



REPORT OF

THE

STATE AUDITOR

Private Prisons
Department of Corrections

Performance Audit
April 2005

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This report contains the results of a performance audit of Private Prisons. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Departments of Corrections and Public Safety.

TABLE OF CONTENTS

| | PAGE |
|---|-------------|
| Report Summary | 1 |
| Recommendation Locator | 7 |
| Overview of Private Prisons | 11 |
| Chapter 1: Services | 19 |
| Medical Services | 19 |
| Mental Health Services | 25 |
| Food Services | 28 |
| Chapter 2: Security and Safety | 31 |
| Inmate Custody Levels | 31 |
| Earned Time | 39 |
| Private Prison Staff | 43 |
| Employee Background Checks | 47 |
| Visitors to Private Prisons | 50 |
| Chapter 3: Contract Oversight | 55 |
| Restitution and Child Support | 55 |
| Monitoring | 59 |
| Monitoring Unit Staffing | 65 |
| Enforcement | 67 |
| Procurement | 71 |
| Management | 73 |
| Appendix A | A-1 |
| Appendix B | B-1 |



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**Private Prisons
Department of Corrections
Performance Audit, April 2005**

Authority, Purpose, and Scope

This performance audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of the state government. The audit work, performed between September 2004 and March 2005, was conducted in accordance with generally accepted governmental auditing standards.

The audit reviewed Colorado's oversight of private prisons. We evaluated (1) the treatment and services that private prisons are providing to Colorado inmates, including medical, mental health, and food services; (2) the classification, placement, and retention of inmates (both Colorado and out-of-state inmates) in private prisons located in Colorado and Mississippi; (3) the earned-time calculations for sex offenders in private prisons, the staffing at private prisons, and the Department's process for conducting criminal history checks on staff working at and visitors to the private prisons; and (4) the Department's monitoring of private prisons, enforcement of contract provisions, and procurement of private correctional services.

Overview

Colorado's inmate population has exceeded the physical capacity of prisons operated by the Department of Corrections (the Department) since the 1980s. The Department has used several approaches for dealing with this situation, including housing inmates in county jails, prisons operated by other states, and privately run prisons. Due to lawsuits by Colorado counties to reduce the number of inmates in their jails, the Department established additional ways to house its inmate backlog. Beginning in the late 1980s, the Department contracted with other states' departments of corrections and out-of-state county jails for housing Colorado inmates. In 1993, placements began to shift, almost exclusively, to private prisons in other states. The first private prison in Colorado began operations in 1994, and the Department started transferring inmates to this facility in that year. Colorado currently houses 2,800 of its 18,000 inmates (16 percent) in six private prisons. The Department paid more than \$53 million to incarcerate inmates in private prisons in Fiscal Year 2004. Most of the 2,800 inmates in private prisons are male, between the ages of 20 and 39 years, convicted of class 3 through 5 felonies, and classified as medium custody.

For further information on this report, contact the Office of the State Auditor at 303.869.2800.

The Department has established contracts with six local governments for the confinement of state inmates in private prisons in their jurisdictions; the local governments subcontract with the private prisons. Five private prisons operate in the State, including (1) Brush Correctional Facility (female inmates only), (2) Bent County Correctional Facility, (3) Crowley County Correctional Facility, (4) Huerfano County Correctional Center, and (5) Kit Carson Correctional Center. The Department also houses approximately 100 high-custody inmates in the Tallahatchie County Correctional Facility, which is located in Tallahatchie County, Mississippi. The Department has designated the five private prisons in Colorado as level III facilities and the prison in Mississippi as a level V facility (facility classifications range from level I to level V, with level I facilities providing the least security and level V the most).

The Executive Director of the Department is required by statute to monitor private prisons. As such, the Department established the Private Prisons Monitoring Unit (Monitoring Unit) in 1999 to provide oversight of contract facilities. The Monitoring Unit conducts security, food, laundry, program, medical, and mental health audits; performs weekly facility inspections; and approves placement of out-of-state inmates according to statute and Department policy.

The General Assembly allocates funding to the Department for housing inmates in private prisons. Nearly all of the monies are general funds. In Fiscal Year 2004 the Department paid more than \$53 million to incarcerate inmates in private prisons. The per diem rate set by the General Assembly for Fiscal Year 2005 equates to an annual cost per inmate of approximately \$18,100. The General Assembly also allocates funding to the Department for overseeing the operations of private prisons. The General Assembly appropriated almost \$1.1 million and 15 FTE to the Department's Monitoring Unit for its Fiscal Year 2005 operations.

Summary of Audit Comments

Services

According to Section 17-1-202 (1)(f), C.R.S., private prisons must provide "a range of dental, medical, and psychological services and diet, education, and work programs at least equal to those services and programs provided by the Department of Corrections in comparable state correctional facilities." The Department has included several of its regulations pertaining to the delivery of services to inmates in its contracts to ensure that comparable services are being provided by the private prisons. We evaluated the medical, mental health, and food services being provided by the private prisons and the Department's oversight of these services and found:

- **The Department is not adequately overseeing the medical clinics operated by private prisons.** None of the medical clinics operated by the five private prisons located in Colorado are licensed by the Department of Public Health and Environment as required by statute. The Department of Corrections has been aware of this issue since at least 2002 and has taken no action. We also identified two cases where the failure of private prison staff

to follow the Department's quality standards potentially contributed to the deaths of two inmates. The Department evaluated the factors that contributed to these deaths and requested written responses from the private prisons. Although the private prisons never provided a sufficient written response, the Department took no further action. We also found the Department's inspections of private prison medical clinics to be inadequate in addressing and documenting contract violations.

- **Inmates with serious mental illnesses are not being seen by mental health staff at the private prisons within required time frames.** About 300 of the State's 2,800 inmates with serious mental illnesses were incarcerated in private prisons as of March 2005. We evaluated the records for 68 seriously mentally ill inmates and determined that about 75 percent had not been scheduled for an initial appointment with a mental health practitioner within the time requirements specified by the Department. One private prison's mental health provider was not meeting with seriously mentally ill inmates at all. The Department does not conduct comprehensive file reviews to determine that treatment and services are being provided as required by contracts, and as such, problems at the private prisons are allowed to continue.
- **The private prisons are not consistently following the Department's master menu as required by contracts.** We reviewed a sample of 16 monthly food substitution reports submitted by three private prisons to the Department between July and November 2004 and found that about 200 food substitutions were made from the master menu during this time. There were seven instances where a dietitian employed by the private prisons noted in writing that food substitutions were not nutritionally equivalent to the food item on the Department's master menu. The Department has been aware of ongoing food service problems at the private prisons since 2003 but has taken no action to enforce the contract provisions.

Security and Safety

Our audit evaluated how the Department ensures the security and safety of the private prisons housing Colorado inmates and found:

- **The Department lacks a process to identify those out-of-state inmates who are no longer eligible to be incarcerated in Colorado's private prisons.** Inmates from other states are reclassified according to their own states' classification systems. These states' systems do not reconcile to Colorado's classification system. We requested the Department reclassify 11 inmates from other states according to Colorado's classification system. Of these 11 inmates, three were reclassified to custody levels that made them ineligible to remain in Colorado's private prisons.

- **The Department placed state inmates classified above medium into Colorado's private prisons, which is in direct violation of statute.** Section 17-1-104.9, C.R.S., prohibits the placement of inmates who are classified above medium in Colorado's private prisons. We identified 79 occasions where the Department transferred state inmates with custody designations above medium to Colorado's private prisons during Fiscal Year 2004.
- **Statutes are silent on the placement of high-custody inmates in private prisons outside of Colorado.** Although it appears that the General Assembly intended to limit placements at private prisons to only medium-custody inmates and below, the Department has transferred about 100 high-custody inmates to a private prison in Mississippi. We identified several concerns with the placement of high-custody inmates in Mississippi, including the safety and security provided by the prison, the willingness of the company operating this private prison to comply with contract provisions, and the frequency and cost of monitoring inmates at this private prison. It should be noted that the Department reports a shortage of high-custody beds in state-run prisons.
- **The Department does not adequately oversee the staffing levels maintained by the private prisons where Colorado inmates are housed.** On average, private prisons have more inmates per staff person than state-run prisons. Overall, staffing ratios at private prisons are about 80 percent of staffing ratios at state-run prisons. The Department does not review or approve staffing patterns for private prisons as part of its contracts and does not have any processes in place for such reviews.
- **Private prisons have hired some applicants with questionable backgrounds.** We identified 4 out of about 300 current private prison employees in our sample who appeared to have questionable backgrounds when hired by the private prisons. These four employees had previous convictions that included aggravated motor vehicle theft, assault, criminal mischief, and harassment. We also found that one employee who currently works at a private prison never received a criminal background check, and employees are allowed to begin work at the private prisons before the results of their criminal background checks are received.
- **Visitors to private prisons are not screened as frequently as visitors to state-run prisons.** The Department only conducts background checks on visitors to private prisons prior to their first visit. The Department typically conducts background checks on visitors to state-run prisons at least every six months. We performed background checks on a sample of 37 private prison visitors and found that two visitors had recent criminal convictions and were no longer eligible to visit the facilities.

Contract Oversight

We evaluated the Department's oversight of the collection of restitution and child support, its monitoring of private prisons, enforcement of contract provisions, and procurement of private correctional services. We found:

- **Private prisons are not properly deducting and transmitting court-ordered inmate restitution and child support payments to the appropriate destinations.** We followed up on a finding from our March 2003 audit of Inmate Restitution and Child Support and found recurring problems.
- **The Department's audit process is inadequate and ineffective in identifying and documenting areas of noncompliance at the private prisons.** The Department ensures contract compliance two primary ways: on-site monitoring visits to the private prisons and comprehensive, targeted audits. We found that the Department did not perform 33 of the 212 weekly, on-site visits (16 percent) for four private prisons during Fiscal Year 2004. Monitoring staff are also typically on-site at the private prisons for less than 10 hours per week, although the Department's goal is 20 hours on-site per week. Additionally, we found that Department staff do not routinely monitor the services and programs provided by the private prisons and that the audit tools currently used by monitors are not sufficient to produce quality results capable of demonstrating contract violations and comparison of service levels at private and state-run prisons. Finally, we found that the Department's monitoring reports do not clearly communicate whether contract violations were identified.
- **The Department is not utilizing the full-time equivalents (FTE) appropriated to the Monitoring Unit as the General Assembly intended.** We evaluated the Monitoring Unit's staffing and found that of the 15 FTE specifically allocated to the Monitoring Unit in the Fiscal Year 2005 Long Bill: 10 perform Monitoring Unit-related functions, including site visits, clinical inspections, and security audits; 4 are assigned to other units within the Department; and 1 critical position (Operations Manager, which oversees private prisons contracts and corrective action plans) has remained vacant for about three years. Only 4 of the 15 FTE appropriated by the General Assembly are directly monitoring the 6 private prisons used to house Colorado inmates.
- **The Department has documented continued contract violations by the private prisons, yet it has failed to take action to enforce the terms of the contracts.** Of the 107 reports we reviewed that identified contract violations, the majority (close to 70 percent) were not provided to the local governments and private prisons for action to be taken. We also found no written documentation that the Department performed follow-up reviews to determine whether deficiencies were addressed.

- **The Department does not use a competitive bidding process to procure private correctional services.** As the result of an acquisition of a private prison in 2002, one company now owns and operates all four male, medium-security prisons in Colorado, effectively creating a monopoly in this market.
- **Department management was not fully aware of the problems identified in our audit or the contract violations occurring at the private prisons, as identified by the Monitoring Unit.**

Our recommendations and the responses of the Departments of Corrections and Public Safety can be found in the Recommendation Locator on pages 7 through 10 and in the body of this report.

RECOMMENDATION LOCATOR

| Rec. No. | Page No. | Recommendation Summary | Agency Addressed | Agency Response | Implementation Date |
|----------|----------|---|---------------------------|-----------------|--|
| 1 | 24 | Require clinics to be licensed by the Colorado Department of Public Health and Environment. Conduct audits of private prison clinics and ensure deficiencies have been corrected. | Department of Corrections | Agree | In progress with full implementation by July 2006 |
| 2 | 27 | Improve oversight of mental health services provided at private prisons by implementing standardized processes for reviewing contractually required services. | Department of Corrections | Agree | July 2005 |
| 3 | 29 | Develop policies relating to the number and types of food substitutions allowed and enforce the contract if private prisons are found to be in noncompliance. | Department of Corrections | Agree | July 2005 |
| 4 | 33 | Require private prisons to reclassify inmates from other states according to Colorado's classification system. Transfer higher than medium custody inmates back to state of origin. | Department of Corrections | Agree | Implemented |
| 5 | 35 | Comply with statutory provision prohibiting the placement of state inmates classified above medium custody in Colorado's private prisons. | Department of Corrections | Agree | Implemented |
| 6 | 38 | Seek legislative clarification regarding the placement of high-custody inmates in private prisons. | Department of Corrections | Agree | Begin working with the General Assembly in Fiscal Year 2006 with final implementation by July 2006 |

RECOMMENDATION LOCATOR

| Rec. No. | Page No. | Recommendation Summary | Agency Addressed | Agency Response | Implementation Date |
|----------|----------|--|-----------------------------|-----------------|---|
| 7 | 42 | Improve written guidance for earned-time computations and establish a standard procedure for reviewing awarded earned time. Evaluate the incentives and disincentives associated with granting earned time to offenders refusing treatment. Provide the General Assembly with sentencing and commitment alternatives for sex offenders who are a risk to public safety. | Department of Corrections | Agree | In progress with full implementation by July 2006 |
| 8 | 46 | Include and enforce minimum staffing requirements for private prisons in future contracts. | Department of Corrections | Agree | July 2005 |
| 9 | 49 | Update future contracts to provide the Monitoring Unit the authority to prohibit private prisons from hiring applicants with questionable backgrounds. Develop a private prison employment policy. Work with private prisons and the Colorado Bureau of Investigation (CBI) to verify all private prison employees receive background checks. Require private prisons to discontinue allowing applicants to begin training prior to completion of CBI background checks. | Department of Corrections | Agree | In progress with full implementation by July 2006 |
| 10 | 52 | Work with CBI to establish a procedure for periodically reviewing the criminal histories of approved visitors to private prisons. | Department of Corrections | Agree | In progress with full implementation by February 2006 |
| | | | Department of Public Safety | Agree | Implemented/Ongoing |

RECOMMENDATION LOCATOR

| Rec. No. | Page No. | Recommendation Summary | Agency Addressed | Agency Response | Implementation Date |
|----------|----------|--|---------------------------|-----------------|---|
| 11 | 57 | Consider assigning the Department's Business Office the responsibility for auditing restitution and child support payments of inmates in private prisons. Ensure future contracts require compliance with statutes and regulations related to restitution and child support payments. Provide assistance to private prisons that continually fail to comply with requirements. | Department of Corrections | Agree | In progress with full implementation by July 2006/Ongoing |
| 12 | 63 | Develop the necessary tools, schedules, and programs to improve the processes used for monitoring the operations of private prisons. | Department of Corrections | Agree | In progress with full implementation by January 2006 |
| 13 | 66 | Ensure that the FTE appropriated to the Monitoring Unit are directly assigned to accomplish the Unit's responsibilities. | Department of Corrections | Agree | In progress with full implementation by November 2005 |
| 14 | 70 | Develop a formal process for applying the remedial provisions contained in the current contracts and strengthen the enforcement mechanisms in future contracts for private correctional services. | Department of Corrections | Agree | In progress with full implementation by July 2005 |
| 15 | 73 | Evaluate alternatives for procuring future private correctional services. | Department of Corrections | Agree | Begin working with the Joint Budget Committee in Fiscal Year 2006 with full implementation by July 2006 |

