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Mass Incarceration - Winter 2022

Addressing Prison Sexual Abuse Through Public Policy

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Executive Summary

The current prevalence of sexual harassment and assault in Michigan prisons demands urgent policy attention. Legislators must swiftly and effectively address the rampant abuse that occurs as a result of a lack of prison oversight and lack of enforcement and specificity of current legislation. At present, under the Prison Rape Elimination Act (PREA) of 2003, people who are incarcerated are unable to sue correctional facilities or administrations for non-compliance with this law. Additionally, there is no independent oversight for Michigan state prisons; they are collectively overseen by the Correctional Facilities Administration, and individually monitored by appointed prison wardens (MDOC).

One policy option to address this is the modification of PREA to allow people who are incarcerated to sue for non-compliance. Another potential policy solution is the formation of an independent body responsible for prison oversight, based on the Correctional Association of New York (CANY) that can investigate prison conditions and make recommendations for improvement. It is recommended that the former policy option, the modification of PREA, be implemented as soon as possible due to its ability to legally require prisons to alter their practices, as well as its ability to improve the reporting and grievance process for people who are incarcerated.

Background

The United States leads all other countries in incarceration rates. Of the 50 states, Michigan is ranked number ten in the highest prison populations, and as of 2020, 0.7% of all individuals in the United States are incarcerated (Wagner & Bertram, 2020). In context, one out of every five of the total people incarcerated in the world is incarcerated in the United States (Wagner & Bertram, 2020). In 2018, the Michigan Department of Corrections (MDOC) reported that there were 760 allegations of sexual harassment and 475 allegations of sexual conduct between prisoners and prison guards and only 30 of those cases proceeded (MDOC, 2018). There are many reasons why the

issue has persisted, including difficulty in reporting sexual assault and a lack of preventative action by prison administrators and legislators, compounded by generally poor prison conditions and the dehumanization of people who are incarcerated. In response to this crisis, the Prison Rape Elimination Act (PREA) was passed in 2003 in order to bolster reporting mechanisms and prevent future sexual abuse in prison settings. This act includes all federal, state, and local prisons as well as jails, police holding cells, juvenile facilities, and private facilities (National Sheriffs' Association). However, nearly 20 years later assault and abuse in prison settings remain common and victims of abuse are often discouraged from or face difficulties in reporting such incidents. It is critical to address these issues immediately through direct policy action.

Options

1. Suing for PREA Non-Compliance

Starting in 2014, states found PREA non-compliant faced having their federal prison grant funding reduced by 5% (US Code, 2003). However, if a state issues an assurance that it will use at least 5% of the federal grant money to work towards PREA compliance they still receive full funding (US Code, 2003). This system does not create very strong incentives for compliance. As of August 2020, only 21 states certified they were in full compliance with PREA, and 27 states (including Michigan) issued assurances. A possible avenue to address this enforcement issue is by establishing a private right to sue on grounds of PREA violation. Currently, PREA non-compliance can be used as supporting evidence in related claims of rights violations (PREA Resource Center, 2021). However, in numerous cases, such as *Moore v. Jordan* and *Bennett v. Parker*, the Supreme Court has held that Congress never intended to give people who are incarcerated the right to sue based solely on PREA violation (PREA Resource Center, 2021). If PREA were amended to establish this right, courts could directly hold non-compliant states accountable. States would be much more incentivized to comply in the face of costly lawsuits. It would also allow for more regular check-ins on PREA compliance in each facility than the current every three-year PREA audit system that began in August of 2013 (PREA Resource Center). In addition to encouraging compliance, this would also give victims of sexual assault while incarcerated an additional avenue to seek justice. This would require federal-level action which is a very slow process. The current political climate at the federal level also would make this difficult. This option would also put the burden of action on people who are currently and formerly incarcerated. This is already a process that people who are incarcerated tend to have less access to. The already present obstacles of finding and paying for a lawyer are only worsened when attempting to do so from prison.

