



Action Report

Social (Human Rights)

Corrections Corporation of America

April 19, 2012

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
CXW	NYSE	5-10-12	3-13-12	Nashville, Tennessee

Agenda	
Item	Proposal
1	MGT: Elect directors
2	MGT: Ratify selection of auditors
3	MGT: Shareholder advisory vote on executive compensation
4	SH: Report on prisoner abuse prevention

Si2 Briefing [Social \(Human Rights\) This Action Report also contains background information on sexual abuse and rape in U.S. prisons.](#)

Report Author [Peter DeSimone](#)

Links [Proxy Statement](#); [10-K Filing](#)

Resolved Clause **RESOLVED:** That the stockholders of Corrections Corp. of America (“Company”) request that the Board of Directors (“Board”) report to the Company’s stockholders on a bi-annual basis, beginning within ninety days after the 2012 annual meeting of stockholders, excluding proprietary and personal information, on the Board’s oversight of the Company’s efforts to reduce incidents of rape and sexual abuse of prisoners housed in facilities operated by the Company. The reports should describe the Board’s oversight of the Company’s response to incidents of rape and sexual abuse at the Company’s facilities, including statistical data by facility regarding all such incidents during each reporting period.

Lead Proponent Alex Friedmann

Vote History This is the first time this proposal has been filed at Corrections Corporation of America. The company unsuccessfully challenged the proposal at the SEC, arguing it could be omitted because it relates to a personal grievance, concerns ordinary business and is moot. The SEC rejected the company’s argument on all grounds. The personal grievance challenge stemmed from the fact that Alex Friedmann is a former prisoner who was incarcerated at a facility operated by Corrections Corporation of America during the 1990s. He also is the associate editor of *Prison Legal News*, which regularly speaks out against prison privatization.

Summary The proponent believes that greater board oversight and transparency over the pervasive inmate sexual abuse problem in U.S. prisons would help protect the company’s reputation and preserve its license to operate, as well as shareholder value. The prob-

lem has, after all, spurred a federal law and an associated regulatory process the holds certain implications for the company's facilities. However, Corrections Corporation of America says it is already working effectively within the regulatory process and with government partners and other industry participants. Therefore, it sees no need for adopting the proponent's proposal.

I. Corrections Corporation of America and Prisoner Sexual Abuse

Corrections Corporation of America (CCA), according to its [2011 10-K filing](#), is the largest U.S. owner and operator of privatized correctional and detention facilities and one of the largest prison operators in the United States, behind only the federal government and three states. It operates 66 correctional and detention facilities, including 46 facilities under its ownership, with a total design capacity of approximately 91,000 beds in 20 states and the District of Columbia. It is also constructing the Jenkins Correctional Center, an additional 1,124-bed correctional facility in Millen, Georgia, under a contract awarded by the Georgia Department of Corrections that the company will own and plans to complete in the first quarter of 2012. It also owns two additional correctional facilities that it leases to third-party operators.

Financials			
(\$ millions)	2010	2011	% Change
Total Revenue	\$1,675.0	\$1,735.6	3.6%
Net Income	\$157.2	\$162.5	3.4%

The company specializes in owning, operating and managing prisons and other correctional facilities and providing residential inmate and prisoner transportation services for governmental agencies. In addition to providing the fundamental residential services relating to inmates, its facilities offer a variety of rehabilitation and educational programs, including basic education, religious services, life skills and employment training and substance abuse treatment, intended to help reduce recidivism and to prepare inmates for reentry into society. It also provides health care, including medical, dental, and psychiatric services, food services, and work and recreational programs.

Its customers consist of federal, state and local correctional and detention authorities. At the end of 2011, federal correctional and detention authorities represented 43 percent of its total revenues, the same as in 2010 and up only slightly from 40 percent in 2009. Federal correctional and detention authorities primarily consist of the Federal Bureau of Prisons, the United States Marshals Service and the U.S. Immigration and Customs Enforcement (ICE).

Employees: As of Dec. 31, 2011, Corrections Corporation of America employed approximately 16,750 employees—370 at its corporate offices and approximately 16,380 at its facilities and in its inmate transportation business. Only 735 of its employees at three of its facilities are represented by unions, and it did not have any strikes or work stoppages at its facilities in 2011.

