of homeless people in decades,”<sup>527</sup> but it is, ultimately, just one battle in a larger, expansive political campaign spearheaded by billionaires to criminalize unhoused people. Since 2021, the Cicero Institute, which was founded by Joseph Lonsdale, a venture capitalist and co-founder of Palantir, has been pushing a spate of bills in state legislatures across the country to forcibly remove unhoused people sleeping in public spaces. In 2021, Cicero

helped to pass a statewide ban on houseless camps in Texas, and then wrote model legislation<sup>528</sup> for at least nine other states that would criminalize unhoused people and impose punitive fines up to \$5,000 for sleeping outside.<sup>529, 530</sup> Similar laws have since been enacted in other states, including Florida, Kentucky, and Tennessee.<sup>531, 532, 533</sup>

In a cruel and ironic, but not entirely unpredictable turn of events, the same billionaire investors who are pushing to criminalize houselessness across the United States also profit from its false solutions. Palantir, for example, provides custom case management software for Abode Services' Project Welcome Home, which serves "150-200 chronically homeless individuals who are also frequent users of the County's emergency services, mental health facilities and jails."<sup>534, 535</sup> Notably, Palantir also helps ICE to target, arrest, and deport undocumented immigrants with its controversial information gathering and data analytics software, and also provides predictive policing technology to the Los Angeles Police Department, which has resulted in specific individuals being excessively stopped by police.<sup>536, 537</sup> This common use of Palantir's technology to help law enforcement agencies to target and surveil marginalized communities should have been a red flag for houseless service agencies to conduct human rights due diligence<sup>538</sup> when choosing vendors with whom to contract. Instead, "the Bay Area's largest homeless housing and services provider"<sup>539</sup> inexplicably decided to work with Palantir.

This type of campaigning by special interest groups to benefit private interests is not unusual in politics.<sup>540</sup> For example, in 2010, private prison lobbyists helped to draft and pass Arizona SB 1070, also known as the Support Our Law Enforcement and Safe Neighborhoods Act. The law requires that all adult immigrants in Arizona carry immigration documents at all times, and requires police to check immigration status during routine stops and arrests.<sup>541</sup> CCA and GEO Group collectively spent over \$5 million on lobbying in 36 other states that introduced similar legislation between 2003 and 2012. These bills necessitated the use of private prison contractors as DHS by itself could not supply the beds or facilities needed for the increase in numbers of immigrants that were detained as a result of the new laws.<sup>542</sup>



Cicero's attacks on unhoused people aren't necessarily motivated by profit as there certainly appears to be an ideologically and politically driven motive behind wealthy and disconnected people's efforts to eradicate and disappear the most marginalized in society, a return of the "ugly laws" of the 20<sup>th</sup> century.<sup>543, 544</sup> These coordinated attacks on defenseless people also deflect public scrutiny from billionaires' role in manufacturing the housing crisis by victim-blaming unhoused people. But, it would neither be a stretch to think that Palantir might also somehow materially benefit from Cicero's lobbying work. For example, in the run-up to Palantir's initial public offering in 2020, it was important to show investors that its work could expand beyond "catering exclusively to defense, law enforcement and intelligence agencies."<sup>545</sup> A lot was riding on Palantir's work with Abode Services, which was contracted on a "pay for success" funding model, as it demonstrated the potential applications of Palantir's data analytics approach to client management in nonprofit and commercial markets. This work paved the way for an explosion of private equity investment in case management software for programs serving unhoused people.

The U.S. Department of Housing and Urban Development (HUD) organizes geographic areas in the United States somewhat haphazardly into administrative units called Continuums of Care (CoC). These units may span wide areas encompassing multiple counties, though multiple CoCs can also be contained within a single county.<sup>546</sup> Every program servicing unhoused people within one of California's CoCs that receives federal funding is required by HUD to use a Homeless Management Information System (HMIS) to help with case management and to track utilization of services within different systems, e.g., emergency services or housing services, and sometimes across different CoCs. HMIS was implemented in 2004 (and revised in 2010) in response to a Congressional directive to collect, measure, and analyze data on the effectiveness of houseless services and programs that fall under the McKinney-Vento Act.<sup>547, 548</sup> In 2018, "state law began allowing agencies that provide services to people experiencing homelessness, including cities, to establish multidisciplinary teams to share information that is confidential under state law with one another under certain circumstances."<sup>549</sup> Some of the personally

identifiable information that an HMIS administrator collects and stores in HMIS includes an unhoused person's name, social security number, date of birth, disability, location, and destination.<sup>550</sup> Some of the aggregated information is shared publicly on California's Homeless Data Information System dashboard.<sup>551</sup>

