



National Police Accountability Project

A Project of the National Lawyers Guild

RECLAIMING PUBLIC SAFETY: ENDING PRIVATIZATION OF JAILS AND POLICING

Over the last decade, there has been an increased public focus on creating civilian oversight of jails and civilian-led policies to improve the treatment of people who are detained awaiting trials. Similarly, how and when police officers can use force remains one of the most pressing public policy debates in American society today. Despite the immense public importance of corrections and policing practices, decisions about these issues are often not made by elected officials or public servants. Instead, in many communities, they are being made by private corporations that are largely unaccountable to anyone other than their shareholders.

Over the last two decades, municipalities have increasingly outsourced their corrections and policing responsibilities to private corporations. They have brought in companies to operate their jails, provide healthcare to people in their custody, handle police policymaking, and train their officers. This trend of privatization has been a major driver of constitutional injuries, undermined accountability, and frustrated reforms. These private companies have wholly different incentives from public actors that would otherwise handle these functions, particularly their prioritization of profit over public safety. Additionally, companies have an easier time escaping scrutiny about their practices and track record since they are not always subject to the same open records and open meetings laws. Moreover, the relatively deep pockets of private companies provide them with leverage to frustrate accountability through civil rights litigation. Privatization has major implications for safety and accountability yet the public has little control over a city or county's decision to enter a contract.

Even though privatization excludes communities from important corrections and policing decisions, points of intervention exist. The public can influence minimum standards for private contracts, oppose their formation, and prevent their renewal. To be clear, public entities cause significant harm in policing and carceral spaces. Replacing private contracts with government operation alone will not fix the policing and incarceration problems in our country—we need to shrink the scope of policing, enact significant accountability reforms, and stop incarcerating people absent compelling public safety concerns. However, ending privatization is an essential step towards initiating many fundamental policy solutions and will help minimize the particularly egregious outcomes that result from corporate control of police departments and jails. This white paper provides an overview of common harms associated with privatizing policing and corrections as well as outlines legislative options and tactics to prevent them from being signed in the first place.



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Meet the Corporations

Correctional Management	Healthcare	Policing
 <p><i>Better the public good™</i> Profits: \$1.85 Billion Summary: Private prisons, jails, and detention centers. Active States: Throughout US with high concentration in Colorado and New York</p>	 <p>Profits: \$1.5 Billion Summary: Healthcare contracts in jails and prisons. Active States: Throughout US including Kansas, Missouri, Idaho</p>	 <p>Profits: Est. \$100 Million Summary: Police, Jail, and Prosecutorial Policies Active States: Throughout US, with high number of contracts in California.</p>
 <p>Profits: \$34 Million Summary: Jails, prison, and Immigration Detention Centers Active States: Louisiana, Texas</p>	 <p>Profits: \$1.17 Billion Summary: Health Healthcare contracts in jails and prisons. Active States: Across the US</p>	 <p>Profits: \$850 Million Summary: Law enforcement equipment and policies. Active States: Across the US</p>
 <p>Profits: \$2.56 Billion Summary: Operates private jails, prisons, ICE detention Active States: Across the US</p>		



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Privatization Trends and Prevalence

Privatization is an outgrowth of America's over-policing and incarceration crises.¹ The wave of racist, tough-on-crime politics in the 1980s and 1990s expanded police presence and led to a huge spike in incarceration.² In particular, the 1994 Violent Crime Control and Law Enforcement Act provided financial incentives to local governments to hire more police officers, make more arrests, and hand down longer sentences.³ As law enforcement agencies arrested and detained more people, their existing infrastructure was stretched beyond capacity.⁴ Governments found it more efficient to outsource responsibilities to corporations rather than bring their existing systems to scale or reject federal funds conditioned on unsustainable over-policing.⁵

Most local governments have privatized some aspects of their jails ranging from outsourcing all operations to contracting for specific services like healthcare. Corporations like Core Civic and LaSalle entered into contracts with counties and cities to staff and supervise jails. These contracts typically permit companies to set policies for how incarcerated individuals are treated and dictate the standards for facility operations.⁶ Even more outsource healthcare to private companies, with almost 40% of all American jails relying on corporations to provide medical services.⁷