RECOMMENDATION LOCATOR

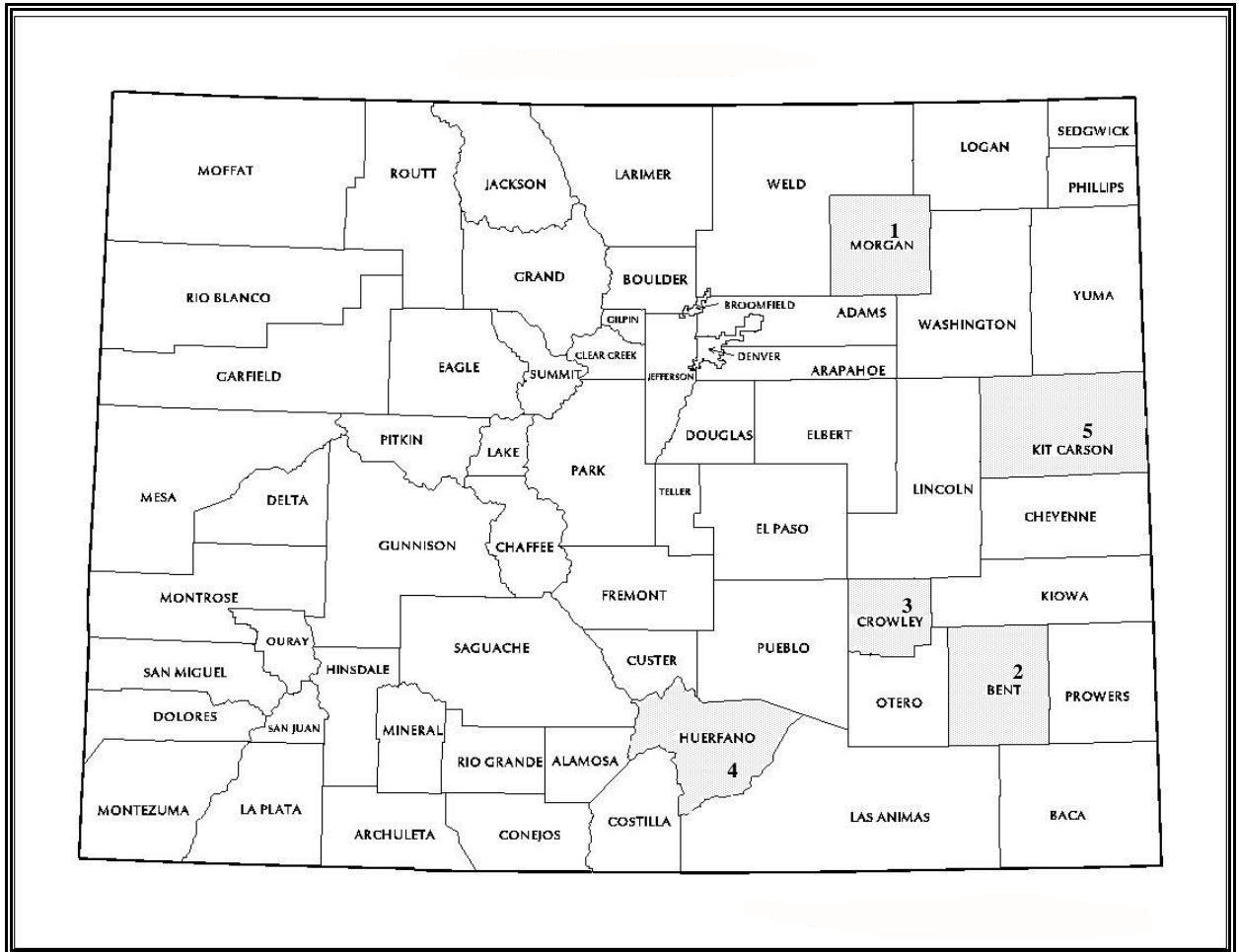
| Rec. No. | Page No. | Recommendation Summary | Agency Addressed | Agency Response | Implementation Date |
|-----------------|-----------------|--|---------------------------|------------------------|----------------------------|
| 16 | 75 | Require active participation of executive management to improve the Department's oversight of private prisons. | Department of Corrections | Agree | Implemented/Ongoing |

Overview of Private Prisons

Colorado currently houses about 2,800 of its 18,000 inmates (16 percent) in six private prisons. The Department of Corrections (the Department) paid more than \$53 million to incarcerate inmates in private prisons in Fiscal Year 2004. Colorado, along with most other states, has experienced rapid growth in its prison population in recent years. Since the 1980s Colorado's inmate population has exceeded the physical capacity of prisons operated by the Department. As a result, the Department has had to house some inmates in county jails, prisons operated by other states, and privately run prisons.

The Department began using county jails to house its inmate backlog in 1982. However, approximately 25 Colorado counties filed multiple lawsuits against the Department between 1987 and 1991 to reduce inmate populations in county jails and to receive compensation for services rendered for housing state inmates. The courts ordered the Department to remove inmates from the county jails, and as a result, the Department had to establish additional ways to house its inmate backlog. Beginning in the late 1980s, the Department contracted with other states' departments of corrections and out-of-state county jails for housing Colorado inmates. In 1993, placements began to shift, almost exclusively, to private prisons in other states, which resulted in some inmates' families filing lawsuits against the Department, citing the hardships of traveling to visit their relatives in these facilities. The courts upheld the Department's position to house inmates in out-of-state prisons.

In 1994 a private prison in southeastern Colorado began operations, and the Department started transferring inmates housed out-of-state to this facility. By December 1998 three additional private prisons were operating in Colorado, and all inmates in out-of-state facilities were returned to Colorado. Currently five private prisons operate in the State, including (1) Brush Correctional Facility, (2) Bent County Correctional Facility, (3) Crowley County Correctional Facility, (4) Huerfano County Correctional Center, and (5) Kit Carson Correctional Center. Brush Correctional Facility houses female offenders, and the other four house males. The map below shows where these prisons are located.



In May 2004 the Department entered into a contract with Tallahatchie County, Mississippi, to house up to 128 male, high-custody inmates (close custody and administrative segregation) in a private prison located there.

In total, the six private prisons incarcerating Colorado inmates have a capacity of about 3,700 beds; state-run prisons have a capacity of almost 14,200 beds. As of December 31, 2004, the Department was using about 2,800 (76 percent) of the private prison beds for Colorado inmates. Approximately 2,600 of the beds are for the Department's male, medium-custody inmates, which represents almost 40 percent of its entire male, medium-custody population. Additionally, private prisons in Colorado house approximately 440 inmates from the states of Hawaii, Washington, and Wyoming. As required by Section 17-1-104.5, C.R.S., the Department must approve all placements of inmates from other states into private prisons in Colorado.

State statutes classify prisons based on the level of security provided and the types of inmates housed in the facility. Facility classifications range from level I to level V, with level I facilities providing the least security and level V the most. The Department has designated the five private prisons in Colorado as level III facilities. According to Section 17-1-104.3(III), C.R.S., level III facilities “generally shall have towers, a wall or double perimeter fencing with razor wire, and detection devices,” and they must be continuously patrolled. Appendix A lists the five security-level designations used for Colorado’s prisons, describes the security requirements and inmate custody levels generally acceptable for each, and reports the operational capacity of both state-run and private prisons for each security level.

Oversight of Private Prisons

Section 17-1-105(1)(f), C.R.S., grants the Executive Director of the Department of Corrections the authority to enter into contracts with other jurisdictions (e.g., local and other state governments) for the confinement and maintenance of inmates in its custody. The Department has established contracts with six local governments for the confinement of state inmates in private prisons in their jurisdictions; the local governments subcontract with the private prisons. Below we discuss the Department’s and local governments’ oversight responsibilities related to private prisons.

Department of Corrections

According to Section 17-1-202(1)(g), C.R.S., the Executive Director of the Department of Corrections is required to monitor private prisons. To fulfill this obligation, the Department established the Private Prisons Monitoring Unit (the Monitoring Unit) in 1999. The mission of the Monitoring Unit is to provide effective and efficient oversight of the contract facilities. The Monitoring Unit is responsible for overseeing the Department’s contracts with five private prisons in Colorado, one private prison in Mississippi, a county jail, and a security company. Two new private pre-parole/release facilities are being constructed and are expected to begin housing inmates in Fiscal Years 2006 and 2008. The Monitoring Unit will be responsible for overseeing these private facilities. In overseeing private prisons, the Monitoring Unit conducts security, food, laundry, program, medical, and mental health audits; performs weekly facility inspections; and approves placement of out-of-state inmates. The Monitoring Unit also drafts and executes all private prison contracts, and monitors and enforces contract provisions. The General Assembly appropriated almost \$1.1 million and 15 FTE to the Monitoring Unit for its Fiscal Year 2005 operations.

Local Governments

The Department contracts with four counties (Bent, Crowley, and Huerfano in Colorado and Tallahatchie in Mississippi) and two cities (Brush and Burlington in Colorado) for the confinement of state inmates in private prisons in their jurisdictions. The local governments subcontract with private companies, which own, operate, and manage the facilities. The Department pays the counties and cities, which in turn pay the private companies. Each local government has either assigned one staff person or has contracted with an individual to oversee the private prisons. However, the local governments' roles in monitoring the private prisons are typically limited to activities such as attending staff meetings at the facilities, touring the facilities, and interviewing staff and inmates. The local governments do not perform detailed audits of the facilities to ensure they are complying with contract provisions.

Statistics

The Department of Corrections maintains various types of data on inmates. The table below shows demographic data related to offenders in private and state-run prisons as of June 30, 2003 (most recent data available). As can be seen, demographics of both populations are similar.

| Demographics of Inmates in Private Prisons and State-Run Prisons as of June 30, 2003 | | |
|---|------------------------------------|--------------------------------------|
| Gender | Private Prisons¹ | State-Run Prisons¹ |
| Male | 100% | 91% |
| Female ² | 0% | 9% |
| TOTALS | 100% | 100% |
| Ethnicity | Private Prisons | State-Run Prisons |
| White | 43% | 45% |
| Hispanic | 32% | 30% |
| African-American | 22% | 22% |
| American Indian | 2% | 2% |
| Asian | 1% | 1% |
| TOTALS | 100% | 100% |
| Age | Private Prisons | State-Run Prisons |
| 14-19 years | 1% | 1% |
| 20-29 years | 32% | 34% |
| 30-39 years | 34% | 31% |
| 40-49 years | 25% | 24% |
| 50+ years | 8% | 10% |
| TOTALS | 100% | 100% |
| Source: Office of the State Auditor’s analysis of statistical data as of June 30, 2003 (most recent data available from the Department of Corrections). | | |
| ¹ A total of about 13,900 inmates were in state-run prisons and about 2,450 inmates were in private prisons as of June 30, 2003 (most recent data available). As of our audit, about 18,000 Colorado inmates were incarcerated in state-run and private prisons. | | |
| ² The Department of Corrections began housing female inmates in a private prison in Colorado in Fiscal Year 2005. | | |

All Colorado inmates incarcerated in the Department’s facilities or private prisons have been convicted of felonies. The Department tracks the most serious crime that resulted in inmates’ sentencing to the Department. State statutes categorize crimes by seriousness, and felony classifications range from 1 (most serious) to 6 (least serious). We reviewed the felony classifications of inmates in private prisons and state-run prisons as of June 30, 2003 (most recent data available). About 87 percent

of the inmates in private prisons were convicted of class 3 through 5 felonies (e.g., aggravated robbery and forgery) compared with 77 percent for state-run prisons. A higher percentage of inmates in state-run prisons were convicted of class 1 and 2 felonies (e.g., first- and second-degree murder) than those in private prisons (12 percent and 6 percent, respectively).

Funding

The Department paid more than \$53 million to incarcerate inmates in private prisons in Fiscal Year 2004. Funding for the placement of inmates in private prisons is based on per diem rates. The per diem rate set by the General Assembly for Fiscal Year 2005 equates to an annual cost per inmate of approximately \$18,100. The following table shows the changes in total funds paid by the Department for the confinement of inmates in private prisons and the average number of private prison beds occupied each year.

| Payments for Housing Inmates in Private Prisons and Average Number of Beds Occupied | | | |
|--|---|--|---|
| Fiscal Year | Annual Reimbursement Rate per Inmate | Average Private Prison Daily Population | Total Payments¹ (In Millions) |
| 2000 | \$19,200 | 2,295 | \$44 |
| 2001 | \$19,500 | 1,995 | \$39 |
| 2002 | \$20,000 | 2,270 | \$45 |
| 2003 | \$19,200 | 2,450 | \$47 |
| 2004 | \$18,400 | 2,885 | \$53 |
| Percent Change From Fiscal Years 2000 To 2004 | -4% | 26% | 20% |
| Source: State of Colorado Financial Data Warehouse and Joint Budget Committee Fiscal Year 2006 Budget Briefing Document. | | | |
| ¹ Payments for housing inmates in private prisons are made by the Department to the local jurisdiction in which the private prison is located. The local jurisdictions charge the private prisons a fee for administering the contracts. The amount of the fee is typically withheld from the payments listed in the table. | | | |

As the table above shows, the total funds paid by the Department increased by about 20 percent from Fiscal Years 2000 to 2004. Although the daily reimbursement for each inmate decreased slightly during this time, the average daily prison population increased about 26 percent.

Audit Scope

Our audit focused on Colorado's oversight of private prisons. As part of the audit, we collected and analyzed data related to private prisons from the Department of Corrections, local governments under contract with the Department, and the private prisons where Colorado inmates are incarcerated. We visited all six private prisons currently incarcerating Colorado inmates. During our visits we toured the correctional facilities, interviewed staff and inmates, and reviewed various documents related to each facility's operations, including a sample of inmate case records. Close to one-half of the states use private prisons; we surveyed 9 of these states during our audit.

Services

Chapter 1

Background

The Department of Corrections (the Department) provides various types of services to inmates housed in its facilities, including medical, dental, food, and rehabilitative services (e.g., educational/vocational courses and mental health, sex offender, and substance abuse treatment). According to Section 17-1-202(1)(f), C.R.S., private prisons must provide “a range of dental, medical, and psychological services and diet, education, and work programs at least equal to those services and programs provided by the Department of Corrections in comparable state correctional facilities.” In general, contracts between the Department and local governments require private prisons to comply with statutory requirements to ensure that comparable services are being provided.

Our audit evaluated the treatment and services private prisons are providing to Colorado inmates. We identified problems with the medical, mental health, and food services provided by private prisons, and we discuss these issues in greater detail in this chapter.

Medical Services

According to the 1976 United States Supreme Court ruling in *Estelle v. Gamble*, inmates have a constitutional right to health care. As discussed earlier, statutes require private prisons to provide medical services that are at least equal to those provided by the Department at comparable state-run facilities. Contracts stipulate that private prisons are to provide for the primary, dental, and mental health care for all Colorado inmates. Private prisons operate clinics within their facilities to provide the required medical services. As part of our audit, we evaluated medical services provided to inmates in private prisons and discuss our concerns below.

Clinic Licensure

Statutes require health care facilities and clinics to be licensed by the Department of Public Health and Environment. Licensure provides another level of accountability and ensures that health care facilities and clinics meet minimum quality standards. In overseeing licensed clinics, the Department of Public Health and Environment reviews the clinics' fitness, conducts on-site inspections as required, investigates complaints, and ensures each clinic has submitted a quality management plan that meets minimum standards.

State statutes specify the types of medical facilities that must be licensed. In particular, Section 25-3-101, C.R.S., states that:

It is unlawful for any person, partnership, association, or corporation to open, conduct, or maintain any general hospital...community clinic, rehabilitation center, convalescent center, community mental health center,...or other facility of a like nature, except those wholly owned and operated by any governmental unit or agency, without first having obtained a license therefore from the department of public health and environment.

Department of Public Health and Environment regulations define a "community clinic" as "a comprehensive community-based medical facility which includes general or primary care services, preventative health services, diagnostic or therapeutic outpatient services, appropriate inpatient services, and/or emergent care services." According to Department of Public Health and Environment data, all clinics within state-run prisons are licensed as community clinics.

Our audit found that none of the clinics in the five private prisons located in Colorado are licensed, even though they are also classified as "community clinics" by the Department of Public Health and Environment. The Department of Corrections has been aware since at least 2002 that clinics within private prisons have not been licensed and has taken no action to bring the private prisons into compliance with state statutes. Since these private prison clinics are not licensed, the Department of Public Health and Environment has not monitored them. In addition, these clinics have not reported any incidents related to (1) physical, sexual, or verbal abuse, (2) neglect, and (3) death of patients to the Department of Public Health and Environment. Licensed clinics are required to report these types of incidents. Data from the Department of Corrections show that between January 2001 and September 2004, nine inmate deaths occurred at private prisons. If these deaths had been reported, the Department of Public Health and Environment would have had an opportunity to investigate these cases and determine whether quality was maintained at the clinics. Licensure of private prison clinics by the Department of Public Health

and Environment allows for an additional and independent review of the quality of medical services beyond that already provided by the Department of Corrections.

Quality Standards

The Department's contracts with local governments set forth some specific standards related to the provision of health care to inmates at private prisons. One of these standards requires private prison physicians to physically examine inmates before changing their medications. We identified two cases where physicians changed the inmates' medications without examining them. Department clinical and administrative records indicate that medication changes made by private prison staff potentially contributed to the death of these inmates.

According to Department records, these inmates' medical conditions were controlled by specific medications when they were housed in state-run correctional facilities. When one inmate was subsequently moved to a private prison, the private prison medical staff changed the inmate's medication, neglected a medication stop order, and administered two medications that, according to the Bent County coroner's autopsy report, interacted with one another. The inmate died from a drug overdose. When the other inmate was placed in a private prison, the inmate's medication ran out and was not immediately refilled. Medical staff prescribed and administered a different medication. According to a letter from the Department's former chief medical officer to the private prison company's chief medical officer, the different medication did not treat the inmate's condition effectively. The inmate succumbed to his previously diagnosed medical condition and died shortly thereafter.

We evaluated the Department's response to these two inmate deaths and determined that its response was insufficient. For the first inmate noted above, both the Department's Inspector General's Office and Clinical Services Division investigated the circumstances surrounding the death. The Inspector General's Office, after completing its criminal investigation, provided the case to the local district attorney. The district attorney's office found that no crime had been committed in regard to this inmate's death and criminal charges were not filed. The Clinical Services Division also reviewed the records related to the death and found that errors made by private prison staff contributed to this inmate's death. Five months after the inmate's death, the Clinical Services Division notified the private prison that it needed to provide a written response on corrective actions taken. The private prison did not respond, and the Clinical Services Division took no further action.

