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**THE TREATMENT INDUSTRIAL COMPLEX: HOW THE FOR-
PROFIT PRISON INDUSTRY IS HIJACKING SENTENCING
REFORM FOR CORPORATE GAIN**

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I. INTRODUCTION

As states pursue sentencing reform efforts to reduce prison populations, the private, for-profit prison industry faces pressure to adapt to a shifting penal landscape that is bending increasingly towards alternatives to incarceration.

State and federal contracts represent roughly equal portions of the contracts held by both CoreCivic (formerly Corrections Corporation of America) and GEO Group. The private prison industry depends on expansion and acquisition of new contracts to continue being profitable. Sentencing reform campaigns that reduce prison populations threaten the profit margins for prison corporations.

In response to these developments, the private prison industry is continuously adapting. By re-branding and expanding into in-prison health care, mental health treatment, and other “alternative” programming, for-profit prison corporations seek to ensure growth and stability.

The result is an emerging “Treatment Industrial Complex” —the movement of the for-profit prison industry into correctional medical care, mental health treatment, and “community corrections”. Community corrections include corrections programs outside of jail or prison walls: probation and parole services including halfway houses; day reporting centers; drug and alcohol treatment programs; home confinement; electronic monitoring; and an array of supportive services such as educational classes and job training.

The term “Treatment Industrial Complex” has its roots in a 1961 address by President Dwight D. Eisenhower, who expressed his concern at the time about defense contractors, politicians, and the press capitalizing on public fears during the cold war with the Soviet Union in order to secure more military spending. Eisenhower said, "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex."¹

In 1997, educator, author, and activist Angela Davis delivered a speech entitled “The Prison Industrial Complex”, which later served as the title of a book on the subject. Writing in *ColorLines*, Davis explained:

¹ Eric Schlosser, *The Prison Industrial Complex*, ATLANTIC MONTHLY (Dec. 1998) <https://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669/>.

[Incarceration and the maintenance of penal infrastructure], which used to be the primary province of government, is now also performed by private corporations, whose links to government in the field of what is euphemistically called “corrections” resonate dangerously with the military industrial complex. The dividends that accrue from investment in the punishment industry, like those that accrue from investment in weapons production, only amount to social destruction. Taking into account the structural similarities and profitability of business-government linkages in the realms of military production and public punishment, the expanding penal system can now be characterized as a “prison industrial complex.”²

In 1998, Eric Schlosser, writing in *The Atlantic*, further described the phenomenon:

Three decades after the war on crime began, the United States has developed a prison-industrial complex—a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need . . . It is a confluence of special interests that has given prison construction in the United States a seemingly unstoppable momentum. It is composed of politicians, both liberal and conservative, who have used the fear of crime to gain votes; impoverished rural areas where prisons have become a cornerstone of economic development; private companies that regard the roughly \$35 billion spent each year on corrections not as a burden on American taxpayers but as a lucrative market; and government officials whose fiefdoms have expanded along with the inmate population.³

In this industry, the raw material is people. While the Prison Industrial Complex was dependent on incarceration or detention in prisons, jails, and other correctional institutions, the Treatment Industrial Complex now allows the same corporations to profit from the housing of people with

² Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, COLORLINES (Sept. 10, 1998) <https://www.colorlines.com/articles/masked-racism-reflections-prison-industrial-complex>.

³ Schlosser, *supra* note 1.

mental illnesses in facilities that had originally been intended as a therapeutic environment, such as state hospitals or civil commitment centers. In addition, the corporations stand to profit from expanding their purview beyond physical prisons and jails to supervision and surveillance of people on parole or probation and formerly incarcerated people, potentially infiltrating all segments of the criminal justice system.

Many for-profit prison corporations generate revenue by charging “per diem”—meaning a dollar amount for every incarcerated individual, for every day. It is a static system to a large degree, dependent upon fixed contracts based on established sentencing practices and population rates. The Treatment Industrial Complex, on the other hand, is a dynamic system, with many people constantly moving through. This high volume represents the potential for higher profit.

Under the Treatment Industrial Complex, individuals may no longer be held in prisons, but instead are housed in other types of facilities like mental health institutions, residential drug treatment centers, and halfway houses. While corporations typically charge a lower per diem for these facilities, the pool of individuals is larger than the incarcerated population and therefore can generate greater profit margins for the company.

Those individuals who are not physically held in any sort of institution, yet remain under state supervision through home arrest, probation, parole, or other community corrections programs become potential profit-making schemes when corporations can charge for monitoring equipment, supervision fees, drug testing, counseling, and the like. Although the profit generated from this type of supervision is typically low, the length of time under supervision may be longer. As a result, the Treatment Industrial Complex has the potential to ensnare more individuals, under increased levels of supervision and surveillance, for longer periods—in some cases, for the rest of a person’s life.

II. COMMERCIALIZING COMMUNITY CORRECTIONS

Economic, social, and political developments contributed to the growing movement to end mass incarceration in the United States. A major motivation to look outside of incarceration as a response to crime was the financial crisis of 2008. Prisons are fundamentally expensive, while alternatives such as supervision and treatment are vastly cheaper. Additionally, high recidivism rates highlighted the failure of the punishment-only model at reducing crime and helping people return to

their communities. The financial crisis opened the door to consider community corrections as an alternative to incarceration.

Changing public perceptions of drug addiction and mental illness also contributed to the move towards alternative solutions. The increasingly common view is that addiction and mental illness are social problems that arrests and incarceration exacerbate rather than fix. However, the public and political dialogue began to markedly shift when the War on Drugs began to spread into the white, affluent, suburban communities once insulated from its reach. As a result, incarceration as a response to drug addiction and mental illness (frequently concurring maladies) is being eschewed for public health-focused prevention and therapeutic models. Today, there is bipartisan support for a response to drug addiction and mental illness that is compassionate and treatment-focused.

At the same time, the fear-based, “tough on crime” mentality of the 1990’s has gradually been replaced by a pragmatic, scientific approach to addressing criminal behavior. Social science research has been translated into a set of model policies and programs known as Evidence-Based Practices. In general, this approach emphasizes measuring the individual’s actual risk for violence or reoffending, tailoring interventions based on their needs, and providing the incentive to comply through positive reinforcement rather than the threat of further punishment.

The growing consensus amongst practitioners and researchers is that community-based interventions that place individuals on the lowest level of supervision necessary for the shortest time necessary produce the best public safety outcomes. Essentially, the recommendation is to reserve scarce budget dollars for incarcerating those who truly need to be removed from society. These interventions are the most cost-effective approach because most individuals can be safely and effectively handled through less punitive interventions. For these reasons, efforts to expand and support community corrections have increasingly become popular.

Community corrections generally falls into two basic categories:

1. “Front-end” **alternatives to incarceration**, such as probation, home arrest, diversion programs, problem solving courts (such as drug, mental health, and veteran’s courts), intermediate sanctions for technical violations of probation and parole, and supervision and surveillance (including electronic monitoring).

2. “Back-end” **re-entry programs** for individuals returning to the community after a period of incarceration, such as parole, halfway houses, and work-release centers.

Nearly two-thirds of people involved in the criminal justice system are *not* held in prison or jail, but are instead monitored via community correction programs.⁴ At the end of 2014 more than 4.7 million adults were under probation or parole.⁵

In 2016, Prison Policy Initiative analyzed the full spectrum of the criminal punishment system and noted that probation is the leading type of correctional control utilized nationwide. The study found that 56% of people under the control of the American criminal justice system are on probation, with another 11% on parole.⁶

III. REBRANDING

Private corrections corporations are working hard to reconfigure their business models to sell what governments are currently buying. For prison corporations such as Corrections Corporation and GEO Group, the number of individuals on probation represents a sizeable untapped market for privatization. Smaller companies are also springing up to meet the demand for community corrections programs and related services.

Beginning around 2010, major for-profit prison operators began to take advantage of the states’ newfound interest in rehabilitation and alternatives to incarceration. As states began amending their sentencing laws to reduce prison populations, the major private prison companies had to adapt or lose their contracts. Their marketing and communications shifted from an emphasis on physical prison facilities, security, and cost savings to claims of providing rehabilitation and “services” to prisoners.

The clearest example of this trend was the literal rebranding of Corrections Corporation of America (CCA), which officially changed its name to CoreCivic in October 2016. Damon T. Hininger, CoreCivic’s President and Chief Executive Officer, explained:

⁴ One in 31 U.S. Adults are Behind Bars, on Parole or Probation, THE PEW CHARITABLE TRUSTS (2009), <http://www.pewtrusts.org/en/about/news-room/press-releases/0001/01/01/one-in-31-us-adults-are-behind-bars-on-parole-or-probation>.

⁵ Danielle Kaebler, et. al., *Probation and Parole in the United States, 2014*, U.S. DEP’T OF JUST. (Nov. 2015), <https://www.bjs.gov/content/pub/pdf/ppus14.pdf>.

⁶ Correctional Control: Incarceration and supervision by state, PRISON POLICY INITIATIVE (2016), <https://www.prisonpolicy.org/reports/50statepie.html>.

Government has core responsibilities that are vital for safe, healthy and thriving communities. But in our increasingly complex and budget-constrained world, performing these basic functions is becoming harder to do For more than three decades, our company has been an innovative, dependable partner for government. As CoreCivic, we will continue to bring the scale, experience and professionalism needed to solve problems for our partners and serve the greater public good.

Notable in this statement is the absence of any reference to incarceration. CoreCivic's rebranding effort is clearly a move away from the image of the company as running "private prisons"—an increasingly unpopular topic with the public.

The spectrum of the criminal punishment system is incredibly diverse, spanning from non-prison treatment interventions to in-prison health care and rehabilitation programs to post-prison monitoring and reentry services. This "continuum of care" represents numerous opportunities for private companies to secure contracts to provide these services. GEO Group has blithely referred to this potential for cradle-to-grave supervision and control as "the Corrections Lifestyle."⁷

To quickly ramp up their capacity to take advantage of this emerging market, larger for-profit prison corporations acquired smaller companies that specialized in electronic monitoring, reentry services, and community corrections. These mergers allowed companies to absorb existing contracts without having to compete in bidding processes.

In 2010, GEO Group acquired BI Incorporated, which makes electronic monitoring products like GPS ankle bracelet monitors, voice verification technology, and alcohol monitors for individuals on home confinement. GEO now boasts a newly reorganized "Community Services" unit. GEO Community Services, operates halfway houses, day reporting centers, and juvenile detention facilities. By 2014, the Community Services segment represented 19% of GEO Group's operations.⁸

GEO Group's 2014 Annual Report promised to make an annual investment of \$5 million to expand its "GEO Continuum of Care" platform, which "will integrate in-prison rehabilitation with post-release

⁷ THE GEO GRP., INC., 10-K FILING U.S. SECURITIES AND EXCHANGE COMMISSION (Mar. 2013).