Police started relying on private companies for policies and training in the early 2000s. This trend is also traceable to shifts in the political climate as Lexipol, Axon, and other companies were able to hock their products due to a perceived rising tide of public backlash against police

¹ See Alexander Volokoh, *Privatization and the Law of Economics of Political Advocacy*, 60 Stan. L. Rev. 1197, 1226 (2008)(collecting statements from private prison executives on benefits of the 1994 crime bill); David Shapiro, *Banking on Bondage: Private Prisons and Mass Incarceration*, ACLU, Nov. 2, 2011, Available at: https://www.aclu.org/files/assets/bankingonbondage_20111102.pdf.

² James Cullen, *The History of Mass Incarceration*, Brennan Center, July 20, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration>.

³ *Id.*

⁴ Michael G. Anderson, *If You've Got the Money, I've Got the Time: The Benefits of Incentive Programs with Private Prisons*, 34 Buff. Pub. Interest L.J. 43, 54 (2015)(private correctional facilities increased with expanding prison populations in the 1980s and 1990s); Micaela Gleman, *Mismanaged Care: Exploring the Costs and Benefits of Private vs. Public Healthcare in Correctional Facilities*, 95 NYU L. Rev. 1386, 1388-89 (2020)(increased reliance on private healthcare providers in response to growing prison populations).

⁵ *Supra.*, note 4.

⁶ See eg. Contract between LaSalle Corrections and Jefferson County Sheriff's Office, Sept. 28, 2015, https://co.jefferson.tx.us/agenda/agendas_pl/20151012_306/Attachments/RECEIVE%20AND%20FILE%20EXECUTED%20AGMT%20LASALLE%20CORRECTIONS.pdf

⁷ Paul von Zielbauer, *As Health Care in Prison Goes Private, 10 Days Can Be a Death Sentence*, N.Y. TIMES (Feb. 27, 2005),

<http://www.nytimes.com/2005/02/27/nyregion/ashealth-care-in-jails-goes-private-10-days-can-be-a-death.html> [https://perma.cc/2WJ5-4SA6].



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violence.⁸ The public opposition to aggressive policing has caused many local governments to contract with manufacturers of less lethal weapons in hopes of reducing deaths at the hands of the police. Other local governments have purchased privately drafted policies and training to create litigation proof policies.⁹ Marketing that preys on municipal insecurity about liability for police misconduct has resulted in Lexipol securing contracts with hundreds of police departments across the country, particularly in smaller communities.¹⁰

While municipal decision-making is not monolithic, most cities and counties contracted out carceral and policing responsibilities because it seemed like the cheapest, easiest way to absorb rapid changes. Unfortunately, many municipalities have continued to enter into and renew these contracts despite consistent, dismal and even deadly outcomes not to mention decades to implement alternative systems.

Human Impact of Privatization in Jails

While local jails are typically not known for humane conditions and high standards, facilities operated by private corporations are uniquely dangerous.¹¹ For profit jails, like many privatized carceral entities, make many operational decisions with a focus on saving money. One of the key cost-saving measures undertaken by private jails is to limit labor costs by understaffing and undertraining corrections officers.¹² For instance, a review of recent lawsuits against LaSalle Corrections reveals the unconstitutional and deadly results alleged in the complaints are often tied to the company's practice of understaffing.¹³ There are numerous cases where overextended

⁸ Ingrid Eagly and Joanna Schwartz, *Lexipol: The Privatization of Police Policymaking*, 96 Tex. L. Rev. 891, 915-917 (2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Laura I. Appleman, *Cashing In on Convicts: Privatization, Punishment, and the People*, 2 Utah L. Rev. 580, 593 (2018); German Lopez, *A federal report just confirmed it: for-profit prisons more dangerous than public ones*, Vox, Aug. 12, 2016, <https://www.vox.com/2016/8/12/12454410/private-prisons-violence-investigation> (noting comparable trend in private prisons); *Lawsuit over jailhouse death settled*, KTBS, Sept. 10, 2018, (quoting Louisiana law enforcement consultant, "I'm being retained far more by attorneys in private facilities -- for violence in private facilities -- than I am in government-run facilities," Sanders said. "Untrained staff lead to incidents where people's civil rights are infringed upon. In order to cut costs they're having to hire as cheap a labor force as they can get... and cut costs on training.")

