Negative: Private Prison Information Act

By “Coach Vance” Trefethen

***The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: The AFF plan passes the Private Prison Information Act, a bill currently pending in Congress but not yet enacted. It requires private (outsourced, contracted) prisons to provide the same level of reporting as is currently required of federal government prisons. It is possible that some of AFF’s evidence may be written before Oct 2017. That’s when a Supreme Court decision required private prisons to comply for the first time with FOIA (Freedom Of Information Act). Since then, anyone can file a FOIA request to get all the records that used to not be disclosed, and that are probably the things AFF is worried about. None of it matters anyway, since Biden announced in 2021 that he is phasing out federal use of privately contracted prisons. So the problem was either already solved in 2017 and/or becomes irrelevant since 2021 as their contracts expire and are not renewed.

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TOPICALITY

1. Staff, not prisoners

Link: Bill only requires staff to fill out reports. It changes nothing about prisoners. Here’s the official summary of the bill:

H.R. 5853 (IH) - Private Prison Information Act of 2021. <https://www.govinfo.gov/app/details/BILLS-117hr5853ih> (accessed 15 Jan 2022)

To require non-Federal prison, correctional, and detention facilities holding Federal prisoners or detainees under a contract with the Federal Government to make the same information available to the public that Federal prisons and correctional facilities are required to make available.

Extra-topical provisions. They do things besides changing policy toward prisoners, like mandating staff paperwork.

Text of the Private Prison Information Act of 2021. https://www.govinfo.gov/content/pkg/BILLS-117hr5853ih/pdf/BILLS-117hr5853ih.pdf



Violation: Nothing happens to the prisoners

The day after this plan is enacted, or any time afterwards, the prisoners will never notice any difference. The staff will notice, because they’ll have to fill out more paperwork. But nothing changes for prisoners.

Impact: No one affirming the resolution = Negative ballot

No one is affirming the resolution in this debate round. No matter who wins, you should write Negative on the ballot.

HARMS / SIGNIFICANCE

1. A/T “Inspector General’s report on poor private prison performance”

IG’s report was flawed – it used meaningless and even contradictory metrics to criticize private prisons

Prof. Alexander “Sasha” Volokh 2016. (teaches law at Emory University law school) 19 Aug 2016 “Opinion: Don’t end federal private prisons” <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/08/19/dont-end-federal-private-prisons/> (accessed 16 Jan 2022) (brackets in original)

Let’s consider the IG report itself. One of its evaluation categories is rates of assaults, both inmate-on-inmate and inmate-on-staff. That seems fine — I think we can all agree that assaults are bad — provided the measurement methods are comparable. But the report also says that “the contract prisons confiscated eight times as many contraband cell phones annually on average as the BOP institutions.” That’s not the actual number of contraband cell phones — it’s the number confiscated, because of course we don’t know the actual number. Well, I know a great way to get that number down: just stop looking hard for contraband phones. This is an inappropriate measure because it could indicate that there are a lot of phones or that enforcement is very vigorous; you can’t use it as a basis for comparison between prisons unless you know, for instance, that the level of enforcement is similar. And yet, the IG report uses that as a basis to criticize private prisons. Similarly, the IG report found that the private prisons “fail[ed] to initiate discipline in over 50 percent of incidents”. But whether you should initiate discipline in any given case is a matter of judgment, and I’m sure that, in another context, people would think that a bright-line insistence on initiating discipline 100% of the time is inflexible and overly punitive.

And AFF doesn’t solve for it anyway

No matter how bad private prisons are, AFF plan doesn’t fix them. All their bill requires is a new set of reports, not any plan or reforms to fix them.

2. More study needed

We need more study to find out if there are any problems with private prions that are worth worrying about

Prof. Alexander “Sasha” Volokh 2021. (prof. of law at Emory Univ.) 27 Jan 2021 “[Biden's Private Prisons Executive Order: A Solution in Search of a Problem?](https://reason.com/volokh/2021/01/27/bidens-private-prisons-executive-order-a-solution-in-search-of-a-problem/)” <https://reason.com/volokh/2021/01/27/bidens-private-prisons-executive-order-a-solution-in-search-of-a-problem/> (accessed 16 Jan 2022)

Are private prisons better or worse than public prisons? Relatedly, do private prisons really save money? (And if so, a lot or a little?) These questions turn out to be surprisingly hard to answer. The cost question is difficult because of different accounting conventions between the private and public sectors. And the quality question is difficult because of the general failure to adopt performance standards and measure consistent quality numbers between sectors. Nonetheless, there have been a few good-quality studies, and these don't generally find consistent differences between the public and private sectors.

