New York Could Become First State To Be Completely Done With Private Prisons

Senator Brian Benjamin introducing the bill in front of Bank of America in Harlem.

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With many corporations having capitalizations that make them larger than countries, it can sometimes feel hard to imagine governments effectively being able to set limits on companies — let alone entire industries. We've seen this recently in the case of tech monopolies having federal regulatory agencies completely befuddled, or, on a more local level, the difficulty communities have getting corner stores to sell more fresh food and less cigarettes and liquor.

One interesting exception to this rule is the private prison industry; where the government (given they are the largest client) is uniquely positioned to effectively regulate the sector — or, as many would argue, to eliminate private prisons entirely, given their problematic incentive to encourage the criminalization of vulnerable communities. This includes at our southern border, where the vast majority of immigrant detainees seeking refuge are held in for-profit facilities.

New York State has been leading the way in flexing its muscles with respect to the private prison industry, having taken three concrete actions against private prisons: 1. prohibiting private prisons from operating within the state, 2. divesting state pension funds from the largest private prison companies, GEO Group and CoreCivic, and then just last week, 3. passing Bill S5433 in the State Senate, which would prohibit NY State-chartered banks from "investing in and providing financing to private prisons." Let's take a look at what these three policies in concert mean, and what may come next as Bill S5433 goes to the Assembly and ultimately the Governor for approval as soon as this week.

Today In: Investing

1. **Private prison prohibition**

As noted in TIME, private prisons in America can be traced to a long history of profiting from those convicted of crimes. In the late 1960s, Terrel Don Hutto ran a cotton plantation the size of Manhattan, which operated predominantly off of unpaid, African-American convict labor. He then went on to found the $1.8 billion private prison corporation, Corrections Corporation of America (now known as CoreCivic.)

Today, 23 states continue to contract with CoreCivic and GEO Group. New York is one of just three states nationally that has prohibited the operation of private prisons within the state prison system — although federal facilities technically may still choose to contract with private prisons. This prohibition dates back to 2007, when Assembly member Ortiz and State Senator Nozzolio introduced A 4484-B / S4118. Notably, the bill memo stated that "in the effort forced upon state and local governments to cut operating costs, some are turning to the privatization of prisons. Inevitably, hungry, bottom line adventurers appear ready to take the public money."

2007 was also the year that a study concluded “cost savings from privatizing prisons are not guaranteed and appear minimal.” In addition to not making much economic sense, private prisons also have a long documented history of poor treatment of inmates. The Department of Justice itself has noted that despite public claims of being “safer” than government-run facilities, private prisons are more dangerous for both inmates and guards alike.

2. **Private prison divestment**

In July of 2018, New York State divested $10M from CoreCivic and GEO Group under the leadership of state comptroller Thomas DiNapoli. The issue was originally raised by Senator Brian Benjamin of District 30 (Harlem, East Harlem, and the Upper West Side), who worked closely with the Comptroller's office.

$10M is a tiny piece of the state’s $207B pension fund, but ironically, this is part of why nationally it’s such an easy action for states to take given that its impact on portfolio performance is typically considered to be negligible. Its impact is seen to be more systemic and inspirational, as millions of pension fund participants (including over 1M in New York’s system alone) learn more about the interdependency of the private prison system and finance industry.

3. **Bank restrictions**

On June 11, 2019, the New York State Senate passed Bill S5433, prohibiting banks chartered in the state, whether US or international, from financing private prisons. As Senator Benjamin noted in introducing the bill, in front of a Bank of America branch, “ The goal is to starve private prisons of capital. My constituents do not put their hard-earned savings in a bank like the one we are standing in front of today expecting that those funds will be used to finance mass incarceration. Whether through organizing and community pressure, or tools like the bill I am announcing here today, we can and we must bring an end to private prisons.”

Bank financing is particularly critical to private prison companies because they are legally organized as Real Estate Investment Trusts (REITs), such that they must distribute a minimum of 90% of profits — and thus without significant retained earnings, must rely on bank financing to execute their work.

According to Senator Benjamin, it's important to note that in New York, foreign banks are included in the institutions currently financing private prisons, including British multinational investment bank Barclays and French retail banking group BNP Paribas. This fact is particularly eyebrow-raising when you realize that many of these international banks are headquartered in countries where the ownership of private prisons is illegal.

While banks are not required to publicly disclose the exact amounts that they individually contribute to private prisons financing, their collective contributions to the private prison industry have been publicly documented. According to a groundbreaking April 2019 data brief by #FamiliesBelongTogether coalition members In the Public Interest and The Center for Popular Democracy, GEO Group has a $900 million revolving line of credit with a syndicate of six banks (BNP Paribas, Bank of America, Barclays, JPMorgan Chase, SunTrust, and Wells Fargo), has borrowed $490.8 million under the line of credit, owed six banks a total of $786 million through its term loan, and issued four bonds totaling $1.150 billion. Similarly, CoreCivic has issued seven bonds totaling over $1.516 billion, financed by Bank of America, JPMorgan Chase, SunTrust, Wells Fargo, PNC, US Bank, HSBC, BB&T, RBS, Fifth Third, Barclays, Avondale Partners, Macquarie Capital, Regions, Canaccord Genuity, FTN Financial, and Citizens Bank.

Encouragingly, in the wake of mass activism, two of these banks — Wells Fargo and JPMorgan Chase — already cut their ties with GEO Group and CoreCivic earlier this year, shaking the private prison industry. In GEO Group's own words:

"if other banks or third parties that currently provide us with debt financing or that we do business with decide in the future to cease providing us with debt financing or doing business with us, such determinations could have a material adverse effect on our business, financial condition and results of operations. Increased public resistance to the use of public-private partnerships for correctional, detention and community-based facilities in any of the markets in which we operate, as a result of these or other factors, could have a material adverse effect on our business, financial condition and results of operations."

If the Assembly passes Bill S5433, and Governor Cuomo signs it into law, this will be the strongest statement by any state yet against the private prison industry, particularly coupled with last year's divestment. The impact is expected to reach beyond just New York chartered banks, and more widely put pressure on the banking industry writ-large — for instance, New York City Comptroller issued a scathing indictment of Bank of America:

"Private prisons built a billion dollar business by capitalizing on human suffering – and Bank of America is complicit. The industry is not just inhumane, it's a huge risk financially. That's why we in New York City took a stand and became the first public pension fund in the country to divest from the abhorrent industry. We've shown that divesting from private prisons is the right and smart thing to do. Bank of America should follow our lead – now."

There is fear that private prison lobbyists, who historically have spent over $25M on lobbying over the past three decades, are working to kill the bill, but Senator Benjamin is confident that the state assembly will recognize the value of this bill to constituents. From here Senator Benjamin intends to embark on a national tour to share New York's experience across the country, noting, "We sometimes forget that local government can truly make a difference. I hope that our work in New York to support a transition to a justice system focused on serving people, not making profits, inspires other states to take action — whether through divestment, or by similarly limiting bank financing."