



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

July 11, 2017

The Honorable Sheila Jackson Lee
U.S. House of Representatives
2187 Rayburn HOB
Washington, DC 20515

Re: H.R. 1980 – Private Prison Information Act of 2017

Dear Representative Jackson Lee:

We, the undersigned criminal justice, civil rights and public interest organizations, submit this letter to jointly express our support for the Private Prison Information Act of 2017, which you reintroduced this past April as H.R. 1980. As you know, this bill, which will extend provisions of the Freedom of Information Act (FOIA) to private corrections companies that contract with federal agencies—including the U.S. Bureau of Prisons, Immigration and Customs Enforcement (ICE) and the U.S. Marshals—is a critical first step in bringing transparency and accountability to the for-profit private prison industry.

We continue to be deeply troubled by the secrecy with which private prison companies operate. While the Bureau of Prisons (BOP) and state departments of correction are subject to FOIA and state public records statutes, respectively, private prison firms that contract with public agencies generally are not. The public deserves to know how its money is being spent, and government officials should not be allowed to contract away the public's right to obtain that information.

The need for transparency and public accountability with respect to private prisons is especially important in light of a report released by the U.S. Department of Justice's Office of the Inspector General (OIG) in August 2016. The report found that privately-operated facilities housing federal prisoners for the BOP had higher average rates of contraband cell phones, tobacco and weapons; higher rates of prisoner-on-prisoner assaults, prisoner-on-staff assaults and uses of force; and more lockdowns, among other findings.¹

¹ <https://oig.justice.gov/reports/2016/e1606.pdf>

Alex Friedmann, Associate Director
5331 Mt. View Road #130
Antioch, TN 37013
(615) 495-6568 • fax (866) 735-7136
afriedmann@prisonlegalnews.org

On August 18, 2016, then-Deputy Attorney General Sally Q. Yates issued a memo stating the Department of Justice was beginning the process of reducing and ultimately ending its use of privately-operated prisons; she cited a declining BOP population as well as the OIG's findings, stating contract prisons "do not maintain the same level of safety and security."²

Although the Yates memo was rescinded by Attorney General Sessions earlier this year,³ the findings in the OIG report have not been refuted and indicate a need for greater oversight and transparency at privately-operated facilities that house federal prisoners.

Additionally, in June 2016, *Mother Jones* magazine published an extensive article based on the personal experiences of Shane Bauer, a reporter who worked undercover for four months at a prison operated by Corrections Corporation of America (now known as CoreCivic). The detailed article cited high levels of violence, staff shortages, misconduct by staff and insufficient medical and mental health care, among other deficiencies.⁴

If private prison companies like CoreCivic, GEO Group and MTC want to continue enjoying the benefits of taxpayer-funded federal contracts, then they must be required to adhere to the same disclosure laws applicable to their public counterparts, including FOIA.

Why should private prisons that house federal prisoners be any less accountable to the public than the Bureau of Prisons or ICE? We contend that because the for-profit private prison industry relies almost entirely on taxpayer support, and performs the inherently governmental function of incarceration—depriving people of their liberty—the public has a right to obtain information related to private prison operations.

While for-profit prison companies routinely claim they provide safe, secure and cost effective services, they also routinely refuse to release information that would allow the public to determine whether those claims are accurate.

As noted by the Project on Government Oversight (POGO), "Unlike government agencies, private companies that are contracted by the federal government to run ICE detention centers are not subject to the Freedom of Information Act (FOIA). This makes it much more difficult to obtain information about these facilities. While the public can file FOIA requests with ICE or other parts of the federal government for records related to these facilities, any records solely in the possession of the contractors are out of reach."

As just one example of the need for H.R. 1980, Professor Jacqueline Stevens at Northwestern University filed a FOIA request with ICE, seeking copies of grievance logs at the CoreCivic-operated Stewart Detention Center—documents that would be subject to FOIA at public facilities. In response, ICE stated, "A search of the ICE Office of Enforcement and Removal Operations (ERO) was conducted and no records responsive to your request were found." This illustrates how the current system of submitting FOIA requests to federal agencies for records maintained by private prisons is inadequate, as some records are only kept by the contractors.

² <https://www.justice.gov/archives/opa/file/886311/download>

³ <http://www.politico.com/f/?id=0000015a-6d3f-d49b-a77a-7fbf234a0001>

⁴ <http://www.motherjones.com/politics/2016/06/cca-private-prisons-corrections-corporation-inmates-investigation-bauer/>

And even when FOIA requests are filed with federal agencies seeking records related to private prisons, the companies sometimes intervene to prevent disclosure of the records. For example, both CoreCivic and GEO Group intervened to block the release of information related to their contracts with the federal government in a FOIA lawsuit filed by Detention Watch Network and the Center for Constitutional Rights. While the government did not appeal a district court ruling that held the contracts must be disclosed, CoreCivic and GEO Group filed an appeal which resulted in the Second Circuit ruling against the companies in April 2017.⁵

Around 17.8% of federal prisoners⁶ and 65% of immigration detainees⁷ are held in privately-operated facilities. CoreCivic and GEO Group both receive more than 40% of their total revenue from the federal government, and these are further reasons why transparency and accountability are vitally important with respect to the private prison industry.

In the past, critics of the Private Prison Information Act have argued that its passage would set a “dangerous precedent” with respect to FOIA overreach. However, the version of the PPIA you have introduced applies narrowly to facilities that house federal prisoners, thus there is no danger of overreach or extension to other government contractors.

Accordingly, we, the undersigned, express our support for H.R. 1980, as we believe that private prisons must comply with the same FOIA requirements as their public counterparts. Comments or questions regarding this letter may be directed to Alex Friedmann, Associate Director of the Human Rights Defense Center, at (615) 495-6568 or afriedmann@prisonlegalnews.org; or to Christopher Petrella, Ph.D., lecturer at Bates College, at (207) 786-8376 or christopherfrancispetrella@gmail.com.

Respectfully,

Alabama CURE

Black & Pink

Prof. Byron Price, Charles Hamilton Houston Institute for Race & Justice, Harvard Law School
(individual capacity only)

Civil Rights Clinic, Michigan State University College of Law

Coalition for Prisoners’ Rights

Colorado Criminal Justice Reform Coalition

Criminal Defense Clinic, CUNY School of Law

DeafCAN!

Demos

⁵ <https://ccrjustice.org/home/press-center/press-releases/court-won-t-reconsider-private-prisons-appeal>

⁶ <https://www.bjs.gov/content/pub/pdf/p15.pdf> (Appendix Table 2)

⁷ <https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf>

Detention Watch Network
Enlace / National Prison Divestment Campaign
Florida Justice Institute
Florida Legal Services
Grassroots Leadership
HEARD
Human Rights Defense Center
In the Public Interest
International CURE
John Howard Association of Illinois
JustLeadership USA
Justice for Families
Justice Strategies
Lewisburg Prison Project
Media Alliance
Middle Ground Prison Reform
National Center for Lesbian Rights
Nevada CURE
No Exceptions Prison Collective
Pennsylvania Institutional Law Project
Prison Activist Resource Center
Prison Policy Initiative
Private Corrections Institute
Private Corrections Working Group
Project on Government Oversight
Southern Center for Human Rights
Texas CURE
Texas Jail Project
The Center for Church and Prison
The Legal Aid Society of the City of New York
The Real Cost of Prisons Project
The Sentencing Project
Transformative Justice Law Project of Illinois

UC Davis School of Law Immigration Law Clinic

Uptown People's Law Center

Vermonters for Criminal Justice Reform

Washington Lawyers' Committee for Civil Rights and Urban Affairs