INHERENCY

1. Private prisons abolished at federal level

Biden is phasing out federal use of private prisons

Char Adams 2021 (journalist with NBC News) 27 Jan 2021 “Biden's order terminates federal private prison contracts. Here's what that means” <https://www.nbcnews.com/news/nbcblk/biden-s-order-terminates-federal-private-prison-contracts-here-s-n1255776> (accessed 15 Jan 2022)

President Joe Biden on Tuesday signed an executive order that will phase out the Department of Justice’s use of [private prisons](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/). The action is part of the administration’s effort to address racial inequity in the country and make good on Biden’s campaign promises to Black Americans — who were[integral to securing his presidential win](https://www.nbcnews.com/news/nbcblk/how-black-voters-key-cities-helped-deliver-election-joe-biden-n1246980). The order directs the Justice Department to decline to renew contracts with privately-operated, for-profit prisons.

A/T “Private immigration detention” – Not convicted prisoners

Neil Barsky 2020 (founder of the Marshall Project, a prison reform research group) NEW YORK TIMES 14 Apr 2020 <https://www.nytimes.com/2020/04/14/opinion/coronavirus-jail-bail.html> (accessed 15 Jan 2020)

Historically, the argument for outsiders providing bail for people awaiting trial has been straightforward: It’s a matter of justice. Over 670,000 people sit in our jails and immigrant detention centers, accused but not convicted of a crime, often for long stretches, waiting for their trial or a hearing.

2. Already audited frequently

Private contract prisons already have frequent audits and reports required

Office of the Inspector General, Dept. of Justice 2016. “Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons” Aug 2016 https://oig.justice.gov/reports/2016/e1606.pdf

Each contractor must maintain a quality control program with audit tools that incorporate, among other government requirements, the 29 vital functions in the 8 operational areas described above and detailed in Appendix 2. The audit tools define the contractor’s work, which is evaluated during required internal inspections. The tools specify the documents to examine, sampling techniques, span of time for review, processes to observe, persons to interview, and desired outcomes. A Quality Assurance Specialist and a trained team of contract staff conduct audits monthly or every other month based on their prison’s specific audit tools. The contractor provides the audit results to its corporate headquarters and the BOP. Each contractor’s corporate headquarters conducts an annual audit of its prisons and provides the results to the BOP.

3. FOIA (pronounced foy-ya)

Supreme Court ruled the Freedom Of Information Act applies to private prisons. They must release documents to the public

Center for Constitutional Rights 2017. (civil rights advocacy group) 10 Oct 2017 “Supreme Court Rules in Favor of Government Transparency Against Private Prison Corporations” <https://ccrjustice.org/home/press-center/press-releases/supreme-court-rules-favor-government-transparency-against-private> (accessed 15 Jan 2022

Today, the Supreme Court denied a petition by private prison corporations seeking to block the release of government documents about their immigration detention practices. In a case brought by the Center for Constitutional Rights (CCR) and Detention Watch Network (DWN), under the Freedom of Information Act (FOIA), a federal district court ruled in July 2016, that the government must release details of its contracts with private prison corporations. The government chose not to appeal; instead, the country’s two largest private prison corporations, GEO Group and Corrections Corporation of America (CCA), recently rebranded as “CoreCivic,” intervened to appeal the decision to the Second Circuit Court of Appeals, which dismissed their petition in February. GEO then petitioned the Supreme Court for a full review of the case, asking for the right to prevent the government from releasing information under the FOIA. The Supreme Court’s decision lets stand the February ruling by the Second Circuit Court of Appeals, which rejected the private contractors’ unusual attempt to fight for government secrecy when the government itself had acceded to the court’s ruling.

FOIA decision solves for private prison transparency

Center for Constitutional Rights 2017. (civil rights advocacy group) 10 Oct 2017 “Supreme Court Rules in Favor of Government Transparency Against Private Prison Corporations” <https://ccrjustice.org/home/press-center/press-releases/supreme-court-rules-favor-government-transparency-against-private> (accessed 15 Jan 2022

“This outcome is a decisive victory for government transparency and a reminder that private companies do not have the right to try to overturn government decisions regarding the release of information to the public,” said [Ghita Schwarz](https://ccrjustice.org/home/who-we-are/staff/schwarz-ghita), senior staff attorney at the Center for Constitutional Rights. “The Supreme Court correctly recognized that private companies have no standing under FOIA to interfere with the balance Congress sought to strike between the public and their elected representatives regarding the transparency necessary in our democracy,” said Jenny-Brooke Condon, Professor of Law at Seton Hall Law School’s Center for Social Justice.