2. *Independent Prison Oversight Commission*

A second policy option to address rampant sexual assault in Michigan prisons is the formation of an independent prison oversight commission to monitor state correctional facilities, hear grievances from individuals who are incarcerated, and recommend appropriate changes to correctional facilities. Families Against Mandatory Minimums (FAMM) has undertaken an initiative in support of independent prison oversight commissions, which they stress must be an entity entirely separate from the Department of Corrections in that state, meaning no corrections officials can participate in or monitor the work of this commission (FAMM). This commission would be modeled after the Corrections Association of New York (CANY), which is an independent commission that has been given authority by the state of New York to go into prisons and collect relevant data and information on prison conditions and the health and well-being of inmates (CANY). Once data collection and analysis are complete, CANY works with relevant advocacy groups and coalitions to formulate recommendations for prison administrations and legislators. The state of Michigan currently has a citizen advisory board, which was initially formed through Citizens for Prison Reform as an informal way to convey concerns to the MDOC, but it is now being modified to be composed of individuals appointed by the MDOC (MICPR, 2020). The formation of this board outside of the purview of the MDOC provides a precedent for the formation of other independent bodies serving a similar purpose, but its absorption by the MDOC makes it an insufficient form of oversight. The formation of a new, entirely independent committee would allow for the investigation of prison conditions, addressing prisoner grievances, improvement of prison administration, and protection of the rights of people who are incarcerated. However, this option does not allow the commission to have much legislative or legal authority as they would exist outside of the Department of Corrections, which is largely responsible for correctional oversight and practices.

Recommendation

After analysis of the costs and benefits of each policy option, it is recommended that the alteration of the terms and enforcement of PREA to allow people who are incarcerated to sue on the basis of violating PREA would be the most realistic policy option at this time. While PREA itself is an effective policy, it has historically not been properly enforced. According to Deborah LaBelle, an attorney focused on civil rights for marginalized populations, especially in the criminal justice system, PREA is rarely, if ever enforced in jails and juvenile correctional facilities, and has been inconsistently enforced among prisons in the state. Under PREA, facilities that do not comply with the act are subject to 5% of their federal funding being held until they can demonstrate a plan to comply, at which point this funding is reinstated. While financial penalties may seem ideal, withholding funding from correctional facilities could also lead to worsening conditions and further

harm to people who are incarcerated. As such, the proper approach to PREA would be to ensure that people who are incarcerated have the legal ability to sue correctional facilities and administrators for non-compliance. This option is politically feasible given that PREA was already passed into law and this would simply modify the terms of this act. Additionally, this modification would likely garner bipartisan support as it neither cuts nor increases funding to correctional facilities, and instead focuses on improving the chances for justice for a victim of sexual abuse. However, it is notable that this option would place the burden on people who are incarcerated to pursue legal action as opposed to directly placing the burden on the correctional system to make improvements. The benefits of this policy are immense: states and individual facilities would be more likely to comply in order to avoid costly lawsuits, both in terms of time and money, and people who are incarcerated would have increased access to legal avenues to express their grievances and get justice.

Acknowledgments

We would like to thank Professor Nekisha Chaney and Deborah LaBelle for meeting with us and providing us with valuable insight into the prevalence of prison sexual assault and how to improve reporting systems and legal avenues for victims of abuse.

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Transgender Rights and Needs in Prison Facilities

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Executive Summary

In many cases, the prison experience of transgender individuals is unfortunately different from their cis-gender counterparts. Transgender prisoners' access to legal support decreased after the Prison Litigation Reform Act was enacted; this has led to a regressive prisoner-rights legislative environment when coupled with a lack of modern-day community understanding of transgender rights and needs. This imbalance of incarcerated-individuals treatment needs to be urgently addressed. Both an alteration to the Prison Litigation Reform Act and hiring transgender-rights educated prison guards and prison-adjacent decision-makers on transgender peoples' needs and rights would move towards a safer, more equitable prison environment. We recommend implementing a nationwide education program for prison guards in order to move toward this goal.

