

**CRUEL AND UNUSUAL PRIVATIZATION: HOW  
VERMONT’S PRIVATE PRISON CONTRACT RESTRICTS  
MEDICAL CARE**

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## INTRODUCTION

“*[Individual] found unresponsive in his cell . . .*”<sup>1</sup> “*Staff immediately began life-saving measures . . .*”<sup>2</sup> “*[D]eath does not appear suspicious at this time.*”<sup>3</sup> Three phrases often found in a press release or news article after a person dies in a private prison facility.

On February 25, 2024, Alfred Brochu was found unresponsive in his cell at 12:14 p.m. in the Tallahatchie County Correctional Facility (TCCF).<sup>4</sup> The next day, after being transferred to a medical center while in critical condition, Alfred died.<sup>5</sup> A 71-year-old from Newport, Vermont, Alfred served a life-without-parole sentence for aggravated murder.<sup>6</sup> Alfred had been in TCCF since 2011 due to Vermont Department of Corrections’ (DOC) contract with CoreCivic, a for-profit private prison company that owns facilities across the United States.<sup>7</sup> His death did not appear suspicious.<sup>8</sup> Two weeks after Alfred’s death, on March 10, 2024, prison staff found

1. See, e.g., Press Release, Dep’t of Corr., Vermont DOC Reports Death of Incarcerated Individual in Mississippi (Feb. 26, 2024) [hereinafter Vermont DOC Reports Death of Incarcerated Individual in Mississippi] (emphasis added), <https://doc.vermont.gov/press-release/vermont-doc-reports-death-incarcerated-individual-mississippi>; accord Press Release, Dep’t of Corr., Vermont DOC Reports Death of Incarcerated Individual in Springfield (Jan. 23, 2025) [hereinafter Vermont DOC Reports Death of Incarcerated Individual in Springfield (Jan. 2025)], <https://doc.vermont.gov/press-release/vermont-doc-reports-death-incarcerated-individual-springfield-9>; Press Release, Dep’t of Corr., Vermont DOC Reports Death of Incarcerated Individual in St. Albans (Sept. 11, 2023) [hereinafter Vermont DOC Reports Death of Incarcerated Individual in St. Albans], <https://doc.vermont.gov/press-release/vermont-doc-reports-death-incarcerated-individual-st-albans>.

2. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1 (emphasis added); Vermont DOC Reports Death of Incarcerated Individual in St. Albans, *supra* note 1; accord Vermont DOC Reports Death of Incarcerated Individual in Springfield (Jan. 2025), *supra* note 1; Press Release, Dep’t of Corr., Vermont DOC Reports Death of Incarcerated Individual in Springfield (Sept. 29, 2025) [hereinafter Vermont DOC Reports Death of Incarcerated Individual in Springfield (Sept. 2025)], <https://doc.vermont.gov/press-release/vermont-doc-reports-death-incarcerated-individual-springfield-10>.

3. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1 (emphasis added); Vermont DOC Reports Death of Incarcerated Individual in Springfield (Jan. 2025), *supra* note 1; Vermont DOC Reports Death of Incarcerated Individual in Springfield (Sept. 2025), *supra* note 2; accord Vermont DOC Reports Death of Incarcerated Individual in St. Albans, *supra* note 1.

4. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1; Ethan Weinstein, *Vermonter Incarcerated at Mississippi Private Prison Dies*, VTDIGGER (Feb. 26, 2024), <https://vtdigger.org/2024/02/26/vermonter-incarcerated-at-mississippi-private-prison-dies/>.

5. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1; Weinstein, *supra* note 4.

6. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1; Weinstein, *supra* note 4.

7. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1; Weinstein, *supra* note 4.

8. Vermont DOC Reports Death of Incarcerated Individual in Mississippi, *supra* note 1; Weinstein, *supra* note 4.

Sean Ousterhout unresponsive in his cell in TCCF.<sup>9</sup> Sean, a 43-year-old Barre, Vermont, native, died around half an hour later.<sup>10</sup> Sean served 5 years of his 14- to 30-year sentence.<sup>11</sup> His death did not appear suspicious.<sup>12</sup> On December 13, 2020, prison staff found Roberto Vargas unresponsive in his cell in TCCF.<sup>13</sup> Roberto, from Newport, Vermont, died the next day.<sup>14</sup> A Vermont court suspended all but 15 years of Roberto's 20-years-to-life sentence in 2017.<sup>15</sup> His death did not appear suspicious.<sup>16</sup> On September 2, 2019, Christopher Chase was found unresponsive in his cell in TCCF.<sup>17</sup> Chase was a 39-year-old from Vermont's Northeast Kingdom.<sup>18</sup> He died by suicide, hanging himself using a sheet and an electric cord.<sup>19</sup>

The Eighth Amendment explicitly states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>20</sup> When the state proves beyond a reasonable doubt that an individual committed a crime, the judge may incarcerate an individual based on the offense's sentencing guidelines.<sup>21</sup> Those sentencing guidelines, however, do not include losing medical access and treatment for illnesses or injuries. In practice, however, systemic administrative barriers often prevent incarcerated individuals from exercising these constitutional rights. Notably, a Vermont Superior Court agreed with Alfred that TCCF failed to provide grievance forms to incarcerated individuals or provided them upon request only after long delays.<sup>22</sup> The court stated that these delays “ma[de] it difficult

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9. VTD Editor, *Vermont Man Incarcerated in Mississippi Prison Dies*, VTDIGGER, (Mar. 10, 2024), <https://vtdigger.org/2024/03/10/vermont-man-incarcerated-in-mississippi-prison-dies/>.

10. *Id.*

11. *Id.*

12. *Id.*

13. Paul Heintz, *Vermont Inmate Dies at Mississippi Prison*, SEVEN DAYS (Dec. 14, 2020), <https://www.sevendaysvt.com/news/vermont-inmate-dies-at-mississippi-prison-31886921/>.

14. *Id.*

15. *Id.*

16. *Id.*

17. Alan J. Keays, *DOC: Vermont Inmate Dies of Apparent Suicide in Out-of-State Prison*, VTDIGGER (Sept. 3, 2019), <https://vtdigger.org/2019/09/03/doc-vermont-inmate-dies-of-apparent-suicide-in-out-of-state-prison/>.

18. *Id.*

19. *Id.*

20. U.S. CONST. amend. VIII.

21. *See Gall v. United States*, 552 U.S. 38, 50 (2007) (“[The judge] must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.”).

22. *Brochu v. Touchette*, No. 12-1-20 Wncv, 2021 WL 5112079, at \*3 (Vt. Sup. Ct. Feb. 2, 2021) (finding that Mr. Brochu had a statutory right to the reasonable availability of grievance forms at CoreCivic's facility).

or impossible to pursue” relief at the facility.<sup>23</sup> Without a functional grievance process, incarcerated individuals have no mechanism to report or remedy the very constitutional violations the Eighth Amendment prohibits. The Eighth Amendment’s Cruel and Unusual Punishments Clause must extend to protect people who are incarcerated from decreased medical care access in private for-profit facilities.

Oftentimes, engaging the public on an issue like prisoners’ healthcare rights proves to be a difficult task—unless the issue directly impacts them. Everyone in Vermont and across the country implicitly plays a role in continuing the private prison-industrial complex. Specifically, Vermont taxpayers pay \$7 million each year in taxes that fund the state’s CoreCivic contract.<sup>24</sup> The private prison-industrial complex generates nearly \$7.4 billion in revenue annually, making up 10% of the correctional market.<sup>25</sup> Private prisons, like CoreCivic or GEO Group, charge states \$30–\$200 per individual per day depending on the facility.<sup>26</sup> In 2023, Vermont DOC renewed its contract with CoreCivic for two years, setting a maximum cost of \$21,463,095 for 300 beds.<sup>27</sup> What would happen if taxpayer dollars went to improving peoples’ medical care rather than into a private prison’s pocket? Alfred’s death lost CoreCivic \$30–\$200 per day.<sup>28</sup>

Focusing on the numbers makes it easier to forget the constitutional violations real people face every day in these facilities. This Note uses Vermont as just one example of a state facing unconstitutional contractual problems with private prison companies, but these issues are not unique to Vermont.<sup>29</sup> This Note uses Vermont DOC’s contract with CoreCivic to demonstrate one state’s approach to outsourcing care for people who are

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23. *Id.*

24. James Lyall, *Prisons Are the Problem*, ACLU VT. (Jan. 23, 2020), <https://www.acluvt.org/news/prisons-are-problem>.

25. Thierry Godard, *The Economics of the American Prison System*, SMARTASSET, <https://smartasset.com/mortgage/the-economics-of-the-american-prison-system> (last updated May 30, 2023).

26. *CoreCivic Inc.*, INVESTIGATE (Sept. 15, 2024), <https://investigate.afsc.org/company/corecivic>; Liam Elder-Connors, *Vermont Renews Out-of-State Prison Contract with Private Company*, VT. PUB. (Sept. 27, 2023) [hereinafter Elder-Connors, *Vermont Renews*], <https://www.vermontpublic.org/local-news/2023-09-27/vermont-renews-out-of-state-prison-contract-with-corecivic-mississippi>.

27. *Id.*; VT. DEP’T OF CORR., AGENCY OF HUM. SERVS., STATE OF VERMONT CONTRACT # 46523, at 1, 4 (2022) (available at <https://doc.vermont.gov/document/doccocivic-contract>).

28. Elder-Connors, *Vermont Renews*, *supra* note 26. CoreCivic’s contracts charge states \$30–\$200 per incarcerated individuals a day depending on where incarcerated individuals are located. *Id.*

29. See KRISTEN M. BUDD, SENT’G PROJECT, PRIVATE PRISONS IN THE UNITED STATES 1 (Feb. 21, 2024) (“A total of 27 states and the federal government use private corporations like GEO Group, Core Civic, LaSalle Corrections, and Management and Training Corporation to run some of their corrections facilities.”).

incarcerated. Through a constitutional analysis of the Eighth Amendment, this Note argues that ending this contract will promote the rights and access to medical care for those incarcerated.<sup>30</sup>

Part I details private prisons' rise across the United States and how Vermont factors in. It then outlines United States Supreme Court precedent regarding private prisons and recognized standards for incarcerated individuals' medical claims. Part I concludes with the Vermont General Assembly's attempts at protective legislative action. Part II analyzes how private prisons violate Vermont incarcerated individuals' constitutional liberties protected by the United States Constitution's Eighth Amendment in a healthcare context.<sup>31</sup> Specifically, private prisons preclude access to quality medical care and inflict cruel and unusual punishment by limiting that right to access for those inside. Part III proposes actions for Vermont DOC and what relief incarcerated individuals can assert in the meantime. If Vermont DOC neglects to act, then the Vermont legislature must bring proposals back to the table. Ending the contract takes a step in the right direction by allowing Vermont to directly oversee its incarcerated individuals' healthcare access. Changes like these take time and money; therefore, Part III showcases ways incarcerated individuals can seek relief through the Vermont Constitution while the contract is still in effect. Overall, Vermonters must act, as this unconstitutional problem can no longer be ignored.

#### I. PRIVATE PRISONS, MASS INCARCERATION, AND VERMONT'S SOLUTIONS

Understanding private prisons' origin is crucial to understanding their unconstitutionality.

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30. This Note does not purport to solve all the issues that the nation and Vermont face by continuing privatization. Rather, this Note serves as a commentary on how prison privatization implicates neglected constitutional rights.

31. Private prisons violate the Thirteenth Amendment by enslaving prisoners for profits, but because the crime exception remains in the Amendment, incarcerated individuals are barred from relief under it. U.S. CONST. amend. XIII, § 1; *see* Sammy Brown, *A Badge of Slavery: How Private Prisons Are Unconstitutional Under the Thirteenth Amendment* 15 (Dec. 21, 2017) (unpublished manuscript) (available at <https://ssrn.com/abstract=3253206>); ACLU & GLOB. HUM. RTS. CLINIC, UNIV. OF CHI. L. SCH., *CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS* 5 (2022).

