



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Alaska

December 11, 2019

House State Affairs Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

Re: Private Prisons and Prisoner Outsourcing

Dear Co-Chairs Fields and Kreiss-Tomkins, and Members of the House State Affairs Committee:

I write to share the American Civil Liberties Union (ACLU) of Alaska's concerns about the practice of outsourcing prisoners to private prisons as a means of addressing overcrowding in our state's prisons. We appreciate your oversight of this issue and urge you to explore policy solutions to address the population management challenges the Department of Corrections (DOC) is clearly facing.

Private, Out-of-State Prisons Have Questionable Benefits

Proponents of private prisons point to effective management and cost savings. There is ample evidence, however, that private prison operators can neither guarantee significant savings nor safe, sanitary, well-run prisons.

Numerous studies, audits and reports—in states as varied as Hawaii, Arizona and New Jersey—have found that private prisons do not save money and may even cost more than government-operated prisons.¹ Not only is there no guarantee of direct cost savings, contracting with out-of-state private prison operators would eliminate the indirect economic benefit to local communities. Rather than spurring and supporting local employment and economic growth, Alaska's public dollars would benefit families and communities outside the state.

¹ *Banking on Bondage: Private Prisons and Mass Incarceration*. American Civil Liberties Union, November 2011. Available at https://www.aclu.org/sites/default/files/field_document/bankingonbondage_20111102.pdf

In addition, research suggests that prisoners in private facilities are exposed to greater threats to safety than those in government run facilities.² Alaska’s own troubled history with private, out-of-state prisons bears this out: it is thanks to the practice of outsourcing prisoners that a number of well-organized, violent prison gangs from the Lower 48 have gained a foothold in our state.³

Private, Out-of-State Prisons Are Inconsistent with State Policy

With four of five incarcerated people suffering from substance use disorders,⁴ and approximately 44 percent with a diagnosed mental health issue,⁵ Alaska’s prison population reflects many of our state’s challenges: a struggling economy, insufficient availability of mental health and substance use disorder treatment, and a raging opioid epidemic. It also reflects systemic biases that result in incarceration of Alaska Native people at four times the rate of white individuals.⁶

Driven by a profit motive, private prisons have little incentive to prioritize rehabilitation and reduce future crime, but rehabilitation and recidivism reduction are essential goals of Alaska’s criminal legal system. Our state Constitution protects the rehabilitative interests of incarcerated Alaskans⁷, and it is explicit state policy to preference the retention of prisoners in-state if “continued confinement in Alaska will better facilitate rehabilitation or treatment.”⁸ Sending inmates out-of-state is widely understood to hinder rehabilitation by placing incarcerated individuals too far away to successfully sustain positive family relationships and community connections. Dislocation could have an especially negative impact on vulnerable populations within our prison system.

² *Ibid.*

³ For example, the violent white supremacist 1488 gang was founded in part by Alaskan inmates incarcerated in Colorado and Arizona (U.S. Department of Justice, “Multi-Agency Investigation Results in Charges against 18 Members and Associates of Violent White Supremacist Gang,” press release, March 27, 2019).

⁴ Alaska Criminal Justice Commission, *2018 Annual Report* (November 1, 2018), <http://www.ajc.state.ak.us/acjc/docs/ar/2018.pdf>

⁵ “Key Issues Impacting Alaska Mental Health Trust Beneficiaries” (February 2019), http://dhss.alaska.gov/dph/HealthPlanning/Documents/scorecard/2018_MHT_Scorecard_full.pdf

⁶ Alaska DOC, *2017 Offender Profile*, <http://www.correct.state.ak.us/admin/docs/2017profile.pdf>; U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race and Hispanic Origin for the United States and States,” 2017 population estimates.

⁷ See Alaska Const. art. I, § 12.

⁸ Alaska Statute 33.36.010 states that “it is the policy of the State of Alaska not to transfer a resident inmate outside of the state ... if that inmate’s continued confinement in Alaska will better facilitate rehabilitation or treatment.”

Private prisons have also tended to decline to house inmates with known medical needs.⁹ This “cherry-picking” is in evidence in the recent Request for Proposals issued by DOC. In response to questions from private prison operators evaluating whether to bid, DOC agreed to exclude from transfer prisoners being treated for a variety of costly medical conditions.¹⁰

Alaska’s Mass Incarceration Crisis Requires Real Policy Solutions

Alaska’s prisons are in crisis. On October 15, 2019, DOC issued a press release indicating our state’s corrections system was at 97 percent of its maximum capacity.¹¹ A facility’s maximum capacity is intended to be limited to short-term, emergency circumstances because it exceeds the specifications for normal use. Under these emergency conditions, incarcerated people are forced to sleep in cots or bunks in recreational areas, as well as in solitary confinement. Recent news coverage regarding the Lemon Creek Correctional Center indicates this is in fact occurring.¹² If crowding at emergency levels is sustained for extended periods of time, it corrodes DOC’s ability to maintain an environment that is safe, sanitary, and conducive to rehabilitation.