For the second inmate, the Clinical Services Division requested the private prison perform an in-depth review of the death and provide an explanation for why "the patient did not receive the [needed] medication." When the private prison did not respond, the Department made two subsequent requests for information. Nine

months after the Department's initial request, the private prison provided only a cursory explanation. No further follow-up was performed by the Clinical Services Division. We discussed these two cases with the Department management and they indicated that they do not plan to perform any additional reviews or follow-up with the private prisons on corrective actions taken.

Department Monitoring

The Monitoring Unit conducts inspections of private prison clinics to ensure that Colorado inmates are receiving appropriate medical care and that instances of substandard care are identified and corrected in a timely manner. To be effective, these inspections must be comprehensive and occur regularly. As the table below indicates, the Monitoring Unit's inspections of private prison clinics have been inconsistent. In fact, the Monitoring Unit did not perform any clinical inspections at the four private prisons housing Colorado inmates during the 20-month period from May 2003 to December 2004.

| Clinical Inspections Conducted by the Monitoring Unit Between Calendar Years 2001 and 2004 | | | | | |
|--|-------------|-------------|-------------|-------------|--------------|
| Private Prison | 2001 | 2002 | 2003 | 2004 | Total |
| Bent County Correctional Facility Fiscal Year 2004 Colorado Average Daily Population: 700 Fiscal Year 2004 Total Payments: \$12.6 million | 3 | 10 | 1 | 0 | 14 |
| Crowley County Correctional Facility Fiscal Year 2004 Colorado Average Daily Population: 800 Fiscal Year 2004 Total Payments: \$15.0 million | 3 | 5 | 1 | 0 | 9 |
| Huerfano County Correctional Center Fiscal Year 2004 Colorado Average Daily Population: 700 Fiscal Year 2004 Total Payments: \$13.3 million | 0 | 1 | 1 | 0 | 2 |
| Kit Carson Correctional Center Fiscal Year 2004 Colorado Average Daily Population: 700 Fiscal Year 2004 Total Payments: \$12.0 million | 0 | 0 | 1 | 0 | 1 |
| TOTALS | 6 | 16 | 4 | 0 | 26 |
| Source: Office of the State Auditor's analysis of the Monitoring Unit's inspection and audit reports between Calendar Years 2001 and 2004. | | | | | |

During the four years, the Monitoring Unit performed 23 of the 26 inspections at the Bent County Correctional Facility and Crowley County Correctional Facility clinics and only 3 inspections at the Huerfano County Correctional Center and Kit Carson Correctional Center clinics. Additionally, the Monitoring Unit did not conduct initial

or start-up clinical inspections at two other private prisons (Brush Correctional Facility and Tallahatchie County Correctional Facility), which began housing Colorado inmates in 2004. The Wyoming Department of Corrections also contracts with the Brush Correctional Facility to house its inmates, and a recent audit performed by Wyoming identified several problems with this facility's clinic.

We evaluated the 26 inspections and found that they are inadequate in addressing and documenting contract violations at private prisons. The inspections noted that contract violations had occurred, but the reports did not identify the specific contract provisions that were violated. Further, the inspections did not include recommendations addressing the violations, and the Department did not conduct follow-up reviews to ensure deficiencies were corrected in a timely manner. We discuss the effects of poor monitoring and enforcement in more detail in Chapter 3.

Improvements

The Department needs to hold private prisons accountable for providing quality medical care to inmates, as stipulated in the contracts. First, the Department should immediately require private prisons to license their medical clinics in accordance with Department of Public Health and Environment standards. Second, the Department should improve its oversight of medical clinics operated by private prisons. This should include establishing specific standards for the delivery of medical services and monitoring private prisons' compliance with those standards. The Department recently assigned a full-time staff member to oversee the operations of medical services at private prisons. This staff member should conduct regular visits to the clinics; review case records and other documentation; audit the clinics' adherence to the required performance standards; document any contract violations (e.g., failing to physically examine inmates before medication changes occur); make recommendations for improvements; and follow up to ensure that violations are corrected in a timely manner. Further, these reviews should determine if private prisons are providing comparable medical services to state-run prisons. Finally, the Department should consider streamlining processes for integrating medical information provided at state-operated and private prisons by requiring the private prisons to use its automated medical information system. This system would provide private prisons with real-time information on each inmate's medical history, assisting with accurate diagnoses and treatment.

The lack of consistent monitoring and failure of the private prisons to comply with standards and seek licensure of its clinics creates an environment where problems related to substandard care may occur unnoticed.

Recommendation No. 1:

The Department of Corrections should improve its oversight of medical clinics maintained by private prisons by:

- a. Requiring clinics to be licensed by the Colorado Department of Public Health and Environment.
- b. Conducting periodic reviews and audits of services provided by clinics.
- c. Following up on corrective action plans to ensure deficiencies have been corrected.
- d. Considering requiring private prisons to use the Department's information system for medical services.

Department of Corrections Response:

- a. Agree. Implementation date: In progress with full implementation by July 2006. The Monitoring Unit has requested each of the private facilities to obtain licensure. On January 21, 2005, the four CCA facilities submitted their applications to the Colorado Department of Public Health and Environment (CDPHE) Health Facilities and Medical Services Division, and on February 24, 2005, GRW, the Brush facility, submitted its application. Supplemental information has been requested by CDPHE, but the process is well underway at this writing, and each of the private clinics has committed to achieving compliance with this finding. Future contracts shall contain language requiring private clinics to obtain/maintain community clinic licensure from CDPHE.
- b. Agree. Implementation date: In progress with full implementation by July 2005. As noted by the audit, the Department recently assigned a full-time person to oversee the operations of medical services at private prisons. Job duties for the position include periodic clinic visits, on-site review of medical records and services provided, and determination of compliance with contractual specifications.
- c. Agree. Implementation date: In progress with full implementation by December 2005. The Monitoring Unit has implemented a written document-based deficiency log and tracking process. The facility is provided a copy and required to respond in writing with a corrective

action plan to the monitor. The monitor verifies the action plan has been implemented and completed, and the deficiency rectified. This written document process is cumbersome and inefficient; therefore, the Department is working toward the implementation of a Web-based computer application to track and ensure private prisons are held to contractual obligations.

- d. Agree. Implementation date: July 2005. The Department is negotiating proposed language to the new private prison contract (effective July 1, 2005) requiring the full utilization of the Department's information system for medical services by the private prisons. This will effectively integrate the medical information pertaining to inmates at private and state-run prisons into one system. This system will provide the private prisons with real-time information on each inmate's medical history, assisting with accurate diagnosis and treatment. The system will also make the monitoring of medical services at the private prisons more efficient for the Monitoring Unit.

Mental Health Services

As discussed earlier, statutes require private prisons to provide mental health services that are at least equal to those provided by the Department at comparable state-run facilities. Department clinical staff perform a series of assessments on inmates to determine the extent of their mental health needs. Based on the results of these assessments, clinical staff assign a psychological needs code to each inmate, which can range from 1 to 5, with 1 indicating the lowest need and 5 the highest need for mental health services. Any inmate with a psychological code of 3 or higher is considered to have a serious mental illness, requiring specialized, high-priority mental health services. As of March 2005, the Department housed approximately 2,800 inmates with serious mental illnesses, and of these, about 300 (11 percent) were incarcerated in private prisons. All 300 inmates had a psychological code of 3, since the Department does not place inmates with higher psychological codes in private prisons.

The Department's *Clinical Standard and Procedure for Mental Health Manual* includes specific requirements on the services that must be provided to inmates with serious mental illnesses. According to contracts, private prisons must comply with the requirements in this manual. This manual states that "all inmates with serious mental illnesses will be scheduled for an initial appointment with a mental health staff member within five working days from the time that the inmate arrives at their facility, or is identified as having a serious mental illness." During the audit, we

reviewed mental health records for 68 inmates with serious mental illnesses who were placed in private prisons. We evaluated whether these inmates were scheduled for an initial appointment with a mental health practitioner within the time requirements specified in the Mental Health Manual. The table below shows the results of our review.

| Time Frames for Initial Mental Health Appointments for Seriously Mentally Ill Inmates in Private Prisons | | |
|--|--------------------------|----------------------------|
| Number of Working Days | Number of Inmates | Percentage of Total |
| 5 days or less (as required) | 17 | 25% |
| 6 to 14 days | 23 | 34% |
| 15 to 30 days | 19 | 28% |
| More than 30 days | 9 | 13% |
| TOTALS | 68 | 100% |
| Source: Office of the State Auditor's analysis of mental health records maintained on a sample of 68 inmates with serious mental illnesses housed in private prisons during Fiscal Year 2005. | | |

As the table above shows, only 17 of the 68 inmates in our sample (25 percent) received their initial mental health appointments within five working days of entering the facilities, as required. Nine inmates (13 percent) did not receive their initial mental health appointment for more than 30 days after entering the private prisons, with one of these inmates not receiving an initial appointment for more than three months.

We also identified one private prison where the mental health provider was not meeting with seriously mentally ill inmates, as required by contract. With the assistance of staff from the Monitoring Unit, we determined that this mental health staff member had provided no mental health services to 16 inmates with serious mental illnesses since their arrival at the facility. We reported our finding to the Department, and immediate action was taken. From our review of weekly monitoring reports prepared on this facility, we determined that the Monitoring Unit was not aware of this problem. The importance of treating inmates with serious mental illnesses in a timely and consistent manner cannot be overstated.

The Department's Monitoring Unit has assigned one staff member the responsibility for overseeing mental health services provided to inmates at private prisons. This

staff member also monitors the alcohol and drug treatment programs at private prisons, ensures the care of mentally retarded and developmentally disabled inmates, and coordinates infirmary admissions and transfers required because of an inmate's mental health. However, staff within the Monitoring Unit are not conducting comprehensive file reviews to determine that treatment and services are being provided as required by contracts. As such, problems related to the delivery of mental health services are allowed to continue at the private prisons.

The Department needs to improve its oversight of the mental health services provided by private prisons. In particular, the Department should develop performance standards and begin auditing inmate mental health records and treatment plans to ensure that private prisons are providing the required services. If, through these audits, it is determined that a facility is not providing the required services, the Department should use the enforcement mechanisms contained in its contracts. We further discuss the need for better contract enforcement by the Department in Chapter 3.

Recommendation No. 2:

The Department of Corrections should improve its oversight of mental health services provided to inmates in private prisons by developing and implementing standardized processes for ensuring that private prisons are providing mental health services required by contract. This should include requiring monitoring staff to periodically review documentation maintained by private prisons to assess whether required services are being provided.

Department of Corrections Response:

Agree. Implementation date: July 2005. The Monitoring Unit has consistently provided oversight of delivery of mental health and rehabilitative programs for the private prisons, including file reviews. The focus of the report was one element of the Offenders with Mental Illnesses (OMI) monitoring standard, related to scheduling of initial contact. Failure to meet this standard is related directly to chronic understaffing in two of the private prisons, and this was addressed over a period of time with facility management staff. Both facilities have received contract violation letters and have begun the process of recruiting and hiring new staff.

Information regarding the specific Clinical Standard "Monitoring OMI Offenders" has not been reported in a standardized format. This is a change in reporting that would be easy to implement and could be adopted quickly.

This year's new proposed policy for the Fiscal Year 2006 contract will include a liquidated damages clause for noted deficiencies.

Food Services

Contracts require private prisons to “provide meals to offenders housed at the facility which are at least equal in nutritional and esthetic value as those meals furnished to offenders which are housed within the Department facilities.” To meet this requirement, private prisons are to use the Department’s six-week master menu and submit monthly reports that list all menu substitutions made and the reasons for each substitution. Department staff perform periodic audits of food services provided by private prisons to ensure that food quality and safety standards are met.

We reviewed a sample of 16 monthly substitution reports submitted by three private prisons and four state-run prisons to the Department between July and November 2004, and we found:

- Seven instances where a dietitian employed by the private prisons noted in writing that food substitutions were not nutritionally equivalent to the food item on the Department’s six-week master menu. The private prisons’ dietitian had repeatedly informed the kitchens’ staff in writing to refer to the menu substitution policy for appropriate substitutions.
- The private prisons made about 200 food substitutions from the master menu, as compared to only 122 substitutions at the four state-run prisons. Further, of the 200 food substitutions made by the private prisons, about one-half were because they were out of the required item. In contrast, only two of the substitutions at state-run facilities were a result of the kitchens’ being out of the required item. The remaining 120 substitutions at the state-run facilities were due primarily to facility lockdowns (e.g., cold meals are typically substituted because the food must be delivered to each inmate’s cell) and the preparation of special holiday meals (e.g., Thanksgiving, Christmas). According to Department staff, private prison kitchens did not have required food items in stock because of poor planning and efforts to control costs.

Department management staff have reported that “good quality, adequate meals are essential to effective management of prison operations.” Staff indicated that poor food service can be one of several factors that contribute to facility disturbances, as was the case for the riot that occurred at one private prison in July 2004.

According to Department documents, the Department has been aware of the ongoing food service problems at private prisons since 2003. The Department has taken no action to enforce the contract provisions. The Department should develop and implement a standardized process for ensuring that the six-week master menu is being adhered to by the private prisons. This should include determining performance standards such as the appropriate number of substitutions allowed, the types of foods that may be substituted, and the authorized reasons for substitutions (e.g., holiday meals). The Department should also begin enforcing contract requirements regarding food service if continued deficiencies are identified at the private prisons.

Recommendation No. 3:

The Department of Corrections should take immediate steps to improve food services at private prisons by:

- a. Developing specific policies relating to the number and types of food item substitutions allowed.
- b. Creating a process for ensuring that private prisons adhere to the six-week master menu.
- c. Enforcing the contractual requirements if private prisons are found to be in noncompliance.

Department of Corrections Response:

Agree. Implementation date: July 2005.

- a. For Fiscal Year 2006, the Department is negotiating proposed language to the private prisons contract which will clarify the policy regarding the acceptable number and types of menu substitutions. This year's new proposed policy for the Fiscal Year 2006 contract will include a liquidated damages clause for menu changes that exceed the specified deviations allowed in the contract.
- b. Monitoring Unit monitors observe meal service during their visits. Annual audits by Department Food Service staff now are conducted unannounced. The Department receives a list of menu changes from each facility on a monthly basis. The Department reviews the changes and responds in writing when changes appear to be excessive or

inappropriate. The food service management company, Canteen Corporation, has initiated a reward system which provides financial incentives to food service staff to minimize menu changes. The number of menu changes appears to have decreased in recent months.

- c. For Fiscal Year 2006, the Department has drafted a clarification of policy regarding the acceptable number and types of menu substitutions. This new proposed policy will include a liquidated damages clause for menu changes that exceed the specified deviations allowed in the contract.
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Security and Safety

Chapter 2

Background

The Department of Corrections (the Department) is charged with incarcerating persons convicted of felonies in the State and protecting the safety of the public, staff, and inmates, including those Colorado inmates housed in private prisons. Ensuring the security and safety of a prison begins with properly classifying inmates and placing them in facilities appropriate to their custody levels. Prisons are physically designed and staffed to manage different levels and numbers of inmates. The placement of high-custody inmates in prisons not designed for such custody levels can result in management problems and lead to situations that security staff are neither trained nor equipped to handle. The security and safety of prisons are also ensured by carefully controlling the persons allowed to enter the facilities to either work or visit inmates. The General Assembly has recognized these principles of safety and security and enacted several statutory provisions related to each.

As part of our audit, we evaluated the classification, placement, and retention of inmates in private prisons located in Colorado and Mississippi. We also examined the processes used by the Department to ensure that the private prisons are appropriately staffed and that only approved visitors gain entry to the facilities. We identified concerns with Department decisions to place and retain high-custody Colorado and other state inmates in private prisons. We also identified problems with earned-time calculations for sex offenders, the staffing at private prisons, and the Department's process for conducting criminal history checks on visitors to the private prisons. We describe each of these issues in this chapter.

Inmate Custody Levels

Section 17-1-104.9, C.R.S., authorizes the Department "to permanently place state inmates classified as medium custody and below in private contract prisons." The Department classifies inmates, using a custody range from minimum (not a management problem or threat) to administrative segregation (severe management problem and high threat level), with medium-custody inmates falling in the middle. The General Assembly has made it clear through legislation that state-run prisons are the only suitable location for permanently incarcerating high-custody inmates (those inmates classified above medium custody). Inmates housed at private prisons will

occasionally, as the result of an offense committed at the private prison, be reclassified to a custody level above medium. However, Section 17-1-104.9, C.R.S., requires the Department to transfer these inmates to a state-run prison as soon as space becomes available.

The Department is also authorized by statute to control the types and number of inmates from other states being placed in Colorado's private prisons. Section 17-1-104.5(2), C.R.S., stipulates that no inmates from other states can be housed in Colorado's private prisons without the express approval of the Department's Executive Director. Furthermore, other states' inmates cannot be classified at a higher custody level than the one designated for the facility. As discussed in the Overview, the Department has designated all of the private prisons located in Colorado as suitable for housing only medium-custody inmates.