SOLVENCY

1. Private Prison Info Act wouldn’t improve anything

PPIA won’t bring accountability, won’t tell us anything we don’t already know, won’t motivate any improvements, and might even backfire and make things worse

Chandra Bozelko 2017. (journalist, former federal prisoner) 9 Aug 2017 “Open record laws should apply to private prisons, too” THE HILL <https://thehill.com/blogs/pundits-blog/crime/345959-open-record-laws-should-apply-to-private-prisons-too> (accessed 16 Jan 2022)

Even though many Freedom of Information Act (FOIA) requests served on private prisons have been blocked by courts, we still have all the information we need make decisions about private prison management. The fact that we have these data and still don’t take more action against these businesses shows that Senator [Cardin’s Private Prison Information Act](https://www.congress.gov/bill/114th-congress/senate-bill/3422) probably won’t deliver the accountability it promises.

**END QUOTE. SHE GOES ON LATER IN THE SAME ARTICLE SAYING QUOTE:**
Given what we already know about private facilities, it’s unlikely anyone will unearth anything drastically worse under Senator Cardin’s proposed law. It’s possible that the Private Prison Information Act will even backfire and provide justification for contracting with companies that treat their wards like animals as long as they adopt an open records policy. History shows that little consequence follows when investigators discover what happens inside. The question, then, when it comes to accountability for private prisons is not securing data and records, but acting appropriately and decisively when the truth is revealed.

PPIA brings little or no benefit because it’s not the real solution: Shutting down bad prisons

Chandra Bozelko 2017. (journalist, former federal prisoner) 9 Aug 2017 “Open record laws should apply to private prisons, too” THE HILL <https://thehill.com/blogs/pundits-blog/crime/345959-open-record-laws-should-apply-to-private-prisons-too> (accessed 16 Jan 2022)

Of course, the federal government may not know about other facilities that are neglecting and abusing the people they confine, so more information that would come from the Private Prison Information Act won’t hurt it’s mission to protect prisoners. But the bill that needs to be introduced somewhere in Congress if we want pure accountability is a bill that sets standards for private facilities and details the consequences for violating them. How we hold private prisons accountable is to shut them down when they mistreat people.

2. Already tried and failed

If the level of transparency in federal prisons is required for privatized prisons, they’ll be equally as bad. Federal prisons are messed up too

**Headley and Zamor generally agree with the Affirmative position, but they admitted in 2014 QUOTE:**

Andrea Headley, Jean-Claude Garcia-Zamor 2014. (Headley is a Ph.D. student in Public Affairs in the Department of Public Administration at Florida International University. Garcia-Zamor has a Ph.D. in Public Administration from New York University. Professor in the Department of Public Administration at Florida International University (FIU)) International Journal of Humanities Social Sciences and Education, Aug 2014 The Privatization of Prisons and its Impact on Transparency and Accountability in Relation to Maladministration <https://www.arcjournals.org/pdfs/ijhsse/v1-i8/4.pdf> (accessed 15 Jan 2022)

There are many problems surrounding public prisons associated with transparency, accountability and maladministration, which cannot be neglected. Issues regarding prisoner’s rights and maltreatment of prisoners have been seen through the works of scholars, national news reports and prisoner’s rights advocates, amongst others. Furthermore, prison violence is widespread and takes place in all prisons alike.

Want to make private prisons just as good as public ones? That won’t be much of an improvement

Chandra Bozelko 2021 (journalist, former federal prisoner) 4 Feb 2021 “Don’t Ban Private Prisons. Make Them Part of the Solution.” <https://www.barrons.com/articles/dont-ban-private-prisons-make-them-part-of-the-solution-51612454364> (accessed 16 Jan 2022)

Right now, private prisons in the United States aren’t defensible to me. The Department of Justice’s inspector general found an alarming level of [violence behind private facilities’ walls](https://oig.justice.gov/news/doj-oig-releases-report-federal-bureau-prisons-monitoring-contract-prisons) in a 2016 report. The problem is that prisons run by the government aren’t much better. A woman at the state-run Lowell Correctional Center in Florida was allegedly beaten into paralysis by four guards; taxpayers paid a [$4.65 million settlement](https://www.wmfe.org/woman-paralyzed-in-florida-prison-wins-4-65-million-settlement-seeks-early-release/163069). When similar private and public facilities are compared side-by side, there’s little difference in the availability of [health-related programs](https://journals.sagepub.com/doi/abs/10.1177/1078345817728078?journalCode=jcxa) like substance use and mental health treatment. Studies have historically found recidivism to be about the [same](https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=205465).