Background

Transgender individuals are inequitably targeted for abuse, violence, and discrimination in prison systems compared to their cisgender counterparts. According to the National Center for Transgender Equality, "Transgender inmates are 10 times more likely to be sexually assaulted by their fellow inmates and five times more likely to be sexually assaulted by staff". The Supreme Court has said that an excessive risk of abuse can be established when a prisoner belongs to "an identifiable group of prisoners who are frequently singled out for violent attacks by other inmates", including transgender people. According to TransEquity, it is incredibly difficult for transgender inmates to legally prove abuse, for, in order to win a case and advance reform, the inmate would need to prove "... not only that prison officials failed to take steps to stop or prevent abuse, but also that they knew that the abuse was likely to happen...". This is an advanced standard to meet in court; it is highly pertinent that legal action is taken rapidly to protect transgender inmates.

Options

1. Adjust Prison Litigation Reform Act

One policy option that would help institute transgender reform in prisons interstate is to adjust the Prison Litigation Reform Act. This law is regressive for transgender inmate rights because it makes their representation more difficult in a court of law. Previously, if attorneys win a case, they receive attorney fees. However, post-enacting the Prison Litigation Reform Act, it has inadvertently grown more difficult to fully compensate attorneys, which prevents prisoners from being able to access attorneys in the way they could previously. Lawyers hoping to represent inmates who were victims of crime and maltreatment aren't adequately paid, causing these inmates to receive insufficient representation. This bill requires a client to pay 150% of the maximum hourly rate if they win the case. As a result, a lack of resources (attorney access) is an invaluable resource to these inmates. The solution to this problem is to adjust this act to re-facilitate a legal process that provides financial support to attorneys that defend inmates who were victims of crimes while incarcerated.

2. Increase Education Regarding Transgender People's Needs and Rights

Our second policy option recommendation addresses a lack of education when it comes to prison decision-makers in regards to transgender people's needs and rights. Many prisons are in remote parts of their states, where there may not be sufficient enlightenment on LGBTQ education. In many cases, prison guards have a big influence on whether somebody gets sexually or physically assaulted through the practice of placing inmates near or isolated from each other. There need to be effective programs on education; our proposal is to incorporate a cross-state education program for prison guards that is required in order to work on-field. Through enhanced education, prison guards would be more likely to foster empathy and awareness of the direct impact their actions may have in the future. It is also a method of de-isolating transgender inmates, for inmates would have a clear source of protection if needed.

Recommendation

After weighing the pros and cons of both policy options, we posit that the incorporation of a cross-state education program for prison guards is the best solution. Not only would this implementation increase the awareness and knowledge of LGBTQ individuals and their lives, but it will also de-isolate Transgender inmates from the prison population by ensuring they have access to welfare resources. Although updating the Prison Litigation Reform Act may create a new, positive legislative precedent, it is less feasible to adjust a significant piece of legislation that carries much weight on our modern-day prison reform laws.


Starting off small by implementing an interstate prison education program would regulate immediate issues that are taking place. For example, with this policy, guards and other prison employees will be taught about sexual abuse prevention, how to report safety violations in an efficient manner, and transgender health resources. The program would be mandatory for all prison employees, ensuring that transgender individuals have a source of protection from abuse by other inmate and have a safely-fostered environment in the prison. This education system (not just for guards, but also volunteers, mental health practitioners, investigators, and other prison employees) will create a safe and secure space for incarcerated transgender individuals to serve their time and be reimmersed with general society efficiently. Ultimately, this policy would be the most successful in increasing safety and respect for transgender prisoners across the country.

Acknowledgments

We would like to thank Professor Michael J. Steinberg for taking the time to speak with us.

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Recidivism Rates in the United States v.s. Norway

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Executive Summary

Currently, the American prison system seeks to incarcerate individuals while administering punishment for committing a crime, though the negative effects of this paradoxical system are clearly present given the country's high rates of recidivism (repeat offending). In our policy brief, we discuss factors that have contributed to the United States' dramatically increased rates of recidivism as compared to Norway, and what perceptions or systematic devices have led to the propagation of detrimental life standards for previously incarcerated individuals. Norway serves primarily as a backdrop in our brief, serving to draw out abnormalities within the U.S. prison system that aren't present in other democracies in a comparative manner. Thus, we explore multiple reform possibilities for the U.S. prison system to decrease overall rates of recidivism in the United States while promoting healthy reentry for previously incarcerated persons.