Practices for placing out-of-state inmates in private prisons differ from practices for placing Colorado inmates. The Department's Monitoring Unit classifies inmates from other states prior to their placement in one of Colorado's private prisons. In contrast, the Department's Office of Offender Services (Office) is the entity responsible for transferring Colorado inmates to private prisons located in either Colorado or Mississippi. The Office evaluates each Colorado inmate's classification and case history before transfer. If an inmate needs a higher custody level after placement in a private prison, private prison staff are responsible for requesting that the Office reclassify the inmate and transfer the inmate to a state-run prison. The Department's Monitoring Unit may also request that the Office reclassify and transfer an inmate to a state-run prison if problems arise.

We reviewed the classification and custody levels of Colorado and other state inmates approved by the Department for placement in private prisons and identified problems with both.

Out-of-State Inmates in Colorado Private Prisons

In December 2004, Colorado's five private prisons housed about 80 inmates from Hawaii, 190 inmates from Washington, and 170 inmates from Wyoming. As discussed earlier, statutes require that before an inmate from another state can be placed in one of Colorado's private prisons, the Executive Director must review the inmate's case file to ensure that the inmate's custody level, as determined by using Colorado's classification system, is appropriate for the facility. The Executive Director has assigned the responsibility for screening and approving inmates for placement in Colorado's private prisons to the Monitoring Unit. Monitoring Unit staff initially classify the inmates referred from other states and then present their recommendations to Department management for final approval.

We reviewed the process used by the Monitoring Unit to screen inmates from other states. We identified problems with the reclassification of other states' inmates after they have been initially classified by the Monitoring Unit and placed in a private prison. The Department's practice is for case managers at private prisons to reclassify out-of-state inmates according to the applicable state's classification system, not Colorado's classification system. Other states' classification systems cannot be reconciled to Colorado's system. Case managers are not required to report changes in classification levels for out-of-state inmates to the Department's Monitoring Unit. As a result, the Department would not be aware of inmates who have been reclassified at a higher custody level and are no longer eligible for placement in a private prison. As part of our audit, we requested that the Monitoring Unit reclassify 11 inmates from other states according to Colorado's classification system. We selected these inmates because of high scores on their own state's classification system and due to evidence of disciplinary or escape problems in their files. Of the 11 inmates we requested to be reviewed, 3 were reclassified to custody levels above medium, making them ineligible to remain in Colorado's private prisons.

The Department needs to improve its process for reclassifying out-of-state inmates in Colorado's private prisons. This should include ensuring that private prisons reclassify out-of-state inmates according to Colorado's classification system. Furthermore, the private prisons should be required to report to the Department all instances where an out-of-state inmate's custody level rises above medium. When such reclassifications occur, and a classification override is not authorized by Department policy, the Department should work to transfer the inmate back to the state of origin in a timely manner. The Department's Monitoring Unit will need to ensure compliance through its weekly inspection process.

Recommendation No. 4:

The Department of Corrections should strengthen its process for managing placements of other states' inmates in Colorado's private prisons by requiring private prisons to reclassify inmates from other states according to Colorado's classification system and reporting changes in custody levels above medium to the Department. Using the Department's classification policy, the Department should transfer those out-of-state inmates whose final classification is above medium custody back to the state of origin.

Department of Corrections Response:

Agree. Implementation date: Implemented. All out-of-state inmates will be regularly reclassified utilizing Administrative Regulation 600-1 Inmate Classification. The completed document is reviewed by the facility monitor and forwarded to the chief of the Monitoring Unit for approval/denial. A hard copy of the document is maintained in the Monitoring Unit. If a non-Colorado inmate scores higher than medium-custody level, a Department reclassification document will be completed. If the inmate scores close-custody level but will rescore medium-custody level or below before the next routine reclassification is completed, that inmate may be overridden in accordance with Administrative Regulation 600-1. If he or she will not score medium-custody level or below, the sending state will be notified, as outlined in Exhibit L of the Contract, and the inmate will be returned to the sending state on the next available transport. A copy of the classification document will be maintained in the Monitoring Unit inmate files for historical record.

Colorado Inmates in Colorado Private Prisons

As previously discussed, Section 17-1-104.9, C.R.S., prohibits the placement of inmates who are classified above medium in Colorado's private prisons. During the audit, we examined the transfer records for each private prison during Fiscal Year 2004. We identified 79 occasions where the Office of Offender Services transferred state inmates with custody designations above medium to Colorado's private prisons, which was in direct violation of statute.

Department staff explained that several of the segregation units at private prisons have been used to temporarily house inmates from state-run prisons to provide for the effective management of the inmate population. For example, Ft. Lyon Correctional Facility, a state-operated prison, has a limited number of segregation beds, and when these segregation beds are occupied, this facility transfers inmates convicted of Colorado Code of Penal Discipline (COPD) violations to a nearby private prison's segregation unit to serve their punitive time. Upon conviction, these inmates are often reclassified above medium custody, making them statutorily ineligible for placement in Colorado's private prisons. In the 79 transfers in violation of statute, the inmates stayed an average of 46 days in the private prisons before being transferred back to a state-run prison.

The statutory prohibition against placing state inmates classified above medium in Colorado's private prisons was designed to protect correctional staff, inmates, and the public. As will be discussed in Chapter 3, the Department has also identified

ongoing concerns with the private prisons' ability to manage medium-custody inmates. Higher-custody inmates, even those reclassified as the result of COPD convictions, create an additional management problem. We identified one case in which a state inmate classified as administrative segregation, who suffered from chronic mental illness, was transferred from a state-run prison to a private facility. In a report, Monitoring Unit staff determined that the private prison's management of this inmate was inadequate and noted that the private prison had violated several contract provisions designed to protect the safety of the staff and inmate. The report also stated that the inmate was "injured as a direct result of an escalation of force that appeared to be unnecessary."

According to Department staff, Colorado inmates classified as close or administrative segregation could be adequately managed at a state-run prison until a high-custody bed becomes available within the state system. Therefore, the Department should adhere to statute and not transfer state inmates classified above medium into Colorado's private prisons, even on a temporary basis.

Recommendation No. 5:

The Department of Corrections should comply with the statutory provision prohibiting the placement of state inmates classified above medium in Colorado's private prisons.

Department of Corrections Response:

Agree. Implementation date: Implemented. Prior to the audit, the Department used several of the segregation beds at private prisons to temporarily house Colorado inmates classified above medium custody to effectively manage the inmate population. As soon as this problem was brought to the Department's attention, the practice of temporarily placing Colorado inmates classified above medium custody in Colorado's private prisons was stopped. Now, Colorado inmates classified above medium custody will be managed at state-run prisons until a high-custody bed becomes available within the state system.

High-Custody Colorado Inmates in Mississippi

Statutes do not expressly authorize the Department to place high-custody inmates in private prisons located in other states. As discussed previously, Section 17-1-104.9, C.R.S., authorizes the Department to permanently place state inmates classified as

medium custody and below in “private contract prisons.” Furthermore, in authorizing the Department to issue certificates of participation (COPs) for financing the construction of the Colorado State Penitentiary II, the General Assembly, through passage of House Bill 03-1256, expressed its intent by stating:

The general assembly has previously recognized in section 17-1-104.9, Colorado Revised Statutes, that it is in the best interests of public safety to incarcerate high-custody inmates in state prison facilities, rather than in private contract prison facilities.

Although it appears that the General Assembly intended to limit placements at private prisons to only medium-custody inmates and below, in April 2004 the Department transferred 36 high-custody inmates (classified at the State’s highest-custody level of administrative segregation) to a private prison in Texas. In May 2004 the Department began moving these inmates to a private prison in Mississippi because the Texas Commission on Jail Standards determined that Texas statutes do not authorize the incarceration of high-custody inmates from other states. Department management have indicated that the inmates transferred to Mississippi were identified as leaders of prison gangs and had been involved in six major disturbances in state prisons that occurred in January, February, and March 2004. Department management have also reported that these transfers were temporary and were intended to break up the inmate groups creating problems in state-run prisons.

The Department sought an opinion from the Attorney General’s Office (AGO) concerning the legality of such transfers. The informal opinion issued by the AGO found that “there is no Colorado statute that limits the classification levels of CDOC [Department] inmates placed in private prisons in other states.” The informal opinion was primarily based on the statutory definition of a private contract prison as “any private prison facility operated by a county, city and county, or private corporation located in this state” [Section 17-1-102 (7.3), C.R.S.]. (The complete informal opinion from the Attorney General’s Office can be found in Appendix B.) Through our review, we found that statutes are silent on the placement of high-custody inmates in private prisons outside of Colorado.

As part of the audit, we noted several concerns with the placement of high-custody inmates in Mississippi. One problem we identified relates to the safety and security provided by the private prison. As of November 2004, Colorado inmates in this facility were involved in two major disturbances that required emergency intervention by private prison staff and resulted in numerous injuries. One disturbance was attributable to the inadequate construction of the recreation area and lack of direct observation by security staff. The other disturbance resulted when a contractor working at the private prison opened all cell doors in a unit housing Colorado inmates. Many of the Colorado inmates in this unit were rival gang

members and began attacking one another upon release from their cells. In addition, the Monitoring Unit has questioned the adequacy of staffing levels at the private prison and investigated several instances where this facility's security staff appeared to use excessive force on Colorado inmates. In September 2004, Monitoring Unit staff inspected the unit housing Colorado inmates and reported that "staffing levels are minimal in this area for the number of offenders and the daily duties that must be carried out." The Monitoring Unit concluded that the low staffing levels resulted in security officers' being "more task-oriented and less security/safety-oriented."

Another problem we noted relates to the willingness of the company operating this prison to comply with contract provisions. This same company manages four of the five private prisons in Colorado. As we will discuss in Chapter 3, the Monitoring Unit has identified ongoing contract violations at these prisons, and inmates at one of the Colorado prisons operated by this company rioted in July 2004. The Department's After Action Report on this riot noted that a "high staff attrition rate and inexperience has contributed to lack of ability to appropriately respond to emergencies" and that the company's management "has failed to comply in a timely manner" with recommendations made by the Monitoring Unit.

A third problem we identified relates to the frequency of inspections at the Mississippi facility and the costs associated with transporting inmates and monitoring staff to the private prison. We found that the Monitoring Unit does not oversee the operations at the private prison in Mississippi as thoroughly as it does the private prisons operating in Colorado. Monitors typically visit the private prison in Mississippi monthly; monitors are required to be on-site at Colorado's private prisons weekly. We estimate that the Department will spend about \$31,000 annually in travel costs for four Monitoring Unit staff to go to Mississippi monthly.

The Department admits that housing high-custody inmates in private prisons, especially those located in other states, is not optimal. Department reports indicate that a significant shortage of high-security beds will exist between Fiscal Years 2004 and 2008. Although the General Assembly authorized the financing and construction of Colorado State Penitentiary II to alleviate this shortage, a lawsuit filed in October 2003 has delayed construction. The Colorado Court of Appeals heard oral arguments in March and issued a ruling in April in favor of the State. The lawsuit is still unresolved with appeals pending.

The Department should seek legislative clarification on the State's policy to transfer high-custody inmates to private prisons located in other states. If the Department wants to continue placing high-custody inmates in private prisons located outside of Colorado, statutory changes should be made that explicitly authorize this practice. The Department should also explore other options for housing these high-custody inmates in state-run prisons, such as requesting funding for the conversion or

expansion of existing correctional facilities. If high-custody inmates continue to be housed in other states, the Department should strengthen its monitoring process and use the remedial provisions in the contracts to enforce compliance, as discussed in Chapter 3.

Recommendation No. 6:

The Department of Corrections should work with the General Assembly to seek legislative clarification on the State's current policy of placing high-custody inmates in private prisons located in either Colorado or other states. The Department should also explore alternatives that allow these inmates to be incarcerated in state-run prisons.

Department of Corrections Response:

Agree. Implementation date: Begin working with the General Assembly in Fiscal Year 2006 with final implementation by July 2006. The Department will work with the General Assembly to seek legislative clarification on the State's policy of placing high-custody inmates in private prisons located in either Colorado or other states. The Department would prefer to house all high-custody inmates in state-run prisons. However, the Department currently faces a significant shortage of high-custody beds. This shortage will not be alleviated until the construction of Colorado State Penitentiary II (CSP II) is completed. The Department is continuously evaluating and seeking out new and innovative ways of managing this inmate population. Due to the complexity of this problem, the Department will explore alternatives by creating a working group consisting of, at a minimum, staff from the Department's Executive Office, Legal Services, Planning and Analysis, Policy Administration, Contract Review Unit, Office of Offender Services, Monitoring Unit, and the Department's legislative liaison. Staff from the Attorney General's Office will also be invited to participate. The results from this working group, after endorsement by the Executive Director, will be adopted into the most current and appropriate Departmental policies, practices, and procedures.

Earned Time

According to Section 17-22.5-405, C.R.S., the Department may deduct up to 10 days per month of earned time from an inmate's sentence if the inmate has made consistent progress in goals related to rehabilitation, work, and education. However, statutes direct that earned time may not reduce an inmate's sentence by more than 25 percent. According to contracts, private prisons are required to follow Department regulations regarding sentence computation, which require that computations be determined according to the Department's Time Computation Manual. The manual states that progress toward the goals and programs established by the Colorado Diagnostic Program accounts for 3 of the 10 days of earned time that may be granted each month. Sex offender treatment is a part of the Colorado Diagnostic Program. Inmates are eligible for a sex offender treatment program if they have less than eight years but more than two years to serve before their parole eligibility date. Sex offenders who refuse to participate or have been terminated from a sex offender treatment program due to noncompliance should have three days of earned time withheld from their monthly time computations.

During the audit, we reviewed 228 earned-time awards entered in the Department's information system from June to November 2004 for a sample of 38 private prison inmates. The inmates in our sample were coded in the most risky categories (S4 and S5) on the diagnostic Sexual Violence Scale (scale of S1 to S5, with S1 for inmates with no history or indication of sex offense behavior and S5 for inmates with past or current felony sexual offense convictions) and were in need of sex offender treatment. However, these inmates either refused treatment or were terminated from sex offender treatment programs and, thus, should have had three days of earned time per month deducted from their time computations for noncompliance. We found that private prisons did not withhold the three days of earned time for 30 of the 228 earned-time awards (13 percent) we reviewed. We provided this information to the Department and the private prisons so that corrections could be made.

In December 2004 staff from the Sex Offender Treatment and Monitoring Program (SOTMP), independent of our audit, completed an analysis of earned time awarded in October 2004 to about 2,500 sex offenders who had refused or been terminated from treatment. They found that Department and private prison staff erroneously granted more than seven days of earned time to 114 inmates during this month, 36 (32 percent) of whom were housed in private prisons. Since these 114 inmates refused to comply with their sex offender treatment programs, staff should have deducted at least three days from each inmate's earned time for the month of October. SOTMP staff have requested this analysis be performed monthly.

Earned time is deducted from an inmate's sentence, moving forward the inmate's mandatory release date and parole eligibility date. Excessive earned time can result in inmates' being released sooner than allowed by law and Department policies. We found that one inmate in our sample, who received excessive earned-time awards for the entire period we reviewed, was released about three months earlier than he should have been. This inmate did not receive any sex offender treatment while incarcerated.

The Department is responsible for ensuring that earned-time computations completed by private prisons comply with statutes and regulations. Section 17-1-203(1)(d), C.R.S., states that decisions affecting "the sentence imposed upon or the time served by an inmate, including a decision to award, deny, or forfeit earned time," cannot be delegated to a contractor. The Department has assigned this responsibility to the Monitoring Unit, which reviews monthly logs showing the cases where fewer than 10 days of earned-time have been granted to inmates in private prisons. The Monitoring Unit does not review earned-time calculations for inmates who receive the entire 10 days and, as a result, did not detect the errors we identified. Furthermore, the Monitoring Unit does not examine earned-time calculations entered into the Department's information system. Finalized earned time is based on data in this system. We also found that the Department's rules concerning the calculation of earned time for sex offenders who refuse or are terminated from treatment are unclear and are often interpreted differently by case managers. This lack of clarity potentially creates inconsistent application of earned-time calculations across the Department.

The Department is currently in the process of creating a new regulation to address some of the widespread issues and confusion surrounding earned-time computations. The Department should work to formalize this new regulation and continually educate the case managers at the private prisons on the correct procedure for calculating earned time for sex offenders. To further prevent the early release of those inmates who refuse or are terminated from sex offender treatment, the Department should establish a standard procedure for reviewing the earned time awarded to these inmates and should ensure that any errors identified are corrected in a timely manner.

In addition, the Department should evaluate the incentives and disincentives of the current earned-time system as it relates to inmates' participation in sex offender treatment. The current earned-time system, which deducts only three days of earned time each month if a sex offender refuses or is terminated from treatment, appears to be inconsistent with the General Assembly's intent for rehabilitation of sex offenders. In particular, statutes state:

- The general assembly hereby finds that the majority of persons who commit sex offenses, if incarcerated or supervised without treatment, will continue to present a danger to the public when released from incarceration and supervision. [Section 18-1.3-1001, C.R.S.]
- The general assembly hereby declares that the comprehensive evaluation, identification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the elimination of recidivism by such offenders. [Section 16-11.7-101, C.R.S.]

