

# PLATINUM EQUITY'S NOT SO SECURUS INVESTMENT

Platinum Equity-owned Prison Telecom Company Securus Profits from the Poor, Flaunts Regulations and Jeopardizes Privacy Protections



## PROFITING FROM THE POOR

### The True Cost of Staying in Touch

Some children and their families have to pay as much as \$1 per minute to speak with an incarcerated parent.<sup>1</sup> Why? Because the prison telecom industry is largely a duopoly, led by Securus Technologies and Global Tel Link (GTL). Both are owned by private equity firms – Securus has been owned by Los Angeles-based Platinum Equity since November 2017.<sup>2</sup> Together, both GTL and Securus negotiate contracts with states and municipalities that aim to extract profits from some of the nation's most impoverished families.

The costs are borne by communities that can least afford them. According to a 2015 study by the Ella Baker Center, Forward Together and Research Action Design, 82 percent of survey respondents reported that families are responsible for phone and visit costs. Of these families, one in three goes into debt to pay for these costs. Of the family members responsible for these costs, 87 percent are women of color.<sup>3</sup>

### KEY POINTS

- Private equity firm Platinum Equity acquired prison, jail, and detention service provider Securus Technologies in November 2017.
- Securus' exorbitant phone charges and fees isolate communities of color and poverty and limit opportunities for growth and rehabilitation.
- Staying in touch with incarcerated family members has a significant positive effect on enhancing rehabilitation and reducing recidivism. Yet, the true cost of incarceration is borne by communities who can least afford it. One in three families go into debt to pay for these costs. Of the family members responsible for these costs, 87 percent are women from communities of color.
- Securus' subsidiary JPay exploits low-income communities by charging them as much as 35% in fees to make \$20 money transfers to incarcerated loved ones. JPay also charges excessive fees to send electronic messages to incarcerated individuals. JPay continues to extract fees and deplete economic resources even after people are released.
- Securus faces increasing legislative and regulatory oversight. A growing number of states and municipalities are moving towards efforts to make prison and jail phone calls free. Securus' industry consolidation efforts have faced restrictions from the Federal Communications Commission (FCC) and it has faced public regulatory admonishment and millions of dollars in fines.
- Securus has raised privacy concerns by impermissibly obtaining and making available personal information from tens of millions of people.

# Platinum Equity's Not So Securus Investment

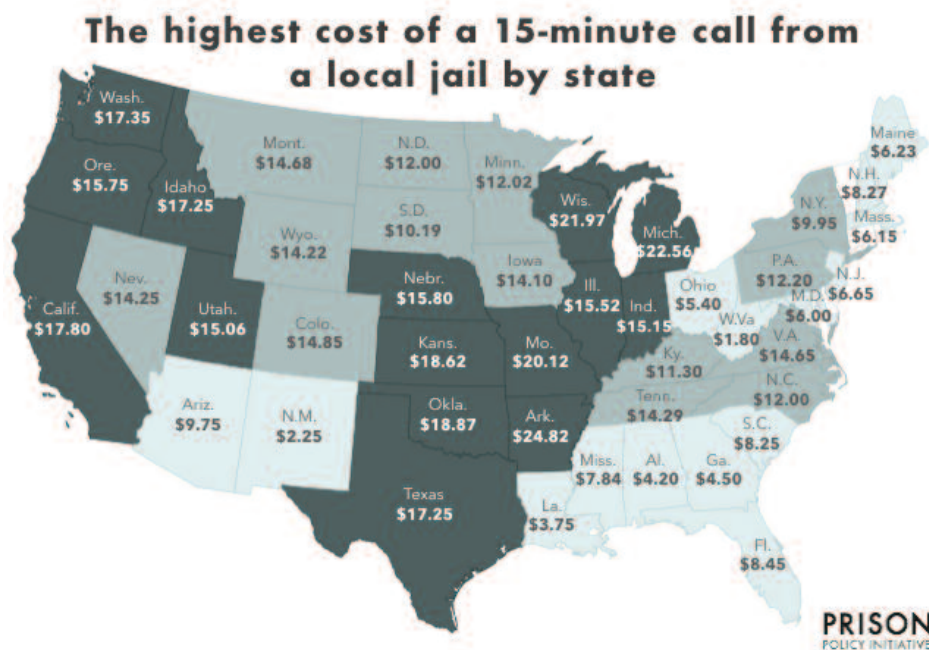


Figure: As of November 2018, in more than half of states, the highest in-state 15 minute call costs more than \$10, and in 15 states it costs over \$15. Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont do not have jails and are therefore not displayed. (Source: Peter Wagner and Alexi Jones. "State of Phone Justice," Prison Policy Initiative. February 2019, [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html))