While increases to the state’s prison population were anticipated with the passage of House Bill 49,¹³ our analysis of DOC’s data on prison population by facility has revealed a state of emergency. Between October 1, 2018 and October 15, 2019, eight DOC facilities had exceeded their maximum limits. Far from being sporadic occurrences, these facilities’ exceedances spanned an average of 140 days in the time period examined. Three of these facilities had been over maximum capacity for more than 200 days in the time period examined:

⁹ *Banking on Bondage: Private Prisons and Mass Incarceration* (supra).

¹⁰ https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=119995&fbclid=IwAR0msQeKOQgEn0VXXfwgKplU9pOvuRwv_hZgJTJBWx2pMXAJvPfmdWVwJqw

¹¹ “DOC Addresses Population Management” (press release), Oct. 15, 2019. <https://doc.alaska.gov/commish/pressreleases/DOC%20Addresses%20Population%20Management.pdf> (last accessed Oct. 17, 2019).

¹² Baxter, Adelyn. “Overcrowding Leads to Loss of Hobby Shop at Lemon Creek.” KTOO Public Media, October 17, 2019. <https://www.ktoo.org/2019/10/17/overcrowding-leads-to-loss-of-hobby-shop-at-lemon-creek/>

¹³ See, for example, Fiscal Note 17 for House Bill 49 (dated May 6, 2019), in which DOC acknowledges that it will need to accommodate approximately 500 inmates in excess of current prison capacity in the first year of implementation (available at <http://www.akleg.gov/PDF/31/F/HB0049-17-4-050819-COR-Y.PDF>).

- Anvil Mountain Correctional Center in Nome (267 days over maximum capacity);
- Fairbanks Correctional Center (253 days over maximum capacity); and
- Wildwood Correctional Center (226 days over maximum capacity).¹⁴

Overcrowding exacerbates the numerous issues faced by prisoners with medical and mental health needs. When prisons and jails are past capacity, it becomes even more difficult for people to access adequate treatment, resulting in violations of their constitutional rights and potentially irreversible health consequences.

Between September 2018 and September 2019, the data point to a 20 percent increase in unsentenced individuals, including large numbers of Alaskans who are jailed while awaiting trial, incarcerated without having been convicted of a crime.¹⁵ Currently, roughly half of our state's prison population is unsentenced, and analysis for DOC data by the Alaska Criminal Justice Commission indicates that there has been an increase in defendants admitted to DOC facilities for non-violent misdemeanor offenses.¹⁶ This is a central driver of our overcrowding crisis that no plans to send incarcerated individuals out-of-state adequately address.

When overcrowding is addressed, prisons are increasingly able to implement programs and health care infrastructure that are central both to rehabilitation and to public safety. Solutions to the overcrowding crisis that do not involve building more prisons and jails include shorter prison sentences, diversion programs, and alternatives to incarceration, particularly for people with mental health disabilities and substance use problems. The data clearly indicate that a targeted focus on pre-trial practices, such as diversion to treatment, use of electronic monitoring, and examination of cash bail practices, would clearly have impact. Analysis for the Urban Institute for the ACLU has found, for example, that pursuing alternatives to incarceration for public order offenses (such as disorderly conduct or court offenses) to reduce admissions for those offenses by 70 percent would result in more than 4,000 fewer people admitted to jail in a given year.¹⁷

¹⁴ "ACLU Analyzes Alarming Prison Overcrowding Records from Alaska Department of Corrections" (press release), November 15, 2019. <https://www.acluak.org/en/news/aclu-analyzes-alarming-prison-overcrowding-records-alaska-department-corrections>

¹⁵ *Ibid.*

¹⁶ *Alaska Criminal Justice Commission 2019 Annual Report*, November 1, 2019. <http://www.ajc.state.ak.us/acjc/docs/ar/2019.pdf>

¹⁷ *Blueprint for Smart Justice: Alaska*. American Civil Liberties Union, 2019.

House State Affairs Committee
Private Prisons and Prisoner Outsourcing
December 11, 2019
Page 5 of 5

I thank you for the opportunity to offer input and urge you to continue to use your legislative and oversight authority to pursue this issue.

Sincerely,



Triada Stampas
Policy Director