*A. The Catastrophic Reincarnation of Private Prisons*

Private prisons are not a new phenomenon in the United States.<sup>32</sup> Rather, the facilities date back to before the Civil War.<sup>33</sup> In 1844, Louisiana privatized a penitentiary by leasing it to a company, McHatton, Pratt, & Ward, which ran the facility as a factory.<sup>34</sup> Incarcerated individuals there made clothing for people who were enslaved.<sup>35</sup> Other southern states followed the trend, using incarcerated individuals as free laborers.<sup>36</sup> The Civil War's end led to abolishing slavery, but the Thirteenth Amendment permitted slavery as punishment for crimes.<sup>37</sup> Privatization continued to grow because states could not afford to run penitentiaries, so companies took the lead.<sup>38</sup> Incarcerated individuals suffered egregious treatment in these facilities.<sup>39</sup> In 1871, companies in Tennessee forced incarcerated individuals to work in the mines and even collected incarcerated individuals' urine to sell to tanneries.<sup>40</sup> After exhaustion or disease took incarcerated individuals' lives, Tennessee companies sold incarcerated individuals' bodies to medical schools for students to practice on.<sup>41</sup>

In the 1920s, private prisons took a different form. Private prisons in this period operated juvenile justice facilities, halfway houses, work-release programs, and immigration detention centers.<sup>42</sup> These facilities also provided services such as healthcare, food service, educational and vocational programs, and staff training.<sup>43</sup> During this time, private prisons focused on

32. Eleven other countries use a variation of private prisons like in the United States. Specifically, England, Scotland, Wales, Germany, France, South Africa, New Zealand, Australia, Japan, Brazil, and Chile all operate prisons at some degree of privatization, with some utilizing a private-public partnership model, which maintains some state agency in overseeing its incarcerated population. CODY MASON, SENT'G PROJECT, INTERNATIONAL GROWTH TRENDS IN PRISON PRIVATIZATION, 2-3 (2013).

33. Shane Bauer, *The True History of America's Private Prison Industry*, TIME (Sept. 25, 2018), <https://time.com/5405158/the-true-history-of-americas-private-prison-industry/>.

34. *Id.* An incarcerated individual in his memoir wrote that "as soon as the prison was privatized, his jailers 'laid aside all objects of reformation and re-instated the most cruel tyranny, to eke out the dollar and cents of human misery.'" *Id.*

35. *Id.*

36. *Id.*

37. U.S. CONST. amend. XIII, § 1.

38. Bauer, *supra* note 33.

39. *Id.*

40. *Id.*

41. *Id.*

42. David N. Wecht, *Breaking the Code of Deference: Judicial Review of Private Prisons*, 96 YALE L.J. 815, 816 (1987).

43. *Id.*; Shymeka L. Hunter, *More than Just a Private Affair: Is the Practice of Incarcerating Alaska Prisoners in Private Out-of-State Prisons Unconstitutional?*, 17 ALASKA L. REV. 319, 321 (2000) (examining the constitutionality of incarcerating individuals in private prisons outside of Alaska in

“convict leasing.”<sup>44</sup> Convict leasing took the form of contracting incarcerated individuals as workers to private entrepreneurs.<sup>45</sup> Eventually, the labor movement challenged the practice of leasing individuals.<sup>46</sup> Congress temporarily sealed private prisons’ fate by passing the Hawes-Cooper Act, banning prison-made goods from interstate commerce.<sup>47</sup> Consequently, the need for facilities decreased, and facilities did not survive.<sup>48</sup>

Increased incarceration rates helped private prisons reenter the market. In the 1980s, when mass incarceration reared its ugly head, the market assigned greater value to for-profit prisons.<sup>49</sup> This value increased because states did not have the capacity to house incarcerated individuals on their own.<sup>50</sup> In 1985, over 740,000 individuals were incarcerated in the United States—with the number steadily increasing.<sup>51</sup> In 1990, 1.1 million individuals were incarcerated.<sup>52</sup> By 1995, the number rose to nearly 1.6 million individuals.<sup>53</sup> And in 2003, the nation incarcerated over 2.1 million individuals.<sup>54</sup> The United States makes up only 4% of the world’s population but accounts for 22% of the world’s prison population.<sup>55</sup>

Tough-on-crime propaganda and the War on Drugs resulted in exponential prison rate growth across the country.<sup>56</sup> State research in the

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relation to an Alaska Supreme Court holding); see Richard Culp, *Prison Privatization Turns Twenty-Five: The Evolution of a Mature Private Prison Industry in the United States* 11 (July 15, 2009) (unpublished manuscript) (available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1462792](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1462792)).

44. Culp, *supra* note 43, at 3.

45. *Id.*

46. *Id.* at 4.

47. *Id.*; DERECK ORR ET AL., *COLL. OF WM. & MARY, PRIVATE SECTOR PRISON INDUSTRIES: A REPORT TO THE STATES* 7 (n.d.).

48. Culp, *supra* note 43, at 4.

49. See Peter J. Duitsman, *The Private Prison Experiment: A Private Sector Solution to Prison Overcrowding*, 76 N.C. L. REV. 2209, 2217 (1998); DAVID SHAPIRO, ACLU, *BANKING ON BONDAGE PRIVATE PRISONS AND MASS INCARCERATION* 9 (2011). The terms “private prisons” and “for-profit prisons” are interchangeable. *Id.*

50. See e.g., BUDD, *supra* note 29, at 1 (“The resulting burden on the public sector led to the modern emergence of for-profit prisons in many states and the federal system.”); Lauren Kozmor, *Profit, Power, and Prison*, BROWN POL. REV. (Nov. 1, 2025), <https://brownpoliticalreview.org/profit-power-and-prison/> (“This surge in incarceration overwhelmed the capacity of public facilities, leading to the rise of for-profit prisons in many states and the federal system.”).

51. BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., *SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 2002*, at 478 (Kathleen Maguire & Ann L. Pastore eds., 2004).

52. *Id.*

53. *Id.*

54. PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP’T OF JUST., *BULLETIN NO. NCJ 205335, PRISONERS IN 2003*, at 2 (2004).

55. German Lopez, *Mass Incarceration in America, Explained in 22 Maps and Charts*, VOX, <https://www.vox.com/2015/7/13/8913297/mass-incarceration-maps-charts> (last updated Oct. 11, 2016).

56. Lisa D. Moore & Amy Elkavich, *Who’s Using and Who’s Doing Time: Incarceration, the War on Drugs, and Public Health*, 98 AM. J. PUB. HEALTH 782, 782 (2008).

1980s showed an 8–15% savings through private prison use, but the Government Accountability Office noted “the difficulty in making valid comparisons between public and private sector costs of running a prison and criticized the methodological validity of the body of existing privatization cost comparison research.”<sup>57</sup> With heightened incarceration rates, private prison corporations chomped at the bit to provide a service states were unable to fulfill.<sup>58</sup> These groups wasted no time in building facilities across the country with enough beds to match the growing incarceration rates.<sup>59</sup>

### *B. The Major Players: CoreCivic and Wellpath*

CoreCivic exists as one of the major private prison companies in the United States.<sup>60</sup> Right on time with the War on Drugs, in 1983, CoreCivic began as Correctional Corporation of America (CCA) in Nashville, Tennessee.<sup>61</sup> At its founding, CCA had no experience in corrections.<sup>62</sup> Founder Terrell Don Hutto, however, did have experience running a cotton plantation in the 1960s, where predominately Black people convicted of crimes picked cotton for no pay.<sup>63</sup> To bridge its lack of knowledge, CCA hired management from the public sector.<sup>64</sup> Currently, CoreCivic operates 82 private prison facilities across the United States.<sup>65</sup> In 2023, CoreCivic reported a total revenue of \$1.9 billion with Damon Hiniger, its president and

57. Culp, *supra* note 43, at 6.

58. Exec. Order No. 12,803, 3 C.F.R. 296, 296–97 (1993), reprinted in 31 U.S.C. § 501 app. at 39 (2006).

59. Sharon Dolovich, *State Punishment and Private Prisons*, 55 DUKE L.J. 437, 457 (2005).

60. *About Us*, CORECIVIC, <https://www.corecivic.com/facilities> (last visited May 17, 2026) (“We are the nation’s largest owner of partnership correctional, detention and residential reentry facilities, and one of the largest prison operators in the United States.”); *see also* PAUL ASHTON & AMANDA PETERUTI, JUST. POL’Y INST. GAMING THE SYSTEM: HOW THE POLITICAL STRATEGIES OF PRIVATE PRISON COMPANIES PROMOTE INEFFECTIVE INCARCERATION POLICIES 6 (2011). This Note focuses on CoreCivic, as Vermont currently contracts with that facility.

61. *See generally* Alan Mobley & Gilbert Geis, *The Corrections Corporation of America AKA the Prison Realty Trust, Inc.*, in *PRIVATIZATION IN CRIMINAL JUSTICE: PAST, PRESENT, AND FUTURE* 207, 209 (David Shichor & Michael J. Gilbert eds., 2001) (detailing the history of CCA’s founding).

62. *Id.*

63. Bauer, *supra* note 33. Thomas Beasley and Doctor Robert Crants also aided in CCA’s founding, with Beasley comparing private prisons to “selling cars, or real estate, or hamburgers.” *See* Mobley & Geis, *supra* note 61, at 209.

64. *See* Mobley & Geis, *supra* note 61, at 218 (stating that a “large percentage” of the Federal Bureau of Prisons’ executive staff departed to the private-prison sector). The same investors who aided in funding the Hospital Corporation of America and Kentucky Fried Chicken also partly financed the CCA. Aric Press, *Good, the Bad, and the Ugly: Private Prisons in the 1980’s*, in *PRIVATE PRISONS AND THE PUBLIC INTEREST* 19, 19 (1990).

65. *Find a Facility*, CORECIVIC, <https://www.corecivic.com/facilities> (last visited May 17, 2026).

chief executive officer, stating, “CoreCivic is experiencing strong business momentum” heading into 2024.<sup>66</sup>

Yet, CoreCivic’s strong business momentum does not correlate to quality facility conditions. Most recently, the United States Department of Justice announced a civil rights investigation into conditions at Trousdale Turner Correctional Center (TTCC), owned and operated by CoreCivic.<sup>67</sup> In a press release, former Assistant Attorney General Kristen Clarke of the Justice Department’s Civil Rights Division said that “[p]eople are incarcerated at [TTCC] as punishment for their crimes, but in our legal system, punishment does not and cannot include violence and sexual abuse.”<sup>68</sup> In 2024, CoreCivic spent over \$4.4 million in lawsuit settlements involving at least 22 incarcerated individuals deaths.<sup>69</sup> As of May 2026, CoreCivic faces an ongoing class action lawsuit, joined by individuals in CoreCivic’s California facilities.<sup>70</sup> The suit alleges that CoreCivic coerced or forced detainees to clean areas of the facility outside of their personal living area under threat of punishment and without adequate pay.<sup>71</sup>

CoreCivic denies incarcerated individuals access to adequate healthcare services. In 2016, TTCC agreed to “pause the ramp-up” of incarcerated individuals at the facility following “serious issues.”<sup>72</sup> Prison staff provided

66. News Release, CoreCivic, CoreCivic Reports Fourth Quarter and Full Year 2023 Financial Results (Feb. 7, 2024) [hereinafter *CoreCivic Reports Fourth Quarter and Full Year 2023 Financial Results*], <https://ir.corecivic.com/news-releases/news-release-details/corecivic-reports-fourth-quarter-and-full-year-2023-financial>. In 2023, CEO Hiniger’s salary amounted to \$1,060,751, and he obtained an additional \$1,788,378 bonus. *Damon T. Hininger*, SALARY.COM, <https://www.salary.com/tools/executive-compensation-calculator/damon-t-hininger-salary-bonus-stock-options-for-corecivic-inc?year=2023> (last visited May 17, 2026). Hiniger’s total amount earned in 2023 was \$5,792,037, including his \$2,799,997 stock award and \$142,911 in other compensation. *Id.*

67. Press Release, U.S. Dep’t of Just., Justice Department Announces Civil Rights Investigation into Conditions at Tennessee’s Trousdale Turner Correctional Center (Aug. 20, 2024), <https://www.justice.gov/opa/pr/justice-department-announces-civil-rights-investigation-conditions-tennessees-trousdale>. The investigation began August 20, 2024, after staffing shortages, physical and sexual assaults, murders, and a 188% turnover rate among prison guards in 2023. *Id.*

68. *Id.*

69. Jonathan Mattise et al., *Private Prison Giant Has Spent over \$4.4m to Settle Mistreatment Complaints in 1 State—Including at Least 22 Inmate Deaths*, FORTUNE (Oct 14, 2024), <https://fortune.com/2024/10/14/private-prison-corecivic-settle-mistreatment-complaints-tennessee-inmate-deaths/>.

