

## Truth in Sentencing: For Peace or For Profit?

By Colin Senat

The War on Drugs, initially declared in 1971 by President Richard Nixon, was supposed to be a public safety initiative aimed at reducing drug use and drug-related crimes in the United States.<sup>1</sup> However, the War on Drugs created a complex system of laws and policies that resulted in the disproportionate incarceration of people, mainly those of Black and Brown communities, for (usually minor) drug offenses.<sup>2</sup> Although the War on Drugs appeared to be driven by public safety, private corporations and prisons influenced legislation dictating prisoner sentencing, thus both gaining an economic interest and contributing to disproportionate incarceration rates.

While the public believed the War on Drugs was a campaign for public safety, it was actually a campaign to weaken opposing political parties' voting bodies. In order to advance his personal agenda, President Nixon promoted tough-on-crime legislation like obligatory minimum sentences, three-strikes laws, and the main focus of this essay, truth-in-sentencing laws.<sup>3</sup> Together, these policies sought to strengthen the Republican Party's political capital by disenfranchising communities less likely to vote Republican. In 1992, 84% of Black people were leaning left, about 13% of the nation's total population.<sup>4</sup> John Ehrlichman, the Assistant to the President for Domestic Affairs under President Richard Nixon, explains in a confessional the true intent of Nixon's War on Drugs: "You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and then vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."<sup>5</sup> Unfortunately, the adverse effects of tough-on-crime legislation were swept under the rug by the Nixon Administration and the following Presidents, Ronald Reagan, George Bush and Bill Clinton, as they continued to pass tough-on-crime legislation. Part of

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<sup>1</sup> Drug Policy Alliance. (2016, September 15). *What is the Drug War? With Jay-Z & Molly Crabapple* [Video]. YouTube. <https://www.youtube.com/watch?v=HSozqaVcOU8>

<sup>2</sup> Ibid.

<sup>3</sup> Drug Policy Alliance. (n.d.). *Drug War History*. Retrieved August 16, 2025, from <https://drugpolicy.org/issues/brief-history-drug-war>.

<sup>4</sup> Pew Research Center. (2016, September 13). *The Parties on the Eve of the 2016 Election: Two Coalitions, Moving Further Apart*. <https://www.pewresearch.org/politics/2016/09/13/2-party-affiliation-among-voters-1992-2016/>.

<sup>5</sup> U.S. Census Bureau. (1994, May). *Statistical brief: Blacks in America — 1992*.

<https://www2.census.gov/library/publications/1994/demographics/sb94-12.pdf>.

<sup>6</sup> Vera Institute of Justice. (n.d.). *Drug War Confessional*. Retrieved August 16, 2025, from <https://www.vera.org/reimagining-prison-webumentary/the-past-is-never-dead/drug-war-confessional>.

what enabled the Republican Party to pass tough-on-crime legislation was the public perception of crime. There was a growing concern among the American public about the level of crime and drug abuse in the country.<sup>7</sup> In the 1980s and 1990s, the media played a significant role in shaping public opinion about crime. News programs and crime shows depicted violent criminals, leading to a public perception that crime was rampant in the country and that something needed to be done to address it.<sup>8</sup> Despite the tough-on-crime approach, the overall admission of violent offenders to state prisons from 1993 to 1997 barely changed, even as the number of convicted violent offenders in states with truth-in-sentencing laws requiring an 85% minimum sentence increased tenfold.<sup>9</sup>

From the 1970s to the 1990s, a variety of approaches to sentencing emerged in the United States. These included indeterminate sentencing, which was common in the early 1970s and enabled parole boards to have the authority to release offenders from prison; determinate sentencing, in which states introduced fixed prison terms that could be reduced by good-time or earned-time credits; mandatory minimum sentences, in which states enacted statutes requiring offenders to be sentenced to a specified amount of prison time; and sentencing guidelines, in which states established sentencing commissions and created ranges of sentences for given offenses and offender characteristics. Ultimately, these culminated with truth-in-sentencing laws taking prominence.<sup>10</sup>

