

UNITED STATES GENERAL ACCOUNTING OFFICE

Department of Justice
Governmental Affairs Office



FEDERAL BUREAU OF INVESTIGATION
BUREAU OF PRISONS

Investigations and
Prisons

Department of Justice
Federal Bureau of Investigation
Bureau of Prisons
Public Domain

141079



141079

U.S. Department of Justice
National Institute of Justice

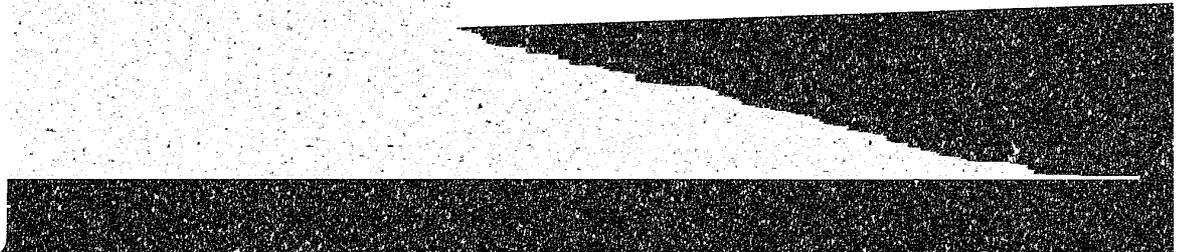
This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by
Public Domain

U.S. Accounting Office

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.



141079



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-250248

September 24, 1992

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

INCORE

FEB 25 1993

ACQUISITIONS

Dear Mr. Chairman:

In response to the Committee's request, this report provides information on the 5-year detention bedspace plan developed by the U.S. Marshals Service and the Bureau of Prisons. The report identifies opportunities for cost savings and more reliable planning.

As arranged with the Committee, we plan no further distribution of this report until 30 days from its issue date, unless you publicly release its contents earlier. At that time, copies of the report will be sent to the Attorney General, U.S. Marshals Service, Bureau of Prisons, Office of Management and Budget, and other interested parties. Copies will also be made available to others upon request.

Major contributors to this report are listed in appendix II. If you have any questions about this report, please call me on (202) 566-0026.

Sincerely yours,

Harold A. Valentine
Associate Director, Administration
of Justice Issues

Executive Summary

Purpose

Federal detainees, as distinct from federal prison inmates, are generally individuals housed in jails while awaiting trial, sentencing, or Immigration and Naturalization Service (INS) proceedings. The number of federal detainees has increased significantly over the past decade. Between fiscal years 1981 and 1991, the average daily population of federal detainees jumped from 3,968 to 16,168. In response, the U.S. Marshals Service (USMS) and the Federal Bureau of Prisons (BOP) developed a 5-year detention bedspace acquisition plan, dated February 1991. Implementation will entail construction and other acquisition costs of over \$1.4 billion.

At the request of the Chairman of the Senate Committee on Governmental Affairs, GAO reviewed federal detention plans and practices to identify opportunities for reducing expansion costs and for improving the plan's reliability. Specifically, GAO examined whether (1) BOP jail design standards could be revised to reduce plan costs, (2) less expensive state and local contract bedspace could be utilized more, and (3) fiscal year 1996 BOP jail bedspace estimates are reliable.

Background

USMS is responsible for housing and transporting detainees awaiting judicial proceedings in the 271 cities where federal criminal proceedings are held on a regular basis. USMS houses these detainees in state, local, and BOP jails.

The February 1991 detention plan developed by USMS and BOP includes forecasts of the fiscal year 1996 detainee population, listings of current detention bedspace, and a plan for meeting any remaining bedspace need for each of the 271 cities. The plan is to be updated annually to reflect changing conditions and plans for years beyond fiscal year 1996. Bedspace is to be acquired through four mechanisms, at the least possible cost to the government, and in the following preferred order:

- Intergovernmental Agreements, USMS agreements with state or local jails for use of bedspace for a per diem, on an "as available" basis;
- the Cooperative Agreement Program, contracts under which federal funds are provided for state or local jail construction or renovation in exchange for guaranteed bedspace for a guaranteed number of years (costs also include a per diem);
- contracts with private companies for jail bedspace in exchange for a per diem; and
- construction of BOP-operated jails.

Plans call for BOP to provide about 57 percent of USMS bedspace in fiscal year 1996, compared to about 24 percent provided in fiscal year 1991. BOP plans to accomplish this increase through the construction of 12,850 cells at 23 locations at an expected per bed cost of about \$108,000. Intergovernmental Agreement and Cooperative Agreement Program bedspace will provide about 8 and 33 percent of needed bedspace, respectively, in fiscal year 1996. At the time of GAO's study, the average per diem cost was about \$48 per day under both programs. USMS must also pay construction or renovation costs under the Cooperative Agreement Program. These costs are expected to average about \$27,000 per bed.

Results in Brief

BOP should revise federal jail design standards, as it has done for prisons, to allow double-bunking. BOP has successfully double-bunked detainees extensively for many years. GAO's analysis indicates that double-bunking 50 percent of fiscal year 1996 bedspace could result in savings of as much as \$61 million in the bedspace acquisition program.

The contract bedspace programs should be better planned and emphasized. Estimates of fiscal year 1996 Intergovernmental Agreement bedspace may be inaccurate as they are based on out-of-date information and were gathered from a survey using ambiguous terminology.

USMS may lose Cooperative Agreement Program bedspace because the Office of Management and Budget (OMB) may cut funding on the basis of its belief that this bedspace is less economical than BOP bedspace. However, GAO's analysis shows that Cooperative Agreement Program bedspace is cost effective and fills needs which BOP cannot meet.

Listings of BOP bedspace available for USMS use in fiscal year 1996 contained inaccuracies relative to 19 of 31 locations. Among other errors, BOP failed to consider sentenced inmate and/or INS bedspace needs.

GAO's Analysis

A Double-Bunking Standard Should Be Used to Determine Jail Capacity

BOP recently revised its single-bunking requirement to allow for double-bunking 50 percent of the inmates in medium security prison cells and 100 percent of the inmates in low and minimum security prison cells.

However, because it believes it lacks sufficient information to determine a detainee's threat to others, BOP continued to base the capacity of federal jails on a single-bunking standard of one 75-square-foot cell per detainee. (See pp. 19-20).

In practice, BOP has double-bunked detainees for many years. As of January 1992, bedspace in the 20 BOP facilities housing USMS detainees was occupied overall at 100 percent over rated capacity. Seventeen of the 20 facilities were occupied over rated capacity in amounts ranging from 52 to 240 percent. Moreover, USMS detainees confined in state and local jails are double-bunked to varying extents. Neither USMS nor BOP officials consider the detainees in non-BOP jails to have less potential for violence. (See p. 20).

GAO found no evidence that double-bunking has created unmanageable control problems. GAO analysis of incidents at BOP facilities housing primarily USMS detainees revealed that the aggregate rate of violent incidents at these facilities remained relatively stable over time and was comparable to that experienced among the sentenced inmate population. (See pp. 21-22).

Double-bunking 50 percent of the currently projected 1996 bedspace could save as much as \$61 million as a result of a reduced need for Cooperative Agreement Program bedspace and of BOP's construction of fewer cells. (See pp. 23-25).

Use of Lower Cost Contract Jails Should Be Better Planned and More Fully Implemented

USMS' detention plan identifies Intergovernmental Agreement and Cooperative Agreement Program bedspace as the least costly methods for acquiring bedspace. These agreements account for about 41 percent of the projected fiscal year 1996 needs (see p. 27). However, efforts are needed to ensure the detention plan makes the fullest possible use of these programs.

First, estimates of fiscal year 1996 Intergovernmental Agreement bedspace availability are based on fiscal year 1987 and fiscal year 1989 surveys that are dated and that possibly are tainted by ambiguous terms and definitions. In these surveys, USMS districts were asked to project the availability of Intergovernmental Agreement bedspace in each court city by rating the ease of finding the necessary bedspace as "no problems," "potential problems," "serious," "critical," or "emergency." The plan then

listed the bedspace as available only if the district had answered that there would be "no problems" in obtaining it.

USMS officials doing the fiscal year 1987 and fiscal year 1989 surveys noted discrepancies in interpretations of the surveys' terms and definitions and acknowledged that cities with similar local conditions may have been assessed quite differently.

