

General Convention of The Episcopal Church 2022 Archives' Research Report

Resolution No.: 2022-D009
Title: Resolution to Address the Issue of Private Prisons
Proposer: The Rev. Debra Bennett
Topic: Prisons

Directly Related: (Attached)

2015-A011 Urge Advocacy for Policy Changes to End Mass Incarceration Practices
2015-D067 Divest from Private Corporations in the Prison Business
2012-D026 Urge Support for Bipartisan U.S. Commission on Criminal Justice
2000-B055 Reaffirm Criminal Justice System Reform
1985-C043 Create a Task Force on Reform of the Criminal Justice System

Indirectly Related: (Available in the [Acts of Convention](#) database, searchable by resolution number)

2015-D062 Investigate Prison Conditions
2012-A077 Develop a Model Prisoner Ministry
2009-A109 Refer a Resolution on Developing a Model Prisoner Ministry Program (Referred)

In preparing this report, the Archives researched the resolutions in the Acts of Convention database for the period 1973 through 2018, selecting “direct” resolutions that have a substantive bearing on the proposed legislation. The “direct” resolutions are attached and “indirect” resolutions are available in the Acts of Convention database. Committee members who require other research assistance should contact the Archives through the [Research Request Form](#) or call 800-525-9329.

D009 - Resolution to address the issue of Private Prisons

Final Status: Not Yet Finalized

Proposed by: The Rev. Debra Bennett

Endorsed by: Ms. Krisita Jackson, Mr. Joe McDaniel

Requests New Interim Body: No

Amends C&C or Rules of Order: No

Has Budget Implications: No

Cost:

HiA: HD

Legislative Committee Currently Assigned: 08 - Social Justice & United States Policy

Completion Status: Incomplete

Latest House Action: N/A

Supporting Documents: No

Resolution Text

Resolved, the House of _____ concurring,

That this 80th General Convention of The Episcopal Church hereby direct and encourage the adoption, as appropriate, on a state-by-state basis and at the national level a moratorium on the construction of private prisons, and for their outright abolition; and be it further

Resolved, That this 80th General Convention direct, consistent with established policies and procedures, that the Executive Council refer this Resolution to the Office of Government Relations, so that it may take all actions necessary to accomplish the intentions and purposes of this Resolution.

Explanation

The Federal Bureau of Prisons announced its intent to end for-profit prison contracts: Terminating federal contracts. On August 18, 2016, Deputy U.S. Attorney General Sally Yates announced that the Justice Department intended to end its Bureau of Prisons contracts with for-profit prison operators, because it concluded "...the facilities are both less safe and less effective at providing correctional services..." than the Federal Bureau of Prisons. In response, Issa Arnita, the spokesperson for the third largest U.S. for-profit prison operator Management and Training Corporation, said it was "disappointed" to learn about the DOJ's decision. "If the DOJ's decision to end the use of contract prisons were based solely on declining inmate populations, there may be some justification, but to base this

decision on cost, safety and security, and programming is wrong." In a memorandum, Yates continued, for-profit "...prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource and these services are essential to reducing recidivism and improving public safety. Also, the recidivism rates of the private prisons, "Within three years of release, about two-thirds (67.8 percent) of released prisoners were rearrested. Within five years of release, about three-quarters (76.6 percent) of released prisoners were rearrested. Of those prisoners who were rearrested, more than half (56.7 percent) were arrested by the end of the first year." These private prison recidivism rates, compared to the public prison's recidivism rates, are virtually identical and in return have minuscule benefits. At the time, the Justice Department held 193,000 inmates, about 22,000 of whom were in 14 private prisons. Criminal justice reform had caused the prison population to drop by about 25,000 inmates over the previous few years.

On February 23, 2017, the DOJ under Attorney General Jeff Sessions overturned the ban on using private prisons. According to Sessions, "the (Obama administration) memorandum changed long-standing policy and practice and impaired the bureau's ability to meet the future needs of the federal correctional system. Therefore, I direct the bureau to return to its previous approach."

In her memo announcing the change, Deputy Attorney General Sally Yates pointed out that private prisons "compare poorly" to facilities run by the federal Bureau of Prisons. The DOJ found that, in general, private prisons provide fewer correctional services at greater security and safety risk to inmates and staff, without producing substantial savings.