Under the Department's current policy of awarding three days of earned time per month to offenders agreeing to or participating in treatment, a sex offender who refused or was terminated from sex offender treatment would lose about one month of earned time per year. If the Department changed its policy to withhold all earned time to sex offenders refusing or terminating from treatment, the offender could lose as much as four months of earned time each year. This may be a stronger incentive for sex offenders to participate in treatment. As such, the Department should evaluate whether its policies should be changed to further reduce or even eliminate earned time granted to sex offenders refusing or being terminated from sex offender treatment.

Alternatively, the State could consider other options for ensuring that certain sex offenders are not released from confinement without appropriate treatment. For example, Colorado could enact legislation that would allow the State to file a petition to have a high-risk sex offender, who presents a threat to society, further assessed and considered for commitment to a mental institution following his or her completion of a criminal sentence. We identified eight other states that have civil commitment statutes for sex offenders. For example, California laws created the Sexual Offender Commitment Program (SOCP), which allows the state to commit certain sex offenders to the state mental health hospital for an initial period of two years following their release from prison. These offenders, as determined by mental health clinicians, have been diagnosed with a mental disorder that makes it likely that they will engage in a sexually predatory behavior upon release from prison. As of March 1, 2005, California had approximately 500 sexually violent offenders in its state mental hospital under this program. As another option, the General Assembly could consider strengthening mandatory sentences for high-risk sex offenders. The Department would have to assess the costs and benefits of this change in public policy.

Recommendation No. 7:

The Department of Corrections should ensure that earned-time calculations are accurate and serve as an effective incentive for motivating sex offenders to participate in treatment by:

- a. Improving the written guidance governing earned-time computations and continuing to educate private prison staff on time computation calculations and procedures.
- b. Establishing a standard procedure for routinely reviewing earned time awarded to sex offenders.
- c. Evaluating the incentives and disincentives associated with granting earned time to sex offenders refusing or being terminated from sex offender treatment.
- d. Collaborating with the Department of Human Services, Parole Board, and other state agencies to provide the General Assembly with alternatives for ensuring that sexually violent offenders, who pose a significant risk to public safety, are not released from prison without first receiving treatment.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by July 2006.

- a. The process for improving the written guidance is being addressed by the creation of a new Administrative Regulation in the 550 series that will explain the granting of earned time to inmates. The Monitoring Unit will provide ongoing training to all case managers in private prisons to fully explain the new policy.
- b. The process for reviewing earned-time awards will also be mandated in the new earned-time policy. In addition, the Monitoring Unit will continue to review the earned-time grants of private prison case managers. A new document has been created requiring private prison case managers to support their decisions for granting earned time. This new document will require the case managers to specifically justify all earned-time grants for sex offenders. Also, a new electronic process is being developed in PCDCIS (the Department's inmate information

system) that will allow supervisors to efficiently review all grants awarded by case managers.

- c. The Department will evaluate the incentives and disincentives associated with granting earned time to sex offenders refusing or being terminated from sex offender treatment. Again, this evaluation touches many areas of the Department, and a working group will be created to perform the evaluation. Members of the working group will include staff from the Department's Executive Office, Office of Offender Services, Monitoring Unit, and the Office of Clinical Services. The results of this working group, after endorsement by the Executive Director, will be adopted into the most current and appropriate Departmental policies, practices, and procedures.
- d. The Department will work in collaboration with the appropriate state agencies and communicate all ideas for any appropriate and approved sentencing and commitment alternatives to the General Assembly.

Private Prison Staff

Staffing levels maintained by private prisons are one of the primary ways to ensure the security and safety of the facility. Prisons typically employ two types of staff to operate their facilities: correctional officers and institution staff (e.g., instructors, doctors, counselors, and administrators). Private prisons require applicants to meet certain education, experience, and fitness criteria, and submit to a background check before employment can begin. We reviewed the Department's contracts with local governments and found that they are vague on the number of staff private prisons must maintain. In particular, the contracts state that private prisons are to "maintain staffing levels at the facility in sufficient numbers and rank to maintain the safety of the public, staff, and offenders, and to carry out the provisions of the contract." However, the contracts do not define what staffing levels constitute "sufficient numbers and rank" and do not provide a mechanism for the enforcement of minimum staff requirements.

As part of our audit, we reviewed inmate per staff ratios for the four male private prisons in Colorado, and compared them with ratios for similar state-run facilities. The table below shows the results of our comparison.

| Medium-Custody Prisons Inmate to Staff Ratio as of June 30, 2004¹ | |
|---|--------------|
| State-Run Prisons | Ratio |
| Arkansas Valley Correctional Center | 3.3 |
| Fremont Correctional Facility | 3.3 |
| Colorado Territorial Correctional Facility | 3.1 |
| Buena Vista Correctional Facility ² | 3.0 |
| Overall Ratio | 3.2 |
| Private Prison³ | |
| Private Prison³ | Ratio |
| Crowley County Correctional Facility | 4.2 |
| Huerfano County Correctional Facility | 4.1 |
| Kit Carson Correctional Facility | 3.7 |
| Bent County Correctional Facility | 3.6 |
| Overall Ratio | 3.9 |
| <p>Source: Office of the State Auditor's analysis of employee rosters of state-run and private prisons and average daily population.</p> <p>¹ All the facilities are designated as level III and typically house male medium-custody inmates. The ratios are calculated by dividing the number of inmates incarcerated at a facility by the number of staff employed. For example, Arkansas Valley Correctional Center incarcerates, on average, 3.3 inmates for each staff member employed.</p> <p>² The Buena Vista Correctional Complex includes both level I and level III facilities. The ratio in the table includes all staff and inmates at these facilities.</p> <p>³ The inmate to staff ratio for the Brush Correctional Facility was not included in the table because the facility was new and did not begin housing Colorado inmates until July 2004.</p> | |

The table above shows that, on average, private prisons have more inmates per staff person than state-run prisons. Overall, staffing ratios at private prisons are about 80 percent of staffing ratios at state-run prisons. The Department does not conduct such comparative staffing reviews and no standard exists for monitors to quantify the level of staff shortages at the private prisons if such shortages exist. The Department reports that monitoring staff only have their experience and knowledge of industry standards to use when evaluating staffing levels at private prisons. We also found that salaries at state prisons are about 50 percent higher than salaries at private prisons. The annual starting salary for an entry-level correctional officer is about \$35,000 at state-run facilities compared with approximately \$23,000 at private prisons.

The Monitoring Unit does not currently review or approve staffing patterns for private prisons as part of its contracts and does not have any processes in place for such a review. We surveyed nine states that contract with private prisons and found that six of them use contractual provisions to ensure that staffing expectations are met by the private prisons. For example, Texas and Oklahoma use contract language, similar to Colorado's, that requires private prisons to have sufficiently trained staff who will maintain the security, control, custody, and supervision of inmates of the facility. Although Texas and Oklahoma do not require specific staffing ratios at private prisons, their contracts do set forth the minimum staff the facility must maintain. When private facilities fail to meet minimum staffing levels, contract provisions allow for remedial actions, such as the assessment of liquidated damages, and withholding of payments equal to the salary of vacant positions. Additionally, Texas approves each private facility's staffing plan and incorporates the plan into its contracts. The approved staffing plan lists each position that must be occupied and the shift the position is required to be filled, and designates a relief factor for each position so that vacancies do not occur during vacations, training, and sick days. If a correctional officer position remains vacant for more than ninety days at one of Texas's private prisons, the contract states that the monthly contractor payment "shall be reduced by an amount equal to the base salary (including company fringe benefits) of the position for each day on which such position is vacant, starting on the 91st day from the position being vacant."

Virginia uses an approach that is similar to Texas. Virginia reported that it is rare that a "month goes by without some liquidated damages being assessed for failure to have one or more positions filled" at its private prison, as required by its contract. Virginia indicated that the vacancy rate at the private prison remains low because of its consistent monitoring and use of liquidated damages. None of the states included in our survey require minimum salaries for correctional officers employed by private prisons.

Although the Department's contracts do not explicitly list the required staffing pattern for private prisons, the Monitoring Unit has identified ongoing concerns in this area. For example, in its January 2003 monitoring report for one private prison, the Monitoring Unit noted that the facility does not appear to "have enough staff to properly operate all contracted obligations (i.e., searches, observation, etc.)." Further, following a riot at a private prison in July 2004, the Department reported that the facility was "not fully staffed" prior to the riot. Additionally, the Monitoring Unit sent a letter to all local government officials contracting with private prisons in September 2004 noting that:

The existent staffing patterns at the contracted facilities cause a considerable amount of consternation. The contract facilities are not

maintaining staffing patterns commensurate with similar size and demographically equivalent state facilities.

The Department has not taken enforcement action against any of the private prisons in which it has noted staffing shortages. The Department also has not evaluated the impact of salaries at private prisons to determine whether minimum salary requirements should be included in contracts. We believe that the lack of specificity in the contracts has contributed to the Department's lack of enforcement action. We discuss how the lack of monitoring and enforcement affects the safety of private prisons later in Chapter 3. If specific requirements on staffing levels are not added to future contracts, the Department will continue to have difficulty ensuring that private prisons are adequately staffed.

The Department negotiates new contracts for private correctional services each year, and its current contracts expire on June 30, 2005. All new contracts established by the Department should include minimum staffing requirements explicitly detailing the staffing patterns that must be maintained by each private prison. The contracts should also include the formula for calculating liquidated damages if the Department's monitors identify contract violations. Additionally, the Department should develop a standardized process to ensure that private prisons are complying with the staffing levels and enforce the requirements if private prisons are not complying.

Recommendation No. 8:

The Department of Corrections should improve its oversight of staffing levels by:

- a. Including the appropriate staffing requirements each facility must maintain in future contracts.
- b. Creating a standardized process for ensuring that private prisons are complying with staffing standards.
- c. Enforcing contractual requirements if private prisons are found to be out of compliance with staffing standards.

Department of Corrections Response:

Agree. Implementation date: July 2005.

- a. The Department is proposing an Exhibit in the proposed new contract that will require the private prisons to submit a facility staffing plan. The Department must approve the staffing plans submitted by the private prisons. The new proposed contracts will also require the private prisons to pay liquidated damages if the Department-approved staffing plan is not maintained.
- b. As mentioned in sub-part a, the Department has included an Exhibit in the proposed new contracts requiring the private facilities to provide staffing patterns for Monitoring Unit review and approval. Upon approval of the proposed contract, each monitor will be responsible for utilizing the facility staffing pattern from the contract to monitor compliance. The Contract Monitor Manual will require monitors to document deficiencies in a database to ensure compliance.
- c. Failure to meet the proposed new contractual expectations will result in liquidated damages in accordance with the terms of the new contracts (effective July 1, 2005), through the deficiency reporting process.

Employee Background Checks

Private prisons are required by law to uphold certain employment standards to ensure the safety and security of their facilities. Specifically, statute [Section 17-1-202(1)(a)(I) C.R.S.] provides that a private prison contractor:

- Shall require applicants for employment to submit a set of fingerprints to the Colorado Bureau of Investigation (CBI) for a criminal background check.
- Is prohibited from employing a person who is required to register pursuant to the provisions of the “Colorado Sex Offender Registration Act.”

Additionally, the Department’s contracts with local governments authorize the Department to “review and provide comments, prior to selection,” on the appointment of personnel for critical positions (i.e., facility warden, assistant warden, program manager, security chief, and health services administrator). We evaluated the processes used by the Monitoring Unit to ensure that private prison employees receive required criminal background checks and identified several problems.

First, we identified 4 out of about 300 current private prison employees in our sample who appeared to have questionable backgrounds when hired by the private prisons. Records indicate that these private prison employees, prior to applying for

employment at the private prisons, were convicted of crimes such as aggravated motor vehicle theft, assault, criminal mischief, and harassment. Monitoring Unit staff report that they have no contractual or statutory authority to keep applicants such as these from being hired by private prisons, even if they consider the applicants' backgrounds to be questionable.

Second, we found that controls do not exist for ensuring that criminal background checks are completed on all private prison employees. Through a case file review of 22 current private prison employees, we identified one employee who has never received a criminal background check by CBI. The Department was unaware of this employee. According to Monitoring Unit staff, the private prison employee database is not cross-referenced with background check records provided by CBI to ensure that new hires have had the necessary background checks performed.

Lastly, we found that private prisons often hire applicants and allow them to begin training and working before CBI criminal background checks are completed. This practice is contrary to the hiring standards used by the Department. Specifically, the Department does not hire, train, or allow a person to begin work at a state-run prison until the results of CBI criminal background checks are completed and reviewed.

Future contracts should be modified to clearly specify the Department's authority to prohibit private prisons from hiring applicants with questionable backgrounds. This will require the Department to develop procedures for systematically reviewing the backgrounds of prospective hires at private prisons. At a minimum, the Department's procedures should stipulate the crimes that automatically disqualify an applicant from employment at a private prison. Procedures should further set forth the types of criminal histories that can be evaluated and approved by the Monitoring Unit and the types of criminal histories that, due to their seriousness or complexity, should be referred to the background unit in the Department's Inspector General's Office. Reasons for approving the hire of individuals with criminal histories at private prisons should be clearly documented. Policies should be included as attachments in future contracts and disseminated to the private prisons for use in screening applicants.

Additionally, the Department and the private prisons need to ensure that all current private prison employees have had the proper CBI background checks to maintain the safety and security of the private facilities and to comply with state statutes. This should include the Department updating its record-keeping system and maintaining criminal background results on all subsequent new hires. The Department should also require private prisons to obtain complete CBI background checks before allowing new employees to begin training.

Recommendation No. 9:

The Department of Corrections should ensure private prisons in Colorado comply with state statutes regarding employee criminal background checks by:

- a. Updating future contracts to provide the Monitoring Unit with the authority to prohibit private prisons from hiring applicants with questionable backgrounds. This should include developing a process whereby questionable applicants are required to undergo a more detailed background investigation by the Department's Inspector General's Office.
- b. Developing a formal policy that specifies those criminal histories that disqualify applicants from employment at the private prisons and those that require a more detailed review by the Inspector General's Office. This policy should be included in future contracts and disseminated to the private prisons to be used in screening applicants.
- c. Working with the private prisons and the Colorado Bureau of Investigation to verify that all current private prison employees have had the proper background checks and are flagged for subsequent arrests.
- d. Requiring the private prisons to discontinue the current practice of allowing applicants to begin training based upon the results of criminal background checks from sources other than CBI.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by July 2006.

- a. We are currently negotiating language in the proposed contracts that will provide the Monitoring Unit with the authority to prohibit the private prisons from hiring applicants with questionable backgrounds.
- b. The Department is currently working to develop a policy specifying the criminal histories that disqualify applicants from employment at private prisons and those that require a more detailed investigation. The new policy will be incorporated in future proposed contracts and provided to the private prisons.

- c. The facilities will continue to send the fingerprint cards to CBI for background checks until such time as the Department can purchase and implement the Livescan system. A letter has been generated from the Department with input from CBI, directing each county sheriff's office to begin utilizing the Livescan machine for the purpose of electronically transmitting the fingerprint information to the CBI Identification Unit for the potential contract prison employees as well as the sub contractors' employees. Each contract facility has been issued an account number by the CBI Identification Unit to assist in the billing for this purpose. The Department will continue to track and document the result of each employee's background check for pre-employment, and upon termination.
- d. The Department will require private prisons to not allow any applicant to begin employment until written notice is received from CBI that the applicant has cleared the CBI background check.

Visitors to Private Prisons

According to contracts, private prisons in Colorado must follow the Department's regulation related to the offender visiting program. The regulation requires all prospective visitors to private facilities to complete an application form and submit it to the Monitoring Unit. The Monitoring Unit is responsible for performing background checks on all visitor applicants. Typically, an applicant will not be approved to visit a facility if he or she (1) is on active parole, probation, or other forms of conditional release for a felony adjudication; (2) has incurred a felony adjudication for which the terms of sentencing have been completed, satisfied, or discharged within the past three years; or (3) has a felony or misdemeanor warrant. In addition, an approval to visit an offender may be revoked if information becomes known that would have resulted in a denial of the visitor application.

The Department uses the National Crime Information Center (NCIC) and the Colorado Crime Information Center (CCIC) to perform criminal history name checks on visitors to correctional facilities. Unlike state-run prisons, private prisons do not have access to the NCIC and CCIC databases. As a result, Monitoring Unit staff perform all visitor background checks in addition to their normal monitoring duties. This includes performing the background checks, maintaining a database for cleared visitors, fielding phone calls from applicants, and mailing incomplete applications back to the applicants and cleared applications to the private prisons.