⁸ THE GEO GRP., INC., 2015 ANNUAL REPORT 1, 47 (Feb. 2016).

services for inmates completing evidence-based programming in GEO facilities.”⁹ In the report the company states:

We believe our industry-leading diversified services position GEO to pursue additional opportunities in the delivery of evidence-based rehabilitation and reentry services, which is in-line with worldwide efforts to focus resources on offender rehabilitation and community transition programs, and we expect these opportunities to drive new growth and continue to create value for our shareholders.¹⁰

In 2015, GEO acquired Soberlink, Inc.¹¹, which describes itself as “the leader in mobile-breath sobriety monitoring.”¹² The company makes smartphone breathalyzer tests and a Bluetooth device that enables wireless alcohol testing using an iPhone or iPad.

CoreCivic has also pursued this strategy aggressively. After rebranding, CoreCivic organized its “business offerings” into three separate categories: CoreCivic Safety (its traditional prison and detention center management); CoreCivic Properties, which builds on its status as a Real Estate Investment Trust; and CoreCivic Community, which it describes as a growing network of residential reentry centers to provide previous offenders an effective and successful transition from incarceration back into their communities. This transitional period leads to higher success rates upon reentry and provides a proven solution to tackling America’s recidivism crisis.¹³

In August 2013, the company acquired Correctional Alternatives, Inc. (“CAI”). In doing so, CoreCivic absorbed CAI’s existing contracts providing work furloughs, residential reentry programs, and home confinement for San Diego County, the Federal Bureau of Prisons (“BOP”), and United States Probation and Pretrial Services System.¹⁴

In 2015, CoreCivic acquired four residential re-entry facilities from a privately held owner of community corrections facilities that were leased

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Soberlink, Inc. Successfully Sells Criminal Justice Segment*, SOBERLINK (Nov. 18, 2015), <https://www.soberlink.com/soberlink-successfully-sells-criminal-justice-segment/>

¹² *Addiction Experts Publish Consensus on the Soberlink System*, SOBERLINK (Feb. 6, 2017) <https://www.soberlink.com/media-center/press-releases/>.

¹³ CORECIVIC, INC., 2016 ANNUAL REPORT 1, 8 (2017).

¹⁴ CCA Announces Acquisition of Correctional Alternatives, Inc. (2013), <https://finance.yahoo.com/news/cca-announces-acquisition-correctional-alternatives-100000434.html>.

to the Community Education Centers, Inc. (“CEC”).¹⁵ The re-entry facilities each have about 600 beds and were leased by the Pennsylvania Department of Corrections and the Philadelphia Prison System.¹⁶ In the same year, CoreCivic acquired Avalon Correctional Services Inc.¹⁷ With this \$157.5 million deal, CoreCivic now operates 17 re-entry facilities totaling 4,365 beds, making it the largest domestic owner of community corrections beds.¹⁸

The push into the residential reentry market is aimed in part at expanding relationships with existing clients such as the BOP. On any given day, the BOP has roughly 9,000 inmates in re-entry facilities nationwide and has been seeking additional funding to expand its reentry programs.¹⁹

In 2016, CoreCivic acquired Correctional Management, Inc. (CMI), which currently operates seven facilities providing community corrections and non-residential day reporting services in Colorado.

Clearly, both corporations are investing heavily to expand into community corrections and they would not make such investments if they didn’t expect significant profits.

IV. THREATS TO REFORM EFFORTS

The Treatment Industrial Complex represents a threat to the movement to end mass incarceration. For-profit prison corporations like GEO and CoreCivic are well-funded and adept at reading market trends. In addition, their extensive lobbying efforts at both the federal and state levels have situated them to influence policies and contracting decisions to their financial advantage.

Corporations such as GEO and CoreCivic, can exploit reform efforts in several ways:

- Out-compete smaller, community-based service providers for contracts

¹⁵ CORECIVIC, INC., 2016 ANNUAL REPORT 1, 73 (2017).

¹⁶ *Id.*

¹⁷ CORRECTIONS CORP. OF AMERICA, 2015 ANNUAL REPORT 1, 19 (2016).

¹⁸ *Id.* at 20.

¹⁹ Getahn Ward, *CCA Boosts Investment in Halfway Houses*, TENNESSEAN (Oct. 19, 2015), <http://www.tennessean.com/story/money/real-estate/2015/10/29/cca-deal-boosts-investment-half-way-houses/71674910/>.

- Promote more restrictive options that incorporate a larger number of people
- Promote expanded use of supervision and surveillance for low-risk populations

Traditionally, for-profit prison corporations profited by charging a per-diem rate for each incarcerated person in a facility they manage. This model depends on incarcerating the greatest number of people for the greatest length of time to maximize profit. However, community corrections offers more profit-generating activities and a larger pool of potential “clients”.

Residential custody still offers the greatest potential profit, but it also has the highest associated costs (staffing, security systems, food, medical care). For non-residential options, which cost less to administer, the profit potential is measured in the number of people supervised, level of supervision, length of supervision, and associated services, such as required drug-testing, counseling, treatment, and job training.

It is in the interest of for-profit prison corporations to steer policy decisions in the direction that will generate the most profit for the company.

For example, in 2014, Oklahoma participated in the Justice Reinvestment Initiative (JRI), a nationwide campaign to reduce prison populations spearheaded by the Pew Charitable Trusts.²⁰ Operators of Oklahoma’s private prisons and halfway houses stalled reform legislation aimed at low-level offenders who violated the terms of their release because it excluded the use of private facilities.²¹ The companies then advocated to have their halfway houses serve as the “intermediate sanctions facilities” incorporated in the law.²²

An open record request exposed emails showing that executives from Avalon Correctional Services and GEO both sought meetings with the Governor's office and Corrections Department officials regarding the JRI reforms.²³ An email from a GEO Group lobbyist to the Governor read, “We would like to hear your thoughts on JRI and future impact on corrections.”²⁴

²⁰ Curtis Killman & Cary Aspinwall, *Private Corrections Companies Hoped to Cash in on Oklahoma Reforms*, OKLAHOMAN (Jan. 6, 2014), <http://newsok.com/article/3921158>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

The Governor's campaign committee received \$38,250 in funding from private corrections corporations.²⁵ Political action committees representing two private corrections companies with interests in the state have donated the maximum allowed, \$5,000, to the Governor's 2010 and 2014 campaign committees.²⁶ The spending prompted at least one prominent state legislator to question the correlation between political spending and the push for privatized intermediate sanctions facilities. State Senator Constance Johnson declared, "[fo]llow the money This whole notion of special interests having undue influence on the legislative process, this is proof."²⁷

Private prison companies have tactically adopted the language of treatment and rehabilitation to keep pace with the shifting terrain of penal policy reform, and to maintain profitability. An instructive example can be found in GEO Group's successful effort to take advantage of the Federal Government's Alternatives to Detention ("ATD") Program.

Immigration and Customs Enforcement ("ICE"), a government agency under the Department of Homeland Security ("DHS"), came under fire from immigrant rights advocates for the abysmal conditions in immigrant detention centers, about half of which are operated by for-profit corporations. In particular, the practice of "family detention" generated widespread public opposition for placing young children in prison. Usurping the rhetoric of immigrant rights advocates, ICE defended the practice as "keeping families together."

In late 2015 and early 2016, there was an increase in women and children fleeing drug and gang violence in Central America and entering the US seeking political asylum.²⁸ This surge raised additional concerns about how families and children were treated while being processed by the immigration system.

In response, the Obama Administration began pursuing a program to expand the ATD program for some immigrants and asylum seekers. ICE proposed to place many asylum seekers on GPS ankle bracelet monitors in lieu of detention.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Joe Watson, *Does Political Spending by Private Prison Firms in Oklahoma Influence Prison Reform?*, PRISON LEGAL NEWS (July 13, 2015), <https://www.prisonlegalnews.org/news/2015/jul/31/does-political-spending-private-prison-firms-oklahoma-influence-prison-reform/>.

²⁸ Kirk Semple, *Fleeing Gangs, Central American Families Surge Toward U.S.*, N.Y. TIMES (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/world/americas/fleeing-gangs-central-american-families-surge-toward-us.html>.

GEO's acquisition of BI Incorporated gave the company significant advantage in the immigration detention arena, and positioned GEO well to take advantage of the ATD program policy shift. Consequently, the company received an \$11 million-per-year contract for its subsidiary GEO Care, LLC to run a supervised release program for women and children who are released from family detention facilities.²⁹

GEO Group also runs one of the heavily-criticized family detention facilities, the Karnes County Residential Center, which plans to expand to 626 beds.³⁰ It is estimated that this expansion will increase the facility's revenues by \$20 million each year.³¹ Expansion ensures that the GEO Group will continue to profit from immigrant families, whether they are entering or exiting detention.³²

On its face, the move gives immigrant rights advocates exactly what they've been demanding for years—moving people out of detention. But while it is certainly preferable to incarceration, many question whether this 24-hour monitoring is necessary.

This issue highlights the potential pitfalls facing reform advocates in navigating the movement of the for-profit incarceration industry into this new arena. Simply calling for “alternatives” is not enough. Advocates must be vigilant about how their recommendations are being applied in order to ensure that they truly are used as *alternatives*, rather than ensnaring individuals who do not require constant supervision.

V. KEY COMPONENTS OF COMMUNITY CORRECTIONS PROFITEERING

1. Electronic Monitoring

Electronic Monitoring (EM) may include a variety of technologies and software systems that monitor a person's location. This can include

²⁹ The GEO Group Awarded Contract By U.S. Immigration And Customs Enforcement for the Continued Provision of Services under Intensive Supervision and Appearance Program, BUSINESS WIRE (2014), <http://www.businesswire.com/news/home/20140910005643/en/GEO-Group-Awarded-Contract-U.S.-Immigration-Customs>.

³⁰ The GEO Group Announces 626-Bed Expansion of the Karnes County Residential Center in Texas, BUSINESS WIRE (2014), <https://www.businesswire.com/news/home/20141219005408/en/GEO-Group-Announces-626-Bed-Expansion-Karnes-County>.

³¹ *Id.*

³² John Burnett, *As Asylum Seekers Swap Prison Beds For Ankle Bracelets, Same Firm Profits*, NAT'L PUB. RADIO (Nov. 13, 2015), <http://www.npr.org/2015/11/13/455790454/as-asylum-seekers-swap-prison-beds-for-ankle-bracelets-same-firm-profits>.

wrist/ankle bracelets, field monitoring devices, alcohol and drug testing devices, voice verification systems, and global positioning systems (“GPS”). Electronic monitoring is employed both as an alternative to incarceration, alone or in tandem with other services such as outpatient treatment or day reporting, and on the “back-end” to monitor those released from prison or detention.

2. Day Reporting Centers

This model of community-based supervision is being employed in a variety of ways, with individuals on probation, diverting people in jail, providing pre-release services to people technically in jail custody, and with those on parole. Many are designed as a “one-stop shop” providing supervision, drug treatment and testing, employment readiness, and other rehabilitative services. Another example is an automated system that asks supervisees a series of questions to determine their compliance with the program.

3. Intermediate Sanctions Facilities

These facilities offer an alternative to revocation to prison or jail for violations of the terms of probation or parole, such as positive drug test results, curfew violations, or missed parole officer appointments. They are generally designed for shorter stays (90 to 180 days) and provide treatment, counseling, and supervision to address the nature of the violation.