Prisoner Sexual Abuse Prevention

When the [Prison Rape Elimination Act \(PREA\)](#) was signed into law in 2003, the U.S. Department of Justice formed a national commission—the National Prison Rape Elimination Commission—to study sexual abuse in correctional facilities and to develop national standards and best practices to detect, prevent, monitor and respond to sexual abuse and assault of incarcerated and detained individuals.¹ The culmination of this effort was a [report](#) from the commission in June 2009, which outlined nine findings about

¹ See <http://www.insidecca.com/cca-source/cca-prea-always-aware-staying-vigilant/> and <http://ojjdp.ncjrs.gov/about/PubLNo108-79.txt>.

sexual abuse in confinement with recommended policies and practices to curb the problem of prison rape and sexual assault.² The report found:

- 1) “Protecting prisoners from sexual abuse remains a challenge in correctional facilities across the country,” and “too often, in what should be secure environments, men, women, and children are raped or abused by other incarcerated individuals and corrections staff.” Prisoner sexual abuse, the report found, is “widespread” but also varied considerably between facilities. “For example, 10 facilities had comparatively high rates, between 9.3 and 15.7 percent, whereas in six of the facilities no one reported abuse during that time period.” The report found that prisoners were more likely to report sexual abuse by staff than other prisoners; 2.9 percent of respondents reported staff abuse compared with about 2 percent for prisoner abuse.
- 2) Leadership matters in preventing prisoner sexual abuse, “because corrections administrators can create a culture within facilities that promotes safety instead of one that tolerates abuse.” In 2006, the report notes, “the Urban Institute surveyed 45 State departments of corrections about their policies and practices on preventing sexual abuse and conducted in-depth case studies in several states.” Not surprisingly, the report says, “the surveys and case studies identified strong leadership as essential to creating the kind of institutional culture necessary to eliminate sexual abuse in correctional settings.”
- 3) Youth, small stature, and lack of experience in correctional facilities increase the risk of sexual abuse by other prisoners. The report encourages facilities to assess prisoner populations for risk before devising strategies to prevent sexual abuse.
- 4) Rigorous internal monitoring with extensive external oversight and reviews are critical to reducing incidents of prisoner sexual abuse.
- 5) “Many victims cannot safely and easily report sexual abuse, and those who speak out often do so to no avail.” The report says that “reporting procedures must be improved to instill confidence and protect individuals from retaliation without relying on isolation,” and “investigations must be thorough and competent.” It adds, “Perpetrators must be held accountable through administrative sanctions and criminal prosecution.”
- 6) “Victims are unlikely to receive the treatment and support known to minimize the trauma of abuse.” The report sees this as a contributing problem to ongoing abuse in correctional facilities, and it advises prisons “to ensure immediate and ongoing access to medical and mental health care and supportive services” for victims and for corrections administrators “to create a protective environment in the facilities they manage.”
- 7) “Juvenciles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults.” In what could be viewed as an addendum to the “at risk” assessments recommended earlier, the report recommends that sexual abuse prevention, investigation and treatment be tailored to the developmental capacities and needs of youth. “A daily snapshot of juveniles in custody in 2006 showed that approximately 93,000 youth were confined in juvenile residential facilities in the United States and more than half of them were 16 years or younger,” and “rates of sexual abuse appear to be much higher for confined youth than they are for adult prisoners.” According to the Bureau of Justice Statistics (BJS), the rate of sexual abuse in adult facilities, based only on substantiated allegations cap-

² National Prison Rape Elimination Commission. (June 2009). *National Prison Rape Elimination Commission Report*. Retrieved from http://cybercemetery.unt.edu/archive/nprec/20090820155502/http://nprec.us/files/pdfs/NPREC_FinalReport.PDF.

tured in facility records, was 2.91 per 1,000 incarcerated prisoners in 2006, while the parallel rate in juvenile facilities was more than five times greater—16.8 per 1,000.

- 8) “Individuals under correctional supervision in the community, who outnumber prisoners by more than two to one, are at risk of sexual abuse.” The report notes that “the nature and consequences of the abuse are no less severe.”
- 9) In a second addendum to at-risk categories of prisoners, the report points out, “a large and growing number of detained immigrants are at risk of sexual abuse.” Researchers found that the number of immigrants held in detention pending a judicial decision about their legal right to remain in the United States increased nearly 400 percent in the 15 years from 1994 to 2009, without a commensurate increase in resources to deal with the volumes.