70. *Owino v. CoreCivic*, No. 17-cv-1112 JLS, 2024 WL 2031647, at \*1 (S.D. Cal. May 3, 2024); Plaintiffs and Counter-Defendants’ Notice of Withdrawal of Motion for Leave to Clarify or Amend, *Owino v. CoreCivic*, No. 3:17-CV-01112 JLS, 2024 WL 2031647 (S.D. Cal. Apr. 16, 2026).

71. *Owino*, 2024 WL 2031647, at \*1.

72. Dave Boucher, *New Tennessee CCA Prison Stops Taking Incarcerated Individuals amid ‘Serious Issues’*, TENNESSEAN (May 24, 2016), <https://www.tennessean.com/story/news/politics/2016/05/24/new-tennessee-private-prison-stops-taking-inmates/84867834/>.

“inferior care,” specifically, denying one incarcerated individuals access to his inhaler and other necessary medicines.<sup>73</sup> In 2017, Douglas Dodson and Jasper Vick filed a class action suit against TTCC for depriving incarcerated individuals’ access to basic diabetic care at the facility.<sup>74</sup> The plaintiffs alleged that CoreCivic subjected incarcerated individuals to cruel and unusual punishment, violating the Eighth Amendment by enacting policies and practices manifesting “deliberate indifference” to individuals’ serious medical needs.<sup>75</sup> The facility deprived insulin-dependent incarcerated individuals access to blood sugar monitoring during mealtimes.<sup>76</sup> Because the court previously certified the plaintiffs’ case as a class action, the court did not deem the case moot; however, the court, in prior cases, found non-class action plaintiffs’ issues moot after the incarcerated individuals were transferred to another facility.<sup>77</sup> The parties eventually settled and the court entered a judgment order on July 25, 2019.<sup>78</sup> The order outlined a protocol CoreCivic must follow for insulin-dependent incarcerated individuals and detailed language CoreCivic must add to its written policies and training materials.<sup>79</sup> This judgment did not stop CoreCivic from continuing to deny adequate diabetic care. On February 5, 2020, Jason Cunningham, an incarcerated individuals at TTCC, wrote to the court that the order was “not being enforced.”<sup>80</sup> Cunningham further stated, “Someone really needs to look into this prison.”<sup>81</sup>

CoreCivic facilities lack necessary healthcare and mental health intervention services. In 2020, John and Soynia Smith brought a wrongful death suit against CoreCivic.<sup>82</sup> They asserted that the facility failed to provide

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73. *Id.*

74. Class Action Complaint, *Dodson v. CoreCivic*, No. 3:17-cv-00048, 2018 WL 4800836, at \*1 (M.D. Tenn. Oct. 3, 2018).

75. *Id.*

76. *Id.* This is not the first time CoreCivic denied individuals access to diabetic treatment. Cynthia Yue, *The Private Prison Industrial Complex*, EQUAL JUST. UNDER L. (Jan. 18, 2019), <https://equaljusticeunderlaw.org/thejusticereport/privateprisonindustrialcomplex>. “Two other class-action lawsuits claim that the same facility failed to properly screen or treat those affected by a previous scabies outbreak; other lawsuits against CoreCivic filed in the past dealt wrongful deaths and failed guard intervention.” *Id.*

77. *Dodson*, 2018 WL 4800836, at \*3 n.3. The court did, however, dismiss the plaintiffs’ Americans with Disabilities Act claim because CoreCivic is not a “public entity” as defined by the statute. *Id.* at \*6–7.

78. Judgment, *Dodson*, 2018 WL 4800836 (No. 3:17-cv-00048).

79. *Id.* at 1–2.

80. Letter from Jason Cunningham to Judge Richardson at 1, *Dodson*, 2018 WL 4800836 (No. 3:17-cv-00048).

81. *Id.* at 2.

82. *Smith v. CoreCivic, Inc.*, 3:20-cv-00563, 2022 WL 17640183, at \*2 (M.D. Tenn. Dec. 12, 2022).

adequate mental illness treatment on behalf of their son, who died by suicide four days after another incarcerated individual sexually assaulted him.<sup>83</sup> Following the tragic and preventable death of Kelsey Vial, a 23-year-old Brazilian asylum seeker, the American Civil Liberties Union of New Mexico sued CoreCivic for wrongful death.<sup>84</sup> Vial died by suicide under the company's watch.<sup>85</sup> CoreCivic employees ignored "critical red flags"<sup>86</sup> and sent Vial to an unoccupied cell with a bedsheet, leaving him unsupervised for 30 minutes during a "count."<sup>87</sup>

Additionally, research indicates higher assault levels within CoreCivic's facilities. In private facilities, violent attacks by incarcerated individuals toward correctional officers were 163% higher than in public facilities.<sup>88</sup> Further, United States Department of Justice researchers found that incarcerated individuals-on-incarcerated individuals assaults in private facilities are 28% higher than in public facilities.<sup>89</sup> Private prisons in Kentucky were forcibly shut down following sexual abuse allegations and large prison riots.<sup>90</sup> Yet these facilities have since reopened despite the actions that led to constitutional violations.<sup>91</sup>

With elevated assault rates come an elevated constitutional mandate for adequate healthcare access. Wellpath, a Tennessee-based corrections healthcare provider, attempts to fill that need through contracts with various

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83. *Id.*

84. Complaint at 16–17, *Estate of Kelsey Vial v. CoreCivic & Dr. Christopher Clancy*, D-101-cv-2022-01722 (N.M. Dist. Ct. 2023).

85. *Id.* at 17.

86. Press Release, ACLU, *ACLU Sues Private Prison Company After Preventable Death of Asylum Seeker at Torrance Detention Facility* (Sept. 27, 2023), <https://www.aclu.org/press-releases/aclu-sues-private-prison-company-after-preventable-death-of-asylum-seeker-at-torrance-detention-facility>.

87. Complaint, *supra* note 84. As of January 2026, the trial will not proceed, as the parties are "in the process of finalizing the settlement agreement." Press Release, ACLU N.M., *Trial in Wrongful Death Case of Kelsey Vial Will Not Proceed* (Jan. 4, 2026), <https://www.aclu-nm.org/press-releases/the-wrongful-death-trial-on-behalf-of-the-estate-of-kelsey-vial-scheduled-to-begin-monday-january-5-2026-in-first-judicial-district-court-will-not-proceed/>.

88. OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUST., *REVIEW OF THE FEDERAL BUREAU OF PRISONS' MONITORING OF CONTRACT PRISONS*, at 19 (2016). The Department of Justice's Office of the Inspector General conducts reviews of the federal private prison contracts to analyze how the Bureau of Prisons monitors the facilities. *Id.* at i. Research in 2016 showed contract prisons "incurred more safety and security incidents per capita than comparable BOP institutions." *Id.*

89. *Id.* at 18.

90. Morgan Watkins, *Kentucky Will Reopen Private Prison Despite Past Inmate Sex Abuse*, *COURIER J.* (Nov. 16, 2017), <https://www.courier-journal.com/story/news/2017/11/16/kentucky-reopen-private-prison-despite-past-inmate-sex-abuse/867367001/> (stating that a Tennessee state audit released in 2017 found "major staffing and managerial problems at a CoreCivic-run prison" in Tennessee).

91. *Id.*

states and CoreCivic facilities.<sup>92</sup> The company services roughly 200,000 individuals daily.<sup>93</sup> Wellpath has undergone restructuring over the years. In 2018, a multi-billion-dollar private equity firm, HIG Capital, acquired Wellpath, then known as Correct Care Solutions.<sup>94</sup> HIG Capital merged then-Correct Care Solutions with Correctional Medical Group Companies to form Wellpath.<sup>95</sup> But in 2019, Gerald Boyle, Wellpath's founder, was indicted for federal bribery charges, following exposure of a 12-year stint providing cash and gifts to former Norfolk, Virginia, Sheriff Robert McCabe.<sup>96</sup> Those gifts inspired McCabe to favor Wellpath for medical service contracts and insider bidding information.<sup>97</sup> Despite this history, Wellpath contracts with more than 500 facilities across 34 states, bringing in \$1.5 billion in annual revenue.<sup>98</sup>

Wellpath's acquisition has not shielded it from legal trouble. In 2021, Thomas Leighton sued Wellpath for wrongful death after his son, Andrew, died in prison.<sup>99</sup> Andrew sought medical attention five times from Wellpath between July 31, 2018 and October 1, 2018, and asked a nurse to be admitted for monitoring after having difficulty breathing and feeling a golf-ball-sized lump blocking his airway.<sup>100</sup> The nurse denied Andrew's request, and Andrew died on October 1, 2018.<sup>101</sup> His story is unfortunately not unique. A CNN investigation discovered that Wellpath faced more than 1,400 lawsuits from 2014 to 2018, involving over 70 deaths.<sup>102</sup>

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92. Liam Elder-Connors, *Vt. Prisons Will Have a New Medical Contractor July 1. The Company Is Accused of Providing Inadequate Care*, VT. PUB. (Apr. 5, 2023) [hereinafter Elder-Connors, *Vt. Prisons*], <https://www.vermontpublic.org/local-news/2023-04-05/vt-prisons-will-have-a-new-medical-contractor-july-1-the-company-is-accused-of-providing-inadequate-care>.

93. *About*, WELLPATH, <https://wellpathcare.com/about/> (last visited May 17, 2026).

94. Elder-Connors, *Vt. Prisons*, *supra* note 92.

95. Marsha McLeod, *The Private Option*, ATLANTIC (Sept. 12, 2019), <https://www.theatlantic.com/politics/archive/2019/09/private-equitys-grip-on-jail-health-care/597871/>.

96. Indictment ¶ 7, *United States v. McCabe*, No. 19-cr-00171, 2019 WL 10836031 (E.D. Va. Oct. 24, 2019). HIG Capital also owns TKC Holdings, a prison and detention food provider, and previously owned Securus, a prison phone company. PESP Admin, *Founder of HIG Capital-owned Wellpath Indicted on Federal Bribery Charges*, PRIV. EQUITY STAKEHOLDER PROJ. (Dec. 5, 2019), <https://pestakeholder.org/news/founder-of-hig-capital-owned-wellpath-indicted-on-federal-bribery-charges-2/>.

97. Indictment ¶¶ 9–10, *supra* note 96.

98. Blake Ellis & Melanie Hicken, *A CNN Investigation Exposes Preventable Deaths and Dangerous Care That Government Agencies Have Failed to Stop*, CNN (June 25, 2019), <https://www.cnn.com/interactive/2019/06/us/jail-health-care-ccs-invs/index.html>.

99. *Maine Father Says Negligence Led His Imprisoned Son's Death*, AP NEWS (Feb. 5, 2021), <https://apnews.com/article/lawsuits-maine-prisons-27cd03e5d6c1b1ab6276d37402117689>.

100. *Id.*

101. *Id.*

102. Ellis & Hicken, *supra* note 98.

This legal trouble likely contributed to Wellpath's \$644 million in debt.<sup>103</sup> On November 11, 2024, Wellpath Holdings, Inc. and its affiliated companies filed petitions in the United States Bankruptcy Court for the Southern District of Texas seeking Chapter 11 bankruptcy.<sup>104</sup> Due to the bankruptcy proceedings, the court granted stays in all lawsuits involving Wellpath.<sup>105</sup> These stays blocked individuals and families from continuing to seek relief against Wellpath for their claims ranging from negligence to wrongful deaths.<sup>106</sup> But now, the company has emerged from Chapter 11 to lead a "new era in correctional healthcare."<sup>107</sup>

### C. Vermont Enters the Private Fold

In the late 1990s, Vermont DOC began contracting with out-of-state prisons.<sup>108</sup> Since then, Vermont's overall prison population has declined.<sup>109</sup> Vermont is a smaller state than most;<sup>110</sup> no private facilities exist within the state, leading Vermont to house incarcerated individuals at facilities far beyond state borders.<sup>111</sup> Currently, Vermont has six correctional facilities within the state.<sup>112</sup> In 2014, a Vermont Superior Court held in *Carpenter v. Pallito* that Vermont DOC's policy of sending male incarcerated individuals out of state was unconstitutional, reasoning that it violated the Equal Protection Clause and Common Benefits Clause in the Vermont

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103. Dietrich Knauth, *Wellpath Spins Off Behavioral Health Unit in Bankruptcy Sale*, REUTERS, <https://www.reuters.com/legal/government/wellpath-spins-off-behavioral-health-unit-bankruptcy-sale-2025-01-08/> (Jan. 8, 2025).