4. Residential Reentry Centers

Residential reentry centers, more commonly known as halfway houses, provide housing and supervision to people exiting prison or who are near release. Residential reentry centers are intended to provide reintegration services, including employment counseling, financial education, and substance abuse support. Residential reentry center facilities exist at the federal and state prison level.

While this article focuses on these four types of facilities and programs in the emerging Treatment Industrial Complex, they are by no means stand-alone categories. In fact, many states and municipalities blend the various approaches into their community corrections programs, with some aspects being administered by the state agency, others contracted out to for-profit corporations, and others to non-profit service providers. This makes it difficult to assess the full scope of the Treatment Industrial Complex.

For the sake of brevity, this article does not address the myriad of other types of profiteering in the criminal justice field, such as drug treatment and mental health programs provided inside various correctional and “alternative” facilities.

These four segments were selected for consideration because they represent some of the most lucrative sectors of this emerging market. Collectively, they illustrate the continuum of profiteering in community corrections, from residential treatment (which generates the highest per diems) to supervision and surveillance, which make up for the lower per day cost with higher numbers of individuals being monitored.

A. Electronic Monitoring

Electronic monitoring has been used to supervise people since the 1960’s. Technological advances such as GPS and location tracking technology has made the use of these devices, especially body-attachment monitors, much more widespread.

Over the last three decades, the number of people in prison soared, and state corrections’ budgets grew exponentially. After the 2009 recession, governments began looking for more affordable alternatives. Electronic monitoring is popular with cash-strapped departments and municipalities because the corporations contracting with the government agency charge the sentenced individual for the cost of their own supervision. At the same time, electronic monitoring represents a more politically feasible option for prison reduction, while addressing public concerns about accountability and safety.

This technology is used both on the “front end,” in lieu of pre-trial imprisonment, for people on home arrest and other diversion programs or for probationers, as well as on the “back end” for those released from jail or prison on community supervision. Additionally, electronic monitoring is used with sex offenders, juveniles, truant students, domestic abuse offenders, and those accused of gang activity.

The use of electronic monitoring has increased by 68% between 1998 and 2014.³³ Since most sentences are less than a year, about 300,000 people experience electronic monitoring annually.³⁴ In addition, an estimated 50,000 alcohol detection devices are in use due to DUI

³³ James Kilgore, *Electronic Monitoring is Not the Answer: Critical Reflections on a Flawed Alternative*, URBANA-CHAMPAIGN INDEP. MEDIA CTR. (Oct. 2015), <http://centerformediajustice.org/wp-content/uploads/2015/10/EM-Report-Kilgore-final-draft-10-4-15.pdf>.

³⁴ *Id.* at 8.

convictions.³⁵ Over 40 states and the District of Columbia have passed laws permitting and setting guidelines for the use of electronic monitoring.³⁶

GPS Electronic monitoring devices record a person's location every 60 seconds, and transmits that information to the supervising entity.³⁷ If the person is not in an approved location or has removed or disabled the device, an alarm will alert the supervising authority.³⁸

Other devices monitor the individual's blood alcohol level through their sweat, like a wearable breathalyzer test. The monitors can weigh about two pounds, must be worn 24 hours a day, and need to be charged an average of five hours each day to remain active.

The majority of companies providing electronic monitoring are for-profit enterprises. BI Inc., owned by the GEO Group, 3M Electronic Monitoring, Sentinel Offender Services (which owns Satellite Tracking of People, LLC.) are some of the top companies taking government contracts at the federal, state and county level. However, the lucrative nature of the industry is attracting new players, such as SuperCom, an Israeli-based Smart ID and electronic monitor producer, which has predicted that this will be a \$6 billion a year global industry by 2018.³⁹

Estimated revenue from such operations is believed to exceed \$300 million, with the amount expected to rise as governments are pressured to reduce costs without reducing convictions.⁴⁰

i. Electronic Monitoring in State and County Supervision

At the state and county government level, electronic monitoring services are used for pre-trial accountability (as an alternative to jail),

³⁵ *Id.*

³⁶ E. R. QUATREVAUX, EVALUATION OF THE CITY'S ELECTRONIC MONITORING PROGRAM ADMINISTERED BY THE ORLEANS PARISH SHERIFF'S OFFICE 1, 2 (2014), http://www.nolaoig.gov/index.php?option=com_mtree&task=att_download&link_id=31&cf_id=37.

³⁷ *Id.*

³⁸ Stuart Yeh, *The Electronic Monitoring Paradigm: A Proposal for Transforming the Criminal Justice System in the US.*, 4 LAWS J. 60 (2014).

³⁹ James Kilgore, *The Spread of Electronic Monitoring: No Quick Fix for Mass Incarceration*, TRUTHOUT (Jul. 30, 2014), <http://www.truth-out.org/news/item/25232-the-spread-of-electronic-monitoring-no-quick-fix-for-mass-incarceration>.

⁴⁰ Brian Donlinar & James Kilgore, *Carceral Conglomerate Makes Millions From Incarcerated, Their Friends and Families*, TRUTHOUT (Feb. 13, 2015), <http://www.truth-out.org/news/item/29095-carceral-conglomerate-makes-millions-from-incarcerated-their-friends-and-families>.

parole/probation supervision, house arrest, and monitoring of those with specific convictions that are considered more likely to reoffend, such as domestic violence or sex offenses.

According to the Associated Press, at least 100,000 people convicted of sex offenses, on parole, and on probation were wearing electronic monitoring devices in the US in 2013.⁴¹ Current statistics are unavailable, but it is likely that the number has increased and will continue to climb as new contracts are consistently being signed.

Contracts for electronic monitoring include not only the physical devices, but also transmitters, software, and technical support. Part of what makes this form of supervision so attractive to government agencies is the ability to pass much of these costs on to the person under supervision. Indeed, a common sales pitch to criminal justice agencies is that the program “practically pays for itself.”

Daily fees charged to supervisees can range anywhere from \$3.95⁴² to \$40 per day⁴³, depending on the municipality and the private contract. This does not include fees for installation and setup, ongoing maintenance, or other requirements, such as landlines or charges for lost or damaged equipment.

A nationwide survey by NPR found that 49 states — every state except Hawaii, plus the District of Columbia— now allow or require the cost to be passed along to the person ordered to wear an electronic device.⁴⁴ These costs can create an unreasonable burden for low-income or homeless individuals, as discussed below.

ii. Electronic Monitoring in Immigration

As noted above, ICE has adopted electronic monitoring. In 2014, 48,170 people were in the ATD program⁴⁵, which includes the intensive

⁴¹ David B. Caruso & Nicholas Riccardi, *Some Electronic Monitoring Alarms Go Unchecked*, THE SAN DIEGO UNION-TRIBUNE (Feb. 29, 2013), <http://www.sandiegouniontribune.com/sdut-ap-impact-some-ankle-bracelet-alarms-go-unchecked-2013jul28-story.html>.

⁴² QUATREVAUX, *supra* note 36.

⁴³ Donlinar, *supra* note 40.

⁴⁴ Joseph Shapiro, *Measures Aimed at Keeping People Out of Jail Punish the Poor*, NAT'L PUB. RADIO (May 24, 2014), <http://www.npr.org/2014/05/24/314866421/measures-aimed-at-keeping-people-out-of-jail-punish-the-poor>.

⁴⁵ BUDGET-IN-BRIEF FISCAL YEAR 2016 (2016), https://www.dhs.gov/sites/default/files/publications/FY_2016_DHS_Budget_in_Brief.pdf

supervision or electronic monitoring services provided by the GEO Group. In its 2018 budget request to Congress, the DHS asked for this program to be expanded to 79,000 people per day at an annual cost of \$177.7 million.⁴⁶

The program has two “supervision options”: Technology Only and Full-Service.⁴⁷ Both programs contract for electronic monitoring, using either GPS ankle bracelets or voice recognition software for telephonic reporting.

As of February 2014, there were 10,833 active Technology Only participants and 11,368 in the Full-Service option.⁴⁸ The DHS reports that the contractor charges \$0.17 a day per participant for telephonic monitoring and \$4.41 for GPS monitoring.⁴⁹ Case management services that come with the Full-Service option cost an average of \$8.37 per day.⁵⁰

The ATD program was designed to focus on ICE’s top priorities in immigration, which are those people with serious criminal histories and who pose a threat to public safety. However, according to ICE reports, *only 47% of the immigrants under supervision have been convicted of a crime.*⁵¹ 31% of people under supervision have no criminal history.⁵²

Instead, electronic monitors are being used as ‘collateral’ to ensure that a person shows up for their scheduled immigration court date. Yet, it is doubtful that women who are seeking asylum in the United States would turn down a chance to go to court and obtain this protection. Over 90% have expressed fear in returning to their native country, and are seeking US asylum.⁵³ Additionally, an April 2015 US Citizen and Immigration Services report showed that nearly 88% of those staying in the family specific detention facilities and who applied for asylum because of their fear of their native country were recognized by ICE as having a credible reason for being fearful.⁵⁴

⁴⁶ *Id.* at 4.

⁴⁷ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT’S ALTERNATIVES TO DETENTION (REVISED) 3-4 (2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Maria Sacchetti, *Program to track immigrants grows, drawing scrutiny*, THE BOSTON GLOBE (Mar. 17, 2013), <https://www.bostonglobe.com/metro/2013/03/16/monitor/A6e2Hxv3hRAOJufFLqT7QN/story.html>

⁵² *Id.*

⁵³ E.C. Gogolak, *Ankle Monitors Weigh on Immigrant Mothers Released From Detention*, N.Y. TIMES, Nov. 15, 2015.

⁵⁴ U.S. CITIZEN AND IMMIGR. SERVICES, USCIS ASYLUM DIVISION FAMILY

Immigration attorneys in Texas filed a formal complaint with the DHS charging that migrants, many of whom were mothers of minor children, were being deliberately misled and/or coerced into agreeing to wear ankle bracelets in order to be released from detention.⁵⁵ The complaint alleged that immigrants were not adequately informed of their right to be released on bonds instead of the tracking devices.⁵⁶ In addition, ICE personnel were meeting with the immigrants and obtaining their signatures without notifying immigration attorneys.⁵⁷ Even more disturbing, the complaint charges that ICE personnel threatened to withhold medical care for their children and threatened the mothers with deportation if they chose to seek bond hearings instead of agreeing to wear the ankle monitors.⁵⁸

iii. Libre by Nexus

In addition to those companies that contract with government entities to provide electronic monitoring services, there is a new breed of profiteer that is using the technology to broker bonds for immigrants in detention centers.

Libre by Nexus (“LBN”) is a surety company working with the for-profit bail bond industry. The company specifically targets families affected by immigration detention who are desperately seeking a way out of detention centers.

“Libre” means “free” in Spanish. The advertising used by the company plays on many of the themes and even messaging used by immigrant rights advocates in their opposition to the over-use of detention. The website proudly declares, “We reunite families.”⁵⁹

Most bond companies require collateral in order to post an immigration bond, such as a house, credit card, or a cash deposit. Libre

FACILITIES REASONABLE FEAR (2015), <http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-familii-facilities-FY2015Q2.pdf>.

