**A Resolution for Informational Briefing by the Province III Synod on May 2, 2022**

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**Resolution #D009
Resolution to Address The Issue of Private Prisons**

Resolved, the House of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ concurring, That this 80th General Convention of The Episcopal Church hereby direct and encourage the adoption, as appropriate, on a state-by-state basis and at the national level a moratorium on the construction of private prisons, and for their outright abolition; and be it further

Resolved, That this 80th General Convention direct, consistent with established policies and procedures, that the Executive Council refer this Resolution to the Office of Government Relations, so that it may take all actions necessary to accomplish the intentions and purposes of this Resolution.

**Explanation:**

The Federal Bureau of Prisons announced its intent to end for-profit prison contracts:

Terminating federal contracts. On August 18, 2016, Deputy U.S. Attorney General Sally Yates announced that the Justice Department intended to end its Bureau of Prisons contracts with for-profit prison operators, because it concluded "...the facilities are both less safe and less effective at providing correctional services..." than the Federal Bureau of Prisons. In response, Issa Arnita, the spokesperson for the third largest U.S. for-profit prison operator Management and Training Corporation, said it was "disappointed" to learn about the DOJ's decision. "If the DOJ's decision to end the use of contract prisons were based solely on declining inmate populations, there may be some justification, but to base this decision on cost, safety and security, and programming is wrong." In a memorandum, Yates continued, for-profit "...prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource and these services are essential to reducing recidivism and improving public safety. Also, the recidivism rates of the private prisons, “Within three years of release, about two-thirds (67.8 percent) of released prisoners were rearrested. Within five years of release, about three-quarters (76.6 percent) of released prisoners were rearrested. Of those prisoners who were rearrested, more than half (56.7 percent) were arrested by the end of the first year.” These private prison recidivism rates, compared to the public prison's recidivism rates, are virtually identical and in return have minuscule benefits. At the time, the Justice Department held 193,000 inmates, about 22,000 of whom were in 14 private prisons. Criminal justice reform had caused the prison population to drop by about 25,000 inmates over the previous few years.

On February 23, 2017, the DOJ under Attorney General Jeff Sessions overturned the ban on using private prisons. According to Sessions, "the (Obama administration) memorandum changed long-standing policy and practice and impaired the bureau's ability to meet the future needs of the federal correctional system. Therefore, I direct the bureau to return to its previous approach."

In her memo announcing the change, Deputy Attorney General Sally Yates pointed out that private prisons “compare poorly” to facilities run by the federal Bureau of Prisons. The DOJ found that, in general, private prisons provide fewer correctional services at greater security and safety risk to inmates and staff, without producing substantial savings.

These results are related. To achieve their modest savings, private prisons tend to cut back on staff costs and training. More than a decade ago, researchers found that private facilities pay their officers less, provide fewer hours of training and have higher inmate-to-staff ratios, a combination which may account for their much higher turnover rate among correctional officers, as well as the uptick in inmate assaults.

This is the conventional critique of private prisons: They do not deliver on their promise of significant savings, and the greater risk far outweighs the small fiscal benefit they provide to those within the walls.

But the evidence for this critique is mixed. As the legal scholar Sasha Volokh has pointed out, some studies have shown that public prisons are more cost-effective than their private counterparts, while others suggest the opposite. More importantly, Volokh argues that the private sector can be incentivized to improve—especially compared to the government—and that we should reform the model rather than end the experiment. If we accept the premise that private corporations should run prisons, Volokh’s argument has some force.

The real reason is that justice should not be administered through the prism of profit. As a rule, we disfavor private prosecutors hired by the victim’s family, or judges who get paid when a defendant in her court is convicted but not when he is acquitted. In both cases, the concern is obvious: We mistrust arrangements that might lead actors in the system to stray from their duty to administer justice impartially.

The problem with the private prison is analogous, though not identical. The companies that build and run private prisons have a financial interest in the continued growth of mass incarceration. That is why the two major players in this game—the Corrections Corporation of America and the GEO Group—invest heavily in lobbying for punitive criminal justice policies and make hefty contributions to political campaigns that will increase the number of private prisons.

From 1999-2010, for instance, the Sentencing Project found that CCA spent on average $1.4 million per year on lobbying at the federal level and employed a yearly average of 70 lobbyists at the state level. In California, where state law requires lobbyists to disclose their contributions in detail, we know that CCA used its resources to support, among other things, additional adult and juvenile prisons and detention centers and to oppose a bill that would have outlawed private prisons entirely.

These corporations have every legal right to shower money on friendly legislators. But the fact that they consider it in their interest to do so is exactly what exposes their troubling conflict. Especially today, when the systemic, deeply entrenched, racialized problems with the criminal justice system are increasingly apparent, we should not endorse strategies that encourage the expansion of the carceral state.

Regrettably, this was not the explicit message in the DOJ’s announcement. But Yates at least hinted at it. Before pointing out that private prisons “compare poorly” to their public counterparts—that is, before making the conventional critique—Yates noted that the number of federal prisoners has begun to fall, in part because of a shift in law and policy away from incarceration, especially in drug cases.

As a philosophical matter, the Obama Administration is trending—albeit haltingly—toward a default preference for non-carceral solutions to crime. The best evidence strongly supports their preference. The endless churning of the incarceration cycle—the thousands of young men and women repeatedly removed from their neighborhoods, returned and removed again—systematically destabilizes the very communities we are trying to save by disrupting the intricate but fragile webs of connection that hold them together. In fact, research has shown that high incarceration rates of the sort we have seen since the 1980s not only destabilize disadvantaged communities; they actually increase the incidence of crime. That is why former Attorney General Eric Holder recently argued that as a nation, we should aspire to send fewer people to prison for shorter periods.

This is precisely the opposite of what the private prison industry wants. While you can perhaps incentivize it to improve, you cannot incentivize a private corporation to go out of business. As long as we have private prisons, their corporate leadership will support policies that fill every bed.

There are roughly 115,000 people incarcerated in private prisons: 25,000 in the federal system and 90,000 in the states. A corporation’s bottom line should not determine their fate. The DOJ has done what it could. It is time for the states to follow the lead.