



# U.S. MARSHALS SERVICE

## Prisoner Operations Division

---

### USMS Impact to Executive Order on the Use of Private Prisons

February 10, 2021

#### Background

The United States Marshals Service (USMS) is a federal law enforcement agency with multiple missions; providing judicial security; apprehending fugitives and non-compliant sex offenders; seizing and managing assets acquired through illegal means; assuring the safety of endangered government witnesses and their families; and securing and transporting prisoners from arrest to incarceration.

In support of the prisoner management mission, the USMS receives approximately \$2 billion to provide for the housing, subsistence, medical care, and transportation of an annual average of 62,000 prisoners throughout 94 districts. Since the USMS neither owns nor operates its own facilities, the USMS must partner with state and local governments using Intergovernmental Agreements (IGA), private detention facilities under direct contract with the USMS, and Federal Bureau of Prisons (BOP) facilities. Additional challenges arise when trying to house prisoners in close proximity to the prosecuting judicial district, as both prosecutors and defense counsel require routine access to prisoners. This judicial demand creates challenges to centralizing prisoners to achieve economies of scale. In order to best service the courts and accommodate defendants' need for access to their legal counsel and personal support system, such as family, the USMS makes every effort to house prisoners within 50 miles of the courthouse.

The BOP provides the USMS with detention space in 28 facilities. Approximately 14% of USMS prisoners are housed in BOP allocated beds. In order to meet the need for the remainder of the required space, the USMS has approximately 1,200 IGAs with approximately 700 actively used at any given time. (An IGA is an agreement between the USMS and a state, county, or local government to provide safekeeping, housing, subsistence, and medical care of USMS prisoners in accordance with all state and local laws, standards, regulations, policies, and court orders applicable to the operation of the facility.) The USMS houses approximately 51% of all USMS prisoners in IGA facilities.

While these state and local governments have historically provided detention space to the USMS, their primary mission is to house prisoners prosecuted within their jurisdictions. Accordingly, these facilities limit the detention space available to the USMS and the availability of this space is not guaranteed; it fluctuates based on their local need. These local county facilities are currently inundated with state pre-trial prisoners and sentenced prisoners serving short term sentences due to overcrowding in state facilities. Consistent with the statutory requirement, the USMS has generally maximized the use of the state and local detention facilities in those districts supported by privately-operated detention facilities.

## **USMS Use of Private Detention Facilities**

In several areas of the country, BOP facilities and state and local facilities either do not exist or have limited space available for USMS use. In those areas the USMS contracts with private detention facilities. These facilities are typically in areas where there are extremely large prisoner populations. Consistent with statutory requirements, the USMS establishes contracts and IGAs for privately-operated detention space when there is a general lack of detention space to fully support the detention mission in one or more judicial districts. Additionally, privately-operated detention facilities are used by the USMS to support its prisoner transportation mission. The Justice Prisoner and Alien Transportation System (JPATS) uses the facilities as holdover facilities to facilitate the efficient and expedient transfer of sentenced prisoners to the custody of the BOP.

The authority of the USMS to enter into private detention service contracts stems from 18 U.S.C. § 4013(c), which provides that the USMS “*may designate districts that need additional support from private detention entities...based on...the number of Federal detainees in the district...and the availability of appropriate Federal, State, and local government detention facilities.*” The USMS contracts directly with 16 private detention facilities that house 14% of USMS prisoners. Additionally, the USMS houses prisoners in 31 privately-operated detention facilities under contract with a state or local government; these facilities house about 21% of the USMS detention population.

Losing the use of these private detention facilities would be detrimental to USMS districts that currently rely on private facilities. Each user district would have its own set of challenges, but the common denominator is that there is simply not enough bedspace in the regions to accommodate the more than 23,000 USMS prisoners housed in private facilities operating under direct contract with USMS or under contract with the state and local governments through which the USMS has an agreement to house its prisoners. The primary impact of losing the privately-operated detention space is the effect it will have on the operational mission, as well as the capability to house prisoners proximate to the federal courthouses where they are being prosecuted. The use of privately run detention facilities is a necessary resource that allows the USMS to house the prisoners remanded to its custody by the United States Courts. Because the USMS does not have the statutory authority to own or operate detention facilities, the use of nonfederal detention space has become integral to the USMS’s mission to house prisoners pending adjudication.

