

THE DEPARTMENT OF JUSTICE'S RELIANCE ON PRIVATE CONTRACTORS FOR PRISON SERVICES

INTRODUCTION

The housing of federal prisoners is the responsibility of three Department of Justice (DOJ) components: the U.S. Marshals Service (USMS), the Immigration and Naturalization Service (INS), and the Federal Bureau of Prisons (BOP). The USMS detains individuals awaiting trial for federal crimes. The INS detains persons charged with violating immigration laws, entering the country illegally, or awaiting deportation. The BOP maintains custody of persons convicted of crimes and sentenced to federal prison.

All three components obtain space for prisoners through contracts with private contractors and through intergovernmental agreements (IGAs) with state and local governments. In some cases, the space and services obtained through an IGA are actually provided by a private contractor of the state or local government entity. Private prison contractors provide DOJ with about 18,000 beds each day.

Most private prison space is provided to the DOJ by three corporations: Corrections Corporation of America (CCA), Wackenhut Corrections Corporation (WCC), and Cornell Corrections. The DOJ's reliance on a few large contractors for jail and prison space raises concerns about the impact on the DOJ if one of these contractors is unable to continue to operate its facilities across the country for an extended period.

Our review objectives were to determine: (1) the extent to which the DOJ relies on private contractors for prison services, and (2) the status of contingency planning in the event a contractor is unable to carry out its contractual obligations. See Appendix I for our scope and methodology.

RESULTS OF REVIEW

CONTINGENCY PLANS ARE NEEDED TO ADDRESS THE POTENTIAL LOSS OF PRIVATE CONTRACTOR SERVICES

About 18,000 federal offenders are housed each day in facilities owned or operated by private contractors, and the use of contractors for housing prisoners is expected to increase in the future. The DOJ's reliance on a few large private prison contractors raises concerns about how the DOJ would respond to a long-term loss of multiple private contractor facilities across the country, such as if one of the large contractors ceased operating. However, the USMS, the INS, and the BOP have not developed contingency plans to address the potential inability of a contractor to continue operations on a large scale. Without coordinated contingency planning, the disruption of contract services could lead to a host of legal, health, financial, logistical, safety, and security issues.

Reliance on Private Contractors

The DOJ relies on private prison contractors to help manage its growing prison population and reduce overcrowding. The following table shows the significant extent to which the USMS, the INS, and the BOP currently rely on private facilities to house prisoners.

FEDERAL PRISONERS HOUSED IN PRIVATE FACILITIES

| DOJ COMPONENT ¹ | TOTAL PRISON POPULATION | PRIVATE PRISON POPULATION | | | |
|----------------------------|-------------------------|---------------------------|------------------|--------------------|------------------|
| | | CONTRACT | IGA ² | TOTAL CONTRACT/IGA | PERCENT OF TOTAL |
| BOP | 145,851 | 3,929 ³ | 4,481 | 8,410 | 5.8 |
| INS | 19,043 | 3,593 | 541 | 4,134 ⁴ | 21.7 |
| USMS | 35,954 | 4,013 | 1,663 | 5,676 | 15.8 |
| Total | 200,848 | 11,535 | 6,685 | 18,220 | 9.1 |

The USMS relies on state and local facilities to provide jail space near cities with federal courts. However, according to the DOJ's February 2000

¹ We were unable to obtain the data from each component for the same time period. The BOP prison population is as of December 31, 2000, and the INS data is as of December 29 and 31, 2000, and January 3, 2001. For the USMS, the private prison population is as of November 15, 2000, while the total prison population is the average daily population for November 2000.

² This only includes IGAs with facilities owned or managed by private contractors.

³ This excludes approximately 6,000 individuals in halfway houses.

⁴ Complete data on the number of INS detainees in IGAs operated by private contractors were not readily available. Thus, this number may be understated.

Detention Plan, acquiring detention space is becoming increasingly difficult for the USMS because state and local detention facilities are filling up with their own prisoners. The plan revealed that many USMS districts were reporting that the only option available to them was private contractors. In 1994, private facilities housed about 1 percent of USMS detainees. By the end of 2000, private facilities housed almost 16 percent.

The INS relies on private contractors because it lacks the funding to build and operate additional facilities and because, like the USMS, it sometimes has difficulty obtaining space from state and local governments. According to an INS official, the INS is seeking to increase the number of beds by more than 1,500 in its private contract facilities in Houston, TX; Laredo, TX; and Seattle, WA.

