



WASHINGTON LAWYERS' COMMITTEE
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D.C. Prisoners: Conditions of Confinement in the District of Columbia

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A report of the Washington Lawyers' Committee
for Civil Rights & Urban Affairs
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**D.C. PRISONERS: CONDITIONS OF CONFINEMENT
IN THE DISTRICT OF COLUMBIA**

TABLE OF CONTENTS

	PAGE(S)
Executive Summary	2
I. District Department of Corrections Facilities and Populations	4
A. Facilities	5
B. Policies Affecting Prisoner Population	7
C. Demographics and Budget.....	11
II. Recurring Issues and Problems Involving the D.C. Jail and CTF.....	12
A. Crumbling physical infrastructure.....	13
B. Mental Health and Suicide Prevention Practices at the D.C. Jail.....	20
C. Issues Confronting Youth	25
III. Costs of Confinement & Contracted Services	33
A. The CTF & Corrections Corporation of America	33
B. Unity Health Care	45
C. Halfway Houses	46
IV. Looking Forward	47
A. Recommendation 1: Close the D.C. Jail and the CTF and construct a new, safer, more effective facility.....	48
B. Recommendation 2: Expand the Secure Residential Treatment Program.....	48
C. Recommendation 3: Correct deficiencies in suicide prevention and youth confinement	48
D. Recommendation 4: Conduct a review of training	49
E. Recommendation 5: Revise current policies restricting “Good Time Credits”	49
F. Recommendation 6: Return management of the CTF to District control	49
G. Recommendation 7: Increase public access to records.....	51
Appendix A - Demographics & Budget	
Appendix B - D.C. Department of Corrections Response	

PREFACE

The appalling conditions of confinement in D.C. prison facilities, especially in light of their disproportionate impact on African-Americans, are a key criminal justice and civil rights issue in Washington DC. This is the third in a series of reports focusing on criminal justice reform and civil rights issues by the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

We want to express our appreciation for the invaluable assistance in researching and writing this report provided by a team of lawyers from Covington & Burling LLP: Kevin Glandon, Shelton Abramson, Brandon Myers, and Alan Pemberton, who were the principal authors of this report, as well as paralegals Kimberly Bickham and Eric Barros.

All these reports are dedicated to Judge Louis F. Oberdorfer, the distinguished jurist, who inspired the creation of the Washington Lawyers' Committee in 1968 while a partner at Wilmer, Cutler & Pickering. Judge Oberdorfer served on the Committee's Board of Trustees until his elevation to the bench in 1977. Throughout his long career, Judge Oberdorfer, who died in February of 2013, spoke eloquently in support of civil rights and criminal justice reform. In his memory, the Louis F. Oberdorfer Fund has been established to support the Committee's ongoing work on criminal justice reform and civil rights advocacy. We are pleased to note that one of the significant contributors to this report was Elliot Minberg, who is serving as the Louis Oberdorfer Senior Counsel on the Washington Lawyers' Committee staff. A stipend to support his work is provided by the Oberdorfer Memorial Fund.

The Washington Lawyers' Committee would also like to acknowledge with particular gratitude the service of the following retired and senior Federal and District of Columbia Judges who composed the Advisory Committee assisting with this study:

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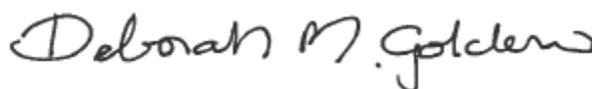
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June 11, 2015

EXECUTIVE SUMMARY

On average, the daily population of D.C. Department of Corrections (DCDOC) facilities exceeds 2,000 prisoners. About three-quarters of these individuals are detained at the Central Detention Facility, a nearly forty-year-old facility commonly referred to as the “D.C. Jail.” Just under one quarter are detained at the privately-run Correctional Treatment Facility (CTF). The rest are located at one of the District’s three halfway houses.

This report examines the conditions of confinement at the D.C. Jail and the CTF and discusses several recurring and serious problems that require the prompt attention of the DCDOC and District policymakers.

- **The D.C. Jail’s physical condition is alarming.** Inspection reports by the D.C. Department of Health (DOH) have identified numerous violations of established correctional and public health standards, as well as structural and mechanical problems that are “serious to extremely serious.” Some of the problems noted in recent inspections appear to be a matter of poor housekeeping and sanitation practices — e.g., an “active infestation of vermin/pests throughout the facility.” Others indicate more fundamental degradation of the D.C. Jail’s physical infrastructure. Inspectors found “openings in the wall” of several cells, “damaged concrete in several of the cell blocks,” “water penetration through the walls,” mold growth, and a leaking roof. In addition, inspectors have noted that “most of the plumbing fixtures were in different stages of disrepair.”
- **Suicide prevention practices in the D.C. Jail are “in need of immediate corrective action.”** An expert report (the “Hayes Report”) arrived at this conclusion in 2013 after being commissioned to examine the D.C. Jail conditions and policies following a ten-month period during which four prisoners in the D.C. Jail committed suicide. The Hayes Report found that the D.C. Jail did not have enough suicide-resistant cells, and that prisoners under observation were subject to “overly restrictive and seemingly punitive” precautionary measures. The Hayes Report also criticized the infrequency of monitoring, which demonstrated “complete unconcern for inmate safety.” In response to the Hayes Report, the DCDOC formed a Suicide Prevention Task Force, which took steps to correct some of the issues noted in the report. However, the Task Force has not published anything in more than one year, so it is difficult to assess whether all of the required remedial measures have been implemented.
- **Facilities for youth are inadequate and programming is insufficient.** A report conducted by an outside correctional consulting group (the “Ridley Report”) identified significant problems with the conditions of confinement for youth housed at the CTF and found that boys at the CTF “have needs far greater than the services currently provided.” The Ridley Report highlighted the

inadequacies of the juvenile facilities at the CTF, the excessive imposition of segregation and isolation, and the insufficient programming for boys held there. The report also notes that many boys may only visit with family members through video visitation, which can interfere with maintaining critical family bonds. The DCDOC reports that it has “worked diligently to implement the Ridley recommendations,” but we recommend further actions, including reducing the use of isolation and segregation among youth prisoners, further increasing and improving youth programming, and expanding access to in-person visitation for all youths.

- **The District should not renew its contract with CCA, the for-profit corporation running the CTF.** Since 1997, the CTF has been operated under contract by the Corrections Corporation of America (CCA). It appears that the District’s compensation to CCA was 31% higher than CCA’s reported average, at least as of 2014. During that year, CCA reported an operating margin of 29.7%. CCA’s contract is set to expire in 2017 and issues related to CCA operation of prisons around the country since the beginning of the contract indicate that it would not be in the District’s interests to continue to contract out the operation of the CTF.
- **The Secure Residential Treatment Program needs expansion.** The Secure Residential Treatment Program, operated out of the CTF by the Court Services and Offender Supervision Agency and the U.S. Parole Commission, offers a helpful alternative to incarceration for those suffering from addiction, but is unavailable to women and to many men due to the location of the facility and its limited size.
- **“Good time credit” policies deny early release based on arbitrary distinctions.** District policies regarding the availability of “good time credit” for academic, vocational, and rehabilitation achievement contain arbitrary restrictions with respect to certain offenses. Federal policy governs good time credits for inmates who will be transferred to the custody of the Bureau of Prisons.
- **Correctional officers may not have been provided sufficient training.** A theme running throughout prior reports is that some of the District’s correctional officers have not been provided modern, effective training.
- **Public records regarding the D.C. Jail and the CTF are difficult to obtain.** The process for obtaining public records regarding the District’s correctional system is complex, time-consuming, occasionally befuddling, and sometimes fruitless.

We conclude by offering seven proposed recommendations to address recurring issues outlined in the report. They would not solve all the issues facing the District’s correctional system, but we believe they would be important and tangible improvements.

Although we detail multiple areas of concern, it should be said at the outset that this report is not intended to find fault with any particular person, organization, or institution. Corrections officers face dangerous, even life-threatening, conditions on a regular basis. The job is stressful and can be thankless. Administrative staff who help run the Department of Corrections and its facilities and programs are often faced with competing safety, budgetary, time, practical, political, and legal pressures. None of this is to say that the District cannot make improvements in every area of concern. We can. But assigning blame is less productive than collaborating to advance practical, effective solutions.

I. DISTRICT DEPARTMENT OF CORRECTIONS FACILITIES AND POPULATIONS

Individuals in the DCDOC system are generally subject to confinement at either of two facilities within the District, the D.C. Jail and the CTF,¹ or at one of the District's three contracted halfway houses. Prisoners convicted of a felony are transferred to a Federal Bureau of Prisons (BOP) facility and may become eligible for parole.

In FY14, the average daily population for all DCDOC facilities combined was 2,041.² Approximately three quarters (1,474) of those individuals were detained at the D.C. Jail. Twenty-four percent (489) of those in DCDOC custody were located at CTF, and the rest were in one of the contract halfway houses in the District.³ While most youth charged with crimes in the District are held at Department of Youth Rehabilitation Services (DYRS) facilities, an average of sixteen boys were located at CTF (the only DCDOC facility that houses youth) in FY14.⁴ Pursuant to the Revitalization Act of 1997, individuals convicted of felonies in D.C. are transferred to the custody of the BOP.

¹ D.C. Dep't of Corr., *FY 2013 Performance Accountability Report*, 1.

² See D.C. Dep't of Corr., *DC Department of Corrections Facts and Figures*, <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20October%202014.pdf>

³ See *id.*

⁴ This number represents juveniles that the District tried as adults. See *id.*

A. Facilities

1. D.C. Jail

The DCDOC operates the D.C. Jail.⁵ The D.C. Jail's population comprises solely adult men who: (1) are awaiting trial or a parole revocation decision and are subject to pre-trial detention, (2) have been convicted of a misdemeanor, or (3) have been convicted of a felony and are awaiting a transfer to a BOP facility.⁶ The D.C. Jail houses all three categories (Low, Medium, and High) of the DCDOC's Inmate Classification System (ICS), which is used to categorize prisoners for housing purposes based on "a number of factors that include the nature of their current criminal charges, prior criminal history and prior incarceration history."⁷

We appreciate the willingness of the DCDOC to allow us to tour the D.C. Jail in February 2015. The D.C. Jail cell blocks include eighteen housing units, one of which is currently being used as an inmate receiving center. Each housing unit has eighty cells which, pursuant to current practices, hold up to two individuals each. The facility has of late been housing fewer District prisoners than the capacity of the D.C. Jail would allow. The tour was brief, we did not tour the entire facility, and we did not bring experts or otherwise attempt to audit the facility or assess shortcomings addressed in environmental inspection reports discussed in section III(A). Nonetheless, the tour was informative. The D.C. Jail is an aging facility and is visibly suffering from wear and tear.

2. Correctional Treatment Facility

Unlike the D.C. Jail, the CTF is operated for the District by a contractor, the Corrections Corporation of America (traded as CXW on the New York Stock Exchange), pursuant to a 20-year contract that runs through January 30, 2017.⁸ The CTF population comprises primarily adult men and women who: (1) are awaiting trial or a parole revocation hearing and are subject to pre-trial detention, (2) have been convicted of a misdemeanor, or (3) have been convicted of a felony and are awaiting a transfer to a BOP facility.⁹ The CTF also houses youth of both sexes and some U.S. Marshals Service

⁵ Located at 1901 D Street, SE, Washington, DC 20003; *see also* D.C. Dep't of Corr., *FY 2013 Performance Accountability Report*, 1.

⁶ D.C. Dep't of Corr., *DOC Frequently Asked Questions*, <http://doc.dc.gov/page/doc-frequently-asked-questions>.

⁷ D.C. Dep't of Corr., *DOC Frequently Asked Questions*, <http://doc.dc.gov/page/doc-frequently-asked-questions>.

⁸ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America (effective Jan. 30, 1997, as modified); D.C. Dep't of Corr., *DOC Frequently Asked Questions*, <http://doc.dc.gov/page/doc-frequently-asked-questions>.

⁹ D.C. Dep't of Corr., *DOC Frequently Asked Questions*, <http://doc.dc.gov/page/doc-frequently-asked-questions>.

prisoners, and is permitted to house up to 200 sentenced BOP prisoners.¹⁰ Unlike the D.C. Jail, the CTF only houses prisoners with a “Low” or “Medium” ICS category.¹¹ The CTF’s operating capacity is between 1,400 and 1,500.¹²

3. Halfway Houses

Until recently, the DCDOC contracted with four separate, contractor-owned and operated halfway houses in the District, which are “often used as alternatives to incarceration”:¹³ (1) Efforts From Ex-Convicts; (2) Extended House, Inc.; (3) Fairview; and (4) Hope Village.¹⁴ The District no longer contracts with Efforts From Ex-Convicts.¹⁵ Data from the first week in February 2015 indicate that the Fairview housed about ten women, Extended House held about twenty-six men, and Hope Village housed about thirty men.¹⁶ These figures are lower than the average daily populations for FY 2014, which were as follows: Efforts From Ex-Convicts (15 individuals), Fairview (24), Extended House (40), and Hope Village (43).¹⁷

¹⁰ *Id.*; D.C. Dep’t of Corr., *DOC Official Population Counts by Facility* (Feb. 6, 2015), <http://doc.dc.gov/node/307122>; Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, Modification 10. As of January 1, 2003, the District permitted the CCA to fill empty beds at the CTF with prisoners from other jurisdictions, with the District receiving a per diem for any such prisoners. *Id.* Modification 3. As of November 4, 2008, the District’s contract with the CCA was expressly modified to permit the CCA to house USMS prisoners at the CTF. *Id.* Modification 9.

¹¹ D.C. Dep’t of Corr., *DOC Frequently Asked Questions*, <http://doc.dc.gov/page/doc-frequently-asked-questions>.

¹² The District reports that the operating capacity is 1,400; CCA filings cite a 1,500 figure. Compare D.C. Dep’t of Corr., *DOC Official Population Counts by Facility* (Feb. 6, 2015), <http://doc.dc.gov/node/307122>, with Corrections Corporation of America, *Annual Report (Form 10-K)*, 14, <http://www.sec.gov/Archives/edgar/data/1070985/000119312514072723/d664216d10k.htm>.

¹³ D.C. Dep’t of Corr., *FY 2015 Performance Plan*, 1, <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC15.pdf>.

¹⁴ D.C. Dep’t of Corr., *FY 2013 Performance Accountability Report*, 1, http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC_FY13PAR.pdf

¹⁵ See D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, C-37, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_1_web.pdf; D.C. Dep’t of Corr., *FY 2015 Performance Plan*, <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC15.pdf>.

¹⁶ D.C. Dep’t of Corr., *DOC Official Population Counts by Facility* (Feb. 6, 2015), <http://doc.dc.gov/node/307122>.

¹⁷ D.C. Dep’t of Corr., *DC Department of Corrections Facts & Figures October 2014*, <http://doc.dc.gov/node/344892>.

B. Policies Affecting Prisoner Population

1. U.S. Bureau of Prisons

Unlike each of America's fifty states, management of the District of Columbia is vested in a Mayor and City Council, but subject to control and oversight by the United States Congress.¹⁸ One result of this control is that, pursuant to a federal law,¹⁹ sentenced felons in the District have been required to be transferred to the BOP.²⁰ Before the enactment of the National Capital and Self-Government Act of 1997 (the "Revitalization Act"), many of those prisoners had been housed at the Lorton Correctional Complex²¹ in Virginia; by December 31, 2001, the District had ceased operations at Lorton.²²

Almost sixty percent of the District's prisoner population are accused or convicted of felonies: Within that population, nearly fifty percent of all District prisoners are standing trial on a felony charge and 10% have been convicted and are awaiting transfer to the BOP.²³ As a result, the District's prisoner population is highly transitory: Those awaiting trial for felonies will generally be released after the trial if acquitted or sent to the BOP if convicted, and misdemeanants will not be confined for more than one year.

2. Reason for Incarceration

The majority of individuals in DCDOC custody are either awaiting trial or awaiting transfer to a BOP facility. Forty-eight percent have a felony legal matter pending, and another 10% have been sentenced to felony time (presumably awaiting transfer to a BOP facility). Seven percent have a misdemeanor legal matter pending and are held pre-trial. Only 11% of DCDOC prisoners are sentenced misdemeanants—individuals, not awaiting a transfer, who are serving imposed sentences in a DCDOC

¹⁸ The Constitution grants legislative authority over the District to Congress. U.S. Const. art. I, § 8, cl. 17.

¹⁹ National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, 111 Stat. 712.

²⁰ D.C. Dep't of Corr., *Correctional Facilities*, <http://doc.dc.gov/page/correctional-facilities>.

²¹ The conditions at Lorton were examined through a series of interviews with staff and prisoners in a 1990 article authored by Professor Robert Blecker of New York Law School. See Robert Blecker, *Haven or Hell? Inside Lorton Central Prison: Experiences of Punishment Justified*, 42 Stan. L. Rev. 1149 (1990).

²² D.C. Dep't of Corr., *About DOC*, <http://doc.dc.gov/page/about-doc>.

²³ See *infra* D.C. Dep't of Corr., *D.C. Department of Corrections' PREA, Safety and Security Report 2014*, <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DOCPREASafetyandSecurityReport2014.pdf>.

facility.²⁴ The remaining 24% of the prisoners are incarcerated for violation of parole, being held pursuant to a writ or hold, or for “other” reasons.

Of the male DCDOC prisoners, about 19% are classified as “Federal Inmates,” *i.e.*, prisoners accused of violating federal law who are temporarily held in a DCDOC facility. Sixteen percent of the men being held for a D.C. Code offense are incarcerated for assault or domestic violence, 13.6% are in for a parole violation, and 9.4% are incarcerated for a burglary/robbery/carjacking. The remaining prisoners are incarcerated for various offenses including property crimes (8.2%), drug offenses (6.6%), weapons possession (6.4%), and homicide (4%). Approximately 32% of male DCDOC prisoners are incarcerated for “violent” or “dangerous” crimes (“dangerous crimes” includes possession with intent to distribute a controlled substance).

The top two reasons for incarceration of female DCDOC prisoners are (1) assault/domestic violence and (2) parole violations, with each of the two categories accounting for 20% of the DCDOC female population. Of female DCDOC prisoners, 13.7% are federal inmates. Other reasons for incarceration include property crimes (7.9%), failure to appear in court²⁵ (6.5%), and white collar crimes²⁶ (5.8%). Twenty-six percent of female prisoners are incarcerated for violent or dangerous offenses.

3. Length of Stay and “Good Time” Credits

The average length of stay in a DCDOC facility is 179 days for male prisoners, and 94 days for female prisoners. Under District law, prisoners²⁷ may earn “Good Time Credits” for completion of academic and vocational programs or rehabilitation programs; for “exceptionally meritorious service”; or “performing duties of outstanding importance in connection with institutional operations”; and for “demonstrat[ing] successful participation in one or more rehabilitation programs, work details, or special projects.”²⁸

One credit is equal to one full day of reduction in a sentence. Prisoners earn one credit for completing a “program, detail, or project” that lasts twenty days or less, two credits for completing a program that lasts between twenty and twenty-six days; and

²⁴ *See id.*

²⁵ “Failure to appear” generally refers to an individual’s failure to appear before any court or judicial officer when ordered to do so. *See, e.g.*, D.C. Code §23-1327.

²⁶ “White collar crime” generally refers to financially-motivated, nonviolent crime that is often committed by government and business professionals. *See, e.g.*, DC Code §22-3225.02 (Insurance fraud).

²⁷ The District’s good time credit laws apply only to pretrial and subsequently sentenced misdemeanants. Inmates charged with felonies and sentenced to more than one year of incarceration will be transferred to BOP custody and can only earn good time credits in accordance with federal law and BOP policies.

²⁸ D.C. Code §§ 24-221.01 to 24-221.01c.

three credits if a program lasts twenty-six days or more.²⁹ There are a few limitations on the use of this policy. First, only prisoners serving sentences for misdemeanors are eligible (however, credits can begin to accrue pre-sentencing while the individual is incarcerated).³⁰ Second, credits may not reduce a prisoner's sentence by more than 15% if the conviction was for a crime of violence, and credits may not reduce the minimum sentence at all for a specified list of crimes, including certain crimes under the Controlled Substances Act.³¹ There are limitations on how many credits a prisoner may earn per month.³²

4. Parole/Supervised Release

When a D.C. Code offender³³ has served his or her minimum felony sentence, s/he may be eligible for parole.³⁴ In addition to the standard parole system, the District also provides for medical parole for permanently incapacitated or terminally ill prisoners, and for geriatric release for prisoners at least sixty-five years old who have a chronic illness.³⁵

The U.S. Parole Commission is vested with the authority to grant or deny parole to D.C. Code felony offenders and to revoke parole and supervised release for those under its supervision.³⁶ Before August 5, 1998, the D.C. Board of Parole was responsible for making parole decisions, but its authority was transferred by the Revitalization Act.³⁷

Even though D.C. Code felony offenders are transferred into the federal BOP system, the Commission applies District (rather than federal) guidelines and procedures to all D.C. Code offenders.³⁸ However, the Commission has the authority to amend the

²⁹ D.C. Dep't of Corr., Program Statement 4341.1, § 10(b) (Aug. 17, 2012) (Good Time Credits).

³⁰ See *id.* § 10(a)-(b).

³¹ *Id.* § 13(a)-(b).

³² *Id.* § 13(d).

³³ By "D.C. Code offender," we refer to an individual who has violated a section of the D.C. criminal code, as opposed to a District resident who violated a federal law.