Corrections Corporation of America’s response: Corrections Corporation of America has a portion of its [website](#) dedicated to its policies and procedures to prevent inmate sexual abuse and detailing its efforts to take a leadership role in developing best practices in implementing pending regulations that are part of PREA. Even though the Justice Department has not issued its PREA standards, CCA says it has devoted considerable resources to helping the process, with efforts that support its zero tolerance policy on inmate sexual abuse, noted earlier. Its policies, associated employee and inmate training, education and support, included the following:

- Developing an online PREA Resource Center for employees featuring reports from the PREA Commission and the Bureau of Justice Statistics as well as company policies, forms and checklists for convenience.
- Maintaining a Sexual Abuse Response Team (SART) at each facility, comprised of professionals in mental health, security and health services and overseen by a coordinator who provides supervision in sexual abuse prevention, detection, investigation and discipline/prosecution, to respond to instances or reported incidents of sexual abuse. The company also has installed a victim services coordinator to support the team at each facility.
- Forming an interdisciplinary, high-level committee comprised of professionals from its legal, operations and mental health departments to review issues related to PREA reporting and incident responses.
- Revisiting and revising the company’s policies as the Department of Justice’s standards evolve.
- Rolling out a PREA, toll-free hotline for inmates and employees to report incidents or suspected misconduct.
- Maintaining rigorous training programs, including pre-service and annual in-service training for employees that includes instruction on PREA, state and other applicable laws regarding criminal liability for the sexual abuse of an individual held in custody.
- Growing awareness of issues related to inmate sexual abuse through campaigns to bolster knowledge and awareness of PREA for employees and inmates.

Support for legislation and regulatory oversight: CCA submitted comments to the Department of Justice during the rulemaking comment period in 2011, in support of the rulemaking process and the PREA standards generally. As part of its comment, the company said it “...wholeheartedly feels that the promulgation of these standards will result in a safer and much more secure environment for both staff

and offenders in this country's correctional facilities."³ As part of its comment, CCA offered recommendations based on its experience to help the department refine its standards.

Available Data

Part of the proponent's request is for more data. There are data available through the [U.S. Department of Justice's Bureau of Justice Statistics](#) (BJS) division. The Clinical Indicators of Sexual Violence in Custody (CISVC) is part of the Bureau Justice Statistics' National Prison Rape Statistics Program, which gathers mandated data on the incidence prevalence of sexual assault in correctional facilities, under the Prison Rape Elimination Act of 2003. The CISVC is a passive surveillance system in which medical staff completes an incident form for each inmate exhibiting symptoms or injuries consistent with sexual violence. PREA also requires BJS to carry out, for each calendar year, a comprehensive statistical review of the incidence and effects of prison rape in randomly selected federal, state, and county correctional facilities.

In response, BJS has collected administrative records on allegations and substantiated incidents of sexual victimization in correctional facilities nationwide every year since 2004. BJS also conducted interviews with prison and jail inmates in 2007 and 2008/9 and youth held in juvenile correctional facilities in 2008/9. During 2010, in collaboration with the National Institute of Justice and the Centers for Disease Control and Prevention, BJS conducted a feasibility study using clinical indicators to track sexual violence in prisons and jails. These data are available on the BJS [website](#).⁴ The major findings from much of these data are analyzed in the 2009 report by the Department of Justice's National Prison Rape Elimination Commission, summarized earlier.

Data on CCA: The BJS reports and data sheets include data on CCA facilities. However, there is no way for a shareholder to pull data by year for all of CCA's facilities to easily aggregate it and analyze trends. From the proponent's perspective, the data are not biannual and also do not describe board oversight of CCA's responses to incidents of rape and sexual abuse at the company's facilities.

Allegations of Prisoner Sexual Abuse

The extensive federal effort from legislation to regulation has been started to address prisoner sexual abuse because of the tremendous scope and severity of the problem nationwide, a problem that appears to have involved Corrections Corporation of America. Many other industry participants, public and private have also been involved with allegations relating to sexual abuse, illustrating that it is a systemic problem.