While the BOP housed the smallest percentage of its total prison population in private facilities (5.8 percent), it has the most prisoners in private facilities of the DOJ components (8,410), and it appears that these numbers will continue to grow. For example, the National Capital Revitalization and Self-Government Improvement Act of 1997 requires the BOP to house District of Columbia sentenced felons in private facilities. In response, the BOP has contracted with WCC to operate a 1,380-bed facility in Winton, N.C. In addition, at the time of our review, the BOP had at least three other private prison projects under development or planned. In its FY 2001 congressional budget submission, the BOP requested funding to contract for an additional 6,000 beds in privately owned or operated facilities. The BOP FY 2001 budget estimates that its contract population will increase from 16,394 beds in FY 1999 to 30,063 by FY 2002 (an increase of 13,669 contract beds), the majority of which will be housed in private facilities.

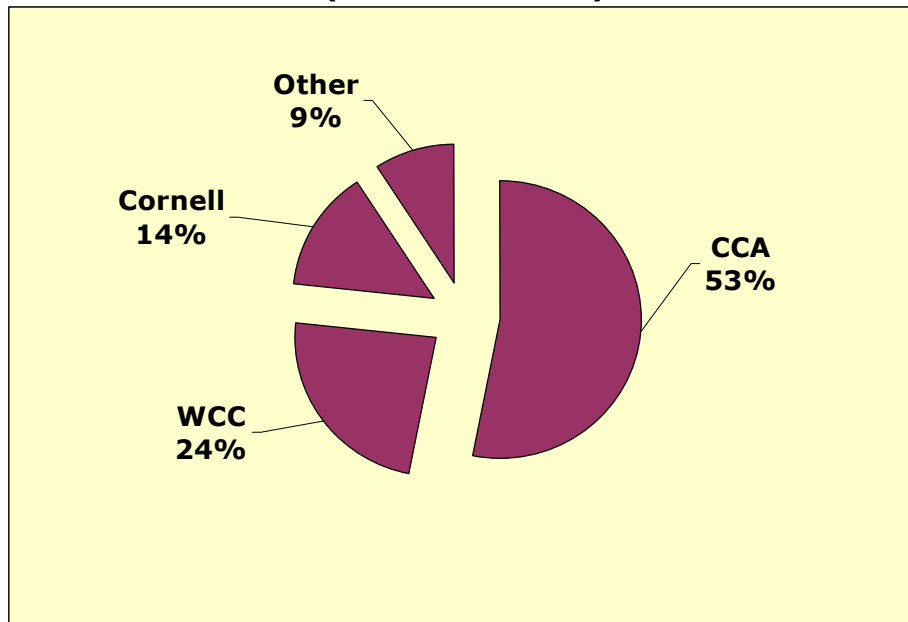
Primary Prison Contractors

CCA, WCC, and Cornell Corrections are the DOJ's three largest private prison contractors.⁵ At the time of our review, DOJ components housed prisoners in at least 41 privately owned or operated facilities (excluding halfway houses).⁶ Of the facilities used by the DOJ, 24 are operated by CCA. As shown below, these contractors account for approximately 91 percent of the federal prisoners currently housed in privately owned or operated facilities.

⁵ The chart in Appendix II shows a breakout of the private contractors for each DOJ component.

⁶ A listing of these facilities appears in Appendix III.

**PERCENT OF FEDERAL PRISONERS
IN PRIVATE FACILITIES
(BY CONTRACTOR)**



CCA is the nation’s largest private provider of detention and corrections services to government agencies. At the time of our review, CCA had approximately 61,000 beds in 68 facilities under contract with government agencies in 21 states, the District of Columbia, and Puerto Rico. WCC has 38 facilities and about 28,000 beds in 14 states and Puerto Rico. Cornell Corrections has contracts to operate 71 adult and juvenile facilities with a total capacity of more than 14,000 prisoners. Cornell’s facilities are located in 13 states and the District of Columbia.

Coordination of Contingency Planning Is Needed

To prepare for unforeseen events and emergencies, it is common business practice to develop contingency plans that describe procedures for ensuring the continuation of mission critical functions in the event of disruptions. While the USMS, the INS, and the BOP have plans in place for dealing with short term emergency situations at individual contract facilities, they lack overall contingency plans to address potential large scale disruption of private contractor facilities nationwide. For example, financial problems of the DOJ’s largest private prison contractor, CCA, underline the need for DOJ components to have contingency plans that address a potential disruption in service on a national basis for an extended period.⁷

