

How privatization increases inequality

Section 1: *Creation of new user fees*

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Executive summary

Inequality in the United States, which began its most recent rise in the late 1970s, continues to surge in the post–Great Recession era.¹ During similar eras—such as the New Deal—many of the public goods and services we value today were created to deliver widespread prosperity. But the way in which cities, school districts, states, and the federal government deliver things like education, social services, and water profoundly affects the quality and availability of these vital goods and services. In the last few decades, efforts to privatize public goods and services have helped fuel an increasingly unequal society. The report, *How privatization increases inequality*, examines the ways in which the insertion of private interests into the provision of public goods and services hurts poor individuals and families, and people of color.

In the Public Interest’s analysis of recent government contracting identifies **five ways in which government privatization disproportionately hurts poor individuals and families**, each of which is explored in greater detail in the report.

This section of the report, *Shifting the burden to the poor*, describes how, as government budgets have declined, some jurisdictions have tried outsourcing services to private companies and allowing those companies to charge fees to the end-user to subsidize or completely fund the service. Many of the services that use this contracting and payment structure are those that poor individuals and families must use or are subject to through their interactions with the government. Furthermore, this regressive user fee approach can fundamentally distort a service’s goals and mission, as evidenced by the changing nature of many services within the criminal justice system, such as probation.

Download the full report at bit.ly/PrivatizationInequality.

Introduction

Governments increasingly find their hands tied in raising new revenues for important public services. Raising taxes to pay for services that residents expect government to provide has become difficult, if not impossible, in many jurisdictions. While state revenues are starting to inch closer to pre-2008 recession levels, recovery for state and local governments has been slow, uneven, and incomplete.² In response, many governments are charging fees to residents who utilize a particular public service. According to the National Association of State Budget Officers, from 2009 to 2012, states brought in about \$1.5 billion in new user fees. Georgia, at the high end, raised its fees by \$264 million in fiscal year 2013.³

Insufficient revenues combined with the often flawed attempts of many governments to achieve cost savings through contracts with private companies has profoundly changed how some private contractors are compensated by the government. An increasing number of contracts are structured to shift financial burden away from government budgets and onto end users, allowing contractors to collect some, and in some cases all, compensation from the people utilizing or subject to the service. Public services ranging from tax collection to probation have been impacted by this “user-funded” dynamic, as the examples below highlight.

The user fee structure disproportionately impacts poor individuals and families, and in some services, unfairly targets people of color. Many of the contracts that have incorporated this type of fee structure target poor residents, who have the most trouble shouldering the fees. In effect, the “user-funded” approach is a highly regressive way of funding public services that should be, and in many cases once were, a part of basic government operating budgets and paid for with more progressive revenue sources. Some services’ missions have even changed to focus more and more on fee collection. For example, private probation companies are less concerned with supervision of behavior than they are with acting as collection agencies for fees and fines.

Not only is the burden of paying for these services disproportionately shifted to the poor, but private companies that seek to maximize revenues and profits are also able to collect fees directly from these individuals. What can be thought of as a new regressive “tax” is effectively being administered and collected by private companies that may have entirely different goals, priorities, and financial incentives than the government in program and service provision. This is troubling, and as the examples below show, makes the services provided by private contractors ripe for abuse that can have detrimental and sometimes life-threatening impacts on the individuals and families who must participate or comply with the terms of these services.

Delinquent tax and fine collection

This regressive user fee structure is illustrated in the contracts that local and state governments across the country have signed with private companies to collect delinquent taxes and fines. In these contracts, governments typically do not pay the company for their services, but instead allow the company to charge an additional fee to the debtor as compensation. This arrangement incentivizes aggressive tactics by collections contractors to ensure they get paid. States, such as Florida and Texas, have even passed bills that enshrine this dynamic in law. For example, under Florida law, a private collections agent can add up to a 40% fee to the amount it collects for payments that the delinquent individual must pay.⁴ Under Texas law, the amount that a private collections agent can collect is set at 30%.⁵

This contracting arrangement incentivizes a contractor to maximize all possible interest charges, surcharges, and fees that can be added on to the initial debt to increase the total amount that the company can collect. Very small delinquent fines, sometimes as low as \$1, can balloon in size once collection is handed over to a private company. For example, in Texas, a driver failed to pay \$7.50 in tolls on a highway. In just a few months, the debt increased to \$157.50, with \$66 in administrative fees and \$84 going to the collections contractor, Linebarger Goggan Blair & Sampson, one of the country's largest government debt collectors.⁶