3. Transparency solves nothing

Transparency is overrated because people are too busy and the issues too complex for public disclosure to matter very much

Prof. Amitai Etzioni 2014 (professor of international relations at The George Washington University. He served as a senior adviser to the Carter White House) 13 Jan 2014 “Transparency Is Overrated” https://www.theatlantic.com/politics/archive/2014/01/transparency-is-overrated/282990/

The main reason transparency is vastly oversold is that it rests on a popular—but highly naïve—theory of how our democracy functions: Namely, that it operates as a direct democracy. This theory assumes voters can learn about the ins and outs of the numerous programs the government carries out; evaluate their effectiveness and costs; and determine which they favor or are keen to change or discontinue. The problem with this theory is that most people are busy making a living, maintaining a family and a social life, watching TV, and nursing their six-packs, and thus have limited time and energy to devote to following public affairs. And, as recent studies reviewed in Nobel Laureate Daniel Kahneman’s bestselling book Thinking Fast and Slow show definitively, people do not have the training necessary to parse and evaluate the mountains of data. This is particularly true given the complexities and nuance of the available information.

Need regulation to solve, not just transparency

Prof. Amitai Etzioni 2014 (professor of international relations at The George Washington University. He served as a senior adviser to the Carter White House) 13 Jan 2014 “Transparency Is Overrated” <https://www.theatlantic.com/politics/archive/2014/01/transparency-is-overrated/282990/> (accessed 15 Jan 2022)

In most cases the only effective way we can hope to get a handle on that which plagues our public life is if our representatives choose to either ban the problematic behavior (e.g., smoking in public) or regulate it (e.g., ensuring Wall Street will not again take risks that will lead to taxpayer bailouts)—which is to say that these problems cannot be solved by merely releasing information and leaving it to the public to take action. Just like with Vitamin C, there are situations in which mere transparency can help; some evidence suggests that pollution-disclosure requirements result in reduced emissions. But most times we need the real thing: positive government action in the form of regulation.

DISADVANTAGES

1. Distracts from real solutions to private prisons

If private prisons really have problems, then the focus on “transparency” distracts us from the real solution: Regulation

Prof. Amitai Etzioni 2014 (professor of international relations at The George Washington University. He served as a senior adviser to the Carter White House) 13 Jan 2014 “Transparency Is Overrated” <https://www.theatlantic.com/politics/archive/2014/01/transparency-is-overrated/282990/> (accessed 15 Jan 2022)

Transparency is the Vitamin C of politics. It does some good under some limited conditions, but can cause harm if used as an alternative medicine when real treatments are needed. Though always popular, transparency has been much in the news recently as the [solution](https://www.theatlantic.com/politics/archive/2014/01/the-nsa-leaks-are-about-democracy-not-just-privacy/282902/) to that which ails us. The real treatment is more regulation.

Impact: Turn the AFF harms. They get worse post-plan

Whatever bad things AFF thinks are happening in private prisons, they get worse post-plan because we’re distracted by thinking transparency will solve them and we don’t put any effort toward actually solving them.

2. Distracts from real solutions to abuses of imprisonment

Worrying about private prisons distracts us from the real problem: Mass incarceration of prisoners and their abuse and exploitation even in federally owned prisons

Holly Genovese 2020 (PhD student in American Studies at the University of Texas) Private Prisons Should Be Abolished — But They Aren’t the Real Problem 1 June 2020 <https://jacobinmag.com/2020/06/private-prison-profit-labor-incarceration> (accessed 16 Jan 2022)

Many see the fight against private prisons as a potential win for anti-prison activists, a reflection of the ways in which criminal justice reform has become increasingly mainstream in the last decade. And private prisons are, of course, abhorrent. But the fight against private prisons can also be a cop-out, a way for Democratic candidates to pay lip service to supporting the rights of incarcerated people while implicitly supporting the status quo. By emphasizing private prisons in policy proposals, campaign platforms, and public rhetoric, state and federally owned prisons are downplayed or even implicitly seen as a more ethical form of imprisonment.  But only 8.2 percent of the United States’ massively bloated prison population is in privately owned prisons. And all prisons — even federally and state-owned prisons — exploit prisoners’ labor.

Works Cited

1. ABC News 2018. (writer is Julia Macfarlane. She is a London-based reporter covering global affairs for ABC News. She began her career as a freelance photojournalist working in Indonesia, where she was born. She then moved to Beirut, Lebanon and worked for the BBC News bureau as a producer and TV journalist. A graduate of University of St. Andrews in Scotland, Macfarlane received her MA in English Literature.) 2 February 2018 “Why is the US still in Afghanistan?” https://abcnews.go.com/International/us-afghanistan/story?id=52763044