⁷ In fiscal year 1999, CCA, formerly Prison Realty Trust, Inc. (PRT), suffered a net loss of \$72.7 million. Due to the company’s financial condition and default on certain provisions of its indebtedness, in March 2000 CCA’s independent auditor expressed substantial doubt as to its ability to continue as a going concern. For fiscal year 2000, CCA incurred a net loss of almost

According to BOP and INS officials, contracts with private prison companies typically require the contractor to have an emergency plan for each facility to address such things as strikes, fire, adverse weather, or other disturbances. In addition, BOP and INS officials told us their contracts with individual facilities allow them to take over and operate the facility in case of an emergency, but INS officials added that they lack the resources to do so. INS and BOP officials emphasized that they have a history of addressing emergency situations, sometimes involving thousands of prisoners. Thus, INS and BOP officials believed their components could address—at least in the short term—the inability of a contractor to operate its facilities. In our judgment, however, while the components may have successfully dealt with emergencies at individual facilities in the past, their lack of plans to address a large-scale disruption of private contractor services at multiple facilities across the country makes it imperative that they develop plans to respond to such a possibility.

USMS, INS, and BOP officials acknowledged that they lacked an overall plan for addressing a long-term loss of private contractor's services. The USMS and the BOP are independently working on contingency plans, but have no definitive time frames for completing these plans. The INS has not started to develop a contingency plan. According to BOP officials, they are developing a contingency plan that will address staff and other resources necessary to carry out emergency functions simultaneously at a contractor's facilities across the country should the contracted facilities be unable to continue operation. The plan will also address options such as relocating prisoners to other facilities, officials said. USMS officials told us that they started working on a contingency plan several months ago and are exploring various options such as operating contract facilities or relocating prisoners to available jail space across the country.

Because of the cross-cutting nature of the DOJ's use of private prison contractors, we believe the components should also coordinate their efforts in developing contingency plans to prevent conflicts and duplication of effort. The BOP, the INS, and the USMS rely on the same contractors for prison space and, in some cases, are competing for the same resources. For example, CCA provides prison space for USMS prisoners in 17 of its facilities. INS prisoners are housed in at least 11 CCA facilities and BOP prisoners are housed in 4 facilities. Eight of the 24 CCA facilities used by the components are shared by more than one component. Thus, a disruption of service from a single contractor could affect all three components. Consequently, the

\$731 million. The Report of Independent Public Accountants, dated April 16, 2001, notes that CCA has over \$1 billion of outstanding debt. The Accountant's report also notes that there can be no assurance that CCA will be able to refinance or renew its \$382 million debt obligations maturing on January 1, 2002.

components should coordinate the development of their plans to ensure that they do not conflict with or duplicate one another.

Without coordination and oversight of contingency planning, there is an increased risk that any disruption of contractor services would affect not only a single component but all three components, rendering the DOJ's reaction to a crisis ineffective. In a worse case scenario, the DOJ could find itself having to house thousands of offenders throughout the country on a daily basis without any planning and without the required resources to address the problem. Such a prospect raises serious public safety concerns, and we believe that the DOJ should accelerate its contingency planning efforts accordingly.

In discussing their contingency planning, officials for all three components expressed concerns about the authority of the federal government to assume control of private contract facilities beyond the short term if a contractor goes bankrupt and ceases operation. They stated that these legal issues need to be addressed at the Departmental level. INS officials told us that the need for a Departmentwide approach to contingency planning had been raised with the Detention Planning Committee last summer.⁸ JMD officials believed, however, that the responsibility for detention planning issues should fall under the purview of the Office of Federal Detention Trustee.⁹ BOP officials disagreed, stating that the assignment of a coordination role to either the Detention Planning Committee or the Office of the Detention Trustee is not appropriate. Both entities, they said, only have authority to address issues related to the detention population of the INS and the USMS, not the BOP's sentenced prison population. In our judgment, a determination should be made as to each component's authority to assume control of a private facility if the contractor is unable to continue operations. This effort should be based on the components' specific legislation, regulations, and contract and IGA conditions and should be coordinated at the Departmental level.

⁸ The Detention Planning Committee is chaired by the Deputy Attorney General and consists of members of various agencies, including the INS, the BOP, and the USMS.

⁹ The Office of the Federal Detention Trustee is being established consistent with the FY 2001 Justice Appropriation, which provides \$1 million to establish a Federal Detention Trustee. The Detention Trustee will report to the Deputy Attorney General and be responsible for managing DOJ detention resource allocations, exercising financial oversight of detention operations, and ensuring the implementation of efficiency and effectiveness improvements in DOJ detention operations. At the time of our review, the DOJ was in the process of seeking candidates for the Detention Trustee position.