As the cost of phone calls for the non-incarcerated population nears zero, prison telephone providers charge exorbitant consumer rates. These rates "can increase the cost of families staying in touch...by as much as 40%," according to the Federal Communications Commission (FCC).<sup>4</sup> Former FCC Commissioner Mignon Clyburn called the soaring cost of prison phone rates a civil rights issue, preventing the 2.7 million children across the country with at least one incarcerated parent from being able to speak to those parents.<sup>5</sup>

Until very recently, private telecommunications companies like Securus had unregulated reign in providing jail and prison phone services, allowing them to charge exorbitant call rates and fees. The Prison Policy Initiative estimates that these additional fees constitute more than a third of the annual \$1 billion that families pay to call imprisoned family members.<sup>6</sup> The FCC's 2014 limits on rates for out-of-state calls from jails and prisons have no effect on 92% of calls from jails that are made in-state. Instead of paying 21 cents or less per minute, as incarcerated individuals would for out-of-state-calls, people in jails calling loved ones in-state often still pay \$1 per minute or more (see Figure 1).<sup>7</sup>

As of late 2016, the majority of the nation's correctional facilities served by Securus charged a first minute rate of more than \$2, with many first minute charges exceeding \$5.<sup>8</sup>

This pattern of exploitative charges has continued under Platinum Equity's ownership of Securus.

Excessive phone rates and fees weigh heavily on families who may have also lost the primary earner in their household. In 2016, United States Senator Cory Booker and Commissioner Mignon Clyburn stated, "Many families report paying telephone providers \$400-500 a month, or over \$5,000 a year, just to stay in touch with their loved ones – double or triple the average American's monthly phone bill."<sup>9</sup> Clyburn elaborates on this issue in a FCC blog post, "Easing the financial burden on these families is not only the compassionate thing to do, it's the smart thing to do. Multiple

# Platinum Equity's Not So Securus Investment

studies have shown that having meaningful contact beyond the prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism.”<sup>10</sup>

Furthermore, many correctional telephone companies have kickback payment arrangements with correctional facilities whereby the facility receives a cut of the telephone company's earnings. These profit-sharing arrangements create perverse incentives for prisons to not seek the lowest rates for calling services, but rather the telephone provider that offers the largest slice of the pie.<sup>11</sup> In 2018, for example, four plaintiffs in Massachusetts filed a lawsuit against Securus and Bristol County Sheriff Thomas M. Hodgson alleging violations of state consumer protection laws. The lawsuit alleges that Hodgson's contract with Securus includes an illegal payoff that nearly doubled the cost of phone calls.<sup>12</sup> These commission arrangements do little to encourage companies like Securus to reduce phone costs for families in need of economic opportunity. Studies report that nearly 40 percent of all crimes are directly attributable to poverty<sup>13</sup> and 80 percent of incarcerated individuals are low-income.<sup>14</sup>

## Paying Premiums for Monetary Transfers

With prison wages as low as 12 cents an hour, sending money from support networks into prisoner accounts is crucial. Securus profits from this practice through its subsidiary JPay (acquired in 2015). JPay's electronic money transfers serve 70 percent of the nation's incarcerated and detained people.<sup>15</sup> In 2018, JPay charged families \$4.95, or nearly 25%, for a \$20 online money transfer to their incarcerated loved one in Florida.<sup>16</sup> Transferring smaller amounts like this are more common among economically vulnerable families and can cost sometimes as much as 35% in fees (e.g., in JPay correctional facilities in Maryland, Colorado, or North Carolina).<sup>17</sup> The Center for Public Integrity found that to make these payments, some families forego medical care, skip utility bills and limit contact with their imprisoned relatives,<sup>18</sup> further harming chances for impoverished families to rebuild and secure stable economic opportunities.