As a result of the 1987 and 1989 surveys, USMS did not list any Intergovernmental Agreement bedspace in 182 (about 67 percent) of the court cities. However, a 1991 GAO survey of 35 of these court cities revealed that conditions in 16 (about 46 percent) had changed for the better since the 1989 survey. As of September 1991, 546 Intergovernmental Agreement bedspaces were in use in the 16 cities and, in addition, USMS staff responsible for 13 of these cities told GAO of local jail expansion plans that they had not reported to USMS. Despite these changing conditions and the possible ambiguity in terminology, USMS does not plan to update the information. (See pp. 27-29).

Second, USMS may lose opportunities to acquire Cooperative Agreement Program bedspace due to inadequate funding. The Department of Justice (DOJ) and OMB have reduced Cooperative Agreement Program funding requests about 61 percent over the 12-year life of the program because of their concerns over USMS' administration of the program and OMB's belief that BOP facilities are economically preferable.

DOJ and OMB agree that USMS' administration of the program has improved, but OMB continues to consider Cooperative Agreement Program bedspace less economical than BOP bedspace. However, in the cities where USMS plans Cooperative Agreement Program bedspace, the expected agreements average only about 56 beds and BOP does not consider it cost effective to construct jails for fewer than 500 detainees. BOP estimates that a 150-bed jail would cost, per bed, about 2.5 times as much to construct and about 1.75 times as much to operate as a 500-bed jail. GAO's analysis also revealed that the Cooperative Agreement Program bedspace is less expensive than BOP bedspace under each of four scenarios analyzed. (See pp. 29-32).

Estimates of Available BOP Bedspace Are Not Reliable

Reliable estimates of fiscal year 1996 BOP bedspace are essential so that USMS can appropriately plan. The detention plan contained inaccuracies in 19 locations involving 3,155 beds. These inaccuracies resulted from (1)

BOP's failure to take into account BOP sentenced inmate and INS bedspace needs and (2) other mistakes in listing the capacity expected to be available in 1996. With the correct information, an overall USMS surplus of 1,132 beds in these locations becomes an overall deficit of 897. The effect of the corrected capacities varies by city. In some cities USMS would have a deficit rather than an excess of bedspaces and in others would have an even larger deficit than anticipated in the plan. (See pp. 36-38).

Recommendations

GAO recommends that the Attorney General require the Director, BOP, to

- revise BOP's design standards for jails to ensure that its expansion plans and budget requests are premised on double-bunking where feasible and to limit single-bunking to those locations where double-bunking is clearly not feasible (see p. 26);
- use the revised standards to determine the rated capacity of federal detention bedspace and to justify the need for new detention cells (see p. 26); and
- adopt procedures to ensure that the detention bedspace plan reflects, as accurately as possible, the expected number of BOP beds available to USMS in fiscal year 1996 (see p. 37).

GAO recommends that the Attorney General require USMS to periodically assess the availability of Intergovernmental Agreement bedspace in each court city. In doing so, USMS should provide additional guidance to its district offices on how to make these assessments. (See p. 33).

GAO recommends that the Director of OMB reexamine concerns about the cost effectiveness of Cooperative Agreement Program bedspace and more carefully evaluate and balance a variety of cost elements in assessing the cost-effectiveness of this program (see p. 33).

Agency Comments

GAO discussed the information contained in the report with officials from BOP, USMS, and OMB, who generally agreed with the facts presented and the recommendations.

Bureau of Prisons

BOP has decided to double-bunk 25 percent of its existing and future detainee bedspace. BOP arrived at this figure through the exercise of its professional judgment. GAO believes that BOP has demonstrated through practice that it can double-bunk detainees at rates higher than 25 percent

and that BOP should reconsider this rate. As to the errors in estimates of fiscal year 1996 BOP detainee bedspace, BOP stressed that the plan is a working document and that the numbers can and do change but agreed that, to ensure the best possible planning, the numbers should be as accurate as possible. (See pp. 26 and 37.)

U.S. Marshals Service

USMS told GAO that they have instituted a number of requirements for documentation and site inspections that will ensure that the 89 court cities in emergency, critical, or serious condition acquire bedspace through the Cooperative Agreement Program and BOP expansion only to the extent necessary. USMS will also provide additional guidance to district offices on how to assess court city status. As to the remaining 182 cities, GAO believes USMS should institute a requirement that district offices provide USMS with written notification of possible state or local jail expansion. In this way, USMS will have greater assurance that all possible Intergovernmental Agreement bedspace is used. (See pp. 33-34).

Office of Management and Budget

OMB said that it will take the recommendation regarding Cooperative Agreement Program cost effectiveness into consideration. However, the official GAO spoke with disagreed with (1) the use of the current average Cooperative Agreement Program per diem because many of the current rates were negotiated some time ago and (2) the use of 30 years as the useful life of a BOP facility because BOP retains an asset at the end of 30 years. GAO believes that its use of these assumptions was sound. GAO believes the per diem data used are the best available. As to the second objection, GAO recognized in its analysis that the usefulness of the BOP asset extends beyond the 30-year period but still found Cooperative Agreement Program bedspace to be less expensive. In addition, because BOP construction costs are so much higher, costs of acquiring Cooperative Agreement Program bedspace in future years would have to exceed construction costs many times over before BOP bedspace would be less expensive. (See p. 34).

Contents

Executive Summary		2
<hr/>		
Chapter 1		10
Introduction	USMS Detainee Population Has Increased Dramatically	10
	Role of Justice Agencies in Federal Detention	11
	Federal Detention Planning Efforts	12
	Objectives, Scope, and Methodology	16
<hr/>		
Chapter 2		19
A Revised Design Standard for BOP Jails Could Save Expansion Funds	BOP Adopted a Double-Bunking Standard for Prisons but Not for Jails	19
	In Practice BOP Does Not Follow the Single-Bunking Standard for Jails	20
	Double-Bunking Has Not Resulted in Unmanageable Problems	21
	Double-Bunking Jails Is Not Contrary to the Law	22
	Double-Bunking Does Not Prevent Accreditation	22
	Adopting a Reasonable Double-Bunking Standard Could Save Expansion Funds	23
	Conclusions	25
	Recommendations to the Attorney General	26
	Agency Comments and Our Response	26
<hr/>		
Chapter 3		27
Use of Lower Cost Contract Jails Should Be Better Planned and More Fully Implemented	Potential IGA Bedspace Should Be Periodically Identified	27
	Criteria Used to Justify Reductions in CAP Funding Requests Should Be Reconsidered	29
	Conclusions	32
	Recommendation to the Attorney General	33
	Recommendation to the Director of the Office of Management and Budget	33
	Agency Comments and Our Response	33

Chapter 4		35
Detention Plan Should Be Based on More Reliable Estimates of Planned BOP Detainee Capacity	<ul style="list-style-type: none"> Estimates of Available BOP Bedspace Were Unreliable Inaccuracies Affect USMS Planning for Additional Bedspace Conclusions Recommendation to the Attorney General Agency Comments 	<ul style="list-style-type: none"> 35 36 37 37 37
<hr/>		
Appendixes	<ul style="list-style-type: none"> Appendix I: USMS Detainee Population Projections Appendix II: Major Contributors to This Report 	<ul style="list-style-type: none"> 38 40
<hr/>		
Tables	<ul style="list-style-type: none"> Table 2.1: USMS CAP Program Savings if BOP Adopts a Double-Bunking Standard Table 2.2: BOP Construction Program Cost Savings If BOP Adopts a Double-Bunking Standard Table 3.1: Survey of Court City Status and IGA Bedspace Table 3.2: Adjustments to USMS' CAP Budget Requests Table 3.3: Cost of Bedspace Acquired Through the CAP Program and BOP Construction Table 4.1: Effect of BOP's Corrected Capacities 	<ul style="list-style-type: none"> 24 24 28 30 32 36
<hr/>		
Figures	<ul style="list-style-type: none"> Figure 1.1: Average Daily Population of USMS Detainees, Fiscal Years 1981-1996 Figure 1.2: Source of USMS Bedspace, Fiscal Years 1991 and 1996 	<ul style="list-style-type: none"> 11 15

Abbreviations

ACA	American Correctional Association
BOP	Bureau of Prisons
CAP	Cooperative Agreement Program
DOJ	Department of Justice
INS	Immigration and Naturalization Service
IGA	Intergovernmental Agreement
JMD	Justice Management Division
MDC	Metropolitan Detention Center
OBIS	Offender Based Information System
OMB	Office of Management and Budget
USMS	U. S. Marshals Service