⁵⁵ Lindsay Harris, et al., *Public Complaint Regarding Coercion and Violations of the Right to Counsel at the South Texas Family Residential Center in Dilley, AM*. IMMIGR. LAW ASS’N (2015), <http://www.aila.org/advo-media/press-releases/2015/coercion-intimidation-detained-mothers-children/complaint-regarding-residential-center-in-dilley>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Immigration Bail Help - Libre by Nexus (2017), <https://www.librebynexus.com/> (last visited Dec 29, 2017).

only requires a “co-signer,” and this person does not have to be a US citizen or permanent resident.⁶⁰ For indigent immigrant defendants, this is a major advantage.

However, the company then uses expensive GPS monitoring as its collateral in underwriting detention bonds with recognized bail bond companies. To be released from detention, a person must sign a contract agreeing to pay \$420/month, plus various other fees, for “renting” a GPS ankle monitor that they must wear at all times.⁶¹ For bonds over \$5,000, the company requires an \$880 processing and installation fee, which is non-refundable.⁶² Neither the interest payments nor the installation fee is used toward paying off the bond.⁶³ The person must wear this until their detention hearings are completed, meaning until they are either deported or granted asylum in the US, or until the total amount of the bond is paid, plus 20% interest.⁶⁴

Immigration cases can take months or even years to settle. Families have reported paying thousands of dollars *more than their original bond* to cover the GPS contract, and still do not have a court date scheduled.⁶⁵ LBN is not regulated in any way, unlike for-profit bail bond companies, which must register as a certified company with the US Department of Treasury. LBN avoids this by outsourcing to a certified bail bond company, and then profits from the GPS rental agreement.

This type of predatory action can cause great harm to the individuals enrolled, as well as to the ATD movement. LBN claims to provide case management, legal services, and holistic support, but few clients have seen those services. Instead, they lure people who are in detention and desperate to leave with a false freedom, enriching their business in the process.

⁶⁰ Immigration Bail Help - Libre by Nexus (2017), <https://www.librebynexus.com/libre-bond-process> (last visited Dec 29, 2017).

⁶¹ Lizbeth Mateo, *When “Libre” does not mean Freedom*, CRIM. LAW & POL’Y BLOG (May 26, 2016), <https://crimlawandpolicy.wordpress.com/author/lizbethmateo/>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Libre by Nexus Contract Materials, Immigration Electronic Monitoring Services, 2014 | Prison Legal News, Prisonlegalnews.org (2017), <https://www.prisonlegalnews.org/news/publications/libre-nexus-contract-materials-immigration-electronic-monitoring-services-2014/>. (last visited Dec 29, 2017).

⁶⁵ Jorge Morales Alamada, *Congresista exige investigar a compañía que coloca grilletes a inmigrantes*, LA OPINION (Oct. 17, 2015), <https://laopinion.com/2015/10/17/congresista-exige-a-ice-que-investigue-a-compania-de-fianzas-que-coloca-grilletes-a-inmigrantes/>.

iv. Concerns Regarding Electronic Monitoring Profiteering

Determining the effectiveness of electronic monitoring depends upon the stated (or understood) goal of the program. Is electronic monitoring being used to punish, to track, to rehabilitate, or for some other purpose? The best practices for the community corrections field recommends a balanced approach between treatment, surveillance, and accountability to prevent recidivism.

In the case of pretrial incarceration or detention, the stated goal of electronic monitoring is to ensure the defendant shows up to court. As an alternative to incarceration, the goal is also to ensure that the supervisee is adhering to the rules and requirements of his or her program, i.e. staying away from drugs and alcohol, not spending time with “criminal associates,” attending required classes or rehabilitation programs, and, perhaps most importantly, not committing new crimes.

The true effectiveness of this intervention has not been extensively studied, particularly when it comes to the diversity of populations who are now being subjected to increased supervision. The potential for reductions in recidivism must be balanced with other concerns, such as those listed below.

Faulty Equipment. The reliability of electronic monitoring varies widely. A study completed in 2007 in Arizona found that 70% of the alerts sent to supervising entities were false alerts—meaning the person did nothing wrong but the monitor reported that they did. This is due to technical issues such as signals lost in dead zones.⁶⁶ As reported by BI Inc., false alerts can be sent because of a low battery or while the device is charging.⁶⁷ Another report from Tennessee found that 82% of the 38,476 alarms that occurred from the 68 people that were being electronically monitored resulted from technology issues, not safety concerns.⁶⁸ In 2012, following numerous issues with the GPS equipment breaking, batteries dying, and “ghost signals” that reported people miles away from their actual location, the State of California cancelled its contract with 3M.⁶⁹

⁶⁶ ARIZ. ST. LEGIS., JOINT LEGIS. STUDY COMM. ON GLOBAL POSITION SYSTEM MONITORING (2007).

⁶⁷ BI, Inc., *BI Incorporated Factsheet*, COLO. DEP’T OF CORRECTIONS.

⁶⁸ ARTHUR A. HAYES JR., PERFORMANCE AUDIT, TENN. COMPTROLLER OF THE TREASURY (2012), <http://www.comptroller.tn.gov/repository/SA/pa12036.pdf>.

⁶⁹ Paige St. John, *Tests found major flaws in parolee GPS monitoring devices*, L.A. TIMES. (Mar. 30, 2013), <http://www.latimes.com/local/la-me-ff-gps-monitors-20130331-dto-htmlstory.html>.

With the excessive false alarms and the incredible amount of data collected from electronic monitoring, parole and probation officers often fail to properly follow up on alerts. An Associated Press study found that federal probation officers in New York often ignore alerts that lasted less than five minutes, as it was assumed that it was a technical issue.⁷⁰ In Orange County, Florida, the number of alerts was so overwhelming that the staff prioritized responding to alerts of removal only.⁷¹ This permitted one person being monitored to violate his curfew 53 times in one month without sanction, and allowed him to shoot three people as well as kill one person planned to testify against him.⁷² And in the worst cases, failures in equipment and reporting can result in people being arrested and imprisoned for parole violations that never happened.

Surveillance vs. Support. Instead of acting as one of many tools used alongside comprehensive treatment services, electronic monitoring often acts as a crutch for overworked probation and parole departments. It threatens a return to the “tail ‘em, nail ‘em, and jail ‘em” approach, in which the officer—or in this case, the device—is simply there to catch the individual if and when he or she violates the terms of probation or parole, leading to sanctions that often include re-incarceration.

Pure surveillance, without the opportunity to meet with a case worker or parole officer to “check in”, get assistance, and talk things through, results in higher rates of violation. A Washington State Institute of Public Policy analysis of adult corrections programs found that supervision programs without a focus on treatment do not, in general, produce a reduction in recidivism rates.⁷³ Community supervision in some jurisdictions, however, continues to focus heavily on individual probationer accountability rather than on providing officers with the skills, tools, and resources necessary to reduce the risk of recidivism among their supervisees.⁷⁴ One monitored individual noted:

The restrictions had no particular purpose in terms of my own development. They only seemed dedicated to keeping

⁷⁰ Associated Press, *Analysis finds not enough monitoring of monitoring bracelets in US*, FOX NEWS (Jul. 28, 2013), <http://www.foxnews.com/us/2013/07/28/analysis-finds-not-enough-monitoring-monitoring-bracelets-in-us.html>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ CENTER ON SENTENCING AND CORRECTIONS, *POTENTIAL OF COMMUNITY CORRECTIONS TO IMPROVE SAFETY AND REDUCE INCARCERATION*, VERA INST. FOR JUST. (2013), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/potential-of-community-corrections.pdf>.

⁷⁴ *Id.*

me under control. Moreover, there were no meaningful conversations with parole agents or case managers about how a person was supposed to advance, about the best place to find work, about the difficulties in getting a driver's license or how I might go about re-establishing relationships with my family after a six and a half year absence. I was on my own with a plastic ankle bracelet and a box that made lots of beeps on the line every time I wanted to talk to someone on the phone.⁷⁵

Surveilling people without connecting them to treatment and resources does not solve the problem of crime and thus it does not enhance public safety. In fact, it represents a significant misallocation of taxpayer dollars.

Net Widening. Rather than serving as a true alternative to incarceration, electronic monitoring appears to be bringing new populations under state control. According to an analysis in the Washington University Journal of Law and Policy, most of those placed on electronic monitors haven't committed serious or violent offenses and, were it not for monitoring, "at least some of these populations would not in fact be incarcerated or otherwise under physical control."⁷⁶

A negative incentive is sometimes even embedded in the contracts, as the cost for each device is reduced when more are ordered. In a \$3 million contract with the state of Arkansas, the price for an ankle bracelet and receivers drops from \$2.50 each when 500 or less units are ordered to \$2.25 at 501 to 1,500 units.⁷⁷ This continues to the lowest cost option, which is only \$1.95 per unit when more than 3,000 are ordered.⁷⁸ This gives governments the incentive to order more devices as a long-term cost saving measure, and prioritizes the use of electronic monitoring over other options solely because the equipment is available, not because it is the best option for that person and their circumstances.

Stigma and Negative Impacts on Families. Wearing a visible monitoring device immediately marks someone as a "criminal". An ankle

⁷⁵ JAMES KILGORE, REFLECTIONS ON A RESEARCH AGENDA FOR ELECTRONIC MONITORING IN THE UNITED STATES BEFORE THE 9TH EUROPEAN ELECTRONIC MONITORING CONFERENCE ELECTRONIC MONITORING, PROBATION AND HUMAN RIGHTS IN FRANKFURT, GERMANY (2014).

⁷⁶ Molly Carney, *Correction through Omniscience: Electronic Monitoring and the Escalation of Crime Control*, 40 WASH. U. J. OF L. & POL'Y 294 (2013).

⁷⁷ Electronic Monitoring Equipment | Department of Finance and Administration, ARKANSAS.GOV (Jul. 9, 2013), https://www.dfa.arkansas.gov/state-contracts/details/ElectronicMonitoringEquipment_3M.

⁷⁸ *Id.*

monitor can dissuade employers from hiring a person out of fear, and the stigma the monitor attracts can cause a person to isolate themselves. In this way, electronic monitoring can keep people trapped in the system rather than helping them to grow out of it.

A Department of Justice study found that, with the visible ankle monitor acting as a "scarlet letter", those permitted to go to work had a difficult time finding or holding jobs.⁷⁹ This is a huge issue, given that gaining employment is a crucial step in avoiding future offenses. Most people under supervision are in the low wage, flexible hours job market. The job sectors most available to them are fast food, cleaning and maintenance, gardening, and retail sales. Limitations on movement and schedule changes can interfere with other conditions of their supervision, creating a catch 22.