Conclusion

The DOJ houses about 18,000 prisoners each day in contractor owned or managed facilities. The DOJ components appear to have plans in place to address short-term emergency situations at individual private prison facilities. However, the increased use of private prison contractors and financial difficulties of the DOJ's largest private prison contractor highlight the need for contingency plans for addressing the potential large scale loss of private prison services for an extended period of time. Each component must determine its unique housing requirements (e.g., security level, proximity to courthouses, etc.) based on its specific needs. In addition, because the USMS, the INS, and the BOP rely on the same contractors for prison space and could be competing for the same resources, they need to coordinate development and implementation of their contingency plans. Further, the DOJ's ability and legal authority to assume control of a private contract facility in the event of contractor nonperformance is an overriding concern that must be quickly addressed.

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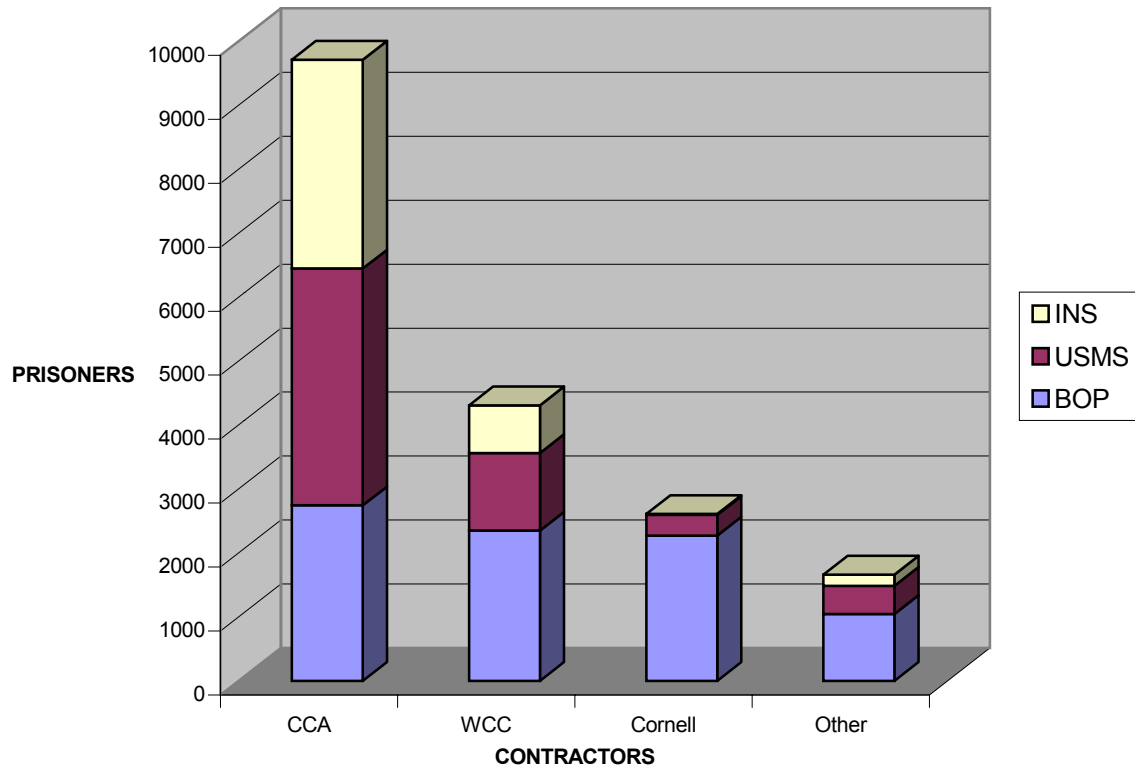
We provided a draft of this report to the USMS, the INS, the BOP, and JMD on May 4, 2001 and requested written comments. Each of the components declined to provide comments.

REVIEW SCOPE AND METHODOLOGY

We performed our review between January and March 2001. During that period, we obtained background information on CCA, WCC, and Cornell Corrections. In addition, we reviewed audit reports on CCA and PRT issued by the Defense Contract Audit Agency and the companies' independent auditors. We also reviewed documents related to CCA's October 2000 reorganization and documents prepared for its December 2000 annual stockholders meeting. At the USMS, the INS, and the BOP, we obtained data on the extent to which each component contracted directly, or indirectly through IGAs, with private contractors for prison services. Information on the extent that the INS relies on IGAs that are actually operated by private contractors was not readily available. Therefore, we estimated the number of prisoners in such facilities by comparing lists of CCA, WCC, and Cornell facilities to an INS list of its detention facilities. We also obtained information on the status of each component's efforts to develop contingency plans.