Introduction

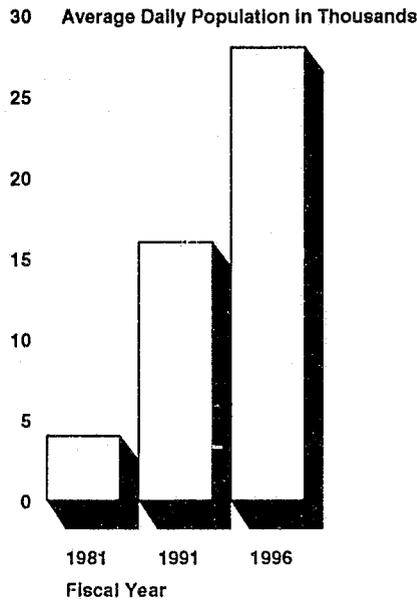
Federal detainees, as distinct from federal prison inmates, are individuals housed in federal Bureau of Prisons (BOP), state, or local jails while awaiting trial, sentencing, or other judicial matters. Federal prison inmates are generally individuals serving a sentence of imprisonment after conviction for a violation of the federal criminal code. The United States Marshals Service (USMS) is responsible for housing and transporting federal detainees. The number of USMS detainees has more than quadrupled over the last decade, and DOJ expects it to continue growing at an average annual rate of 12 percent a year from fiscal year 1991 through fiscal year 1996. To cope with this anticipated growth, USMS and BOP developed a federal detention bedspace plan. The plan, initiated in fiscal year 1989, details projected bedspace resources to meet anticipated fiscal year 1996 needs. Subsequent editions of the plan will address bedspace needs as they are projected beyond fiscal year 1996 and any necessary planning for additional bedspace. As written, the plan will require over \$1.4 billion in appropriated funds. This figure does not include operations costs. The Department of Justice (DOJ) identified the shortage of USMS detention bedspace as a Federal Managers' Financial Integrity Act high risk area in its fiscal year 1993 budget submission.

USMS Detainee Population Has Increased Dramatically

The average daily population of USMS detainees rose from 3,968 in fiscal year 1981 to 16,168 in fiscal year 1991, an increase of over 300 percent. USMS estimated that this number will increase to about 28,000 in fiscal year 1996, as illustrated in figure 1.1. USMS and BOP attribute this dramatic growth to a number of factors, including the following:

- increased criminal caseloads resulting from greater federal law enforcement resources over the past decade;
- the Bail Reform Act of 1984, which permits the courts to order the preventive detention of individuals considered a threat to public safety, as well as various provisions of the Anti-Drug Abuse Acts of 1986 and 1988; and
- the Sentencing Reform Act of 1984, which is believed to have increased the amount of time spent in preparation for the sentencing hearing, and therefore the amount of time the defendant is detained prior to sentencing.

Figure 1.1: Average Daily Population of USMS Detainees, Fiscal Years 1981-1996



Note: Rounded to the nearest 1,000 detainees.

Source: USMS data sources.

As a result of this population growth and simultaneous growth in state and local jail populations, USMS has experienced more difficulty finding sufficient jail bedspace in the 271 court cities, requiring U.S. deputy marshals to travel increasing distances to find bedspace. According to USMS, the lack of required bedspace close to the courthouses causes delays in court appearances, increases security concerns as detainees are transported over longer distances, increases transportation costs, and results in the use of considerable overtime by the deputies responsible for transportation.

Role of Justice Agencies in Federal Detention

Various components of DOJ are responsible for the care of federal detainees. USMS is responsible for housing and producing defendants at proceedings in the 271 cities where federal criminal proceedings are held on a regular basis. The Immigration and Naturalization Service (INS) is responsible for detainees held under provisions of the immigration laws. BOP is responsible for sentenced inmates but also houses some criminal

aliens for INS and an increasing number of pretrial and presentenced detainees for USMS.

Federal Detention Planning Efforts

To meet the increased need for detention resources, USMS and BOP developed a plan to acquire bedspace to meet projected USMS 1996 needs. This effort is ongoing and involves primarily USMS and BOP, with some input from INS.¹

Planning began in fiscal year 1989 with a joint USMS and BOP effort to determine projected fiscal year 1996 detainee populations for each of the 271 court cities located within the 94 federal judicial districts. Population projections were based on historical population data provided by USMS from the 94 districts and the 271 court cities. BOP used this information on past population increases to project future populations. A discussion of the population projections is included as appendix I.

The next phase of the planning process involved identification of existing bedspace resources which USMS anticipated would still be available in fiscal year 1996. To meet any remaining need, USMS then identified potential new state, local, and private sector bedspace in each court city. BOP then identified BOP capacity available for USMS use in fiscal year 1996. USMS and BOP worked jointly to determine the locations where BOP should seek funding for construction of additional federal jail bedspace.

The plan resulting from this effort is titled Federal Detention Plan, 1992-1996, dated February 1991. The plan's narrative and attachments detail the problem, the agencies involved, population projections, current bedspace resources, and a plan of action for each of the 271 cities. The stated objective of the plan is to provide a multiyear coordinated approach to resolving the detention bedspace problem, using a combination of approaches at the least possible cost to the government. USMS and BOP officials estimate that over \$1.4 billion in construction and other acquisition costs will be needed to implement the plan. These costs do not include the daily operational costs associated with housing and transporting USMS detainees. According to USMS, the plan will be updated once a year.

According to the plan, bedspace should be acquired in a "cost-effective sequential process," moving through the following four avenues: (1)

¹INS involvement in the plan was limited to bedspace needs for aliens who have violated the U.S. Criminal Code in the three cities where USMS also has bedspace needs and where BOP plans to build.

Intergovernmental Agreements (IGA), (2) the Cooperative Agreement Program (CAP), (3) privatization, and (4) BOP construction of federal jail bedspace. USMS is responsible for acquisition of bedspace through the first three avenues.

USMS has traditionally acquired bedspace through IGAs. IGAs are written agreements between USMS and state or local jails permitting USMS use of bedspace for a daily per diem, on an as available basis. The average per diem, as of May 1992, was about \$48. DOJ considers IGAs the least expensive way to acquire bedspace. Due to state and local jail population increases, USMS officials expect available IGA bedspace to decrease. USMS projects that the number of IGA beds available will drop from 4,430 in fiscal year 1991 to 2,169 in fiscal year 1996.²

USMS implemented the CAP program in 1982. CAP agreements are contractual arrangements with state or local jails through which USMS acquires the use of a guaranteed number of beds for a guaranteed number of years and the local jail receives federal funding for construction or renovation of jail space. Under this arrangement, USMS also pays a daily per diem. DOJ considers CAP bedspace the second least expensive way to acquire bedspace. As of July 1991, USMS had entered into 171 CAP agreements, for 6,614 beds, at an average cost of \$18,566 per bed, plus the daily per diem, which averaged about \$48 in May 1992. The average length of these agreements is about 13 years. The plan includes a listing of anticipated CAP agreements and contract costs. Based on the detention plan, the expected average contract cost per bed, excluding the daily per diem, is about \$27,000.

USMS' contracts with the private sector for provision of bedspace in privately owned and operated jails, or privatization, were authorized by Congress in 1988 and involve payment of a per diem only. Unlike CAP, USMS does not provide up-front funding for facility construction. USMS explored contracts with private companies in three locations, as a pilot project. A contract was negotiated with a company which opened a 256-bed jail in one of these locations, Leavenworth, KS, in June 1992. The per diem at the Leavenworth jail is \$99.40 for the first 198 detainees and \$14.85 for detainees 199 through 256. According to USMS, the per diem is higher than that paid through contracts with state and local jails because the private company's construction as well as operations costs are absorbed in the rate charged to USMS. USMS officials told us that they do not plan to pursue

²A total of 2,559 IGA beds are listed in the plan. Officials at USMS told us that 390 were actually beds that were anticipated from an agreement with a private company and should not be included in the total of IGA beds.

the privatization alternative due to private sector financing difficulties, public opposition to location of a jail in the community, and the relatively high per diem in Leavenworth.

According to the plan, BOP construction is the most expensive option and should be used as a last resort, if sufficient bedspace is not available through other sources. As of January 1992, BOP was operating four Metropolitan Detention Centers (MDC) and 14 detention units at existing prisons and, in addition, had converted the prisons at Otisville, NY, and Miami, FL, into jails.³ BOP has provided jails⁴ in areas with either very large federal detainee populations or with smaller populations where USMS reported it cannot otherwise acquire sufficient and reliable bedspace.