This arrangement is even more punitive than the collection of consumer debt, such as credit card debt. Consumer debt is regulated by the Fair Debt Collection Practices Act, which prohibits collectors from charging any fee that wasn't originally agreed to in a contract or permitted by state law.⁷ Debts to the government such as property taxes, speeding tickets, or road tolls aren't considered "consumer debt" and are rarely subject to the Fair Debt Collection Practices Act, allowing these private contractors to operate outside the construct of "consumer protection," and employ tactics that are prohibited in the collection of private debt. Additionally, with consumer debt, people can seek assistance from an attorney general office or the Consumer Financial Protection Bureau (CFPB).⁸ With delinquent government debt, individuals often have little recourse once that debt is turned over for collection by a private company.

In another example, a Kansas man who received a \$100 speeding ticket watched the fine balloon to \$2,200 once fees, court costs, jail fines, and the contractor's charges were added. Unable to afford the fine and the high fees, he was frozen in fear. He skipped court hearings because he was scared of going to jail. As he explained, "It's illegal to be poor."⁹ Without the ability to pay the initial debt, people with relatively low delinquent tax bills, traffic tickets, or toll fees can be caught in an ongoing cycle of debt once private companies take over the collection process. As Tai Vokins, the former Kansas assistant attorney explained, "[The companies] keep figuring out ways to stack these fees up. They're preying on the absolute poorest people."¹⁰

“Offender-funded” private probation

This user funded contracting model has also been used in various parts of the U.S. criminal justice system. Probation is widely used in the sentencing of misdemeanor crimes, which are relatively minor offenses such as traffic violations, shoplifting, or noise violations. Instead of going to jail, an individual sentenced to probation is conditionally released for a certain amount of time, and must meet certain standards for good behavior and regularly meet with a probation officer during that term.

Unfortunately, as county and local government corrections budgets have diminished in recent years, the burden of paying for misdemeanor probation and funding court administration has fallen to probationers themselves, who are often poor and unable to shoulder the expense. An increasing number of governments have signed contracts with private, for-profit companies that offer misdemeanor probation services at no cost to the government in exchange for the right to collect fees from the probationers they supervise. These companies also receive the promise that courts make probation terms contingent on paying those fees.

In this arrangement, people who aren't able to pay their fine in full at the time of sentencing are given probation because they need additional time to make their payment. It is important to note that these individuals are not sentenced to probation because they represent some sort of danger to the community and need supervision, but solely to ensure that they pay their financial debt. Through this probation sentence, the individual is not only responsible for the original fine, but must also pay regular fees to the private company. People can be put on probation for long periods of time, sometimes up to several years, racking up monthly “supervision fees” they must pay the company.

Economic inequality is inherent in such “offender-funded” private probation, as those who can afford to pay their fines upfront actually pay less in the long run. Those who are the poorest are forced into a long-term debt cycle that allows a private company to extract increasing amounts of money from them.

Misdemeanor probation companies are little more than debt collection services.¹¹ Because so many municipal courts are underfunded, the promise by private probation companies to provide a service that ensures high collection rates of fines at no cost to the government appears attractive. As Judge Tommy Nail of the Alabama 10th Judicial Circuit explains in a 2014 interview with *The New Yorker*, the reluctance of policymakers to raise taxes has made municipal courts reliant on high collection rates, and “when you inject a profit motive into the criminal-justice system, you’re opening it up to corruption and abuse. . . . You are asking the poorest of the poor to fund the court system, and that’s what’s causing all of these abuses, in my opinion.”¹²

An interview by Brave New Films of a woman in Columbiana, Alabama, caught in the private probation system clearly illustrates this dynamic. She originally received a \$41 ticket for driving without a seatbelt. Unable to pay at the time of her court date, she was

sentenced to probation with one of the largest probation companies, Judicial Correction Services (JCS). Within six months, she owed the company \$235 in fees, which included an initial fee of \$25 plus a recurring \$35 fee per month in addition to the original \$41 fine. At the six month mark, she was able to pay the original \$41 fine, but that money was put towards her fees to JCS, not the initial fine. Instead, the fees continued to stack up at a rate of \$35 per month, making it impossible for her to catch up and pay the amount in full. If she is unable to pay the company, she will ultimately go to jail.¹³