There are currently five vendors contracted with one or more of California's 44 CoCs to provide HMIS services. All of the vendors are private companies, and three (Bitfocus, WellSky, and Bonterra) are private equity-owned. The three private equity-owned companies together comprise 84 percent of HMIS contracts with California's CoCs. Bitfocus, which is owned by the private equity firm, Alpine Investors, saw a 156 percent increase in contracts between 2016 and 2022,<sup>552</sup> and is currently contracted with more than half of California's CoCs.<sup>553</sup> Bitfocus' Online Navigation and Entry (ONE) System is used by 90 agencies<sup>554</sup> while its Clarity Human Services HMIS software is used by over 4,000 agencies across 21 states.<sup>555</sup> Mediware was acquired by the private equity firm, TPG Capital, in 2017,<sup>556</sup> and then rebranded as WellSky in 2018.<sup>557</sup> As noted on its website, "WellSky serves more than 10,000 customer sites, including the nation's largest hospital systems, post-acute care franchises, state agencies, and human services organizations."<sup>558</sup> Private equity's investments in client management software and the potential integration of client data across multiple platforms should be concerning given the history of companies like Palantir that leverage data to help law enforcement to profile, target, and surveil people. For example, the private equity firm, Apax Funds, recently acquired the Social Solutions HMIS platform, which was integrated into Bonterra, along with the well-known nonprofit fundraising platforms, Network for Good and Salsa Labs.<sup>559</sup>

In 2018, *Business Insider* ran an uncritical article hyping Bitfocus' ONE System, promising that its case management software would end the houselessness crisis in San Francisco by tracking "the health, housing, jail, and counseling history of every homeless person in the city."<sup>560</sup> The article referenced Salt Lake City's "90% drop in chronic homelessness" in 2015 as a blueprint, but failed to mention that the city's 10-year initiative was based on a Housing First model, in which the city invested in building thousands of affordable housing units. Also, while Salt Lake City did manage to move a significant number of its chronically

unhoused people into permanent housing, the “90 percent” figure was later revealed to be a result of numbers inflation.<sup>561</sup>

Between 2018 and 2023, despite spending \$24 billion on various houseless service programs, the unsheltered population in California increased 69 percent from 2013. Only 14 percent of its unsheltered population, or 46,363 people, were placed in permanent housing.<sup>562</sup> HMIS was designed to help agencies track service usage to measure and improve outcomes, but while the state invested heavily in individual-level data collection and monitoring, a report from the California State Auditor’s Office, released in April 2024, found that the California Interagency Council on Homelessness (Cal ICH), which oversees all houseless service programs in the state, “does not have a consistent method for gathering information on the costs and outcomes for individual programs.”<sup>563</sup> The auditor determined that many agencies did not report spending and program costs in HMIS, and did not use the collected individual-level data for the intended purpose of evaluating program effectiveness. Two of the three grant recipients that received the most money from the state were the Whole Person Care Pilot Program run by the California Department of Health Care Services (DHCS), and No Place Like Home, which is run by the California Department of Housing and Community Development. Both programs received over \$1 billion and take a behavioral health-focused approach to addressing houselessness. The only two state-funded programs that were found to be cost-effective were the Department of Housing and Community Development’s Homekey program, which received \$797 million, and the CalWORKs Housing Support Program, which only received \$259 million in funding. The Homekey program and Housing Support Program are both based on provision of permanent affordable housing or housing assistance.<sup>564</sup>

Despite the touted benefits of HMIS, the report found numerous problems with the accuracy and completeness of the data collected and submitted through HMIS, including deleted records of people who utilized services, as well as completely fabricated records. The Homeless Housing, Assistance and Prevention (HHAP) program, run by Cal ICH, had “unknown” entered as the destination for about a third of people who left its services. As Parks (2024)

notes, "Because an *unknown destination* can indicate that the person did not know the destination, that the person refused to answer, that the data was not collected, or that the exit interview was not conducted, we cannot determine whether these people actually exited homelessness."<sup>565</sup> The report also found evidence of likely data falsification, such as shelters reporting usage that would have surpassed their bed capacity, including one shelter reporting that 1,100 beds were occupied despite having a bed capacity of less than 300.<sup>566</sup>