According to Department staff, state-run prisons typically conduct background checks on visitors at least every six months and sometimes as often as every time the

visitor enters the facility. Department staff, however, indicated that visitors to private prisons are screened less frequently. Currently the Monitoring Unit only conducts background checks on visitors to private prisons prior to their first visit. The Monitoring Unit does not run subsequent criminal history background checks on visitors unless a private prison requests the Unit to do so. We performed background checks on a sample of 37 active private prison visitors and found that 2 visitors had recent criminal convictions and were no longer eligible to visit the facilities. One of these visitors had a recent criminal mischief conviction, making her ineligible to visit for three years from the date of the conviction. Without conducting periodic background checks on approved visitors, the Monitoring Unit and the private prisons cannot ensure that approved visitors still meet the visitor eligibility requirements.

The Department reported that the number of background investigations conducted by the Monitoring Unit increased by 79 percent, from 3,685 in Fiscal Year 2002 to 6,600 in Fiscal Year 2004. The increased workload in visitor background checks in recent years has, in part, affected the Monitoring Unit staff's ability to complete other critical functions. For example, the Department reported a significant decrease in the number of formal audits completed on private prisons in the last three years and linked this decrease to the large number of visitor background checks monitoring staff were required to perform during this same time period. We also noted a decline in the number of audits and inspections conducted by the Monitoring Unit between Fiscal Years 2003 and 2004 and discuss this further in Chapter 3. As a result, the Department has requested an additional FTE for Fiscal Year 2006. This employee's primary responsibility would be to conduct visitor applications and background checks for the Monitoring Unit. According to the Department, this additional FTE would free up Monitoring Unit staff for other primary functions.

In addition to its request for an FTE, the Department should explore other ways to ensure that the visitor practices at private prisons are comparable to those at state-run prisons. This should include ensuring that subsequent background checks are conducted on approved visitors to private facilities. We examined the possibility of allowing private prisons direct access to the NCIC and CCIC databases to conduct visitor checks on-site. Providing private prisons with direct access to Colorado's criminal information databases would ensure that visitors are checked prior to entry into the secured areas of the facilities and enhance overall safety. This would also ensure continuity between the visitor screening processes at private and state-run prisons. Although providing the private prisons direct access to the NCIC and CCIC databases is technologically possible, CBI indicated that it does not provide access to these databases to any private agency, since controls are not sufficient to ensure that criminal data are not used for unauthorized, inappropriate purposes. Alternatively, the Department could work with CBI to develop an automated solution whereby a visitor database maintained at the facilities could be routed, through the

Department's system, to the CBI's internal database on a regular basis. The Department could also task Monitoring Unit staff with rechecking a sample of visitors as part of their weekly monitoring duties. This solution, although not optimal, would improve the current process used to screen visitors to private prisons.

Recommendation No. 10:

The Department of Corrections should explore options for ensuring that the visitor practices at private prisons reflect those at state-run prisons. This should include working with the Colorado Bureau of Investigation to establish a standard procedure for periodically reviewing the criminal histories of approved visitors to private prisons to ensure they continue to meet the eligibility criteria for visiting facilities. This should also include exploring automated routing to CBI internal databases through the Department's system.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by February 2006. The Colorado Bureau of Investigation (CBI) will work with the Department of Corrections (Department) to establish standard procedures in order that the NCIC and CCIC systems can be accessed for criminal history information. This information will assist the Department in its review of visitors' criminal histories to ensure they continue to meet the eligibility criteria for visiting Department facilities.

A meeting between the two agencies has occurred and both agencies agree in principle that database information regarding visitors will be provided to the Department by CBI. Written procedures for Department access to the databases is being created by Department and CBI personnel at this time.

A procedure will be implemented to conduct periodic follow-up reviews on a sample of visitors monthly by a Monitoring Unit monitor. This information will be implemented in the Contract Monitor Manual with documented results stored in a database.

Department of Public Safety Response:

Agree. Implementation date: Implemented/Ongoing. The Colorado Bureau of Investigation (CBI) will continue to work with the Department of Corrections (Department) to establish standard procedures for accessing the National Crime Information Center (NCIC) and the Colorado Crime

Information Center (CCIC) systems for criminal history information. The information that the Department can obtain from these systems will allow them to review criminal histories of any visitor to a Department facility, including private prisons in Colorado, to ensure visitors continue to meet Department eligibility criteria for visiting these facilities. It is CBI's policy to allow only law enforcement agencies access to NCIC and CCIC to prevent abuse and misuse of these databases. Since private prisons are not law enforcement agencies, CBI will not allow private prisons access to NCIC and CCIC independently.

A meeting between CBI and the Department has occurred, and both agencies agree in principle that database information regarding visitors will be provided to the Department by CBI. Written procedures for Department access to the databases is being created by Department and CBI personnel at this time.

CBI has not had any issues with the Department and supports their use of these systems.

Contract Oversight

Chapter 3

Background

As mentioned previously, Section 17-1-105(1)(f), C.R.S., gives the Department the authority to enter into contracts for the confinement and maintenance of inmates in its custody. The Department has established contracts with local governments who subcontract with private prisons for housing and program services. The contracts with local governments describe the types of services private prisons must provide, reimbursement rates, the operational and performance measures that private prisons must follow, and enforcement actions the Department can take when private prisons fail to comply with the contract. As mentioned earlier, the Department currently contracts with two Colorado cities, three Colorado counties, and one Mississippi county. Five of these six local governments have subcontracted with the same private correctional company.

As part of the audit, we evaluated the Department's oversight of the collection of restitution and child support, its monitoring of private prisons, enforcement of contract provisions, and procurement of private correctional services. We identified several areas in need of improvement and discuss each below.

Restitution and Child Support

Statutes and Department regulations require Colorado inmates to make payments on their court-ordered restitution and child support. State statutes emphasize the importance of redressing an inmate's wrongs toward victims through the payment of restitution and of noncustodial parents' meeting their child support obligations. Specifically, Section 16-18.5-106 (2), C.R.S., states:

At a minimum, the executive director shall order that twenty percent of all deposits into an inmate's bank account, including deposits for inmate pay shall be deducted and paid toward any outstanding order from a criminal case or for child support. If an inmate owes money on more than one order from a criminal case or for child support, the executive director may equitably apportion payments among the outstanding obligations.

According to a Department regulation, state-run and private prisons are required to withhold a minimum of 20 percent of all deposits into inmates' bank accounts for court-ordered restitution and/or child support payments. If both restitution and child support are owed, 10 percent must be paid toward restitution and 10 percent toward child support. In general, contracts require private prisons to comply with the Department's regulation on inmate restitution and child support withholding.

As part of our March 2003 audit of Inmate Restitution and Child Support, we reviewed the processes used by private prisons to deduct and transmit both restitution and child support payments to the appropriate destinations. Our 2003 audit found that one private prison was not properly withholding restitution and child support payments, and some were not transmitting child support payments to the appropriate state agency within the statutorily required time frame. The 2003 audit report recommended that the Department's Monitoring Unit periodically verify that private prisons are accurately deducting and submitting all required child support and restitution payments.

In our current audit, we identified one private prison housing approximately 120 Colorado inmates that does not deduct any payments for restitution and child support. We also found that the contract between the Department and the local government where this prison is located does not require the private prison to withhold inmate restitution and child support. The Department reports that it will include this regulation in future contracts with this private prison and ensure that the appropriate restitution and child support payments are being withheld.

We also reviewed a sample of 72 private prison inmates' bank accounts at the four private prisons housing Colorado inmates in Fiscal Year 2004 to assess whether problems identified in the 2003 audit had been corrected, and we noted some areas still in need of improvement. In particular, we found that private prisons do not always deduct payments of restitution and child support, as required by their contracts. Of the 831 inmate bank deposits we reviewed, we identified 129 deposits (16 percent) where required child support payments were not deducted and 113 deposits (14 percent) where required restitution payments were not deducted. The Department's Business Office identified similar problems in its recent audits.

We also noted problems with the timeliness of child support payments submitted by the private prisons to the Family Support Registry (FSR). Section 26-13-122.5 (3)(g)(II), C.R.S., requires child support payments to be forwarded to the FSR "within ten calendar days after the date of each deduction and withholding." Private prisons send all child support payments owed by inmates at its facility to the FSR. We reviewed 25 monthly payments made by five private prisons for the months of April to September 2004. We found that 11 payments (44 percent) were not

submitted within the required time frames. Nearly all of the payments were at least one week late.

The Department has made some efforts to better ensure that private prisons are properly deducting and submitting restitution and child support payments. For example, the Department's Business Office recently performed audits of two private prisons' processes for deducting restitution and child support payments. In addition, Monitoring Unit staff typically review six inmate accounts at each facility on a monthly basis to assess whether private prisons are properly deducting and submitting restitution payments. However, we found that the monthly reviews performed by Monitoring Unit staff from March 2003 to October 2004 did not identify the same types of problems with restitution and child support that we did. These staff are primarily correctional specialists and have not received adequate training to conduct such financial reviews. Furthermore, Monitoring Unit staff are not currently reviewing the timeliness of child support payments made to the FSR by the private prisons.

We believe that the Business Office, because of its financial expertise and the qualifications of its staff, may be better equipped for auditing and monitoring restitution and child support payments and that the Department should consider assigning the Office this role. The Department should also incorporate its regulation governing inmate restitution and child support withholdings in all current and future private prison contracts. The Department also reports that requiring the private prisons to utilize its inmate banking system would increase the accuracy and efficiency of the withholding and payment of restitution and child support. We agree with the Department's assessment and believe that future contracts should require the private prisons to utilize the Department's information system for all inmate banking functions. Lastly, Department staff should provide training to the private prisons on the proper procedures for withholding and submitting restitution and child support payments until future contracts are amended and the private prisons begin utilizing the Department's information system.

Recommendation No. 11:

The Department of Corrections should enhance its oversight of restitution and child support payments deducted and submitted by private prisons. This should include:

- a. Considering assigning the Department's Business Office the responsibility of performing all audits and monitoring functions related to restitution and child support payments for inmates in private prisons.
- b. Evaluating the timeliness of child support payments as part of its audits.

- c. Ensuring all contracts with private prisons include provisions requiring compliance with statutes and Department regulations related to the deduction and submission of restitution and child support payments.
- d. Amending future contracts to require the private prisons to utilize the Department's information system for all inmate banking functions.
- e. Providing technical assistance to private prisons that are continually failing to comply with requirements related to restitution and child support payments until future contracts can be amended and the private prisons begin using the Department's information system for inmate banking.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by July 2006/Ongoing.

- a. Beginning with Fiscal Year 2004, the Department's internal auditor has been performing audits of inmate banking transactions including child support and restitution payments for at least two private prisons each fiscal year. We agree that the internal auditor and business office staff are better qualified to perform audits and monitoring functions related to restitution and child support payments. Audits and monitoring duties will be handled by the Internal Auditing Office.
- b. The audits and monitoring functions performed by the Department's internal auditor and business office staff will include evaluating timeliness of child support payments. The Department would like to note that as of January 2005, private prison facilities began submitting child support withholding to the Department Inmate Bank for payment to the Family Support Registry. The Department Inmate Bank believes this will improve accuracy and timeliness. In addition, a computer program change is being implemented in Fiscal Year 2005 by Child Support Enforcement and the Department to improve processing and posting of all child support payments including inmates in private prisons. The Department will submit data files to Child Support Enforcement for electronic posting of collections.
- c. Future proposed contracts will include provisions requiring compliance with Administrative Regulations on Inmate Banking and withholdings for Restitution and Child Support. The Department's Administrative Regulations follow state statutes.

- d. The Department is negotiating an amendment to the proposed contract language to require private prisons to utilize the Department Inmate Banking system for Department offenders. The Department believes that utilization of its inmate banking system by the private prisons will increase the accuracy and efficiency of the withholding and payment of restitution and child support. The Department is also submitting contract changes that will require private prisons to use the Department Canteen Services and Colorado Inmate Phone System (CIPS). The Department believes these changes will provide consistent and better pricing of goods and services to inmates in private prisons. The proposed contract changes are subject to contract negotiations with the counties and private prisons. The Department will pursue the recommended changes.
- e. It will be required in the proposed contract to have the private prisons utilize the Department's Business Office to provide assistance to the private prisons related to restitution and child support payments.

Monitoring

National studies on contracting for private correctional services stress the importance of monitoring contract compliance and being able to demonstrate noncompliance if it occurs. Effectively monitoring contract compliance at private prisons requires the development of a systematic audit process, which includes frequent audits and inspections, audit coverage of all contract areas, documentation and notification of audit results, and a process to ensure that documented areas of noncompliance are corrected in a timely manner. In Colorado, the Department's Monitoring Unit is responsible for carrying out all of these duties. Staff from the Monitoring Unit typically visit private prisons on a weekly basis and perform periodic security, food service, laundry, library, mental health, medical, and other specialized audits. The Monitoring Unit is responsible for identifying contract violations and ensuring that documented violations are corrected by the private prisons in a timely manner. The Monitoring Unit notifies Department management of continued deficiencies at the private prisons and recommends enforcement action where appropriate.

We evaluated the Department's monitoring process, which included accompanying staff on weekly inspections and security audits, and interviewing inmates and local government, private prison, and Department staff. We also analyzed the inspection and audit reports completed by the Monitoring Unit between Calendar Years 2002 and 2004 (through October 2004). We evaluated 294 (67 percent) of the 442 reports provided to us by the Monitoring Unit, which included 241 weekly inspections, 18 security audits, 8 mental health reports, 8 food service reviews, 6 public health food

service inspections (conducted by the Colorado Department of Public Health and Environment), 6 Kosher food service reviews, 4 Emergency Activation Drills, 2 reports reviewing uses of force, and 1 report reviewing urinalysis results.

Overall, we found the Department's audit process to be inadequate and ineffective in identifying and documenting areas of noncompliance at the private prisons. We identified several specific concerns with the Department's oversight of private prisons, as described below.

Frequency of Monitoring Activities

The Monitoring Unit ensures contract compliance two primary ways: on-site monitoring visits to the private prisons and comprehensive, targeted audits. For on-site visits, Monitoring Unit staff are expected to conduct weekly visits to each prison, except for the Tallahatchie County Correctional Facility in Mississippi, where visits occur monthly. We identified three problems with the frequency of these weekly visits, including:

- **Missed visits.** We reviewed the private prisons' entry logs for Fiscal Year 2004 and found that monitors did not consistently visit their assigned private prisons on a weekly basis. In particular, we found that monitoring staff did not perform 33 of the 212 required weekly visits (16 percent) for four private prisons during this year.
- **Visit duration.** The Monitoring Unit has established a goal that staff should spend approximately 20 hours per week at their assigned private prison. However, interviews with monitoring and private prison staff and our review of the private prisons' entry logs indicate that staff are typically on-site for less than 10 hours per week. We found that 5 of the 9 states we surveyed require their monitors to spend more time on-site at the private prisons, ranging between 30 and 40 hours per week.
- **Monitoring reports.** Monitoring staff are also required to complete a report for each weekly visit to a facility. For the 179 weekly visits performed in Fiscal Year 2004, staff only completed reports for 113 visits (63 percent).

The Monitoring Unit performs more comprehensive reviews of specific areas of private prison operations, such as assessing the overall security of a prison or conducting Emergency Activation Drills. Staff are expected to conduct at least one security audit and one Emergency Activation Drill at each private prison per year. We found that the Monitoring Unit has not conducted these reviews as frequently as it has targeted. As the table below shows, the Monitoring Unit did not meet these

targets in Fiscal Year 2004, and in fact, the number of targeted reviews declined from the prior year.

| Security Audits and Emergency Activation Drills Completed by the Monitoring Unit in Fiscal Years 2003 and 2004 | | | | |
|---|-------------------------|---------------|-------------------------|---------------|
| Type of Audit/Review | Fiscal Year 2003 | | Fiscal Year 2004 | |
| | Target | Actual | Target | Actual |
| Security | 4 | 5 | 4 | 1 |
| Emergency Activation Drills | 4 | 3 | 4 | 1 |

Source: Office of the State Auditor's analysis of the Monitoring Unit's security audits and emergency activation drills performed at four private prisons housing Colorado inmates for the entirety of Fiscal Years 2003 and 2004.

As the table shows, the Monitoring Unit exceeded its target for security audits in Fiscal Year 2003 but performed only one of the four targeted audits in Fiscal Year 2004. Further, the Monitoring Unit did not meet its targets for Emergency Activation Drills in either year, with a decline in drills from Fiscal Years 2003 to 2004. Of particular concern, we noted that the Monitoring Unit had never conducted an Emergency Activation Drill at the one private prison that experienced a riot in July 2004 and only produced monitoring reports for one-third of the targeted weekly inspections (18) at this facility during Fiscal Year 2004.

Quality of Monitoring

According to contracts and Section 17-1-202(1)(f), C.R.S., private prisons must provide "a range of dental, medical, and psychological services and diet, education, and work programs at least equal to those services and programs provided by the Department of Corrections in comparable state correctional facilities." To ensure that private prisons are providing services similar to those at comparable state facilities, the Department must conduct systematic reviews of all areas of a prison's operations.