## Exorbitant Fees on E-Messaging

Through JPay, Securus also extracts profits from e-messaging, a rudimentary form of email that remains disconnected from the larger web. Nearly half of all state prison systems now have some form of e-messaging and JPay's services are available to prisoners in 20 states. Unlike the free email services (e.g., Gmail, Yahoo Mail, Hotmail, etc.) available to the public, JPay charges a token, or a “stamp”, to send one page of writing. Each picture attachment costs another stamp. A short video costs three stamps. With the US postal service, stamp prices are fixed regardless of the time of year. But JPay's stamp prices fluctuate. According to Wired, shortly before Mother's Day, a stamp cost 35 cents; the price rose to 47 cents the following week.<sup>19</sup>

JPay is quietly building a money-making machine unhindered by competition, a monopoly framework prohibited in the outside world. Similar to a captive market, prisoners and their loved ones will find a way to pay whatever necessary to send a message. And the more ways prisoners are isolated from communicating with their families, the better it is for JPay. For instance, the embrace of e-messaging has been coupled with greater restrictions on regular mail. In Indiana, the Department of Corrections forbids sending greeting cards, colorful envelopes and typed sheets of paper.<sup>20</sup> Charging steep fees to remain in touch with loved ones further exacerbates the economic tension for poor families across the country.

*“Easing the financial burden on these families is not only the compassionate thing to do, it's the smart thing to do. Multiple studies have shown that having meaningful contact beyond the prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism.”*

FCC Commissioner Mignon Clyburn

# Platinum Equity's Not So Securus Investment



## The Extraction Doesn't Stop After Release

JPay's exploitative practices can continue even after release. Upon release, individuals are given a card preloaded with the remaining amount from their prison account and governmental support to help them get established. In January 2018, a recently released California prisoner, Joe Rudy Reyes, with representation provided by the Human Rights Defense Center, filed a proposed federal class action lawsuit against JPay. The complaint alleges that JPay's release-card policies are monopolistic and illegal, as the fees charged for Reyes to access his own money "took full advantage of Mr. Reyes's complete lack of bargaining power." The complaint continues: "Defendants [JPay] deliberately place additional conditions on access to frozen accounts as each condition is met, in a conscious attempt to delay a cardholder's access to his or her funds. The longer the delay, the more maintenance and decline fees Defendants can extract from the account."<sup>21</sup> The court granted JPay's motion to compel arbitration in the case in lieu of a trial.<sup>22</sup>

Unlike consumer debit cards, release cards are unregulated, leading to predatory pricing. Cardholders who opt to transfer their balances to a bank can be charged fees of \$30. Account maintenance fees, deducted even if no transactions are made, can be as much as \$2.50 a week. The cost of issuing and managing these cards is borne solely by the formerly incarcerated people through fees – fees that quickly deplete their meager balances.<sup>23</sup>

## REGULATORY AND LEGISLATIVE RISK

Recently, Securus' operating practices have faced greater regulatory scrutiny and spurred legislative action to limit its predatory practices across the country.

### States and Municipalities Move to Make Correctional Phone Calls Free

In August 2018, New York City became the first city to pass a law to eliminate the charge for prison phone calls.<sup>24</sup> "Unfortunately, the city has been profiting from some of the poorest and most vulnerable New Yorkers for years," Corey Johnson, the City Council speaker and sponsor of the bill, said in a statement. "Thankfully, that is now going to stop."<sup>25</sup>

Prisoner-rights groups say making the calls free is fundamentally about fairness. Families are effectively required to pay fees to call incarcerated loved ones.<sup>26</sup> Research has shown that people in prison who maintain contact with their families and report positive relationships overall are less likely to be reincarcerated.<sup>27</sup>

Following in New York City's footsteps, Connecticut's legislature held a hearing for HB No. 6714 in early 2019. If the legislation passes, Connecticut could become the

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Senator Brian Schatz (D-HI)

# Platinum Equity's Not So Securus Investment

first state in the country to make calls from prison free for incarcerated individuals and their families. Since 2013, Securus has had no prior lobbying presence in Connecticut. However, that changed in April 2019, when it retained the services of Capitol Strategies Group, for \$40,000, to lobby on its behalf in Hartford.<sup>28</sup>

Massachusetts and San Francisco are also considering efforts to eliminate phone costs for prisoners and their families.<sup>29</sup> In November 2018, Shelby County, Tennessee announced it would no longer charge juvenile detainees and their families for making phone calls.<sup>30</sup> Shortly thereafter, Mecklenburg County Sheriff's Office in North Carolina agreed to stop charging juveniles in county jails for making phone calls.<sup>31</sup> Securus' model of charging exorbitant fees runs counter to this rising tide of legislation.