Torrance County Detention Facility: In a 2008 report, the BJS found that the Torrance County Detention Facility in Estancia, New Mexico, operated by Corrections Corporation of America, had the highest rate of sexual abuse allegations by staff members among 280 jails nationwide. The data are based on inmate self-reporting through a BJS administered survey and are uncorroborated, however. On Sept. 30, 2008, county and Corrections Corporation officials appeared before the Review Panel on Prison Rape to discuss the jail's excessively high rate of sexual abuse.⁵ As noted in the panel's report, CCA responded constructively to the BJS survey and the panel's inspection and hearing, including implementing improvements based on the panel's findings relating to characteristics of facilities with high rates of self-reported inmate abuse.⁶ Also, CCA points out that the Bridgeport Pre-Parole Transfer Facility, a CCA women's facility operated for the Texas Department of Criminal Justice, was identified by the BJS in a

³ See March 30, 2011, letter from CEO and President Damon Hininger and Vice President Steve Conry at <http://www.regulations.gov/#!documentDetail;D=DOJ-OAG-2011-0002-1318>.

⁴ See <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=64>.

⁵ See <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1745>.

⁶ See http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea_finalreport_081229.pdf.

subsequent year as having among the lowest prevalence of sexual abuse allegations—none—and was used by the panel to demonstrate the strengths of a sexual abuse prevention program.⁷

T. Don Hutto Family Residential Center: On Oct. 19, 2011, the ACLU of Texas filed suit in federal district court seeking class action damages on behalf of three immigrant women who were sexually assaulted while in the custody of Immigration and Customs Enforcement (ICE) at the T. Don Hutto Family Residential Center in Taylor, along with numerous others who experienced similar trauma.⁸ Corrections Corporation of America is the operator and a defendant named in the suit, along with ICE officials, Williamson County, the former facility administrator, and Donald Dunn, a guard who pled guilty in state court to three counts of official oppression and two counts of unlawful restraint based on his assaults of five women. The assaults allegedly occurred when Dunn alone was transporting women from the Hutto facility to the airport or bus station in nearby Austin. Log books and other documents obtained by the ACLU of Texas indicate that, in addition to the seven known occasions on which Donald Dunn is believed to have assaulted nine women, at least 20 different male guards transported at least 44 female detainees between December 2008 and May 2010. CCA notes that the alleged assaults relate primarily to allegations of excessive and unnecessary pat searches. The lawsuit alleges that ICE, Williamson County and CCA were “deliberately indifferent and willfully blind” to the fact that Dunn and other employees regularly violated the rule that detainees not be transported without another escort officer of the same gender present.

As in any situation involving misconduct by CCA employees, the company told Si2, CCA’s stated position has been to take decisive employment action and support full prosecution under the law. In this matter, CCA terminated Dunn’s employment and cooperated fully with local and federal investigative authorities, supporting prosecution against this individual.

Hawaii removes inmates from Corrections Corporation facility: *The New York Times* reported on August 25, 2009 that Hawaii prison officials decided to remove all of the state’s 168 female inmates at a Kentucky prison privately run by Corrections Corporation of America because of charges of sexual abuse by guards.⁹ The article reported that Hawaii sent inmates to Kentucky to save money, and residents in the community where the prison is located welcomed them because the area is one of the poorest rural regions in the country. Following a site visit, Hawaii investigators found that at least five corrections officials at the prison, including a chaplain, had been charged with having sex with inmates in the last three years, and four were convicted. Three rape cases involving guards and Hawaiian inmates were turned over to law enforcement authorities. At the time the article was published, another sexual assault case was being readied for a grand jury hearing. CCA also was being threatened by civil litigation surrounding the incident.

Civil society organizations wage complaints: The Human Rights Defense Center, a non-profit organization dedicated to protecting human rights in U.S. detention facilities, issued a [press release](#) on February 16, 2012, following the SEC’s decision to reject Corrections Corporation of America’s challenge of the proponent’s proposal in support of the proponent, Alex Friedmann. “Criminal justice, sexual abuse prevention and women’s right organizations support shareholder resolution to hold CCA accountable for reducing rape and sexual abuse of prisoners at the company’s for-profit detention facilities,” the group said. Other organizations supporting the proponent’s resolution include the National Center on Domes-

⁷ See http://www.ojp.usdoj.gov/reviewpanel/pdfs/prea2012_appendixb.pdf.

⁸ See <http://www.aclutx.org/2011/10/19/aclu-of-texas-sues-ice-officials-williamson-county-and-cca-for-sexual-assault-of-immigrant-women>.