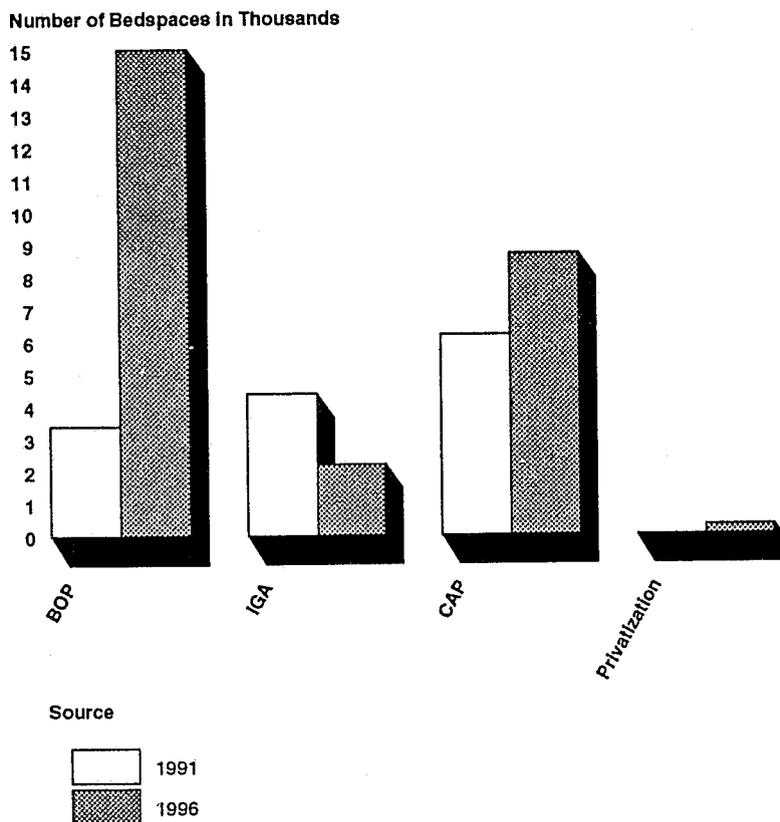
BOP jail bedspace expansion is typically accomplished through the construction of stand alone MDCs or detention units added to existing prisons. The units added to existing prisons take about 18 months to construct, the stand alone jails about 3 years. USMS bedspace expansion through this alternative involves BOP construction and operations costs. Construction costs for planned BOP jail bedspace average about \$108,000 per bed. BOP estimates that operating costs over the useful life of its facilities are 15 to 20 times the construction costs. BOP's current average MDC daily per bed operating costs are about \$47.

The allocation of bedspace between IGA, CAP, privatization, and BOP as of fiscal year 1991, and as planned for fiscal year 1996, is illustrated in figure 1.2.

³After completion of the jail bedspace expansion program, the prisons at Otisville and Miami and detention units at five prisons will not be available for USMS use. In addition, a small jointly operated BOP/USMS jail unit at a state facility in Hartford, CT, was deactivated in January 1992.

⁴BOP prisons generally house only offenders sentenced to more than 1 year. BOP jails and jail units primarily house offenders awaiting trial or sentencing but also house some offenders sentenced to short sentences.

Figure 1.2: Source of USMS Bedspace, Fiscal Years 1991 and 1996



Note 1: This figure does not reflect the 1,570 unplanned fiscal year 1996 bedspace needs.

Note 2: Rounded to the nearest 100 bedspaces.

Source: USMS and BOP data.

As planned, the number of beds provided by BOP will rise, as a percentage of the total and in absolute terms. Overall, it is planned that the beds provided by BOP will increase, over 5 years, from about 24 percent in fiscal year 1991 to about 57 percent in fiscal year 1996. Though the number of CAP beds is also expected to increase, the percentage of beds provided through this program is expected to decrease from about 44 percent in fiscal year 1991 to about 33 percent in fiscal year 1996. It is planned that IGA bedspace will decrease in both percentage and absolute terms, dropping from about 32 percent of total beds in fiscal year 1991 to about 8

percent in fiscal year 1996. Privatization is expected to provide about 1 percent of total beds. The plan does not include provision for 1,570 projected bedspace needs. It is the intention of USMS to make provision for these needs as the plan is updated.

Objectives, Scope, and Methodology

The Chairman of the Senate Committee on Governmental Affairs asked that we examine the February 1991 detention bedspace plan to identify possible opportunities for cost savings and for improving the plan's reliability. After discussions with the Committee, it was agreed that we would address whether (1) BOP could adopt a double-bunking design standard for determining the rated capacity of existing and planned jails and jail units so as to reduce the cost of the detention plan, (2) plan costs are minimized through the fullest possible use of IGA and CAP bedspace, and (3) the planning process reliably identified existing and planned BOP bedspace.

To accomplish these objectives we discussed the plan, including various housing options and the population projections and methodology, with officials from USMS, BOP, DOJ's Justice Management Division (JMD), and the Office of Management and Budget (OMB). We also reviewed planning and budget documentation and written policies and procedures for IGA, CAP, privatization, and BOP jails.

To specifically address the first objective, we reviewed our prior work on BOP design standards contained in Federal Prisons: Revised Design Standards Could Save Expansion Funds (GAO/GGD-91-54, Mar. 14, 1991) and BOP's response to our recommendations. We interviewed officials at BOP about the rated capacity of existing and planned BOP detention facilities and BOP's rationale for using single-bunking as the standard to determine rated capacity in existing and planned detention facilities. We obtained and reviewed documentation from BOP showing rated capacities and actual populations of existing facilities. We reviewed American Correctional Association (ACA) standards and spoke with USMS officials about requirements for USMS detainees housed in non-BOP facilities. We requested and reviewed information on incidents of violence at BOP jails and prisons over the past 5 fiscal years and reviewed our previous work on crowding and violence in BOP prison facilities. To determine possible cost savings in the jail expansion program, we used BOP's medium security double-bunking standard of 50 percent and applied it to all existing and planned BOP jail capacity of 75 or more square feet per cell. As part of our analysis, we used a hypothetical standard of 100 percent as an upper limit.

We used 75 square feet since this is the standard BOP has adopted for double-bunking in medium security facilities. We used these standards to determine whether (1) USMS might avoid acquisition of additional CAP bedspace in areas with BOP jails or detention units and (2) BOP might construct new jails with fewer cells.

To meet the second objective, we surveyed by telephone USMS field office staff in a judgmental sample of 35 of the 182 federal court cities listed in the plan as having no IGA space. The purpose of the survey was to determine whether the IGA bedspace estimates in the plan were reliable. We also interviewed USMS officials about what criteria they used to list IGA beds in the plan and whether they planned to update the listings of IGA bedspace.

We interviewed officials at USMS, JMD, and OMB and reviewed various materials relating to the CAP program. To determine whether CAP bedspace would be cost-effective over the useful life of a BOP facility, we calculated and compared the net present value of bedspace acquired through the CAP program with bedspace acquired through BOP construction. We obtained cost information from USMS and BOP. Because operating costs for USMS and BOP prisoners are not separable, BOP provided information only for the facilities which predominantly house USMS prisoners. Costs were analyzed over the expected 30-year life (without major renovation costs) of a BOP facility and a 12-year cycle that corresponds with the average life of a CAP agreement, on the basis of the acquisition of 500 beds from either source. We assumed that at least three CAP agreements would be necessary to correspond to the 30-year life of the BOP facility. Sensitivity analyses were performed on the above scenarios, respectively, assuming that the per bed cost of entering into a CAP agreement would almost triple at the end of the first 12-year cycle and slightly more than double at the end of the second 12-year cycle and that BOP would double-bunk at a 40-percent rate which would result in the BOP facility actually holding 700 prisoners.

To meet the third objective, we interviewed officials at USMS and BOP responsible for developing and implementing the plan. We compared figures in the plan with information supplied by BOP and requested and reviewed explanations for discrepancies. We interviewed officials at USMS and BOP about the population projection methodology and the population projections.

Chapter 1
Introduction

We did not perform an independent evaluation of bedspace needs, existing and possible bedspace resources within court cities, or USMS or BOP cost or detainee population data.

We discussed this report's contents with USMS, BOP, and OMB officials. Their comments and our response are discussed on pp. 26, 33-34, and 37. We did our work between June 1991 and May 1992, in accordance with generally accepted government auditing standards.