³⁴ D.C. Code § 24-404(a).

³⁵ See *id.* §§ 24-464, 24-465.

³⁶ See U.S. Dep't of Justice, *FAQs*, <http://www.justice.gov/uspc/frequently-asked-questions#q46>.

³⁷ See *id.* The D.C. Board of Parole retained the authority to *revoke* parole until August 5, 2000, when that authority was also transferred to the Commission and the Board was abolished. *Id.*; D.C. Code § 24-131(a)(1).

³⁸ See Parole FAQs. Specifically, D.C. Code offenders are addressed in Subpart C of the Commission's manual, which is available at <http://www.justice.gov/uspc/documents/uspc-manual111507.pdf>.

rules, and it did so in 2000, potentially requiring prisoners to serve time beyond when they become eligible for parole until they are deemed “suitable” for parole.³⁹ The Commission’s guidelines have been subject to challenge. For example, a class action filed by D.C. Code offenders challenges the application of the Commission’s rules, arguing that the Commission’s rules unconstitutionally apply retroactively to extend the length of time before prisoners will receive parole.⁴⁰

While D.C. Code offenders are on parole, they are subject to supervision by an independent federal agency, the Court Services and Offender Supervision Agency (CSOSA).⁴¹ CSOSA also supervises pre-trial defendants who have been released to the community.

5. Secure Residential Treatment Program

The Secure Residential Treatment Program (SRTP) is a residential substance abuse treatment program for individuals who have violated the terms of their parole or supervised release and who have addiction needs.⁴² The benefit of the SRTP is that the participants receive substance abuse counseling and earn street-time credit, meaning that they are still considered to be on supervised release for purposes of calculating the length of their supervised release. The SRTP started as “a joint collaboration of CSOSA, the DC Government, the United States Parole Commission, and the Bureau of Prisons (BOP)” to address the needs of “chronic substance abusing, and criminally-involved DC Code offenders” and “increase their chances of successful community reintegration.”⁴³ According to the DCDOC, the SRTP is currently operated by CSOSA and the U.S. Parole Commission, which control eligibility requirements and the content of the program.⁴⁴

³⁹ *Id.*; *Daniel v. Fulwood*, 766 F.3d 57, 59 (D.C. Cir. Sept. 12, 2014).

⁴⁰ See *Daniel v. Fulwood*, 766 F.3d 57; see also Spencer Hsu, *U.S. appeals court revives parole challenge by D.C. inmates imprisoned since 1985*, *The Washington Post*, Sept. 12, 2014, http://www.washingtonpost.com/local/crime/us-appeals-court-revives-parole-challenge-by-dc-inmates-imprisoned-since-1985/2014/09/12/5c4a78ce-3a97-11e4-bdfb-de4104544a37_story.html.

⁴¹ Court Services and Offender Supervision Agency for the District of Columbia, *Mission and Goals*, <http://www.csosa.gov/about/mission.aspx>.

⁴² See Court Services and Offender Supervision Agency for the District of Columbia, *FAQs: Supervision Programs and Initiatives* (“Describe CSOSA’s planned participation in the [SRTP]”), <http://www.csosa.gov/about/faqs/programs.aspx#faq19>.

⁴³ *Id.*

⁴⁴ D.C. Department of Corrections Response to Washington Lawyers’ Committee White Paper, May 5, 2015 (hereinafter “DCDOC Response”). A draft of this report was shared with the DCDOC and, on May 5, the DCDOC provided its comments. This draft incorporates DCDOC comments, along with analysis of those comments. The DCDOC Response is included as Appendix B to this report.

Participants in the SRTP are housed for up to 180 days in a special thirty-two-bed unit at the CTF. The SRTP is administered by Phoenix House, a third-party contractor.⁴⁵

The SRTP makes a significant difference in the lives of many of its participants and can help reduce the rate of recidivism.⁴⁶ But currently, the number of individuals who could benefit from the program far exceeds the SRTP's capacity. The SRTP is available only to men, and its limited capacity means that many individuals who might benefit from the program are unable to participate.

Those who are unable to participate in the program are held in custody and can wait months to begin participating in the program. During that time, the individuals who are held for a violation of their supervised release but who are unable to participate in the SRTP do not receive street time credit. Also, because the SRTP is operated out of the CTF, it is not available to individuals with a "High" ICS rating. As a result, individuals with a High ICS rating are put in custody at the D.C. Jail instead of being able to participate in the SRTP and will likely have their parole or supervised release revoked. They may apply for a waiver, but those waivers can take months, if they are ever granted at all.⁴⁷

C. Demographics and Budget

As District leadership and community stakeholders confront the challenges presented by the conditions of confinement in the District, it is vital to consider two additional aspects of the correctional system: The system's disproportionate impact on certain populations, and its cost. In addition to the discussion in this section,

⁴⁵ See Phoenix House, *Secure Residential Treatment Program*, <http://www.phoenixhouse.org/locations/metro-dc/secure-residential-treatment-program/>.

⁴⁶ See generally Press Release, *Norton Announces the Secure Residential Treatment Program for Non-Violent Offenders Will Continue*, Congresswoman Eleanor Holmes Norton, <http://norton.house.gov/media-center/press-releases/norton-announces-the-secure-residential-treatment-program-for-non->

⁴⁷ The SRTP is distinct from the Residential Substance Abuse Treatment (RSAT) program, which is available to male and female inmates in DCDOC custody. See D.C. Department of Corrections, *Substance Abuse Treatment at DOC*, <http://doc.dc.gov/page/substance-abuse-treatment-doc>. According to the DCDOC, inmates may volunteer to participate in the RSAT, join via referral or self-report, or enroll if they "have violated the terms of their probation and otherwise meet the requirements of the program." See DCDOC Response. The RSAT is generally a 30- to 120-day program that includes services on relapse prevention, as well as "workshops on domestic violence, parenting, fatherhood, life skills, arts, behavior modification, vocational education and health education." *Id.*; D.C. Department of Corrections, *Substance Abuse Treatment at DOC*, <http://doc.dc.gov/page/substance-abuse-treatment-doc>. This curriculum has been "licensed by Addiction Prevention and Recovery Administration (APRA), the regulating body for policy for substance abuse, prevention, treatment, and recovery services." DCDOC Response. Individuals who successfully complete the RSAT program are reinstated to supervision and are generally placed in a 30- to 60-day aftercare program.

demographics and cost issues are addressed in more detail in the appendix to this report.

Slightly less than half (49.5%) of the District's total population, but 91% of the District's prisoner population, is Black.

The District's prisoner population is disproportionately Black and male as compared to the District's total population. Slightly less than half (49.5%) of the District's total population, but 91% of the District's prisoner population, is Black. By contrast, 43.4% of the District's total population, but only a small fraction (3%) of the District's prisoner population, is White.

And, while 92% of the DCDOC population is male, only 47% of the District's total population is male.

And, while 92% of the DCDOC population is male, only 47% of the District's total population is male.⁴⁸ When it comes to youth, the racial and gender disparities are even starker.

Since 2007, the District's prisoner population has declined significantly, and may well decline further as a result of District policies relating to the decriminalization of marijuana. A report studying the District's high incarceration rate identified a lack of affordable housing, high rates of homelessness, education deficiencies, lack of access to mental health and substance abuse treatment, and high unemployment as relevant factors.⁴⁹

II. RECURRING ISSUES AND PROBLEMS INVOLVING THE D.C. JAIL AND CTF

Despite the tremendous investments that the D.C. government has made in its prison system, discussed in more detail in the Appendix, the D.C. Jail and CTF continue to face significant problems. As the following sections explain:

- The D.C. Jail's physical infrastructure appears to be crumbling and multiple inspections have revealed unsanitary conditions and non-compliance with basic standards established by national correctional authorities;

⁴⁸ United States Census Bureau, *State & County QuickFacts*, <http://quickfacts.census.gov/qfd/states/11000.html>.

⁴⁹ Justice Policy Institute, *A Capitol Concern: The Disproportionate Impact of the Justice System on Low-Income Communities in D.C.*, http://www.justicepolicy.org/images/upload/10-07_EXS_CapitolConcern_AC-PS-RD-DC.pdf.

- An independent expert found that the suicide prevention program employed at the D.C. Jail has significant shortcomings despite the fact that four prisoners recently committed suicide in the span of less than one year; and
- The CTF is not adequately providing for the needs of juveniles who are incarcerated there.
- For nearly twenty years, the CTF has been operated under contract by CCA. Continued problems at the CTF, the fact that the District's compensation to CCA appears to be 34% higher than CCA's reported average, at least as of 2013, and CCA's operational track record around the country since the beginning of the contract all strongly indicate that it would not be in the District's interests to continue to contract out CTF operations when the CCA contract expires in 2017.

A. Crumbling physical infrastructure

1. Recent reports

The District's jail facilities are not new. The CTF was opened in 1992 and has now been in operation for over twenty years.⁵⁰ The D.C. Jail was opened in 1976 and has been in operation for nearly forty years.⁵¹ Based on discussions with DCDOC staff, as well as testimony provided to the D.C. Council by DCDOC officials, maintenance and upkeep for the D.C. Jail will continue to consume resources and may require expensive upgrades.

Inspection reports prepared by the D.C. Department of Health (DOH) paint a troubling picture of the physical condition of the D.C. Jail. The two most recent inspection reports that are available account for a September 2013 to October 2013 inspection period (the "Fall 2013 Inspection") and a February 2014 to March 2014 inspection period (the "Spring 2014 Inspection").⁵² A cover letter from the DOH to the Director of the DCDOC accompanies each of the inspection reports and explains that:

*This inspection identified areas of non-compliance with environmental requirements as defined by the American Correctional Association Standards for Adult Local Detention Facilities and the American Public Health Association Standards for Health Services Correctional Institutions.*⁵³

⁵⁰ D.C. Dep't of Corr., *Correctional Facilities*, <http://doc.dc.gov/page/correctional-facilities>.

⁵¹ D.C. Dep't of Corr., *Correctional Facilities*, <http://doc.dc.gov/page/correctional-facilities>.

⁵² Although additional inspections likely occurred since March 2015, prior requests to obtain access to any associated reports through the FOIA process were unsuccessful.

⁵³ Letter from Joxel Garcia, Director, D.C. Department of Health, to Thomas Faust, Director, D.C. Department of Corrections (May 20, 2014); Letter from Joxel Garcia, Acting Director, D.C. (continued...)

The inspection reports themselves raise grave concerns. Although some of the problems could conceivably be addressed through improvements in housekeeping and sanitation or maintenance practices, others speak to larger problems with the physical infrastructure of the D.C. Jail and indicate that the facility itself—which opened nearly forty years ago—may require significant renovations or need to be replaced.

In both the Fall 2013 Inspection and the Spring 2014 Inspection, the inspector found that “the cell blocks and several common areas were not maintained in a clean and sanitary manner and in good repair.”⁵⁴ In the reports accompanying each inspection, the inspector provided a list of more than 100 problems to support this conclusion.⁵⁵ Problems that pertain to sanitation failures and a lack of routine maintenance and that could possibly be corrected through significant improvements in housekeeping practices include, for example:

“There is an active infestation of vermin/pests throughout the facility”

- “There is an active infestation of vermin/pests throughout the facility;”⁵⁶
- There were numerous sanitation issues in the kitchen, such as unsanitary equipment and improper temperature control for refrigerated foods;⁵⁷
- “The showers throughout the housing units were not sanitarily maintained and in good working order;”⁵⁸

Department of Health, to Thomas Faust, Director, D.C. Department of Corrections (Dec. 4, 2013).

⁵⁴ See generally Ralph Spencer, *Central Detention Facility Inspection Report, February 18 to March 21, 2014* (Mar. 21, 2014) (hereinafter “Spring 2014 Inspection Report”); Ralph Spencer, *Central Detention Facility Re-Inspection Report, February 18 to March 21, 2014* (Mar. 21, 2014) (hereinafter “Spring 2014 Re-Inspection Report”); Ralph Spencer, *Central Detention Facility Inspection Report, September 17 to October 11, 2013* (Oct. 18, 2013) (hereinafter “Fall 2013 Inspection Report”); Ralph Spencer, *Central Detention Facility Re-Inspection Report, September 17 to October 11, 2013* (Oct. 18, 2013) (hereinafter “Fall 2013 Re-Inspection Report”).

⁵⁵ See Spring 2014 Re-Inspection Report, 2 - 6; Spring 2014 Inspection Report, 2 - 6; Fall 2013 Inspection Report, 2 - 6; Fall 2013 Re-Inspection Report, 2 - 7.

⁵⁶ Memorandum from Ralph Spencer, Safety and Environmental Health Specialist, to Senior Deputy Director, Health Regulation and Licensing Administration, 6 (Feb. 18, 2014 to Mar. 21, 2014) (hereinafter “Spring 2014 Spencer Memorandum”); Memorandum from Ralph Spencer, Safety and Environmental Health Specialist, to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration (Sept. 17, 2013 to Oct. 11, 2013) (hereinafter “Fall 2013 Spencer Memorandum”)

⁵⁷ Spring 2014 Spencer Memorandum, 6; Fall 2013 Spencer Memorandum, 4 - 5.

- Numerous parts of the medical facility were deemed “dirty” or “damaged” and there was “a sewer odor” in some of the rooms;⁵⁹ and
- “[T]he lighting was not functioning properly” in many of the cell blocks.⁶⁰

**Department of Health:
“structural and mechanical
deficiencies were more
prominent than
environmental deficiencies”**

By contrast, other problems cited in the reports could be remedied only through significant renovations to the facility or by replacing the D.C. Jail entirely. Indeed, the Department of Health noted in its Fall 2013 Inspection that “structural and mechanical deficiencies were more prominent than environmental deficiencies,”⁶¹ and many of those issues remained uncorrected during the Spring

2014 Inspection.⁶² Structural or mechanical deficiencies observed during the inspections, included, for example:

- “There were openings in the wall” of several cells⁶³ and “damaged concrete in several of the cell blocks;”⁶⁴
- “Most of the plumbing fixtures were in different stages of disrepair;”⁶⁵
- The roof was leaking;⁶⁶
- There was “water penetration through the walls;”⁶⁷

⁵⁸ Spring 2014 Spencer Memorandum, 7; Fall 2013 Spencer Memorandum, 6.

⁵⁹ Fall 2013 Inspection Report, 4 - 5; Fall 2013 Re-Inspection Report, 4 - 5; *see also* Spring 2014 Inspection Report, 4 - 6; Spring 2014 Re-Inspection Report, 4 - 5.

⁶⁰ Fall 2013 Re-Inspection Report, 11; *see also* Spring 2014 Inspection Report, 11 (“There were several blown fluorescent tubes throughout the cell blocks and in the stairwells.”).

⁶¹ Fall 2013 Spencer Memorandum, 2.

⁶² Spring 2014 Spencer Memorandum, 2.

⁶³ Fall 2013 Re-Inspection Report, 8; Fall 2013 Inspection Report, 2; *see also* Spring 2014 Spencer Memorandum, 9 (identifying “Openings in the wall” as a general maintenance concern).

⁶⁴ Spring 2014 Re-Inspection Report, 2; Spring 2014 Inspection Report, 2; Fall 2013 Re-Inspection Report, 8; Fall 2013 Inspection Report, 2.

⁶⁵ Fall 2013 Re-Inspection Report, 4, 12.

⁶⁶ Spring 2014 Spencer Memorandum, 2; Fall 2013 Spencer Memorandum, 2.

⁶⁷ Spring 2014 Spencer Memorandum, 2; Fall 2013 Spencer Memorandum, 2.

- Mold was growing on many of the walls;⁶⁸
- There was “concrete separating at the corners in the gym;”⁶⁹
- The floors, walls, and ceilings in many rooms were “damaged;”⁷⁰
- Floor tiles in many of the rooms were missing or damaged;⁷¹
- There were rusted areas in the ceiling and the wall;⁷²
- There were damaged and rusted windows and “damaged and missing caulk from around the window in several of the cell blocks;”⁷³
- There was “peeling paint on the walls throughout the facility;”⁷⁴ and
- There was damage to the “concrete walkway around the exterior premises.”⁷⁵

The DOH emphasized the seriousness of the water leakage in particular, which it blamed for mold growth and described as “a health and safety issue which can have serious effects.”⁷⁶

⁶⁸ Spring 2014 Spencer Memorandum, 2; Fall 2013 Spencer Memorandum, 2.

⁶⁹ Spring 2014 Inspection Report, 2; Fall 2013 Re-Inspection Report, 2.

⁷⁰ *See generally* Spring 2014 Inspection Report; Spring 2014 Re-Inspection Report; Fall 2013 Inspection Report; Fall 2013 Re-Inspection Report.

⁷¹ *See generally* Spring 2014 Inspection Report; Spring 2014 Re-Inspection Report; Fall 2013 Inspection Report; Fall 2013 Re-Inspection Report.

⁷² Spring 2014 Inspection Report, 12; Spring 2014 Re-Inspection Report, 12; Fall 2013 Inspection Report, 12; Fall 2013 Re-Inspection Report, 12.

⁷³ Spring 2014 Inspection Report, 3; Fall 2013 Re-Inspection Report, 2.

⁷⁴ Spring 2014 Spencer Memorandum, 8; Fall 2013 Spencer Memorandum, 7.

⁷⁵ Spring 2014 Spencer Memorandum, 2; Fall 2013 Spencer Memorandum, 2.

⁷⁶ Fall 2013 Spencer Memorandum, 3; *see also* 2014 Spencer Memorandum, 10.

2. Persistent problems

A review of reports from ten recent inspections indicates that many issues have not been adequately addressed after being noted in prior reports.⁷⁷ For example, in the report accompanying the Spring 2014 Inspection, the inspector noted that “[s]everal of the structural and mechanical deficiencies observed in previous inspections . . . remained outstanding.”⁷⁸ These issues include: “leaking roof, water penetration through the walls, mold growth on the walls,” and “leaking damaged and or inoperable plumbing fixtures.”⁷⁹ In past reports, the Department of Health described these problems as “serious to extremely serious” and explained that some of these problems “can have a negative impact on the health and safety of the inmates and staff if they are not addressed in a timely manner.”⁸⁰

The Department of Health described these problems as “serious to extremely serious”

However, despite the seriousness of these and other concerns, many of the same problems persisted—and in some cases deteriorated—between reports.⁸¹ Thus, while it is helpful that the DOH inspects the D.C. Jail on a regular basis, it is not clear that these reports are being translated into actions that significantly improve the condition of the facility.

It is standard for periodic inspections to consist of an initial inspection and a follow-up inspection to determine compliance with corrective action plans submitted by

⁷⁷ The ten inspections were conducted in February 2014 - March 2014; September 2013 - October 2013; April 2013 - May 2013; November 2012; May 2012 - June 2012; January 2012 - February 2012; May 2011; May 2010 - June 2010; June 2009; January 2009.

⁷⁸ Spring 2014 Spencer Memorandum, p. 2.

⁷⁹ *Id.*

⁸⁰ See, e.g., Memorandum from Milton Anderson and Ralph Spencer to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration, 6 (May 18, 2010 to June 2, 2010); Memorandum from Milton Anderson and Ralph Spencer to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration, 18 (June 8, 2009 to June 19, 2009); Memorandum from Milton Anderson and Ralph Spencer to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration, 17 (Jan. 12, 2009 to Jan. 30, 2009).

⁸¹ See, e.g., Memorandum from Milton Anderson and Ralph Spencer to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration, 6 (May 18, 2010 to June 2, 2010); Memorandum from Milton Anderson and Ralph Spencer to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration, 18 (June 8, 2009 to June 19, 2009); Memorandum from Milton Anderson and Ralph Spencer to Feseha Woldu, Senior Deputy Director, Health Regulation and Licensing Administration, 17 (Jan. 12, 2009 to Jan. 30, 2009).

the facility based on the initial inspection. The DCDOC states that it is “committed to performing preventative and day to day maintenance of the CDF and CTF facilities in order to provide a clean and safe environment,” and, typically, the DCDOC will have addressed or fixed at least some of the problems identified in the initial inspection by the time the follow-up inspection occurs. The DCDOC did not dispute the findings from these past reports, but noted that DOH had recently cited “noticeable improvements in the facility,” and observed that “areas that were in need of repair and in poor condition during the initial inspection have improved significantly.”⁸² Further, the DCDOC maintained that 87% of the items identified in a March 2015 inspection have already been “abated.”⁸³ Nonetheless, as DCDOC acknowledged, some of the issues noted in DOH inspection reports are, “due to the age and deterioration of the physical structure,” “outside of DOC’s control.”⁸⁴

During our tour of the D.C. Jail, we did not attempt to re-evaluate the facility or verify the findings of the environmental inspection reports. Nonetheless, we did observe that, although many parts of the facility were painted and appeared to be maintained, in other areas of the facility, paint was peeling or scratched, metal frames and hinges were rusted, the ceiling was stained and missing ceiling tiles, and piping insulation was frayed or damaged. We observed flies in the culinary area, though not to such an extent that we would term it an “infestation.” We also learned that mice posed an occasional problem in dry storage. We did not observe any mice during the tour.

The DCDOC acknowledged that it has not been able to fix certain shortcomings “due to the age and deterioration of the physical structure.”