⁹ Urbina, Ian for *The New York Times*. (August 25, 2009). “Hawaii to Remove Inmates Over Abuse Charges.” Retrieved from <http://www.nytimes.com/2009/08/26/us/26kentucky.html>.

tic and Sexual Violence; the National Organization for Women; National Center for Transgender Equality; Citizens United for the Rehabilitation of Errants (CURE); Justice Fellowship, the public policy arm of Prison Fellowship; the National Lawyers Guild; the National Council of Women's Organizations; Detention Watch Network, a coalition involved in immigration detention issues; the Partnership for Safety and Justice; Justice Policy Institute; and Enlace, an alliance of worker centers, unions and community organizations that works against corporate abuses. (Friedmann works as an associate editor for a publication of the Human Rights Defense Center, *Prison Legal News*.)

II. Proponent Position

The proponent's concerns stem from Corrections Corporation of America's adherence to basic human rights principles in its operations and in particular to the Prison Rape Elimination Act (PREA) enacted in 2003 to address the problem of rape and sexual abuse of inmates. In adopting PREA, the proponent notes, Congress found that prison rape is a significant public policy issue, stating, "Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released... Victims of prison rape suffer severe physical and psychological effects that hinder their ability to integrate into the community... upon their release from prison." Although final PREA standards have not been issued by the Department of Justice, the proponent points out that Corrections Corporation of America has assured shareholders and other stakeholders that its "level of focus on inmate sexual abuse has been voluntary and ongoing" and its "practices, policies and procedures are in compliance and reflect best practices."

Nonetheless, the proponent underscores, "incidents of sexual abuse at facilities operated by the company continue to occur, demonstrating that the important public policy goal of eliminating sexual abuse of prisoners has not been achieved by the company." As evidence, the resolution points to:

- A 2008 report from the U.S. Department of Justice, which found that the company's Torrance County Detention Facility had the highest rate of sexual victimization among those surveyed.
- An ACLU class-action lawsuit filed in Texas against Corrections Corporation of America in October 2011, alleging that immigrant detainees were sexually assaulted by one of the company's employee at the company's T. Don Hutto facility.
- The 2009 removal by two states—Kentucky and Hawaii—of female prisoners from the company's Otter Creek facility, following a sex scandal involving the company's employees.
- Litigation filed against the company stemming from allegations of rape and sexual abuse of prisoners and resulting in legal expenses and negative publicity.

"In light of the ongoing occurrence of rape and sexual abuse at the company's facilities," the proponent says, "stockholders have valid concerns that the board needs to provide greater oversight of the company's efforts to reduce rape and sexual abuse of prisoners." The proponent adds, "A failure by the company to adequately address this issue, and the negative publicity, loss of business and litigation that results, constitutes a risk to the Company and a threat to shareholder value." The proponent argues that reports on the board's efforts to oversee and check the company's policies and conduct on incidents of rape and sexual abuse will provide much-needed transparency, reduce risk and increase investor confidence and "further the important public policy goal of reducing sexual abuse of prisoners."

Therefore, the proponent is requesting that the board report to shareholders "on a bi-annual basis, beginning within ninety days after the 2012 annual meeting of stockholders, excluding proprietary and personal information, on the board's oversight of the company's efforts to reduce incidents of rape and sexual abuse of prisoners housed in facilities operated by the company." The proponent says the re-

ports “should describe the board’s oversight of the company’s response to incidents of rape and sexual abuse at the company’s facilities, including statistical data by facility regarding all such incidents during each reporting period.”

“The purpose of the resolution is twofold,” says Friedmann:

First, to ensure that shareholders know the scope of the problem of sexual abuse at [the company’s] facilities, the risk that problem poses, and what the company is doing to mitigate that risk. Also, if CCA knows it will be accountable to shareholders, then the company will have an incentive to take actions to reduce sexual abuse of prisoners, particularly by CCA employees—which is a significant problem.

He adds, if the company “is serious about reducing rape and sexual abuse of prisoners then they wouldn’t offer to provide incomplete, untimely and less frequent reports.” He argues, “If Wal-Mart or McDonald’s employees were raping or sexually abusing customers on a consistent basis, there would be a public outcry. Equally, there should be outrage when CCA’s private prison employees rape or sexually abuse prisoners.”