While some smaller companies also provide private probation services, two large companies dominate the market. Sentinel Offender Services supervises more than 40,000 misdemeanor probationers per month,¹⁴ while Judicial Correction Services (JCS) monitors 38,000 probationers at any given time.¹⁵ Although these and smaller probation companies do not disclose their annual revenues, Human Rights Watch estimates that in Georgia alone, probation companies take in at least \$40 million in revenues from fees they charge to probationers.¹⁶

The payment structure for probationers clearly preys on the poor. The longer it takes an individual to pay off their debt, the longer they remain on probation and the more they pay in fees to the private company. Interviews by Human Rights Watch of probationers in Alabama, Georgia, and Mississippi, three states where many courts utilize private probation, reveal that companies engage in aggressive tactics to collect, including continual threats of jail time—or even incarceration—when probationers fall behind on payments in an attempt to extract money from their families and other loved ones. Typically a warrant for an individual's arrest is issued so offenders can be brought before the court for a probation revocation hearing. However, some probation companies secure the arrest, use it as leverage to extract some level of payment from the probationer, and then ask the judge to release the person prior to the hearing.¹⁷ In the meantime, the local government has jailed the probationer unnecessarily. The irony of this tactic is that the amount the local government pays for jailing the individual can potentially wipe out any net revenue it would collect from the original fine. For example, in Georgia it costs around \$50 per day to keep someone in jail.¹⁸ If a person's fine is \$250, and they spend a week in jail, the government has spent more than it can collect, resulting in a net loss to taxpayers. But, considerations such as these are of no concern to private probation companies, who seek to protect their own bottom lines.

Lower-income people caught in this continual probation debt cycle are often forced to choose between basic necessities and paying off their probation fees. Foster Cook, the director of Treatment Alternatives for Safer Communities (TASC) at the University of Alabama, recently conducted a survey of more than sixty private probationers in his program. The vast majority of respondents had forgone rent, groceries, medicine, or all three to pay fees to private probation companies. A third of respondents had committed an illegal act, such as selling drugs or stealing, to make their payments.¹⁹

Prison phones and video

In attempt to raise revenues, many states and localities sign contracts with private companies to provide prison phone and video services. Many of these contracts provide a “commission” to the governmental entity, while those incarcerated in jails and prisons pay the company exorbitant rates to communicate with loved ones. These commissions are paid to governments either as a percentage of revenue that the companies take in from the facility, a fixed upfront payment, or a combination of the two.²⁰ On the state level, departments of corrections typically receive between 20% and 70% of revenues in commission payments through these types of contracts.²¹ Only eight states do not accept commissions for prison phone service.²² In some counties, the commission level is even higher.²³ This contract structure creates a perverse incentive for governments to award a contract to the company that will provide the highest commission, with little or no consideration of the costs the company passes on to prisoners.

Two main companies, Global*Tel Link (GTL) and Securus make up about 80% of the prison phone business, which is about a \$1.2 billion industry. Collectively, they provide services to approximately 4,600 facilities in all 50 states.²⁴

Families who have no choice but to use the contractor’s service if they want to communicate with their incarcerated loved one can pay these companies up to \$17 for a 15 minute call.²⁵ While exact rates and fees charged to prisoners and their families vary from contract to contract, this contract structure enshrines a regressive revenue collection method in which prisoners and their families fund corrections budgets. As Justin Jones, former director of the Oklahoma Department of Corrections, explained in an interview with the *International Business Times* earlier this year, “This is just another piece of what we have evolved into as a country in the form of fines and fees and commissions for those that, in a previous decade, were funded by government sources.”²⁶ Researchers have found that high commission rates drive high phone rates and fees—in other words, companies charge prisoners and their families higher rates when they pay the governmental entity higher commissions. Unsurprisingly, researchers found that governmental entities’ primary factor in choosing a contractor was who could offer the highest commission rate.²⁷ This type of decision-making in the procurement process fails to adequately consider the impact high phone rates have on a prisoner’s ability to communicate with their family.