¹² Cody Mason, *Dollars and Detainees: The Growth of For-Profit Detention*, THE SENTENCING PROJECT 12 (2012), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Dollars-and-Detainees.pdf>; Robert Craig and Andre Douglas Pond Cummings, *Abolishing Private Prisons: A Constitutional and Moral Imperative*, 49 U. Balt. L. Rev. 261, 271, 312 (2020); See eg., Aimee Ortiz, *For-Profit Jail Accused of Abuse After Death of Woman with H.I.V.*, N.Y. TIMES, Sept. 17, 2020, <https://www.nytimes.com/2020/09/17/us/lasalle-corrections-inmate-death.html>.

¹³ Tom Aswell, *Hysterectomies in Georgia facility prompt examination of Ruston-based LaSalle Corrections' High Inmate Deaths*, Louisiana Voice, Sept. 23, 2020,



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corrections officers were unable to adequately monitor people that had severe illnesses, resulting in their death. Texan Holly Barlow Austin tragically died after she was incarcerated in LaSalle's Bi-State Justice Center after she was deprived of her HIV medication and contracted meningitis as a result.¹⁴ Ms. Barlow Austin became blind and spent two days writhing in agony on the floor of a medical observation cell without food or water before she was discovered and finally taken to a hospital emergency room where she died.¹⁵ The lawsuit against LaSalle cited the company's conscious policy of understaffing facilities to "keep their budgets unrealistically low, to make money" as the reason staff failed to conduct even a perfunctory check of the medical observation cell.¹⁶

Similar monitoring failures have resulted in the deaths by suicide at LaSalle facilities in multiple states. For example, Michael Martinez died by suicide while detained in a LaSalle-run jail in Waco after he was unmonitored for three hours despite state requirements that he be visually observed every 15 minutes.¹⁷ LaSalle's intentional understaffing has similarly resulted in deaths and serious injuries from inmate on inmate assaults. In the LaSalle-run Richwood Correctional facility in Louisiana, the staff member responsible for video monitoring the cell of Erie Moore and Vernon White stated that she did not detect Moore beating White to death because she had too many monitors to observe at once.¹⁸ LaSalle is not the only private jail operator to have caused deaths as a result of its intentional understaffing to save on costs—GEO Group jails have similarly been sued and cited for their consistent failure to screen and monitor inmates with medical vulnerabilities.¹⁹ In addition to understaffing, private jails cut costs by undertraining and underpaying staff leading to more corruption which can manifest in greater rates of violence, drug access, and a number of other safety issues.²⁰

Private correctional care companies have also delivered services at a level far below those of public providers. Studies have shown that facilities with privatized carceral healthcare have higher mortality rates than those with publicly provided healthcare.²¹ Additionally, prison healthcare corporations have documented patterns of refusing to diagnose and treat people to save costs. Wellpath maintains a practice of refusing to send pretrial detainees out of the jail to

<https://louisianavoices.com/2020/09/23/hysterectomies-in-georgia-facility-prompts-examination-of-ruston-based-lasalle-corrections-high-prisoner-death-rate/>.

¹⁴ *Mathis v. Southwest Correctional, LLC*, 5:20-cv-00146, Complaint

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Martinez v. Southwestern Correction LLC*, 6:2017-cv-00009, Complaint

¹⁸ *Supra.*, KTBS

¹⁹ St. John Barned-Smith, *State Inspectors Find Deficiencies at Liberty County Jail After Recent Deaths*, HOUS. CHRON. (May 2, 2015), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-news-6238310.php>

²⁰ *Supra.*, Appelman

²¹ Kelly Bedard & H.E. Frech III, *Prison Health Care: Is Contracting Out Healthy?*, 18 HEALTH ECON. 1248, 1248 (2009).