These results are related. To achieve their modest savings, private prisons tend to cut back on staff costs and training. More than a decade ago, researchers found that private facilities pay their officers less, provide fewer hours of training and have higher inmate-to-staff ratios, a combination which may account for their much higher turnover rate among correctional officers, as well as the uptick in inmate assaults.

This is the conventional critique of private prisons: They do not deliver on their promise of significant savings, and the greater risk far outweighs the small fiscal benefit they provide to those within the walls.

But the evidence for this critique is mixed. As the legal scholar Sasha Volokh has pointed out, some studies have shown that public prisons are more cost-effective than their private counterparts, while others suggest the opposite. More importantly, Volokh argues that the private sector can be incentivized to improve—especially compared to the government—and that we should reform the model rather than end the experiment. If we accept the premise that private corporations should run prisons, Volokh's argument has some force.

The real reason is that justice should not be administered through the prism of profit. As a rule, we disfavor private prosecutors hired by the victim's family, or judges who get paid

when a defendant in her court is convicted but not when he is acquitted. In both cases, the concern is obvious: We mistrust arrangements that might lead actors in the system to stray from their duty to administer justice impartially.

The problem with the private prison is analogous, though not identical. The companies that build and run private prisons have a financial interest in the continued growth of mass incarceration. That is why the two major players in this game—the Corrections Corporation of America and the GEO Group—invest heavily in lobbying for punitive criminal justice policies and make hefty contributions to political campaigns that will increase the number of private prisons.

From 1999-2010, for instance, the Sentencing Project found that CCA spent on average \$1.4 million per year on lobbying at the federal level and employed a yearly average of 70 lobbyists at the state level. In California, where state law requires lobbyists to disclose their contributions in detail, we know that CCA used its resources to support, among other things, additional adult and juvenile prisons and detention centers and to oppose a bill that would have outlawed private prisons entirely.

These corporations have every legal right to shower money on friendly legislators. But the fact that they consider it in their interest to do so is exactly what exposes their troubling conflict. Especially today, when the systemic, deeply entrenched, racialized problems with the criminal justice system are increasingly apparent, we should not endorse strategies that encourage the expansion of the carceral state.

Regrettably, this was not the explicit message in the DOJ's announcement. But Yates at least hinted at it. Before pointing out that private prisons "compare poorly" to their public counterparts—that is, before making the conventional critique—Yates noted that the number of federal prisoners has begun to fall, in part because of a shift in law and policy away from incarceration, especially in drug cases.

As a philosophical matter, the Obama Administration is trending—albeit haltingly—toward a default preference for non-carceral solutions to crime. The best evidence strongly supports their preference. The endless churning of the incarceration cycle—the thousands of young men and women repeatedly removed from their neighborhoods, returned and removed again—systematically destabilizes the very communities we are trying to save by disrupting the intricate but fragile webs of connection that hold them together. In fact, research has shown that high incarceration rates of the sort we have seen since the 1980s not only destabilize disadvantaged communities; they actually increase the incidence of crime. That is why former Attorney General Eric Holder recently argued that as a nation, we should aspire to send fewer people to prison for shorter periods.

This is precisely the opposite of what the private prison industry wants. While you can perhaps incentivize it to improve, you cannot incentivize a private corporation to go out of business. As long as we have private prisons, their corporate leadership will support policies that fill every bed.

There are roughly 115,000 people incarcerated in private prisons: 25,000 in the federal system and 90,000 in the states. A corporation's bottom line should not determine their fate. The DOJ has done what it could. It is time for the states to follow the lead.



Resolution Number: 2015-A011
Title: Urge Advocacy for Policy Changes to End Mass Incarceration Practices
Legislative Action Taken: Concurred as Substituted and Amended
Final Text:

Resolved, That the 78th General Convention acknowledges that implicit racial bias and racial profiling result in a criminal justice system that disproportionately incarcerates people of color damaging individuals, families, and communities; and be it further

Resolved, That the 78th General Convention challenges The Episcopal Church at every level to commit mindfully and intentionally to dismantling our current mass incarceration system; and be it further

Resolved, That the 78th General Convention urges the Presiding Bishop of The Episcopal Church, the Executive Council of The Episcopal Church and the Office of Governmental Relations of The Episcopal Church to advocate publicly for changes in Federal policies that perpetuate the mass incarceration system; and be it further