These high phone rates and fees are aimed at a population that is typically lower-income and has less money to spend on phone calls. The Prison Policy Initiative’s analysis of data from the Bureau of Justice Statistics (BJS) found that in 2014 dollars, incarcerated people had a median annual income of \$19,185 prior to their incarceration, which is 41% less than non-incarcerated people of similar ages. This was true across all gender, race, and ethnicity groups.²⁸ Incarcerated people are dramatically concentrated at the lowest ends of the national income distribution.²⁹ Many incarcerated individuals simply don’t have the means to pay for frequent communication with their families, and their families are often unable to fill in the gaps

themselves. This is especially troublesome given the well-documented link between family contact during incarceration and reduced recidivism.³⁰ Recent survey data from 14 states show that the high cost of maintaining contact with incarcerated family members led more than one in three families into debt to pay for phone calls and visits alone.³¹

The burden on poor families is severe. Estrella King, a 24-year-old prisoner serving time for violating her parole, is pregnant with her fourth child. Her mother, Omarah Zemorah of Ocala, Florida, works as a cashier making \$8 an hour, and takes care of Estrella's three other children and two children of her own, and will take in the baby once Estrella gives birth. She explained in a recent interview that she is unable to pay for regular calls with her incarcerated daughter. She simply has no extra money at the end of each month. In order to communicate with her mother and children, Estrella sells her food trays to other prisoners who are able to communicate with their families, who in turn will relay messages to Omarah. While Omarah is able to receive messages from her daughter in this patchwork way, she describes how the lack of communication has negatively impacted Estrella's children. Her oldest son went from being an honor roll student to failing classes and exhibiting behavior problems after his mom went to prison. As another prisoner in Estrella's facility explained, "There's so much stress. People are heartbroken. People miss their kids. They can't talk to them. People go crazy inside."³²

Similarly, video visitation utilizes a similar payment structure, with governmental entities receiving commissions from private contractors, while those incarcerated and their families pay high rates to access the video call platform. In fact, video visitation contracts are often bundled with other contracts, such as phone contracts to make them more attractive to governments.³³ Video visitation can take two forms: 1) a person can place a video call from their own home to an incarcerated person, and/or 2) a person physically visiting a facility must use a video call platform to communicate with their incarcerated loved one. This takes the place of in-person contact and through-the-glass visitation.

While video visitation has some theoretical benefits, such as allowing family members who live far away from their incarcerated loved one to visually communicate with them, the service is still expensive and unreliable, with users reporting major technological problems. In some jurisdictions, video calls can cost \$20 for a 20-minute video call, placing a high burden on already financially strapped families. Furthermore, Prison Policy Initiative found that 74% of jails banned in-person visits when they implemented video visitation.³⁴ Not only does video visitation significantly decrease the quality of visits that prisoners receive from their loved ones, it can also significantly hamper the ability of lawyers and other advocates to build relationships with their incarcerated clients.³⁵

The costs of phone and video communications can add up to huge amounts over time. Joanne Jones's son Nate is incarcerated at Hays County Jail in Texas, where Securus holds the contract for all communications. Joanne pays about \$10 for a phone call and about \$8 for a video visit, which is cheaper than the same services at some facilities in nearby counties. In the year and half that her son has been in jail, she has paid Securus more than \$1,000 to keep in contact with her son.³⁶

The Federal Communications Commission (FCC) has attempted to institute caps on rates that private companies can charge for interstate and intrastate prison phone calls. The FCC said the caps were intended to limit what it described as “excessive rates and egregious fees” paid by prisoners, saying combined charges and fees in some cases were as high as \$14 a minute, or an estimated 31 times the per-minute cost of a call to Antarctica.³⁷ However, prison phone providers Securus, GTL, and Telmate asked the federal appeals court to stop the caps from being implemented. In March 2016, the U.S. Court of Appeals issued an order putting the lower rate caps on hold for the time being.³⁸ Regulations related to video call rates are not part of this action.

Money bail system

In most parts of the country, the pretrial stage of our criminal justice system is embedded with corporate interests that disproportionately impact and harm poor individuals and their families. Money bail is commonly used as a condition for pretrial release when someone is arrested. This means that, after being arrested, a person may be given the option of paying a certain amount of money to the court, known as bail, in order to be released before their trial. Higher-income people and/or their families can pay this full bail amount to the court and get released until their court date. When the arrestee shows up for their court date, the full bail amount minus court fees is refunded.