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hospitals and specialists because they would be required to cover costs of those additional treatments.²² Another pervasive Wellpath cost-saving tactic is to withhold prescribed medication from people in pretrial detention.²³ Wellpath also actively trains its employees to question grievances for medical care—directing them to read “Games Criminals Play” as part of their training.²⁴ The book, in short, teaches Wellpath staff that their patients are trying to “set them up” and they should be skeptical of their symptoms and pleas for help.²⁵

Other strategies used by corporations include severely limiting labor costs by staffing facilities with employees who were not qualified to perform the jobs they were tasked with doing. Common examples include hiring Licensed Vocational Nurses for jobs that required Registered Nurse certification and hiring inadequate numbers of medical staff, forcing regular jail staff to handle medical matters even though they do not have the proper qualifications.²⁶ The outcomes of these companies' aggressive profit-driven medical decisions have been deadly. At least 70 people died in facilities where Wellpath or its predecessor Correct Care Solutions provided medical services from 2003 to 2019.²⁷ People have died from conditions that could have been easily avoided with proper medical treatment like drug withdrawals²⁸ and tuberculosis.²⁹ Others have been permanently disabled, like a man who gouged his eyes out due to inadequate medical responses to his psychosis or a man whose bladder ruptured due to Wellpath staff's refusal to treat him.

Privatizing correctional services has caused demonstrable harm. To be clear, pretrial detention should be a last resort and only used as a response to significant community safety problems. Publicly run jails and services produce many of their own harms, however, the damage pales in comparison to their for-profit counterparts. The improved outcomes of public jail services alone should inspire elected officials to search for ways to reduce dependence on private corporations.

²² Blake Ellis and Melanie Hicken, *Please Help Me Before It's Too Late*, CNN, June 25, 2019, <https://www.cnn.com/interactive/2019/06/us/jail-health-care-ccs-invs/>; Brad Branan, California for-profit company faces allegations of inadequate inmate care, January 17, 2015, Sacramento Bee, at p. 2, “Staffing Profit.” www.sacbee.com/news/investigations/the-public-eye/article7249637.html.

²³ Appleman at 598-599.

²⁴ Interview with attorney practicing in the Federal District of Colorado.

²⁵ Games Criminals Play, Amazon, <https://www.amazon.com/Games-Criminals-Play-Profit-Knowing/dp/0960522603>.

²⁶ Micaela Gelman, *Mismanaged Care: Exploring the Costs and Benefits of Privatized Healthcare in Correctional Facilities*, at 1414.

²⁷ Supra, CNN

²⁸ Justine Lofton, *Family of man who died in jail settles lawsuit for \$2.45 M*, Michigan Live, <https://www.mlive.com/news/2022/06/family-of-man-who-died-in-jail-settles-lawsuit-for-245m.html>

²⁹ [Fulvio Cajina]



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Impact of Privatization in Policing

Effective police policymaking and training is also undermined by corporate profit motives. While companies like Lexipol are not focused on reducing operating costs, they do have economic incentives to advocate for policing practices that fit their business model. For instance, Lexipol's business model is centered on policies that maximize police discretion.³⁰ Because Lexipol's primary marketing pitch is premised on reducing liability, they have aggressively resisted drafting use of force policies that would restrict officer discretion and provide plaintiff's attorneys with the opportunity to capitalize on the fact that an officer responsible for misconduct departed from departmental policy.³¹ Per Lexipol's philosophy, when a departmental policy permits an officer to do anything they wish, the officer cannot be in violation of the policy. Unfortunately, this philosophy is incredibly dangerous. In the use of force context, policies that give officers ultimate discretion to use dangerous practices have much higher rates of civilian deaths caused by police officers.³² Lexipol's narrow focus on minimizing liability exposure has also led to under-training officers on conduct that is unlikely to result in litigation.³³ Victims of illegal stops, searches, and seizures are less likely to sue than people harmed by use of force. Accordingly, Lexipol provides little guidance and training on how to constitutionally and respectfully conduct the policing interactions that happen most frequently.³⁴