104. Voluntary Petition for Non-Individuals Filing for Bankruptcy, *In re Wellpath SF Holdco, LLC*, No. 24-90566 (Bankr. S.D. Tex. Nov. 11, 2024); see *Wellpath Takes Action to Strengthen Financial Foundation and Position Business for Future, Ensuring Uninterrupted Service Delivery*, WELLPATH (Nov. 12, 2024), <https://wellpathcare.com/2024/11/12/wellpath-takes-action-to-strengthen-financial-foundation-and-position-business-for-future-ensuring-uninterrupted-service-delivery/>.

105. Jaelyn Diaz, *A Health Care Provider that Faced Dozens of Prisoner Lawsuits Is Filing for Bankruptcy*, NPR (Dec. 27, 2024), <https://www.npr.org/2024/12/27/nx-s1-5223873/wellpath-prison-bankruptcy-lawsuits>.

106. *Id.*

107. *Wellpath Emerges from Chapter 11 to Lead a New Era in Correctional Healthcare*, WELLPATH (May 12, 2025), <https://wellpathcare.com/2025/05/12/wellpath-emerges-from-chapter-11-to-lead-a-new-era-in-correctional-healthcare/>.

108. Elder-Connors, *Vermont Renews*, *supra* note 26.

109. *Id.*

110. Matt Rosenberg, *What Are the Smallest States in the U.S.?*, THOUGHTCO. (May 5, 2025), <https://www.thoughtco.com/smallest-states-in-the-united-states-4071971>.

111. *Correctional Facilities*, DEP'T OF CORR., <https://doc.vermont.gov/correctional-facilities> (last visited May 17, 2026).

112. *Id.* South Burlington, Rutland, St. Johnsbury, Newport, Swanton, and Springfield contain facilities. *Id.*

Constitution.<sup>113</sup> Michael Carpenter was housed at CCA's (now CoreCivic) Lee Adjustment Center in Kentucky, denying him contact with his minor children.<sup>114</sup> The Superior Court determined that removing fathers' access to their children does not advance any governmental interest.<sup>115</sup> This holding had no impact on DOC's contracts with prison companies. Until 2015, CoreCivic held Vermont incarcerated individuals in Kentucky and Arizona facilities pursuant to DOC's contracts.<sup>116</sup> Then in 2015, Vermont DOC entered a two-year \$30 million contract with GEO Group, which transferred incarcerated individuals from Arizona and Kentucky to GEO Group's North Lake Correctional Facility in Michigan.<sup>117</sup>

Vermont's need for prison facilities decreased in the years to follow. In 2016, beds at Caledonia Community Work Camp, a state facility housing non-violent and low-level offenders, were left empty as the facility's population drastically decreased in size.<sup>118</sup> In January 2018, CoreCivic lobbied the Vermont legislature to build and lease a new 950-bed facility to the state.<sup>119</sup> Later in 2018, Vermont DOC announced a new contract with CoreCivic, which sent 228 incarcerated individuals from a state-run Pennsylvania prison in Camp Hill to CoreCivic's private prison in Mississippi.<sup>120</sup> Since then, however, Vermont DOC terminated the three-year contract with the Camp Hill State Correctional Institution following concern over incarcerated individuals' treatment.<sup>121</sup> Four Vermonters died at the state-run facility—Roger Brown, Herb Rodgers, Tim Adams, and Michael Senna.<sup>122</sup> Vermont DOC had the option between CoreCivic's contract and a contract with the Central Falls Detention Facility Corporation

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113. *Carpenter v. Pallito*, No. 531-9-13 Wncv, 2014 Vt. Super. LEXIS 52, at \*28, \*31, \*33 (Vt. Super. Ct. Aug. 13, 2014).

114. *Id.*

115. *Id.* at \*19.

116. See Taylor Dobbs, *State Hopes to Close Out-of-State Prison Program*, VT. PUB. (June 11, 2015), <https://www.vermontpublic.org/vpr-news/2015-06-11/state-hopes-to-close-out-of-state-prison-program>; Henry Epp, *Vermont Will Send Out-of-State Inmates to Private Mississippi Prison*, VT. PUB. (Sept. 19, 2018), <https://www.vermontpublic.org/vpr-news/2018-09-19/vermont-will-send-out-of-state-inmates-to-private-mississippi-prison>.

117. Dobbs, *supra* note 116.

118. April McCullum, *Why Vermont Could Close St. Johnsbury Prison Work Camp*, BURLINGTON FREE PRESS (Mar. 13, 2016), <https://www.burlingtonfreepress.com/story/news/politics/2016/03/13/why-vermont-could-close-st-johnsbury-prison-work-camp/81453576/>.

119. Katy Savage, *Vermont Prisoners to Be Moved to Mississippi Prison Run by CoreCivic*, VTDIGGER (Sept. 9, 2018), <https://vtdigger.org/2018/09/09/vermont-prisoners-moved-mississippi-prison-run-corecivic/>.

120. Epp, *supra* note 116.

121. Savage, *supra* note 119.

122. *Id.*

in Rhode Island.<sup>123</sup> Ultimately, Vermont DOC chose CoreCivic despite its farther distance from Vermont.<sup>124</sup>

Healthcare issues taint Vermont's history with CoreCivic. In 2020, COVID-19 infiltrated private prisons at concerning rates, as the disease plagued the country.<sup>125</sup> Specifically, Vermont's incarcerated individuals at CoreCivic's Tallahatchie County Correctional Facility (TCCF) faced an enormous outbreak, infecting 146 Vermont incarcerated individuals in Mississippi.<sup>126</sup> The Vermont Prisoners' Rights Office filed a lawsuit on behalf of Brian Butler, who detailed how TCCF failed to follow any social distancing policies and provided no disinfectant materials.<sup>127</sup> TCCF prison staff maintained "business as usual" despite testing positive for COVID-19 themselves.<sup>128</sup> A court dismissed the lawsuit after TCCF complied with Butler's requests.<sup>129</sup> Subsequently, in 2023, Vermont DOC renewed its contract with CoreCivic for two years, setting a maximum cost of \$21,463,095 for 300 beds; meanwhile, Vermont DOC only housed 120 prisoners in the facility.<sup>130</sup>

Yet, where did this power to contract away incarcerated individuals come from? Enter *Daye v. Vermont*.<sup>131</sup> In 2000, the Vermont Supreme Court held in *Daye* that Vermont's DOC Commissioner had implicit authority to enter into out-of-state contracts, notwithstanding an Interstate Corrections Compact (ICC) provision authorizing contracts only with member states.<sup>132</sup> The ICC codifies the agreement between member states to provide correctional facilities that "serv[e] the best interests of such offenders and of society and effect[] economies in capital expenditures and operational

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123. *Id.*

124. *Id.*

125. Miltonette Olivia Craig et al., *Incarcerated in a Pandemic: How COVID-19 Exacerbated the "Pains of Imprisonment"*, 49 CRIM. JUST. REV. 244, 244 (2023).

126. Kevin McCallum, *A Covid Outbreak Prompts Scrutiny of Vermont's Private Prison Contract*, SEVEN DAYS (Aug. 12, 2020), <https://www.sevendaysvt.com/news/a-covid-outbreak-prompts-scrutiny-of-vermonts-private-prison-contract-30984338/>.

127. *Id.*

128. *Id.*

129. *Id.*

130. Elder-Connors, *Vermont Renews*, *supra* note 26.

131. 171 Vt. 475, 769 A.2d 630 (2000).

132. *Id.* at 479, 769 A.2d at 634. John Gorczyk was the DOC Commissioner at the time of litigation, but this applies to any Vermont DOC Commissioner. *Id.* at 476, 769 A.2d at 631. Additionally, the Vermont DOC Commissioner's power to engage in the interstate commerce of people is codified in VT. STAT. ANN. tit. 28, § 102(6) (2026). The Commissioner must "maintain security, safety, and order at the correctional facilities and act to subdue any disorder, riot, or insurrection that may occur at any facility." *Id.*

costs.”<sup>133</sup> The ICC permits administrative and judicial officers to form nationwide contractual agreements for housing and treating offenders with prison sentences among participating states, ultimately allowing states to transfer incarcerated individuals interstate.<sup>134</sup> Further, the Vermont Supreme Court held in *Daye* that a contract delegating Virginia authorities the right to designate prison assignment of incarcerated individuals transferred from Vermont did not violate the ICC.<sup>135</sup>

As of May 2026, Vermont DOC incarcerates 1,656 total individuals, with 147 males located out of the state.<sup>136</sup> Males are the only gender currently housed at out-of-state facilities.<sup>137</sup> Ninety percent of DOC’s entire population receives medication, 70% receive psychotropic medications, and 55–60% receive medication for Opioid Use Disorder.<sup>138</sup> In fiscal year 2023, DOC saw 3,756 patient intakes, a 45% increase from the previous year.<sup>139</sup> Per month, an average of 1,117 individuals received medication.<sup>140</sup> Chronic illness affects 1,000 individuals who are incarcerated, representing 90% of DOC’s population.<sup>141</sup>

Vermont DOC currently contracts out its prison health services to Wellpath.<sup>142</sup> The \$113,524,463.73 agreement began on July 1, 2023, and extends until June 30, 2026.<sup>143</sup> The contract acknowledges that DOC is responsible for all incarcerated individuals healthcare and that DOC’s Health Division ensures that Wellpath complies with Eighth Amendment rights, state law, and National Commission for Correctional Health Care (NCCHC) standards.<sup>144</sup> Per the contract, Wellpath provides DOC with monthly and

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133. NAT’L CTR FOR INTERSTATE COMPACTS, INTERSTATE CORRECTIONS COMPACTS, art. I (2010). “The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.” *Id.*

134. *Id.* art. IV(c). Forty jurisdictions currently follow the compact, and Vermont joined in 1969. *Interstate Corrections Compact Scope*, NAT’L CTR FOR INTERSTATE COMPACTS, <https://compacts.csg.org/compact/interstate-corrections-compact/> (last visited May 17, 2026).

135. *Daye*, 171 Vt. at 478, 769 A.2d at 633.

136. *Daily Counts Dashboard*, DEPT. OF CORR., <https://doc.vermont.gov/daily-counts-dashboard> (last visited May 17, 2026).

137. *Id.*

138. DEP’T OF CORR., SFY25 BUDGET PROPOSAL 9 (2024).

139. *Id.* at 10.

140. *Id.*

141. *Id.* at 9.

142. VT. DEP’T OF CORR., AGENCY OF HUM. SERVS., STATE OF VERMONT CONTRACT # 46573, at 1 (2022) [hereinafter VERMONT CONTRACT # 46573] (available at <https://doc.vermont.gov/document/docwellpath-full-contract>).