In hindsight, it is curious that anyone could have believed that improved case management alone would solve the houselessness crisis without sustained investment in affordable housing. As with alternatives to incarceration, it is more likely that these technology "solutions" are a boondoggle for politicians who can appear to be doing something about houselessness without actually helping anyone but themselves while enriching their constituents. The omission of program-specific performance data, even as investors and developers touted improved efficiency through technology, is consistent with a long history of wealth redistribution enabled by lack of government transparency and politicization of safety and security. Mark Skidmore, a professor of economics at Michigan State University, found over \$21 *trillion* of spending that is unaccounted for by the Department of Defense and the Department of Housing and Urban Development since 1998.<sup>567</sup> For six consecutive years, the Department of Defense has failed its financial audits, even as its budget has ballooned to almost a trillion dollars.<sup>568</sup> False technological solutions to the housing crisis are not just a boondoggle for private equity, however; they give ammo to right-wing critics of the "homeless industrial complex"<sup>569</sup> while also providing a literal platform for further exploitation of Disabled people, racialized people, and unhoused people as commodities for a technocracy whose entire existence is based on the management of these populations.

## Conclusion

An executive at a private equity-owned prison company once cautioned investors that decriminalization and criminal legal reforms were the top threats to their business model.<sup>570</sup> However, because every cog in the carceral machinery can be (and has been) reconfigured as a generator of private profit, including prison labor, meal services, telecommunications services, and medical care, it is not surprising that trade groups and special interest groups are heavily invested in both preserving systems of carcerality and promoting their expansion through “alternatives.” Carceral industries and their logics shapeshift and expand in response to public attention, often replacing one egregious system for another and calling it reform.

We are already seeing such an expansion of mass incarceration via criminalization and reinstitutionalization across the country in efforts to push more people experiencing mental illness and houselessness into coercive interventions such as Assisted Outpatient Treatment, conservatorship, and civil commitment.<sup>571</sup> The *Los Angeles Times* editorial board recently suggested that unhoused people be warehoused at the hollowed-out Metropolitan State Hospital, a psychiatric institution where “coyotes prowl freely across the sprawling grounds,” dispelling any doubts that criminalization of houselessness has always been about a revival of eugenics and mass institutionalization.<sup>572</sup> Earlier this year, both NAMI California and the California Correctional Peace Officers Association (CCPOA)<sup>573</sup> helped to pass Prop 1 on the California primary ballot by misleadingly framing houselessness as mental health and public safety issues rather than an affordable housing issue.<sup>574, 575</sup> A torrent of media reporting leading up to the March election stoked public fears about crime and “dangerous” unhoused people.<sup>576, 577, 578</sup> Just days prior to the March election, *Politico* somewhat deceptively reported that Prop 1 would fund new “housing,” even though that housing would in actuality be in the form of residential treatment facilities holding 11,000 beds, i.e., an institution.<sup>579</sup> The Prop 1 campaign slogan was “Treatment Not Tents,” despite that Prop 1 “would

primarily fund forced treatment and institutionalization” while reducing “already-strapped community-based and culturally responsive mental health services.”<sup>580</sup> Disability Rights California noted that Prop 1 was written without any consultation or engagement with the Disabled community, which violates the disability rights principle of “nothing about us without us.”<sup>581</sup>

At the state and national levels, legislation can potentially improve the conditions for people who are incarcerated. In California, Senate Bill 254 passed the state legislature earlier this year, and would have allowed greater access for the news media to investigate the insides of prison and jail facilities, but the bill was vetoed by Governor Newsom in September.<sup>582, 583</sup> The Private Prison Information Act, introduced last year by Senator Cardin and Representative Raskin, would make certain prisons, jails, and detention centers no longer exempt from Freedom of Information Act (FOIA) requests. Notably, the rule would apply to private companies that receive federal funding or hold incarcerated people for the federal government.<sup>584</sup> The End Solitary Confinement Act, introduced last year by Senator Markey and Representative Cori Bush, would severely restrict the use of solitary confinement except for limited cases, including quarantine and emergency de-escalation. In such cases, the legislation would improve protections for people placed in solitary confinement.<sup>585</sup>

These are all important developments, but the Disabled community continues to be excluded from the groups and spaces where these conversations are taking place despite being severely impacted by mass incarceration and its expansion. As Dara Baldwin writes, we can no longer “continue to have groups that do not include or uplift those with lived experience of disability or directly impacted as part of the solution.”<sup>586</sup> To create real and meaningful change that raises all, it is also imperative that disability rights and other advocacy groups foreground and uplift the work of organizations led by Black people and Indigenous people. HEARD (Helping Educate to Advance the Rights of the Deaf), is one of a few such organizations that advocates for Disabled and/or Deaf people who are incarcerated. As Kimberlé Crenshaw recently wrote in an op-ed for *The Guardian*, “Our country cannot be saved without the input of ‘the other,’

without our history, and without the knowledge about this country that we have long brought to the table."<sup>587</sup>