Axon, another major player in police policymaking and training, had a different business model that relies on underplaying the potential risks of its products to maximize sales. In addition to selling products like tasers, body worn cameras, and evidence management software, they sell training and manuals to accompany their products. Axon has a history of failing to disclose the risks associated with use of their electronic weapons products.³⁵ Successful product liability lawsuits against the company have revealed that the company was aware of peer-reviewed studies that its tasers could cause cardiac arrest when deployed for multiple and prolonged discharges but failed to notify or train police departments about these risks.³⁶ While Axon has adapted training and manuals to notify police departments of risks, the training now focuses on shifting liability for future injuries onto police departments rather than advocating for limited use

³⁰ Schwartz, *supra*. at 926

³¹ *Id.* at 926-928

³² See, *State Use of Force Legislation and Public Safety*, NPAP, at 4

<https://www.nlg-npap.org/wp-content/uploads/2021/12/Use-of-Force-White-Paper-FINAL.pdf>

³³ Schwartz, *supra* at 929

³⁴ *Id.*

³⁵ Jane Mundy, *Taser Death: Attorney Discusses the First Successful Verdict Against Taser International*, Nov. 25, 2008, Lawyers and Settlements,

https://www.lawyersandsettlements.com/legal-news/taser_death/taser-death-tasered-to-deaths-by-tasers-5-11567.html

³⁶ *Id.*



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of their products or advising on how to prevent those injuries.³⁷ An additional issue with Axon's taser training is that it is contractually mandated.³⁸ Police departments cannot opt out of showing their officers unhelpful guidance that is largely designed to insulate the company from liability.

Just as publicly run jails are not without flaws, public police policymaking and training causes its fair share of harm. However, public decisionmaking at least in theory will factor in the considerations other than what makes the most money.

Accountability Issues of Privatization

Part of the reason corporations have such a consistently bad track record is they are able to dodge accountability in ways that public entities cannot avoid. First, private corporations can skirt community accountability because they can claim exceptions to freedom of information and open meetings statutes. Documentation of policies, practices, budget information, and other performance data that would normally be subject to release under open records laws can remain secret in states with limited public records laws.³⁹ Communications about policymaking that would similarly be open to the public⁴⁰ can often be impossible to obtain directly from the private company in question. Even where corporate documents are in the possession of the government, corporate claims of proprietary information and confidentiality can delay their release or require lengthy legal battles.⁴¹ For instance, government entities that contract with Wellpath have claimed that policies and other records from the company are confidential, proprietary information that they are contractually barred from releasing.⁴² In the policing context, Lexipol restricts police departments from publishing Lexipol policies absent compliance with stringent trademark requirements.⁴³

This lack of transparency hinders community accountability efforts by making it more difficult for the public to identify problematic policies and advocate for change. The lack of open

³⁷ John Burton, *What Are The Risks, What is the Potential Liability*, Presentation to the San Francisco Police Commission, Jun. 21, 2017.

<https://www.sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/Burton%20sfpc%20presentation.pdf>.

³⁸ *Id.* at pages 12, 14.

³⁹ Rani Gupta, *Privatization v. Public Right to Know*, RCFP, <https://www.rcfp.org/wp-content/uploads/imported/PRIVATIZATION.pdf>.

⁴⁰ Andan Olia, *Public Records Laws about Text Messages in All 50 States*, <https://www.intradyn.com/public-record-law-text-messages-50-states/>.

⁴¹ See Gelman, at 1429-30; Marsha McLeod, *The Private Option*, *The Atlantic*, Sept. 12, 2019, <https://www.theatlantic.com/politics/archive/2019/09/private-equitys-grip-on-jail-health-care/597871/>; see also eg. Letter of Texas Attorney General, Feb. 19, 2019, <https://www2.texasattorneygeneral.gov/opinions/openrecords/51paxton/orl/2019/pdf/or201904619.pdf>

⁴² See *Id.*

⁴³ *Supra*. Schwartz



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meetings access also prevents the public from being able to voice concerns directly to the relevant decision-makers. Closed records and meetings make legal accountability more difficult. Without access to corporate records, people injured in private jails or by private medical providers may struggle to determine who is liable for the harm caused.⁴⁴ Moreover, private corporations also are not accountable to the public in that their contracts are not directly put to a democratic vote.