143. *Id.*

144. *Id.* at 8.

quarterly reports in advance of required meetings.<sup>145</sup> Further, Wellpath must comply with all NCCCHC standards relating to accessing care, medical autonomy, and responsible health authority.<sup>146</sup> DOC formerly contracted with Correct Care Solutions (Wellpath's former name) from 2010 to 2015.<sup>147</sup>

#### *D. The United States Supreme Court Weighs In*

The Supreme Court provided incarcerated individuals with a constitutional right to healthcare through *Estelle v. Gamble* in 1976.<sup>148</sup> J.W. Gamble, an incarcerated individual at a Texas facility, brought a pro se complaint against the prison following severe back pain after a cotton bale fell on him during prison work.<sup>149</sup> Staff repeatedly refused his requests to see a doctor, and even lost his pain medication prescription.<sup>150</sup> The Court held in *Estelle* that failing to provide “adequate medical care” violates the Eighth Amendment’s Cruel and Unusual Punishments Clause.<sup>151</sup> Since then, the Supreme Court set a rather narrow two-part test to determine whether prison staff violated incarcerated individuals’ Eighth Amendment rights.<sup>152</sup> First, courts look to whether the constitutional deprivation is “sufficiently serious.”<sup>153</sup> For a deprivation to be deemed “sufficiently serious,” the prison staff’s act or omission must either lead to a denial of “the minimal civilized measure of life’s necessities” or pose a substantial risk of serious harm.<sup>154</sup> The meaning of “sufficiently serious” is a matter for the courts to decide; however, any negligence toward an individual’s safety and health seems to be on its face “sufficiently serious.”

Second, courts look to whether prison officials had a “sufficiently culpable state of mind” and acted with “deliberate indifference” to an incarcerated individual’s health or safety.<sup>155</sup> Courts define “deliberate indifference” as occurring when a prison staffer “knows of and disregards an

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145. *Id.* at 25.

146. *Id.* at 24–25.

147. Press Release, Dep’t of Corr., Vermont DOC Announces Health Services Contract with Wellpath, LLC (Apr. 4, 2023), <https://doc.vermont.gov/press-release/vermont-doc-announces-health-services-contract-wellpath-llc>.

148. 429 U.S. 97, 99 (1976).

149. *Id.* at 100.

150. *Id.* at 101.

151. *Id.* at 105.

152. *Wilson v. Seiter*, 501 U.S. 294, 296 (1991).

153. *Id.* at 298.

154. *Id.* (depicting the “minimal civilized measure of life’s necessities” standard); *Helling v. McKinney*, 509 U.S. 25, 35 (1993) (defining substantial risk of serious harm).

155. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981); *Wilson*, 501 U.S. at 297.

excessive risk to incarcerated individuals health or safety.”<sup>156</sup> The Supreme Court set the “deliberate indifference” standard in *Estelle v. Gamble*.<sup>157</sup> The Supreme Court held that incarcerated individuals must show prison staff acted with an indifference that would offend “evolving standards of decency.”<sup>158</sup> The Court further held that mere negligence from prison staff would not cut it—making deliberate indifference a higher bar.<sup>159</sup>

The Supreme Court has created easier defenses over time for prison staff violating incarcerated individuals’ healthcare rights. This, however, wasn’t always the case. In 1971, the Supreme Court held in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* that individuals may sue federal officers for damages for alleged violations of their constitutional rights.<sup>160</sup> Meanwhile, state agents are susceptible to federal civil rights lawsuits under 42 U.S.C. § 1983.<sup>161</sup> In 1988, the Supreme Court held that a physician contracted to provide medical services to incarcerated individuals at a state-prison hospital must act under color of state law when treating an incarcerated individuals.<sup>162</sup> The Court, in *West v. Atkins*, defined state action as “[s]tate employment is generally sufficient to render the defendant a state actor.”<sup>163</sup> Subsequently, in 1996, the Supreme Court set a crucial standard for incarcerated individuals at private facilities looking for relief from constitutional violations. In *Richardson v. McKnight*, the Court held that prison guards employed at private facilities were not entitled to qualified immunity when incarcerated individuals filed 42 U.S.C. § 1983 violations.<sup>164</sup>

That standard, however, quickly vanished in subsequent cases. In 2001, the Supreme Court in *Correctional Services Corp. v. Malesko* declined to extend *Bivens*’ applicability.<sup>165</sup> In doing so, the Court safeguarded private

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156. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (“[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”).

157. 429 U.S. 97, 100 (1976).

158. *Id.* at 106.

159. *Id.* at 105.

160. 403 U.S. 388, 390, 397 (1971).

161. 42 U.S.C. § 1983. In relevant part, the statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

*Id.*

162. *West v. Atkins*, 487 U.S. 42, 49 (1988).

163. *Id.*

164. 521 U.S. 399, 412 (1997); 42 U.S.C. § 1983.

165. 534 U.S. 61, 63 (2001).

entities acting under color of federal authority.<sup>166</sup> Subsequently, in 2012, the Court held in *Minnecci v. Pollard* that prisoners could not assert a *Bivens* claim for damages against private prison employees.<sup>167</sup> *Minnecci* also held that state tort law provides private prison employees “roughly similar” incentives not to commit crimes, limiting what relief incarcerated individuals can assert against employees.<sup>168</sup>

### *E. Vermont Legislature’s Solutions Stalled*

Vermont politicians proposed a solution—or at least tried to—several times. In the 2023–2024 legislative session, representatives proposed H.326, titled, “An Act Relating to Prohibition on the Transfer of Vermont Incarcerated Individuals to an Out-of-State Correctional Facility.”<sup>169</sup> The act made four distinct findings. First, housing incarcerated individuals out of state does not serve as a temporary solution, creating long-term costly practices for Vermont.<sup>170</sup> Second, out-of-state incarceration leads to reduced familial visitation, increasing recidivism rates.<sup>171</sup> Third, out-of-state prisoners face additional burdens, with access to legal counsel restricted to expensive telecommunications.<sup>172</sup> And fourth, Vermont is unable to provide the same standard and level of care to prisoners held out of state.<sup>173</sup> The bill has since stalled. The last recorded action occurred on February 22, 2023, when the House heard the bill for the first time.<sup>174</sup> The House subsequently referred the bill to the Committee on Corrections and Institutions.<sup>175</sup>

And then, in the 2025–2026 session, representatives proposed a similar act: H.191.<sup>176</sup> The Act, titled, “An Act Relating to Prohibiting the Use of Private and For-Profit Correctional Facilities,” again acknowledged that Vermont is unable to provide the same level of oversight and care for

166. *Id.* at 74–75 (declining to create an implied damages remedy in an Eighth Amendment suit against a private prison).

167. 565 U.S. 118, 131 (2012) (declining again to create an implied damages remedy in an Eighth Amendment suit against private prison guards).

168. *Id.* at 130.

169. H.326, 2023–2024 Gen. Assemb., Reg. Sess. (Vt. 2023). Rep. Barbara Rachelson sponsored the Act along with Rep. Troy Headrick, Rep. Emma Mulvaney-Stanak, Rep. Katherine Sims, Rep. Taylor Small, and Rep. Mary-Katherine Stone. *H.326*, VT. GEN. ASSEMBLY [hereinafter *H.326 Bill Status*], <https://legislature.vermont.gov/bill/status/2024/H.326> (last visited May 17, 2026).

170. Vt. H.326 § 1(1).

171. § 1(2).

172. § 1(3).

173. § 1(4).

174. *H.326 Bill Status*, *supra* note 169.

175. *Id.*

176. H.191, 2025–2026 Gen. Assemb., Reg. Sess. (Vt. 2025).

incarcerated individuals held at out-of-state prisons.<sup>177</sup> Yet, H.191 would allow the state to send individuals out of state, provided that the facility is public or nonprofit.<sup>178</sup> H.191 detailed the General Assembly’s intent to prohibit private prison use by 2034 “so that corporations are not enriched for depriving the liberty of persons sentenced to imprisonment.”<sup>179</sup> To date, H.191, however, has not gained traction. The House Committee on Corrections and Institutions did consider corrections reform,<sup>180</sup> but H.191 has not made progress since April 3, 2025, as of May 2026.<sup>181</sup> And after the Essex Town Planning Commission rejected a new women’s facility zoning request,<sup>182</sup> Vermont’s reliance on private facilities may increase.<sup>183</sup>

## II. PRIVATIZED PRISONS VIOLATE INCARCERATED INDIVIDUALS’ EIGHTH AMENDMENT RIGHT TO HEALTHCARE

While CoreCivic’s contract remains in effect, the Vermont Department of Corrections (DOC) violates out-of-state incarcerated individuals’ constitutional rights under the United States Constitution. Specifically, private prison staff violate incarcerated individuals’ Eighth Amendment rights against cruel and unusual punishment through medical neglect, caused by poor conditions.<sup>184</sup> A duty to protect individuals from cruel and unusual punishment stems from constitutional principles rooted in both American and

177. *Id.*

178. § 3(a) (proposed to be codified at VT. STAT. ANN. tit. 28, § 709 (2026)).

179. § 1(b).

180. Vt. Comm. on Corr. and Insts., *HCI - 2025-04-03 - 1:45PM*, YOUTUBE (Apr. 3, 2025), [https://www.youtube.com/watch?v=3\\_DiL9p2bNY](https://www.youtube.com/watch?v=3_DiL9p2bNY).

181. *See* Vt. Comm. on Corr. and Inst., *Meeting Record*, VT. GEN. ASSEMB., <https://legislature.vermont.gov/committee/meeting-detail/2026/17/1474> (last visited May 17, 2026) (stating that legislators heard a “[w]eigh-in by the Department of Corrections and Vermont State Employees Association” on H.191).

182. Press Release, Nat’l Council for Incarcerated and Formerly Incarcerated Women and Girls, FreeHer Vermont and the National Council Celebrate Major Victory: No New Women’s Prison in Essex (Oct. 12, 2025), <https://www.nationalcouncil.us/blog/freeher-vermont-and-the-national-council-celebrate-major-victory-no-new-womens-prison-in-essex>.

183. This is not to suggest that the solution is to build more facilities in Vermont. Reasonable minds can—and have—disagreed on the proper next steps, but stopping all conversations does not bode well for incarcerated individuals in the interim.

184. In 1892, Justice Field dissented in *O’Neil v. Vermont* arguing that the Eighth Amendment condemned “all punishments which by their excessive length or severity are greatly disproportioned to the offences charged.” 144 U.S. 323, 339–40 (1892). Private prisons arguably violate the Eighth Amendment under this principle because private prisons create higher recidivism rates—making a sentence length greatly disproportionate to what the sentence could have been at a publicly-run prison. Rachel Leah Arco, *When Conditions of Confinement Lead to Violence: Eighth Amendment Implications of Inter-Prisoner Violence*, 20 HOUS. J. HEALTH L. & POL’Y 411, 422 (2021).

English legal history, dating back to 1689.<sup>185</sup> In private prisons, staff violations of incarcerated individuals' Eighth Amendment rights manifest as unreasonable assault risks,<sup>186</sup> overall poor conditions,<sup>187</sup> and heightened danger for incarcerated individuals.<sup>188</sup> Assaults and dangerous surroundings tend to cause incarcerated individuals to seek medical attention, but private prisons' limited healthcare support leaves incarcerated individuals in dangerous predicaments.

#### A. Private Prisons' High Assault Risks Violate the Eighth Amendment

Private prisons provide an unreasonable risk of assaults primarily due to two staffing issues: lack of knowledgeable staff and understaffing.<sup>189</sup> These two issues combined make assault more probable because inadequate oversight goes hand in hand with inadequate precautions.<sup>190</sup> Assault can be defined as any action that causes a person fear from physical attack from another person.<sup>191</sup> Yet, assaults take multiple forms, like threats, verbal abuse, or harassment.<sup>192</sup> The meaning of assault, however, differs depending on whether someone is incarcerated. Unlike non-incarcerated individuals, incarcerated individuals must prove prison staff *physically* attacked them.<sup>193</sup>

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185. Prohibiting “cruel and unusual punishment” has been a long-standing principle since the prohibition was first acknowledged in the 1689 English Bill of Rights—often seen as the precursor to the United States Bill of Rights. *See* Bill of Rights 1689, 1 Will. & M., sess. 2, cl. 2 (Eng.); *Furman v. Georgia*, 408 U.S. 238, 242 (1972) (holding death penalty use in a discriminatory manner violates the Eighth Amendment). American colonists adopted the ban in subsequent years, and the ban ultimately became a part of the United States Bill of Rights in 1791. Anthony F. Granucci, ‘*Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 CALIF. L. REV. 839, 840 (1969).

186. “Contract prisons also had higher rates of assaults, both by incarcerated individuals on other incarcerated individuals and by incarcerated individuals on staff.” OFF. OF THE INSPECTOR GEN., U.S. DEP’T OF JUST., REVIEW OF FEDERAL BUREAU OF PRISONS’ MONITORING OF CONTRACT PRISONS ii (2016) [hereinafter REVIEW OF FEDERAL BUREAU OF PRISONS’ MONITORING OF CONTRACT PRISONS].