Background

The United States not only has the highest rates of incarceration compared to all other countries, but it also has one of the highest rates of recidivism, or reoffending, in the world at 76.6%. Studies have found that three years post-release, 2 out of 3 formerly incarcerated individuals are rearrested, and 50% are reincarcerated. Therefore, these extremely high recidivism rates are reflective of the inadequacies of the criminal justice system in providing rehabilitation and resources to formerly incarcerated individuals, especially as they re-enter society.

When comparing the United States with Norway, the role that focusing on rehabilitation can play in reducing recidivism is apparent. Norway has one of the lowest recidivism rates in the world at 25%, three times smaller than that of the United States. This extremely low rate of reoffending is reflective of a system that emphasizes helping incarcerated individuals change and grow during incarceration, equipping them for reintegration into society. For example, a study found that unemployment rates amongst incarcerated individuals actually decreased following release from

prison, meaning that many people who were unable to hold a job prior to incarceration were able to integrate into the workforce following release.

In direct contrast, the United States' extremely high recidivism rates are caused by a variety of inadequacies within the criminal justice system. Rehabilitation is not at the center of U.S. prisons; in many cases, incarcerated individuals aren't eligible to participate in different programming until the final years of their sentence. In the meantime, these individuals develop maladaptive survival habits in the absence of resources and programming opportunities. Additionally, upon release, there is a lack of employment opportunities due to the stigma associated with having a criminal record. This lack of employment often funnels newly released individuals into the criminal behaviors that landed them in prison in the first place. More broadly speaking, a failure to assist formerly incarcerated individuals in securing basic necessities upon release, such as stable housing and food, leads many people to homelessness, a condition that is conducive to crimes of survival. Whether within prisons or directly after release, the criminal justice system does very little to rehabilitate incarcerated individuals, yet expects them to successfully reintegrate into society and avoid criminal activity. The United States' high recidivism rates expose this inadequacy and demonstrate that changes need to be made at the policy level.

Options

1. Increased Sense of Normalcy within Prisons

The normalization of prisons, or making them as similar to the outside world as possible, can help decrease the barriers faced by individuals as they re-enter society. Individuals who leave prison feeling ostracized and out of touch with society are more likely to face challenges during reintegration, contributing to an increased likelihood of reoffending. This normalization can take many forms, including establishing pay wages that are comparable to those on the outside, increasing the number of educational opportunities, and overall altering the punitive nature of incarceration. The benefits of increasing this sense of normalcy are extensive. First, a decreased emphasis on punishment leaves more room for prison staff to engage in rehabilitation efforts. For example, in Norwegian prisons, the principle of incarceration is simply a restriction of freedom and no further punishment takes place, creating a greater sense of humanity within the institutions. Therefore, the role of staff members is not to further punish but to rehabilitate. Secondly, a prison environment more similar to outside society allows incarcerated individuals to visualize life after their sentence, offering a sense of hope. This is especially beneficial for those serving long sentences, for studies have shown that the longer individuals are incarcerated, the more their ability to function outside of prison debilitates. Overall, an increased sense of normalcy reduces

the environmental shock of reintegration, easing the process and setting individual's up with an opportunity to alter their life path.

2. More Holistic and Trauma-Informed Prison System

Most offenders have been victims at some point, and criminality tends to be cyclical. However, this is rarely taken into account within the United States' criminal justice system, a system that considers the cold, hard facts rather than individual circumstances. A more effective criminal justice system should focus on a more holistic approach, providing more trauma-informed care, mental health services, and addiction treatment. One way through which this could be accomplished is by expanding Medicaid to fund inmate care, which could allow for the creation and utilization of rehabilitative programs. Without a more trauma-informed system, people come to prisons with trauma, develop more during their time in prison, and then leave still traumatized. Moreover, the United States, as opposed to Norway, views incarceration as a means of punishment, rather than one of rehabilitation. It means that we emphasize poor living conditions, a lack of resources, and little empathy for those incarcerated, when in reality the lack of freedom during incarceration is sufficient punishment. A shift in the purpose of incarceration from punishment to providing rehabilitation and trauma-informed care might help alter the public perspective of previously incarcerated individuals. Knowing that an individual has received proper care and rehabilitation while incarcerated could reduce the general public's stigma against formerly incarcerated individuals, allowing for smoother and more successful reintegration.