3. Addressing these structural deficiencies

These DOH reports underscore the urgent need for improvements to the D.C. Jail. Many of these issues may not be easily remedied. Indeed, the DCDOC acknowledged that it has not been able to fix certain shortcomings “due to the age and deterioration of the physical structure.”⁸⁵ But if District prisoners are to be housed in a facility that is clean, sanitary, and up to the minimum standards that have been established by national correctional authorities, then they must be addressed. A full examination of the potential remedies—including physical plant issues such as the replacement of aging facilities with one or more new, modern facilities—is necessary. The status quo is unacceptable.

⁸² DCDOC Response.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ DCDOC Response.

4. Additional Concerns

In a recent hearing before the Committee on the Judiciary and Public Safety, Director Thomas Faust suggested that the D.C. Jail's lack of program space makes it difficult to provide significant programming.⁸⁶ Director Faust also stated that the facility is well-worn and that it will continue to need significant repairs.

During our tour, we discussed a number of structural issues at the facility that appear to pose current risks and may require costly improvements.

First, the D.C. Jail has four electrical generators, three of which are as old as the D.C. Jail itself, and a fourth that was transferred from the Lorton facility and was likely not new when that facility closed in 2001. Although the generators are reportedly all functioning and able to provide emergency back-up power, the current generator system is unable to provide enough power to meet all of the facility's electricity needs. In particular, the system would not be able to support full operation of the air chillers on a hot day. There is no indication of a security risk, but the result could be an inability to maintain reasonable temperatures in the facility. Additionally, due to the age of the generators, parts are increasingly unavailable on the market, driving up the cost of maintenance and repair.

Second, the air handlers that control air flow and help balance temperatures in the cells were moved nearly two decades ago in an effort to increase efficiency. Unfortunately, it appears that there were fairly severe problems in the implementation of the system redesign and the current system has not been able to maintain consistent temperatures in the cellblocks. Moreover, the air handlers are reportedly nearing the end of their useful life and replacement and attendant redesign of the structure may cost millions.

Third, the D.C. Jail relies on the D.C. General steam plant for steam, which is used for heating. When the steam plant goes offline, as it has in the past, the D.C. Jail does not have an alternate source of steam for heat and has no control over the repair of that facility. This lack of a contingency is concerning, particularly if a failure results in an inability to adequately heat the facility in winter.

Fourth, the D.C. Jail contains a number of structural flaws that limit its utility and cost-effectiveness. For example, during the tour, DCDOC staff noted that one of the elevators was designed to skip a floor in the facility. Staff were uncertain as to the original intent behind the design, but the feature is apparently no longer necessary. Nevertheless, staff must contend with an elevator that does not stop at all floors. Additionally, the 1970s facility was not designed with energy efficiency in mind, a concept that would be expected to save costs in a modern facility.

⁸⁶ D.C. City Council, *Public Hearing, Committee on the Judiciary* (Feb. 19, 2015), http://208.58.1.36:8080/DCC/February2015/02_19_15_Judici.mp4 (video) (testimony of Director Faust).

Fifth, although the cell blocks we toured contained common areas, the D.C. Jail appeared to have limited space available for programming.

B. Mental Health and Suicide Prevention Practices at the D.C. Jail

Between November 2012 and August 2013, four prisoners at the D.C. Jail committed suicide, bringing the suicide rate to three times the national average.

Prisoners at the D.C. Jail receive on-site mental health services from the D.C. Department of Mental Health,⁸⁷ and clinicians from Unity Health Care, an outside vendor that provides a range of health care services to prisoners in DCDOC facilities.⁸⁸ In recent years, prisoner suicides at the D.C. Jail have highlighted potential shortcomings in this mental health system.⁸⁹ Between November 2012 and August 2013, four

prisoners at the D.C. Jail committed suicide, bringing the suicide rate to three times the national average.⁹⁰ At the time, the DCDOC's contract with Unity Health Care provided for certain suicide-prevention measures, including safe cells, a suicide intake protocol, and periodic suicide screening.⁹¹

In the midst of the dramatic increase in suicides at the D.C. Jail, the DCDOC engaged an outside consultant in mid-2013 to draft a report on suicide prevention practices within the D.C. Jail.⁹² The DCDOC also formed a Suicide Prevention Task Force (the "Task Force"), whose membership includes representatives of the Department of Corrections, Unity Health Care, the Department of Mental Health, and the Corrections Corporation of America.⁹³ The Task Force took steps to correct some of

⁸⁷ D.C. Dep't of Corr., *Mental Health Services at DOC*, <http://doc.dc.gov/page/mental-health-services-doc>. Mental health services may also be provided by "community service agencies." *See id.*

⁸⁸ *See* Lindsay M. Hayes, *Report on Suicide Prevention Practices within the District of Columbia, Department of Corrections' Central Detention Facility* (Sept. 13, 2013) (hereinafter "Hayes Report").

⁸⁹ Aaron C. Davis, *Report: Rash of suicides at D.C. Jail points to deep problem with inmates' mental health care*, *The Washington Post*, Nov. 7, 2013, http://www.washingtonpost.com/local/dc-politics/report-rash-of-suicides-at-dc-jail-points-to-deep-problem-with-inmates-mental-health-care/2013/11/07/caecf39c-47e5-11e3-b6f8-3782ff6cb769_story.html.

⁹⁰ *Id.*

⁹¹ D.C. Contract, DCFL-2006-D-6001 & Modifications (Unity Health Care, Inc.), Contract §§ C.3.2.3, C.3.12; *id.* at Modification 8, §§ C.3.2.4, C.3.12.7.

⁹² *See generally* Hayes Report.

⁹³ D.C. Dep't of Corr., Office of Health Administrations, *Suicide Prevention Task Force Report* (Oct. 14, 2013) (hereinafter "Task Force Report").

the issues noted in the Hayes Report, but,⁹⁴ after an initial report in October 2013, the Task Force has not published anything further in more than a year. Nevertheless, Director Faust characterized the Task Force as “very active” in a recent hearing before the Committee on the Judiciary and Public Safety.⁹⁵

1. Hayes Report

The DCDOC engaged Lindsey Hayes, an expert in the area of suicide prevention in correctional facilities, to assess the policies and practices at the D.C. Jail and to issue a report summarizing his findings (the “Hayes Report”).⁹⁶ The Hayes Report found that, while the DCDOC and Unity Health Care had policies that “more than adequately cover the required components of a suicide prevention program . . . the suicide prevention *practices* for many of these required components [were] lacking in varying degrees and in need of immediate corrective action.”⁹⁷ The D.C. Jail was particularly lacking in the following areas:

- *Lack of Suicide-Resistant Cells.* Hayes found that the D.C. Jail included an inadequate number of suicide-resistant cells.⁹⁸ Such cells do not include protrusions that could serve as an anchoring device for a prisoner trying to commit suicide by hanging. At the time of the assessment, the D.C. Jail included only nine suicide-resistant cells, but “there were more than nine (9) inmates on observation status each day.”⁹⁹ As a result, several prisoners who were under observation for potentially suicidal behavior were housed in non-suicide resistant cells that contained “dangerous anchoring devices.”¹⁰⁰ In response, the Hayes Report “strongly recommended that DOC officials embark upon an inspection program to ensure that prisoners on suicide precautions are housed in ‘suicide-resistant’ cells.”¹⁰¹
- *Punitive Conditions.* Hayes found that the “precautions” taken with respect to prisoners who were possibly suicidal were “overly restrictive and seemingly punitive.”¹⁰² When prisoners were designated for “behavioral observation,” they

⁹⁴ *See id.*

⁹⁵ D.C. City Council, *Public Hearing, Committee on the Judiciary* (Feb. 19, 2015), http://208.58.1.36:8080/DCC/February2015/02_19_15_Judici.mp4 (video) (testimony of Director Faust).

⁹⁶ *See generally* Hayes Report.

⁹⁷ *Id.* at 6.

⁹⁸ *See id.* at 23.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 26.

¹⁰² *Id.* at 24.

were isolated and “stripped of all clothing and possessions, and given only a paper gown without undergarments.”¹⁰³ While under behavioral observation, prisoners were permitted to leave their cells only for showers and legal visits, and were prohibited from using the telephone or having family visits.¹⁰⁴ Hayes noted that many of these measures were counterproductive: “Confining a suicidal inmate to their cell for 24 hours a day only enhances isolation and is anti-therapeutic.”¹⁰⁵ The “seemingly punitive” conditions also decreased the chances that prisoners would honestly report suicidal ideations.¹⁰⁶ According to Hayes, it was “obvious” that the punitive measures were premised on “a misguided belief that most inmates who threaten suicide and/or engage in self-injurious behavior are simply manipulative” and that the overly “restrictive and punitive aspects of Behavioral Observation [are meant] to deter such behavior.”¹⁰⁷

- *Insufficient Supervision of Potentially Suicidal Prisoners.* Hayes was most critical of the DCDOC’s use of a monitoring protocol called “behavioral observation” for suicidal prisoners instead of “Suicide Watch” or “Suicide Prevention.” Hayes found it “incredibl[e]” that, “*there were not any inmates on either Suicide Watch or Suicide Prevention status*” during the three-day on-site assessment.¹⁰⁸ This is significant because while prisoners who are on Suicide Watch or Suicide Prevention would be monitored continuously or once every fifteen minutes, respectively, prisoners placed on “behavioral observation” were monitored only once every 30 to 60 minutes.¹⁰⁹ Hayes even suggested that this irregular monitoring of suicidal prisoners showed “complete unconcern for inmate safety,”¹¹⁰ and that it was “obvious” that behavioral observation was being used to by-pass more regular monitoring.¹¹¹ The Hayes Report cites one case of a prisoner who had attempted suicide on several occasions in the previous two months but was nevertheless placed on behavioral observation where he might be monitored only once every sixty minutes.¹¹²
- *Inadequate Training.* Hayes found that “correctional officers that are assigned to the mental health unit do *not* receive any specialized mental health and/or

¹⁰³ *Id.* at 23.

¹⁰⁴ *Id.* at 24.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 33.

¹⁰⁸ *Id.* at 31.

¹⁰⁹ *Id.* at 30, 32.

¹¹⁰ *Id.* at 33.

¹¹¹ *Id.*

¹¹² *Id.* at 34 - 35.

suicide prevention training.”¹¹³ The suicide prevention training program for all employees was “a 39-slide PowerPoint presentation . . . encompassing only one hour of instruction.”¹¹⁴ Overall, the report concluded that “the number of hours devoted to both pre-service and annual suicide prevention training for correctional, medical, and mental health staff is inadequate, and the content of the training curricula is in need of improvement.”¹¹⁵

2. Suicide Prevention Task Force

In response to the increase in prisoner suicides, the DCDOC formed the Suicide Prevention Task Force to review “custodial practices related to medical and mental health issues in DOC facilities.”¹¹⁶ On October 14, 2013, the Task Force published a report summarizing a recent meeting and other steps taken by the Task Force to date.¹¹⁷ In the report, the Task Force noted that, as of the date of the report, the suicide rate for the DCDOC as a whole, when accounting for the average daily population of its facilities, was “more than 3 times the average” of local jails nationwide.¹¹⁸

The report also described positive steps that the Task Force had taken to address some of the concerns outlined in the Hayes Report. For example, the following Task Force recommendations were implemented:

- Increase the frequency of “Segregation and Intake unit checks” to at least once every fifteen minutes.¹¹⁹
- Ensure that “NO ONE is placed in a single cell unless there’s an overwhelmingly compelling reason to do so.”¹²⁰
- Include a dedicated booking supervisor at intake to “monitor all high-risk inmates . . . to determine if an expedited referral to a mental health clinician is warranted.”¹²¹
- Implement a new “Razor plan” that prohibits prisoners from accessing razors.¹²²

¹¹³ *Id.* at 9.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 10.

¹¹⁶ *See* Task Force Report, 2.

¹¹⁷ *See generally id.*

¹¹⁸ *Id.* at 4.

¹¹⁹ *Id.* at 6.

¹²⁰ *Id.*

¹²¹ *Id.* at 5.

¹²² *Id.* at 6.

- Institute a more robust four-hour suicide prevention training curriculum.¹²³

In its report, the Task Force also described a set of “long-term suicide prevention strategies undergoing consideration.”¹²⁴ For example, in order to improve suicide-resistance in prisoner cells, the “DOC’s Facilities team” worked on and had “nearly completed a ‘suicide-resistant’ cell prototype.”¹²⁵

Although the Task Force report signaled some improvements in the DCDOC’s suicide prevention program, more work needed to be done beyond what was described in the October 2013 report. The DCDOC has reported that, as of May 2015, it has taken the following additional steps to improve its suicide prevention practices.

- The DCDOC reports that, as of October 2014, “all 40 designated cells have been completed and retrofitted as follows: to decrease ligature points, handles have been removed from toilets and desks, vents are covered with anti-ligature grade mesh, pick-proof, penal-grade caulking has been used in the cells, and doors have been replaced to allow for 2 clear panels that provide enhanced vision into and out of the cells.”¹²⁶
- As of May 2015, the DCDOC “provides suicide-resistant smocks and blankets.”¹²⁷ In addition, “more time out of cells and the provision of more family visits and telephone access is under review.”¹²⁸
- The DCDOC reports that it “immediately discontinued “Behavior Management” status...upon receipt of the Hayes Report.” As of May 2015, the DCDOC reports that there are “two categories of observation: Suicide Watch for inmates thought to be actively suicidal and Suicide Precaution for inmates who are at risk of suicide, but less acutely compared to inmates on Suicide Watch.”¹²⁹ The DCDOC states that “Inmates on Suicide Watch are placed in a safe cell on 3rd floor medical and are provided one-to-one constant monitoring by a healthcare professional,” whereas “Inmates on Suicide Precaution are monitored by officers every fifteen (15) minutes in staggered intervals.”¹³⁰

¹²³ *Id.*

¹²⁴ *Id.* at 7.

¹²⁵ *Id.* at 8.

¹²⁶ DCDOC Response.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

- The DCDOC also reports that “Suicide Prevention training has been significantly enhanced.”¹³¹ As of May 2015, “[a]ll correctional officers, other DOC staff and healthcare vendor staff must undergo four (4) hours annually of Suicide Prevention training.”¹³² The DCDOC also stated that it “brought in national expert Dr. Dean Aufderheide to conduct a full day of training on self-injurious behavior issues which involved inmates with mental health issues as well as those exhibiting ‘bad behavior.’”¹³³ That training was attended by “[c]orrectional officers on the mental health and segregation units, as well as mental health staff.”¹³⁴

The DCDOC reports that the recommendations of the Hayes Report “have been implemented.” However, the WLC was unable to verify that this is the case. Based on the information provided, none of these improvements make clear how prisoners who were isolated for exhibiting suicidal behavior would be treated in a manner that is less restrictive or punitive than before. Hayes had noted that these seemingly punitive conditions were based on false assumptions and that they were actually counterproductive. Moreover, it is not clear that the 40 designated safe cells are being made available to inmates in all cases where there may be a need. For example, although a new inmate processing center currently under construction at the D.C. Jail contains a suicide-resistant cell, or safe cell, the existing inmate processing center (a converted housing unit) does not. It also is not clear whether a best-practices standard has been applied to confirm that safe cells are in fact adequately suicide-resistant. On our tour, a cell at the D.C. Jail deemed to be a safe cell appeared to be little different from a regular cell and included potentially dangerous fixtures, such as bunk beds.

Even though the D.C. Jail’s recent District inmate population is well below operating capacity, the DCDOC has a practice of double-celling, or holding two people in a single cell, for the general population. This practice was described as a suicide prevention measure. Individuals in the mental health unit, however, are generally housed one to a cell.

C. Issues Confronting Youth

Significant problems with the conditions of confinement for youth who are housed at the CTF were identified in a 2013 report prepared by a criminal justice consulting firm (the “Ridley

“Juveniles at CTF have needs far greater than the services currently provided.”

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

Report”).¹³⁵ The DCDOC operates the Incarcerated Juvenile Program at CTF, which includes youth who “have been charged in the court system as adults and are awaiting trial or currently serving their sentence.”¹³⁶ According to the Ridley Report, approximately one girl and seventy boys are processed through CTF each year, and approximately 26% of these youth have mental health issues.¹³⁷ At the time of the onsite assessments by the Ridley Group, the CTF was housing twenty-five youth, all but one of whom were boys.

The Ridley Report found that “juveniles at CTF have needs far greater than the services currently provided.”¹³⁸ The report highlights the inadequacies of the facilities at the CTF, the excessive imposition of segregation and isolation, and the insufficient programming for juveniles. The report also notes that boys may only visit with family members through video visitation, which can interfere with maintaining critical family bonds. As the following analysis suggests, many of these problems are exacerbated by the fact that the DCDOC is housing an average of twenty-five youth at a facility that also houses hundreds of adults.¹³⁹

1. Inadequate Facility

The Ridley Report concluded that the youth’s “Unit Space is inadequate for the population served.”¹⁴⁰ Units for youth should include “sufficient space for adequate physical exercise; provision of regular, special, and vocational education; and therapeutic programming.”¹⁴¹ However, the Ridley Report found that at the CTF, the on-site “school is cramped and the unit does not have dedicated programming or recreation space.”¹⁴² Some of the issues appear to arise from the fact that the small number of youth must be separated from the adult prisoner

The on-site “school is cramped and the unit does not have dedicated programming or recreation space.”

¹³⁵ Walter B. Ridley, Francis Mendez, and Ghia Ridley Pearson, *The District of Columbia Department of Corrections Correctional Treatment Facility Juvenile Unit Assessment* (2013). Mr. Ridley is a former Director of the DCDOC.

¹³⁶ *Id.* at 6.

¹³⁷ *Id.*

¹³⁸ *Id.* at 47.

¹³⁹ D.C. Dep’t of Corr., *DOC Official Population Counts by Facility*, <http://doc.dc.gov/node/307122>; D.C. Dep’t of Corr., *Quarterly Population Statistics October 2014*, <http://doc.dc.gov/node/344902>.

¹⁴⁰ Walter B. Ridley, Francis Mendez, and Ghia Ridley Pearson, *The District of Columbia Department of Corrections Correctional Treatment Facility Juvenile Unit Assessment* (2013), 9.

¹⁴¹ *Id.* at 13.

¹⁴² *Id.* at 9.

population by both sight and sound. For example, the juveniles are permitted to use the gym and outdoor recreation facilities only when the adults are not using those facilities. The Ridley Report recommended that the DCDOC “explore whether there are unused spaces in the complex that can be used for recreation activities and or to move the unit to a larger space.”¹⁴³

2. Use of Segregation

The Ridley Report, which was released in 2013, suggests that the use of isolation and segregation for youth at CTF is excessive. Generally, youth in D.C. are not supposed to be subject to isolation for more than five days, and a hearing of the housing board is required to extend the isolation of a juvenile beyond five days.¹⁴⁴ However, the Ridley Group found that in some cases “segregation had been extended multiple times,” causing the “juveniles to remain in segregation for longer periods of time.”¹⁴⁵ Indeed, “a few juveniles reported being placed in segregation for 2 months with 1 hour of recreation daily.”¹⁴⁶ In response, the Ridley Report recommended that DOC adopt a

[W]ritten policy which reflects clearly the process and procedure which ensures (a) juveniles are returned to the general population within the mandated five days of segregation/the duration of the segregation is as short as possible to address the risk to the other juveniles or (b) clear guidelines are defined and followed for segregation extensions.¹⁴⁷

In addition, the report recommended that “segregation should be revoked as soon as it is considered no longer reasonable and necessary for the purpose for which it was implemented.”¹⁴⁸ In March 2014, Daniel Okonkwo, the Executive Director of D.C. Lawyers for Youth testified before the D.C. City Council Committee on Public Safety and the Judiciary, asserting that, as of that time, the DCDOC had “still not established and published” a written policy “that defines the procedure and requirements for imposing solitary confinement.”¹⁴⁹ As a result, it appeared “that there [still] is no upper limit to how long a youth can be held in solitary.”¹⁵⁰

¹⁴³ *Id.* at 13.

¹⁴⁴ *Id.* at 36.

¹⁴⁵ *Id.* at 37.

¹⁴⁶ *Id.* at 15

¹⁴⁷ *Id.* at 37.

¹⁴⁸ *Id.*

¹⁴⁹ Testimony of R. Daniel Okonkwo, Executive Director, Committee on Public Safety & the Judiciary, Performance Oversight Hearing on the Department of Corrections (Mar. 19, 2014), http://www.dcly.org/cpsj_doc_2014#_ftn2.

¹⁵⁰ *Id.*

Excessive use of solitary confinement is troubling because of the effect that it can have on juveniles' development. A joint report by the American Civil Liberties Union and Human Rights Watch found that "solitary confinement of young people often seriously harms their mental and physical health, as well as their development," and called for the practice to be abolished.¹⁵¹ Clinical studies of the use of solitary confinement have "shown that adult prisoners generally exhibit a variety of negative physiological and psychological reactions to conditions of solitary confinement,"¹⁵² and the "American Academy of Child and Adolescent Psychiatry has concluded that, due to their 'developmental vulnerability,' adolescents are in particular danger of adverse reactions to prolonged isolation and solitary confinement."¹⁵³

"Solitary confinement of young people often seriously harms their mental and physical health, as well as their development"

While the inadequate facilities and excessive use of isolation are significant problems in their own right, the Ridley Report suggested that they may be linked. Inadequate space might require corrections staff to use isolation and segregation on youth more frequently than they would if they were housed in a more appropriate facility: "Based on the fact that all juveniles are housed on one unit, at CTF, it is difficult to separate them without the use of segregation."¹⁵⁴

The DCDOC has provided information on the use of administrative segregation subsequent to the release of the Ridley Report. The following chart provided by DCDOC shows the number of juveniles who were segregated over the past year (either because they were "awaiting a disciplinary hearing or placed in administrative segregation"):

¹⁵¹ Human Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, <https://www.aclu.org/files/assets/us1012webwcover.pdf>.