Truth-in-Sentencing (TIS) laws were the major steps announced by the federal authorities, resulting in the increase of the prison population and removal of suitable offenders with longer sentences for violent perpetrators. The enactment of TIS was created to improve public safety after several years of jail overcrowding problems associated with ineffective incarceration policy. Truth-in-Sentencing is a term used to describe laws that seek to reduce the disparity “between court-imposed sentences and the time a person actually serve[s] in prison.”<sup>11</sup> Prior to the Violent Crime Control and Law Enforcement Act of 1994, most TIS laws were handled at the state level because most prisons are state prisons. “Seven states made slight changes to the percentage of sentences to be served by those convicted of violent offenses (for example, from 75 to 85 percent),” and “nine states that had no TIS laws before 1994 passed sentencing reforms that included TIS provisions.” There is reason to believe that they did so because in the Violent Crime Control and Law Enforcement Act of 1994, in order for states to receive

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<sup>7</sup> See footnote 2

<sup>8</sup> Deggans, E. (2021, June 18). *How TV Dramas Informed And Misinformed Perceptions Of The War On Drugs*. NPR. <https://www.npr.org/2021/06/18/1004476457/war-on-drugs-the-wire-miami-vice-orange-is-the-new-black-dragnet-law-and-order>.

<sup>9</sup> Ditton, P. & James W. (1999). *Truth in Sentencing in State Prisons*. U.S. Department of Justice. <https://bjs.ojp.gov/content/pub/pdf/tssp.pdf>.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

federal grants, they must utilize TIS laws that include a requirement that prisoners serve a minimum of 85% of their sentence. Before the 1994 Crime Act, only five states had TIS laws. In the same year the federal law was enacted, five more states adopted TIS legislation, followed by 11 additional states the following year.<sup>12</sup>

This change can provide a monetary motivation for judges to sentence more prisoners with violent offenses, as money often tends to be a compelling force. The sheer growth in states' prison populations attests to this. In 1990, the total number of sentenced prisoners under state jurisdiction was 689,577 (315,900 under violent offense charges). By 1996, the total number of sentenced prisoners under state jurisdiction grew by 7% annually, nearly doubling the total state prison population to 1,048,004 (495,400 under violent offense charges).<sup>13</sup> The amount available to carry out this section for any fiscal year under subsection (a) shall be allocated to each eligible state in the ratio that the number of Part 1 violent crimes reported by such state to the Federal Bureau of Investigation for 1993 bears to the number of Part 1 violent crimes reported by all states to the Federal Bureau of Investigation for 1993."<sup>14</sup> Not only does this imply that states will receive more money if they sentence more people under violent offense charges, but also that states are competing with each other in order to receive more grant money. This created a dangerous environment where prisoners may not accurately be judged for their crimes, and as a result, may receive longer sentences. Along with the surge of TIS laws, many states began weakening or outright removing parole eligibility or good-time credits. By 1999, 14 states had abolished early release at the discretion of a parole board, and eight of these states passed this alongside their own TIS law.<sup>15</sup> This change disincentivized inmates from behaving well, as they were already unlikely to lose a substantial amount of their sentence.

The American Legislative Exchange Council (ALEC) played a vital role in molding legislation at both federal and state levels. ALEC, originally the Conservative Caucus of State Legislators, was a non-profit organization founded in 1973 by Mark Rhoads, an Illinois state house staffer.<sup>16</sup> Rhoads created this group because he wanted to counteract liberal policies passing in states.<sup>17</sup> Over time, the

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<sup>12</sup> National Institute of Justice. (n.d.). *Truth in Sentencing and State Sentencing Practices*. Retrieved August 16<sup>th</sup> <https://nij.ojp.gov/topics/articles/truth-sentencing-and-state-sentencing-practices>.

<sup>13</sup> See footnote 8

<sup>14</sup> U.S. Congress. (n.d.). *H.R. 3355 - Violent Crime Control and Law Enforcement Act of 1994*. Congress.Gov. Retrieved August 16, 2025, from <https://www.congress.gov/bills/103rd-congress/house-bill/3355/text>

<sup>15</sup> Congressional Record House. (1994, April 21). *House of Representatives*. <https://www.govinfo.gov/content/pkg/GPO-CRECB-1994-pt6/pdf/GPO-CRECB-1994-pt6-6-1.pdf>

<sup>16</sup> Bishop, B. (2008, May) *The Big Sort: Why the Clustering of like-Minded America Is Tearing Us Apart* (p. 203). Houghton Mifflin.