Some supervisees have reported that they can be placed on "lockdown," meaning they cannot leave their house at all, for virtually any reason for an indefinite period of time (as determined by the parole officer).⁸⁰ They report that there is no means to appeal such a decision. One remarked, "it's like you just turned my family's house into another cell."⁸¹

89% of probation officers surveyed by the Justice Department felt that "offenders' relationships with their significant others changed because of being monitored."⁸² 65% of offenders described the negative impact as stress from the nuisance and inconvenience, while 10% said it changed family relationships because the supervisee stayed home more.⁸³

70% of offenders feel that electronic monitoring negatively impacts their relationships with their children because (1) the children feel stressed about or ashamed of the parent-offender, (2) the restrictions on the places where the parent-offender can take them, (3) the limitations or prohibitions on visits with the children, and (4) the interruption it brings into their children's lives.⁸⁴ As one parent testified, "When it beeps, the kids worry about whether the probation officer is coming to take me to

⁷⁹ Maya Schenwar, *Your Home is Your Prison*, TRUTHOUT (Jan. 19, 2015), <http://www.truth-out.org/news/item/28609-your-home-is-your-prison>.

⁸⁰ James Kilgore, *Repackaging Mass Incarceration*, COUNTERPUNCH (Jun. 6, 2014), <https://www.counterpunch.org/2014/06/06/repackaging-mass-incarceration/>.

⁸¹ *Id.*

⁸² WILLIAM BALES, ET. AL., A QUANTITATIVE AND QUALITATIVE ASSESSMENT OF ELECTRONIC MONITORING, DOC. NO. 230530, U.S. DEP'T OF JUST. 1, 92 (2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/230530.pdf>.

⁸³ *Id.*

⁸⁴ *Id.* at 93.

jail. The kids run for it when it beeps."⁸⁵ Another noted that his child repeatedly strapped a watch around his ankle "to be like Daddy".⁸⁶

People have also reported health issues due to constantly wearing the monitors. Issues range from skin abrasions, swelling of the foot or ankle, infections, severe leg cramps, headaches, and burns when charging.⁸⁷

Penalizing the Poor. Perhaps one of the most concerning aspects of for-profit corporations' involvement in electronic monitoring is the fact that those under supervision are generally low income. At the same time, the proliferation of these programs is due in large part to their promises of cost savings to state and local jurisdictions. These savings are frequently achieved by requiring the supervisee to pay for the cost of the equipment, a telephone landline, and fees for the supervision itself. These costs are in addition to any other court-ordered fees or restitution. The combined expenses can become a significant burden on individual and families who are already financially stressed.

When people fall behind in their payments, they can be charged additional late fees. Ultimately, those who fail to pay can be sent back to prison or jail. This has given rise to concerns about a return to "debtor's prisons".⁸⁸

An additional concern related to the use of electronic monitoring for pre-trial release from jail or immigrant detention is that it creates an unequal system of justice—only those who can afford it will be released. Rather than basing releases on risk assessment or other factors, the decision can rest solely on the person's ability to pay.

Passing the cost of equipment, servicing, and supervision on to defendants and supervisees is a major incentive for cash-strapped state, county, and city governments struggling to pay for their "get tough" policies. However, some jurisdictions have found that the contracts ultimately undermined promised cost savings because governments have to chase down indigent defendants who fall behind on payments.

⁸⁵ *Id.* at 90.

⁸⁶ *Id.*

⁸⁷ Kyle Barron & Cinthya Santos Briones, *No Alternative: Ankle Monitors Expand the Reach of Immigration Detention*, THE N. AM. CONGRESS ON LATIN AM. (Jan. 6, 2015), <https://nacla.org/news/2015/01/06/no-alternative-ankle-monitors-expand-reach-immigration-detention>; Jane Guskin, "Something Better" Than Detention for Immigrants?, TRUTHOUT (May 22, 2015), <http://www.truth-out.org/news/item/30913-something-better-than-detention-for-immigrants>.

⁸⁸ Editorial, *The New Debtors' Prisons*, THE ECONOMIST (Nov. 16, 2013), <https://www.economist.com/news/united-states/21589903-if-you-are-poor-dont-get-caught-speeding-new-debtors-prisons>.

At the same time, other counties are actually reaping an *additional profit* from these programs. In Mountlake Terrace, a suburb north of Seattle, the city contracts with a small electronic monitoring firm, which charges the town \$5.75 “per client”. Yet the person placed on electronic monitoring actually pays the city \$20 per day, resulting in a net revenue for the city of “approximately \$50,000 to \$60,000” per year, according to Mountlake Terrace county documents.⁸⁹

Making those involved in the justice system into profit-generating machines is inherently unethical. It is also a dangerous trend that ultimately undermines the public safety and rehabilitative goals of the criminal justice system.

VI. REENTRY CENTERS AND OTHER “ALTERNATIVE” FACILITIES

A. Day Reporting Centers

The concept of Day Reporting Centers emerged in the 1980s as a community-based intermediate sanction, delivered in a single location, which could be used as an alternative to incarceration. Day reporting represents a relatively low-cost means of supervising large numbers of individuals at varying degrees of intensity. Individuals can use an electronic kiosk to remotely “check-in” or drop in to a center as little as once a week for a drug test or meeting with their supervisor. However, some programs require supervisees to remain physically present in the center to participate in as much as 8 hours of treatment programming daily.

Many programs operate as a “one-stop shop,” where wraparound services are offered for individuals to participate in during the day, allowing them to return to their homes at night.

The spectrum of programs in counties and states include:

1. In-custody “pre-release” programming for jail inmates
2. Jail diversion for those released on their own recognizance, in lieu of posting a bond
3. Supervision and programming for probationers

⁸⁹ Eric Markowitz, *Electronic Monitoring Has Become the New Debtor’s Prison*, NEWSWEEK (Nov. 23, 2015 at 12:23PM), <http://www.newsweek.com/2015/12/04/electronic-monitoring-has-become-new-debtors-prison-397225.html>.

4. Supervision and programming for parolees or recently released prisoners

At the time of writing, there is no national data available to indicate just how many Day Reporting Centers are in use across the country. An initial scan indicates that the majority are administered on the county level by jails and probation departments. The range of programs and services is extremely varied. Examples of Day Reporting include:

- Georgia operates 15 Day Reporting Centers and 17 “Day Reporting Center Lites” throughout the state for probationers and parolees. Low-risk probationers can utilize an automated system. More intensive programs include wrap-around services.⁹⁰
- Cook County, IL utilizes day reporting as a jail diversion program. Participants are still considered “inmates”, and the program pairs day reporting with electronic monitoring.⁹¹
- Sacramento, CA utilizes day reporting for probation, parole, jail release, and state prisoners who have been released through the recent passage of Proposition 47, which retroactively made certain drug and theft offenses misdemeanors instead of felonies.⁹²
- Washington state County Probation departments utilize day reporting for pre-trial jail releases in lieu of a bond, as well as for those who are non-compliant with the terms of their probation. The program is also used to monitor behavior pending placement in substance abuse and mental health treatment facilities.⁹³

A major player in the Day Reporting Center market is GEO Group, through its subsidiary BI Incorporated. The company boasts a total of 64 Day Reporting Centers in California, Colorado, Illinois, Kansas,

⁹⁰ Probation Supervision Programs | Department of Community Supervision, GEORGIA.GOV (2017), <http://dcs.georgia.gov/probation-supervision-programs> (last visited Dec 29, 2017).

⁹¹ CHRISTINE MARTIN, ET. AL., *AN EVALUATION OF THE COOK COUNTY SHERIFF’S DAY REPORTING CENTER PROGRAM: REARREST AND REINCARCERATION AFTER DISCHARGE*, ILL. CRIM. JUST. INFO. AUTHORITY (2000), <http://www.icjia.org/assets/pdf/researchreports/An%20Evaluation%20Rearrest%20and%20Reincarceration%20After%20Discharge.pdf>.

⁹² SACRAMENTO COUNTY OFFICE OF INFO., *YOLO COUNTY DAY REPORTING CENTER: YEAR IN REVIEW 2014-2015* (2015).

⁹³ WASH. ST. INST. FOR PUB. POL’Y, *BENEFIT-COST RESULTS, DAY REPORTING CENTERS 2015* (2015).

Kentucky, Louisiana, North Carolina, New Jersey, Pennsylvania, and Virginia.⁹⁴

The original vision of a Day Reporting Center was a place where individuals came once a day to report to their probation or parole officer, possibly submit a drug test, and attend counseling. With the advent of technology, it is possible for people to “check-in” remotely via a kiosk, further minimizing the disruption to their lives and the burden of supervision.

But many such programs now require 8-hour a day participation for set lengths of time. Some programs also place individuals on electronic monitoring, which represents a costly duplication of services. Likewise, the use of these programs as a pre-release program from jail has the potential to simply prolong the process before the individual can actually return to the community and resume their productive activities.

B. Intermediate Sanctions Facilities

Technical violations of probation and parole are a driver of high incarceration rates in many counties and states. In 2014, technical violations accounted for 26 percent of all prison admissions in the US.⁹⁵

Technical violations are typically failures to abide by the conditions of release, such as testing positive for drugs, missing appointments with parole officers, or violating a curfew—not committing new crimes. Due to the tremendous costs associated with revoking technical violators back to prison, the use of graduated sanctions in lieu of a return to custody has been promoted as a best practice by a range of government, academic, and social service entities.⁹⁶

Graduated sanctions can include community service, increased drug testing, and loss of privileges. More serious infractions can be addressed through immediate, short-term stays in intermediate sanctions facilities. The recommended length of stay is one to three days, to allow people to maintain their employment, family, and community ties.

The most accepted model is “swift and certain sanctions” (“SAC”), referring to research findings that individuals are more motivated to comply when punishment is immediate and guaranteed, rather than unduly

⁹⁴ Find Your Regional Representative - GEO Reentry Services, GEO REENTRY SERVICES (2017), <http://www.georeentry.com/locations/> (last visited Dec 29, 2017).

⁹⁵ E. ANN CARSON, *PRISONERS IN 2014*, U.S. DEP’T OF JUST. (2015), <https://www.bjs.gov/content/pub/pdf/p14.pdf>.

⁹⁶ ALISON LAWRENCE, *PROBATION AND PAROLE VIOLATIONS: STATE RESPONSES*, NAT’L CONF. OF ST. LEG. (2008), <http://www.ncsl.org/print/cj/violationsreport.pdf>.

harsh. Model programs like HOPE in Hawaii have proliferated around the country, touted at professional conferences and in industry publications.⁹⁷

The highest level of sanction is a short-term stay in some type of residential setting. Sometimes county jails, residential reentry centers, or other non-prison facilities are used for this purpose. But increasingly, new facilities are being developed for this population, representing a potential source of income for for-profit operators.

The relative freedom of movement in these residential settings varies. While a court order or threat of re-incarceration can coerce participation, in most cases the individual is technically free to leave. In others, the facility is considered “secure”, offering little distinction from a jail or prison stay other than the fact that it also offers rehabilitative services. At the time of writing, there is no national overview or evaluation of the number, scope, and performance of these types of programs.