## Securus' High Fees and Perverse Incentives Face Regulatory and Legislative Oversight

In 2015, an Obama-era policy sought to cap prison and jail calling fees to as low as 11 cents per minute.<sup>32</sup> However, after facing fierce opposition from prison phone companies, including the industry's giants GTL and Securus, President Trump's FCC Chairman Ajit Pai (who previously represented Securus)<sup>33</sup> refused to defend a key portion of the rule in 2017, resulting in the rule stuck in a legal quagmire. In March 2018, a bipartisan group of US Senators introduced a bill aiming to restore federal authority to crack down on the exploitative business practices that comprise the \$1.2 billion prison telephone industry.<sup>34</sup>

"Our bipartisan legislation will help make sure that prison telecommunication rates are fair so family members can more easily afford to stay in touch with incarcerated loved ones, improving the odds that rehabilitated offenders will be able to become productive members of society upon their release," Senator Tammy Duckworth said in a statement announcing the bill.<sup>35</sup> The senate bill would also strengthen the FCC's ability to discourage correctional facility commissions to help ensure the FCC's mandate that prison phone rates are "just, reasonable, and fair."<sup>36</sup>

"People in prison should not have to pay exorbitant fees just to talk on the phone with their kids, their clergy, or their counsel," says Senator Brian Schatz (D-HI), who is co-sponsoring the bill with Senator Rob Portman (R-OH) and Senator Cory Booker (D-NJ). "It's bad for human rights, it's bad for our justice system, and it's bad for our taxpayers."<sup>37</sup>

## Securus' Agrees to Pay \$1.7 million to resolve FCC investigation

In addition to facing legislative oversight regarding its predatory practices, Securus had also faced FCC censure, fines, and growing oversight. During Platinum Equity's \$1.6 billion acquisition of Securus in October 2017, Securus was required to enter into a consent decree where it agreed to pay a \$1.7 million fine to resolve an investigation into whether Securus provided inaccurate and misleading information to the FCC to secure faster approval over the transfer of control to Platinum Equity.<sup>38</sup>

The FCC's Wireline Competition Bureau, in its review of the merger application, found "Securus's cavalier and willful attitude towards the Commission and its transaction review process unacceptable." Securus' actions led the FCC to temporarily halt consideration of the acquisition.<sup>39</sup>

FCC Commissioners Mignon Clyburn and Jessica Rosenworcel noted, "[Securus] is a company that has shown it is willing to operate on the bleeding edge of legality when it comes to this agency's rules. For example, when the FCC banned connec-

*"[Securus] is a company that has shown it is willing to operate on the bleeding edge of legality when it comes to this agency's rules. For example, when the FCC banned connection fees, this company simply re-named them first minute rates and continued to charge them. This is unacceptable and wrong."*

FCC Commissioners Mignon Clyburn and Jessica Rosenworcel, October 30, 2017

# Platinum Equity's Not So Securus Investment



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## FCC Blocks Securus' Acquisition of ICS

Earlier this year, the FCC further cracked down on Securus for anti-competitive practices in its effort to expand its footprint. In April 2019, Securus and one of its competitors Inmate Calling Solutions (ICS) agreed to drop a merger bid after U.S. regulators recommended blocking the deal due to significant competition concerns. President Trump's FCC Chairman, Ajit Pai, said that "allowing Securus Technologies Inc. and Inmate Calling Solutions LLC to merge would not have been in the public interest." Critics of the deal said that the merger could have led to a market where the vast majority of calls were controlled by only two companies. Jessica Rosenworcel, a Federal Communications Commissioner said that "now that two of the largest prison payphone companies have called off their merger, it is time for the FCC to once and for all fix the sky-high rates inmates and their families pay for phone calls."<sup>40</sup>

*"allowing Securus Technologies Inc. and Inmate Calling Solutions LLC to merge would not have been in the public interest."*

FCC Chairman Ajit Pai, April 2019

## PRIVACY AND SECURITY ISSUES

Aside from growing legislative and regulatory admonishment and oversight, Securus has had to contend with a history of impermissibly obtaining and making available personal information from tens of millions of people.

