

# Prisoners for Profit: The Influence of Private Prison Corporations Over Public Policy and Incarceration Rates

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## Abstract

The United States prison population has quadrupled since the 1980s, incarcerating more than 2.1 million people and maintaining the highest incarceration rate in the world. This fact becomes nearly inconceivable knowing that crime rates have either decreased or remained stagnant since the 1980s. As crime rates dwindle in every small and large city across the United States while incarceration rates boom, our country faces a formidable paradox.

This paper seeks to explain this paradox particularly through analyzing the role private prison corporations have had in increasing the incarceration rate in the United States since the 1980s. Private prison corporations were able to maintain influence and power over public policy, specifically criminal justice and immigration policy, through partnering with the American Legislative Exchange Council (ALEC), and with the involvement of state and federal legislators who are ALEC members. Through ALEC, private prison corporations, and their vested financial interests, were able to profit off of legislation that was strategically made to increase imprisonment rates and the prison population, while concealing their corporate motives.

## Background Information

It is through ALEC that private prison corporations shape criminal justice and immigration policy in order to maximize their profits. By drafting prison-related model legislation, or prewritten policy proposals, ALEC was able to singlehandedly shape legislation with the help of state legislators who copied their model bills, and pushed to have them passed. In a leaked document from 2011, that contained over 800 resolutions and model bills that was once only available to the legislators and corporate members affiliated with ALEC, prison legislation was the most popular domain, where one in five bills pertaining to prisons. In fact, 84% of prison-related ALEC model legislation has put an increasing number of people behind bars for a longer amount of time.

## Findings re. criminal justice policy

With the help of ALEC, private prison corporations and their vested financial interests played an instrumental role in the surge of incarceration rates seen between 1980 and 2000 by creating model bills of the Three Strikes You're Out Law and the Truth in Sentencing Law (Some of the most harsh and consequential pieces of legislation), along with mandatory minimums non-violent drug offenders. With the help of ALEC, private prison corporations and their vested financial interests played an instrumental role in the surge of incarceration rates seen between 1980 and 2000 by creating model bills of the Three Strikes You're Out Law and the Truth in Sentencing Law, along with mandatory minimums non-violent drug offenders.

## Findings re. criminal justice policy, cont.

Pioneering the most punitive, controversial sentencing legislation, ALEC created the Three Strikes and the Truth in Sentencing model legislation in order to increase the volume of violent offenders, lengthen their prison sentences, and punish them more harshly. By 2000, more than half of all states enacted some form of the Three Strikes Law. The term mass incarceration was coined in 2000 to account for the exponential increase in imprisonment between 1975 and the late 1990s, where it reached a rate of 389 per 100,000 Americans. And between 1990 and 1997, the prison population grew 7% annually. As incarceration rates grew exponentially, the government kept encouraging privatization of prisons in order to cut costs, establishing the overall legitimacy and continued growth of private prisons. Of course, with the drastic increase in incarceration rates and sentences came the increase in profits for private prison corporations, with CoreCivic's stock particularly rising 11% in the mid 1990s.

ALEC's model legislation increased the prison population through three main tactics: expanding definitions of existing crimes/creating new crimes; enhancing enforcement of existing crimes; and lengthening prison sentences. The prison policy that ALEC pioneered or redefined is crucial to acknowledge, not only because it contributes to the issues of mass incarceration, but because it inherently places corporate profits in competition against citizen interests and basic civil liberties. A way in which ALEC does this is by increasing incarceration for non-violent offenses. Bills that are most obvious in the threat they pose to civil liberties for the sake of profit include 'Criminal Justice Drug Testing Act' where corrections, probation, and parole agencies are allowed to drug test those in any class of crime. Those who refuse to partake in a drug test or test positive are incarcerated, and revoked of any intermediate sentence being served in lieu of incarceration. By requiring no probable cause to drug test someone, this bill can be a gateway to a conviction, usually based on bias rather than evidence.

Model legislation from ALEC also primarily functions to increase recidivism rates, underscoring our nation's unfortunate prioritization of profit and retributive justice, over rehabilitation and restorative justice. A profitable prison corporation is incentivized by both higher recidivism rates and the prevention of inmates successfully reentering society—if they were successful at producing low recidivism rates and rehabilitative care, they would eventually run themselves out of business. ALEC's prison related legislation seeks to bar inmates from a successful reentry into society, with 12%, or one in ten, of its bills dedicated to this. Infamous ALEC bills include making the history of ex-offenders public through registries and the publication of offender's photograph in local newspapers, causing reintegration into normal society nearly impossible and making it more likely they will return to jail for having illegal sources of income.

## Racial Implications

Many of ALEC's bills that have ultimately increased incarceration seem to disproportionately target minority populations, creating the bills to have racial implications as much as profit implications. For example, the 'Drug-Free Post-Secondary Education Act' has shown to disproportionately target students of color, as it suspends students convicted of a drug offenses and cancels their financial aid, forcing them to drop out and pursue unproductive paths. ALEC is also responsible for creating new types of crime for non-violent drug offenders, which have shown to disproportionately target people of color since they are more likely than white people to be jailed for the same drug offense. Some of these bills include, the 'Use of a Minor in Drug Operations Act,' which creates an offense for using a minor in a drug operation, but removes the requirement of actual proof of distributing to the minor; and the 'Drug-Free Housing Project Act' which allows a landlord to evict a tenant from public housing if there is speculation of a felony drug violation, making it a crime for the tenant to return to public housing after the eviction.

## Findings re. immigration policy

Private prison corporations in conjunction with ALEC have increasingly criminalized immigration to use undocumented citizens as a huge, new source of revenue. With local and state incarceration is decreasing slowly, the main source of revenue for private prisons is under threat. To compensate, private prison corporations began operating immigration detention centers, with now 65% of detainees from ICE being housed in private prisons. GEO Group and Core Civic each run 12 ICE facilities, and they owe "much of their financial success to the federal government's willingness to turn over the management of huge swath of immigrant detainees." ALEC created model legislation that incarcerates unprecedented numbers of undocumented immigrants, showcasing their power and influence over immigration policy.

One of the most contentious laws originating from ALEC is the Immigration Law Enforcement Act of 2006, which criminalizes immigrants by making it illegal for them to exist on American soil without proof of federal immigration status, and the No Sanctuary Cities for Illegal Immigrants Act, which makes it a crime to have an undocumented immigrant in one's car, allows a private citizen to sue if they believe their local or state government isn't enforcing immigration law enough, and makes it a requirement for employers to use the E-Verify System that inherently criminalizes the employment of illegal immigrants. This law was very similar to Arizona's infamous anti-immigration law enacted in 2010 that was also driven by prison economics—known as Support Our Law Enforcement and Safe Neighborhoods Act, which allows officers to ask for proof of citizenship in routine traffic interactions.