Private jail corporations have also been largely unaffected by traditional legal accountability mechanisms. Even though constitutional violations and lawsuits are a foreseeable consequence of many of the practices of privately-run jails, companies have not changed their playbook. Successful settlements and verdicts are rare and can be easily absorbed by these billion dollar corporations. Accordingly, the economic calculus still favors austerity budgets and lean staffing.⁴⁵ Private jail operators are relatively insulated from the deterrence effects of litigation damages and impervious to one of the most effective accountability mechanisms for public entities. Private healthcare providers like Wellpath have been sued thousands of times in recent years but they have little incentive to change. These corporations may wish to avoid major settlements or verdicts but they are rarely at risk of losing contracts because local governments have little inclination to replace them.⁴⁶ Private corporations are also uniquely able to frustrate meritorious litigation. Wellpath publicizes the fact that it will aggressively litigate and refuse to resolve cases in the promotional materials it provides to local governments.⁴⁷ In furtherance with this goal, Wellpath resists discovery and will low-ball or refuse to participate in settlement discussions.⁴⁸ Wellpath will also starve future litigants from access to information that would assist in their cases by insisting on confidential settlements.⁴⁹ The company's deep pockets allow them to engage in limitless gamesmanship in litigation and avoid the same consequences a public entity would face if they violated the Constitution.

Privatization can also make it more difficult to hold the contracting public entity accountable and achieve voluntary reforms. First, contractual terms often place policymaking authority exclusively in the control of the for-profit company, which prevents government officials from improving practices and policies in response to community pressure. For instance, Wellpath contracts provide that the company will develop policies and procedures with no process for the

⁴⁴ Michael Avery et. al. *Police Misconduct Law and Litigation* (2020) §6:12.

⁴⁵ Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1680 (2003) (noting limited impact of litigation in changing behavior of private prison and jail).

⁴⁶ Gelman, at 1399.

⁴⁷ Interview with an attorney practicing in the Federal District of Colorado.

⁴⁸ *Id.*

⁴⁹ Steve Coll, *The Jail Health Care Crisis*, *The New Yorker*, Feb. 25, 2019, <https://www.newyorker.com/magazine/2019/03/04/the-jail-health-care-crisis>.



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government to review, reject, or approve those policies.⁵⁰ When communities express concerns about Wellpath practices, even receptive elected officials have no recourse to make appropriate changes. Additionally, where Wellpath is sued along with a local jail for violating pretrial detainees' rights, they will prevent the government from negotiating a settlement in the case. Attorneys that have litigated against the company in the past have reported that Wellpath uses cross-indemnity agreements to prevent local governments from settling.⁵¹

In the policing context, some cities have expressed reservations about voluntarily changing Lexipol-drafted policies.⁵² Lexipol has frustrated legislatively mandated changes. Lexipol actively advised police departments not to revise their use of force policies and training in response to state law changes required by California's AB 392, a transformative piece of legislation that substantially limits the circumstances under which police officers are authorized to use deadly force.⁵³ Lexipol stuck to this position even after their clients started getting sued for failure to comply with AB 392.⁵⁴ Where police departments decide to improve standards against Lexipol advice, the company will often literally erase the changes when the company issues updates.⁵⁵ Once a local government contracts with a private company, prospects for change through community pressure, litigation, and even legislation become significantly more difficult. Accordingly, the most important point of intervention is before the government enters into these contracts.

Legislative Options and Tactics

Even though elected officials have little influence over how corporations conduct operations once a contract is inked, they have considerable power before entering or renewing service agreements. The decision of whether to enter into a contract with a company for services is a public process that requires approval by elected officials who are (theoretically) accountable to the public. Additionally, local governments can set minimum standards for government contracts that could set the floor for private contractors' policies and performance. Here are several ways that the public can intervene.