A Revised Design Standard for BOP Jails Could Save Expansion Funds

The federal detention plan calls for BOP to provide USMS with 14,967 beds in fiscal year 1996, or about 57 percent of all the projected detention bedspace need. Existing BOP facilities will provide 2,117 beds, and new construction, at 23 locations, will provide the remaining 12,850 beds. To determine how much present detention bedspace it has and the number and size of the jails it must build, BOP uses a single-bunking standard (one detainee per cell). Substantial cost savings could be realized if BOP adopted, as it has for prisons, a revised standard for calculating detention capacity.

BOP Adopted a Double-Bunking Standard for Prisons but Not for Jails

A key standard for any correctional facility is the number of inmates that can be placed in an individual cell or living area (cubicle and open dormitory areas hereafter referred to as cells). BOP's expansion plans and budget requests are based on BOP's determination of its rated capacity, or the number of inmates that can be housed in its prisons and jails. Rated capacity is based on design standards. Traditionally, BOP determined rated capacity based on a single-bunking standard of one inmate per cell.

In our earlier work on BOP design standards, we recommended that BOP reassess its design standards to assure that its expansion plans and budget requests were premised on the use of double-bunking where feasible, limiting single-bunking to those locations where double-bunking was clearly not feasible.¹ As a result of its own initiatives and our work, BOP revised its design standards to provide for double-bunking 50 percent of the cells in existing and planned medium security prisons and 100 percent in low and minimum security prisons.² According to BOP policy, double-bunked medium security cells must be at least 75 square feet in size, low and minimum security cells at least 65 square feet. According to BOP officials, the 50-percent double-bunking rate in medium security cells allows enough single-bunked cells to accommodate the more dangerous inmates, provide inducement for good behavior, and ensure the flexibility needed to accommodate population surges.

BOP did not extend the revised standard to its high security prisons or administrative security facilities such as jails. According to BOP, capacity determinations for all existing and planned detention bedspace are based

¹Federal Prisons: Revised Design Standards Could Save Expansion Funds (GAO/GGD-91-54, Mar. 14, 1991).

²BOP's facilities are designated minimum, low, medium, high, and administrative, depending on the amount of security provided and therefore the type of inmate housed in the facility. Administrative facilities, such as jails, house inmates of varying security needs or have specialized functions, such as medical or mental health facilities.

on a standard of one detainee per 75-square-foot cell. BOP officials said that the single-bunking standard is used for jails because too little is known about the potential dangerousness of detainees. Detainees have typically been incarcerated for a short period of time and have not been subjected to the detailed background investigations that sentenced inmates have undergone.

In Practice BOP Does Not Follow the Single-Bunking Standard for Jails

In practice, BOP has used double-bunking extensively throughout its jail system to accommodate growing detainee populations. BOP officials said BOP's jails have been double-bunked to various degrees for at least the last decade. The incidence of double-bunking varies among the facilities depending upon such factors as actual living unit size, security needs, and staffing. As we noted in our earlier report, BOP does not maintain statistics that show the actual levels of double-bunking in individual facilities or systemwide. However, as of January 1992, the 20 BOP-operated jails had twice as many detainees (6,803) overall as they were designed to hold based on their rated capacity (3,401). Of the 20, 17 were occupied over capacity in amounts ranging from 52 to 240 percent, and one facility was occupied at 26 percent over rated capacity.

For the most part, detainees are not actually separated from all other inmates in their housing areas. Most are only locked in their cells for about 8 hours a day. As of January 1992, about 26 percent of the detainees in four of BOP's largest jails were not separated at all but were housed in open dormitories. When not locked in their housing units or making court appearances, detainees spend their time participating with other detainees in various recreational activities and in limited work assignments, educational programs, and counseling.

USMS does not require that the detainees it places in state and local contract jails be housed in single cells. While no statistics are maintained on double-bunking, USMS officials told us that they are aware that their detainees in contract facilities are double-bunked to varying extents. In addition, a USMS contract with a private company provides for housing that is designed to hold from one to eight detainees a cell. Both USMS and BOP officials said there is no reason to believe that the detainees placed in contract facilities are any different from those placed with BOP in terms of having more or less potential for violence. In addition, USMS said that contract facilities do not have more information with which to classify detainees than BOP has.

Double-Bunking Has Not Resulted in Unmanageable Problems

In our earlier report, we noted that we had found no studies or other indications that double-bunking had led to behavioral or other significant problems in the federal system. We also noted that BOP staff at the five facilities visited said that while they preferred an inmate population closer to rated capacity, they did not believe the excess inmates had created unmanageable problems.

We also noted that despite significant increases in inmate population resulting in record levels and wide-scale use of double-bunking throughout BOP, the rate of major inmate incidents actually decreased in every category except natural deaths during the 1980s. A subsequent article on BOP facilities in the BOP Federal Prison Journal also noted that, "in general, rates for inmate homicides and suicides and inmate-on-inmate and inmate-on-staff assaults have all decreased since the early 80's."³

To obtain a perspective on incidents of violence specifically among detainees, we analyzed rates of violent incidents (assaults, homicides, suicides, and escapes) at five BOP jails which predominately house USMS detainees (Chicago, Los Angeles, San Diego, New York, and Miami) for fiscal years 1987-1991.⁴ Our analysis revealed that the aggregate rate of violent incidents remained relatively stable over time. The overall rate was 15 per 1,000 detainees in fiscal year 1987 and 14 per 1,000 in fiscal year 1991. During this period, the rate ranged from a high of 16 to a low of 9 while BOP's average daily detainee population in these facilities increased by about 26 percent.⁵

The aggregate rate of violent incidents among detainees during this period was comparable to that experienced among BOP's sentenced inmate population. For example, the aggregate rate of violent incidents for fiscal years 1987 through 1991 was 14 per 1,000 for detainees and 13 per 1,000 for sentenced inmates. BOP has comparable rates of violent incidents in its jails and prisons despite the fact that it does not have a formal mechanism for classifying detainees such as the one used to classify sentenced inmates. However, according to BOP officials, individual BOP jails do have and use their own informal classification systems, and their use of these systems might be responsible in part for helping to manage potential

³Karacki, Loren, "An Era of Change," 2 Federal Prison Journal, No. 3 (Summer: 1991), p.24.

⁴BOP does not categorize incidents of violent behavior by sentenced inmates versus detainees. Therefore, to the extent sentenced inmates committed violent incidents, the rate of violent incidents presumably committed by USMS detainees is inflated.

⁵The average daily population of the MDC, Los Angeles, was not included in this analysis as this facility became operational in fiscal year 1989.

violence in BOP jails. The classification systems may be used, for example, to separate detainees known to be violent and to house them with convicted inmates or to house various types of detainees on different floors of a facility. Staff obtain the information that is used to informally classify from observations of and interviews with detainees, from knowledge of a detainee's prior criminal history or prior sentences served in BOP facilities, and from information relating to the nature and circumstances of the current alleged offense.

Double-Bunking Jails Is Not Contrary to the Law

As we previously reported, double-bunking, in and of itself, is not contrary to the law. No federal statutes or regulations prohibit double-bunking in federal jails or prisons. BOP, which double-bunks extensively throughout its system, is not under federal court order to alleviate this condition. In addition, the U.S. Supreme Court has held that double-bunking is not in itself unconstitutional. For example, in *Bell v. Wolfish*, 441 U.S. 520 (1979), the Court considered conditions at BOP's jail in New York City, which had been double-bunked since activation in 1975, and held that double-bunking detainees did not violate the detainees' rights under the Due Process Clause of the Fifth Amendment.

While double-bunking has not in itself been held to be a constitutional violation, it seems conceivable that under certain circumstances, double-bunking combined with other factors might be found to violate detainee rights. For example, the *Bell* Court considered such factors as the total floor space of each unit, the amount of time per day a detainee actually spent in the unit, and total length of stay at the facility.

Double-Bunking Does Not Prevent Accreditation

While ACA holds to a single-bunking standard for high security detainees, primarily out of concern for inmate and staff safety, adherence to it is not a prerequisite to ACA accreditation provided that other key standards are followed. It is possible for a facility to earn and maintain ACA accreditation when the standard is exceeded. BOP seeks ACA accreditation of its facilities and thus attempts to follow ACA standards. The ACA considers single-bunking a nonmandatory standard and will accredit institutions that use double-bunking as long as mandatory standards are followed. As of January 1992, although extensively double-bunked, 17 of the 20 BOP-operated jails and prisons with detention units were ACA accredited. Of the remaining three, two were recently activated and had not gone through the accreditation process and one was a state-owned facility which was no longer used by BOP or USMS.