Friedmann also notes that he had “specifically raised concerns about rape and sexual abuse in the company’s facilities at two previous shareholder meetings, and discussed this issue with one of the company’s Board members.” He says, “It is a direct result of the insufficient efforts of the company and its Board to reduce incidents of rape and sexual abuse at CCA’s facilities” that led him to introduce the proposal.

On accusations from the company that he is acting out of motivation from personal grievances and a personal agenda, Friedmann acknowledges that he opposes “incarcerating people for corporate profit.” Nonetheless, he adds:

So long as we have private prisons, they need to be run in a manner that minimizes incidents of rape and sexual abuse of prisoners, particularly by private prison employees. I have no ‘personal claim’ or ‘grievance’ in wanting to reduce rape and sexual abuse at [the company’s] facilities, other than the concern that all people should share in wanting to reduce such incidents—a concern that apparently is not shared by CCA, as the company objected to my resolution.

Friedmann found the company’s “ordinary business” argument for no action on his proposal at the SEC even more ridiculous. “Certainly, the company cannot contend with a straight face that the rape and sexual abuse of prisoners is an ‘ordinary business matter’ rather than a significant social and public policy issue.” He says this is further evidence for the need for greater transparency and oversight of this issue at Corrections Corporation of America and a vote for his proposal.

In an interview with Si2, the proponent added the following:

The company says it is already undertaking efforts to reduce incidents of prisoner rape and sexual abuse. If that is true, then CCA should not object to issuing reports that describe those efforts—but CCA does object. The resolution also would require CCA to produce statistical data on the number of incidents of sexual abuse at each of its prisons during each reporting period. This would help gauge the effectiveness of CCA’s efforts to reduce such incidents.

I submit that stockholders who invest in the company have a moral obligation to ensure that CCA is in fact taking action to reduce incidents of prisoner rape and sexual abuse, and that such actions are effective. Although having a “zero-tolerance” policy for sexual abuse at its facilities, CCA continues to face lawsuits and negative publicity for incidents of rape and sexual assault that have occurred despite that policy.

While CCA portrays this resolution as the work of an anti-private prison activist, the company fails to note that a number of national organizations have expressed their support for this resolution, including the National Center on Domestic and Sexual Violence, the National Organization for Women, the National Council of Women’s Organizations and Justice Fellowship, among others.

It is disturbing that this type of resolution is necessary, but it is more disturbing that the company would recommend that stockholders vote against a resolution that requires reports on its efforts to reduce prisoner rape and sexual abuse.

III. Management Position

“Prisoner sexual abuse is an important public policy and corrections industry issue that affects public and private operators alike, as well as our employees and the prisoners entrusted to our care,” the company says. However, Corrections Corporation of America opposes the resolution for the following reasons:

- **Effective and coordinated government and industry action**—CCA’s board believes that efforts directed at eliminating prisoner sexual abuse, including reporting functions, are best served if implemented and updated in conjunction and in coordination with industry-wide standards, best practices and regulations. Proposed regulations pending promulgation by the U.S. Department of Justice, for which CCA has publicly expressed support, would enhance existing reporting requirements and ensure reporting from all industry participants in a coordinated, consistent manner. Adoption of this proposal would be an unwarranted departure by the company from that responsible approach.
- **Good policies and procedures**—It has a “zero tolerance” approach to prisoner sexual abuse and has taken a leadership position on the issue. Furthermore, the company points out, in advance of the Department of Justice’s issuance of rules in implementing the Prison Rape Elimination Act (PREA), Corrections Corporation has proactively adopted—and in some cases exceeded—many of the proposed standards and best practices. In addition, its former vice president and general counsel was appointed to the National Prison Rape Elimination Commission, which was established by PREA to develop a set of proposed national standards for the prevention of and response to sexual abuse at corrections facilities and to be contained in final regulations promulgated by the Attorney General.
- **Strong oversight and accountability**—The company has a sexual abuse prevention program with board oversight, including quarterly review of key program information, as well as management oversight of the program through a PREA committee consisting of high level company officers and health care, legal, and corrections professionals. The PREA committee reviews every allegation of sexual abuse at a company facility, including all incident reports, documentation surrounding investigation, and enforcement of applicable policies, as well as referral to law enforcement where appropriate. The company also has a quality assurance team that audits compliance with its standards and procedures.
- **Transparent reporting**—It has comprehensive sexual assault prevention and incident reporting policies and procedures, including a 24-hour hotline for inmates for reporting allegations of sexual harassment or abuse. In addition, it conducts training for inmates and employees, as well as other awareness efforts that emphasize the company’s zero tolerance approach and encourages employees and inmates to report allegations of sexual assault or harassment.
- **Ample publicly available data**—Meaningful disclosure already is publicly available—both voluntarily by the company through its website and by the Bureau of Justice Statistics (BJS)—for stockholders and others who are interested in CCA’s efforts to eliminate prisoner sexual abuse. BJS makes publicly available statistical data reported on an annual basis by CCA and other public and private industry participants.