3. Improved Reentry Support

Though efforts made during incarceration to prepare for reintegration are important, the weeks and months following release are also of paramount importance. Firstly, America should look to increase parts of their social safety net, those which pale in comparison to European countries like Norway. The U.S. lacks a national healthcare system, societally speaking looks at government aid as handouts rather than hand-ups, is comparatively short on affordable housing, and fails to level out economic disparities through governmental action. Take that the poorest 38% of Norwegians are wealthier than the poorest 38% of Americans, even though the U.S. has a higher median yearly income. Secondly, employers, and legislators, should remove the "scarlet F," from employment consideration, at least until after the preferred candidate is decided upon. The University of Michigan, for example, has made steps to make it so that an individual is only asked about their felonious history once a candidate has been selected and an offer is about to be made. Lastly, the United States needs a wholesale societal shift towards released offenders. Former offenders are disproportionately looked down upon in the US comparatively, and as a result, government and

company action follow. If the US as a society begins to not only accept but work to actively reintegrate released offenders, the risks of recidivism will likely reduce drastically.

Recommendation

The benefit of implementing a more holistic and trauma-informed approach to incarceration and rehabilitation lies primarily with the feasibility of implementing a recovery-oriented system. While each of our proposed options is an invaluable possibility concerning a revision of the currently implemented and wholly counterproductive prison system, Option #2 is undoubtedly the most feasible option according to our research. Option #1 relies too heavily on infrastructural renovations that would likely not pass for approval given the extensive federal funding that this project might cost. Likewise, Option #1 fails to reach cohesion between federal and private prisons, given that private prisons might not elect to forfeit the necessary funding for renovating prison amenities to reflect a positive and safe living space. Likewise, societal prejudices and perceptions concerning inmates are not easily swayed given the historical detriments of the American judicial system's extensive focus on punishment as compared to rehabilitation and reintegration efforts. While renovation efforts and changes in public opinion would be phenomenal if attainable, this possibility remains widely idealistic and outside of prison renovations, a change in societal/judicial perceptions of prisoners would mostly occur outside of prisons. Option #2 already tackles these negative perceptions by focusing on trauma-oriented rehabilitation for prisoners in order for them to learn and grow from their experiences, values which can be carried into life, post-sentence.

Option #3, though highly beneficial, is unlikely in practice given that it branches across many mediums of government and other correlating mechanisms of the judicial system. Although being a skeptic is exhausting, it's unlikely that the United States would remove the "Scarlet F." that follows previously incarcerated individuals upon finishing their sentences. Doing so would force institutions to reevaluate how they distinguish violent, versus nonviolent crimes, as well as reexamining how sexual offenders, whether violent or nonviolent (statutory rape in specific contexts), are evaluated or attributed a certain indication of their crime post-sentencing. On top of that, altering the existing healthcare system and Medicaid policies implemented currently to provide previously incarcerated individuals with fiscal, social, and medical safety nets upon reentry would require a copious amendment to existing policies, a frail possibility given the current start of polarization within the United States' sitting federal government. Thus, the ramifications and necessities of implementing these changes are too great to overcome at a moment's notice, though are indefinitely necessary for the long term to ensure the safety and vitality of rehabilitated individuals.