¹⁵² American Civil Liberties Union, *Alone and Afraid*, <https://www.aclu.org/files/assets/Alone%20and%20Afraid%20COMPLETE%20FINAL.pdf>.

¹⁵³ *Id.* (internal citations omitted).

¹⁵⁴ Ridley Report, 37.

Month	Number of juveniles
May 2014	Six (6)
June 2014	Zero (0)
July 2014	Three (3)
August 2014	Three (3)
September 2014	Two (2)
October 2014	Six (6)
November 2014	Two (2)
December 2014	Zero (0)
January 2015	Zero (0)
February 2015	Zero (0)
March 2015	Five (5)
April 2015	Two (2)
May 2015	Zero (0)

Further, the DCDOC provided the following information about how, as of May 2015, it uses isolation and segregation with juveniles.

- Juveniles in administrative segregation are “housed in a separate cell on the lower tier within the juvenile unit.”¹⁵⁵
- According to the DCDOC, those juveniles are able to “attend school through DCPS and have access to legal services, programming, counseling services, and meaningful contact with the other juvenile inmates.”¹⁵⁶
- In addition, “[i]f a juvenile is placed in administrative segregation . . . officers are required to do a visual security check of the juvenile every fifteen (15) minutes,” and the “juvenile receives individual recreation for two (2) hours per day.”¹⁵⁷

As of May 2015, the DCDOC reports that, over the past year, “the average stay in segregation” is “approximately two (2) days.”¹⁵⁸ The DCDOC states that “[j]uveniles will not be placed in segregation for longer than five (5) days unless extenuating circumstances exist.”¹⁵⁹ It is unclear what these extenuating circumstances are or how frequently they are deemed to exist.

3. Insufficient Programming and Staffing

Insufficient programming for youth is a significant problem. According to the Ridley Report, “programming at the Juvenile Unit is insufficient and needs to be

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

expanded.”¹⁶⁰ The lack of programming left youth “without structured activity for the majority of the weekend.” Feedback from youth cited in the Ridley Report indicated that there “is too much down time with nothing structured to do.”¹⁶¹ In addition, youth who completed their GED or high school diploma did not have any academic programming provided and were instead “assigned to detail duty for extended periods of time.”¹⁶² With regard to re-entry programming, the Ridley Report recommended that CTF “incorporate evidence-based reentry planning as early as possible for all juveniles from the moment they are admitted.”¹⁶³ Such programming can be critical for helping to ensure that problems do not carry over into adulthood and that the youth are best equipped to succeed when they re-enter their communities. While the Ridley Group acknowledged that the DCDOC had “significantly expanded programming” in recent months, it stated that “there is still an opportunity to increase programming even further.”¹⁶⁴ According to the DCDOC, it has further expanded the juvenile program since the Ridley Report.¹⁶⁵ For example, the DCDOC expanded an after-school program so that it now operates Monday through Friday.¹⁶⁶

The Ridley Report also raised concerns with the staffing of the juvenile unit for youth prisoners, finding that many of the corrections officers lacked proper training. In response, the Ridley Group recommended that “Personnel on all shifts should be trained to work with juveniles.”¹⁶⁷ As a recent report by D.C. Lawyers for Youth and Youth Justice acknowledged, staffing issues were at least partially attributable to the fact that a small number of boys and girls are housed at an otherwise adult facility: “Given that youth are such a small fraction of CTF’s population, it is perhaps unsurprising that CTF does not have a separate position description for hiring corrections officers to the Juvenile Unit and that the Unit sometimes utilizes relief staff who normally work with adults.”¹⁶⁸ The DCDOC reports that, “[a]s of September 2014, all correctional officer recruits are trained in Positive Youth Development (PYD), as well as the operational and disciplinary procedures of the Juvenile Unit.”¹⁶⁹ The DCDOC states that its PYD training “emphasizes building skills and assets in youth in addition to preventing

¹⁶⁰ Ridley Report, 11.

¹⁶¹ *Id.*

¹⁶² *Id.* at 12.

¹⁶³ *Id.* at 21.

¹⁶⁴ *Id.* at 11.

¹⁶⁵ DCDOC Response.

¹⁶⁶ *Id.*

¹⁶⁷ Ridley Report, 14.

¹⁶⁸ Campaign for Youth Justice and D.C. Lawyers for Youth, *Capital City Correction: Reforming D.C.’s Use of Adult Incarceration Against Youth*, 18, http://www.campaignforyouthjustice.org/images/pdf/Capital_City_Correction.pdf.

¹⁶⁹ DCDOC Response.

negative outcomes.”¹⁷⁰ For existing correctional staff, this PYD training will be “phased into” annual training.¹⁷¹

4. Shortcomings of Video Visitation

Not surprisingly, boys said that the video visitations “make it hard for [them] to communicate with their family members.”

Contrary to the American Bar Association’s Standards for Treatment of Prisoners, youth housed at the CTF are generally restricted to video visitation in lieu of in-person visitation. Although there may be benefits to the selective implementation of video visitation, the ABA has taken the position that video

visitation should not be used as a replacement for in-person visitation.¹⁷² However, it appears that, for youth at the CTF, video visitation *has* replaced in-person visitation, even though CTF offers in-person visits to *adults*. The use of video visitation is particularly problematic for youth because “[a] key part of working with juveniles is being able to engage the families and help to strengthen the relationship between the juveniles and their parent/guardian.”¹⁷³ Moreover, according to a report by the Campaign for Youth Justice and D.C. Lawyers for Youth, the “visitation monitors are located in a common space, so youth have no privacy while speaking with their family members.”¹⁷⁴ Not surprisingly, boys said that the video visitations “make it hard for [them] to communicate with their family members.”¹⁷⁵

In its Standards for Treatment of Prisoners, the American Bar Association states that video visitation should not be used as a replacement for in-person visitation.¹⁷⁶ And while video visitation is sometimes cited as a means to reduce the introduction of contraband into a prison, a recent study in Texas found that, after a county replaced in-

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *ABA Standards for Criminal Justice, Treatment of Prisoners*, http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf.

¹⁷³ Ridley Report, 45.

¹⁷⁴ Campaign for Youth Justice and D.C. Lawyers for Youth, *Capital City Correction: Reforming D.C.’s Use of Adult Incarceration Against Youth*, 18, http://www.campaignforyouthjustice.org/images/pdf/Capital_City_Correction.pdf.

¹⁷⁵ Ridley Report, 15.

¹⁷⁶ *ABA Standards for Criminal Justice, Treatment of Prisoners*, http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf.

person visitation with video visitation, there was an increase in contraband and disciplinary infractions.¹⁷⁷

The DCDOC began providing some limited in-person visitation for minors in March 2014, but it appears that this has been made available to fewer than 50% of youths.¹⁷⁸ While applauding this development, the Committee on the Judiciary and Public Safety has requested “that the Department consider providing in-person visits to all juveniles, given the unique nature of their confinement.”¹⁷⁹ The DCDOC reports that, as of May 2015, “juveniles who have reached the Gold Tier in the Juvenile Unit are given contact visitation with their parent or guardian once per month.”¹⁸⁰ Whether a youth is eligible for Gold Tier is “based on several factors such as behavior, program

The DCDOC reports that, as of May 2015, “juveniles who have reached the Gold Tier in the Juvenile Unit are given contact visitation with their parent or guardian once per month.”

participation, and educational factors.”¹⁸¹ As of May 5, 2015, the DCDOC reported that eight juveniles had attained “Gold Tier” status, and that two more were expected by May 7, 2015.¹⁸² In addition, youth inmates “are given contact visits during the holiday season in December.”¹⁸³

The use of video visitation is not confined to youth at the CTF. Since 2012, in-person visitation for prisoners at the D.C. jail has been limited to visits with lawyers or with clergy, or with others in exceptional circumstances. By all indications, the availability of video visitation is not, in itself, a concern. Indeed, it appears to provide additional opportunities for adult prisoners at the D.C. Jail to communicate with family and friends. However, video visitation should not come at the cost of heavy restrictions on in-person visitation.

¹⁷⁷ Texas Criminal Justice Coalition & Grassroots Leadership, *Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price*, <http://grassrootsleadership.org/sites/default/files/uploads/Video%20Visitation%20%28web%29.pdf>.

¹⁷⁸ Report and Recommendations of the Committee on the Judiciary and Public Safety on the Fiscal Year 2015 Budget for Agencies Under Its Purview, May 14, 2014, http://dccouncil.us/files/performance_oversight/Committee_on_the_Judiciary_and_Public_Safety.pdf.

¹⁷⁹ *Id.*

¹⁸⁰ DCDOC Response.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

III. COSTS OF CONFINEMENT & CONTRACTED SERVICES

Over the past decade, the DCDOC's budget has averaged \$141.7 million. As discussed in more detail in the Appendix, a significant percentage of the Department of Corrections budget is devoted to payment for contractual services, including the DCDOC's contracts with CCA, with the private halfway houses, and for prisoner health care.

A. The CTF & Corrections Corporation of America

Since January 30, 1997, the District has been paying CCA both a management fee to operate the CTF and a lease payment for the CTF facility. The management fee has varied over time pursuant to a twenty-year contract, which is set to expire in 2017, but appears to have been \$14.4 million for 2014.¹⁸⁴ When the District entered into the operations contract with CCA, the District and CCA also entered into an agreement to sell the CTF facility to CCA for \$52 million.¹⁸⁵ The CCA was required to make initial improvements to the facility and, over the duration of the operations contract, the District agreed to pay \$2.8 million each year (and a lesser amount in the final year of the contract, 2017) in lease payments in addition to paying any real estate taxes imposed on CCA as a result of ownership of the CTF.¹⁸⁶ At the end of the operations contract, ownership of the CTF will revert to the District.¹⁸⁷

¹⁸⁴ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America (effective Jan. 30, 1997, as modified). We were able to review a copy of the operations contract and fourteen modifications, as well as the lease agreement. We were initially unable to obtain other contract documents such as the lease agreement or any modifications after modification number nine. The DCDOC referred our request for contract documents to the Office of Contracting and Procurement (OCP), which initially failed to provide any documents. Under the District's freedom of information law, we appealed that non-response to the Mayor's office. After over nine weeks and a series of follow-up communications with the Mayor's General Counsel Office, and the Mayor's Office of Legal Counsel, OCP ultimately provided documents. It should not be so difficult to obtain public documents.

¹⁸⁵ Lease Agreement by and between Corrections Corporation of America as Lessor and The District of Columbia as Lessee; Stephanie Mencimer, *Let's Make a Deal*, Wash. City Paper (May 9, 1997), <http://www.washingtoncitypaper.com/articles/12631/lets-make-a-deal>.

¹⁸⁶ *See id.*

¹⁸⁷ *See id.*; Corrections Corporation of America, *2009 Letter to Shareholders*.

1. The Contract

The term of CCA's contract with the District is significantly longer than what CCA describes as its typical contract duration, which is typically for a term of "up to five years," with additional renewals at the option of the government.¹⁸⁸

The District pays CCA in a number of ways. As drafted, CCA's contract provided that the District's primary expense associated with CCA operation of the CTF is based on a per-prisoner daily rate that is increased by 3% annually. In 1997, the first year of the contract, the District was required to pay CCA \$70.40 per prisoner per day.¹⁸⁹ Due to contract modifications, the base rate (before annual increases are figured in) has been adjusted several times. For example, during a period in 2003, the per diem rate was dropped as low as \$51.40 as part of a settlement of claims the District "may have had against [CCA] related to the Management Contract and [CCA's] alleged non-compliance, known and documented by the Department of Corrections (DOC) as of January 1, 2003."¹⁹⁰ Assuming standard annual increases since the last contractual modification of the per diem, the per diem rate the District is obligated to pay in 2015 is \$85.95 per prisoner per day.¹⁹¹ Based on a calculated 2014 per diem rate of \$83.45, and an average adult prisoner population at the CTF during 2014 of 473, the 2014 management fee would have been roughly \$14.4 million.

By way of comparison, CCA reported that, nationally, its revenue per "compensated man-day" in calendar year 2014 was \$63.54, an increase over the 2013 figure of \$60.57.¹⁹² Assuming that CCA's SEC filings reported an average rate, a degree of variation between the per diem rates of various jurisdictions due to different economic conditions and different regulatory regimes is to be expected.

Whether such variation fully explains the rates in the District's contract, which were approximately 31% higher in 2014 than the average, is unclear.¹⁹³ However, labor costs may play a role in explaining the variation. CCA often markets its services as

¹⁸⁸ Corrections Corporation of America, *Annual Report (Form 10-K)*, 28, <http://www.sec.gov/Archives/edgar/data/1070985/000119312514072723/d664216d10k.htm>.

¹⁸⁹ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, ¶ 7.1.

¹⁹⁰ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, Modification 4.

¹⁹¹ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, ¶ 7.1.2; Modification 6 (setting a per diem rate of \$62.09 as of February 1, 2004, to be adjusted annually thereafter).

¹⁹² Corrections Corporation of America, *Annual Report (Form 10-K)*, 56 (Feb. 25, 2015) <http://www.sec.gov/Archives/edgar/data/1070985/000119312515061839/d853180d10k.htm>.

¹⁹³ This assumes a 2014 per diem rate of \$83.45, which was calculated based on annual increases since Modification 6 in 2004.

leading to cost-savings, in part based on savings in expenses for labor. In states where it can operate without unions, its employee pay floor may be set by the minimum wage. By contrast, the District's contract with CCA provides that CCA must recognize the right of employees to unionize¹⁹⁴ and District contracts are subject to the federal Service Contract Act, which sets wage floors for various occupation codes (e.g., "Accounting Clerk II," "Pharmacy Technician," etc.) that, depending on the type of service, may be significantly higher than the federal minimum wage.¹⁹⁵ According to the most recent U.S. Department of Labor wage determination, the hourly wage for the occupation of "Corrections Officer" is \$22.80, not including fringe benefits.¹⁹⁶ By way of comparison, the District's minimum wage as of the date of this report was \$9.50 per hour, and the "Living Wage" for 2015 that the District requires its major contractors to pay is \$13.80 per hour.¹⁹⁷

Nonetheless, one of the DCDOC's plans for FY13 was to seek to re-negotiate the CTF per-diem rates, though this initiative was "discontinued due to a change in priorities" and has not been proposed in the department's FY14 or FY15 plans.¹⁹⁸

In addition to regular payments based on the per diem rate, the District has paid CCA lump sum amounts on multiple occasions over the years. For example, a September 2005 contract modification included an additional payment of \$960,000 in connection with a dispute between the District and CCA over a Department of Labor wage determination applicable to correctional officers, and \$26 million in FY06 for prisoner bed space and a lease payment.¹⁹⁹

¹⁹⁴ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, ¶5.2.4

¹⁹⁵ See 41 U.S.C. §§ 6702-6703.

¹⁹⁶ U.S. Dep't of Labor, *WD 05-2103 (Rev. -14)*, <http://www.wdol.gov/wdol/scafiles/std/05-2103.txt>.

¹⁹⁷ See D.C. Dep't of Employment Servs., *Wage and Hour Compliance*, <http://does.dc.gov/service/wage-and-hour-compliance>; D.C. Dep't of Employment Servs., *Living Wage Act of 2006 Fact Sheet*, http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/Living%20Wa ge%20Act%20Fact%20Sheet%202015.pdf.

¹⁹⁸ See D.C. Dep't of Corr., *FY 2013 Performance Accountability Report*, http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC_FY13PAR.pdf; D.C. Dep't of Corr., *FY 2014 Performance Plan*, <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC14.pdf>; D.C. Dep't of Corr., *FY 2015 Performance Plan*, <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC15.pdf>.

¹⁹⁹ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, Modifications 7-8.

For calendar year 2014, CCA reported that its operating margin was 29.7%, slightly up from the 29.4% margin it achieved in 2013.²⁰⁰

One cost to the District is for a building and equipment lease between the District and CCA for the CTF. CCA reports that it expects to receive a minimum of \$2.8 million each year in rental income for 2014-2016 and an additional \$694,000 in 2017, the last year of its current contract.²⁰¹

CCA has been involved in lawsuits and investigations over the years, including an agreement to pay the State of Idaho \$1 million as a result of “contractual disputes related to staffing at the Idaho Correction Center.”²⁰² CCA is also being investigated by the Federal Bureau of Investigation (FBI) in connection with its actions at the Idaho facility, which has reportedly been referred to by prisoners as “Gladiator School.”²⁰³ The FBI is investigating whether CCA violated federal law prohibiting fraud following CCA’s apparent acknowledgment that it violated its contract with the state by understaffing the facility “by thousands of hours” and that CCA’s employees “falsified reports to cover up the vacancies.”²⁰⁴

CCA has acknowledged that, “[t]he operation of correctional and detention facilities by private entities has not achieved complete acceptance by either governments or the public,” that “[t]he movement toward privatization of correctional and detention facilities has also encountered resistance from certain groups,” and that “negative publicity about an escape, riot or other disturbance or perceived poor operational performance, contract compliance, or other conditions at a privately managed facility may result in adverse publicity to [CCA] and the private corrections industry in general,” any of which may “make it more difficult for [CCA] to renew or maintain existing contracts or to obtain new contracts.”²⁰⁵

²⁰⁰ Corrections Corporation of America, *Annual Report (Form 10-K)*, 56, <http://www.sec.gov/Archives/edgar/data/1070985/000119312515061839/d853180d10k.htm>.

²⁰¹ Corrections Corporation of America, *Annual Report (Form 10-K)*, F-20, <http://www.sec.gov/Archives/edgar/data/1070985/000119312514072723/d664216d10k.htm>

²⁰² Corrections Corporation of America, *Annual Report (Form 10-Q)*, 18, <http://www.sec.gov/Archives/edgar/data/1070985/000119312514300102/d755063d10q.htm>,

²⁰³ See *id.*; Rebecca Boone, *APNewsBreak: FBI investigates prison company*, Associated Press, March 7, 2014, <http://bigstory.ap.org/article/apnewsbreak-fbi-investigates-prison-company-cca>.

²⁰⁴ Rebecca Boone, *APNewsBreak: FBI investigates prison company*, Associated Press, March 7, 2014, <http://bigstory.ap.org/article/apnewsbreak-fbi-investigates-prison-company-cca>.

²⁰⁵ Corrections Corporation of America, *Annual Report (Form 10-K)*, 27-28, <http://www.sec.gov/Archives/edgar/data/1070985/000119312514072723/d664216d10k.htm>.

2. Profile of CCA and its relationship with the District

CCA, founded in 1983, is a publicly traded real estate investment trust, and is the oldest and largest private prison company in America.²⁰⁶ Because CCA's contract is set to expire in 2017, it is appropriate to consider events involving CCA that have occurred since 1997, when the contract was signed. The DCDOC itself apparently planned to conduct a cost/benefit analysis of continuing a privatized model for the CTF or returning management to the District in FY12 and FY13, but this initiative was at first delayed due to "an incredible backlog of critical DOC procurements at [the Office of Contracting and Procurement]," and ultimately "discontinued due to a change in priorities."²⁰⁷

CCA "owns or controls 52 correctional and detention facilities and manages 13 additional facilities owned by [its] government partners, with a total design capacity of approximately 86,500 beds in 20 states and the District of Columbia."²⁰⁸ In 2013, CCA reported revenue of approximately \$1.69 billion.²⁰⁹



Source: "See CCA's Nationwide System of Correctional Centers," CCA.com, <http://www.cca.com/locations>.

²⁰⁶ See Matt Stroud, *The Private Prison Racket*, POLITICO Magazine, Feb. 24, 2014, <http://www.politico.com/magazine/story/2014/02/private-prison-racket-103893.html#.VCXP12ddV8E>.

²⁰⁷ See D.C. Dep't of Corr., *FY 2013 Performance Accountability Report*, http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC_FY13PAR.pdf ; D.C. Dep't of Corr., *FY 2012 Performance Accountability Report*, http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC_FY12PAR.pdf ; D.C. Dep't of Corr. *FY 2012 Performance Plan*, <http://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOC12.pdf>.

²⁰⁸ Corrections Corporation of America, *CCA Announces 2014 First Quarter Financial Results*, News Release, May 7, 2014, <http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-newsArticle&ID=1928425&highlight=>.

²⁰⁹ Corrections Corporation of America Revenue & Earnings Per Share (EPS), NASDAQ, <http://www.nasdaq.com/symbol/cxw/revenue-eps>.

In 1997, CCA contracted with the District to “operate, maintain and manage the CTF” for a term of 20 years.²¹⁰ In the event that CCA fails to comply with the provisions in its contract, federal or state and local requirements and laws, the District may terminate its contract with CCA after allowing a 30 day cure period.²¹¹ However, “if any action, or failure to act, by [CCA] results in any risk to the safety or welfare of the prisoners assigned to the CTF, the staff of the CTF or the general public, the District may immediately initiate the action it deems appropriate to eliminate or reduce such risk, including assumption of the operation of the CTF.”²¹²

In 1997, CCA contracted with the District to “operate, maintain and manage the CTF” for a term of 20 years.