<sup>17</sup> Ibid.

organization grew and defined itself as supporting “individual liberty, limited government, free markets, and free enterprise.”<sup>18</sup> The main function of ALEC was to generate a “dynamic public-private partnership, proving that when state legislators and the private sector work as allies rather than adversaries, the result is public policies that are beneficial to all Americans.”<sup>19</sup> ALEC does this by generating mock legislation with its members, which includes legislators, politicians, and corporations. Just as the War on Drugs was not truly about drugs, the Truth in Sentencing Act was never about justice, but it was about generating profit for a private prison system whose membership in ALEC empowered them to create model legislation to be passed at both federal and state levels.

The Truth in Sentencing Grants provision in H.R. 3355, the Violent Crime Control and Law Enforcement Act of 1994, was influenced by the fundraising organization ALEC, as attested to by Republican House Representative Bill McCollum's statement acknowledging ALEC's guidance and support, as well as the alignment between the model legislation drafted by ALEC and the requirements of the eventual TIS laws. H.R. 3355, also known as the Violent Crime Control and Law Enforcement Act of 1994, Title II's Truth in Sentencing Grants statute was influenced by ALEC. In the Congressional Record of Thursday, April 21, 1994, Republican House Representative Bill McCollum tried to pass revisions to Title IX of the crime bill of the law's predecessor, H.R. 4092. In his speech, he states:

“I want to thank the individuals and organizations that worked so diligently to provide guidance to Members of the House of Representatives during consideration of these important titles. Also, I would like to submit one letter in particular, the American Legislative Exchange Council [ALEC] to the Record. I would also like to add that not only did I receive correspondence from ALEC on behalf of my truth in sentencing prison amendment which I offered in substitute for title VI of the crime bill, I also drew letters of support from: the National Troopers Coalition, Governor Allen, and John Walsh of America's most wanted.”<sup>20</sup>

Although McCollum's request to amend the law failed the vote, his speech directly admits to his association with and influence from ALEC regarding the truth in sentencing laws that made it into the final version. To further demonstrate ALEC's influence on the TIS section of the 1994 Crimes Act, look no further than the bills ALEC writes themselves. In 1994, ALEC created a collection of the mock bills

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<sup>18</sup> American Legislative Exchange Council. (1995). *The Sourcebook of American State Legislation* (p. 1).

<sup>19</sup> Ibid.

<sup>20</sup> The Congressional Record Online. (1994, April 21). *Violent Crime Control and Law Enforcement Act of 1994*. Congressional Record. <https://www.govinfo.gov/content/pkg/CREC-1994-05-03/html/CREC-1994-05-03-pt1-PgE32.htm>

and legislation they drafted with their members, including corporations and legislators, called *The Sourcebook of American State Legislation, 1995*. Within it is a mock bill called “Truth in Sentencing Act.” The summary of the text reads, “This act would require any person convicted of a crime to serve no less than 85% of the sentence imposed.” Although there is no direct mention of it, the parts of the truth in sentencing legislation that McCollum included in the 1994 Crimes Act reflect the model legislation ALEC drafted that same year, signifying that in his discussions with ALEC, they more than likely influenced the TIS legislation that was worked on by corporation members of ALEC. This revelation introduces the core problem with the 1994 Crime Act’s truth in the sentencing statute: the very corporate members involved in developing the policy also financially benefit from it.<sup>21</sup>

Private prison companies such as CoreCivic were major contributors to crafting the Violent Crimes Act of 1995, resulting in their financial gain due to increased stock prices. This also exposed the conflict of interest due to the private prison business model that pushes for profit over rehabilitation and reasonable sentencing. They were key authors of a bill that would directly profit them, and they did profit from it, as evident by the rise in their stock prices. Corecivic (CCA), which received its first major contract in 1984, was a major and politically active private prison corporation in the country during the 90s. From 1995 onwards, the value of CXW stock exponentially rose. On Jan 31, 1995, the price per share was \$13.44. One year later, on Jan 31, 1996, the price per share grew to a whopping \$71.69.<sup>22</sup> Coincidentally, this is at the same time the Violent Crimes Act passed in 1995. Furthermore, the CCA was an active member of ALEC, sponsoring its 1994 annual meeting. This suggests that the CCA directly profited from legislation they helped write through ALEC. As a publicly traded company, they have a fiduciary responsibility to work in the best interest of their shareholders. This often means maximizing profits, often at the expense of other parties. In this case, private prison systems have no incentive to rehabilitate prisoners, and as a result, they do not do the primary function of a prison, which is arguably to rehabilitate prisoners. According to an editorial on FindLaw:

“One of the most perverse incentives in a privately run prison system is that the more prisoners a company houses, the more it gets paid. This leads to a conflict of interest on the part of privately run prisons where they, in theory, are incentivized to not rehabilitate prisoners. If private prisons worked to reduce the number of repeat offenders, they would be in effect reducing the supply of

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<sup>21</sup> See footnote 14

<sup>22</sup> Webull. (n.d.). *Graph of Corecivic Historic Stock Prices*. Retrieved August 16, 2025, from <https://www.webull.com/quote/nyse-cxw>.

profit-producing inmates.”<sup>23</sup>

Defenders of the private prison system cite lower costs for the federal government as a reason to continue the private prison system. For example, according to the Prison Policy Initiative, the U.S. government spends \$80.7 billion on public prisons and jails and \$3.9 billion on private prisons and jails.<sup>24</sup> However, as Oklahoma Democrat Kenneth Corn explained, “We are neglecting our state prison facilities by taking budget funds from them so we can pour money into private prisons.” He added that in Oklahoma, “The average cost is \$37 per day for each inmate in a state-operated facility, compared with \$44 per day for those in private prisons.”<sup>25</sup> While the argument for lower cost due to competition for contracts is valid, it does not take into account the inevitability of mergers and acquisitions, which would increase a single corporation’s market share, thus reducing competition and in turn the chances of lowered contract cost. This has all been driven by corporations in a corporatocracy sacrificing people in the name of profit, robbing people of their 8th Amendment rights against excessively long sentences, and denying them a fair sentencing system.

The defense of corporate engagement commonly employs the concept of corporate personhood as a legal vindication for the part of businesses in today's society. Corporate personhood is the legal notion that corporations share the same rights as people.<sup>26</sup> The argument over the level of corporate rights and participation in the modern world continues to remain a sophisticated and prolonged question. In a US context, the legality of corporate personhood began in 1819 with the Supreme Court case *Trustees of Dartmouth College v. Woodward*, where the Supreme Court ruled that states should not alter corporate charters, reinforcing the Contract Clause’s protection of private and public corporations.<sup>27</sup> This landmark trial demonstrated that states could not have control over corporations, setting the grounds for another Supreme Court case in 1886, *Santa Clara County v. Southern Pacific Railroad Company*. In this case, the court ruled against improper taxation by Santa Clara County.<sup>28</sup> Although Chief Justice Waite’s statement on the 14th Amendment’s Equal Protection Clause was not part of the formal ruling, it was widely interpreted as extending constitutional protections to corporations despite them not being “people.”<sup>29</sup> Together with *Trustees of Dartmouth College v. Woodward*, these two cases

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<sup>23</sup> Find Law. (2017, July 28). *Private Jails in the United States*. <https://www.findlaw.com/civilrights/other-constitutional-rights/private-jails-in-the-united-states.html>.

<sup>24</sup> Prison Policy Initiative. (2024). *Economics of Incarceration*. [https://www.prisonpolicy.org/research/economics\\_of\\_incarceration/](https://www.prisonpolicy.org/research/economics_of_incarceration/).

<sup>25</sup> Rivera, V. (2016, December). *Private Prisons: Change in Policy and Practice*. [https://cops.usdoj.gov/html/dispatch/12-2016/private\\_prisons.asp](https://cops.usdoj.gov/html/dispatch/12-2016/private_prisons.asp).

<sup>26</sup> See footnote 8

<sup>27</sup> Oyez. (n.d.). *Trustees of Dartmouth College v. Woodward*. Retrieved August 16, 2025, from <https://www.oyez.org/cases/1789-1850/17us518>

<sup>28</sup> *Santa Clara County v. Southern Pacific Railroad Co*, 118 U.S. 394 (1886).