Adopting a Reasonable Double-Bunking Standard Could Save Expansion Funds

BOP should adopt a double-bunking standard for its jails as it has for its prisons. Use of a double-bunking standard could result in substantial cost savings. For example, on the basis of current detainee population projections, double-bunking 50 percent of present and planned BOP jail bedspace could result in savings of as much as \$61 million, by

- reducing the number of additional beds which USMS would have to acquire through the CAP program and
- decreasing the number of new cells which BOP would have to construct.

A double-bunking policy of some percent of the detainee population would still allow sufficient single-bunking to accommodate the more dangerous detainees, provide inducement for good behavior, and ensure the flexibility needed to accommodate population surges.

To determine possible savings from use of a double-bunking standard, we analyzed possible cost savings using double-bunking standards of 50 and 100 percent of all space of 75 or more square feet. Fifty percent is the standard currently employed by BOP for medium security facilities. We recognize that 100 percent is probably the extreme, and we use it only to show possible maximum savings.

Double-Bunking Could Reduce the Number of Beds Needed From Non-BOP Sources

According to the plan and discussions with BOP officials, there are 29 locations where BOP has or plans to construct bedspace for USMS use.⁶ We found that upon completion of the BOP bedspace expansion program, if BOP continues to single-bunk existing and planned bedspace, USMS will still need additional bedspace in 12 of these locations. We recalculated the total available BOP bedspace at the 12 locations, using 50 and 100 percent double-bunking standards. Because the detention plan did not list any available fiscal year 1996 IGA bedspace in any of the 12 locations, we determined possible cost savings by assuming USMS would attempt to acquire beds through the CAP program. USMS Headquarters' officials agreed that this was a reasonable assumption. We used the plan's anticipated average per bed CAP cost of about \$27,000. The results of this analysis are displayed in table 2.1.

⁶In arriving at the total of 29 locations, we treated facilities in Los Angeles and San Diego as one, as well as those in New York City and Brooklyn. According to BOP and USMS, the new Los Angeles facility will provide bedspace for San Diego and the New York City and Brooklyn facilities will be used interchangeably, as needed.

Chapter 2
A Revised Design Standard for BOP Jails
Could Save Expansion Funds

Table 2.1: USMS CAP Program Savings if BOP Adopts a Double-Bunking Standard

Dollars in thousands			
50% standard		100% standard	
Beds saved	Dollars saved	Beds saved	Dollars saved
1,438	\$38,826	1,589	\$42,903

Source: GAO analysis of BOP and USMS data.

Double-bunking as little as 50 percent of BOP capacity could reduce or eliminate the need for USMS to acquire additional bedspace in all 12 locations and result in a total savings of 1,438 beds, or nearly \$39 million in acquisition costs. Due to the uncertainty surrounding the projected populations, projected acquisition cost savings could be more or less than this figure. For example, if subsequent population projections decrease by 30 percent, savings, using a 50-percent double-bunking figure, could decrease to about \$3.5 million. An increase of 30 percent in the population projections, using a 50-percent double-bunking standard, could increase savings to nearly \$110 million.

These figures do not take into account any concomitant savings in per diem costs for bedspace in state or local jails in the 12 locations, which savings would be offset to a degree by additional BOP operating costs resulting from the increased BOP detainee population.

Double-Bunking Could Reduce the Number of Cells BOP Needs to Construct

If BOP adopts a double-bunking standard for all existing and planned jails in the locations where it plans construction, it will reduce the number of cells it needs to construct. Table 2.2 shows the possible number of cells eliminated and resulting cost savings, using double-bunking standards of 50 and 100 percent. Savings were calculated using a figure of \$4,000 per cell.⁷

A double-bunking standard of 50 percent could eliminate the need for BOP to build 5,631 cells, or about 44 percent of the total new jail cells planned. Cost savings would be about \$22.5 million. Again, due to the uncertainty surrounding the projected populations, projected acquisition cost savings could be more or less than this figure. For example, if subsequent population projections decrease by 30 percent, savings, using a 50 percent double-bunking figure, could increase to about \$35 million. An increase of 30 percent in the population projections, using a 50 percent double-bunking standard, could decrease savings to about \$12 million.

These figures do not take into account other costs, such as reduced personnel requirements and lower utility and furnishing costs, which might be associated with a reduction in size of the facility. In reducing the number of cells constructed, BOP might also incur added costs depending upon how far into design the individual projects have progressed. Additional staffing costs might be incurred in existing facilities with populations greater than those for which the facility was designed.

Conclusions

Since the need for detainee bedspace is determined in part by comparing BOP capacity with projected populations, the development of reasonable and cost-effective capacity standards is essential to planning the size of federal jails. In our earlier report on double-bunking, we recommended that BOP revise its facility design standards to double-bunk where feasible and to limit single-bunking to locations where double-bunking is clearly not feasible. BOP adopted a double-bunking standard for prisons but, because BOP believes that detainees cannot be safely managed unless separated, declined to extend the new standard to jails.

We believe BOP should adopt a double-bunking standard for jails. In practice, BOP double-bunks detainees extensively and has done so for many years. These detainees are generally confined to their cells only at night and otherwise intermingle with other inmates. Moreover, USMS detainees confined in contract jails are also double-bunked. The rate of violent incidents among BOP detainees is comparable to that found among BOP's sentenced inmates. BOP has not found this rate unmanageable.

Adopting a double-bunking standard for jails could result in significant cost savings in the bedspace acquisition program, the amount depending on the population projections and the double-bunking standard adopted. Double-bunking only 50 percent of the currently projected population could result in savings of as much as \$61 million. These savings could

result from a reduced need for USMS to acquire CAP beds in a number of locations and from BOP construction of fewer cells.

Recommendations to the Attorney General

We recommend that the Attorney General require that the Director of the Bureau of Prisons

- revise BOP's design standards for jails to ensure that its expansion plans and budget requests are premised on double-bunking where feasible and to limit single-bunking to those locations where double-bunking is clearly not feasible and
- use the revised standards to determine the rated capacity of federal detention bedspace and to justify the need for new detention cells.

Agency Comments and Our Response

We discussed the information in this chapter with BOP officials. They generally agreed with the facts presented and the recommendations and said that BOP had decided to double-bunk 25 percent of existing and future high security and detention bedspace capacity of at least 75 square feet. BOP based its decision to double-bunk at the rate of 25 percent on its professional judgment after reviewing the rates used at other types of BOP facilities, i.e., 100 percent at low and minimum and 50 percent at medium security. BOP considers detention facilities more difficult to manage than these other types of facilities and therefore thought a lower double-bunking rate was warranted. We believe that BOP's decision to double-bunk detainee bedspace is sound but believe that BOP should reconsider the rate. BOP has demonstrated through current practice that it can double-bunk detainees at rates higher than 25 percent and, in its decisionmaking process, has presented no evidence that demonstrates that a higher rate is clearly not feasible.

Use of Lower Cost Contract Jails Should Be Better Planned and More Fully Implemented

IGA and CAP agreements are essential components of the detention bedspace plan. The plan identifies them as the least costly and most preferred methods for acquiring needed detention bedspace. About 41 percent (10,832)¹ of bedspace provided in fiscal year 1996 will be from IGA and CAP agreements. Another 1,570 of the bedspace needs, for which USMS does not yet have a plan, may also be filled in total or in part through these programs. In addition, this type of bedspace may be needed as an interim measure, while USMS awaits completion of BOP construction. A BOP official told us that, of BOP's planned 11,600 new MDC beds, only the 750 at the Puerto Rico facility will be available in fiscal year 1992. The remaining facilities are still either in the design, site acquisition, or construction phase.

Efforts to acquire this contract bedspace should be better planned and given more emphasis. Detention plan estimates of the fiscal year 1996 availability of IGA bedspace are about 3 years old, and there are indications that these estimates may now be inaccurate. Further, long-standing concerns about CAP cost-effectiveness need to be resolved and efforts made to ensure that the program is adequately funded.

Potential IGA Bedspace Should Be Periodically Identified

USMS needs more current and consistent data on the estimated long-range availability of IGA bedspace to facilitate maximum possible use of this approach. USMS officials told us that because use of IGA bedspace is not guaranteed, they have no plans to update their estimates of available IGA bedspace. Indications are, however, that due to changed local conditions, the availability of IGA bedspace may have changed. Also, ambiguities in the criteria that were used to assess potential IGA availability might have affected the accuracy of the estimates.