187. *Id.* at iii.

188. *Id.* at ii.

189. *Watkins*, *supra* note 90.

190. REVIEW OF FEDERAL BUREAU OF PRISONS’ MONITORING OF CONTRACT PRISONS, *supra* note 186, at 33 n. 62.

191. Assault is the “threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact; the act of putting another person in reasonable fear . . . of an immediate battery . . . [or a]n attempt to commit battery [with] the specific intent to cause physical injury.” *Assault*, BLACK’S LAW DICTIONARY (12th ed. 2024).

192. *Id.*

193. *See* *Irving v. Dormire*, 519 F.3d 441, 448–49 (8th Cir. 2008) (finding that a prison employee’s multiple death threats, which were partially made in response to the prisoner starting a lawsuit against officers, were serious enough to implicate the Eighth Amendment); *Cole v. Fisher*, 379 Fed. App’x. 40, 43 (2d Cir. 2010) (vacating a district court judgment dismissing a pro se plaintiff’s excessive force claim) (citing *Purcell v. Coughlin*, 790 F.2d 263, 265 (2d Cir. 1986)).

Verbal threats from prison staff currently do not cross the threshold into an Eighth Amendment violation.<sup>194</sup>

The power dynamics between incarcerated individuals and superior officers create obstacles for reporting and receiving remedies for violent acts<sup>195</sup>—especially in a place where those superior officers do not have adequate training.<sup>196</sup> And these dynamics further cause incarcerated individuals' voices to go unheard, even when they ask for medical assistance.<sup>197</sup> In a way, prison staff assault incarcerated individuals by neglecting their medical needs—a different form of physical harm. Thus, the meaning of assault should not be limited to physical attacks within a prison.

The Eighth Amendment requires prison staff to conduct themselves humanely. First, the Eighth Amendment properly prohibits prison staff from using excessive force toward incarcerated individuals.<sup>198</sup> Courts, however, must acknowledge the difference in training between private employees and public employees.<sup>199</sup> The difference in training creates disparities between how staff treat incarcerated individuals.<sup>200</sup> Second, the Eighth Amendment further imposes prison employees with a duty to provide humane confinement conditions, including incarcerated individuals' ability to receive food, clothing, shelter, and medical care.<sup>201</sup> But that duty is seemingly

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194. *Cole*, 379 Fed. App'x. at 43 (noting that “verbal harassment, standing alone, does not amount to a constitutional deprivation”); see *Hudson v. McMillian*, 503 U.S. 1, 9–10 (1992) (stating that any use of force “repugnant to the conscience of mankind” violates the Eighth Amendment). Prison guards are only liable for actions if those acts are completely unjustified, such as using force “maliciously and sadistically.” *Id.* at 9.

195. *Cole*, 379 Fed. App'x. at 43; John Wooldredge & Benjamin Steiner, *The Exercise of Power in Prison Organizations and Implications for Legitimacy*, 106 J. CRIM. L. & CRIMINOLOGY 125, 132–34 (2016) (describing types of power correctional officers exert over incarcerated individuals).

196. Curtis R. Blakely & Vic W. Bumphus, *Private and Public Sector Prisons—A Comparison of Select Characteristics*, 68 FED. PROB. 27, 29 (2004). Public facilities require an average of 58 more hours of pre-service training for new officers than private facilities offer. *Id.* Private facilities have nearly three times higher employee turnover rates compared to public facilities. *Id.*

197. Kelli Canada et al., *Multi-Level Barriers to Prison Mental Health and Physical Health Care for Individuals With Mental Illnesses*, FRONTIERS PSYCH., June 2022, at 1, 4 (“The broad consensus was that most medical staff and officers were just doing their jobs, but that there were a select few who also thought their jobs included making everyone miserable.”); see, e.g., Wooldredge, *supra* note 195, at 135 (noting that power is “exclusively in the hands of prison officials”).

198. See *Hudson*, 503 U.S. at 12 (holding that staff's use of excessive force against incarcerated individuals may constitute cruel and unusual punishment even if the incarcerated individuals does not suffer serious injury).

199. Blakely, *supra* note 196, at 29.

200. Judith Greene, *Comparing Private and Public Prison Services and Programs in Minnesota: Findings from Prisoner Interviews*, 11 CURRENT ISSUES CRIM. J. 202, 223 (2018) (noting that prisoners criticized staff training at the private facility but not at the public facility).

201. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

unimportant to for-profit prisons.<sup>202</sup> The vested interest in maintaining profits makes improving conditions a low priority when the facilities will remain full regardless.

*B. Courts Must Recognize that Private Prison Conditions Violate the Eighth Amendment*

A sequence of Supreme Court opinions seemingly operates preferentially toward incarcerated individuals, but in reality, is not so. The Court has held that the Constitution “does not mandate comfortable prisons.”<sup>203</sup> The Court further held that prisons may not exist if the conditions at the facility are inhumane.<sup>204</sup>

The Supreme Court then properly extended these principles to medical care. In *Brown v. Plata*, the Court recognized that grossly inadequate medical and mental healthcare is “incompatible with the concept of human dignity and has no place in civilized society.”<sup>205</sup> While this statement seems positive for incarcerated individuals, a company with nearly 1,400 lawsuits for medical neglect and conditions remains operational in civilized society.<sup>206</sup> The Court further held that courts may not permit prisons to violate incarcerated individuals’ constitutional rights “simply because a remedy would involve intrusion into the realm of prison administration.”<sup>207</sup> And the Court adequately recognizes its role in determining whether a facility violates the Eighth Amendment. The Court stated that “federal courts will discharge their duty to protect constitutional rights” when confinement conditions meet the cruel and unusual punishment bar.<sup>208</sup> Subsequently, in *Bell v. Wolfish*, the Court appropriately distinguished when it evaluates cruel and unusual punishment claims.<sup>209</sup>

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202. CoreCivic Reports Fourth Quarter and Full Year 2023 Financial Results, *supra* note 66. CoreCivic reported \$1.9 billion in revenue for 2023. *Id.*

203. *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981).

204. *Farmer*, 511 U.S. at 832. Arguably, all facilities can be regarded as inhumane when prisons today utilize the same methods as plantations in the times of slavery. Prison farms were used following the Thirteenth Amendment’s carve-out that abolished slavery except as punishment for a crime, and the prison industry celebrates these practices today with prison labor at private and public facilities. RUTH DELANEY ET AL., VERA INST. OF JUST., REIMAGINING PRISON 39 (2018).

205. 563 U.S. 493, 502, 511 (2011) (ordering the release of nearly 46,000 incarcerated individuals from California prison because of overcrowding and neglected medical treatment causing “[n]eedless suffering and death”).

206. *Diaz*, *supra* note 105.

207. *Brown*, 563 U.S. at 511.

208. *Procunier v. Martinez*, 416 U.S. 396, 405–06 (1974).

209. 441 U.S. 520, 535 n.16 (1979) (evaluating claims under Due Process Clause rather than Eighth Amendment because pretrial detainee is not punished in the same way as sentenced incarcerated individuals).

Overstating deference to prison administration is where the Court erodes its own holdings. Deference to a state prison, however, is not the same as deference to a private for-profit prison. Per the Court, prison administration's practices are evaluated in light of the administration's "central objective."<sup>210</sup> This principle cannot translate to a private facility. Increasing capacity and profits appear to be a private prison's central objective—not safeguarding the individuals inside it.

Even so, this principle needlessly provides prison administrators with another cop-out if the courts continue to view private and public prisons in the same vein. Overarching statements of prisons' interests in "safeguarding institutional security"<sup>211</sup> do not outweigh incarcerated individuals' rights to medical access and against cruel and unusual punishment, especially in the private prison context where strong indicators point to prison administrators' incompetence.<sup>212</sup> While aspects of these opinions point toward a rule that private prisons fall within the definition of "inhumane" under the Eighth Amendment, deference to prison administrators erodes it. Instead of providing deference, the Court should define "inhumane" to include what private prisons really do: deny healthcare access and delay access to grievance forms.

### *C. Incarcerated Individuals' Recovery Avenues Remain Out of Reach*

Recovery from these constitutional violations is no easy feat for incarcerated individuals. With assault levels increasing and subpar conditions in these facilities, incarcerated individuals likely need greater access to medical and psychiatric care.<sup>213</sup> Yet, per the Supreme Court's test, an incarcerated individual must show that the prison showed a "deliberate indifference to serious medical needs" to prevail on a deprived healthcare claim.<sup>214</sup> This deliberate indifference standard "sets a very high bar."<sup>215</sup> A

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210. *Id.* at 547.

211. *Id.*

212. Memorandum from Sally Q. Yates, Deputy Attorney General on Reducing Use of Private Prisons I (Aug. 18, 2016) (available at <https://www.justice.gov/opa/file/886311/dl>).

213. *See, e.g.*, Brian Nam-Sonenstein, *Cut-Rate Care: The Systemic Problems Shaping 'Healthcare' Behind Bars*, PRISON POL'Y INITIATIVE (Feb. 2025), <https://www.prisonpolicy.org/reports/healthcare.html> (finding that "private providers had between 18% and 58% higher mortality rates . . . in jails compared to those with public providers").

214. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) ("An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain.").

215. *Dockery v. Hall*, 443 F. Supp. 3d 726, 738 (S.D. Miss. 2019) (holding that a class of incarcerated individuals did not meet deliberate indifference bar even though they were denied medical care). The plaintiffs were in the East Mississippi Correctional Facility, owned and operated by Management and Training Corporation. *Id.* at 732–33. Several doctors toured the facility and determined

“very high bar” out of an incarcerated individual’s reach. If the courts, however, recognized the totality of the circumstances within private prisons equated to deliberate indifference, then that bar may not be as insurmountable.

Circuit courts have also made relief an unattainable goal. Incarcerated individuals in the Fifth Circuit must establish that the prison staff refused to treat them, ignored their complaints, intentionally provided incorrect treatment, or engaged in any conduct that would “clearly evince a wanton disregard for any serious medical needs.”<sup>216</sup> Proving a neglective intent is an insurmountable bar since the Supreme Court extended immunity to private prisons.<sup>217</sup> Incarcerated individuals have to prove that a prison official had the intent to neglect their needs, even though the Court’s qualified immunity doctrine already excuses that official’s behavior. But like in *Estelle v. Gamble*, an incarcerated individual’s disagreement with the care provided does not meet the deliberate indifference standard.<sup>218</sup> Further, some circuits have concluded that a “delay” in medical treatment does not meet the threshold for a constitutional violation without the delay being deliberately indifferent and causing substantial harm.<sup>219</sup> Yet again, the odds are stacked against incarcerated individuals in private prison facilities. And in civilized society, access to healthcare is a fundamental human right.<sup>220</sup>

Exhausting other options also feels out of reach. The Prison Litigation Reform Act (PLRA) imposes substantial limits on courts’ ability to provide injunctive relief.<sup>221</sup> While this protects against corrupt holdings, the PLRA limits courts’ ability to require a prison to make substantial modifications to its operations.<sup>222</sup> Further, the PLRA dictates that no legal action may be

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that the conditions violated the Eighth Amendment because incarcerated individuals faced excessive solitary confinement, were beaten and ignored by staff, and were at risk of incarcerated individuals-to-incarcerated individual violence. *Id.* at 733; *see, e.g.*, Brad Taylor, *Professional Judgment or Deliberate Indifference? Suicide Under the Eighth Amendment*, 2020 U. ILL. L. REV. ONLINE 60, 65 (2020).

216. *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006).

217. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 71 (2001).

218. 429 U.S. at 106–07.

219. *See, e.g.*, *Easter v. Powell*, 467 F.3d 459, 463 (5th Cir. 2006); *Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016) (evaluating whether a delay was “tolerable” and stating that delays can be reasonable); *King v. Lawson*, No. 21-14492, 2024 WL 3355179, at \*3 (11th Cir. 2024) (noting that if staff delays treatment, an incarcerated individuals “must place verifying medical evidence in the record to establish the detrimental effect of [the] delay in medical treatment” (alteration in original) (quoting *Hill v. Dekalb Reg’l Youth Det. Ctr.*, 40 F.3d 1176, 1188 (11th Cir. 1994))).

