

# People Over Private Prisons NM (POPPNM) Statement to the Courts, Corrections, and Justice Committee for the October 12, 2021 Panel on Eliminating Private Prisons

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## Problems with Private Prisons

Starting in the 1970's with the War on Drugs, **mass incarceration has come to be a social policy that is disastrous**, harmful, and one that disproportionately impacts both people of color and low-income individuals.<sup>1</sup> Mass incarceration is driven in part by tough-on-crime policies, mandatory minimum sentences, repeat offender laws, strict parole revocations, and approaching addiction and mental health as crimes and not illness.

With the first facilities opening in the 1980's, **private prisons were and are a symptom of mass incarceration**. Private prisons were envisioned as a pathway to incarcerate people on the cheap by defraying capital outlay to the private sector while leveraging the assumed efficiencies of the competitive market.<sup>2</sup>

**Private prisons are correlated with higher incarceration rates and longer sentences.**<sup>3</sup> Meta-analysis indicates that, particularly when established to address overcrowding, private prisons increase incarceration rates and induce demand. By exceeding the national average in terms of both reliance on private prisons and incarceration rates, New Mexico fits with this trend.

**Private prisons exhibit higher recidivism rates than public prisons.** Factors that influence this difference include: private prisons are more violent, private prisons offer fewer meaningful anti-recidivism programs, facilities are in remote locations where visitation is harder, and private prisons have more expensive telecommunications services.

**The DOJ found private prisons more dangerous than public prisons;** private prisons have higher rates of assaults and 50% more incidents of illicit weapons.<sup>4</sup> DOJ attributed the elevated danger in private

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<sup>1</sup> Joseph Biden, "Executive Order 14006: Reforming Our Incarceration System To Eliminate the Use of Privately Operated Criminal Detention Facilities," Federal Register, January 29, 2021, <https://www.federalregister.gov/documents/2021/01/29/2021-02070/reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention>; The White House, "Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities" (The White House, January 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>.

<sup>2</sup> Donna Selman and Paul Leighton, *Punishment for Sale: Private Prisons, Big Business, and the Incarceration Binge*, Issues in Crime & Justice (Lanham, Md: Rowman & Littlefield Publishers, 2010).

<sup>3</sup> Gregmar I. Galinato and Ryne Rohla, "Do Privately-Owned Prisons Increase Incarceration Rates?," *Labour Economics* 67, no. 101908 (December 1, 2020): 1–20, <https://doi.org/10.1016/j.labeco.2020.101908>; Gregmar I. Galinato and Ryne Rohla, "Do Privately-Owned Prisons Increase Incarceration Rates?," Working Paper (Pullman, WA: Washington State University School of Economic Sciences, July 2018), <http://ses.wsu.edu/wp-content/uploads/2018/07/WP2018-6.pdf>.

<sup>4</sup> DOJ OIG, "Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons," Evaluation and Inspections Division (Washington, D.C.: Department of Justice (DOJ) Office of Inspector General (OIG), August 2016), <https://oig.justice.gov/reports/2016/e1606.pdf>.

prisons to: lower inmate to officer ratios, chronic understaffing, long shifts, and less staff training. These elevated risks impact both inmates and staff. In New Mexico, understaffing is a chronic issue, and two federal private prisons were previously closed due to poor conditions.

Over the long term, **private prisons are more expensive than public prisons.**<sup>5</sup> In the 1990's expected savings from private prisons was 20-30%.<sup>6</sup> Decades later GAO found, actual savings were 0.<sup>7</sup> In New Mexico, contractors overcharged per diem rates and held release eligible inmates longer.<sup>8</sup> Realizing these problems, New Mexico fully transitioned one private prison to public and is planning to transition an additional two facilities.<sup>9</sup>

### Eliminating Private Prisons Should Be Closure Not Transition to Public

While we are elated to see the number of private prison beds in the state declining, **we believe that transitioning private prisons to public ones does not address the underlying problem which is 50 years of mass incarceration.**