### Location Data Abuses and Hacks

In addition to selling communication services, Securus has another service that allows correctional departments to locate a cellphone. While Securus advertises this feature as a way to track down missing persons, it is ripe for abuse.<sup>41</sup> For instance, a sheriff in Missouri, Corey Hutcheson, illegally accessed hundreds of people's information from 2014 to 2017. To get around Securus' requirements, he uploaded fake documents and warrants that had nothing to do with his target.<sup>42</sup>

In May 2018, Senator Ron Wyden, sent a letter to the Federal Communication Commission asking for an investigation into wireless carriers working with companies like Securus. Wyden argued that Securus' practices are "abusive and potentially unlawful." Wyden also wrote that top officials at Securus confirmed to his office that the company "takes no steps to verify that uploaded documents in fact provide judicial authorization for real-time location surveillance, or conduct any review of surveillance requires."<sup>43</sup>

# Platinum Equity's Not So Securus Investment

In the same month, a hacker broke into the Securus servers, and provided some of the location data to *Motherboard*. “Securus was enabling tracking without a warrant and allowing users of their system to claim authority to do so without checking it. That’s a problem,” Andrew Crocker, staff attorney at campaign group the Electronic Frontier Foundation told *Motherboard*.<sup>44</sup>

## Hacks Continue to Mount Amidst Alleged Violations of Attorney-Client Privilege

In late 2015, an anonymous data leak of Securus Technologies to *The Intercept* revealed more than 70 million recordings of calls placed by prisoners. Of these calls, at least 57,000 calls were between inmates and attorneys between December 2011 and the spring of 2014.<sup>45</sup>

“This may be the most massive breach of the attorney-client privilege in modern U.S. history, and that’s certainly something to be concerned about,” said David Fathi, director of the ACLU’s National Prison Project.<sup>46</sup>

According to *The Intercept*, some of these records correspond to phone conversations arranged with prison officials to be confidential attorney-client communications, which never should have been recorded.<sup>47</sup>

Even though Securus denied recording calls “without the knowledge and consent” of the parties on the call,<sup>48</sup> *Mother Jones* reported on a lawsuit filed against CoreCivic and Securus Technologies in June 2018, that alleges that more than 1,300 private conversations between people at Kansas’ Leavenworth Detention Center and their lawyers were recorded between 2011 and 2013. Numerous charges and convictions could be overturned if a judge finds prosecutors violated attorney-client privilege by listening to the recordings. The pending civil suit seeks at least \$5 million in damages and demands CoreCivic and Securus cease recording confidential conversations.<sup>49</sup>

## Voice Surveillance Database

In states across the country, correctional authorities are purchasing technology like Securus’ Investigator Pro, to extract and digitize the voice of incarcerated people into unique biometric signatures, known as voice prints. Computer algorithms then draw on these voice prints in databases to identify the voices taking part in a call, both from incarcerated and non-incarcerated people, and to search for other calls in which the voices of interest are detected.

Although Investigator Pro does not have names associated with outsiders’ voice prints, advocates worry about the rapid and secretive growth of such databases. “Why am I giving up my rights because I’m receiving a call from somebody who has been convicted of a crime?” asks Jerome Greco, a digital forensics attorney at New York’s Legal Aid Society. Greco argues that the mining of outside parties’ voice prints should require a warrant. “If you have a family member convicted of a crime, yet you haven’t been, why are you now having your information being used for government investigations?”<sup>50</sup>

Civil liberties watchdogs are concerned that the Investigator Pro risks being abused, such as law enforcement using it to track calling activity of jail reform activists. Mark Silverstein, the legal director of the ACLU of Colorado states, “Many new ways to invade civil liberties are debuted in prisons and jails, and then there’s always the risk that it gets normalized there and starts spreading. Here you have a captive audience with few rights, fewer legal means to object, and authorities can try [new technologies] out often without giving proper notice or receiving informed consent, which seems to be what’s going on.”<sup>51</sup>