220. Zahara Nampewo et al., *Respecting, Protecting, and Fulfilling the Human Right to Health*, INT’L. J. EQUITY HEALTH, Dec. 2022, at 1, 2.

221. 18 U.S.C. § 3626(a)(1)(A).

222. *Id.* Courts must find that “such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation . . . .” *Id.*

brought “with respect to prison conditions” under 42 U.S.C. § 1983, or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility “until such administrative remedies as are available are exhausted.”<sup>223</sup> Put simply, incarcerated individuals may not take legal action unless they have first exhausted the grievance process at their prison.<sup>224</sup> They must make a complaint against their superiors to other superiors; yet, CoreCivic has a record of delaying the grievance process.<sup>225</sup>

The grievance process may cause an incarcerated individuals to face more harm than good, but if they don’t exhaust that process, they will be barred from judicial relief.<sup>226</sup> Incarcerated individuals at private prisons submit 24% more grievances for conditions of confinement, institutional operations, safety and security, sexual abuse or assault, Special Housing Units, and complaints against staff compared to those at public prisons.<sup>227</sup> At Tallahatchie County Correctional Facility (TCCF), where Vermont incarcerated individuals are located, incarcerated individuals may only file a grievance every 14 calendar days, except for grievances health care staff deem emergent.<sup>228</sup> The handbook defines emergent grievances as one that arises “when the regular grievance time limits of waiting 14 calendar days between filing another grievance would increase risk of injury or might cause other serious and irreparable harm.”<sup>229</sup> Further, incarcerated individuals must file grievances within 30 calendar days of the event, and then have 30 days to appeal to headquarters following a decision from TCCF.<sup>230</sup> These procedures, are misleading, however, because only a small number of grievances are filed in the first place.<sup>231</sup>

Recovery for these cruel and unusual punishment violations by private prison officials should come from the Constitution. Simply put, the

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223. 42 U.S.C. § 1997e(a).

224. Tony Vick, *When the Prison Grievance Process Is Worth the Risk*, FILTER (Aug. 5, 2024), <https://filtermag.org/self-advocating-prison-grievance/>.

225. OFF. OF INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., OIG-25-47, RESULTS OF AN UNANNOUNCED INSPECTION OF ICE’S ELOY FEDERAL CONTRACT FACILITY IN ELOY, ARIZONA 6 (2025) (finding that a CoreCivic facility did not comply with all grievance standards).

226. Vick, *supra* note 224.

227. REVIEW OF FEDERAL BUREAU OF PRISONS’ MONITORING OF CONTRACT PRISONS, *supra* note 186, at 22.

228. CORECIVIC, INMATE/DETAINEE ORIENTATION TO TALLAHATCHIE COUNTY CORRECTIONAL FACILITY HANDBOOK 14 (n.d.) [hereinafter INMATE/DETAINEE ORIENTATION HANDBOOK].

229. *Id.*

230. *Id.*

231. Tony Vick wrote about his experiences as a grievance clerk, where he stated that his job was “basically to send back the grievances people had submitted, rather than filing them.” Vick, *supra* note 224. One out of every 20 grievances he received would be filed, and a unit manager threatened someone else with a transfer to a violent unit unless they retracted a grievance. *Id.*

Constitution protects all people in the United States—even if some of those individuals are in private prisons.<sup>232</sup> If an incarcerated individual in a private prison faces a constitutional violation, their ability to seek damages should not be restricted to one subsection of law. Yet, in *Minneeci*, despite being a federal prisoner in a privately operated federal prison, the Court forced Mr. Pollard to seek a state tort law remedy.<sup>233</sup> The Court held that state tort law remedies provide “roughly similar incentives for potential defendants to comply with the Eighth Amendment”<sup>234</sup>—the “potential defendants” being private prisons and their employees—even though some private prisons operate through federal government contracts, not state contracts. This inconsistency restricts incarcerated individuals’ opportunities to seek damages.<sup>235</sup> Recovery should not be restricted solely to what state tort law provides.

The Supreme Court has previously recognized the proper distinction between state tort law and Eighth Amendment constitutional protections within the private prison context.<sup>236</sup> Despite Justice Breyer’s assertion, constitutional protections and state tort remedies do not provide “roughly similar incentives.”<sup>237</sup> Likewise, the Supreme Court must affirm that granting federal remedies to incarcerated people against private prisons and their employees would deter facilities from perpetuating harm.<sup>238</sup> Further, the Supreme Court acknowledged that state tort law can prove “less generous” than a *Bivens* claim.<sup>239</sup> Just because one specific Supreme Court composition deemed state tort law remedies sufficient does not mean this principle should stand.<sup>240</sup> Courts must look to the texts of the state tort law statutes compared

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232. See, e.g., *Turner v. Safley*, 482 U.S. 78, 84 (1987) (“Prison walls do not form a barrier separating prison incarcerated individuals from the protections of the Constitution.”).

233. *Minneeci v. Pollard*, 565 U.S. 118, 131 (2012).

234. *Id.* at 130.

235. *Id.* at 129 (recognizing “that state tort law may sometimes prove less generous than would a *Bivens* action, say, by capping damages, . . . or by forbidding recovery for emotional suffering unconnected with physical harm, . . . or by imposing procedural obstacles, say, initially requiring the use of expert administrative panels in medical malpractice cases” (citations omitted)).

236. *Carlson v. Green*, 446 U.S. 14, 18–19 (1980) (holding that a *Bivens* remedy is available even where plaintiff’s allegations could support a suit against the United States under the Federal Tort Claims Act). In *Carlson*, Joseph Jones, Jr. died in a federal prison in Indiana because of personal injuries that went ignored by prison staff who failed to give him proper medical attention. *Id.* at 16 n.1. His mother sued pleading Eighth Amendment, Equal Protection, and Due Process violations, and sought compensatory and punitive damages. *Id.* at 16.

237. *Minneeci*, 565 U.S. at 130.

238. *Id.* at 133 (Ginsberg, J., dissenting).

239. *Id.* at 129 (majority opinion).

240. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 262 (2022) (stating that adherence to stare decisis “is not ‘an inexorable command’” (quoting *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 455 (2015))).

to *Bivens* and 42 U.S.C. § 1983 principles to provide fully adequate relief and compensate incarcerated individuals appropriately for private prisons and their employees' violations.

*D. A Flawed Hypothetical*

Take, for example, Tony. Tony grew up in an unstable home in Vermont. His parents were in and out of prison throughout his childhood, he grudgingly made it through high school, and he managed his Type 1 diabetes the best he could. Tony graduated high school, started work at a local auto shop, and he barely afforded rent. One day at the auto shop, a man dropped off a brand new 2026 Rolls-Royce Ghost, with a value starting around \$370,750,<sup>241</sup> for inspection. Tony, now a 21-year-old, thought it would be fun to take the car for a joyride after inspecting it. Tony, however, got sidetracked on his way and did not bring the car back to the auto shop for almost 36 hours. Naturally, the car's owner reported it stolen, and subsequent investigation pointed to Tony. The State's Attorney's Office charged Tony with grand larceny, and because the stolen car's value exceeded \$900, Tony committed a felony.<sup>242</sup> Tony took a plea deal, and the court sentenced him to up to ten years in prison and a \$5,000 fine.<sup>243</sup> Vermont DOC sent Tony to TCCF in Mississippi to carry out his sentence.

At TCCF, however, private prison staff ignored Tony's pleas for insulin for his diabetes. Tony was unable to monitor his blood sugar multiple times while in TCCF, but per TCCF's handbook, Tony can only file a nonemergent grievance against prison staff every 14 days.<sup>244</sup> Tony's grievances seemingly continue to get misplaced, so on paper, it appears that nothing has ever been filed at all. Tony fears what will happen to him if his blood sugar levels get too low, and when staff do listen to him, Tony faces long delays before being seen by a healthcare provider. He knew he stole a car, but he never thought his sentence meant being denied access to his medication. Tony is far from home, his family has little access to funds, and his mental health is declining due to his circumstances. He wants to bring legal action against TCCF, so he looks to the law library when he feels up to it.

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241. Drew Dorian, 2025 *Rolls-Royce Ghost, CAR AND DRIVER*, <https://www.caranddriver.com/rolls-royce/ghost> (last visited May 17, 2026).

242. VT. STAT. ANN. tit. 13, § 2501 (2026). Vermont's grand larceny statute provides that a person who steals property valued at \$900.00 or more commits a felony punishable by imprisonment of not more than ten years. *Id.*

243. *Id.*

244. INMATE/DETAINEE ORIENTATION HANDBOOK, *supra* note 228, at 14.

Under the Supreme Court's test, Tony must prove two components of the prison staff's behavior. First, Tony must prove that what they did is "sufficiently serious."<sup>245</sup> For Tony's denial of insulin to be deemed "sufficiently serious," Tony must prove that prison staff's act, or in this case, omission, lead to Tony being denied "the minimal civilized measure of life's necessities" or posed a substantial risk of serious harm to Tony.<sup>246</sup> Tony believes that being denied access to insulin poses a substantial risk of harm to him, as the denial is potentially fatal, so he continues researching.

Second, Tony must prove that prison officials had a "sufficiently culpable state of mind" and acted with "deliberate indifference" to his health.<sup>247</sup> Per the Supreme Court's test, Tony must show prison staff acted with an indifference that would offend "evolving standards of decency."<sup>248</sup> Tony is not sure what that even means. Tony's research taught him that mere negligence would not cut it, so he attempts to determine the guard's mental state to prove deliberate indifference.<sup>249</sup> Yet, Tony cannot practically determine the guard's state of mind when that guard is in a position of authority over him. And because a lack of insulin weakened Tony, he cannot properly advocate for himself. For all Tony knows, some guards may very well just show up to work with a "deliberate indifference" mindset because, at the end of the day, they get paid regardless of what happens to an incarcerated individuals.<sup>250</sup> Furthermore, the courts provide private prisons with a sturdy shield, having held that incarcerated individuals cannot sue private entities under *Bivens*.<sup>251</sup> While individual private prison guards do not enjoy qualified immunity,<sup>252</sup> the courts shield the entities themselves from liability.<sup>253</sup>

But then, Tony remembers that his grievance against the guard was never properly filed. His research showed him what the PLRA requires of him. Tony cannot bring legal action "with respect to prison conditions" under 42 U.S.C. § 1983 "until such administrative remedies as are available are exhausted."<sup>254</sup> Because of the improper filing, he now must wait until prison

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245. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991).

246. *Id.*

247. *Id.*

248. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

249. *Id.* at 105–06.

250. *Correctional Services*, CORECIVIC, <https://jobs.corecivic.com/us/en/correctional-services> (last visited May 17, 2025) ("We offer competitive pay and flexible benefit options allowing you to build a career while achieving your financial goals.").

251. *Corr. Servs. Corp v. Malesko*, 534 U.S. 61, 74 (2001).

252. *Richardson v. McKnight*, 521 U.S. 399, 412 (1997).

253. *Malesko*, 534 U.S. at 74.

254. 42 U.S.C. § 1997e(a).

staff deny him access *again* to his insulin within another 14-day period before the grievance cycle can restart. Tony, however, is afraid that if he continues to speak out against prison staff, prison staff will abuse him in other ways. Tony feels defeated. Even though this is a hypothetical, this very well may be the reality many incarcerated individuals face when sent to private facilities.

### III. NEXT STEPS: CEASING THE CONTRACT, REGAINING DIGNITY

Ending Vermont's Department of Corrections (DOC) contract with CoreCivic is a step in the right direction for regaining the dignity of those incarcerated. This, however, likely cannot happen immediately. Therefore, in the meantime, Vermont incarcerated individuals can assert claims under the Vermont Constitution to seek relief for denial of healthcare.