Mass incarceration is based on the theory that incapacitation and deterrence will lower crime, but regardless of whether the facility is public or private, **prisons are ineffective at lowering crime rates.**<sup>10</sup> Since 2000 increased incarceration accounted for less than 0.01% decline in property crime and 0% effect on violent crime decline.<sup>11</sup> Increasing incarceration rates has accelerating declining marginal

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<sup>5</sup> Saleh Mamun et al., "Private Vs. Public Prisons? A Dynamic Analysis of the Long-Term Tradeoffs Between Cost-Efficiency and Recidivism in the US Prison System," *Applied Economics* 52, no. 41 (September 1, 2020): 4499–4511, <https://doi.org/10.1080/00036846.2020.1736501>; Nathan Craig, "A Synthesis of New Mexico Legislative Finance Committee Documents Related to Private Prisons" (Las Cruces, NM: Advocate Visitors with Immigrants in Detention (AVID), October 2020), <https://avid.chihuahuan.org/2020/10/11/review-of-nm-legislative-finance-committee-documents-regarding-private-prisons/>.

<sup>6</sup> Charles H. Logan, *Private Prisons: Cons and Pros* (New York: Oxford University Press, 1990).

<sup>7</sup> Austin and Coventry, "Emerging Issues on Privatized Prisons"; GAO, "Private and Public Prisons."

<sup>8</sup> LFC, "Legislating for Results: Appropriation Recommendations," Report to the Fifty-Fifth Legislature, First Session, Volume 2 (Albuquerque, NM: Legislative Finance Committee, January 2021), 299, [https://www.nmlegis.gov/Entity/LFC/Documents/Session\\_Publications/Budget\\_Recommendations/2022RecommendVollI.pdf](https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/2022RecommendVollI.pdf).

<sup>9</sup> Phaedra Haywood, "As New Mexico Regains Control of Some Private Prisons, Questions Remain," Santa Fe New Mexican, July 24, 2021, [https://www.santafenewmexican.com/news/local\\_news/as-new-mexico-regains-control-of-some-private-prisons-questions-remain/article\\_6f5094e4-e8af-11eb-8bb9-bf9fb8d84e68.html](https://www.santafenewmexican.com/news/local_news/as-new-mexico-regains-control-of-some-private-prisons-questions-remain/article_6f5094e4-e8af-11eb-8bb9-bf9fb8d84e68.html); Phaedra Haywood, "New Mexico Corrections Department to Take over Two Privately Run Prisons," Santa Fe New Mexican, July 16, 2021, [https://www.santafenewmexican.com/news/local\\_news/new-mexico-corrections-department-to-take-over-two-privately-run-prisons/article\\_5da99dbc-e66b-11eb-ae93-ffefec2f3744.html](https://www.santafenewmexican.com/news/local_news/new-mexico-corrections-department-to-take-over-two-privately-run-prisons/article_5da99dbc-e66b-11eb-ae93-ffefec2f3744.html).

<sup>10</sup> Don Stemen, "The Prison Paradox: More Incarceration Will Not Make Us Safer," For the Record (New York: Vera Institute of Justice, 2017),

[https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1027&context=criminaljustice\\_facpubs](https://ecommons.luc.edu/cgi/viewcontent.cgi?article=1027&context=criminaljustice_facpubs).

<sup>11</sup> Tomislav V. Kovandzic and Lynne M. Vieraitis, "The Effect of County-Level Prison Population Growth on Crime Rates," *Criminology & Public Policy* 5, no. 2 (May 2006): 213–44, <https://doi.org/10.1111/j.1745-9133.2006.00375.x>; Robert H. DeFina and Thomas M. Arvanites, "The Weak Effect of Imprisonment on Crime: 1971–1998," *Social Science Quarterly* 83, no. 3 (September 2002): 635–53, <https://doi.org/10.1111/1540-6237.00106>; Steven Levitt, "Alternative Strategies for Identifying the Link Between Unemployment and Crime," *Journal of Quantitative Criminology* 17, no. 4 (2001): 377–90; Thomas B. Marvell and Carlisle E. Moody, "Prison Population Growth and Crime Reduction," *Journal of Quantitative Criminology* 10, no. 2 (June 1994): 109–40,

returns on lowering crime rates, the more one increases incarceration the less effect it has on crime rates, which makes this approach not just an ineffective long-term solution—but a disastrous and extremely expensive one.<sup>12</sup>