# Platinum Equity's Not So Securus Investment

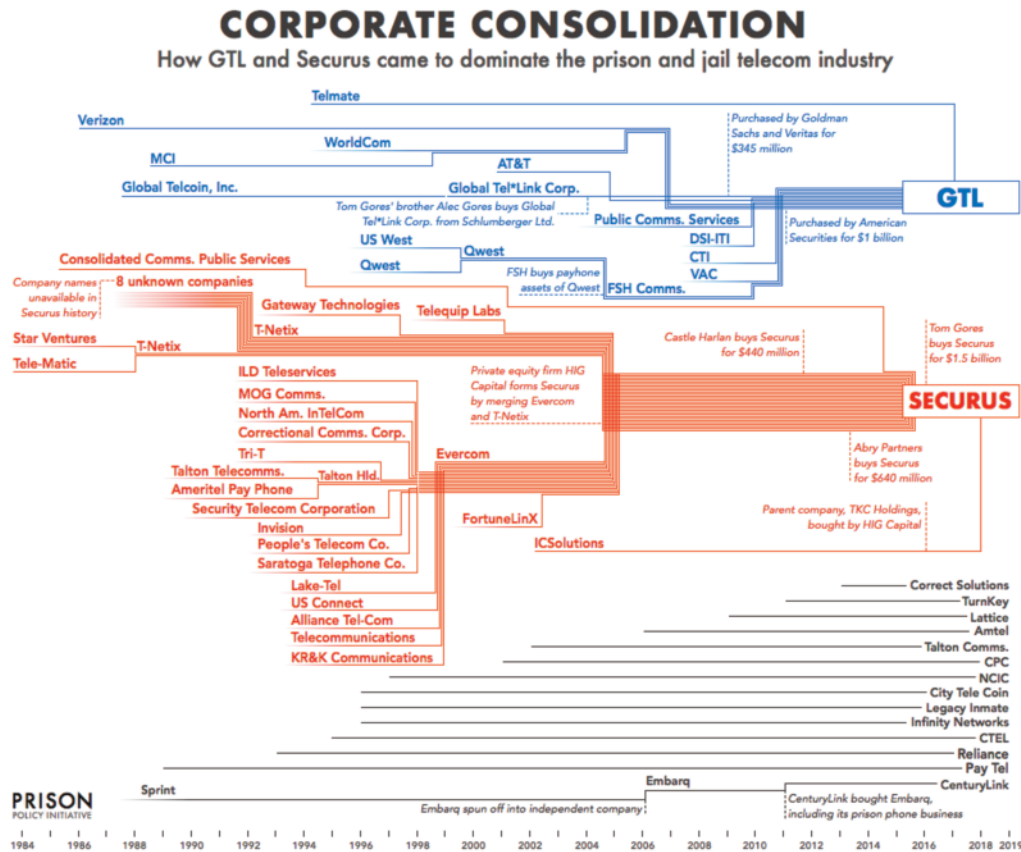


Figure 3: Peter Wagner and Alexi Jones. "State of Phone Justice," Prison Policy Initiative. February 2019.

## INDUSTRY CONSOLIDATION IS A MAJOR DRIVER OF PREDATORY BEHAVIOR

With no significant market competition, experts argue that the near-duopoly within the prison and detention telephone industry drives the predatory behavior described above. In an April 2019 Nation article, Bianca Tylek from Worth Rises observed "without private equity shops, these companies could not have become as big and as exploitative as they are today."<sup>52</sup>

Securus' strategy to acquire and develop non-telephone companies like JPay, geolocation services, and Investigator Pro in order to offer correctional facilities service packages allows providers to shift profits from one service to another, thereby hiding the true cost of each service for the correctional facility. Bundling services also makes it more difficult for the correctional facility to change providers in the future.<sup>53</sup>

These exploitative practices directly and disproportion-

ately impact vulnerable and marginalized communities across the country. Incarceration hurts familial relationships and stability by separating individuals from their support structures and impeding families from thriving. Family members who were not able to speak with or visit their incarcerated loved ones were more likely to report negative health impacts. The most frequent barrier identified to maintaining contact with incarcerated family members, by survey participants in the 2015 Ella Baker Center, Forward Together and Research Action Design report, is the cost of phone calls. And despite their often-limited resources, these financial and health impacts affect women of color and their families disproportionately more than others, deepening existing inequalities and societal divisions that have driven many individuals into the criminal justice system in the first place.<sup>54</sup>



# Platinum Equity's Not So Securus Investment

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# Platinum Equity's Not So Securus Investment

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