Washington State was the first to adopt the program statewide.⁹⁸ In 2012, the state completely restructured their parole and probation systems to embrace the SAC model.⁹⁹ Now, low-risk violations such as testing positive for drugs or alcohol automatically result in one to three days in a county jail. High-risk violations such as firearm possession continue to be addressed with a hearings process that could result in up to 30 days of confinement. New crimes are referred to local prosecutors.

An evaluation of the program found that the model had reduced revocation jail stays from 30 to 120 days to about three.¹⁰⁰ The report found that SAC participants were 20% less likely to be convicted of any crime, including felonies and property crimes.¹⁰¹ Further, SAC participants were 30% less likely to be convicted of a violent felony.¹⁰² And, finally, the evaluation discovered that the program resulted in significant cost savings.¹⁰³ Every dollar spent on SAC saves the

⁹⁷ Swift Certain Fair Hope Resource Center, SCFCENTER.ORG (2017), <http://www.scfcenter.org/> (last visited Dec 29, 2017).

⁹⁸ ZACHARY HAMILTON ET AL, RESEARCH BRIEF: WASHINGTON SWIFT AND CERTAIN, WASH. ST. INST. FOR CRIM. JUST. (2015), <https://s3.wp.wsu.edu/uploads/sites/436/2015/11/WA-Swift-and-Certain-Research-in-Brief.pdf>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 3.

¹⁰² *Id.*

¹⁰³ *Id.* at 4.

Washington Department of Corrections \$16.¹⁰⁴ That amounted to over \$40 million saved at the time of the study.¹⁰⁵

The positive results and costs savings appear tied to not only the swiftness and certainty of the penalty, but also the fact that it is short-term, allowing them to maintain their pro-social activities and connections to family and community. The Washington State study found that “[b]y reducing the duration of confinement for ‘low level’ violations, offenders were more likely to maintain employment, social supports and continue to participate and receive needed treatments and services in the community.”¹⁰⁶ As Jacqueline van Wormer, the report’s co-author, reasons, “It’s easier to explain away a missed day to your employer than 30 [days].”¹⁰⁷

Unfortunately, this model is now becoming distorted into an excuse to create and/or contract out for new facilities that are variations on prisons, or take up wings in existing prisons.

Pennsylvania operates seven “Parole Violator Centers” where individuals who commit technical parole violations are placed in lieu of a return to prison. However, these are secure facilities where individuals are not permitted to leave the center without an official escort. All programming as well as meals and housing are provided on-site. Three of the centers are operated by Gateway Foundation Corrections and Renewal, Inc., a non-profit organization, through contracts with the state.

Texas has seven intermediate sanctions facilities that are operated through the Texas Department of Criminal Justice. Individuals who violate the terms of their supervision are court ordered to participate. Typically, the program lasts six months. They are billed as “community-based facilities [which] allow the offender to retain some ties to family and local support mechanisms with programming that continues community contact including community service restitution and local rehabilitative services.”¹⁰⁸ Yet they are nevertheless secure facilities from which the individuals cannot leave freely until after discharge.

In addition, Texas has two state-contracted intermediate sanctions facilities which are secure lockdown facilities that completely remove the

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 2.

¹⁰⁷ Jason Tashea, *10 Things You Need to Know About Washington’s Innovative Parole Program*, HUFFINGTON POST (Nov. 4, 2015), https://www.huffingtonpost.com/jason-tashea/10-things-you-need-to-know_9_b_8463832.html (updated Dec. 6 2017).

¹⁰⁸ TEXAS DEP’T. OF CRIM. JUST., STATE CONTRACTED INTERMEDIATE SANCTION FACILITY: POLICY AND PROCEDURES FOR COMMUNITY SUPERVISION PLACEMENTS (2015), https://www.tdcj.state.tx.us/documents/ISF_Policies_and_Procedures.pdf.

offender from the community and provide either substance abuse treatment or cognitive treatment. These programs are targeted toward medium- and high-risk felons. These two facilities are operated by Management and Training Corporation.

It is likely that such for-profit corporations with a background in prison facility management would look to these programs as an avenue to expand their revenue. But states and local governments should be extremely cautious when pursuing these options. Recent research questions the usefulness and cost effectiveness of these programs unless there is a demonstrated need for intensive, residential treatment. Further, the parolee should be placed in the program immediately following a violation, not after a lengthy revocation and court order process.¹⁰⁹

C. Residential Reentry Centers

Residential Reentry Centers are what most people refer to as “halfway houses”—they ideally provide housing, treatment, case management and job assistance for a short period of time to assist individuals in their transition from prison to the community. The programs generally require a person meet certain eligibility requirements, often pertaining to conviction types, behavioral records, and support systems before they are accepted.

One of the key areas of sentencing reform for many states is parole reform—reducing the length of time people serve in prison and/or increasing their opportunities for early release. Sensitive to charges of such policy reforms being “soft on crime” or “releasing criminals onto the street”, many states have opted for residential reentry programs to ensure that individuals are being monitored and provided with needed services to reduce their risk of recidivism.

According to the Sentencing Project, lawmakers in at least six states modified policies related to community supervision in 2015.¹¹⁰ California expanded eligibility for early release for people sentenced as juveniles and for those with a mental health or medical diagnosis.¹¹¹ Oklahoma authorized reduced sentences for those who successfully complete a drug

¹⁰⁹ VERA INST. OF JUST., THE POTENTIAL OF COMMUNITY CORRECTIONS TO IMPROVE SAFETY AND REDUCE INCARCERATION (2013), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/potential-of-community-corrections-fact-sheet.pdf>.

¹¹⁰ THE STATE OF SENTENCING 2015: DEVELOPMENTS IN POLICY AND PRACTICE, THE SENTENCING PROJECT 1, 3 (2016), <http://sentencingproject.org/wp-content/uploads/2016/02/State-of-Sentencing-2015.pdf>.

¹¹¹ *Id.* at 5.

treatment program.¹¹² The Governor of Oklahoma also directed the Department of Corrections to allow prisoners sentenced for violent offenses to earn good time in order to reduce their sentences.¹¹³ And Utah passed a law allowing people to earn early release credits of 30 days for each month people monitored on probation or parole were in compliance with their supervision requirements.¹¹⁴

In addition, safe and affordable housing is a huge barrier to individuals released from prison. The vast majority of incarcerated people were poor *before* they went to prison. With few opportunities to earn money inside prison, plus having to pay fines and restitution payments, and being charged for an array of basic needs by the prison (commissary, doctor visits, personal hygiene products), most people are released with very little money or none at all. They often have few marketable job skills and low educational attainment. And the “collateral consequences” of a felony conviction set up additional barriers—many housing providers will not rent to people with a record, and many employers will not hire people who have been incarcerated, regardless of the offense. Residential reentry programs can fill this gap by providing a place for people to live while they are making the transition back into the community.

Most residential reentry programs are designed to provide minimal freedoms such as employment and out of facility visitation, but these are privileges and not guaranteed. Participants must still report in the evening and stay overnight.

The type and quality of treatment, rehabilitative programming, and job assistance provided vary widely, and despite significant research in this area and emerging best practices, to date there are no national standards or guidelines.

i. Residential Reentry Centers in Federal and State Jurisdictions

The BOP provides the best example of a standardized structure for Residential Reentry Centers. Federal reentry programs offer drug testing and counseling for alcohol and drug-related problems, employment training, and medical care, including mental health treatment. The BOP currently has 215 active contracts, with over 9,000 beds for men and

¹¹² *Id.*

¹¹³ *Id.* at 8.

¹¹⁴ *Id.* at 11.

women.¹¹⁵ About 70% of these facilities are operated by nonprofit entities.¹¹⁶ The other 30% are through for-profit entities, with GEO Care and its subsidiaries securing the most contacts.¹¹⁷ Most states or counties contract to private for-profit or nonprofit companies as well.

During their stay, individuals are required to pay 25% of their gross income, not to exceed the average daily cost of their placement.¹¹⁸ These are referred to as “subsistence charges”.¹¹⁹ If a person fails to make payments they can be returned to custody and re-incarcerated.¹²⁰

Because these programs are administered by the Federal Government and subject to a unified set of standards, it is possible to gather reliable data on their performance and outcomes.

The Justice Department’s Office of the Inspector General (“OIG”) conducted an audit of the BOP’s residential reentry programs in 2012.¹²¹ The audit found that the six centers reviewed adequately met most of the requirements.¹²² However, the report identified deficiencies related to substance abuse testing, inmate subsistence payments, escapes, and authorized inmate absences.¹²³ The OIG notes that these conditions increase the probability that inmates will not successfully transition back into society.¹²⁴

At present, there is no comprehensive survey of the use of halfway houses in the states. Available information indicates that there are a range of programs, including residential and non-residential. These are sometimes operated by state agencies, but more often are run by for-profit and non-profit entities. Some have state oversight and some operate completely independently.

As with so many other segments of the Treatment Industrial Complex, the two major players in residential reentry are GEO Group and

¹¹⁵ BOP: Residential Reentry Management Centers, BOP.GOV (2017), https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp (last visited Dec 29, 2017).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ KATHLEEN HAWK SAWYER, CHANGE NOTICE COMMUNITY CORRECTIONS CENTER (CCC) UTILIZATION AND TRANSFER PROCEDURES, FED. BUREAU OF PRISONS 1, 4 (1998), https://www.bop.gov/policy/progstat/7310_004.pdf.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ OFFICE OF THE INSPECTOR GENERAL, AUDIT OF THE FEDERAL BUREAU OF PRISONS’ CONTRACTING FOR AND MANAGEMENT OF RESIDENTIAL REENTRY CENTERS, U.S. DEP’T OF JUST. (2012), <https://oig.justice.gov/reports/2012/a1220.pdf>.

¹²² *Id.*

¹²³ *Id.* at 4.

¹²⁴ *Id.*

CoreCivic. GEO subsidiary GEO Care has 54 reentry facilities in nine states¹²⁵, and contracts for 11 federal residential reentry centers.¹²⁶ As of 2016, CoreCivic owned or controlled 24 residential reentry facilities with a design capacity of 4,970 beds located in six states, making it one of the largest community corrections operators in the US market.¹²⁷

ii. Issues in For-Profit Residential Reentry Centers

Private operators make their profits by winning contracts. They win contracts by being the lowest bidder, yet at the same time, they must provide the same or better service while still generating revenue for their company. Thus, these corporations are notoriously tight-fisted when it comes to their facilities' construction, amenities, programs available to prisoners, and, most significantly, staffing.

These companies often pay staff less than states or the Federal Government. They frequently offer minimal staff training, which can leave employees frustrated and unprepared to handle crises. As a result, facilities tend to have very high turnover rates and are chronically understaffed.

Essentially, the combination of low pay, understaffing, and having a largely inexperienced workforce is a recipe for unstable and dangerous facilities. Staff who are new and under-trained may not have enough experience to notice when conflicts are brewing or know how to defuse them before they escalate.

Despite the tremendous public expenditure on these programs, there is very little monitoring or reporting on their performance, conditions, and outcomes. Because contracts are held by a variety of agencies at the state, county, and municipal levels, what reporting does exist is not collected or aggregated. To date, there is no comprehensive assessment of the overall performance of these contracts nationally.