However, many people who are arrested do not have the funds to pay full bail up front. Many poor individuals must rely on the for-profit bail bond industry, which collects nearly \$2 billion in revenue annually.³⁹ The arrestee (and/or their family) will pay a private bail bondsman a down payment, typically 10% of the total bail amount, and sign an agreement to pay the full amount if they do not appear at their court date. The bondsman typically doesn't have to pay the court for the full bail amount, but instead assures the court they can pay if the arrestee fails to appear. If the person shows up for their court date, the bondsman keeps the 10% down payment, even if the person is found innocent, and the agreement is finished. If the person doesn't appear in court, the bondsman tracks them down, sometimes using coercive and abusive methods, in order to avoid paying the court the full bail amount.⁴⁰

The alternative to posting bail is sitting in jail to await trial, which can last weeks or even months. The risks of losing a job, not being able to attend to family, or even losing custody of children can have serious consequences, forcing many lower-income people who are arrested to engage with the bail bond industry. But the risks are high. Even taking the down payment, if the bail bondsman needs to collect on the full bail amount, they can seize and liquidate any collateral used to secure the bond such as a home or other property, which can propel a family into homelessness.⁴¹ It is also worth noting that even the 10% non-refundable down payment can place a significant burden on many poor families, leaving them with less to spend on food and housing. Troublingly, research indicates that race plays a factor in bail amounts that courts assign, with African Americans ages 18 through 29 receiving significantly higher bail amounts than all other defendants,⁴² meaning that

the money bail system puts young African Americans and their families in an even more precarious financial situation.

Bail bondsmen also have complete discretion regarding whom they take on as clients. People arrested for crimes that carry a lower bail amount may not be seen as worth their time, or a bondsman may decide not to take on a client for arbitrary or even discriminatory reasons. Many people cannot afford the down payment required for a bail bond. Recent analysis of BJS data reveals that most people who are unable to meet bail fall within the poorest third of the income distribution. The average black man, black woman, and Hispanic woman detained for failure to pay a bail bond were living below the poverty line before incarceration.⁴³ These people, who are presumed innocent until proven guilty, must sit in jail for their inability to pay bail. Recent research shows that 646,000 people are locked up in more than 3,000 local jails throughout the U.S., 70% of which are being held pretrial and have not yet been convicted of any crime.⁴⁴ And as former U.S. Attorney General Eric Holder explained, “Almost all of these individuals could be released and supervised in their communities—and allowed to pursue or maintain employment, and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice.”⁴⁵

On top of exploiting low-income people and their families, the for-profit money bail system also is not proven to decrease the incidence of defendants fleeing before trial or increase public safety.⁴⁶ While many bondsmen argue that the best way to manage pretrial populations is by putting a private third party on the hook financially for their return to court, actual evidence points the other direction. A 2013 study of over nearly 2,000 criminal cases in Colorado found that defendants released on personal recognizance (i.e., no-cost bail, the defendant promises to return to court) were just as likely to return to court for their trial and just as likely to not be charged with a new crime as those released on monetary bonds.⁴⁷ In Washington, DC, where money bail has seldom been used in over two decades, 80% of defendants are released before trial, and only 12% of those released fail to show up for their court hearing.⁴⁸ Comparatively, in Dallas, where a cash bail system is routinely used, 26% of defendants do not show up for their court hearing. In the state of Kentucky, where for-profit bail has been banned for decades, researchers examining the state’s use of a pretrial assessment tool found that 90% of released defendants appeared for all scheduled court appearances.⁴⁹

In some cases, the power that bail bondsmen have over individuals who seek their financial assistance can lead to abuse, harassment, and corruption. The loosely regulated for-profit bail industry allows those with very little training to become bail bondsmen.⁵⁰ This was certainly the case for Edmund Langevin, a former auto mechanic, who was able to quickly become a bail bondsman in Virginia with just a 5-day class, \$400, and a \$150 firearms class. He provided bail for a 19-year-old new mom, Sophia, who had been arrested for public intoxication. She didn’t have the \$350 needed to pay Langevin upfront, but he waived the requirement. Instead he pressured her into staying the night at his home, and over the course of several weeks repeatedly pressured her into having sex with him, threatening to

take her back to jail if she did not comply.⁵¹ Langevin previously had shot another client in the stomach for failing to meet with his parole officer, a condition of the client's bail. In both of these incidents, Langevin was never subject to any legal consequences for his actions.⁵²

The power of bail bondsmen in the for-profit bail industry sets up major potential for abuse of poor individuals and their families. Unfortunately, under the money bail system, for those unable to pay bail, the alternative is sitting in jail to await trial, which also can have serious and long-lasting financial and personal repercussions. The use of money bail sets up false choices that unfairly disadvantage poor people and communities of color regardless of their actual risk to public safety.

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