Although security procedures and practices at the private prisons are important for ensuring public safety, services such as mental health counseling and educational programs assist inmates in becoming productive members of society upon their release and must also be monitored for quality and frequency. Research also shows that providing inmates with appropriate and quality educational programs lowers

recidivism, thereby reducing a state's prison costs. We found that Monitoring Unit staff do not routinely monitor the services and programs provided by the private prisons and that the audit tools currently used by monitors are not sufficient to produce quality results capable of demonstrating contract violations and comparisons of service levels at private and state-run prisons.

One area of concern we identified is that the Monitoring Unit does not routinely audit the medical and mental health services offered at the private prisons. As discussed in Chapter 1, our audit identified several medical service contract violations at private prisons of which the Department was unaware. We also found that the Department was not aware that the mental health provider at one private prison was not meeting with seriously mentally ill inmates, as required by contract.

Additionally, we found that the Monitoring Unit has not developed standardized audit tools that can be used by monitors to perform their weekly inspections or assist monitors in reviewing the programs and services offered by the private prisons. Instead, monitors rely on their knowledge and professional experience to conduct their reviews and inspections. As such, the weekly inspection reports typically do not contain measurable results or data that can be used to evaluate contract compliance or compare the service levels at private and state-run prisons. The results from the reports we reviewed were often vague and of limited value in assessing contract compliance at private prisons. For example, one report we reviewed stated, "Staff morale is positive. They [the private prison] continue to have a real emphasis on staff fitness." Although staff morale may contribute to the overall operations of the private prisons, such statements do not provide an objective basis for evaluating contract compliance.

Documentation of Results

Audit and inspection results should be well documented when areas of noncompliance are uncovered. This is important to correct problems and assess penalties. We found that the Monitoring Unit's reports often do not clearly communicate whether contract violations were identified; if problems were noted, the reports do not contain information on which contract provision or regulation was violated, the number of violations identified, or the frequency or recurrence of the violation. Additionally, we identified several weekly inspection reports and security audits that appeared to copy the findings from prior inspection reports, changing only the date and time of the audit work performed. Department management does not review these reports, so management was not aware that the reports contained errors. The Department stated that it is taking steps to address the quality and content of reports. Management staff will begin conducting quality reviews of Monitoring Unit reports, and private prison monitors will be required to include more specific and quantitative data in their weekly inspection reports.

Improvements

The Department needs to improve its practices for monitoring private prisons. The Department should establish specific, written priorities for the Monitoring Unit, develop an audit schedule specifying audit frequency and allowing time for routine follow-ups, and create standardized audit tools that can be used by staff to measure compliance with all areas of the contract on a regular basis. The Department should also develop standard policies and procedures for documenting audit work, such as the type and amount of evidence needed to support a contract violation (e.g., copies of records, photographs). The Department should implement a quality review process to ensure that monitoring reports and audits are thorough and accurate, and provide the required detail to support contract violations if necessary. Finally, the Department should establish a record retention policy and maintain audit work and supporting documentation accordingly.

Recommendation No. 12:

The Department of Corrections should improve its processes for monitoring the operations of private prisons by:

- a. Establishing schedules for its audits and inspections, and periodically assessing whether staff are meeting these targets.
- b. Enhancing processes used to test compliance with contract requirements. This should include developing standardized tools that can be used by staff to measure compliance with all areas of the contract on a regular basis.
- c. Developing a quality review program to ensure that the monitoring records and reports accurately and thoroughly document inspection results.
- d. Establishing policies and procedures related to documenting contract compliance issues and the retention of monitoring records.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by January 2006.

- a. The process for ensuring that the contracted facilities are audited and inspected on a regularly scheduled basis will be to include these functions on the Unit's annual event calendar as well as reporting these goals in the Departments' Strategic Plan. This will allow for self-monitoring as well as external review of Unit objectives. Inclusion on the Department's "Accreditation Unit" master schedule will also be another measure to allow for an unbiased monitoring of the processes.
- b. The Unit chief has responded to this by networking with peers in other states and subsequently adopting a comprehensive monitor manual which will include specific reporting formats based on contractual mandates and time frames to document findings. The process includes a procedure to address, document and track any noted deficiencies and the contractor's written responses to these queries. Resolution of outstanding issues will be determined by the Chief of the Monitoring Unit.
- c. We are working with the Department's Business Technologies Division to implement a Web-based computer application. The advantage of this initiative is to allow users, through an Internet Web browser, to create work place connectivity to the centralized data repository. The monitor can enter deficiencies as "tickets" that need to be addressed. The facility could then run reports listing what issues have been noted and need to be addressed. When compliance is achieved, the "ticket" would be closed. The application provides time lines at every step of the process and can even trigger automatic e-mail, electronic pages, etc., to help the process stay on track. Supervisory staff will be able to use the automated reports to ensure that issues are being properly managed to resolution.

Automatic reports could also be generated to inform the County Commissioners/City Manager of the noted deficiencies and the corrective action plans formulated by the facility. Monitors would be able to run a report of outstanding issues for a facility to use as a work plan. This would be especially useful for a monitor who is filling in for an absent co-worker or someone who is unfamiliar with the facility, but needs to quickly get a snapshot of the facility's issues.

- d. The system mentioned above in sub-parts b and c, should be able to provide provision for internal/external review as well as a historical record of actions. The format being explored would be presented in an electronic form to be filled out by a monitor or another subject matter expert touring or examining programs or systems. The information would be captured electronically and be readily available for review and/or comparison. The criteria for compliance would be based on federal law, state statute, departmental policy, contractual requirements, and American Correctional Association (ACA) standards.

Monitoring Unit Staffing

As discussed above, Monitoring Unit staff are not currently monitoring each private prison at least 20 hours per week and performing at least one security audit and one Emergency Activation Drill at each prison annually in accordance with targets. According to Department management, the current number of staff assigned to the Monitoring Unit are not sufficient to meet these targets and accomplish all of the Unit's other responsibilities. We examined the Department's use of the 15 full-time equivalents (FTE) appropriated by the General Assembly and question whether the Department is using these 15 FTE as the General Assembly intended.

We evaluated the Monitoring Unit's staffing and found that of the 15 FTE specifically allocated to the Monitoring Unit in the Fiscal Year 2005 Long Bill:

- 10 perform Monitoring Unit-related functions, including site visits, clinical inspections, and security audits.
- 4 are assigned to other units within the Department.
- 1 critical position (Operations Manager, which oversees private prison contracts and corrective action plans) has remained vacant for about three years.

Only 4 of the 15 FTE appropriated by the General Assembly are directly monitoring the six private prisons used to house Colorado inmates. These four FTE oversee, on average, 700 inmates each. Two of these four FTE oversee one private prison each and the remaining two FTE oversee two private prisons each.

The General Assembly has acknowledged the importance of monitoring private prisons by consistently increasing the appropriated funds and FTE to the Monitoring Unit. Between Fiscal Years 2003 and 2005, the General Assembly increased the

Monitoring Unit's appropriation from approximately \$800,000 to \$1.1 million, an increase close to 40 percent. During this same time, the General Assembly increased the Monitoring Unit's appropriated FTE from 13.5 to 15.0. The Department is requesting about \$1.2 million and 17 full-time equivalents (FTE) for Fiscal Year 2006. We question the Department's use of these appropriated funds and FTE.

This audit points out substantial problems with the Department's monitoring of private prisons. To address these issues, the Department needs to reevaluate and reengineer the Monitoring Unit's functions and processes, ensuring that appropriate staff are assigned and utilized to accomplish those functions. This should include conducting a comprehensive review of positions and job duties to determine the types and numbers of staff required to accomplish the Monitoring Unit's performance targets and assigned responsibilities, and reporting the results to the Joint Budget Committee. The Department should also work with the Joint Budget Committee to address the four monitoring unit FTE currently assigned to other units. FTE appropriated to the Monitoring Unit should be assigned to the Unit; FTE assigned to other units should be appropriated to those units.

Recommendation No. 13:

The Department of Corrections should reevaluate and reengineer the functions and processes of the Monitoring Unit, specifically reviewing the positions and job duties required to accomplish the Unit's responsibilities effectively, and report the results to the Joint Budget Committee. The Department should ensure that the FTE appropriated to the Monitoring Unit are assigned to directly accomplish the Unit's responsibilities for overseeing private prisons.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by November 2005. The Department has begun the process of evaluating the allocated positions assigned to the Monitoring Unit. The evaluation will include a review of the positions and job duties required to accomplish the Unit's mission. Current positions not performing direct supervision of the Private Prison Contracts will be moved under appropriate organizational units; positions vacated will be back filled to perform primarily monitoring duties. The results of the evaluation will be provided to the Joint Budget Committee during the Fiscal Year 2007 budget process.

The Department notes that two of the positions discussed in the audit report were requested and approved in decision items during Fiscal Years 2000 and 2005.

Enforcement

The overall goal of contract compliance monitoring is to ensure that noted deficiencies are corrected in a timely manner and that the contractor consistently complies with the contract. Remedial provisions contained in contracts provide one way to enforce compliance, should continued deficiencies be noted by Monitoring Unit staff. According to contracts between the Department and local governments, the Department can typically use the following remedial actions if private prisons substantially fail to satisfy or perform duties and obligations specified in the contracts:

- Withhold payments for those services or obligations not provided or if performed have no value to the State.
- Request the removal of private prison employees who have been determined to be negligent, incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable.
- Deny payment due to the private prison's failure to fill critical positions (i.e., facility warden, assistant warden, program manager, security chief, and health services administrator).
- Terminate the contract if the public is threatened.

It is the responsibility of the Department to identify areas of continued noncompliance and enforce the terms of the contract through these agreed-upon remedial provisions. In recent years the Department has identified a number of ongoing contract violations at private prisons. For example, the Monitoring Unit provided our office with a list of 21 issues that it considers to be significant and ongoing violations of the contracts at the private prisons. Examples of these ongoing contract violations include private prisons' consistently failing to:

- Complete a proper investigation and mandatory independent review of a matter prior to implementing Colorado Code of Penal Discipline (COPD) charges against an inmate.
- Follow the Department's six-week master menu (as discussed in Chapter 1).

- Maintain the recommended percentage of Emergency Response Team members needed to respond to inmate disturbances.
- Follow the Department's suicide prevention policy.
- Comply with Sex Offender registration guidelines.
- Maintain sufficient staffing levels (as discussed in Chapter 2).

Continued noncompliance by the private prisons can threaten public safety, as evidenced by the riot that occurred at one facility in July 2004. Noncompliance can also lead to the unequal treatment of Colorado inmates, which could result in litigation against the Department. We reviewed the contracts between the Department, local governments, and private prisons, and the processes used by the Department to enforce the terms and conditions of the contracts. We found that although the Department has documented continued contract violations on the part of the private prisons, it has failed to take action to enforce the terms of the contracts.

First, the Department does not consistently notify the local governments and private prisons in writing of contract violations identified through its monitoring efforts. In particular, of the 107 reports we reviewed that identified contract violations, the majority (close to 70 percent) were not provided to the local governments and private prisons in writing. The Department cannot typically pursue enforcement actions (e.g., withholding payments) upon identifying a substantial failure to satisfy the terms of the contract until it first provides "the contractor with a notice of the deficiency and a reasonable opportunity to cure of no more than 20 days." As mentioned in the Overview, the Department contracts with the local governments and must first notify them of deficiencies before enforcement actions can be taken.

Second, the Department does not consistently require the private prisons to submit corrective action plans when deficiencies are identified. Contracts require the private prisons, through the local governments, to provide a corrective action plan (plan) to the Monitoring Unit within 10 working days of receiving written notification of deficiencies. Further, contracts state that the Monitoring Unit is to evaluate the plan and either approve or deny it within five working days upon receipt. Of the 32 reports that noted contract violations that were provided to the private prisons, the majority (23 or close to 75 percent) did not have an attached plan. Additionally, for those private prisons that did submit a plan, we found no evidence that the Monitoring Unit reviewed those plans or that it informed the private prisons whether the plans sufficiently addressed the recommendations. Private prison staff told us that if they receive no feedback from the Monitoring Unit, they consider their corrective action plan approved.

Third, the Department does not ensure that private prisons have corrected deficiencies in a timely manner. We found no written documentation showing that the Monitoring Unit performed follow-up reviews to determine whether deficiencies were addressed. Monitoring staff acknowledged that because of their heavy workloads and the need to deal with daily emergencies occurring at the private prisons, follow-up reviews are not conducted.

Improvements

The Department needs a comprehensive solution to address enforcement problems at private prisons. As previously noted, the Department's current contracts expire on June 30, 2005. In the short term, the Department should immediately begin using the remedial provisions in its contracts to better ensure that serious and ongoing deficiencies identified in the Monitoring Unit's inspections and audits are corrected by the private prisons in a timely manner. The Department will also need to consistently notify the local governments and private prisons of deficiencies within the contractual time frames and implement a systematic process of collecting, reviewing, and notifying the local governments and private prisons of the sufficiency of corrective action plans. As discussed in prior sections, the Department must also develop a follow-up process to ensure that deficiencies are corrected and that target dates established in corrective action plans submitted by private prisons are achieved.

As a long-term solution, the Department needs to strengthen the enforcement provisions contained in all new contracts by making them more prescriptive and by explicitly detailing the formula for calculating the withholdings. The Department reports that the remedial provisions currently contained in the contracts are too vague to be enforced. Department management believes that a clear and equitable system needs to be developed to withhold monies for contract violations equal to the value of the service that should have been provided. We reviewed the remedial provisions currently available in the Department's contracts, and although we believe that the Department should have used the current provisions to enforce contract compliance at the private prisons, we agree that future contracts could be improved.

In making improvements to its contracts, the Department should consider effective practices for enforcing contracts used in other states. For example, Oklahoma's contracts contain a list of values for different contract areas and a specific calculation for determining liquidated damages when a violation in any area occurs. The calculation is weighted so that violations of critical areas, as determined by Oklahoma, result in higher penalties. Oklahoma's contracts also contain a provision that increases the amount of liquidated damages by a factor of two "in the event the contractor [private prison] has received notice of a breach other than staffing vacancies within the last six months and has repeated the same breach or if contractor is committing a breach that poses a real, serious and imminent danger to

the staff, public and/or inmates.” Texas’s contracts include a spreadsheet that lists the standards to be followed by the private prisons, acceptable and unacceptable levels of compliance, and the payment adjustment calculation to be followed if monitors find problems.

Recommendation No. 14:

The Department of Corrections should improve enforcement of contracts for private correctional services by:

- a. Developing a formal process for applying the remedial provisions currently contained in private prison contracts. This should be used in conjunction with a new audit program that adequately documents continued deficiencies and notifies the contractor of them in a timely manner, as indicated in Recommendation No. 12.
- b. Strengthening the enforcement mechanisms in future contracts for private correctional services.

Department of Corrections Response:

Agree. Implementation date: In progress with full implementation by July 2005.

- a. The Department has defined in the proposed contract a more formalized and robust process to correct contractual deficiencies. The county commissioners, city administrator, or other appropriate entity is sent a “Deficiency Letter,” citing the issue(s) constituting contractual non-compliance. The letter includes expectations of what is needed to achieve compliance and potential consequences for failure to do so. In addition to the county, copies are sent to Department executive staff, the facility warden, the county’s contract monitor, and corporate executive staff.

Contractual timelines are included and a corrective action plan is required to be sent to the Chief of the Monitoring Unit. The facility monitor verifies that the action plan has been implemented, completed, and the deficiency rectified. Failure to adequately meet the terms of the contract may result in applying penalties provided for in the contract.

As noted in the response to Recommendation 12, a Web-based deficiency log and tracking process is being explored to allow monitors to more

efficiently and accurately track deficiencies. The proposed application is capable of more than just tracking timelines and ensuring contractual mandates are within specifications. Given the available resources of the Unit, this electronic process is essential to ensure the success of the Monitoring Unit's mission.

- b. The proposed 2006 contract template has been significantly revised and increased in scope. There is an expansion of the liquidated damages provisions to include staffing patterns, and a narrowing of the time a position is allowed to be vacant before penalties are applied. The "remedies" clause of the contract has been expanded to delineate a broader spectrum of consequences than in previous contracts.

Procurement

The General Assembly has recognized the benefits of creating a competitive private prisons market in Colorado. Section 17-1-202.5(1), C.R.S., allows the Department to "request competitive proposals from private prison providers three years before desired occupancy" of a facility if the General Assembly determines that monies credited to the Capital Construction Fund are not sufficient to design and construct a correctional facility. Section 17-1-202.5(2)(b), C.R.S., also states that "the Department shall, to the extent possible, also take steps to provide a competitive market environment for prospective contractors and to avoid decreased competition and the creation of a monopoly in the market."

Correctional experts state that the use of a competitive bidding process is highly beneficial when a state contracts for correctional services. Furthermore, a state seeking such correctional services should develop and maintain a list of potential bidders and provide ample time for the development of responses to the request for proposal. A competitive bidding process should help to increase the number of providers in a particular service area, ensure that the best services are received for the reimbursement rate, and prevent a company with a monopoly from gaining an unfair advantage.