USMS estimated that 2,169 IGA beds will be available in fiscal year 1996 in 89 of the 271 federal court cities. These estimates were based on information the 94 district field offices provided USMS in fiscal years 1987 and 1989. The districts were asked to estimate the "status" for each of the 271 cities. There were five status possibilities: emergency, critical, serious, potential problems, and no problems. The different statuses referred to the relative ease of finding necessary bedspace in the vicinity of the courthouse, and a short definition was provided for each. Generally, IGA bedspace was included in the detention plan only for those cities where the district reported the court city status as "no problems."

¹This number is based on updated information supplied by USMS.

Chapter 3
Use of Lower Cost Contract Jails Should Be
Better Planned and More Fully Implemented

To determine the reliability of the court city status projections, and therefore of the estimates of IGA availability, we conducted a telephone survey of 35 court cities in October and November 1991. Our sample was selected from the cities for which the plan listed no IGA bedspace. We grouped these cities into judicial circuits and drew the sample from the circuits, in proportion to the number of court cities in each circuit. The districts were asked a number of questions, including the following: (1) whether the court city status of the surveyed city, as projected in fiscal year 1989 for fiscal year 1995, was still correct and, if not, whether it had changed for the better or worse; (2) the number of IGA bedspaces in use on September 30, 1991; and (3) if the district had become aware of any local jail expansion plans not yet reported to USMS.

The results are displayed in table 3.1. Of the 35 responses, 16 (about 46 percent) projected a change for the better. Of these 16, 13 reported new jail expansion in that locality, not yet reported to USMS. A total of 546 IGA bedspaces were in use in these 16 cities on September 30, 1991.

A USMS official told us that USMS does not believe that it is possible to arrive at consistently understood and applied terms and that the problem of consistent interpretations would be compounded because district office staff change frequently. We believe that the terms could be defined so as to increase the likelihood of consistent interpretations and applications. For example, the definition of the status "serious" is "Finding adequate bedspace is starting to pose operational problems which impacts adversely on district." USMS provided no objective indicators to measure, e.g., "operational problems" or "starting to pose." Indicators such as average overtime charged by deputies, median duration of court productions, and length of commuting distances could be provided and used to guide the respondents in their assessments of operational problems in court cities, and in turn to enhance consistency across the court cities.

Criteria Used to Justify Reductions in CAP Funding Requests Should Be Reconsidered

Over the years, DOJ and OMB have substantially reduced USMS' CAP program funding requests because of concerns that (1) USMS was not adequately identifying CAP bedspace needs and potential recipients and was not quickly using the funds already appropriated and (2) BOP facilities were a more permanent and less costly alternative. According to data supplied by DOJ, USMS requests for CAP funding have been cut by DOJ and OMB in 10 of the 12 years of the program's existence, about 61 percent overall, in amounts ranging from 25 to 100 percent. Initial USMS requests and the amounts actually requested from Congress per the presidential budget requests are displayed in table 3.2.²

²During this period, Congress appropriated about 176 percent of the President's requests.

Chapter 3
Use of Lower Cost Contract Jails Should Be
Better Planned and More Fully Implemented

Table 3.2: Adjustments to USMS' CAP Budget Requests

Dollars in thousands		
Fiscal year	CAP budget request	President's request
1982	\$3,000	\$3,000
1983	11,800	2,800
1984	10,000	0
1985	10,000	5,000
1986	10,000	5,000
1987	15,000	4,000
1988	10,000	5,000
1989	20,000	20,000
1990	20,000	15,000
1991	34,000	15,000
1992	30,000	5,000
1993	50,000	7,400
Total	\$223,800	\$87,200

Source: DOJ data.

DOJ and OMB officials agree that earlier concerns about insufficient program planning and USMS' failure to obligate all CAP funds previously provided have been largely resolved. The detention bedspace planning process has provided an improved mechanism to identify CAP bedspace needs. In addition, USMS has generally committed its CAP budget authority at increasing rates and, at the end of fiscal year 1991, had committed over 99 percent of available funds. CAP funding requests may still be cut, however, because OMB considers CAP bedspace less economical than BOP bedspace.

BOP Bedspace Does Not Meet USMS Needs in Cities With Relatively Small Bedspace Requirements

OMB officials prefer to fund more permanent BOP jails. However, according to BOP it is not cost-effective to build jails with capacities of less than 500. Bedspace needs in the cities where USMS has or plans to acquire CAP bedspace are relatively small. The average number of guaranteed bedspaces in existing funded CAP agreements is about 59. The average number in planned CAP agreements is about 56.

Information supplied by BOP indicates that were BOP to construct an MDC smaller than its typical 500-bed jail, per bed construction and operations costs would be substantially higher than those for the 500-bed facility. For example, BOP estimates that a 150-bed MDC would cost, per bed, about 2.5

times as much to construct and about 1.75 times as much to operate as a 500-bed jail. BOP does construct and operate 150-bed detention units, but these are units added on to existing prisons with the necessary infrastructure to support the additional population. According to BOP, these units have been added, to the extent possible, at prisons in the vicinity of federal court cities.

CAPs Less Costly Over the Long Term

OMB officials believe that BOP bedspace is less costly than the multiple CAP agreements that would be needed to provide bedspace for a period equivalent to the expected useful life of a BOP facility. OMB had no cost analysis to support this assumption. To determine whether OMB's assumption was correct, we calculated and compared the cost of acquiring a 500-bed BOP facility with the cost of acquiring 500 CAP bedspaces.³ This scenario is analogous to the projected fiscal year 1996 detention situation in Arizona, where USMS projects an unmet bedspace need of 515. USMS and BOP have discussed the possible construction of a 500-bed BOP jail to meet this need. However, the projected need will be spread out over a geographically dispersed area: Phoenix, Tucson, and Yuma. USMS officials told us that in this situation, a number of CAP agreements might better meet USMS bedspace needs.

We analyzed costs under four scenarios:

- over the expected 30-year life, without major renovation costs, of a BOP facility;
- over the 30-year period, assuming that the per bed cost of entering into a CAP agreement would almost triple at the end of the first 12-year cycle and slightly more than double at the end of the second 12-year cycle;
- over the 12-year average life of a CAP agreement; and
- over 12 years assuming the BOP facility would actually hold an additional 200 detainees and that USMS would have to enter into an additional CAP agreement to accommodate the same increase.

Under each of these assumptions, CAP beds were less costly than BOP beds. The costs under the four scenarios analyzed are displayed in table 3.3.

³In this discussion, "cost" refers to net present value, which is the present value of dollars to be paid or received in future years.

Chapter 3
Use of Lower Cost Contract Jails Should Be
Better Planned and More Fully Implemented

Table 3.3: Cost of Bedspace Acquired Through the CAP Program and BOP Construction^a

Dollars in thousands

Scenario	CAP bed	BOP bed	Percent by which CAP is less costly ^b
30 yrs.	\$317	\$383	21
30 yrs., CAP costs up each 12 yrs.	355	383	8
12 yrs.	167	209	25
12 yrs., 200 more detainees	184	196	7

^aRounded to the nearest 1,000.

^bRounded to the nearest percentage.

Source: GAO analysis of USMS and BOP data.

Over 30 years, the expected life of a new prison without major renovation costs, the cost of a CAP bedspace was about 21 percent less than a BOP bedspace. Over 12 years, the average life of a CAP agreement, the CAP bedspace was about 25 percent less costly than a bedspace acquired through BOP.

BOP construction, activation, and operating costs and CAP per bed acquisition and per diem costs were used in the analyses. CAP costs, for the two 30-year scenarios, were calculated assuming a 12-year agreement, renewed twice. Costs were adjusted for inflation. A discount rate of 7.5 percent was used. A value of \$150 million was imputed for the BOP asset at the end of 30 years and \$80 million at the end of 12 years.⁴

Conclusions

More could be done to better estimate the amount of IGA bedspace that is expected to be available in fiscal year 1996 and to better assure that available CAP bedspace is acquired, if needed. The failure to fully explore these options may lead to the use of a more expensive option.

Because availability of IGA bedspace is not guaranteed, USMS does not plan to update its estimates of available IGA bedspace. However, the estimates used were based on out-of-date information and were determined through use of ambiguous and inconsistently applied terminology. As state and local conditions change, IGA availability may also change. Availability of this relatively inexpensive bedspace in fiscal year 1996 may increase as a result.

⁴BOP was unable to provide an estimate of the value of the BOP asset.

Long-standing and continuing concerns about CAP cost effectiveness may, by resulting in substantial reductions in requested funding levels, limit the ability of USMS to acquire CAP agreements. Evidence indicates, however, that CAP agreements can be used to meet bedspace needs in areas where BOP cannot economically build facilities and that CAPs, even though not a permanent resource, can be a cost-effective option.