Thus, Option #2 functions as our primary recommendation as to how we should begin revitalizing the American justice system. As it stands currently, the federal prison system seeks to punish incarcerated persons, depriving them of social necessities while inadvertently equipping them with

negative survival skills necessary to survive in a modern, inhospitable prison environment. Thus, by reallocating available monetary resources via federal taxation, as well as an increased taxation/fee imposed upon private prison systems, federal prisons could begin to fund rehabilitation classes, therapy, and medication availability for prisoners that have lacked the resources available in their life before sentencing to afford these health necessities. Whereas most repeated offenders that experience recidivism/reincarceration are often drug abusers without financial means available to purchase physiologically/neurologically addictive substances, these resources would help to increase rates of sobriety from harmful drugs while providing both therapeutic and pharmacological treatments for patients deemed eligible for treatment. By making educational resources and therapy available at the start of one's sentence rather than in the final years/months, prison systems could adequately create preventative measures to combat reincarceration for previously sentenced persons. Thus, while evaluating past traumas and eligibility for therapy/medical intervention, prisons can begin to treat their inmates appropriately while also prompting reformation of public opinion surrounding inmates and previously incarcerated individuals. By recognizing previously incarcerated individuals as products of dire circumstances, environments, and medical afflictions, the American prison system can begin to reformulate social perceptions of individuals post and pre-sentencing while redirecting aim toward rehabilitation rather than punishment.

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Policy Reforms to Private Prisons

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Executive Summary

Following the disastrous implementation of the War on Drugs, America's reliance on private prisons has recently come under increased public scrutiny. A lack of unified and transparent information on private prison operations means that public evaluations are based on conflicting studies, often funded by industry. In order to accurately determine the true nature of private prison operation, and mitigate harmful operating practices, changes to the current standards for private prisons are a necessity. The two policy options considered are directly encouraging public institutions to divest their holdings in private prisons, and redefining standards of transparency for private prison companies. While divestment by public institutions would be an eventual necessity if phasing out private prisons was the goal, proper action cannot be taken if the true extent of the problem is not understood. Therefore, it is our recommendation to increase the transparency that private prisons must operate under, and allow the public and investors to determine the fate of private prisons.

Background

With the rise of incarceration brought about by the War on Drugs, the 1980s marked the start of the modern United States' reliance on private prisons. While private facilities only house approximately 16% of federal inmates and 7% of state inmates, the actual distribution of private prisoners varies heavily from state to state. 32 states hold less than 5% of their prisoners in private facilities, yet 11 hold anywhere from 15% to almost half of their prisoners in private facilities. Within the private prison industry, two companies, CoreCivic and the GEO Group, account for a majority of the domestic market, and account for tens of millions of dollars in campaign contributions and lobbying efforts within the last 40 years. Private prison firms advertise affordable incarceration services, which governments are eager to adopt given the still high demand for prison space. However, these claims are conflicted by numerous studies, and it's hard to discern on a national scale whether per-inmate costs are indeed lower in private facilities and if so, if that's a result of the free market or cutting staff, pay, training, and other

standards. Even as many states have shifted away from private facilities, these companies have redirected some of their efforts to other services, including providing detention facilities for ICE. Finally, due to the vast array of American Correctional Departments that interface with private prison companies, there's no single location to gather statistics on all facilities in the United States, meaning a real understanding of the shortcomings of private prisons is absent when American politicians are receiving incentives to continue supporting mass incarceration and private prisons.

Options

Our two policy options were chosen with the goal not of directly harming the private prison industry, but rather on allowing the court of public opinion and the operating cost of humane conditions to determine the fate of private prisons.

1. Encouraging Publicly Owned Finances to Divest from Private Prison Holdings

Currently, private prison corporations are publicly traded like any other public company. As a result, any institution that manages financial assets may come to own private prison stock. While this in itself is not a crime, there are ethical concerns regarding profiting from incarceration, as well as conflicts of interest. Take for example defense stocks. Currently, there are restrictions on defense stock ownership for certain employees of the Department of Defense. When looking at private prisons, no such restriction applies and there exist no limitations for any individual who decides on private prison usage to buy and sell stock in private prison companies. Some of these companies include CoreCivic and GEO Group. In researching these issues it was found that various universities have or had a stake in private prisons. Following public pressure, many have divested their holdings in private prison companies. While the government cannot force individuals and institutions to divest themselves, taking an approach similar to how defense stocks are currently regulated can mitigate the issue at hand. This course of action would see federal and state officials limited in their ability to profit from private prisons while having power over the success of said companies. This course would also provide more transparency to individuals and financial institutions which own or are interested in buying and selling private prison company stocks. While not legally binding, such information will likely discourage ownership in these companies, which would apply pressure to company funding. This is unfortunately limited in that the primary sources of funding for these companies are still state and federal contracts, so the actual impact on the operation is likely limited.