In the absence of such official, aggregate data, the alternative is to compile the publicly-available reports and published accounts that give an indication of the experiences of states, counties, and municipalities in

¹²⁵ Find Your Regional Representative - GEO Reentry Services, GEO REENTRY SERVICES (2017), <http://www.georeentry.com/locations/> (last visited Dec 29, 2017).

¹²⁶ BOP: Residential Reentry Management Centers, BOP.GOV (2017), https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp (last visited Dec 29, 2017).

¹²⁷ *CCA Acquires Correctional Management, Inc.*, NASDAQ GLOBENEWSWIRE (Apr. 11, 2016), <https://globenewswire.com/news-release/2016/04/11/827544/0/en/CCA-Acquires-Correctional-Management-Inc.html>.

contracting for residential reentry. A comprehensive search of news articles, government audits, lawsuits, and other publicly-available sources indicate a pervasive pattern of serious issues in privately operated halfway houses.

Escapes. Because residential reentry centers are not “lockdown” facilities, individuals can and do simply walk away. Because they are still technically under state supervision, this constitutes an escape from custody. An expose in the *New York Times* was one of the first such investigations into the performance of CEC, a for-profit reentry company. The piece revealed that, from 2009 through 2011, 16% of escapees absconded from CEC-operated facilities in New Jersey.¹²⁸

GEO transitional and prison facilities have also reported numerous escapes. The most recent occurred in January 2016 at the Southeast Texas Transitional Center.¹²⁹ That same facility was scrutinized in 2012, when six escapes occurred.¹³⁰

Between 2008 and January of 2014, roughly 30% of the offenders at an Avalon facility in Tulsa reported for misconduct received write-ups for escape or related charges.¹³¹ Avalon staff deliberately misreported escapes as “failure to comply with the limits of confinement” to cover up the problem.¹³²

Drugs and Violence. Reports indicate that lax safety standards, understaffing, and minimal oversight have created truly dangerous environments in some for-profit residential reentry centers. At a CEC halfway house in Colorado—the largest in the state—there have been reports of unchecked drug use and gang violence.¹³³ Former halfway

¹²⁸ DEREK GILNA, WHEN HALFWAY HOUSES POSE FULL-TIME PROBLEMS, PRISON LEGAL NEWS 1, 5 (2015), <https://www.prisonlegalnews.org/media/issues/01pln15.final-web.pdf>.

¹²⁹ Brian Rogers, *Sex offender who absconded from Houston halfway house may be returned to prison*, HOUSTON CHRONICLE (Jan. 12, 2016), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Sex-offender-who-absconded-from-Houston-halfway-6754357.php>.

¹³⁰ Craig Malisow, *GEO Group Lets Sixth Rapist Stroll Away From Halfway House in 24 Months*, HOUSTON PRESS (Oct. 8, 2012), <http://www.houstonpress.com/news/thomas-lee-elkins-geo-group-lets-sixth-rapist-stroll-away-from-halfway-house-in-24-months-6747156>.

¹³¹ Carey Aspinwall & Casey Smith, *Escape Dilemma at Avalon*, TULSA WORLD (Apr. 6, 2014), http://www.tulsaworld.com/news/local/escape-dilemma-at-avalon/article_430ccb10-bd5f-11e3-b6fb-001a4bcf6878.html.

¹³² *Id.*

¹³³ Anat Rubin, *A Record of Trouble: California Looks to Halfway Houses, Finds a Company Cited for Violence and Escapes*, MARSHALL PROJECT (Apr. 14, 2015), <https://www.themarshallproject.org/2015/04/11/a-record-of-trouble>.

house residents and workers in New Jersey have reported that reentry facilities are often violent, dangerous and gang-infested, rampant with drugs and other contraband, and residents are not closely monitored. “This industry just infuriates me,” stated Nancy Wolff, director of the Center for Behavioral Health Services and Criminal Justice Research at Rutgers University. “If you want to go there and sit in peer-run groups – or hang out and smoke and play cards and have access to drugs – it’s a great place.”¹³⁴ Methamphetamine, marijuana, weapons and other contraband were found during a surprise search of a CoreCivic halfway house in southwest Oklahoma City in April of 2016. Nearly 40 grams of marijuana, a half gram of methamphetamine, alcohol and 26 cellphones were among the contraband found, according to a news release.¹³⁵ In 2015, a guard at an Avalon facility in Oklahoma was caught on video appearing incoherent and admitting to have taken drugs provided to him by one of the residents of the facility.¹³⁶ The video was recorded on the guard’s own cellphone by another resident.¹³⁷ In 2014, an Avalon facility in Tulsa came under investigation after a different video emerged showing residents fighting.¹³⁸

Abuse and Unconstitutional Conditions. Cutting corners on staff pay and training can lead to a workforce that is inexperienced, unprofessional, and in some cases, unqualified. In Texas, where CEC runs a network of jails, almost every one of those facilities has been sued for alleged staff misconduct.¹³⁹ The warden and head of security at one CEC-run jail were fired in 2012 after a former inmate sued the company, saying she was sexually assaulted repeatedly by the security officer and then forced by the warden to lie to investigators about the attacks.¹⁴⁰ Sexual assault allegations led to two more lawsuits against CEC in 2014, one by inmates at another CEC jail, the second by a former inmate at a CEC immigration detention center.¹⁴¹

In 2014, the Oklahoma Department of Corrections cancelled a contract with Avalon after three separate investigations found concerns with contraband, safety of residents, and staff imposing fights as punishments.

¹³⁴ Gilna, *supra* note 126.

¹³⁵ *Search of Oklahoma Halfway House Nets Drug Cache*, THE OKLAHOMAN (Apr. 14, 2016), <http://newsok.com/article/5493355>.

¹³⁶ Phil Cross, *State opens investigation into private corrections company after release of video*, FOX 25 NEWS (Aug. 19, 2015), <http://okcfox.com/archive/state-opens-investigation-into-private-correctional-company-after-release-of-video>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Rubin, *supra* note 133.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

The Department told the company it had “lost confidence in the administration” of the facility.¹⁴²

Mismanagement. The pressure to turn a profit can lead to unethical and, sometimes illegal behavior on the part of management and staff. Reports indicate that staff in some facilities have manipulated official records or covered up evidence of problems in the facility. Most concerning is the suggestion that staff are deliberately misrepresenting the amount and quality of treatment services to make the program look “good on paper.”

A former guard at a San Diego halfway house initiated a hunger strike in 2016 to protest the deterioration of conditions after CoreCivic purchased the facility.¹⁴³ He observed cutbacks in staff, food, and programming meant to help inmates reintegrate into the community.¹⁴⁴ He also reported forged documentation of searches and falsified hours spent training guards, but says his complaints were ignored by CoreCivic officials.¹⁴⁵

Colorado corrections inspectors reported in 2008 that administrators in a CEC halfway house staged phony classes during their inspections, offering candy bars to residents if they would pretend to participate in counseling and job placement sessions.¹⁴⁶

Former employees at CEC’s Robinson Center in New Jersey reported rampant falsification of prisoner records.¹⁴⁷ The records reported providing drug treatment and other classes as well as drug tests, which staff said never actually occurred.¹⁴⁸ And when classes were provided, they were given in a haphazard manner or by untrained employees who merely read the program materials to a group of residents.¹⁴⁹

Lack of Standards and Oversight. Despite the proliferation of these facilities, there are few regulations that ensure programs provide safe environments and yield positive results. Both for-profit and nonprofit

¹⁴² Letter from Oklahoma Department of Corrections to Brian Costello (2014) (on file at <http://s3.amazonaws.com/content.newsok.com/documents/Letter%20to%20Brian%20Costello%20re%20Avalon%20Tulsa.pdf>).

¹⁴³ Madison Pauly, *Former Guard Launches Hunger Strike to Protest Private Prison Company*, MOTHER JONES (Jul. 6, 2016), <http://www.motherjones.com/politics/2016/07/san-diego-hunger-strike-cca-prison/>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Rubin, *supra* note 133.

¹⁴⁷ GILNA, *supra* note 128, at 7.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

entities are contracting with governments to reduce the burden of reentry, but there is little monitoring to confirm that they are delivering rehabilitative, responsible, and humane services.

According to the Tampa Bay Times, many halfway houses in Florida are little more than flophouses that cram residents two or three to a room in dingy quarters with no job assistance, no trained staff and no support.¹⁵⁰ Some are operated by individuals “with serious criminal records, including robbery, sexual assault and drug trafficking”.¹⁵¹ Incredibly, state officials do not require reentry facilities to be licensed, thus it is impossible to track such incidents.¹⁵² In fact, without licensing, there is no way to know how many halfway houses are actually operating in Florida.¹⁵³

The State of Pennsylvania has reported a high rate of recidivism of those who cycle through reentry facilities. A 2013 study by the Pennsylvania Department of Corrections (“PDOC”) found that prisoners sent to halfway houses were actually more likely to re-offend than those released directly from prison.¹⁵⁴ According to the study, 67% of prisoners sent to transitional facilities were rearrested or returned to prison within three years, compared to 60% of offenders released to the streets.¹⁵⁵ The PDOC Secretary stated, “The focus has been on filling up beds. It hasn’t been on producing good outcomes.”¹⁵⁶

While the theories and intentions behind the residential reentry center model appear helpful to reducing recidivism, the reality is that many companies are touting reform principles without any attempt or intention of delivering measurable outcomes in terms of rehabilitation or reduced recidivism. Without proper accountability or determined desired outcomes, the public cannot be assured that the residential reentry service model is actually providing the results it promises.

When the main motivation for governments utilizing alternatives to incarceration is cost-savings, it is perplexing that measures of accountability and evaluation often do not take rehabilitation, resident safety, or staff retention into account. Particularly when the monies for these services are coming directly from government contracts, equating to billions of tax dollars.

¹⁵⁰ Susan Taylor Martin, *Felons, Drug Dealers Run Halfway Houses for Addicts*, TAMPA BAY TIMES (Nov. 8, 2012), <http://www.tampabay.com/news/publicsafety/felons-drug-dealers-run-halfway-houses-for-addicts/1261881>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ GILNA, *supra* note 128, at 10.

¹⁵⁴ *Id.* at 12.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

When facility operators are found to be negligent, are compromising the safety of residents and the surrounding community, and are not reducing recidivism, clearly these programs are not living up to their promise of increased public safety. If people are not receiving healthy, safe, and accountable services, this investment serves only to line the pockets of for-profit corporations while sending more people through the revolving door of recidivism.

VII. A BALANCED APPROACH TO COMMUNITY CORRECTIONS

The National Institute of Corrections and its partners in 2004 developed a set of principles known as Evidence-Based Practices (“EBP”). The underlying philosophy is that any and all correctional practices and programs must be supported by rigorous applied research and evaluations.