<sup>29</sup> Manning, R. (1984, February) *Corporate Responsibility and Corporate Personhood*. *Journal of Business Ethics*, 1(3), p. 79.

provided the groundwork for corporate rights.

The prospect that corporations were protected under the 14th Amendment and could legally be defined as people sparked discussion on whether corporations are moral entities. Although corporations are a metaphysical entity, since they are not a moral agent or person, they cannot be considered “people.”<sup>30</sup> From the late 19th century to throughout the 20th century, states passed several antitrust and anti-corporation laws in order to weaken the legal power of corporations. This was done particularly to prevent monopolies and corporate power in politics. The problem arises when an organization like ALEC enables corporations, who should be unable to directly influence legislation, to be able to do exactly that. By working with ALEC, corporations that are normally restricted by antitrust and anti-corporation laws are able to circumvent these restrictive laws and help pass legislation like the 1994 Crime Act that not only benefit the corporations of ALEC but also do so at the detriment of thousands of citizens, as corporations only have to serve in the best interest of their investors and not that of the country.

The profound issue of whether corporations should be deemed moral entities arises from the claim that they possess rights equivalent to those held by human individuals, despite their distinctive lack of ethical capacity. As organizations like ALEC enable firms to elude antitrust and anti-corporation policies, allowing them to impact legislation in measures such as the 1994 Crime Act, this access will normally favor corporate interests and shareholders, frequently disregarding the welfare of everyday citizens. Although corporations are a metaphysical entity, since they are not a moral agent or person, they cannot be considered “people.” From the late 19th century to the 20th century, states passed several antitrust and anti-corporation laws in order to weaken the legal power of corporations. This was done particularly to prevent monopolies and corporate power in politics. The problem arises when an organization like ALEC enables corporations, who should be unable to directly influence legislation, to be able to do exactly that. By working with ALEC, corporations that are normally restricted by antitrust and anti-corporation laws are able to circumvent these restrictive laws and help pass legislation like the 1994 Crime Act, which not only benefits the corporations of ALEC but also does so at the detriment of thousands of citizens, as corporations only have to serve in the best interest of their investors and not that of the country. In addition, ALEC helps corporations bypass standard entries into influencing politics. Usually, corporations would donate money to legislators or to a particular party in order to

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<sup>30</sup> Ibid.

indirectly influence legislation; however, by using ALEC, corporations can directly influence laws, like the Crimes Act of 1994.

So why do legislators end up using ALEC legislation to begin with? Many legislators in conservative states aren't paid much, so often they'll work more than one job. As a result, with less time on their hands, they're more likely to pass legislation that's already been written, like ALEC legislation, to make their work manageable.

A 1985 interview with ALEC's executive director, Kathy Teague, also confirms this recognition. Teague highlighted the resources the group provided to legislators who would otherwise lack such capabilities: 'For the great majority of state legislators, being a lawmaker is their second career.... And so, the need for information is acute. Also, in the majority of states the state legislator has no or very little staff support. In most of the states there is a majority and a minority legislative research office, and that research office has to provide research background information for all of the state legislators in that state.' For these undersupported legislators, ALEC offered clear benefits that included the model bills—but went beyond those proposals. 'We will help them develop it, tailor it for their state. We will put them in touch with legislators in other states who have been the sponsors of similar bills, who can discuss with them the legislative intricacies of the bill, the strategy, the witnesses who were brought in to testify in favor of it, et cetera,' Teague summed up.<sup>31</sup>

In addition, ALEC offers favorable bonuses to legislators that join them, such as prepaid vacations and discounts. This is problematic because state legislators are no longer passing laws that represent the interests of their voters but those of ALEC. At what point are voters no longer the constituency of politicians? In the case where corporations hold more control over the political, economic, and judicial systems, we will live in a corporatocracy rather than a democracy. This is not only harmful to citizens by removing their civic power but also enables corporations to profit over human suffering.

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<sup>31</sup> Hertel-Fernandez, A. (2019, February 4). *State Capture: how Conservative Activists, Big Businesses and Wealthy Donors Reshaped the American States* (p. 82). Oxford University Press.