2. Minimum Threshold of Transparency and Uniform Conditions

This policy would focus the effort not on de-incentivizing private prison operation directly, but rather on forcing private prisons to contend with scrutiny they've previously avoided. There doesn't exist a national registry showing the operation of private or public prisons in the United States. Currently that information is managed at the state level. Standardized national recordkeeping would allow for a clear understanding of what operations private prisons are tasked with, and how fiscally responsible states are when contracting to private companies. Furthermore, having unified national standards for conditions in and operation of private prisons would eliminate variations in prisoner treatment across the country. Enforcing uniform standards in federal private prisons would be fairly easy, as the few that exist are all managed by the Department of Justice. However, coordinating individual state legislatures to adapt to new standards would be a far greater challenge. State prison operation is entirely reserved to the individual states. Some states benefit heavily from private facilities, and would not be inclined to participate. Therefore, any legislation passed needs a mechanism to coerce state governments to fall in line. The most common historical method is to tie funds given to the states to a state's ability to meet a set of standards. Due to the nature of tying funding to standards, it's likely that there will be resistance not only from state governments, but also from citizens concerned about the practice of withholding critical funds from states.

Recommendation

Our recommendation is Option 2: "Minimum Thresholds and Uniform Conditions". Both options would increase public discourse on private prisons, creating pressure both on private prisons, but also on the financial institutions and governments that support them. While both target key components in the current profitability of private prisons, ultimately the lack of binding enforcement power in Option 1 means that Option 2 is more likely to cause real progress.

In order to make Option 2 applicable and impactful, it would be beneficial to create a transparent website that is commonly accessible and readable to the average American. Such a database would serve as a location to provide submitted data on both incarceration statistics and on financial information. While states already are given expected operational costs when determining contracts, this information is not available to the public. Allowing the public to see this information would allow researchers to more easily observe existing trends in private prison operations to advise future changes. It would also permit investing bodies to know in more detail how private prisons provide their services, and where corners get cut.

The key reason that uniform standards are a more impactful policy than the divestment path isn't in the ability to enact the policies, but rather in the ability to enforce them. While it's easy to pass a law, the federalist structure of the United States means that responsibilities for enforcement are

heavily delegated between states and the federal government. Divestment, while a necessary step in the long term, is not something that the federal government can universally enforce, and not something that states who operate private prisons would want to pursue. Pursuing universal standards allows for an avenue through which states could be made to comply. By tying some component of federal funding - most likely justice related - to states to their efforts to reign in private prisons, states would theoretically have to adopt the uniform standards or risk losing federal funding. This sort of fund-oriented compliance has been used numerous times in the past but has faced legal challenges on many of these occasions. As a result, this implementation would likely have more long-term impact but would take longer and risk being struck down if too broadly reaching.

Acknowledgments

Thank you to the SFD E-Board for aiding us in the research and writing process, and for being forgiving with scheduling limitations.

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Addressing Michigan's Public Defender Shortage

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Executive Summary

Coupled with Michigan's overly convoluted appellate process, the state's public defender shortage greatly contributes to low-income individuals facing worse outcomes in appellate trials. Two possible policy reforms to address the public defender shortage include increasing recruitment activities and raising salaries. While both present unique merits and pitfalls, we believe that raising the salaries of public defenders is the optimal policy solution to this issue because it has been proven effective and directly addresses the problem.

Background

Despite its essential nature, the appellate process for an inmate in the state of Michigan is extremely long and tedious. The process is riddled with heavy fees, including a \$375.00 initial filing fee, rendering it inaccessible to many lower-income individuals. As a result, numerous innocent people have been convicted of crimes they did not commit in the state of Michigan. As of 2020, Michigan ranked second in the number of people that are exonerated due to wrongful convictions. There are many problems within the court system that contribute to the high incarceration rate of innocent people. One problem is the lack of public defenders. Public defenders are often overworked and underpaid. Public defenders often have a high caseload. This makes it difficult for them to do a good job because they cannot give each case the focus that it needs. This public defender shortage disproportionately affects people of lower incomes who receive these defenders, due to the fact that they are unable to afford a lawyer. There are multiple solutions to help alleviate this problem. Our group has proposed two solutions: raising the salary of public defenders and recruiting more public defenders.