## **Status of USMS Private Detention Contracts**

The current contract option period will expire for 16 facilities currently under direct contract to the USMS within the next four years. These 16 facilities provide support to 39 judicial districts. Currently, 9 of these 39 judicial districts, plus JPATS, house more than 65 percent of their detention population in these privately-operated detention facilities. For instance, 90 percent of the District of Nevada’s detention population is housed in the Southern Nevada Detention Facility. The remaining 30 judicial districts house an average of 15 percent of their detention population in these 16 privately-operated detention facilities. For each of the 39 districts, the loss of the privately-operated detention space would substantially impede the administration of the federal criminal justice system.

Within the next two years, the complete contract will expire for five (5) facilities under direct contract – two contracts expire during the next three months. (*See, below.*)

NAME OF FACILITY	OPTION YEAR END DATE	CONTRACT END DATE
NORTHEAST OHIO CORRECTIONAL CENTER	2/28/2021	2/28/2021
CROSSROADS CORRECTIONAL CENTER	4/30/2021	4/30/2021
COLUMBIA REGIONAL CORRECT CARE <sup>a</sup>	9/30/2021	9/30/2021
CENTRAL VALLEY CORRECTIONAL FACILITY <sup>b</sup>	1/3/2022	1/3/2022
AURORA ICE PROCESSING CENTER <sup>b</sup>	9/30/2022	9/30/2022
LEAVENWORTH DETENTION CENTER	12/31/2021	12/31/2026
WESTERN REGION DETENTION FACILITY	9/30/2021	9/27/2027
EL CENTRO DETENTION FACILITY	12/22/2021	9/25/2028
CENTRAL ARIZONA FLORENCE CORRECTION CENTER	9/30/2023	9/30/2028
RIO GRANDE DETENTION CENTER	9/30/2023	9/30/2028
ROBERT A. DEYTON DETENTION FACILITY	9/30/2023	9/30/2028
QUEENS DETENTION FACILITY	4/1/2021	3/31/2029
WILLACY COUNTY REGIONAL DETENTION CENTER	9/30/2021	9/30/2029
OTAY MESA DETENTION CENTER <sup>b</sup>	12/19/2021	12/19/2029
WEST TENNESSEE DETENTION FACILITY	9/30/2021	2/4/2030
NEVADA SOUTHERN DETENTION CENTER	9/30/2025	9/30/2030

Note<sup>a</sup> – The Columbia Regional Correct Care facility is a direct contract USMS has with a private vendor to provide highly specialized medical care for USMS prisoners within a detention environment.

Note<sup>b</sup>. The contract for the Otay Mesa Detention Facility, Central Valley Detention Facility, and the Aurora Detention Facility are held by ICE. The USMS established task orders against the ICE contracts to house USMS prisoners at these facilities. The Central Valley Correctional Facility only holds USMS prisoners.

#### Northeast Ohio Correctional Center (NEOCC) – Youngstown, Ohio

**The NEOCC contract with CoreCivic Inc. expires on February 28, 2021.** The USMS has been actively negotiating the new terms of this contract and was scheduled to award later this month. The contract for this detention facility originated in 2010 because of the general lack of detention space available in the Northern District of Ohio (N/OH) and the Western District of New York (W/NY). The contract was originally established to house 500 prisoners; however, because of the increasing lack of available, and/or acceptable, state and local detention space in several districts proximate to the facility, the contract was modified last year to allow for the use of up to 955 prisoners, and USMS currently houses 863 prisoners at the facility with approximately 650 from N/OH. The facility currently provides detention space that supports four (4) judicial districts (W/NY, N/OH, Western District of Pennsylvania, and Northern District of West Virginia), and JPATS, and the Southern District of Ohio on occasion. The Department of Homeland Security, Immigration and Customs Enforcement (ICE) does not currently use this facility.

A survey of the Northern District of Ohio yielded 15-30 available beds between two local IGAs. Geauga County Jail is the nearest facility at 37 miles from the U.S. courthouse in Cleveland, and Mahoning County Jail is more than 70 miles from the courthouse. Other facilities in the local area are at or near capacity. The closest BOP facility, FCI Milan, is 153 miles from the courthouse, and is at full capacity.

According to N/OH district leadership, NEOCC maintains better standards and conditions than any other facility in their district and a primary reason for this is that they are monitored closely under the contract by a USMS position located within the facility. The medical services provided at NEOCC are also much more proficient than the district's other facilities. Additionally, during the outbreak of the COVID-19 pandemic, no other IGA facility in N/OH would take a prisoner that tested positive for COVID-19, except NEOCC. NEOCC was able to take and quarantine them in negative pressure detention cells. This was another factor that proved the critical need for this facility, as the district had no other options concerning new arrests remanded to the custody of USMS who were positive for COVID-19.