## Epilogue

In 2010, the former Pennhurst State School and Hospital was converted into a popular tourist attraction by the real-estate investor, Richard Chakejian. Pennhurst (and other psychiatric hospitals) was a site of untold abuse for the 10,500 people who were incarcerated there until it was finally shut down in 1987.<sup>588</sup> Millions of Americans have also visited the “Bodies ... The Exhibition” touring exhibit that displays the deskinned bodies of formerly incarcerated humans.<sup>589</sup> This year, an *NBC News* investigation discovered that since 2019, the University of North Texas Health Science Center had been procuring the bodies of thousands of people who died poor and unhoused, and selling their body parts to research labs and medical schools, sometimes without informing or obtaining consent from family members of the deceased. The center generated revenues of over \$2.5 million per year from the practice, which the bioethicist, Eli Shupe, has likened to “grave-robbing.”<sup>590</sup>

To understand the true scope of incarceration and its enduring impacts on marginalized people, we must recognize the myriad ways that profiteers seek to extract from Disabled people’s histories and bodies, including the conversion of Pennhurst, and we must reckon with and interrogate the rhetorics and stolen narratives that enable the public to condone and participate in such exploitation and abuse.<sup>591, 592</sup>



## Author's Bio



**Bowen Cho** is a neurodivergent, queer, and disabled scholar-activist. Their formal education is in pure and applied mathematics, psychology, political science, and evolutionary biology. Bowen was a Marilyn Golden Summer Policy Intern with DREDF in 2024, and a 2023 Emerge Fellow with the Longmore Institute on Disability at San Francisco State University.

# Endnotes

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<sup>1</sup> Many of the largest, most prominent mental health organizations take a medicalized and pathologizing approach to disability, including mental illness.

<sup>2</sup> Ben-Moshe, Liat. 2020. *Decarcerating Disability: Deinstitutionalization and Prison Abolition*. Minneapolis: University of Minnesota Press.

<sup>3</sup> Schenwar, Maya, and Victoria Law. 2020. *Prison by Any Other Name: The Harmful Consequences of Popular Reforms*. New York: The New Press.

<sup>4</sup> Gupta, Atul, Sabrina T. Howell, Constantine Yannelis, and Abhinav Gupta. 2024. "Owner Incentives and Performance in Healthcare: Private Equity Investment in Nursing Homes." *The Review of Financial Studies* 37 (4): 1029–77. <https://doi.org/10.1093/rfs/hhad082>.

<sup>5</sup> Ballou, Brendan. 2023. *Plunder: Private Equity's Plan to Pillage America*. New York: Hachette Book Group.

<sup>6</sup> Stevenson, David G., Jeffrey S. Bramson, and David C. Grabowski. 2013. "Nursing Home Ownership Trends and Their Impacts on Quality of Care: A Study Using Detailed Ownership Data from Texas." *Journal of Aging & Social Policy* 25 (1): 30–47. <https://doi.org/10.1080/08959420.2012.705702>.

<sup>7</sup> Szep, Jason, Ned Parker, Linda So, Peter Eisler, and Grant Smith. 2020. "U.S. Jails Are Outsourcing Medical Care—And the Death Toll is Rising." *Reuters*, October 26, 2020. <https://www.reuters.com/investigates/special-report/usa-jails-privatization/>.

<sup>8</sup> *Reuters* journalists compiled data on 7,571 deaths that occurred at 523 jails between 2008 and 2019. For each year in the data set, we counted separate totals of the deaths that occurred in county jails with publicly managed health services and in jails with contracted services. The yearly death rate was calculated by dividing the total number of deaths by the average daily population. We excluded years during which a jail was transitioning from private to public healthcare services or public to private healthcare.

<sup>9</sup> Ben-Moshe, Liat. 2017. "Why Prisons Are Not 'The New Asylums'." *Punishment & Society* 19 (3): 272–89. <https://doi.org/10.1177/1462474517704852>.

<sup>10</sup> Baynton, Douglas C. 2001. "Disability and the Justification of Inequality in American History." In *The New Disability History: American Perspectives*, edited by Paul K. Longmore and Lauri Umansky, 33–57. New York: New York University Press.

<sup>11</sup> In the Preface to the Tenth Anniversary Edition of *The New Jim Crow*.

<sup>12</sup> <https://bjs.ojp.gov/document/cpus22st.pdf>

<sup>13</sup> Hernández, Kelly Lytle. 2011. "Amnesty or Abolition? Felons, Illegals, and the Case for a New Abolition Movement." *Boom: A Journal of California* 1 (4): 54–68. <https://doi.org/10.1525/boom.2011.1.4.54>.