Further, we interviewed officials in JMD to discuss the role of the Detention Planning Committee in coordinating and monitoring the development of components' contingency plans. Our work was conducted as an "other activity of an audit organization" pursuant to section 2.10 of Government Auditing Standards.

FEDERAL PRISONERS IN PRIVATE FACILITIES



**PRIVATELY OWNED OR OPERATED FACILITIES
THAT HOUSE FEDERAL PRISONERS**

| | FACILITY | CONTRACTOR | CATEGORY | COMPONENT | POPULATION |
|------------|--|-------------------|-----------------|------------------|-------------------|
| 1. | Pinal County, AZ | CCA | Contract | USMS INS | 1,811 265 |
| 2. | Eden, TX | CCA | IGA | BOP | 1,164 |
| 3. | California City, CA | CCA | Contract | BOP | 775 |
| 4. | San Diego, CA | CCA | Contract | INS | 532 |
| 5. | Leavenworth, KS | CCA | Contract | USMS | 501 |
| 6. | Houston, TX | CCA | Contract | INS | 487 |
| 7. | Eloy, AZ | CCA | Contract | BOP INS | 470 980 |
| 8. | Cibola County, NM | CCA | Contract | BOP | 335 |
| 9. | Elizabeth, NJ | CCA | Contract | INS | 262 |
| 10. | Laredo, TX | CCA | Contract | USMS INS | 245 389 |
| 11. | East Mesa, CA | CCA | Contract | USMS | 235 |
| 12. | Liberty County Jail, TX | CCA | IGA | USMS INS | 167 13 |
| 13. | Torrance County, NM | CCA | IGA | USMS | 139 |
| 14. | West Tennessee Detention Facility | CCA | Contract | USMS | 129 |
| 15. | Odessa Detention Center, TX | CCA | IGA | USMS | 121 |
| 16. | Hernando County, FL | CCA | IGA | USMS INS | 70 30 |
| 17. | Correctional Treatment Center, DC | CCA | IGA | USMS | 67 |
| 18. | Marion County, IN | CCA | IGA | USMS INS | 54 5 |
| 19. | David Moss Center, OK | CCA | IGA | USMS | 52 |
| 20. | Williamson County, TX | CCA | IGA | USMS | 41 |
| 21. | Metro-Davidson County, TN | CCA | IGA | USMS | 27 |
| 22. | Citrus County, FL | CCA | IGA | USMS INS | 21 85 |
| 23. | Prairie Correctional Facility, MN | CCA | Contract | USMS | 13 |
| 24. | Bay County Jail, FL | CCA | IGA | USMS INS | 9 162 |
| 25. | Taft, CA | WCC | Contract | BOP | 2,349 |
| 26. | Western Region Detention Facility, CA | WCC | Contract | USMS | 623 |
| 27. | Central Texas Parole Violators | WCC | IGA | USMS | 411 |
| 28. | Denver, CO | WCC | Contract | INS | 324 |
| 29. | Queens, NY | WCC | Contract | INS | 179 |
| 30. | Karnes County Jail, TX | WCC | IGA | USMS INS | 178 156 |

| | FACILITY | CONTRACTOR | CATEGORY | COMPONENT | POPULATION |
|------------|--------------------------------------|-------------------|-----------------|------------------|-------------------|
| 31. | San Antonio, TX | WCC | IGA | INS | 75 |
| 32. | Big Spring, TX | Cornell | IGA | BOP INS | 2,273 15 |
| 33. | Donald W. Wyatt Detention Center, RI | Cornell | IGA | USMS | 317 |
| 34. | Santa Fe County Juvenile, NM | Cornell | IGA | USMS | 4 |
| 35. | Seattle, WA | CSC✕ | Contract | INS | 175 |
| 36. | Frio County Jail, TX | CSC | IGA | USMS | 148 |
| 37. | Limestone County Jail, TX | CSC | IGA | USMS | 2 |
| 38. | Ector County, TX | Civegenics | IGA | USMS | 220 |
| 39. | Pulaski County, IL | Civegenics | IGA | USMS | 32 |
| 40. | Zavala County Jail, TX | BRG± | IGA | USMS | 39 |
| 41. | Garza, TX | MTC* | IGA | BOP | 1,044 |
| | TOTAL | | | | 18,220 |

✕Correctional Services Corporation

±Bobby Ross Group

*Management and Training Corporation