CCA, along with other private prison companies, has been the subject of much criticism. Joshua Miller, a labor economist with the American Federation of State, County and Municipal Employees, asserted that the private corrections model was “structurally flawed” because “[t]he profit motive drastically changes the mission of corrections from public safety and rehabilitation to making a quick buck.”²¹³ Public criticisms of CCA generally fall into two categories: (1) Allegations that CCA provides substandard services resulting in harm to both prisoners and prisoners, and (2) Allegations that CCA supports policy measures that have the effect of keeping more people in prison and for longer periods of time.

a) Allegations of substandard services

The first criticism stems, in part, from a number of instances where CCA employees reportedly exhibited misconduct. For example, in 2006, a former CCA corrections officer admitted to “putting human waste in an inmate’s drinking jug” after the company was sued by four prisoners alleging that they were forced to eat food contaminated with urine and feces.²¹⁴ Reportedly, “[o]ne of many instances of prisoner sexual abuse” occurred in a Texas CCA facility where a CCA employee “was found guilty of sexually abusing at least eight female immigrant detainees while

In Idaho, the state’s largest prison was given the nickname “Gladiator School” because of its violent reputation.

²¹⁰ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America (1997).

²¹¹ *Id.* at 9.1-9.3.

²¹² *Id.* at 9.3

²¹³ Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America*, 4, http://grassrootsleadership.org/sites/default/files/uploads/GRL_Dirty_Thirty_formatted_for_web.pdf.

²¹⁴ Kelli Kennedy, *Human Waste Put in Food, Ex-inmates Claim*, Associated Press, Mar. 12, 2006, <http://www.highbeam.com/doc/1P1-119683145.html/>.

transporting them in a van alone.”²¹⁵ In 2007, a Justice Department survey of local jails showed that a CCA facility in New Mexico had “the highest rate of sexual victimization (13.4 percent), more than four times the national average,” and “the highest rate of staff-on-inmate sexual victimization – 7 percent, as compared with a national average of around 2 percent.”²¹⁶ Additionally, CCA facilities have seen numerous escapes, mistaken releases, and riots.²¹⁷ In Idaho, the state’s largest prison was given the nickname “Gladiator School” because of its violent reputation, allegedly caused by understaffing.²¹⁸ After multiple lawsuits and an Associated Press investigation revealing that records had been falsified in order to meet minimum staffing requirements, the Federal Bureau of Investigation announced that it was investigating CCA “and looking at whether various federal fraud statutes were violated and possibly other federal statutes connected with the fraud.”²¹⁹

At the District’s CTF, there have been a series of instances where CCA corrections officers and guards allegedly accepted bribes to smuggle contraband (including cash, electronic items, cigarettes, and drugs) to prisoners. In 2002, four guards were indicted on charges that they smuggled drugs, pagers and cash to prisoners in exchange for bribes.²²⁰ In 2010, another CCA correctional officer pled guilty to bribery for accepting

²¹⁵ Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America*, 5, http://grassrootsleadership.org/sites/default/files/uploads/GRL_Dirty_Thirty_formatted_for_web.pdf.

²¹⁶ James Ridgeway, *Ex-Con Shareholder Goes After World’s Biggest Prison Corporation*, Mother Jones, May 10, 2012, <http://www.motherjones.com/politics/2012/05/ex-con-alex-friedmann-cca-private-prison-rape>.

²¹⁷ Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America*, 5-9, http://grassrootsleadership.org/sites/default/files/uploads/GRL_Dirty_Thirty_formatted_for_web.pdf.

²¹⁸ Rebecca Boone, *FBI investigates prison company*, Associated Press, Mar. 7, 2014, <http://www.nydailynews.com/news/national/fbi-takes-investigation-idaho-gladiator-school-article-1.1714357>.

²¹⁹ *Id.*

²²⁰ Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America*, 5, http://grassrootsleadership.org/sites/default/files/uploads/GRL_Dirty_Thirty_formatted_for_web.pdf.

money to smuggle an iPod and cigarettes to prisoners.²²¹ More recently, in April 2014, two CCA corrections officers were arrested and charged on similar bribery charges.²²²

Also, in 2010, two former CTF prisoners sued the District of Columbia and CCA for civil rights violations alleging that CCA employees “preyed on them sexually and banished them to solitary lockdown when they complained.”²²³ One of the female prisoners alleged that a CCA officer paid her “sugar daddy,” who was on the outside, and then demanded sex from the prisoner.

b) CCA lobbying efforts and political contributions

In its Annual Report filed with the Securities and Exchange Commission, CCA includes the following which it classifies as a “forward-looking statement”:

Our ability to secure new contracts to develop and manage correctional and detention facilities depends on many factors outside our control. Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. This possible growth depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions, governmental budgetary constraints, and governmental and public acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them. Immigration reform laws are currently a focus for legislators and politicians at the federal, state, and local level. Legislation has also been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could

²²¹ Dep’t of Justice, U.S. Attorney’s Office District of Columbia, *Former Correctional Officer Sentenced in Bribery Case*, News Release, <http://www.justice.gov/usao/dc/news/2010/jul/10-171.pdf>.

²²² Federal Bureau of Investigation, *Corrections Officer Arrested on Federal Bribery Charge*, Press Release, <http://www.fbi.gov/washingtondc/press-releases/2014/corrections-officer-arrested-on-federal-bribery-charge>; Keith L. Alexander, *Second guard at D.C. jail charged with bribery in smuggling contraband*, The Washington Post, Apr. 30, 2014, http://www.washingtonpost.com/local/crime/second-guard-at-dc-jail-charged-with-bribery-in-smuggling-contraband/2014/04/30/260e88e4-d0ad-11e3-9e25-188ebef1fa93b_story.html.

²²³ Tim Hull, *Women Call Private Prison Guards Predators*, Courthouse News Service, Feb. 23, 2010, <http://www.courthousenews.com/2010/02/23/24939.htm>.

put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities. Our policy prohibits us from engaging in lobbying or advocacy efforts that would influence enforcement efforts, parole standards, criminal laws, and sentencing policies.²²⁴

Except for the last sentence, the above statement, or one substantially similar to it, appears on every CCA annual SEC filing for the last ten years. However, not until FY11 does the final sentence, setting forth CCA's position as to lobbying with regard to criminal justice policy, appear.

Consistent with this timing (perhaps coincidentally), in 2011 CCA ended its membership with the American Legislative Exchange Council (ALEC), of which CCA had been a corporate member for over twenty years.²²⁵ ALEC, by its own description, is a nonprofit organization that “works to advance limited government, free markets and federalism at the state level” through the partnership of private entities, the general public, and state legislators.²²⁶ While CCA was a member of ALEC, it served on ALEC's Criminal Justice task force (later called the Public Safety & Elections task force) that developed model legislation²²⁷ for what has been called “some of the toughest sentencing laws on the books today[:] . . . mandatory minimums for non-violent drug offenders, ‘three strikes’ laws, and ‘truth in sentencing’ laws.”²²⁸

The so-called “truth in sentencing” (TIS) laws refer to practices “designed to reduce the apparent disparity between court-imposed sentences and the time offenders actually serve in prison.”²²⁹ Such policies are particularly relevant to D.C., where

²²⁴ Corrections Corporation of America, *Annual Report (Form 10-K)*, 29, http://www.sec.gov/Archives/edgar/data/1070985/000119312514072723/d664216d10k.htm#tx664216_1a.

²²⁵ Bog Ortega, *Arizona prison businesses are big political contributors*, Sept. 4, 2011, <http://www.azcentral.com/news/articles/2011/09/04/20110904arizona-prison-business-politics.html>.

²²⁶ American Legislative Exchange Council, “About ALEC,” <http://www.alec.org/about-alec/>.

²²⁷ Additionally, through ALEC, the CCA was reportedly able to review and give its approval for draft legislation that would later become Arizona's controversial SB 1070. The CCA's interest in such legislation would likely be heightened given that CCA “is the nation's largest detainer of immigrants.” See Harvey Silverglate and Kyle Smeallie, *Freedom watch: Jailhouse bloc*, The Phoenix, Dec. 9, 2008, <http://the phoenix.com/Boston/News/73092-Freedom-watch-Jailhouse-bloc/?page=3>.

²²⁸ Mike Elk and Bob Sloan, *The Hidden History of ALEC and Prison Labor*, The Nation, Aug. 1, 2011, <http://www.thenation.com/article/162478/hidden-history-alec-and-prison-labor#>.

²²⁹ Katherine J. Rosich and Kamala Mallik Kane, *Truth in Sentencing and State Sentencing Practices*, NIJ Journal No. 252, <http://nij.gov/journals/252/Pages/sentencing.aspx>.

statutes limit prisoners' use of good time credits and eligibility for parole. ALEC's Criminal Justice Task Force reportedly drafted a model TIS bill—CCA was a member of the task force at the time.²³⁰ In 1994, Congress passed the Violent Crime Control and Law Enforcement Act which, among other things, offered federal grant money for states and the District of Columbia to “expand their prison capacity if they imposed TIS requirements on violent offenders.” In order to qualify for this grant funding, states and the District of Columbia were required to “have or pass laws requiring serious violent offenders to serve at least 85 percent of their imposed sentences in prison.”²³¹ That same year, the District of Columbia enacted the Omnibus Criminal Justice Reform Amendment Act of 1994, D.C. Law 10-151 which, among other things, prevented good time credits from reducing the minimum sentence of someone convicted of a crime of violence by more than 15%, and prevented persons convicted of violent offenses from being paroled prior to serving 85% of the minimum sentence imposed.²³²

Additionally, numerous reports have indicated that CCA has lobbied for policies affecting criminal statutes and sentencing. In 2008, The Phoenix reported that CCA “spent more than \$2.7 million from 2006 through September 2008 on lobbying for stricter laws.”²³³ The Associated Press reported that in CCA spent about half a million dollars in the first half of 2010 “lobbying federal officials.” Targets of CCA’s lobbying efforts included Congress, the Department of Homeland Security, the U.S. Marshals Service and U.S. Immigration & Customs Enforcement.²³⁴ The chart below details the amount of money CCA has spent on federal lobbying efforts each year from 1998 until 2014.

In its self-published Political Activity Report, CCA reported that it and its consultant lobbyists spent approximately \$2.7 million “in fees and other expenditures related to lobbying on behalf of CCA at the Federal, state and local levels.”

²³⁰ Karen Olsson, *Ghostwriting the Law*, Mother Jones, September/October 2002 Issue, <http://www.motherjones.com/politics/2002/09/ghostwriting-law>.

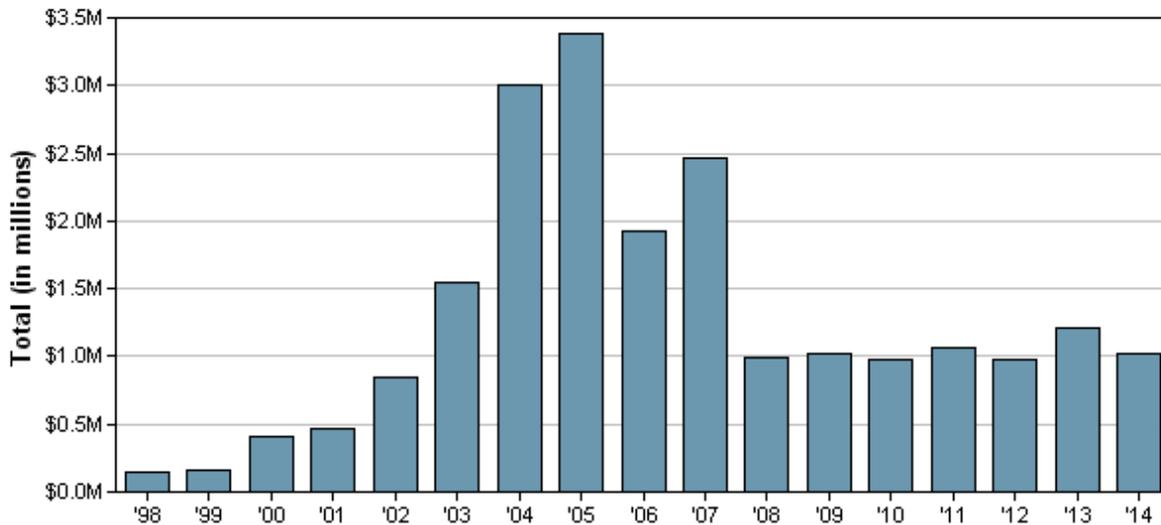
²³¹ Katherine J. Rosich and Kamala Mallik Kane, *Truth in Sentencing and State Sentencing Practices*, NIJ Journal No. 252, <http://nij.gov/journals/252/Pages/sentencing.aspx>.

²³² U.S. Dep’t of Justice, National Institute of Corrections Information Center, *State Legislative Actions on Truth in Sentencing: A Review of Law and Legislation in the Context of the Violent Crime Control and Law Enforcement Act of 1994*, 34, <http://static.nicic.gov/Library/O12259.pdf>.

²³³ Harvey Silverglate and Kyle Smeallie, *Freedom watch: Jailhouse bloc*, The Phoenix, Dec. 9, 2008, <http://thephoenix.com/Boston/News/73092-Freedom-watch-Jailhouse-bloc/?page=3>.

²³⁴ *Corrections Corp. spent \$240,000 on 2Q lobbying*, Associated Press, Sept. 1, 2010, <http://www.businessweek.com/ap/financialnews/D9HVBLM80.htm>.

**Annual Lobbying by
Corrections Corp of America**



Source: “Client Profile: Summary, 2013,” OpenSecrets.org,
<https://www.opensecrets.org/lobby/clientsum.php?id=D000021940&year=2013>.

However, as the above chart only involves expenditures on the federal level, it does not tell the whole story. Most of CCA’s lobbying expenditures occur on the state and local level. In its self-published Political Activity Report, CCA reported that it and its consultant lobbyists spent approximately \$2.7 million “in fees and other expenditures related to lobbying on behalf of CCA at the Federal, state and local levels.” Of that sum, \$1.1 million was attributable to lobbying on the federal level, and \$1.6 million was attributable to state and local activities.²³⁵

CCA has spent over \$7 million in its lobbying efforts to prevent private prisons from being subjected to the same public disclosure requirements as public prisons.

CCA has invested significant resources in lobbying against several incarnations of the Private Prison Information Act (PPIA)—an act that has been introduced in Congress multiple times over the course of several years and which would essentially subject private prisons to the requirements of the Freedom of

Information Act. CCA spent \$1.84 million lobbying against the PPIA of 2007, \$1.48 million lobbying against the PPIA of 2009, and \$3.85 million lobbying against the PPIA of 2011.²³⁶ Thus, since 2007, CCA has spent over \$7 million in its lobbying efforts to prevent private prisons from being subjected to the same public disclosure requirements

²³⁵ See Corrections Corporation of America, *CCA Political Activity and Lobbying Report 2013*, 6, http://ir.correctionscorp.com/phoenix.zhtml?c=117983&p=irol-politicalcontributions_pf.

²³⁶ OpenSecrets, *Corrections Corporation of America, Bills Lobbied, 2007*, <https://www.opensecrets.org/lobby/clientbills.php?id=D000021940&year=2007>.

as public prisons. We note, however, that in recent years, CCA's lobbying disclosures have consistently included the following disclaimer:

CCA DOES NOT LOBBY FOR OR AGAINST ANY POLICIES OR LEGISLATION THAT WOULD DETERMINE THE BASIS FOR AN INDIVIDUAL'S INCARCERATION OR DETENTION.²³⁷

It is not clear whether this statement is intended to cover lobbying efforts by any other organization to which CCA may provide financial support. For example, due to disclosure rules for certain entities, such as 501(c)(4) social welfare organizations, whether CCA supports other organizations that in turn have expressed views regarding legislation may not be publicly available information.

Over the years, CCA has also made substantial political contributions on both the federal and state levels. In 2013, CCA and its political action committee CCA PAC, contributed a total of \$875,350—including contributions to (i) federal candidates, parties and committees; (ii) state/local candidates, parties, and committees; and (iii) 527 organizations (“political organizations” under 26 U.S.C. § 527).²³⁸ With regard to District political elections, CCA has made contributions to the campaigns of several candidates running for City Council and Mayor, with such contributions occurring in 2002, 2006, 2008, and 2009, and totaling \$4,500.²³⁹ A CCA subsidiary, CCA of Tennessee, LLC, actually exceeded the CCA's contribution rate by contributing over \$7,000 in District races in the last five years,²⁴⁰ and another \$5,000 to a mayoral inaugural committee.²⁴¹ None of these figures include direct contributions to candidates by the officers or employees of the CCA or a CCA subsidiary.

²³⁷ See, e.g., Corrections Corporation of America Lobbying Report 2013, Q2 (4/1-6/30), <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=1699C3FE-3358-4854-A8D5-BAE4143E294A&filingTypeID=60>.

²³⁸ See Corrections Corporation of America, *CCA Political Activity and Lobbying Report 2013*.

²³⁹ District of Columbia Office of Campaign Finance, *Contribution & Expenditure Search*, <http://www.ocf.dc.gov/dsearch/searchresultcon.asp?mf1=&ml1=&ms1=&mc1=corrections%20corp&mo1=N&xa=&sa=&ea=&ca=N&sc=&mf3=&ml3=&ms3=&mc3=&mf4=&ml4=&ms4=&mo4=N&d1=0&m1=0&y1=0&d2=0&m2=0&y2=0&d3=0&m3=0&y3=0&mo5=N&sc5=&sr=6&ob1=agynname&ob2=&ob3=&type=pcc&searchtype=org>.

²⁴⁰ District of Columbia Office of Campaign Finance, *Contribution & Expenditure Search*, <http://www.ocf.dc.gov/dsearch/searchresultcon.asp?mf1=&ml1=&ms1=&mc1=cca%20of%20tennessee&mo1=N&xa=&sa=&ea=&ca=N&sc=&mf3=&ml3=&ms3=&mc3=&mf4=&ml4=&ms4=&mo4=N&d1=0&m1=0&y1=0&d2=0&m2=0&y2=0&d3=0&m3=0&y3=0&mo5=N&sc5=&sr=6&ob1=agynname&ob2=&ob3=&type=pcc&searchtype=org>.

²⁴¹ District of Columbia Office of Campaign Finance, *Contribution & Expenditure Search*, <http://www.ocf.dc.gov/dsearch/searchresultcon.asp?mf1=&ml1=&ms1=&mc1=cca%20of%20tennessee&mo1=N&xa=&sa=&ea=&ca=N&sc=&mf3=&ml3=&ms3=&mc3=&mf4=&ml4=&ms4=&mo4=N&d1=0&m1=0&y1=0&d2=0&m2=0&y2=0&d3=0&m3=0&y3=0&mo5=N&sc5=&sr=6&ob1=agynname&ob2=&ob3=&type=pcc&searchtype=org>.

B. Unity Health Care

Between July 19, 2006, and September 30, 2013, the District paid approximately \$185 million for health care services for District prisoners, or about \$26 million per year.²⁴² The contract with Unity is based on a fixed-price model, in which the cost is not dependent upon the prisoner population or number of individuals treated.²⁴³

The prisoner population at the D.C. Jail and the CTF “is highly transient and exhibits a wide array of serious health problems, including tuberculosis, HIV/AIDS, sexually transmitted diseases, and mental illness.”²⁴⁴ Prisoners are provided with medical care through a contract with Unity Health Care, Inc. (Unity).²⁴⁵

Unity has been providing medical care services to District prisoners since 2006.²⁴⁶ This arrangement represented a change for CTF prisoners. Originally, the contract between the District and CCA contemplated that CCA would provide medical services to prisoners, and that CCA would be responsible for a range of both outpatient and inpatient costs.²⁴⁷ Six years into the contractual arrangement, in January 2003, the District and CCA modified their contract to begin transferring responsibility for the provision of medical care back to the District. During the transition, the District initially agreed to pay CCA for the subcontracted services of the Center for Correctional Health and Policy Studies, Inc. while it negotiated its own contract with a medical provider without CCA as an intermediary.²⁴⁸ That same contract modification included a reduction in CCA’s compensation “as full and final settlement of any and all claims the District may have against the Operator related to the Management Contract and Operator’s alleged non-compliance.”²⁴⁹ In April 2003, the District took over

²⁴² D.C. Contract, DCFL-2006-D-6001 & Modifications (Unity Health Care, Inc.). Based on the contract documents, the annual cost did not consistently increase each year over the life of the contract; the contract cost for FY13 (Oct. 1, 2012, through Sept. 30, 2013) was \$23.6 million.

²⁴³ See D.C.-Unity Health Care, Inc. Contract, ¶ B.2 (2006); Letter from Mayor Vincent Gray to The Honorable Phil Mendelson, Chairman, Council of the District of Columbia (Sept. 24, 2013), <http://dcclims1.dccouncil.us/images/00001/20130925162240.pdf>.

²⁴⁴ D.C.-Unity Health Care, Inc. Contract, ¶ C.2 (2006).

²⁴⁵ DOC, FAQs, <http://doc.dc.gov/page/doc-frequently-asked-questions>

²⁴⁶ Unity Health Care, Inc., *About Unity Health Care / Our History*, <http://www.unityhealthcare.org/AboutHistory.html>.

²⁴⁷ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, ¶ 5.4.5.

²⁴⁸ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, Modification 3, at 3.