**Prisons are criminogenic**, meaning they increase the likelihood that a person will be incarcerated again in the future, and this outcome of elevated rates of recidivism is particularly acute when incarceration rates are high.<sup>13</sup> National level studies looking at state level incarceration in relation to crime rates found that 325-429 incarcerated persons per 100,000 is a tipping point at which increasing incarceration leads to higher crime rates.<sup>14</sup> As of 2021, the US average of incarcerated persons per 100,000 is 664 which is well above this threshold, and at 733 **New Mexico sits above the national average and twice the tipping point.**<sup>15</sup>

Compared to probation, being sentenced to prison greatly increases the probability of imprisonment, and this effect is primarily driven by “technical violations of community supervision rather than new felony convictions.”<sup>16</sup> This exact process is documented in New Mexico, LFC found that New Mexico has a recidivism rate that hovers around 50% and most of it is due to technical parole violations. In 2018, LFC reported that parole revocation due to technical violations related to drug use constitutes 50% of the recidivism rate, 1/3 of all persons admitted to NMCD are due to a failed drug test or missed appointment, and these incarcerations cost the state 40% per year with little indication that these incarcerations increase public safety.<sup>17</sup> **Technical parole revocations are driving high incarceration rates, costing money, and aren’t making New Mexicans safer.**

New Mexico won’t reduce crime by continuing to incarcerate at high rates, and the state’s high incarceration levels likely contribute to elevated crime rates. Given this, **there is a dire need to change the mindset about incarceration.** If the goal is to reduce crime and increase public safety, then science indicates different kinds of policy changes are needed.

Reductions in crime rates are consistently associated with: lower unemployment rates, higher per capita income, higher consumer confidence, increased educational levels, and lower alcohol consumption.<sup>18</sup>

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<https://doi.org/10.1007/BF02221155>; Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, “What Caused the Crime Decline?” (New York: Brennan Center for Justice at New York University School of Law, 2017).

<sup>12</sup> Raymond V. Liedka, Anne Morrison Piehl, and Bert Useem, “The Crime-Control Effect of Incarceration: Does Scale Matter?,” *Criminology & Public Policy* 5, no. 2 (May 2006): 245–76, <https://doi.org/10.1111/j.1745-9133.2006.00376.x>.

<sup>13</sup> Lynne M. Vieraitis, Tomislav V. Kovandzic, and Thomas B. Marvell, “The Criminogenic Effects of Imprisonment: Evidence from State Panel Data, 1974-2002,” *Criminology & Public Policy* 6, no. 3 (August 2007): 589–622, <https://doi.org/10.1111/j.1745-9133.2007.00456.x>.

<sup>14</sup> Liedka, Piehl, and Useem, “The Crime-Control Effect of Incarceration.”

<sup>15</sup> <https://www.prisonpolicy.org/global/2021.html>

<sup>16</sup> David J. Harding et al., “Short- and Long-Term Effects of Imprisonment on Future Felony Convictions and Prison Admissions,” *Proceedings of the National Academy of Sciences* 114, no. 42 (October 17, 2017): 11103–8, <https://doi.org/10.1073/pnas.1701544114>.

<sup>17</sup> LFC, “Corrections Department - Status of Programs to Reduce Recidivism and Oversight of Medical Services” (Albuquerque, NM: New Mexico Legislative Finance Committee (LFC), October 23, 2018), 1, [https://www.nmlegis.gov/Entity/LFC/Documents/Program\\_Evaluation\\_Reports/Corrections%20Department%20-%20Status%20of%20Programs%20to%20Reduce%20Recidivism%20and%20Oversight%20of%20Medical%20Services.pdf](https://www.nmlegis.gov/Entity/LFC/Documents/Program_Evaluation_Reports/Corrections%20Department%20-%20Status%20of%20Programs%20to%20Reduce%20Recidivism%20and%20Oversight%20of%20Medical%20Services.pdf).