Corrections Corporation of America argues that the proponent's suggestion is an unwarranted departure from the company's more responsible approach of working with the industry and regulatory authorities toward full implementation of PREA—a legislative remedy the company has ardently supported. The proponent's suggestions also are unnecessary, the company says, because the meaningful disclosures they claim to seek already exist through the company's voluntary reporting on its website, as well as Bureau of Justice Statistics on the company available through the bureau's website. The proposal's overly prescriptive data reporting element, CCA adds, would come with associated costs in terms of time and resources that would be better spent enhancing CCA's prevention measures.

Moreover, the company questions the proponent's motives, which it characterizes as "anti-privatization." CCA notes that the proponent was incarcerated at a correctional facility operated by the company for six of his 10 years in prison and now serves in leadership roles with publications and organizations with the goal of eliminating privatization of prisons. The proponent, the company points out, is an editor of *Prison Legal News*, "through which he regularly publishes stories, press releases, and op-eds that are consistently critical of CCA and its management team...calling into question what the proponent's true objective in his proposal." In addition, it notes, the proponent

also serves as president of the Private Corrections Institute, which states that its mission is to disseminate information regarding the purported 'dangers and pitfalls of privatization of correctional institutions and services in order to reverse and stop this social injustice' and which describes itself as holding the position that 'for-profit prisons have no place in a free and democratic society.'

The company backs up its claims by pointing to the proponent's actions in filing the proposal and following up with the company and the Securities and Exchange Commission (SEC). Corrections Corporation of America underscores that it is open to transparency in this area even in the face of the proponent's views about its businesses and the general policies regarding privatization of prison functions. In fact, CCA said it offered to produce an annual (not biannual as requested by the proponent) report on board oversight of the company's sexual abuse prevention program that, coupled with incident data already publicly available through the Bureau of Justice Statistics, would be a fair and reasonable "compromise" that would have achieved the stated goals of the proposal. However, the proponent declined the offer and made no counterproposal, CCA says.

In the end, Corrections Corporation of America reports that its board "believes that it is reasonable to expect that the proponent, the organizations he represents, and similar organizations would seek to use any information published by the company, including but not limited to the sexual assault incident data requested in the proposal, with the intent to harm, not benefit, the company and its stockholders." Therefore, it is asking shareholders to vote against this proposal.

IV. Analysis

Key Points at Issue

- Would the proponent's proposal improve Corrections Corporation of America's performance on this issue?
- Would the outcome help protect the company's reputation, preserve its license to operate, and help bolster shareholder value?

Clearly, one thing all parties agree on is that there is a tremendous problem with prisoner sexual abuse in the United States. Surprisingly, sexual abuse of inmates is more often perpetrated by prison officials and staff than other inmates, as reported in recent Department of Justice sponsored studies, placing even greater onus on the regulators and prison operators to solve the problem.

The industry and Corrections Corporation of America also have clearly taken notice, cooperating with regulators and proactively taking steps to ameliorate the problem, and CCA has been a leader in many respects, including in adopting best practices cited by the Department of Justice and others. However, the lack of data prevents shareholders from evaluating whether those new policies and programs are helping. It is not clear whether rates of prisoner sexual abuse are lessening at Corrections Corporation of America's facilities or whether the company's responses are helping to address cases of abuse, although that is clearly their intention. The company contends its policies and practices are working and that it is cooperating with regulators to formulate best policies and practices, but it continues to be accused by prisoners under its supervision of severe problems of sexual abuse in its facilities, as evidenced by the articles reviewed for this report. Shareholders will have to decide whether they trust CCA's assurances or if greater oversight and disclosure is warranted.