The EBP for the community corrections field call for a balanced approach between treatment, surveillance and accountability to prevent further abuse, holding offenders accountable and working toward long-term behavior change.¹⁵⁷

But the trend toward outsourcing community corrections to for-profit operators undermines this approach by focusing on cost savings and awarding contracts to the lowest bidder. It is a basic truth that quality services cost more. To fulfill the vision of evidence based practices in this field would mean using electronic monitoring in conjunction with wraparound services for supervisees, case management, and job assistance. It would mean that the person wears an ankle bracelet in addition to regular meetings with their parole or probation officer. But in reality, the proliferation of technology is being used to replace this direct personal connection.

EBP points toward individually-oriented services over a one-size-fits-all approach. The science shows that the most intensive interventions should be reserved for the highest risk individuals. This is not just a matter of scarce resources. Research has found that placing low-risk individuals in high intensity programs actually increases their failure rates. This is partially because lumping them together with people who have more serious issues may expose them to violence and “teach” them anti-social behavior.

¹⁵⁷ MATTHEW DEMICHELE ET. AL., *A CALL FOR EVIDENCE-BASED POLICY: SEX OFFENDER ELECTRONIC MONITORING HAS ADVANTAGES, PROBLEMS*, THE COUNCIL OF STATE GOVERNMENTS (2007), <http://www.csg.org/knowledgecenter/docs/sn0701CallforEvidenceBasedPolicy.pdf>.

In addition, interventions like ankle bracelets and placement in residential facilities away from their families and communities can disrupt the individual's social networks and support systems—the very things that make them “low risk” in the first place.¹⁵⁸ Family support and connection to community resources like churches are key factors in supporting individuals to make the right choices and stay on track with the terms of their supervision.

The widespread acceptance of EBP in sentencing and corrections is in part fueling the movement toward de-incarceration, and this is a positive trend. But the good intentions of this movement are at risk of being undermined by both the deeply ingrained retributive nature of our criminal justice institutions and the power of the profit motive on the part of companies competing for contracts.

VIII. CARCERAL HUMANISM

James Kilgore, a writer and educator based at the University of Illinois, was among the first to identify this trend of “re-packaging mass incarceration.” As the national conversation began moving toward addressing underlying issues behind criminal behavior such as drug addiction and mental illness, he highlighted the danger inherent in this new service-based approach, calling it “carceral humanism.” He writes, “carceral humanism recasts the jailers as caring social service providers.”¹⁵⁹

He particularly singles out the new embrace of community corrections as “non-alternative alternatives to incarceration”, which he rightly points out “purport to change things but in essence simply perpetuate the culture of punishment”.¹⁶⁰ Moreover, he writes:

While many of these may be well-intentioned, and in some cases have positive effects, they typically involve heavy monitoring of a person's behavior including frequent drug testing, limitations on movement and association, a whole range of involuntary but supposedly therapeutic programs

¹⁵⁸ Edward J. Latessa & Christopher Lowenkamp, *What Works in Reducing Recidivism?*, 3 U. ST. THOMAS L.J. 521 (2006).

¹⁵⁹ Kilgore, *supra* note 82.

¹⁶⁰ *Id.*

of dubious value and very little margin of error to avoid reincarceration.¹⁶¹

The alternatives to incarceration movement should be resulting in a strong *downward push*: reducing the number of people incarcerated, but also moving people more quickly off all forms of supervision. In effect, there should be a substantial number of people, based on risk assessments and other factors, who are completely free of the system and allowed to resume their lives.

This should be happening both at the “front end”—where people are provided with appropriate services and accountability measures in lieu of either incarceration *or* probation. It should also be happening at the “back end” where individuals who have completed their sentences, are a low risk of reoffending, and do not need additional support could be taken “off paper”, without cycling through a residential reentry center or being placed on electronic supervision.

However, the opposite appears to be happening. As prisons and detention centers fall out of favor, the number of people being placed on electronic monitoring and in post-release programs appears to be swelling.

IX. WHAT CAN BE DONE?

1. The overarching goal of sentencing reform efforts should be to shrink the size and scope of the entire criminal punishment system. Individuals should be placed on the lowest level of security and supervision necessary for the shortest amount of time. Resources should be concentrated in community-based services *outside the criminal system* to serve people before they require legal intervention.
2. Require all programs to adhere to EBP in Community Corrections. Simply awarding a contract to the lowest bidder does not ensure that the program will deliver quality services or produce positive public safety results. Cutting corners can result in unsafe facilities. Using a blanket, one-size-fits-all approach is not only a waste of scarce resources, it can also be counterproductive.
 - a. The goal should be ensuring the success of supervisees, not punishing their failures. Programs should adopt a behavioral-

¹⁶¹ *Id.*

management approach to supervision that prioritizes assisting offenders in leading successful, crime-free lives in the community. The role of a supervision officer in a behavioral-management model combines enforcement responsibilities with a duty to instruct and model pro-social behavior.

b. Base supervision requirements on the individual's level of risk. Assigning low-risk individuals to intensive supervision and programming can be counterproductive and costly. Reserve intensive supervision for moderate to high-risk individuals.

c. Tailor the intervention to the individual, taking into account both their treatment needs and their personal strengths. This requires the development of an individual treatment plan for each program participant.

d. Use graduated sanctions and incentives for reducing technical violations of probation and parole. Secure residential options should be immediate, short-term, and reserved only for those who demonstrate a need for intensive, residential treatment.

3. Proper Vetting, Evaluation and Accountability of Contract Agencies. Many of the problems identified in this report can be addressed to some degree through the contracting process. Taxpayers get the greatest return on their investment when contractors are required to demonstrate a record of success, adhere to EBP, and are transparent and accountable for their outcomes. The mentality of "cheaper is better" is simply incompatible with criminal justice services. To yield long-lasting results, quality in product and direct services must be ensured.

a. Conduct due diligence research into the background and past performance of potential contractors. As noted in this report, many of the largest players in the community corrections market have had serious problems with safety, ethics, management, and quality of services. Lawsuits, poor audits or other performance measures, scandals, and lost contracts should counterbalance a low bid in the competitive award process in order to ensure quality programming.

- b. Determine and Incentivize Positive Outcomes. Contract awards, payments, and renewals should be tied to measurable outcomes, rather than cost savings or other factors. This includes the number of successful transitions from supervision, lower recidivism, work placements, length of sobriety and other factors that can clearly demonstrate enhancements to public safety.
 - c. Contract Locally. One feature of the Treatment Industrial Complex is the dominance of larger, for-profit industries in the community corrections sphere. These groups can easily out-compete small, local, non-profit organizations for contracts due to their political influence and cash flow. But in many cases, there is inherent value in contracting with local agencies that have a track record of success in a given community. These types of agencies know the “landscape” of their community, including employers, service providers, and other programs. They are more likely to employ community residents than large corporate groups that often import their managers from other facilities.
 - d. Ensure Accountability and Penalties. Contracts should require regular monitoring financial and record-keeping audits, and complete transparency in all areas of operation. Contracts should also stipulate clear and adequate consequences for non-compliance.
4. Prohibit Predatory Practices. Decisions about supervision and interventions should be based on risk and need, not on the opportunity to generate a profit. Criminal justice is a core function of government and is a grave responsibility. When the state sees fit to deprive someone of their liberty, even if it is only through electronic monitoring, it assumes that responsibility entirely, including the responsibility to pay for it. As most people involved in the criminal justice system are low-income, it is both inappropriate and counter-productive to tie their “success” in community corrections to their ability to pay.

X. CONCLUSION

Sociologists have long known that the over-use of probation expands the “net” of those under the control of the criminal punishment system:

[R]esearchers often found that expansions in probation *increased* overall punishment by drawing in more low-level cases (who might otherwise have been sentenced with community service hours, fines, or other less invasive punishments) and making these individuals more likely to be incarcerated in the future due to increased restrictions and monitoring.¹⁶²

Essentially, constant supervision sets people up to fail. The requirements of meetings, home visits, drug testing, and other mandatory activities are extremely challenging for even the most stable of individuals to meet. Add to that the instability that is often a feature of poor people’s lives—problems with transportation, illness, lack of child care, etc.—and it is almost guaranteed that many will not be able to comply.

With the advent of electronic monitoring, 24-hour scrutiny means that any and all violations and offenses—even those that are relatively minor—will be detected, leading to a range of sanctions that serve primarily to keep people under increasing levels of control.

A similar net-widening trend is emerging in the use of “alternative” facilities. There is a serious concern that these are simply various versions of “prison lite,” without any proven benefits to public safety.

For local criminal justice agencies and elected officials, having this extra layer of supervision is a form of insurance—protecting them from accusations of “letting criminals back into the community.” For the companies holding these contracts, it is a revenue stream. The longer they can require participation, the more money they will make. While providing wraparound services like drug treatment, mental health counseling, and job assistance is valuable and often needed, there is no set of universal guidelines that require actual risk assessment to determine that these services are necessarily needed for each individual in the program. It is possible that very low risk individuals who would be perfectly safe to release without such programs or services are nonetheless required to participate.

¹⁶² Michelle S. Phelps, *The Paradox of Probation: Community Supervision in the Age of Mass Incarceration*, 35 LAW & POL’Y 51 (2013).

While the best practices for those who commit technical violations of probation and parole dictate the use of a range of intermediate sanctions up to at most 3 days in jail, many intermediate sanctions facilities are mandating stays of 90 days to six months. A six-month stay undermines the benefit of a SAC approach, which shows that an immediate but short-term period of re-incarceration is all that is needed to hold people accountable and get them back on track.

An additional concern, in the absence of standardized guidelines and operating procedures for these programs, is the decision-making process around completion of a given program. Particularly in day reporting and the various quasi-residential programs in community corrections, the decision about when an individual is ready to leave the program is left to the administrators of the program. On paper, these decisions are tied to things such as “completion of the individual treatment plan” or adherence to the terms of their supervision, the determination of which is at least partly subjective.

Unfortunately, this provides ample room for a self-serving or unscrupulous supervisor to determine that someone is not in compliance or has not satisfactorily met the requirements of the program. Particularly in the case of those programs that are operated by for-profit contractors, there is a perverse incentive to keep people as long as possible in order to generate the greatest amount of revenue.

With tools such as electronic monitoring becoming more widely available and reentry centers an increasingly attractive cost savings option for states and counties, the Treatment Industrial Complex will continue to expand until there is a recognition of the pitfalls and consequences of poorly contracted services. While there is a vital need to reduce the incarcerated population, it is important to ensure these programs do not simply ensnare more individuals in the system, spend tax dollars erroneously, or allow for profit without quality service.

This is in no way suggesting that non-profit or government-administered community corrections programs are “better” than those run by for-profit prison corporations. There are examples of programs run by each type of entity that are humane and effective, and plenty of dismal failures on all fronts.

The purpose of this paper is to expose and question the role of the larger for-profit punishment and control industry in the burgeoning field of community corrections, and to alert decision-makers to the concerns related to the proliferation of these kinds of programs.

In addition, it is vitally important that change agents working to end mass incarceration be aware of the role of the industry and the potential pitfalls of simply recommending “alternatives to incarceration.”

The following recommendations are offered to begin to fix what is broken in the current approach, to avoid the unintended consequences of net widening, and to aid decision-makers and other stakeholders in evaluating the need, scope, and requirements of community corrections programs, particularly where for-profit companies are concerned.