<sup>18</sup> Stemen, “The Prison Paradox: More Incarceration Will Not Make Us Safer,” n. 11.

These correlations tell a straightforward story—people need a pathway to make a living. Neither private nor public incarceration addresses the primary factors that predict high crime rates. Given imprisonment’s high cost, mass incarceration taps public resources that could instead be invested in addressing the root causes of crime.

It is also important to remember that the factors driving imprisonment aren’t solely criminal in nature. Mental illness, addiction, poverty, and racism are four such factors to consider. Many people wind up incarcerated because of one or some combination of these. Mental illness and addiction are diseases and public health matters for which incarceration is obviously the wrong tool. Yet the majority of people incarcerated by New Mexico are being treated for either mental illness, addiction, or some combination of the two.<sup>19</sup> In fact, prisons are now among the primary mental health and addiction facilities. Additionally, because of other forces at play, it is more common to impose incarceration on individuals with mental illness or addiction issues if they are poor or a person of color. **Whether private or public, incarceration is not a sound way to treat mental illness, addiction, or poverty.**

In the post-Mass Incarceration era, incarceration rates in New Mexico are dropping: 14% for males between FY17-FY21 and 23% for females between FY18-FY21.<sup>20</sup> These are positive trends, but we argue far too slow.

**New Mexico must make cutting incarceration by 50% an urgent priority.** To accomplish this, private prisons must be closed and not transitioned. To avoid facing the specter of private prisons in the future, New Mexico code must be revised to remove the authority to enter into new private prison contracts.

Cutting New Mexico’s prison population in half involves reforms in terms of policing, criminal classification, sentencing, and parole along with expansion of programs for education, treatment, and employment. This approach is generally called Justice Reinvestment, it has worked in other states. The DOJ describes, “Justice Reinvestment is a data-driven approach to reduce corrections spending and re-direct savings to other criminal justice strategies that decrease crime and strengthen neighborhoods.”<sup>21</sup>

**New Mexico already commissioned a study on Justice Reinvestment,<sup>22</sup> and it should continue to pursue this social science-based alternative to mass incarceration.**

We believe that moving away from mass incarceration means decommissioning carceral facilities, and it does not involve transitioning private prisons to public prisons or private corrections to immigration detention.

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<sup>19</sup> ACLU, “Blueprint for Smart Justice New Mexico” (Albuquerque, NM: American Civil Liberties Union (ACLU), 2018), <https://www.aclu-nm.org/en/publications/blueprint-smart-justice-new-mexico>.

<sup>20</sup> NMSC Staff, “New Mexico Prison Population Forecast: FY 2021-FY 2030” (Albuquerque: New Mexico Sentencing Commission (NMSC), 2020), <https://nmsc.unm.edu/reports/2020/new-mexico-prison-population-forecast-fy2021--fy2030.pdf>; NMSC Staff, “New Mexico Prison Population Forecast: FY 2022-FY 2031” (Albuquerque: New Mexico Sentencing Commission (NMSC), 2021), <https://nmsc.unm.edu/reports/2020/new-mexico-prison-population-forecast-fy2021---fy2030.pdf>.

<sup>21</sup> DOJ, “Justice Reinvestment: Reshaping Justice and Reallocating Resources,” Department of Justice (DOJ), January 27, 2010, <https://www.justice.gov/archives/opa/blog/justice-reinvestment-reshaping-justice-and-reallocating-resources>.

<sup>22</sup> CSG Justice Center, “Justice Reinvestment in New Mexico: Overview” (Justice Center of the Council of State Governments (CSG), 2018), <https://csgjusticecenter.org/publications/justice-reinvestment-in-new-mexico-overview/>.