Options

1. *Raising Public Defender Salaries*

Public defender salaries in the state of Michigan, according to Indeed, are an average of only \$60,000 per year; however, increasing the salary of public defenders can help maintain an equitable appellate process. The parity in pay between prosecutors and public defenders is large, often affecting the retention of public defenders. Without increasing the pay of public defenders, public defenders often leave for higher-paying jobs. This depletes the number of public defender workers while also pulling out high-quality public defenders from the system. Increasing the salary of public defenders can improve their retention rate and can improve the appellate process by having public defenders that maintain continuity and don't have to be frequently trained. Furthermore, increasing the pay of public defenders can bring in new employees that can contribute new ideas and bring modern solutions to improving the appeal process from the public defender perspective. One negative of this explanation is that increasing the pay of Public defenders to appeal to current workers doesn't incentivize potential new employees. As a result, the same ideas and the same issues are perpetuated in the status quo, and the appellate process is not improved.

2. *Recruiting More Public Defenders*

Especially since the onset of the pandemic, Michigan has had a severe shortage of public defenders across the state. Rindy Hawkes, the organization's executive director, stated in November that there was an average loss of two staff attorneys per month for the past 16 months. It's difficult to recruit new public defenders due to the lack of job infrastructure, including low salaries and an overwhelming amount of work. Recruiting greater amounts of public defenders will even out the overwhelming caseloads among a greater amount of employees, meaning more attention will be given to each individual inmate. The current backlog of cases has led to an increase in housing and job insecurities for indigent defendants as well as a plethora of other issues. As a result of this depreciation, convicted people are severely disadvantaged within the criminal justice system due to the lack of ability that public defenders hold in order to administer proficient representation to their constituents. By improving the standards of the public defender's workplace in order to recruit more public defenders, the appellate process will become increasingly more equitable for those who are unable to hire their own lawyers, as well as improve the validity of the criminal justice system for all income statuses.

Recommendation

Although there are benefits to increasing public defender recruitment, we find that the policy is generally flawed because it does not truly address the problem of appellate trials not being given proper attention. We say this because recruitment funding has been increased in states such as New York, following legal claims by the ACLU that the state did not provide adequate public defenders. Because increased recruitment activities did not make a significant difference, many counties chose to use the recruitment funding they received from the state to simply raise public defender salaries. Given that 64% of job-seekers cited potential salary increases as very important in their decision-making process, the highest of all choices provided, it's no surprise that surface-level recruiting tactics that aren't accompanied by a wage increase are ineffective. Though increasing recruitment tactics could possibly raise awareness and therefore yield results if salaries were also increased, the policy is unable to stand alone.

Thus, we recommend the option of raising public defender salaries. If more law school graduates were incentivized to go into public defense work after graduating, inmates would benefit from representation by talented attorneys that would otherwise likely follow higher existing salaries, like those provided by larger law firms. Currently, "the state of Michigan fails to provide competent representation to those who cannot afford counsel in its criminal courts," according to the National Legal Aid and Defender Association. The average salary for public defenders in the state of Michigan is \$60,000 a year, while the average salary for all attorneys in the state is closer to \$72,000. Offering higher salaries for public defenders will recruit talent and increase attorney quantity, helping to provide adequate representation for more inmates waiting to engage in the appeals process. In tandem with facilitating a more successful recruitment process, raising public defender salaries will also increase the retention rate for existing public defenders. Rather than leave for higher-paying jobs, existing public defenders will feel more incentivized to continue working for underrepresented inmates, cutting training costs and keeping the number of available attorneys high. This will also allow attorneys to develop more personal relationships with inmates, which in turn could improve the quality of their representation in court. While the gains in pay for public defenders would come from Michigan taxpayers, the shift is a necessary one to ameliorate the issues with the appeals process in the state of Michigan.

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