The National Prison Rape Elimination Commission in its final report found that third-party monitoring, oversight and reporting were key drivers of eradicating prisoner sexual abuse. With that said, shareholders will have to consider if Corrections Corporation of America should take additional steps unilaterally at the behest of the proponent, other shareholders and stakeholders, or continue to await standards from the federal government.

Costs and benefits: Whether through regulation or voluntary efforts, additional monitoring and reporting will add costs to doing business. However, if these measures are effective in preventing costly controversies, and associated litigation, they could prove cost effective on their own to warrant implementation with or without government regulation. Plus, there are multiple layers of regulation—federal, state and local—to consider, as well as the company's license to operate. Allegations at a Kentucky facility the company operates led to Hawaii removing its female inmates from the property, for instance. Additional controversies could limit the company's ability to secure contracts from government authorities and erode growth and profits.

At the same time, unilaterally taking action could leave the company in the short-term at a cost disadvantage that shareholders also should consider, and if issues raised in disclosures are not addressed quickly and effectively, the information could lead to additional criticisms and bad press that only cause the company additional problems. Furthermore, twice per year reporting would be a significant endeavor requiring the time and attention of CCA management and staff that might better be focused on enhancing measures designed to prevent prisoner sexual abuse. Presently, CCA is only required to report annually to regulators, so the additional reporting would certainly add costs and some might say that the additional reporting would not help shareholders assess trends any better than annual data.

Voting Considerations

Voting for: Shareholders who feel the issue warrants additional oversight and reporting will vote for this proposal. Clearly the serious alleged abuses and lawsuits have escalated and are causing the company reputational and business risks that might limit its revenues and ability to operate. Greater oversight from the board and regular reporting to shareholders might clarify where problems remain and what needs to be done about them. It also might help the company adapt ahead of its competition to pending regulation in this area, which is still being developed by the U.S. Department of Justice. Staying ahead of the regulatory curve, after all, could help the company stay competitive while improving its reputation as a source for correctional services for government authorities seeking to privatize prison services. The additional transparency and board oversight also could help prevent some incidents of sexual abuse from ever happening and improve the way CCA deals with the cases that do occur. This in turn could help improve the company's reputation, enhance its chances of securing government contracts, and steer it clear of costly lawsuits. Shareholders agreeing with these sentiments will vote for this proposal.

Voting against: Shareholders who believe the company is doing a good job at managing the issue already will vote against this proposal. They will note that the company has cooperated with regulators and taken a leading role in implementing recommendations and good practices, ahead of pending regulations. These voluntary efforts, the company says, are producing results, and some shareholders might feel this is an issue best left to management to shepherd. Shareholder also might want to consider that additional, unilateral disclosure could bring with it unwanted scrutiny and bad press that could distract management and hurt the company's reputation. The additional reporting and stepped up frequency to twice yearly also would add costs that could place CCA at a short-term cost disadvantage to its competitors. Those who share these concerns will vote against the resolution.

Resources

- Corrections Corporation of America's policies and programs to prevent prisoner sexual abuse: <http://www.insidecca.com/cca-source/cca-prea-always-aware-staying-vigilant/>
- The Prison Rape Elimination Act: <http://ojjdp.ncjrs.gov/about/PubLNo108-79.txt>.
- *The National Prison Rape Elimination Commission Report* (June 2009): http://cybercemetery.unt.edu/archive/nprec/20090820155502/http://nprec.us/files/pdfs/NPRE_C_FinalReport.PDF
- Letter from Corrections Corporation of America CEO and President Damon Hininger and Vice President Steve Conry on pending Prison Rape Elimination Act regulations: <http://www.regulations.gov/#!documentDetail;D=DOJ-OAG-2011-0002-1318>
- 2008 report from the Bureau of Justice Statistics on prisoner abuse: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1745>
- ACLU press release on Texas lawsuit against Corrections Corporation of America, among other defendants: <http://www.aclutx.org/2011/10/19/aclu-of-texas-sues-ice-officials-williamson-county-and-cca-for-sexual-assault-of-immigrant-women>
- *The New York Times* article from August 25, 2009 with the headline, "Hawaii to Remove Inmates Over Abuse Charges": <http://www.nytimes.com/2009/08/26/us/26kentucky.html>