<sup>14</sup> Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.

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<sup>15</sup> Jones, Kimberly. 2021. *How We Can Win: Race, History and Changing the Money Game That's Rigged*. New York: Henry Holt and Company.

<sup>16</sup> In this context, it's perhaps not surprising that the full title of Alexander's book features an ableist metaphor though, notably, in the Tenth Anniversary Edition, terms such as "felon" and "inmate" were removed in favor of "formerly incarcerated person." We applaud the movement away from dehumanizing labels and towards person-centered language. We hope that ableist terms will someday be included in people's growing awareness of harmful language. For more information, please visit: <https://stanforddaily.com/wp-content/uploads/2023/01/Stanford-EHLI-Harmful-Language-List.pdf>

<sup>17</sup> Baynton, Douglas C. 2001. "Disability and the Justification of Inequality in American History." In *The New Disability History: American Perspectives*, edited by Paul K. Longmore and Lauri Umansky, 33–57. New York: New York University Press.

<sup>18</sup> Hernández, Kelly Lytle. 2011. "Amnesty or Abolition? Felons, Illegals, and the Case for a New Abolition Movement." *Boom: A Journal of California* 1 (4): 54–68. <https://doi.org/10.1525/boom.2011.1.4.54>.

<sup>19</sup> "Those liable to become 'public charges'" referred to people who depend on government assistance, which, as Rosales notes, was often code for Disabled people. This connection was made more explicit under the Trump administration; Rosales, Alessandra N. 2021. "Excluding 'Undesirable' Immigrants: Public Charge as Disability Discrimination." *Michigan Law Review* 119 (7): 1613–38. <https://doi.org/10.36644/mlr.119.7.excluding>.

<sup>20</sup> Baynton, Douglas C. 2001. "Disability and the Justification of Inequality in American History." In *The New Disability History: American Perspectives*, edited by Paul K. Longmore and Lauri Umansky, 33–57. New York: New York University Press.

<sup>21</sup> Ben-Moshe, Liat. 2020. *Decarcerating Disability: Deinstitutionalization and Prison Abolition*. Minneapolis: University of Minnesota Press.

<sup>22</sup> For example, Alexander writes that "Rationalizing mass incarceration or mass deportation on the grounds that it is meant to rid our nation of 'criminals' perpetuates the false notion that 'criminals' are a monolithic, deviant group that is fundamentally different than 'us' and therefore unworthy of our concern"; Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.

<sup>23</sup> Sered writes that "At the heart of that narrative is the story of an imagined monstrous other—a monster who is not quite human like the rest of us, who is capable of extraordinary harm and incapable of empathy, who inflicts great pain but does not feel it as we do, a monster we and our children have to be protected from at any price." Several sentences later, Sered also writes, "Some acts of violence are committed by people who suffer from serious mental illness"; Sered, Danielle. 2019. *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*. New York: The New Press.

<sup>24</sup> Barbarin, Imani [@Imani\_Barbarin]. 2023. "So I made a video yesterday saying that pointing to mental illness as the root of all problems is violence as it criminalizes Black people for having mental illness and you'll never guess what happened next." X. May 4, 2023. [https://x.com/Imani\\_Barbarin/status/1654135650088546305](https://x.com/Imani_Barbarin/status/1654135650088546305).

<sup>25</sup> <https://behearddc.org/>

<sup>26</sup> Yancy, George, and Talila A. Lewis. 2023. "Ableism Enables All Forms of Inequity and Hampers All Liberation Efforts." *Truthout*, January 3, 2023. <https://truthout.org/articles/ableism-enables-all-forms-of-inequity-and-hampers-all-liberation-efforts/>.

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- <sup>27</sup> Jones, Kimberly. 2021. *How We Can Win: Race, History and Changing the Money Game That's Rigged*. New York: Henry Holt and Company.
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- <sup>31</sup> Oluo, Ijeoma. 2020. *Mediocre: The Dangerous Legacy of White Male America*. New York: Seal Press.
- <sup>32</sup> Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: The New Press.
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- <sup>39</sup> <https://bjs.ojp.gov/content/pub/pdf/dpji1112.pdf>
- <sup>40</sup> <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>
- <sup>41</sup> <https://bjs.ojp.gov/library/publications/disabilities-among-prison-and-jail-inmates-2011-12>
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<sup>584</sup> <https://www.cardin.senate.gov/press-releases/cardin-raskin-call-for-greater-transparency-and-accountability-from-private-prisons-holding-federal-inmates/>

<sup>585</sup> <https://bush.house.gov/media/press-releases/bush-colleagues-introduce-historic-bill-to-end-solitary-confinement>

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