1. Prevent Local Government from Entering or Renewing Contracts.

⁵⁰ See *Eg.* Wellpath CCS-Mohave County Services Contract, 2015.

⁵¹ Interviews with attorneys litigating cases against Wellpath in the Federal District of Colorado and the Federal District of Oregon.

⁵² Ingrid Eagley and Joanna Schwartz, *Lexipol's Fight Against Police Reform*, 97 *Indiana L. J.* 1, 55 (2022)

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Schwartz, *Privatization of Police Policymaking* at 935.



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In most cities and counties, local laws require elected officials to put out a request for proposals (RFP) which allows all interested companies to bid on the opportunity to provide policing or carceral services. The proposals are reviewed and the most competitive bids are selected. Many city and county charters require contracts over a certain amount to be approved by the council or commission. Communities concerned about private jails, medical service providers, and police policymaking have an opportunity to intervene at both the request for proposals and contract approval stages. Below are steps that communities can take to intervene when a contract is being considered:

- Advocate for RFP conditions that would seek bids from companies that are willing to agree to policy, performance, and transparency standards.
- Confirm contracts require approval by commission or council vote
 - Check the local charter and/or ordinances; or
 - Call the local clerk's office
- Figure out the timeline for a contract vote:
 - If there is an existing contract, you can submit an open records request, search past city council meeting minutes to see when it is up for renewal, ask your city councilmember/county commissioner's office;
 - Search city council/county commissioner agendas
- Propose an alternative to the company:
 - A nonprofit/community provider;
 - Another company with better practices;
 - The government provides services directly.

2. Create Standards for Contracts.

Activists do not need to wait until a contract is up for review to take steps to keep problematic corporations out of their community. Cities and counties can enact ordinances that set their own minimum standards for jail operations, medical services, and provide policing practices. For instance, an elected body could pass an ordinance that prescribes minimum training and certification standards for any employee that works in the jail and require contractors to only employ workers that meet those standards. A more direct way to regulate contracts with private corporations would be to prohibit the city from entering into service agreements with companies that have a history of engaging in certain practices or records of past misconduct. Finally, elected officials can outright ban contracting certain services.

3. Break Contracts.



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This is a more aggressive option but most contracts allow for termination of the contract if certain provisions are not met. Communities can encourage local governments to invoke those provisions where private corporations are causing immense community harm. NPAP is willing to help interested community members analyze these contracts and assist in identifying breaches of material provisions.

Challenges

It is important to note elected officials will pushback on proposals to limit or end private corporate contracts. In particular electeds may believe that they lack viable alternatives to the corporate contractor of choice. These contracts exist in the first place because governments do not think they have the capacity, expertise, or financial resources to handle services internally. However, these perceptions are not always rooted in reality. Many government officials concerned about costs discover that they can directly provide services at nominally more expensive rates than their corporate contractor.⁵⁶ Also, reticent elected officials should take into account other costs that contracts entail, including financial costs like lawsuits and damage to public confidence. In addition to encouraging government officials to reclaim carceral and policing policymaking and operations, they should be encouraged to explore nonprofit options. For instance, community health providers can and do provide treatment for pretrial detainees. There are also nonprofit resources for policing policies.

Another important point to emphasize to elected officials that doubt they can end reliance on private contracts is that they can always reduce their jail populations and policing activities. Cities across the country have taken steps to safely reduce their jail populations. Similarly, many cities are shrinking the roles that police play in public safety, reducing the demand for policy and training in the areas where they are shifting services. These topics and strategies are beyond the scope of this white paper but are integral to any advocacy efforts on privatization.⁵⁷

Conclusion

Communities have options to reclaim public safety policymaking from private companies and NPAP is eager to assist with these efforts. Please do not hesitate to contact us at legal.npap@nlg.org if you are interested in ending privatized jails, carceral healthcare, or policing in your community.

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⁵⁷ For more information, please see NPAP's White Paper on Reducing the Scale of Police Departments