As the result of an acquisition of a private prison in 2002, one company now owns and operates all four male, medium-security prisons in Colorado, effectively creating a monopoly in this market. This one company now houses about 40 percent of the 7,000 Colorado male, medium-custody inmates.

We reviewed the processes used by the Department to procure private correctional services and believe that the Department can enhance future compliance with

contract provisions by creating a competitive environment in the private prisons market in Colorado. The Department has recently used a competitive bidding process for two pre-parole/pre-release facilities. Through the competitive bidding process, the Department received qualified bids and executed contracts with two different providers. However, the Department has not used such a process for private prison providers that incarcerate male, medium-custody inmates. As discussed earlier, this is the market where a monopoly has developed in Colorado and where compliance issues have arisen.

It would be beneficial for the Department to release bids for this particular market so it can determine if other private companies are willing and capable of housing these inmates in the future. There are currently no other private providers in the State that own facilities and have bed space available to house Colorado's male, medium-custody inmates. The Department reports that it would take approximately two to three years for a company to plan, design, and build a new prison. Furthermore, the Department's current prison projections indicate that additional male, medium-custody beds will not be required until 2010. We believe that the Department should begin planning for the future procurement of these additional beds now. As such, the Department should evaluate several options for acquiring these additional beds, to include:

- Constructing state prisons with capital construction dollars (if available) and either operating the prison or contracting with a private company for the management of the facility.
- Allowing a private company to construct a prison on either private or state-owned land and then leasing the private prison. The Department would operate the facility with state employees with this option.
- Procuring bed space from private companies through a competitive bidding process. As part of the competitive bidding process, the Department should select vendors based on a review of several factors, such as the vendor's experience and past performance in similar ventures, prison design and construction details, the vendor's financial condition, and the location of the prison (i.e., location can affect transportation and monitoring costs).

As part of this evaluation, the Department should analyze the costs and benefits of each option to determine the alternative that best meets the State's needs. The Department should also evaluate the impacts on public safety for each alternative and compare those results against potential cost savings. Public safety should be one of the primary considerations in the Department's future procurement practices. The Department should report the results to the Joint Budget Committee.

Recommendation No. 15:

The Department of Corrections should evaluate alternatives for procuring future private correctional services, including (1) constructing state prisons, (2) leasing private prisons but operating them with state employees, or (3) using a competitive bidding process to procure private bed space and services. The Department should share the results of the evaluation with the Joint Budget Committee for future budgetary decisions.

Department of Corrections Response:

Agree. Implementation date: Begin working with the Joint Budget Committee in Fiscal Year 2006, with full implementation by July 2006. The Department will continue working with the Joint Budget Committee in addressing Department bed needs which includes constructing and or remodeling new state-owned and privately operated facilities. National and local trends should be studied and interpreted in order to keep all vested parties informed of population and related incarceration growth rates.

Management

As demonstrated throughout our report, we found that the Department's oversight of private prisons could be improved. Noted violations by the private prisons are not being addressed by the Department and have been allowed to continue unresolved. Furthermore, the Department has not instituted a systematic follow-up process to ensure that its recommendations are followed by the private prisons or that documented violations are corrected. To date, the Department has not used the enforcement mechanisms available in its contracts to ensure compliance by the private prisons. As noted in Chapter 1, we identified contract violations at the private prisons we visited of which the Department was unaware; we also noted that the Department's audit process and monitoring tools would not have identified these violations. Additionally, we found that Monitoring Unit staff spend limited time at the private prisons compared with targets due to other obligations and assignments, and the Department has never evaluated the type and number of staff needed by the Monitoring Unit to meet its targets. Furthermore, the number of audits and inspections completed by the Monitoring Unit does not meet targets. Finally, the Department's contracts for private correctional services lack the specificity needed to effectively monitor and enforce many key operational areas, such as staffing levels.

In our discussions with the Department, we found that management was not fully aware of the problems identified in our audit or the contract violations occurring at the private prisons, as identified by the Monitoring Unit. As such, we believe that the Department's executive management staff need to take a more active role in the oversight of private prisons. The Department's executive management staff should take steps to correct the problems identified in our audit, to include:

- Prioritizing the goals and responsibilities of the Monitoring Unit to increase the amount of time monitors spend on-site at private prisons.
- Determining the type and number of staff needed by the Monitoring Unit to meet its targets and to effectively monitor private prisons.
- Reviewing the performance of the Monitoring Unit against established goals to ensure that all areas of private prisons are being routinely monitored and audited.
- Establishing a formalized process by which serious and continued contract violations are brought to the attention of senior management staff.
- Approving enforcement actions against private prisons that repeatedly violate contract provisions.
- Developing contracts that clearly stipulate minimum staffing levels to be maintained by the private prisons and that include strengthened enforcement provisions.
- Establishing a competitive procurement process for private correctional services.

Failure of the Department to make immediate changes in its oversight of private prisons could hamper the rehabilitation of state inmates, result in the unequal treatment of inmates housed at private and state-run prisons, and allow contract violations to continue unchecked.

Recommendation No. 16:

The Department of Corrections should work in collaboration with local governments, private prisons, and other state agencies to ensure that private prisons are adequately monitored and that contract violations are addressed as discussed above. The Department's executive management staff should also take immediate steps to ensure that the oversight of private prisons is improved. This should include ensuring that the recommendations contained in our audit are implemented in a timely manner.

Department of Corrections Response:

Agree. Implementation date: Implemented/Ongoing. As noted in previous responses, the Department has taken immediate steps to both implement the recommendations contained in this audit and to ensure that private prisons are adequately monitored and that contract violations are being addressed. The revisions in the proposed contracts between the Department and the local governments are one of the most significant changes currently being pursued. The proposed new contracts will include provisions for increased monitoring of private prison utilization of Department information systems, inmate phone systems, Colorado Correctional Industries, and Canteen Services, and enforcement of liquidated damages should deficiencies remain uncorrected. The Monitoring Unit currently reports directly to Executive-level staff. The direct line of communications will ensure that serious and ongoing problems at the private prisons are addressed at the highest levels of the Department. The Department has also begun the process of implementing a deficiency notice process. The process will be a requirement in the new proposed contracts (effective July 1, 2005). The Department and Monitoring Unit will continue enforcing the proposed contractual requirements with the newly defined liquidated damages clauses. All recommendations from the audit will be addressed and tracked by the Monitoring Unit.

Appendix A

The following table shows the security levels used by the Department of Corrections to classify its male correctional facilities and details the statutorily required physical security requirements for each. The table also shows the typical inmate classification levels suitable for each level facility and the operational capacity as of December 31, 2004 for private and state-run prisons.

| Security Levels of Male Colorado Prisons Operated by and under Contract by the Department as of December 31, 2004 | | | | |
|--|---|---|---|--|
| Correctional Facility Security Levels | Physical Security Requirements | Inmate Classification Levels | Capacity of State-Run Prison¹ | Capacity of Private Prisons¹ |
| Level I | Designated boundaries, but perimeter fence not needed | Minimum | 1,500 (100%) | 0 (0%) |
| Level II | Single or Double Perimeter Fencing Perimeter Periodically Patrolled | Minimum Minimum Restrictive | 1,500 (100%) | 0 (0%) |
| Level III | Wall or Double Perimeter Fencing with Razor Wire and Detection Devices Towers Perimeter Continuously Patrolled | Minimum Minimum Restrictive Medium Appropriately Designated Close ² | 4,600 (57%) | 3,500 (43%) |
| Level IV | Wall or Double Perimeter Fencing with Razor Wire and Detection Devices Towers Perimeter Continuously Patrolled | Minimum Minimum Restrictive Medium Close | 1,300 (100%) | 0 (0%) |
| Level V | Double Perimeter Fencing with Razor Wire and Detection Devices or Equivalent Security Architecture Towers or Stun-lethal Fencing Controlled Sally Ports Perimeter Continuously Patrolled | Minimum Minimum Restrictive Medium Close Administrative Segregation | 3,900 (97%) | 100 (3%) |

Source: Department of Corrections' FY 2003 Statistical Report, Monthly Population and Capacity Report as of December 31, 2004, and Colorado statutes.

¹ The capacity numbers are rounded. Also, the numbers in parentheses represent the percentage of total beds available at private and state-run prisons by facility security level.

² Section 17-1-104.3(1)(A)(III), C.R.S., stipulates that "appropriately designated close" classified inmates may be incarcerated in Level III facilities. This statute does not define or stipulate the type of inmate considered to be "appropriately designated close." The Department has defined "appropriately designated close" inmates as those inmates who are not considered management problems but scored close because of minor institutional infractions or because of the length of their sentences.

The Department has condensed the security levels of its correctional facilities housing female inmates. The following table shows the physical security requirements, inmate classification levels, and private and state-run prison bed operational capacity by each security level.

**Security Levels of Female Colorado Prisons Operated by and under Contract by the Department
as of December 31, 2004**

| Correctional Facility Security Levels | Physical Security Requirements | Inmate Classification Levels | Capacity of State-Run Prisons¹ | Capacity of Private Prisons¹ |
|--|---|---|--|--|
| Level I/II | Single or Double Perimeter Fencing Perimeter Periodically Patrolled | Minimum Minimum Restrictive | 300 (100%) | 0 (0%) |
| Level III | Wall or Double Perimeter Fencing with Razor Wire and Detection Devices Towers Perimeter Continuously Patrolled | Minimum Minimum Restrictive Medium Appropriately Designated Close ² | 0 (0%) | 80 (100%) |
| Level IV/V | Double Perimeter Fencing with Razor Wire and Detection Devices or Equivalent Security Architecture Towers or Stun-lethal Fencing Controlled Sally Ports Perimeter Continuously Patrolled | Minimum Minimum Restrictive Medium Close Administrative Segregation | 1,100 (100%) | 0 (0%) |

Source: Department of Corrections' FY 2003 Statistical Report, Monthly Population and Capacity Report as of December 31, 2004, and Colorado statutes.

¹ The capacity numbers are rounded. Also, the numbers in parentheses represent the percentage of total beds available at private and state-run prisons by facility security level.

² Section 17-1-104.3(1)(A)(III), C.R.S., stipulates that "appropriately designated close" classified inmates may be incarcerated in Level III facilities. This statute does not define or stipulate the type of inmate considered to be "appropriately designated close." The Department has defined "appropriately designated close" inmates as those inmates who are not considered management problems but scored close because of minor institutional infractions or because of the length of their sentences.

Appendix B



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June 4, 2004

TO: Joe Ortiz
Executive Director
Colorado Department of Corrections

FROM: Paul Sanzo
First Assistant Attorney General
Corrections Unit

RE: Authority To Place CDOC Inmates In Private Facilities In Other States

This informal opinion represents the opinion of the author. It has not been reviewed or approved by the Attorney General, and does not constitute a formal attorney general opinion.

ISSUES:

1. Whether the Executive Director of the Colorado Department of Corrections may place CDOC inmates in private prisons operated in other states.
2. If the CDOC may transfer such inmates, whether there is any limit on the classification of such inmates.

ANSWER:

1. This issue was answered in the affirmative by every court that considered the question after the CDOC's transfer of inmates to private facilities in Minnesota and Texas during the late 1990s. The statute that authorized those transfers remains unchanged. Therefore, the decisions should also remain dispositive.
2. In 2000, a statute was enacted to limit placement in private contract prisons to offenders classified as medium security or below. However, the same Bill limited the definition of "private contract prison" to facilities located in Colorado. There is no Colorado statute that limits the classification levels of CDOC inmates placed in private prisons in other states.

ANALYSIS

I. Placement In Other States Does Not Violate Federal Or State Law.

An inmate has no right to serve his sentence in the state in which he was sentenced. Olim v. Wakinekona, 461 U.S. 238 (1983). It is “neither unreasonable nor unusual for an inmate to serve practically his entire sentence in a State other than the one in which he was convicted and sentenced...” Id., at 246-47. See also Slater v. McKinna, 997 P.2d 1196 (Colo. 2000) (Holding that the transfer of prisoners from Washington to serve their sentences in private prisons in Colorado does not violate prisoner rights or Colorado law); Montez v. McKinna, 208 F.3d 862 (10th Cir. 2000) (The placement of prisoners from other states to serve their sentences in private prisons in Colorado and Texas does not violate federal law); Cochran v. Morris, 73 F.3d 1310 (4th Cir. 1996) (Incarceration in another state's facility does not constitute an atypical and significant hardship in relation to ordinary prison life); Froelich v. State Dep't. of Corrections, 196 F.3d 800 (7th Cir. 1999) (The transfer of an inmate to another state did not violate the Due Process Clause or the Eighth Amendment even though it interfered with her ability to receive visits from her children, nor did the transfer violate the rights of the children); Pischke v. Litscher, 178 F.3d 497 (7th Cir. 1999), cert. denied (1999) (The transfer of state prisoners to private prisons does not violate the Thirteenth Amendment or the Due Process Clause. A prisoner “has a legally protected interest in the conduct of his keeper, not in the keeper’s identity.”); Berdine v. Sullivan, 161 F. Supp.2d 972 (E.D. Wis. 2001) (There is no right to serve a sentence in any particular state, such as the state in which the sentence was imposed, nor is there a right to avoid an interstate transfer merely because the recipient prison is run by a private corporation.).

Appendix B

Page 3

Under Colorado law, the CDOC Executive Director has statutory authority to place CDOC inmates in facilities in other states:

17-1-105. Powers of executive director. (1) The executive director shall have and exercise: ...

(f) The authority to enter into contracts and agreements with other jurisdictions, including other states, the federal government, and political subdivisions of this state, for the confinement and maintenance of offenders sentenced to imprisonment by the courts of this state and the authority to reimburse such jurisdictions for the expenses incurred by such jurisdictions in the confinement and maintenance of said offenders;

The executive director's authority to enter into placement contracts with other jurisdictions includes the authority to enter into contracts with counties of other states, even if the inmates are placed in private facilities within those counties pursuant to subcontracts between the counties and the private prisons. Arnold v. Colorado Dep't. of Corrections, 978 P.2d 149, 150-51 (Colo. App. 1999).¹ See also People v. Wood, 999 P.2d 227 (Colo. App. 2000) (Holding that the placement of inmates in private correctional facilities in Texas pursuant to contracts between the CDOC and Texas counties did not violate the Interstate Corrections Compact (§ 24-60-1601, et seq., C.R.S.) or the Commerce Clause of the United States Constitution); Hunt v. Colorado Dep't. of Corrections, 985 P.2d 651 (Colo. 1999) (Holding that the CDOC did not waive jurisdiction over a prisoner when it placed him in a private correctional facility in Minnesota)².

¹ The Court also held that the placement did not violate the Interstate Compact Clause of the U.S. Constitution. The case was remanded for fact-finding to determine whether the contracts between the CDOC and the Texas counties had been executed by the Colorado State Controller. The District Court subsequently determined that the contract was valid because it had been signed by all parties including the Controller.

² The Court declined to rule on any other issues, holding that his subsequent transfer back to Colorado rendered the issues moot. However, it is my opinion that the Court would have agreed with the many other courts that upheld the placement in numerous unpublished opinions.

Appendix B

Page 4

Section 17-1-105 (1)(f), C.R.S. has not been amended since these judicial decisions were promulgated. They continue to be dispositive. There is no material difference between placement of CDOC inmates in private facilities in Texas pursuant to contract with Texas counties and placement of CDOC inmates in private facilities in Mississippi pursuant to contract with Mississippi's counties.

II. There Is No Federal Or Colorado Law Governing Security Classification Levels For Inmates In Private Prisons.

Prisoners placed in “private contract prisons” may not have a classification level higher than medium security. § 17-1-104.9, C.R.S. However, “private contract prisons” are defined in the same statute as “any private prison facility operated by a county, city and county, or private corporation located in this state;” § 17-1-102 (7.3), C.R.S. [Emphasis added]. Under standard rules of statutory construction, the inclusion of the last four words must be construed as an indication that the custody level requirement only applies to private facilities in Colorado. “A statute is to be construed as a whole to give a consistent, harmonious and sensible effect to all its parts”. Martinez v. Continental Enterprises, 730 P.2d 308, 315 (Colo. 1986). If “private contract prisons” referred to private prisons “anywhere”, the words “located in this state” would be superfluous. Courts should avoid interpreting statutes in a way that makes any part superfluous. Fuller v. Norton, 86 F.3d 1016, 1024 (10th Cir. 1996). Statutes should not be construed in a manner that makes any provision superfluous, Kawaauhau v. Geiger, 523 U.S. 57 (1998), or meaningless, U.S. v. Bunner, 134 F.3d 1000 (10th Cir. 1998). “In enacting a statute, it is presumed that the General Assembly intends that the entire statute be given effect. Each clause and sentence must be presumed to have a purpose and use which cannot be ignored, and a construction that would render any provision unnecessary or insignificant should be avoided.”

Appendix B

Page 5

Villa at Greeley, Inc. v. Hopper, 917 P.2d 350, 353 (Colo. App. 1996) (citations omitted). Courts must give effect to “each and every” word in a statute, unless to do so would cause an absurd result. Dikeou v. Dikeou, 928 P.2d 1286, 1294 (Colo. 1996).

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