Resolved, That the 78th General Convention encourage each congregation and Diocese to undertake at least one specific initiative aimed at addressing the destructive consequences of the mass incarceration system. These initiatives include such possibilities as:

- 1. Advocating for alternatives to incarceration for those who are addicted, and increased funding for treatment programs;**
- 2. Advocating for alternatives to incarceration for those who are mentally ill, and increased funding for treatment programs;**
- 3. Advocating for protection of the civil rights and provision of appropriate support and accommodation for people with disabilities who are arrested and incarcerated;**
- 4. Advocating for funding for job training and apprentice programs for those who are at risk of incarceration and those who are formerly released from prison;**
- 5. Working with local businesses to create pathways to living wage jobs for formerly incarcerated people;**
- 6. Establishing mentoring and accompaniment programs for those leaving prison;**
- 7. Advocating for the repeal of mandatory-minimum sentences for nonviolent offenses;**
- 8. Calling for the abolition of the sentencing disparity between crack-cocaine and powder-cocaine offenses and, as an intermediate step, urging the U.S. Congress, in accordance with the recommendation of the U.S. Sentencing Commission, to make retroactive the 2010 Fair Sentencing Act, which reduces the disparity in sentencing from previous levels;**
- 9. Advocating to eliminate “three strikes” sentencing protocols;**
- 10. Joining local “Ban the Box” campaigns to remove questions about arrest records in on-line and written job application forms;**
- 11. Opposing the creation of “for profit” prisons and immigration detention centers, and, where they exist, organizing against guaranteed nightly numbers of prisoners and detainees, and advocate for access to education and rehabilitation programs for those being incarcerated or detained;**

12. Reforming monetary bail bond systems, which rely upon often-unlicensed and unregulated bail bond agents and on conditioning release from pre-trial incarceration solely on the ability to pay;

13. Advocating for immediate return of the right to vote for those who have served their sentences and left prison; and

14. Calling for the exploration and creation of restorative justice programs to transform juvenile justice systems; and be it further

Resolved, That the 78th General Convention request that each Diocese report back to the 79th General Convention on the initiatives engaged at congregational and Diocesan levels.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Salt Lake City, 2015* (New York: General Convention, 2015), pp. 300-301.



Resolution Number: 2015-D067

Title: Divest from Private Corporations in the Prison Business

Legislative Action Taken: Concurred as Amended

Final Text:

Resolved, That the 78th General Convention directs The Episcopal Church to continue a no-buy policy with respect to corporations which own or operate for-profit prisons and hereby encourages the Church Pension Fund to institute a similar no-buy policy.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Salt Lake City, 2015* (New York: General Convention, 2015), p. 424.



Resolution Number: 2012-D026
Title: Urge Support for Bipartisan U.S. Commission on Criminal Justice
Legislative Action Taken: Concurred as Substituted
Final Text:

Resolved, That the 77th General Convention of The Episcopal Church instruct the Office of Government Relations to urge the United States Congress to support a bipartisan United States Commission on Criminal Justice to inquire into our present flawed system of incarceration and seek alternatives that would be effective, humane, and financially prudent; and be it further

Resolved, That this Convention encourage Bishops and Deputies to transmit this resolution to their Senators and Representatives from their own states and districts, and urge their support for a bipartisan United States Commission on Criminal Justice.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Indianapolis, 2012* (New York: General Convention, 2012), p. 197.



Resolution Number: 2000-B055
Title: Reaffirm Criminal Justice System Reform
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, That the 73rd General Convention of the Episcopal Church reaffirm that the Episcopal Church at all levels become active at local, state and federal levels on public policy decisions affecting the growing prison industrial complex; and be it further

Resolved, That the Episcopal Church call for a moratorium to the posting of prisoners outside their home states and territories; and be it further

Resolved, That the Episcopal Church call for a moratorium on further prison construction and the use of private prisons, except where a local diocese discerns the need to do otherwise for pastoral reasons, and call for appropriate changes in the laws requiring mandatory sentencing for nonviolent and property crimes.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Denver, 2000* (New York: General Convention, 2001), p. 365.



Resolution Number: 1985-C043

Title: Create a Task Force on Reform of the Criminal Justice System

Legislative Action Taken: Concurred As Substituted

Final Text:

Resolved, That the General Convention create a task force on the Church's role in the reform of our nation's criminal justice system, in order to study the problems inherent in it.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Anaheim, 1985* (New York: General Convention, 1986), p. 594.