

USMS Relies on Contractors to Provide Vital Detention Services






On January 26, 2021, President Biden signed Executive Order 14006 “Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities.” This order phased out the use of contractor-operated prisons from the Department of Justice. Initially the assumption was that this order would only apply to the Federal Bureau of Prisons (BOP) but not to the U.S. Marshals Service (USMS). However, the order has been applied to contracts with BOP and the USMS. The population detained in BOP facilities has slowly declined, which makes eliminating contractor-operated prisons a more realistic goal. In contrast, the U.S. Marshals Service (USMS) relies heavily on contractor-operated facilities, and removing this option is highly problematic.

The U.S. Marshals Service (USMS) holds and transports individuals after a federal judge has determined they should remain in custody while awaiting trial. USMS is also responsible for individuals who have been convicted of a felony and are waiting to be assigned to a federal prison. Every day, the USMS detains approximately 62,000 individuals. However, **the USMS does not own nor operate any of its own facilities for detaining individuals.** USMS relies on the Bureau of Prisons (BOP), contracts with private operators, and intergovernmental agreements (IGA) with state, county, or local governments to hold individuals while they await trial or while they await assignment to a federal prison.¹ In 2020, 14% of the USMS population was housed in BOP facilities, 35% in contractor-operated facilities, and 51% in county or regional jails.

USMS estimated that to replace the contractor facilities would require approximately 440 new IGAs with regional jails. Trying to find enough space in regional jails would place individuals further away from federal courts and legal services, provide fewer services to individuals being detained, and reduce the level of oversight and accountability that the USMS has over its detained population. In contrast, the current contractor facilities provide USMS with guaranteed capacity at quality facilities within close proximity to federal courthouses. These facilities also enable USMS to provide better oversight and accountability than tracking individuals at hundreds of different regional jails. Contractor facilities provide detained individuals with:

- Highly accountable facilities with continual oversight from USMS
- Quality care that meets federal performance-based detention standards
- Close proximity to federal courts and legal services
- Services tailored to meet the needs of individuals awaiting trial or sentencing
- Guaranteed capacity versus one-off placements based on current county jail capacities

The value of dedicated contractor-operated facilities was emphasized in a 2021 OIG report. In this report, the OIG determined that contractor-operated facilities for the U.S. Marshals (USMS) had better oversight and accountability than IGAs and were more responsive in implementing COVID safeguards.²

| Advantages of Contractor Facilities for Detained Individuals | | |
|---|--|--|
| Contractor Facilities | | County and Regional Jails |
| USMS engages in continual monitoring of operations to ensure quality treatment and services, as evidenced by the 2021 OIG report on COVID-19 response |  <p>Accountability</p> | With a dispersed population at over 700 hundred facilities, USMS can only provide minimal oversight and monitoring regarding an individual’s treatment and services |
| Facilities adhere to federal performance-based detention standards and seek multiple other accreditations |  <p>Quality</p> | Jails adhere to local and state standards and are less likely to be held accountable for federal detention standards |
| Current facilities provide close proximity to federal courts and legal services; USMS estimates this saves \$75-150 million per year in transportation expenses |  <p>Proximity & Cost</p> | Individuals transferred to jails at greater distances from courthouses and legal services result in less access to legal services, lengthier transports, and greater costs for taxpayers |
| Facilities provide legal, recreational, and educational services focused on short-term detention needs |  <p>Services</p> | Detainees receive minimal if any services, as any services are focused on the criminal justice needs of the local populations |
| Facilities prioritize USMS needs and guarantee capacity that can support population surges |  <p>Capacity</p> | County jails can only accommodate USMS when they have space available, as these facilities prioritize state and regional needs |

¹ U.S. Marshals Service. (2020). Prisoner Operations. Retrieved from https://www.usmarshals.gov/duties/factsheets/prisoner_ops.pdf

² Office of the Inspector General (2021, February). Review of the United States Marshals Service’s Response to the COVID-19 Pandemic”