#### Crossroads Correctional Center – Shelby, Montana

**The Crossroads Correctional Center contract with CoreCivic Inc. expires on April 30, 2021.** The USMS has been actively negotiating the new terms of this contract and was scheduled to award later this month. The contract for this detention facility was established because of the lack of detention space available to support the District of Montana (D/MT). CoreCivic constructed an additional unit, with a capacity of 96 prisoners, at an existing correctional facility under contract with the State of Montana to accommodate the USMS's requirements. This additional unit was constructed for the exclusive use of the USMS.

The USMS is allocated 96 detention beds at the Crossroads facility; and currently houses 96 prisoners at the facility. The facility supports one (1) judicial district, D/MT. The USMS has an additional need for detention space at the Crossroad's facility, but the State of Montana has blocked additional usage because of their need for the bedspace capacity. This facility houses approximately 39% of the D/MT's prisoners and is used by all 4 sub-offices (Missoula, Billings, Helena, and Great Falls). ICE does not use this facility.

The District of Montana uses four (4) other detention facilities within the State to house a total of 124 prisoners. Other IGA facilities are at capacity. The nearest IGA to the Missoula suboffice is over 50 miles away and a secondary facility is 117 miles away - neither of which will house federal prisoners. The Billings suboffice does not have other viable options for housing. The Great Falls suboffice houses over 50% of their population at Crossroads and does not have a viable option for housing this population elsewhere. Additionally, the local IGA facilities in the district routinely refuse to house medically ill prisoners, unlike Crossroads, which is the contingency for medically ill prisoners throughout the state. Even with the use of Crossroads, the district is required to house 30-50 prisoners in facilities located in the District of Wyoming. The closest BOP facility, FDC SeaTac, is 646 miles away from the district. Using FDC SeaTac as a contingency housing option would severely impact district operations and would require expensive flight operations to support prisoner transfers to and from court appearances.

#### **Budget Impact of Lost Privately-Operated Detention Space**

Assuming the availability of detention space at state or local detention facilities, the loss of privately-operated detention space would not, per se, result in higher detention costs to the Federal Government. Approximately two-thirds of the cost of operating any detention facility is salaries paid to facility staff. As required by the Service Contract Labor Standards, salaries paid at privately-operated detention facilities are comparable to those paid at federal, State, and/or

local facilities operating in the surrounding communities where the privately-operated facility is located. The Department of Labor (DOL) routinely assesses the prevailing wages and issues a wage determination for each detention facility contract. The private detention facility operators are required to pay staff at least the prevailing wage established by DOL.

The primary impact of losing the privately-operated detention space is the impact on the operational mission and the capability to house prisoners proximate to the federal courthouses where they are being prosecuted. If the USMS was required to house prisoners further from the courthouses, additional transportation resources would be needed, either funding to support the additional costs that would be incurred by the state and local facilities to transport prisoners or with additional Deputy United States Marshals (FTE) to perform the transports. As transportation expenses are based hourly for personnel and mileage for vehicles, housing prisoners far from federal courthouses directly impact mission costs and lengthy transportation routes affect the ability to service the courts without adverse impact to a prisoner's daily routine. Additionally, the Judiciary would incur costs to pay federal defenders for travel expenses resulting from client visits outside the local area.

#### Transportation Cost Estimate to replace Direct Contracts Only

The USMS currently houses approximately 11,000 prisoners in 15 (excluding the medical facility) privately-operated detention facilities under direct contract to the USMS. Consistent with statutory limitations, these contracts were established due to the lack of sufficient detention capacity available from the BOP or state and local governments proximate to the federal courthouses where the defendants are prosecuted. If these 15 privately-operated facilities were no longer available to the USMS, the USMS would need to house prisoners in more distantly-located state or local detention facilities. Currently, the approximately 700 state and local facilities used by the USMS typically house about 25 prisoners. Provided that the USMS is able to yield the same number of beds from additional State and local facilities with which agreements would be established to replace the privately-operated detention facilities, the USMS would need to establish agreements with 440 facilities.

Approximately two-thirds or more facility operating costs are the result by employee salary costs. Therefore, it would be generally anticipated that the cost of state or local detention space would be comparable (i.e., higher in some instances and lower in others) to privately-operated detention space depending on many factors unknown at this time, such as local area wages and other costs associated with the location of new facilities. Because the "replacement" state/local facilities would be more distantly located from the federal courthouses, additional transportation costs would be incurred by the USMS. Assuming that the new facilities are located an average of 100 miles from the courthouses, the USMS could expect to incur additional costs of \$75-\$150 million per annum depending on the frequency of trips to the courthouse, provided the transports are performed by employees of the State/local detention facility. The cost would be substantially higher if dedicated federal staff are required.