²⁴⁹ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, Modification 3, at 4.

responsibility for providing both medical services and all food services to CTF prisoners.²⁵⁰

The District has been developing a new contract model for health care services that moves away from a fixed price model to a mixed compensation model that would account for volume of services rendered.²⁵¹ Initially, then Mayor Gray transmitted a proposed contract for services with Corizon Health, Inc.²⁵² However, concerns were raised about the firm,²⁵³ and Mayor Gray withdrew the contract from consideration by the Council.²⁵⁴ Mayor Bowser asked the Council to revisit the proposal and, on April 14, 2015, the D.C. Council voted against awarding the contract to Corizon.²⁵⁵ While the District continues procurement of a new long-term contract, it appears that Unity continues to provide health care pursuant to short-term extensions of its contract.

C. Halfway Houses

As noted, until recently, the DCDOC contracted with four separate, privately-owned and operated halfway houses in the District: Efforts From Ex-Convicts; Extended House, Inc.; Fairview; and Hope Village.²⁵⁶ The District no longer contracts

²⁵⁰ Operations and Management Agreement by and between The District of Columbia and Corrections Corporation of America, Modification 4.

²⁵¹ See Letter of Mayor Vincent Gray to The Honorable Phil Mendelson, Chairman, Council of the District of Columbia (Dec. 8, 2014), <http://lims.dccouncil.us/Download/33020/CA20-0548-Introduction.pdf>.

²⁵² See *id.* D.C. Office of Contracting and Procurement, *Determination and Findings for a Sole Source Extension of Contract* (Contract CW2669, Unity Health Care, Inc.) (unsigned), http://app.ocp.dc.gov/intent_award/D_F/DF_SS_UnityHealth_DOC_022515.pdf (proposing a payment of \$5.9 million for services rendered during a three-month period between April 1, 2015, and June 30, 2015).

²⁵³ See, e.g., Human Rights Defense Center, Letter, *Contract with Corizon for Medical Care at D.C. Jail* (Dec. 13, 2014), <https://www.prisonlegalnews.org/media/publications/Letter%20to%20DC%20councilmembers%202014%20Chairman.pdf>.

²⁵⁴ See Mike DeBonis, *Gray halts D.C. Council vote on controversial pick for jail contract*, Wash. Post (Dec. 16, 2014), http://www.washingtonpost.com/local/dc-politics/gray-halts-dc-council-vote-on-controversial-pick-for-jail-contract/2014/12/16/93e9057e-855c-11e4-9534-f79a23c40e6c_story.html.

²⁵⁵ Abigail Hauslohner, *D.C. Council rejects Corizon Health contract after lobbying battle*, Wash. Post (Apr. 14, 2015), http://www.washingtonpost.com/local/dc-politics/dc-council-rejects-corizon-health-contract-after-lobbying-battle/2015/04/14/b784c8e2-e222-11e4-81ea-0649268f729e_story.html.

²⁵⁶ D.C. Dep't of Corr., *FY 2013 Performance Accountability Report*, at 1 (Jan. 2014).

with Efforts From Ex-Convicts.²⁵⁷ Each of the other three halfway houses received a contract with a maximum value of \$990,000 for a one-year period ending on August 13, 2015.²⁵⁸ The halfway houses serve as an alternative to incarceration for individuals awaiting trial and for sentenced misdemeanants. The goal of halfway houses is to provide a number of important services designed to help residents with educational, professional, and interpersonal skills, as well as providing support for residents' mental and physical health and wellbeing.²⁵⁹

Unfortunately, reports of inadequate services and safety concerns point to a need for a review of the capabilities and performance of the District's contract facilities. For example, an op ed by a Washington Post editor reported in 2013 that, of the approximately 2,000 offenders "return[ed] to the District each year after their release from incarceration, . . . half are re-arrested within three years," a statistic that casts doubt on whether the halfway houses are indeed "helping ex-offenders adjust" to life outside.²⁶⁰

IV. LOOKING FORWARD

Based on our review of the conditions of confinement for District prisoners, we believe a number of steps are urgently needed to address deficiencies ranging from physical infrastructure to training, availability of programming, and oversight. Due to the nature of the problems and the measures needed to resolve them, it is apparent that efforts to move forward should be carried forward by the Mayor and City Council. We believe these proposed steps are consistent with the DCDOC's expressed "commit[ment] to improving operations and achieving the status of a benchmark correctional agency."²⁶¹ For each of these following recommendations, we strongly encourage active, good-faith collaboration by all stakeholders. Effective solutions will require input from advocates, lawyers, corrections and law enforcement personnel, and politicians. The goal of this report is not to dictate specific solutions, but to continue the Washington Lawyers' Committee's efforts to address criminal justice issues writ large, and to begin a series of much needed conversations about the District's approaches to confinement.

²⁵⁷ See D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, C-37, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_1_web.pdf.

²⁵⁸ See D.C. Contracts CW 30866 (Extended House), CW 30868 (Hope Village), and CW30870 (Fairview - Reynolds & Associates); see also D.C. Office of Contracting & Procurement, *Contract Awards Notification Report*, <http://app.ocp.dc.gov/RUI/information/award/search.asp>.

²⁵⁹ D.C. Dep't of Corr., *Correctional Facilities*, <http://doc.dc.gov/page/correctional-facilities>.

²⁶⁰ Justin Moyer, *To some, D.C. halfway house is more like 'Hopeless Village'*, The Washington Post, Aug. 29, 2013, http://www.washingtonpost.com/opinions/2013/08/29/cd282a86-f4c1-11e2-9434-60440856fadf_story.html.

²⁶¹ DCDOC Response.

A. Recommendation 1: Close the D.C. Jail and the CTF and construct a new, safer, more effective facility

This report identifies serious recurring and structural problems at the D.C. Jail and the CTF. The D.C. Jail is suffering from degraded infrastructure, as evidenced by recurring plumbing problems and holes in the walls, and insufficient protections for those under observation due to suicide risk. Although we have less information about the condition of the CTF's physical infrastructure, problems associated with the juvenile unit, including space and difficulty providing in-person visitation, and with the Secure Residential Treatment Program, indicate that the CTF is not well-designed for the specialized populations it contains.

Rather than invest considerable resources in a significant overhaul of both the D.C. Jail and the CTF, the District should be proactive and design a new facility or facilities designed to meet modern correctional facility standards, with the flexibility to handle the District's prisoner populations, and which will be easier to maintain.

Additionally, the trends in the District's prisoner population, as well as changes to the District's drug policy, necessitate a reevaluation of the District's true correctional needs. A new facility could be designed to address the prisoner population the District expects to have, and provide for the different prisoner populations, including men and women, those awaiting trial, those post-conviction awaiting transfer to the BOP, parole violators, juveniles of both sexes, individuals within each population who have special physical or mental health needs (including suicide monitoring), and individuals of all ages and gender who could benefit from substance abuse programming such as the SRTP.

B. Recommendation 2: Expand the Secure Residential Treatment Program

The SRTP should be expanded. First, women should be able to participate. In addition, CSOSA and the U.S. Parole Commission should ensure that more than thirty-two beds are dedicated to the SRTP and make the program available for individuals with a "high" ICS rating.

C. Recommendation 3: Correct deficiencies in suicide prevention and youth confinement

Significant work has already been undertaken by the DCDOC to assess the conditions of, and identify problems in the DCDOC's juvenile unit and mental health and suicide programs through the Hayes Report and Ridley Report. Although the DCDOC takes the position that it has addressed the issues outlined in the Hayes Report, more work should still be done. The DCDOC should invite independent third party assessment, such as a review by Hayes, as to whether the issues identified in the Hayes Report have been fully addressed, culminating in a published report. The DCDOC also notes that it has "worked diligently to implement the Ridley recommendations,"

including by creating a “Juvenile Administrative Housing and Hearing policy,” that has been in place since June 2013.²⁶² In order to address issues raised by the Ridley Report, the DCDOC should consider, among other things, reducing the use of isolation and segregation among youth prisoners, further increasing and improving youth programming, and expanding access to in-person visitation for all youths.

D. Recommendation 4: Conduct a review of training

In both the Hayes Report and the Ridley Report, one of the common themes was inadequacy of training of correctional officers tasked with specialized functions related to mental health or the juvenile unit. The DCDOC maintains that the “review of training for correctional officers tasked with specialized functions such as juvenile custody and suicide prevention . . . has been addressed . . . and is ongoing.”²⁶³

We recommend continuing to ensure that adequate training is provided, as described in both reports, but we also believe it would be useful to take a step back and evaluate training across the correctional system in a comprehensive fashion. We propose that the District retain an independent consultant with extensive experience in the corrections field to conduct a review of all training programs needed for correctional officers (and any others, including contract staff) who work at the D.C. Jail, the CTF, and the halfway houses, to ensure that the right people are receiving the right training, and that the training they receive is sufficiently thorough and reflects modern correctional practices.

E. Recommendation 5: Revise current policies restricting “Good Time Credits”

As discussed above, DCDOC prisoners are eligible to earn “good time credits” and reduce their sentences for successfully completing academic, vocational, and rehabilitation programs and for performing duties of “outstanding importance” or reflecting “exceptionally meritorious service.” Other DCDOC policies, however, arbitrarily restrict the earning of such credits with respect to drug or violent offenses. These restrictive policies should be carefully reviewed and revised so that the important penological tool of good time credits is available for the benefit of prisoners and the system alike to the maximum extent possible.

F. Recommendation 6: Return management of the CTF to District control

When the District’s contract with CCA expires, the District should return management of the CTF to District control. The benefits of continuing to contract with a private corrections corporation are doubtful, and there are a number of disadvantages.

²⁶² DCDOC Response.

²⁶³ *Id.*

Private corrections companies such as CCA tout a number of purported benefits as rationales for contracting out correctional services, including taxpayer savings, rehabilitation and reentry services, quality of operations, flexibility, security, and economic benefits to the local community.²⁶⁴

However, prisoners' rights advocates have argued that these benefits are questionable and that the companies themselves have had numerous safety and quality issues. For example, a paper issued by The Sentencing Project pointed out the "promise of meaningful savings is . . . specious at best," citing reviews by the then General Accounting Office (GAO) and the Bureau of Justice Assistance.²⁶⁵ Others have argued that the CCA has used cost-cutting measures such as "operating on routinely low and dangerous staff-to-prisoner ratios."²⁶⁶ This concern was also raised by a ten-year veteran CCA employee who provided testimony at a City Council oversight hearing that "corners are being cut," and "the facility is being operated understaffed to avoid paying overtime to . . . employees."²⁶⁷ The witness also testified that "the company has been grossly negligent in their management of time."²⁶⁸ The witness recalled that, on Mother's Day (May 13, 2012), ten units were being manned by five officers, there was no emergency response team on site, the radios and telephones were faulty, and, as a result, they were "in a death trap."²⁶⁹ The witness also listed various examples of understaffing.²⁷⁰ Additionally, the witness noted that the prisoners had been notified by memo of a facility-wide shakedown, potentially allowing prisoners to dispose of

²⁶⁴ Corrections Corporation of America, *Value and Benefits of Partnership Corrections*, <http://www.cca.com/partner-with-cca/value-benefits>; Corrections Corporation of America, *Value of Partnering with CCA*, <http://www.cca.com/partner-with-cca/value-benefits/partnership-value>; Corrections Corporation of America, *Answers for Our Communities*, <http://www.cca.com/partner-with-cca/value-benefits/community-benefits>.

²⁶⁵ The Sentencing Project, *Prison Privatization and the Use of Incarceration*, http://www.sentencingproject.org/doc/publications/inc_prisonprivatization.pdf.

²⁶⁶ Grassroots Leadership, *The Dirty Thirty: Nothing to Celebrate About 30 Years of Corrections Corporation of America*, 3, http://grassrootsleadership.org/sites/default/files/uploads/GRL_Dirty_Thirty_formatted_for_web.pdf.

²⁶⁷ D.C. City Council, *Public Hearing, Committee on the Judiciary* (Sept. 20, 2012), http://dccarchive.oct.dc.gov/services/on_demand_video/on_demand_September_2012_week_3.shtm (video) (testimony of Ms. Dana Bushrod); see also D.C. City Council, Cmte. on the Judiciary, *Public Oversight Hearing on Corrections Corporation of America's Management of the District's Correctional Treatment Facility: Witness List*, http://dccouncil.us/files/user_uploads/event_testimony/sept20_judiciary_corrections_witnesslist.pdf.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

contraband and, according to the witness, potentially avoiding reporting of negative incidents.²⁷¹

Additionally, in a recent hearing, witness testimony indicated that CCA may not be adequately informing prisoners at the CTF of the availability of good time credits.²⁷² If this is accurate, it is concerning in part because CCA would be paid more if an prisoner resided in the facility for a longer period of time.

There are also downsides to utilizing a private contractor, especially with respect to accountability. Unlike government agencies (including the D.C. Department of Corrections), private corporations are generally not subject to Freedom of Information Act (FOIA) laws. Consequently, it is difficult to obtain internal documentation that would allow for effective oversight of the District's corrections system without engaging in expensive civil litigation. The District-CCA contract provides that a limited set of reports and audits of CCA's operations ought to be in the possession of at least one of the District's departments and therefore subject to FOIA. But these documents can be difficult to obtain, particularly when department FOIA officials fail to comprehensively respond to requests and point the finger at other agencies, as the authors of this report experienced. Anecdotally, and notwithstanding difficulties in obtaining certain information from the Department of Corrections, the authors of this report found it easier to identify facts and data regarding the D.C. Jail than the CTF.

G. Recommendation 7: Increase public access to records

One of the most challenging aspects of public oversight is unearthing the facts. Former Supreme Court Justice William O. Douglas once said, "sunlight is the best disinfectant," meaning that government and freedom of information laws service the public good because more information available to more people will lead to less waste, more justice, and better government. To that aim, under the District of Columbia Freedom of Information Act, public bodies of the D.C. government must disclose public records to any person upon request (unless the record is covered by a statutory exemption).²⁷³ The "basic purpose" of this Act was "to open agency action to the light of public scrutiny."²⁷⁴

Unfortunately, in our efforts to gather information for this report, we encountered barriers that impede public access to corrections information. First, although the District has in place the Freedom of Information Act, its implementation is far from perfect. We submitted FOIA requests to four District agencies. All but one

²⁷¹ *Id.*

²⁷² See D.C. City Council, Cmte. on the Judiciary, *Agency Performance Oversight Hearings on Fiscal Year 2014-2015* (Feb. 19, 2015), <http://dccouncil.us/events/committee-on-the-judiciary-poh1>.

²⁷³ See D.C. Code § 2-534.

²⁷⁴ *District of Columbia v. Fraternal Order of Police*, 75 A.3d 259, 265 (D.C. 2013).

exceeded the fifteen-day statutorily mandated time limit on responding to requests. On one occasion, an agency seemed to wholly ignore our request, prompting us to appeal the request to the Mayor's Office. As a result of the appeal, and following further dialogue, the requested documents were released—more than four months after the statutory deadline. On another occasion, a public information officer asserted that we had contacted the wrong agency in our effort to obtain a report, despite the fact that D.C. law required that agency to conduct such reports. Many other requests did not result in any substantive response at all.

Although some of the individuals we spoke with during this process tried to be helpful, it is our impression that all public information officers could benefit from significant improvements in their ability to identify records within their agencies. Specifically, (i) public information officers should be made aware of the scope of work the agency performs as well as documents created by other agencies or persons that the agency is likely to possess; (ii) standard operating procedures for agencies responding to a FOIA request should require the agency to make reasonable efforts to identify records responsive to requests *before* asserting they do not exist (on more than one occasion, public information officers responding to our request denied possession or knowledge of reports we requested, even though a cursory internet search could have revealed that such reports were produced by the agency in the past); (iii) if an agency makes documents available on its website, it should identify where those documents are located with specificity; (iv) agencies should implement measures to increase agency accountability in their responses to FOIA requests and to ensure that public information officers have an accurate understanding of the scope of disclosure requirements and of the limitations on FOIA exemptions,²⁷⁵ and (v) agency FOIA performance should be assessed for the purpose of determining whether individual agency FOIA units require additional staffing, training, or oversight. Public information officers should not be permitted to ignore requests, flout deadlines without explanation.

Second, notwithstanding our difficulties obtaining certain information from District agencies, it was even harder to identify anyone who would admit to possessing information regarding CCA's operation of the CTF. All of our efforts to obtain the reports and audits authorized by the DC-CCA Contract were unsuccessful. And, while the D.C. Department of Health provided us with its inspection reports of the D.C. Jail

²⁷⁵ Agencies currently submit annual reports providing basic information regarding the number of requests received, the amount of time spent processing FOIA requests, and similar information. See, e.g., D.C. Office of the Sec'y, *Annual Reports*, <http://os.dc.gov/page/annual-reports>. In general, it appears that FOIA oversight currently focuses on quantification of FOIA data; it is less clear that oversight adequately assesses whether FOIA requests are accurately processed. For example, an analysis of the 2012 FOIA reports found that one-third of FOIA requests were subject to delays and, when requesters chose to appeal agency determinations, agency actions were found incorrect "nearly half the time." See D.C. Open Government Coalition, *DC FOIA delays, denials, attorney fee awards jump in 2012*, <http://www.dco.org/content/dc-foia-delays-denials-attorney-fee-awards-jump-2012> (last visited Feb. 10, 2015).

upon request, the agency specifically indicated that it was not authorized to inspect the CTF.²⁷⁶ This points to a larger issue associated with private operation of a large prison facility. CCA itself has resisted efforts to be subjected to sunshine laws, spending millions of dollars over several years to opposed federal legislation alone.

In light of the problems facing those who seek public access to corrections information, we recommend a review of the District's freedom of information laws and practices, to ensure that the laws are functioning as they should, and that staff have the information and resources to respond accurately, helpfully, and promptly to all requests. The need for improvement is especially compelling where it involves the District's oversight of a private prison.

²⁷⁶ We remain uncertain about the accuracy of this assertion. A 2004 Report by the Government Accountability Office mentions "health and safety inspection reports for the Jail *and the CTF* that were prepared from January 2002 through April 2004 by the District's Department of Health." See District of Columbia Jail: Management Challenges Exist in Improving Facility Conditions." GAO-04-742, <http://www.gao.gov/assets/250/243835.html>.

Appendix A

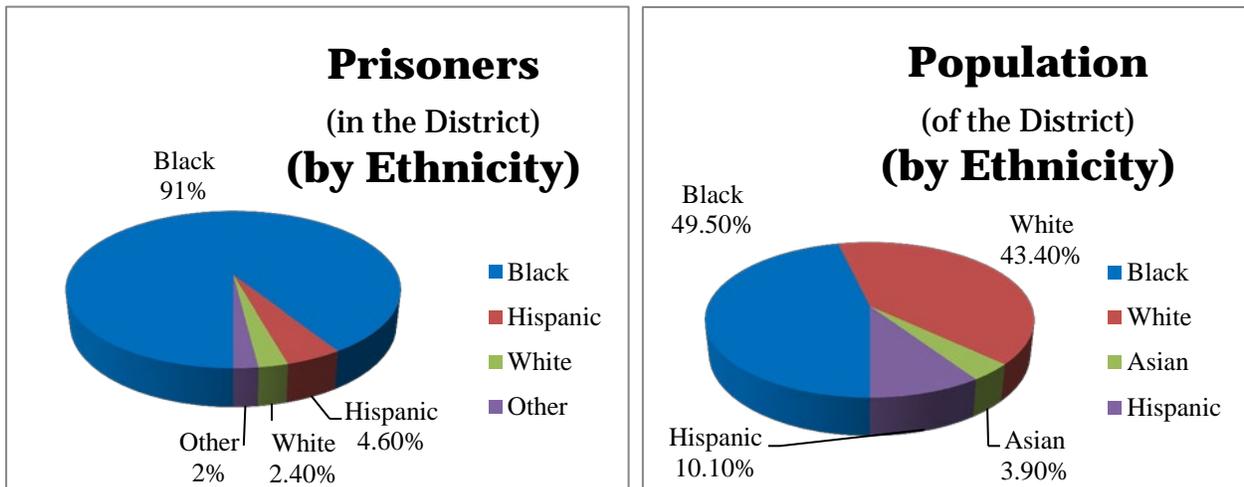
Demographics & Budget

Deficiencies in the conditions of confinement in the District disproportionately impact the District's Black men. We cannot fully understand and correct deficiencies in the correctional system without understanding these realities. Likewise, an understanding of the District's budget for corrections is important, because the high cost¹ of confinement should be a call to action for those unhappy with the status quo.

I. DEMOGRAPHICS

A. Racial Disparities

The District's prisoner population is disproportionately Black and male as compared to the District's total population. Slightly less than half (49.5%) of the District's total population, but 91% of the District's prisoner population, is Black. By contrast, 43.4% of the District's total population, but only a small fraction (3%) of the District's prisoner population, is White. And, while 92% of DCDOC prisoners are male, only 47% of District residents are male.²



¹ Although this Appendix primarily focuses on the monetary costs to the District (and taxpayers) of confining and providing health care to District prisoners, there are numerous other costs associated with confinement, such as the economic cost to individuals and to society of lost productivity both due to confinement and due to difficulty obtaining employment following release, and the economic and non-economic costs to the families of prisoners, to name a few.

² United States Census Bureau, *State & County QuickFacts*, <http://quickfacts.census.gov/qfd/states/11000.html>.