#### *A. The Realities of Ceasing the Contract*

In an ideal world, Vermont DOC would cease its contract with CoreCivic. Of course, that is easier said than done, but, at the very least, needs to be said. Vermont DOC's most recent strategic plan failed to reference contracting with for-profit prisons even once.<sup>255</sup> Its "Roadmap to 2030" claims the DOC is "[m]ission-focused" and "values-driven."<sup>256</sup> The CoreCivic contract must be acknowledged within the "Roadmap to 2030" plan if DOC continues sending incarcerated individuals to CoreCivic's facility. Ignoring a problem does not mean it does not exist. And former Corrections Commissioner Nicholas Deml acknowledged that this plan is the "first time in over 30 years" the DOC has looked to update its goals.<sup>257</sup> But now with an interim commissioner navigating the Department after Deml's departure in August 2025,<sup>258</sup> people incarcerated in Mississippi may not rank highly amongst the Department's structural changes.

With H.191 wasting away in the House Committee on Corrections and Institutions, a changeover in DOC leadership, and a lack of legislative priority on the issue, the battle against for-profit prisons seems sharply uphill. Pessimism, however, cannot prevent action. Bringing new legislation in

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255. See VT. DEP'T OF CORR., AGENCY OF HUM. SERVS., ROADMAP TO 2030: MISSION-FOCUSED, VALUES-DRIVEN (2024).

256. *Id.*

257. *Id.*

258. Press Release, Dep't of Corr., Governor Phil Scott Announces Departure of Corrections Commissioner Nick Deml, Appoints Jon Murad as Interim Corrections Commissioner (July 28, 2025), <https://doc.vermont.gov/press-release/governor-phil-scott-announces-departure-corrections-commissioner-nick-deml-appoints>.

future sessions, like a variation of H.191, back to the table is a step in the right direction.<sup>259</sup> This problem likely cannot be mitigated without legislative funding or action.

If Vermont DOC does renew the contract, however, Vermont DOC should propose a “pay for performance” contract, where companies only receive payment if they adequately fulfill their contractual obligations.<sup>260</sup> These types of contracts have resulted in decreased recidivism rates.<sup>261</sup> And Vermont’s contract with Wellpath already uses this model.<sup>262</sup> Vermont DOC could create a hotline for incarcerated individuals to quickly report abuse from prison staff or healthcare request denials.<sup>263</sup> Creating the hotline could even be a condition of the “pay for performance” contract. This way, ignored grievances, like Alfred’s, could be caught before it is too late.

### B. Regaining Dignity in the Meantime

Understandably, changes cannot happen overnight. Therefore, in the meantime, incarcerated individuals may choose to seek relief for inadequate healthcare through the Common Benefits Clause in Vermont’s Constitution if Eighth Amendment relief proves to be insurmountable. Chapter 1, Article 7, titled “Government for the people; they may change it,” outlines

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259. Representative Barbara Rachelson has reintroduced H.326, in its current form or a similar one, in 2016, 2018, 2021, and again in 2023. *See Testimony on H.326 Before the Joint Just. Oversight Comm.*, 2023–2024 Sess. 1 (2023) (statement of Rep. Barbara Rachelson).

260. Peter H. Kyle, *Contracting for Performance: Restructuring the Private Prison Market*, 54 WM. & MARY L. REV. 2087, 2089 (2023) (“In order to reformulate the market and in turn the incentives created, contracting agencies should use performance-based measurements—such as comparative recidivism and employment rates—that would begin to redefine the market as that for rehabilitated prisoners and reformulate the operational philosophy of prison corporations.”); *see* Leonard Gilroy, *Pay for Success Contracting Reducing Recidivism in Pennsylvania*, REASON FOUND (Aug. 31, 2015), <https://reason.org/commentary/pennsylvania-contract-recidivism/> (reporting that incentive-based, pay-for-success contracts lowered recidivism rates).

261. John F. Pfaff, *The Incentives of Private Prisons*, 52 ARIZ. ST. L.J. 991, 1007–08 (2020) (arguing for “incentivize[ing] better programming” and for reporting success in foreign countries to reduce recidivism); *cf.* Anita Mukherjee, *Impacts of Private Prison Contracting on Inmate Time Served and Recidivism*, 13 AM. ECON. J.: ECON. POL’Y 408, 425, 434 (2021) (finding that assigning incarcerated individuals to private prisons increases overall time served and private prisons’ cost savings claims do not save states as much as they allege).

262. VERMONT CONTRACT # 46573, *supra* note 142, at 49 (“To encourage the provision of high-quality services that lead to improvements in healthcare outcomes and processes, the Contractor will have the opportunity to earn an additional percentage of the total yearly price proposal . . .”).

263. *But see* Memorandum from the State of Vt. Dep’t of Corr. Cent. Off. to All Inmates Housed Out-of-State 4 (Sept. 27, 2018) (available at <https://doc.vermont.gov/sites/correct/files/documents/friends-family/faq-9-out-of-state.pdf>) (declining to create such a hotline in favor of incarcerated individuals reporting to caseworkers).

this clause.<sup>264</sup> In relevant part, Article 7 provides that “government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community . . . .”<sup>265</sup>

Vermont courts analyze Common Benefits Clause challenges under three prongs.<sup>266</sup> First, a court must define the part of the community disadvantaged by the legal requirement.<sup>267</sup> Second, a court must identify the governmental purpose in excluding a part of the community from the benefit.<sup>268</sup> Third, a court must “ultimately ascertain whether the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose.”<sup>269</sup> The third prong requires courts to weigh additional factors. First, courts analyze “the significance of the benefits and protections of the challenged law.”<sup>270</sup> The second factor assesses “whether the omission of members of the community from the benefits and protections of the challenged law promotes the government’s stated goals.”<sup>271</sup> And the third factor asks “whether the [part of the community receiving the benefit] is significantly underinclusive or overinclusive.”<sup>272</sup> The courts are not bound by the tiered levels of scrutiny usually applied in federal Equal Protection cases.<sup>273</sup>

Arguably here, assessing the three prongs weighs in favor of incarcerated individuals. First, the incarcerated individuals at private prisons constitute the disadvantaged group. These incarcerated individuals are disadvantaged because Vermont DOC does not have the same level of oversight over them as it would if they were housed in Vermont’s own facilities.<sup>274</sup> Second, the government is denying incarcerated individuals housed at private, out-of-state private facilities equal access to healthcare compared to in-state facilities. While the State may argue that their purpose

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264. VT. CONST. ch. I, art. 7.

265. *Id.*

266. *Baker v. State*, 170 Vt. 194, 212–14, 744 A.2d 864, 878–79 (1999).

267. *Id.* at 212–13, 744 A.2d at 878.

268. *Id.* at 213.

269. *Id.* at 214, 744 A.2d at 878–79.

270. *Id.* at 214, 744 A.2d at 879.

271. *Id.*

272. *Id.*

273. *Id.* at 212, 744 A.2d at 878.

274. *Cf. Peyton Holahan, The Perils of Privatization: Exploring the Side Effects of Privatized Correctional Health Care in Favor of a Public Delivery Model*, 29 WASH. & LEE J. CIV. RTS. & SOC. JUST. 329, 363 (2023) (noting privatized healthcare systems within public prisons lack sufficient oversight).

for excluding individuals lies in cost efficiency reasons, this cannot outweigh an individual's healthcare rights. While incarcerated individuals lose certain liberty interests in prison, like freedom of movement, they do not lose all their rights.<sup>275</sup> Incarcerated individuals gain access to free food, shelter, and healthcare—which must not be overlooked.<sup>276</sup> Just because Vermont DOC may find continuing the contract to be an efficient use of departmental resources, that finding does not allow for incarcerated individuals' liberty interests to healthcare to be collateral damage. And third, denying an incarcerated individual's medical care is not related to a governmental purpose. Weighing the factors, access to medical care is a significant benefit that incarcerated individuals at CoreCivic facilities purportedly do not have.<sup>277</sup> Yet, Vermont DOC continues to send incarcerated individuals to Mississippi.

The Vermont Supreme Court has held that the Common Benefits Clause “also applies to other types of benefits, including those not guaranteed in the Vermont Constitution.”<sup>278</sup> The Court explained that even if the state is not required to provide a benefit, when it chooses to do so, that benefit “must comply” with the Clause.<sup>279</sup> Vermont DOC provides incarcerated individuals with the benefit of healthcare. Corporations, like CoreCivic, have no hierarchal role to play in overseeing people's healthcare access, and clearly, people are adversely affected because of CoreCivic's lack of knowledge. The DOC may argue that all medical treatment is the same regardless of in- or out-of-state facilities, but that would require the department to take a look

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275. Adam J. Kolber, *The End of Liberty*, 15 CRIM L. PHILOS. 407, 414–15 (2021) (describing the problems with measuring liberty and societal impressions of losing rights to bear arms and vote).

276. *Id.* at 414.

277. *Contrast What CoreCivic Does and Doesn't Do*, CORECIVIC (Aug. 5, 2019), <https://www.corecivic.com/news/what-corecivic-does-and-doesnt-do> (“While medical care is available, we don't provide the health care in the majority of our immigration facilities. In most cases, comprehensive medical, mental health and dental care is provided by the ICE Health Services Corps.”), with Press Release, Rep. Don Beyer, Beyer Presses CoreCivic for Immediate Improvements to Meet Required Medical and Safety Standards at the Farmville Detention Center (Dec. 2, 2025), <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=8703> (“At the time of the visit, it was clear that the medical staff were overwhelmed, could not relay to us the amount of medical staff that were employed by the facility, and that requests for medical attention were not met in a timely fashion, with some detainees waiting days for simple requests like medication for a headache (at which point such request would likely be moot”), and *Newly Opened California City ICE Detention Facility: Dangerous for Disabled People*, DISABILITY RTS. CA. (Nov. 3, 2025), <https://www.disabilityrightsca.org/reports/california-city-ice-processing-center-a-dangerous-expansion-of-immigration-detention-in> (“Another individual reported going seven days without diabetes medications, during which time he felt physically unstable.”).

278. *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, ¶ 19, 217 Vt. 611, 627, 293 A.3d 309, 320.

279. *Id.*

inside the services they provide to incarcerated individuals in-state. Through Vermont DOC's contract with CoreCivic, Vermont DOC has tasked CoreCivic with an immense oversight role. A role CoreCivic cannot fulfill—ultimately, violating Vermont's Constitution.

#### CONCLUSION

In the words of Dr. Martin Luther King, Jr., “When machines and computers, profit motives and property rights, are considered more important than people, the giant triplets of racism, extreme materialism, and militarism are incapable of being conquered.”<sup>280</sup> The private prison industrial complex continually perpetuates Dr. King's notion. While profits remain more important than people and their healthcare needs, a trifecta of societal issues persists. Capitalism has no place in rehabilitating an individual who needs help the most. People cannot be viewed in the same vein as a forgotten monthly subscription that automatically charges a credit card, nor can they be reduced to line items on a profit ledger.

Discussing prisoners' rights requires individuals to take a long look inside themselves and grapple with difficult moral concerns. Incarceration means a crime has occurred, and society places a high value on retribution.<sup>281</sup> True punishment, however, cannot commence when companies' profits exponentially rise by keeping people in cages. Punishment does not, and cannot, constitute a denial in necessary healthcare. A state cannot adequately invest in individuals' rehabilitative needs when they are already investing in a daily rate. A solution is not simple, but continuing to ignore the problem altogether only allows companies' profits to increase at the cost of incarcerated individuals' medical needs.

Ultimately, Vermont's contract with CoreCivic is a short-term solution to a long-term problem. Moving forward, Vermont leaders can rise to the occasion through collaborative problem solving, either in the legislature or at the departmental level, or at the very least, start the conversation. Outsourcing a fundamental responsibility of the government to a private entity is a red flag that can no longer be ignored. It's time to be responsive.

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280. Lee Smithey, *Martin Luther King, Jr. Day and Fixing the Jericho Road*, SWARTHMORE COLL. DEP'T OF PEACE & CONFLICT STUD. BLOG (Jan. 15, 2018), <https://pcs.domains.swarthmore.edu/pcs/martin-luther-king-jr-day-and-fixing-the-gericho-road/>.

281. Molly J. Crockett et. al, *The Value of Vengeance and the Demand for Deterrence*, 143 J. EXPERIMENTAL PSYCH. 2279, 2284 (2014) (“Our findings provide unambiguous behavioral evidence that people are willing to invest personal resources in pure retribution without the possibility of deterrence.”).

*—Phoebe Cykosky\**

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