The significance of this disparity is highlighted when considering the history of vast racial disparities in arrest rates for marijuana possession in D.C. In 2010, the District had the highest overall marijuana possession arrest rate in the nation with 846 marijuana possession arrests per 100,000 residents.³ Ninety-one percent of individuals arrested were Black, causing D.C. to also have one of the largest racial disparities in its arrest rates for marijuana possession.⁴ Thus, District law enforcement officers arrested one White person for marijuana possession for every eight Black people they arrested for marijuana possession.⁵ Between 2009 and 2011, more than eight out of ten adult residents arrested for marijuana possession were Black.⁶ Marijuana use, however, is roughly equal among Blacks and Whites.⁷ Although the District's legalization of possession of small amounts of marijuana for at-home use (discussed elsewhere in this Report) is sure to affect the arrest rates, racial disparities in arrest and conviction rates are certainly not unique to marijuana-related offenses.⁸ We remain concerned that the existence of such a marked disparity in marijuana arrest rates, like the overrepresentation of Blacks in DCDOC custody, is a symptom of a larger problem with regard to the impact of the criminal justice system on minorities, and particularly Black men.

B. Gender Disparities

DCDOC's prisoner population is also predominantly male; in FY14, men represented approximately 92% of those in DCDOC custody. All of the prisoners in the D.C. Jail are male (it only houses male prisoners), and 70% of CTF prisoners are male, as are 80% of those in halfway houses in the District.⁹ This percentage is somewhat

³ See American Civil Liberties Union, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*, 18, <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf>.

⁴ See *id.* at 18.

⁵ See *id.* at 18–19.

⁶ See Washington Lawyers' Committee For Civil Rights and Urban Affairs, *Racial Disparities in Arrests in the District of Columbia, 2009-2011*, http://www.washlaw.org/pdf/wlc_report_racial_disparities.pdf.

⁷ See *id.* at 21.

⁸ See Washington Lawyers' Committee For Civil Rights and Urban Affairs, *Racial Disparities in Arrests in the District of Columbia, 2009-2011*, at 8, 20, 23, http://www.washlaw.org/pdf/wlc_report_racial_disparities.pdf (reporting that in 2011, black arrestees in D.C. accounted for nearly 70 percent of the Metropolitan Police Department's traffic arrests, 76 percent of the disorderly conduct arrests, and 87.5 percent of the simple assault arrests).

⁹ See D.C. Dep't of Corr., "DC Department of Corrections Facts and Figures," <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20October%202014.pdf>.

higher than the percentage of the national average daily prison population that is male (86%).¹⁰

This gender disparity is even more drastic when it comes to youth. While youth incarcerated in the juvenile system are generally held in a DYRS or contract facility, youth tried as adults may be placed at the CTF. An assessment from 2013 reports that only one girl per year is processed through CTF, compared to seventy boys per year.¹¹ The prosecution of girls as adults is not only infrequent, but it also appears to be a fairly recent phenomenon.¹² When in 2006, a sixteen-year-old girl was accused of stabbing a man to death, the Washington Post reported that this was “the first time in recent memory in the District that a girl was charged as an adult with murder.”¹³ In contrast, in FY12, girls represented 12% of youth committed to DYRS.¹⁴

C. Trends

1. History of Disputes Regarding D.C. Jail Population Size.

Over the course of multiple decades, the District had been the subject of lawsuits alleging that the number of prisoners in the D.C. Jail was unsafe and that overcrowding

¹⁰ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Jail Inmates at Midyear 2013 - Statistical Tables*, <http://www.bjs.gov/content/pub/pdf/jim13st.pdf>.

¹¹ The Ridley Group & Associates, LLC, *The District of Columbia Department of Corrections Correctional Treatment Facility Juvenile Unit Assessment*, http://doc.dc.gov/sites/default/files/dc/sites/doc/release_content/attachments/DOC%20CTF%20JUV%20ASSESSMENT%20REPORT.pdf. The Campaign for Youth Justice (CFYJ) cited different, but similarly dramatic figures: CFYJ reported that, between 2007 and 2012, 528 boys and 13 girls were processed through the CTF. Campaign for Youth Justice, *Capital City Correction: Reforming DC’s Use of Adult Incarceration Against Youth*, 12 (May 2014), http://www.campaignforyouthjustice.org/images/pdf/Capital_City_Correction.pdf.

¹² It is unclear how much of this disparity is due to prosecutorial discretion as opposed to fewer female juveniles being arrested for higher level violent crimes. A juvenile who is charged with certain D.C. Code violations, like murder or burglary, will be eligible for “direct filing,” meaning the prosecutor may try the juvenile as an adult from the start without having to seek permission from a court. See D.C. Code § 16-203(3). Nevertheless, prosecutors retain sole discretion in deciding whether to direct file an eligible juvenile. Prosecutors may also petition the court to “transfer” a juvenile’s case from the D.C. Superior Court Family Division (i.e. juvenile court) to the criminal division (to be tried as an adult).

¹³ Henri E. Cauvin, *Jail Options Few for Young Female Suspects*, The Washington Post, Sept. 14, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/13/AR2006091301937.html>.

¹⁴ Dep’t of Youth Rehab. Servs., “Youth Population Snapshot,” <http://dyrs.dc.gov/page/youth-snapshot>.

and other conditions there amounted to cruel and unusual punishment.¹⁵ In 1985, the United States District Court for the District of Columbia capped the population at 1,674. The District never fully complied with this order, nor with a consent decree issued after another prisoner suit, and the District successfully moved to lift this cap in March of 2002 after the enactment of the Prison Litigation Reform Act. Soon thereafter, the D.C. Jail population reportedly skyrocketed and two prisoners were stabbed to death, while another prisoner was stabbed but survived, in unrelated incidents within the facility.¹⁶ City Council member Kathy Patterson said she believed these incidents were related to jail overcrowding—at the time, the D.C. Jail population exceeded 2,400.¹⁷

The Jail Improvement Act of 2003 required the Mayor to establish a maximum number of prisoners at the D.C. Jail based on recommendations from an independent consultant. A study commissioned by the Mayor determined that the D.C. Jail population should remain between 1,958 and 2,164 at any given time. Nevertheless, the D.C. Jail's population often exceeded 2,164¹⁸ and the District was sued again in June 2005. In response, the District initially asserted that it should not be bound by these recommendations. In 2007, D.C. Superior Court Judge Melvin Wright, who presided over the suit, disagreed, stating that the District “does not have the right to choose which laws it will obey” and considered a contempt finding against the Mayor.¹⁹ A week later, the District agreed to cap the number of D.C. Jail prisoners at 2,164 except in “exigent circumstances.”²⁰

¹⁵ See, e.g., *Beale v. District of Columbia*, No. 1:04-CV-0959 (D.D.C.); *Anderson v. Fenty*, No. 2005 CA 005030 B (D.C. Super. Ct.); *Morgan v. District of Columbia*, 824 F.2d 1049 (D.C. Cir. 1987).

¹⁶ Michael Rigby, *Officials Agree To Cap Population at D.C. Jail*, Prison Legal News, Feb. 15, 2009, <https://www.prisonlegalnews.org/news/2009/feb/15/officials-agree-to-cap-population-at-dc-jail/>.

¹⁷ See *Second D.C. inmate stabbed to death in jail*, The Washington Times, Dec. 17, 2002, <http://www.washingtontimes.com/news/2002/dec/17/20021217-110323-2832r/>.

¹⁸ Serge F. Kovaleski, *D.C. Jail Conditions Unchanged Despite Law*, The Washington Post, Apr. 24, 2005, http://www.washingtonpost.com/wp-dyn/articles/A12259-2005Apr23.html?nav=rss_topnews.

¹⁹ Robert E. Pierre, *D.C. Judge Pressures City on Jail Population*, The Washington Post, Oct. 6, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/05/AR2007100502268.html>.

²⁰ David Nakamura, *D.C. Agrees to Abide by 2004 Limit On Inmates*, The Washington Post, Oct. 11, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/10/AR2007101001743.html>; D.C. Dep't of Corr., *Correctional Facilities*, <http://doc.dc.gov/page/correctional-facilities>.

2. From Highest in the Nation to Downward Trend

The District had a higher incarceration rate in 2007 than any state in the country.²¹ The District saw a 48% growth of its prisoner population from 1982 to 2007.²² In 2007, across the nation as a whole about 1 in every 100 adults was confined behind bars; in the District, the figure was 1 in 50.²³ The Justice Policy Institute asserted that these high numbers were largely due to problems particularly affecting low income communities in the District: A report studying the District's high incarceration rate identified a lack of affordable housing, high rates of homelessness, education deficiencies, lack of access to mental health and substance abuse treatment, and high unemployment as relevant factors.²⁴

Whether or not these factors *cause* higher incarceration rates in the District,²⁵ there is no doubt that one or more of these factors impact many District prisoners. Only about 30% of male DCDOC prisoners reported having a high school diploma, and 3.5% report having a college degree. Additionally, census data show a disproportionate number of prisoners reside in the Southeast quadrant of the city. As the Justice Policy Institute reports, the Southeast quadrant of the city primarily consists of Black residents who also “have the lowest median income of the city as well as the highest unemployment rates.” Meanwhile, as shown below, very few members of DCDOC's prisoner population come from the Northwest quadrant of the city. By contrast, the Northwest quadrant is home to the two wards with “the highest median household income and lowest percentage of people of color in the entire District.”²⁶

²¹ The PEW Center On the States, *One In 31: The Long Reach of American Corrections*, at 43, http://www.pewtrusts.org/~media/Assets/2009/03/02/PSPP_1in31_report_FINAL_WEB_32609.pdf.

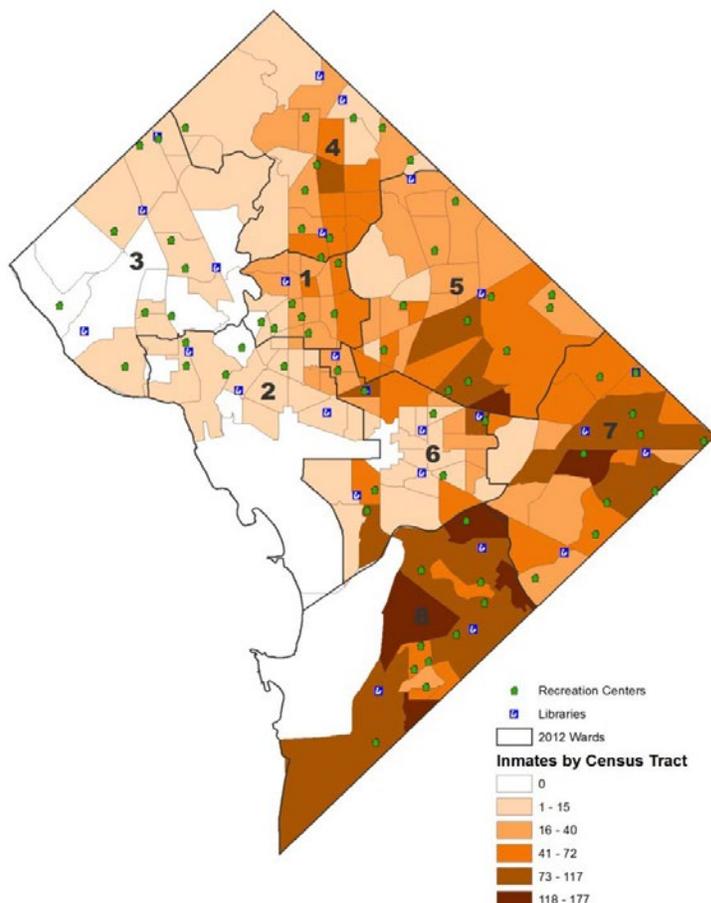
²² *Id.*

²³ *Id.*

²⁴ Justice Policy Institute, *A Capitol Concern: The Disproportionate Impact of the Justice System on Low-Income Communities in D.C.*, http://www.justicepolicy.org/images/upload/10-07_EXS_CapitolConcern_AC-PS-RD-DC.pdf.

²⁵ This question is beyond the scope of this report.

²⁶ *Id.*



Source: D.C. Dep’t of Corrs., “DC Department of Corrections Facts and Figures” (Oct. 8, 2014), <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20October%202014.pdf>.

There has recently been a downward trend in the District’s overall prisoner population—the average daily population for DCDOC facilities in 2009 was 3,089; in 2013, it was 2,289; it was 2,041 in 2014; and there has been a drop of over 700 prisoners from January 2011 through June 2014.²⁷ This trend is also reflected in decreasing intake numbers over the last five years: Intake was 17,903 in 2009, 17,047 in 2011, and 12,334 in 2013. And, whereas the number of intakes exceeded number of releases by seventy-six in 2009, releases exceeded intakes by 642 in 2013.²⁸ In contrast, however, the overall population of D.C. residents has increased from 572,059 residents in 2000 to

²⁷ See D.C. Dep’t of Corr., *Demographics and Statistics*, <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/Demographics%20and%20Statistics%20June%202014.pdf>.

²⁸ See D.C. Dep’t of Corr., *DC Department of Corrections Facts and Figures*, <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20October%202014.pdf>.

601,723 residents in 2010 to 646,449 residents in 2013 to an estimated 658,893 residents in 2014.²⁹

Drug policy, such as the recent legislation legalization of use and possession of small amounts of marijuana, is also likely to impact prisoner population size. Legislation related to this initiative began in July 2014, when the District enacted the Marijuana Possession Decriminalization Amendment Act which decriminalized the possession of up to one ounce of marijuana. Thus, under D.C. law, possession or transfer without exchange of money of a small amount of marijuana became a civil violation (with a \$25 fine) instead of an arrestable offense³⁰ and violators were not subject to jail time.³¹ The effects of this change may already be apparent: The percent of men being held in the DCDOC system for drug offenses dropped from 2013, 8.4% in FY13 to 6.6% in FY14.

On February 26, the District passed a ballot initiative legalizing the possession of up to two ounces of marijuana, and permitting individuals to grow up to three marijuana plants in the home.³² The ballot initiative garnered 70% of the vote.³³

Efforts toward marijuana legalization in the District have not gone unchallenged. As noted, the District is subject to congressional control and, in late 2014, the U.S. Congress passed an omnibus spending bill that included a provision prohibiting the use of federal or local funds in the Act to “enact any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution” of

²⁹ See United States Census Bureau, “State & County QuickFacts, District of Columbia,” <http://quickfacts.census.gov/qfd/states/11000.html>.

³⁰ See D.C. Metropolitan Police, *Marijuana Possession Decriminalization Amendment Act of 2014*, Special Order Number SO-14-04, July 17, 2014, <https://www.documentcloud.org/documents/1219510-metropolitan-police-department-special-order-on.html>.

³¹ See Mike DeBonis and Peter Hermann, *Decriminalization arrives, and D.C. police prepare for sea change in marijuana laws*, The Washington Post, July 17, 2014, http://www.washingtonpost.com/local/dc-politics/decriminalization-arrives-and-dc-police-prepare-for-sea-change-in-marijuana-laws/2014/07/16/0f21a2b8-0c82-11e4-b8e5-d0de80767fc2_story.html.

³² Mike Coneen, *Recreational marijuana use, possession now legal in D.C.*, WJLA, Feb. 26, 2015, <http://www.wjla.com/articles/2015/02/recreational-marijuana-now-legal-in-d-c--111817.html>.

³³ Aaron Davis, *D.C. voters overwhelmingly support legalizing marijuana, joining Colo., Wash.*, Washington Post, Nov. 4, 2014, http://www.washingtonpost.com/local/dc-politics/dc-voters-titling-heavily-toward-legalizing-marijuana-likely-joining-colo-wash/2014/11/04/116e83f8-60fe-11e4-9f3a-7e28799e0549_story.html.

certain substances, including marijuana.³⁴ Additionally, the day before the initiative went into effect, two Members of Congress wrote a letter to the Mayor of the District stating, in relevant part, that if the Mayor were to “decide to move forward . . . with the legalization of marijuana . . . [the Mayor would] be doing so in knowing and willful violation of the law.”³⁵ In an interview, one Congressman suggested that officials who continued with the legalization efforts would face prison time.³⁶ Although District officials were not deterred from moving forward with legalization, it appears that they have (at least for the time being) refrained from pressing forward with efforts to legalize the sale of marijuana, notwithstanding prior discussions of passing legislation to create a “legitimate cannabis industry” in the District.³⁷ However, the City Council has advanced a bill that, if enacted, would limit employers’ ability to require job applicants to undergo drug testing as part of the hiring process.³⁸

³⁴ Alex Rogers, *Congress Approves Trillion-Dollar Spending Bill*, Time, Dec. 14, 2014, <http://time.com/3632125/congress-spending-bill/>; Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 113th Cong. § 809 (2014).

³⁵ Jonathan Topaz, *Muriel Bowser: D.C. won’t back down in Chaffetz pot showdown*, POLITICO, <http://www.politico.com/story/2015/02/jason-chaffetz-and-dc-in-pot-showdown-115495.html>; <http://www.scribd.com/doc/256910143/Letter-to-d-c-Mayor-Muriel-Bowser-Regarding>.

³⁶ Mike DeBonis, *Bowser: Legal pot possession to take effect at midnight in the District*, Washington Post, http://www.washingtonpost.com/local/dc-politics/house-republicans-warn-dc-mayor-not-to-legalize-pot/2015/02/25/2f784a10-bcb0-11e4-bdfa-b8e8f594e6ee_story.html.

³⁷ See Aaron Davis, *D.C. Council backs down on marijuana hearing after attorney general warning*, Washington Post, http://www.washingtonpost.com/local/dc-politics/dc-council-warned-not-to-move-forward-on-marijuana-legalization/2015/02/09/2c1593aa-b067-11e4-827f-93f454140e2b_story.html; Mike DeBonis, *Legal marijuana could be \$130 million a year business in D.C., study finds*, The Washington Post, Oct. 30, 2014, http://www.washingtonpost.com/local/dc-politics/legal-marijuana-could-be-a-130-million-a-year-business-in-dc-officials-find/2014/10/30/d6f80a52-603d-11e4-9f3a-7e28799e0549_story.html?wprss=rss_local.

³⁸ Aaron Davis, *Bill to limit marijuana screening by D.C. employers advances in council*, The Washington Post, Mar. 4, 2015, http://www.washingtonpost.com/local/dc-politics/bill-to-limit-marijuana-screening-by-dc-employers-advancing-in-council/2015/03/04/72569e0c-c28e-11e4-9ec2-b418f57a4a99_story.html.

II. THE DISTRICT'S BUDGET: COSTS OF CONFINEMENT

A. D.C. Department of Corrections Budget

Over the past decade, the DCDOC's budget has averaged \$141.7 million, with peak funding³⁹ in FY08. The Department's FY15 request for \$151.6 million would bring the Department's budget within \$2 million of the FY08 level.

When considering the District's budgeting and priorities, one should note that the District has less control over its budget than do states over their budgets. The District of Columbia Self-Government and Governmental Reorganization Act of 1973 (also known as the "Home Rule" Act) is a federal law that devolves certain decision making responsibilities to the District, including a degree of authority to help determine the District's budget.⁴⁰ To simplify, once the City Council adopts the Mayor's budget, which is effectively a request to Congress for approval of local budget priorities as well as any federal funding, the Mayor sends the budget to the President, who transmits it to the House and the Senate for review.⁴¹ Congress is not required to follow the District's budget when it approves the District's use of its own revenue or when it appropriates funding in the bill it sends to the President for signature. As a consequence, District funding remains subject to the oversight of a political body that is not accountable to residents of the District, an arrangement that can and has led to disputes over funding and puts the District at risk when Congress cannot pass legislation, such as those discussed previously relating to legislation regarding possession of marijuana.⁴²

The District's annual budget figures are divided into "actual," "approved," and "requested" figures. Actual figures are dollars actually spent, as determined by an audit; "approved" figures are amounts approved to be spent; and requested amounts denote spending that the District has proposed, but which has not yet been approved.⁴³

³⁹ This report considers budgets for FY05 through the FY15 request.

⁴⁰ See District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 777 (Dec. 24, 1973); see also D.C. Code §§ 1-201.1, *et seq.*

⁴¹ See D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, 1-16 - 1-17, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_1_web.pdf.

⁴² See, e.g., Erik Wasson, *DC cannot declare budget freedom from Congress, GAO says*, The Hill, Jan. 30, 2014, <http://thehill.com/policy/finance/197019-dc-cannot-declare-budget-freedom-from-congress-gao-says>.

⁴³ See DC Fiscal Policy Institute, *A Citizen's Guide to the DC Budget*, 8-9, <http://www.dcfpi.org/wp-content/uploads/2013/03/3-26-13-Citizens-Budget-Guide.pdf>.

The DCDOC's approved budget for FY14 was \$140.3 million.⁴⁴ The FY14 approved budget represented an increase of 7% over the FY13 actual budget (\$131.1 million).⁴⁵ For FY15, the Department has proposed a budget of \$151.6 million, which represents an increase of approximately 8% over FY14 approved levels.⁴⁶

Figure 1⁴⁷ indicates the Department's budget for fiscal years 2005 through 2015.⁴⁸ As the data indicate, during the covered period (FY05-FY15), the Department

⁴⁴ D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, C-37, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_2_web.pdf.

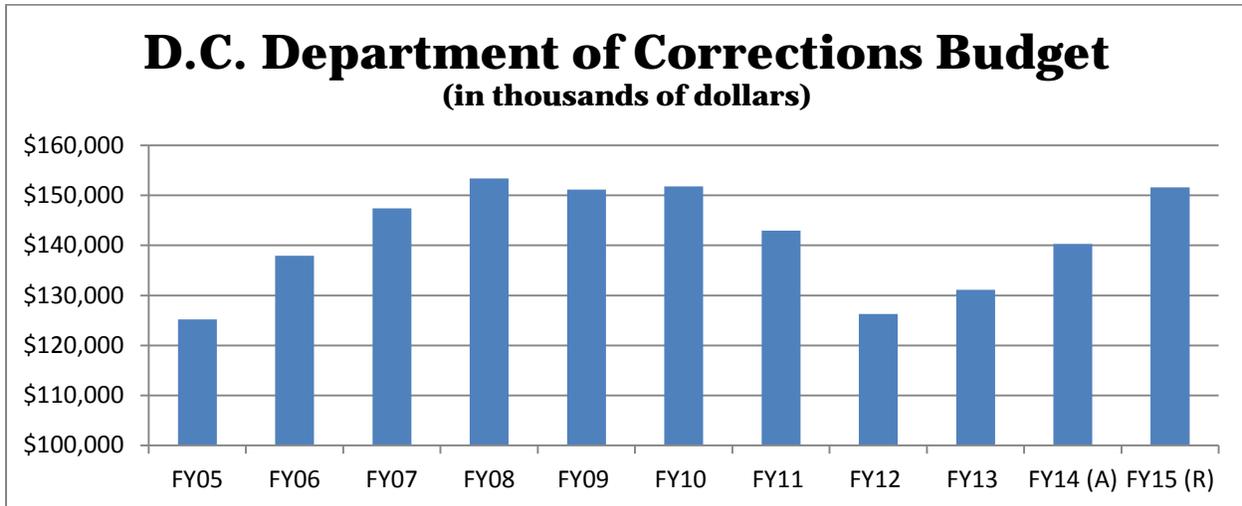
⁴⁵ D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, C-37, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_2_web.pdf.

⁴⁶ D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, C-37, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_2_web.pdf.

⁴⁷ Figure 1 was calculated using information made available by the Office of the Chief Financial Officer. See D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_2_web.pdf; D.C. Chief Financial Officer, *FY 2014 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_2_Final.pdf; D.C. Chief Financial Officer, *Seizing Our Future: FY 2013 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_fy2013_volume_2_chapters_part_1.pdf; D.C. Chief Financial Officer, *One City Rising to the Challenge: FY 2012 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_volume_2_agency_chapters_part_i_web.pdf; D.C. Chief Financial Officer, *Maximizing Efficiency: FY 2011 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/2011_Volume_1-Executive_Summary_Web.pdf; D.C. Chief Financial Officer, *Meeting the Challenge: FY 2010 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_volume_2_agency_chapters_part_i_web_1.pdf; D.C. Chief Financial Officer, *FY 2009 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_agency_budget_chapters_part_1_of_2.pdf; D.C. Chief Financial Officer, *Moving Forward: FY 2008 Proposed Budget and Financial Plan*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_volume_2a_web2.pdf; D.C. Chief Financial Officer, *FY 2007 Proposed Budget and Financial Plan: Public Safety and Justice 2007 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_dc_budget_v (continued...)

received peak funding in FY08 (\$153.4 million). The FY12 budget was the lowest the Department had seen since FY05.

Figure 1



[olume 3d.pdf](#); D.C. Chief Financial Officer, *FY 2008 Proposed Budget and Financial Plan: Public Safety and Justice 2008 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_volume_3_web.pdf; D.C. Chief Financial Officer, *FY 2009 Proposed Budget and Financial Plan: Public Safety and Justice 2009 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_operating_appendices_part_2_of_4.pdf; D.C. Chief Financial Officer, *FY 2010 Proposed Budget and Financial Plan: Public Safety and Justice 2010 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/volume_4_operating_appendices_part_i_web.pdf; D.C. Chief Financial Officer, *FY 2011 Proposed Budget and Financial Plan: Public Safety and Justice 2011 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/2011_Volume_4-Operating_Appendices-Part_I_Web.pdf; D.C. Chief Financial Officer, *FY 2012 Proposed Budget and Financial Plan: Public Safety and Justice 2012 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_volume_4_operating_appendices_part_i_web_r.pdf; D.C. Chief Financial Officer, *FY 2013 Proposed Budget and Financial Plan: Public Safety and Justice 2013 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/ocfo_fy2013_volume_4_appendices_part_1_0.pdf; D.C. Chief Financial Officer, *FY 2014 Proposed Budget and Financial Plan: Public Safety and Justice 2014 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_4_Final.pdf; D.C. Chief Financial Officer, *FY 2015 Proposed Budget and Financial Plan: Public Safety and Justice 2015 Operational Appendices*, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_5_web.pdf.

⁴⁸ Figures for FY05 through FY13 are actual budget figures, while FY14 is the approved budget and FY15 is the Department's request.

The DCDOC’s budget can be further divided to into “Personal Services,” (PS) (Figure 2⁴⁹) which is essentially labor expenses, and “Nonpersonal Services,” (NPS) (Figure 3⁵⁰) which is a catch-all category for other expenses, generally including operational costs including supplies, equipment, and contractual services.

Figure 2

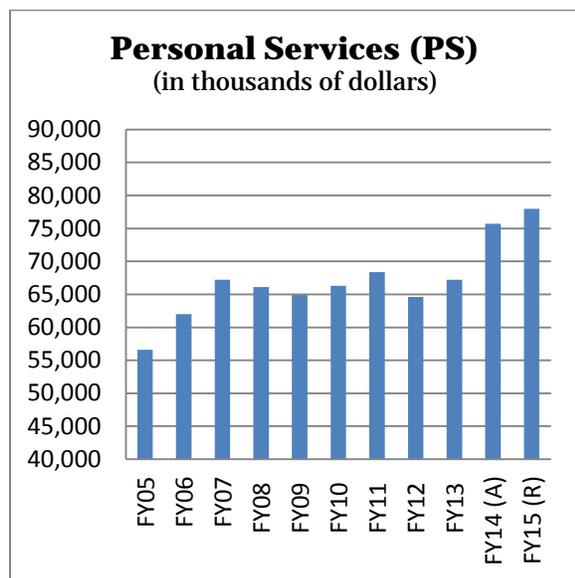
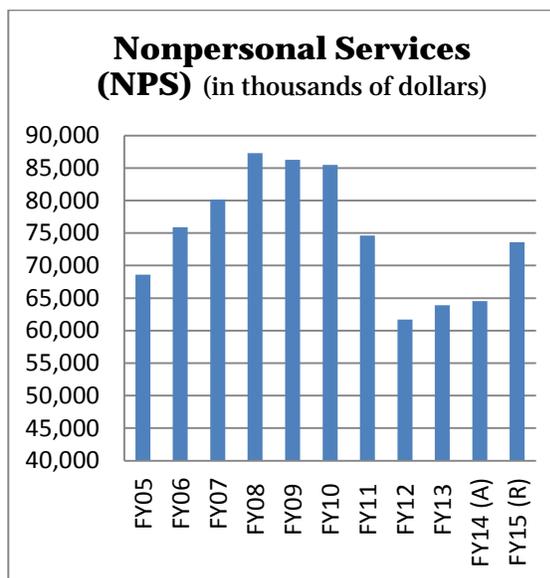


Figure 3



A review of notices of intent to award sole source contracts issued by the Office of Contracting and Procurement⁵¹ provide some insight into the cost of various contractual services:⁵²

- Inmate Telephone, Inc. provides prisoner telephone services for the DCDOC, including labor, equipment, and materials. A proposed extension of a contract for services provided through September 30, 2015, indicates that services would be provided at no cost to the District. Presumably, the company pays for these costs through revenue generated by system use.⁵³

⁴⁹ See *supra* n.47.

⁵⁰ See *supra* n.47.

⁵¹ See D.C. Office of Contracting and Procurement, *Notice of Intent to Award Sole Source Contracts*, http://app.ocp.dc.gov/intent_award/intent_award_opic.asp.

⁵² It is not clear precisely which budget category encompasses these expenditures, though it is not unreasonable to expect that they would be categorized as contractual services.

⁵³ D.C. Office of Contracting and Procurement, *Determinations and Findings for Sole Source Extension of Contract* (Contract CW12929, Inmate Telephone Inc.) (unsigned), http://app.ocp.dc.gov/intent_award/D_F/DF_Sole_Source_Inmate_Telephone.pdf.

- Centric GRP LLC/Keefe Supply Company provides commissary services. A proposed extension of a contract for services would pay the company about \$631,000 for the seven-month period from January 1, 2015, through July 31, 2015.⁵⁴
- Virginia Correctional Enterprises provides off-site laundry services for the D.C. Jail. A proposed extension of a contract for services would pay the company \$200,000 for the nine-month period from January 1, 2015, through September 30, 2015.⁵⁵
- Johnson Control provides maintenance services for the D.C. Jail air, heat, power, and ventilation systems. A proposed extension of a contract for services would pay the company about \$70,000 from the date of the award through September 30, 2015.⁵⁶
- URS Federal Technical Services, Inc./EG&G Technical Services, Inc. provide warehouse management and logistics services, including management of supply operations at the D.C. Jail. A proposed contract for services would pay URS about \$694,000 for services between October 1, 2014, and September 30, 2015.⁵⁷

B. Private Contracts: CCA, Unity Health Care, Halfway Houses

One NPS component, “Contractual Services - Other” (Figure 4⁵⁸) accounted for between 75% and 86% of all NPS expenses for FY05 through FY15, and for between 36% and 48% of the entire budget. The contractual services component appears to include the Department’s contracts with CCA, with the private halfway houses, and for prisoner medical services.

Because the “Contractual Services - Other” category accounts for such a significant percentage of the total NPS budget, it is useful to examine the NPS budget

⁵⁴ D.C. Office of Contracting and Procurement, *Determination and Findings for Sole Source Extension of Contract* (Contract CW18182, Centric GRP/Keefe Supply Company) (unsigned), http://app.ocp.dc.gov/intent_award/D_F/DF_CW18182_R1.pdf.

⁵⁵ D.C. Office of Contracting and Procurement, *Determination and Findings for Sole Source Extension of Contract* (Contract CW17235, Virginia Correctional Enterprises) (unsigned), http://app.ocp.dc.gov/intent_award/D_F/DF_CW17235_R1.pdf.

⁵⁶ D.C. Office of Contracting and Procurement, *Determination and Findings for Sole Source Extension of Contract* (Johnsons Control) (unsigned), http://app.ocp.dc.gov/intent_award/D_F/DF_Johnson_Control_R1.pdf.

⁵⁷ D.C. Office of Contracting and Procurement, *Determination and Findings for Sole Source Extension of Contract* (Contract CW12688, URS) (unsigned), http://app.ocp.dc.gov/intent_award/D_F/DF_CW12688%208_26_14R.pdf.

⁵⁸ See *supra* n.47.

without the contractual services category (Figure 5⁵⁹). As Figure 5 demonstrates, the NPS budget sans the “Contractual Services - Other” category has been subject to a fair degree of year-to-year fluctuation. The figures also reveal comparatively higher expenses in FY10 and FY11. In both fiscal years—and only those fiscal years—the second largest expense category after contractual services was “Expense Not Budgeted Others,” which accounted for \$10.6 million in expenses in FY10 and \$8.6 million in FY11. It is not clear precisely what accounts for the variations in this budget category. For FY15, this budget category includes \$6.5 million for supplies and materials, such as books, writing materials, and other goods purchased for prisoner use and consumption; \$2.7 million for equipment; \$60,000 for telecommunications.⁶⁰ For FY15, this budget category also includes \$2.8 million for land and building rental, which may represent the District’s lease payment to CCA for the CTF facility, as discussed below.⁶¹

Figure 4

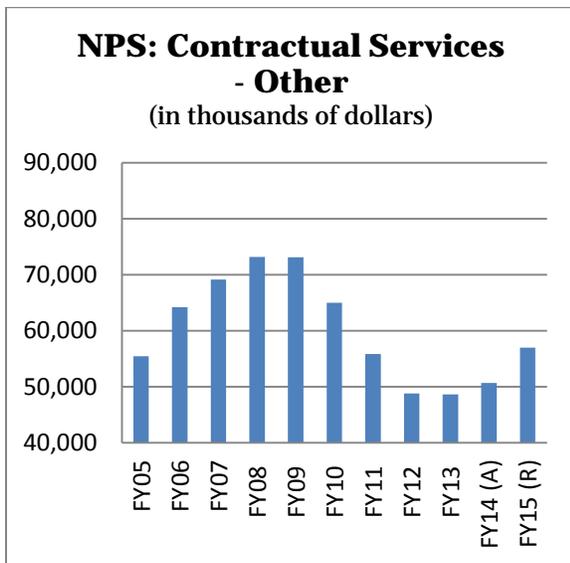
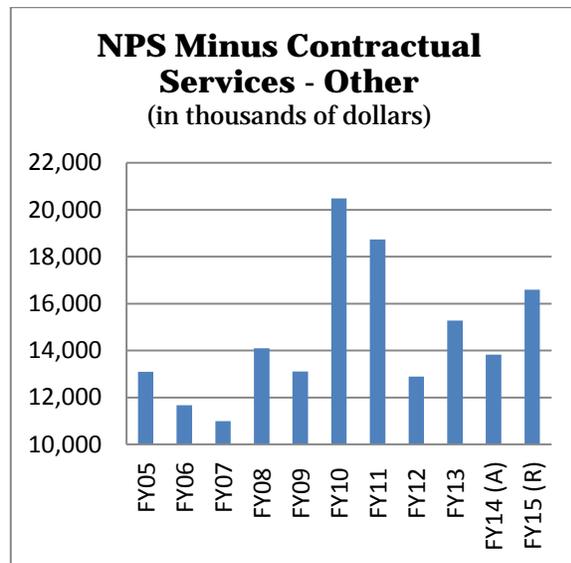


Figure 5



A significant percentage of the Department of Corrections’ budget is devoted to paying for contracts with private entities, including CCA and private halfway houses.

⁵⁹ See *supra* n.47.

⁶⁰ See D.C. Chief Financial Officer, *Keeping the Promises: FY 2015 Proposed Budget and Financial Plan*, C-37 to C-39, http://cfo.dc.gov/sites/default/files/dc/sites/ocfo/publication/attachments/DCOCFO_Volume_2_web.pdf.

⁶¹ See *id.*

Appendix B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CORRECTIONS



D.C. Department of Corrections Response
to
Washington Lawyers' Committee White Paper

The Washington Lawyers' Committee commissioned Covington and Burling to prepare a white paper regarding conditions of confinement at the D.C. Jail and CTF to include physical infrastructure, mental health, suicide prevention, drug treatment practices, juvenile unit, demographics, budget/costs and contracting. The Department of Corrections provides the following comments in response to this report.

CDF and CTF Facilities

- DOC is committed to performing preventative and day to day maintenance of the CDF and CTF facilities in order to provide a clean and safe environment for staff and inmates.
- DOH noted in its exit interview with DOC staff on March 16, 2015 that there had been noticeable improvements in the facility, and areas that were in need of repair and in poor condition during the initial inspection have improved significantly.
- In the most recent March 2015 DOH inspection, 87% of the identified items have already been abated to date; the remaining items are either currently being corrected or, due to the age and deterioration of the physical structure, are outside of DOC's control.

Juvenile Programs

- Since the issuance of the Ridley Report, DCDOC has significantly expanded the juvenile program.
 - The after school program has been expanded and now runs from Monday-Friday. This program focuses on reinforcing the day's lessons, teaching good citizenship and pro-social development.
 - There is a daily barbering program for the male juveniles.
 - There is a comprehensive Victim Impact Training program that combines intensive recovery support, mentoring and anger management services, and workforce development skills.
 - Other weekly programs include: Life Skills workshops, Free Minds Book Club, Adjusting Our Attitudes and substance abuse education.
- The Juvenile Unit program manager is currently in the process of negotiating a career and technical training for weekend programming.
- As of September 2014, all correctional officer recruits are trained in Positive Youth Development (PYD), as well as the operational and disciplinary procedures of the

Juvenile Unit. This training is being phased into the annual in-service training for all correctional staff.

- PYD emphasizes building skills and assets in youth in addition to preventing negative outcomes.

Juvenile Administrative Segregation

The DOC does not use excessive isolation and segregation with the juvenile population. The number of juveniles segregated (either awaiting a disciplinary hearing or placed in administrative segregation) over the past year are as follows with the average stay in segregation being approximately two (2) days:

Month	Number of juveniles
May 2014	Six (6)
June 2014	Zero (0)
July 2014	Three (3)
August 2014	Three (3)
September 2014	Two (2)
October 2014	Six (6)
November 2014	Two (2)
December 2014	Zero (0)
January 2015	Zero (0)
February 2015	Zero (0)
March 2015	Five (5)
April 2015	Two (2)
May 2015	Zero (0)

- The DOC has had Juvenile Administrative Housing and Hearing Procedures in place since June 2013.
- Any juvenile placed in administrative segregation is housed in a separate cell on the lower tier within the juvenile unit.
 - These juveniles attend school through DCPS and have access to legal services, programming, counseling services, and meaningful contact with the other juvenile inmates.
- If a juvenile is placed in administrative segregation, the following occurs:
 - Officers are required to do a visual security check of the juvenile every fifteen (15) minutes.
 - The juvenile receives individual recreation for two (2) hours per day.
 - Juveniles will not be placed in segregation for longer than five (5) days unless extenuating circumstances exist.

Visitation for Juveniles

- In addition to video visitation, juveniles who have reached the Gold Tier in the Juvenile Unit are given contact visitation with their parent or guardian once per month. Eligibility for the Gold Tier is based on several factors such as behavior, program participation and educational factors.
- There are currently eight (8) juveniles on the Gold Tier with two (2) more expected by May 7.
- Juvenile inmates are given contact visits during the holiday season in December.

Suicide Prevention

The DOC, through a proactive initiative, requested that consultant Lindsay Hayes independently assess current practices and provide any appropriate recommendations relating to suicide prevention policies and procedures within DOC. His recommendations have been implemented.

- As of October 2014, all 40 designated cells have been completed and retrofitted as follows: to decrease ligature points, handles have been removed from toilets and desks, vents are covered with anti-ligature grade mesh, pick-proof, penal-grade caulking has been used in the cells, and doors have been replaced to allow for 2 clear panels that provide enhanced vision into and out of the cells.
- In response to the Hayes Report recommendations relating to suicide precautions, the DOC provides suicide-resistant smocks and blankets; more time out of cells and the provision of more family visits and telephone access is under review.
- “Behavior Management” status was immediately discontinued upon receipt of the Hayes Report. There are now two categories of observation: Suicide Watch for inmates thought to be actively suicidal and Suicide Precaution for inmates who are at risk of suicide, but less acutely compared to inmates on Suicide Watch. Inmates on Suicide Watch are placed in a safe cell on 3rd floor medical and are provided one-to-one constant monitoring by a healthcare professional. Inmates on Suicide Precaution are monitored by officers every fifteen (15) minutes in staggered intervals.
- Suicide Prevention training has been significantly enhanced. All correctional officers, other DOC staff and healthcare vendor staff must undergo four (4) hours annually of Suicide Prevention training. Additionally, DOC brought in national expert Dr. Dean Aufderheide to conduct a full day of training on self-injurious behavior issues which involved inmates with mental health issues as well as those exhibiting “bad behavior.” Correctional officers on the mental health and segregation units, as well as mental health staff participated in this training.
- DOC is in the process of developing a Mental Health Step Down Unit, which seeks to transition stabilized inmates on the Crisis Intervention Unit to a different wing of the same area which would involve enhanced programming, as well as double-bunking as a way to help them fully transition to general population as their functionality improves.

Substance Abuse Treatment Programs

- The Secure Residential Treatment Program (SRTP) is a joint program of CSOSA and the US Parole Commission that is located in the CTF. Eligibility requirements and the content of the program are controlled by those agencies.
- The DOC offers a Residential Substance Abuse Treatment (RSAT) program to both male and female inmates. The RSAT curriculum is licensed by Addiction Prevention and Recovery Administration (APRA), the regulating body for policy for substance abuse prevention, treatment, and recovery services.
 - RSAT is a 30-120 day program that includes services such as: relapse prevention, parenting classes, and life skills.
 - The program is open to volunteers and also accepts referrals and self-reports.
 - Inmates who have violated the terms of their probation and otherwise meet the requirements of the program may also enroll.

Good Time Credits

- The DOC amended the good time credits law in 2010 in order to expand the application of good time credits to allow pretrial detainees, in addition to sentenced misdemeanants, to earn credits for good behavior and for successful participation in an expanded list of programs including rehabilitative programs, work details, and special projects, with or without completion of the program.
- The District's good time credit laws only apply to pretrial and subsequently sentenced misdemeanants. In accordance with the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. No. 105-33, 11 Stat.712) and D.C. Code § 24-101, inmates charged with felonies and sentenced to more than one (1) year of incarceration are Federal Bureau of Prisons inmates and can only earn good time credits in accordance with federal law and FBOP policies.

WLC Recommendations

As explained above, the DOC has already taken action on several of the Recommendations contained in the WLC Report. In regard to suicide prevention practices mentioned in Recommendation #3, the DOC brought in on its own initiative an independent consultant, Lindsay Hayes, made the report public, and has implemented the recommendations from his report. Inasmuch as Recommendation #3 relates to juvenile confinement, the DOC similarly commissioned the Ridley report and publicized it, and has worked diligently to implement the Ridley recommendations, including a comprehensive Juvenile Administrative Housing and Hearing policy that is currently in place. The review of training for correctional officers tasked with specialized functions such as juvenile custody and suicide prevention contained in Recommendation #4 has been addressed as explained above, and is ongoing. While much progress has been made, the DOC remains committed to improving operations and achieving the status of a benchmark correctional agency.