Recommendation to the Attorney General

We recommend that the Attorney General require the Director of USMS to periodically assess the availability of IGA bedspace in each court city. We further recommend that in doing so, USMS provide additional guidance to the districts on how to make these assessments.

Recommendation to the Director of the Office of Management and Budget

We recommend that the Director of OMB reexamine OMB concerns about the cost effectiveness of CAP bedspace and more carefully evaluate and balance a variety of cost elements in assessing the cost-effectiveness of this program.

Agency Comments and Our Response

We discussed this report with USMS and OMB officials, who generally agreed with the facts and recommendations as they pertain to their agencies.

U.S. Marshals Service

USMS officials told us that USMS has revised the detention plan and instituted a number of documentation requirements to better ensure that IGA bedspace availability is thoroughly and accurately assessed. The revised plan will list only the 89 court cities which are in emergency, critical, or serious condition. The planning process for these cities has been changed so that more documentation is required at all levels to ensure that, due to a lack of IGA bedspace, more expensive CAP and BOP bedspace resources are necessary. The districts will be required to certify that there is not sufficient IGA or other bedspace in the vicinity of the courthouse and to provide written justifications for each proposed CAP or BOP project. USMS inspectors will verify all IGA and CAP information through site inspections. USMS also plans to make additional guidance available to the districts on the court city status terms and definitions.

As to the cities that will not be included in the new edition of the plan, we are concerned about the lack of a requirement for written documentation attesting that the district has not become aware of new plans for jail

expansion or construction in that area. The cities which will not be listed in the new plan are those which either have adequate bedspace resources or a funded plan providing for acquisition, through CAP or BOP, of necessary bedspace. In these cities, USMS could reduce expansion costs if IGA bedspace becomes available prior to expenditure of the funds appropriated for CAP and/or BOP bedspace. USMS told us that it is aware that conditions can change in any of these cities prior to the planned expenditure of CAP or BOP funds. For example, local or state governments may develop plans to construct or expand jail bedspace. However, at the time of our final discussions, USMS had no plans to require the districts to provide written notification to USMS of any new local or state plans. USMS' justification was that it can rely on the districts to provide this information to USMS when it becomes available. However, our survey revealed 19 cities where local or state plans for expansion or construction had not been reported to USMS. A requirement for written notification as soon as the district becomes aware of possible IGA bedspace would help ensure that USMS has all possible information needed to acquire bedspace at the least possible cost.

**Office of Management and
Budget**

We discussed this report with an official of OMB who generally agreed with the facts as they pertain to OMB and said that OMB will take our recommendation into consideration. However, he disagreed with the assumptions underlying our analysis of comparative CAP and BOP costs in two respects. First, he disagreed with our use of the current average per diem because many of the current rates were negotiated some time ago and if renegotiated today, would result in a higher average cost. Second, he disagreed with our use of 30 years as the useful life of a BOP facility before major renovation or repair costs are required because BOP facilities continue to be used past the 30-year point.

We believe that our use of these assumptions was sound. In a 1989 JMD review of the CAP program, JMD used, in a comparison of BOP and CAP operating costs, an average CAP per diem of \$44.12 for fiscal year 1988. We used a fiscal year average (as of July 1991) per diem figure of \$44.32, only a 20-cent increase from fiscal year 1988, and adjusted this figure by an annual 4-percent inflation rate. We believe these are the best data available. We also recognized in our analysis that the usefulness of the BOP asset extends beyond the 30-year period but still found CAP to be less expensive. In addition, because BOP construction costs are so much higher, costs of acquiring CAPs in future years would have to exceed construction costs many times over before BOP would be less expensive.

Detention Plan Should Be Based on More Reliable Estimates of Planned BOP Detainee Capacity

Reliable estimates of BOP bedspace available for USMS use are needed to ensure that USMS acts appropriately to meet long-range bedspace needs. We found inaccuracies in the BOP bedspace listings for 19 of the 31 locations where BOP, as of the publication of the plan, expected to provide detention bedspace. In some areas, BOP will actually provide more capacity than projected in the detention plan and in other areas less capacity. These discrepancies totalled 3,155 beds. USMS officials were unaware of these inaccuracies.

Estimates of Available BOP Bedspace Were Unreliable

USMS officials explained that in developing the bedspace plan, they listed, by court city, anticipated IGA and CAP bedspace available in fiscal year 1996. BOP then filled in numbers reflecting anticipated BOP capacity available for USMS use in fiscal year 1996. These capacity figures were used by USMS to determine bedspace resources by court city and, overall, for the fiscal year 1996 projected population.

BOP capacity was over- or underestimated for both existing and planned MDCs and detention units at BOP prisons. These inaccuracies resulted from BOP's failure to take into account BOP sentenced inmate and INS bedspace needs and/or because BOP made other mistakes in listing the capacity expected to be available for USMS use.

According to a BOP official, a number of BOP sentenced inmates will be housed in the planned MDCs to perform maintenance work. The anticipated capacity for the 15 planned MDCs was not reduced to take these inmates into account. A BOP official told us that there is no set number of sentenced inmates required for the work cadre. At a 500- to 1,000-bed facility, the work cadre would total about 15 percent of the population. Jails with capacities over 1,000 would have work cadres of about 150 inmates. The exact number is dependent on such factors as the internal configuration of the facility and whether it is built as a high rise or campus style. Using this information, we calculated that 1,514 (about 13 percent) of the planned 11,600 beds at the 15 MDCs will be needed for the work cadre. BOP officials were not able to reconstruct why this adjustment was not made to the capacity figures used in the plan.

BOP officials also could not explain why the capacity figures were not adjusted to reflect some use by INS or why other inaccuracies existed in the plan's BOP capacity listings. INS detainees will occupy 525 beds at 3 of the MDCs that will be constructed as part of the plan. Concerning other inaccuracies, we found that the plan listed 928 beds which will not be

**Chapter 4
Detention Plan Should Be Based on More
Reliable Estimates of Planned BOP Detainee
Capacity**

available in fiscal year 1996 and failed to include 188 beds that will be available.

**Inaccuracies Affect
USMS Planning for
Additional Bedspace**

Table 4.1 illustrates the effect of the differences in BOP capacity on the detention plans for the 19 locations.

Table 4.1: Effect of BOP's Corrected Capacities

Location	Net beds, as per plan	Net beds, BOP corrected
Washington, DC	+78	-72
Sacramento, CA	+173	+98
Tampa, FL	+270	+195
Minneapolis, MN	+275	+200
St. Louis, MO	+170	+95
Cleveland, OH	+295	+220
Philadelphia, PA	+109	-3
Puerto Rico	+300	+113
Houston, TX	+51	-24
Seattle, WA	+98	+8
Elkins, WV	-14	-10
Atlanta, GA	+97	-172
Richmond, VA	-29	+25
Newark, NJ	+122	+60
LA/San Diego, CA	-676	-1148
San Francisco, CA	-17	0
Miami, FL	-278	-485
Chicago, IL	-59	-246
NYC/Brooklyn, NY	+167	+249
Aggregate	+1,132	-897

Source: GAO analysis of detention bedspace plan and BOP data.

Overall, with corrected capacity information, USMS' excess of 1,132 bedspaces becomes a deficit of 897. The type of change varies by city. For example, in four cities (Washington, Philadelphia, Houston, and Atlanta), USMS actually must acquire additional beds, rather than having an excess.

Chapter 4
Detention Plan Should Be Based on More
Reliable Estimates of Planned BOP Detainee
Capacity

In three cities (Los Angeles/San Diego, Miami, and Chicago) the previous bedspace deficit is worse than that anticipated by USMS. In these cities, USMS officials told us they will have to acquire more space than planned, either through local IGA or CAP agreements or through less desirable alternatives, such as use of jails that are located at unacceptable distances from the courthouse.

Conclusions

Estimates of available BOP capacity in the detention bedspace plan are inaccurate in a number of areas. Consequently, USMS may unknowingly plan for too few or too many beds for fiscal year 1996. Recognizing the need for some latitude in planning the use of its facilities, BOP should determine as closely as possible the number of beds that will be available for USMS use in fiscal year 1996 and list only those beds in the plan. With that information, USMS will be more likely to make adequate provision to meet needs in each city and less likely to encounter crisis situations.

Recommendation to
the Attorney General

We recommend that the Attorney General require the Director of BOP to adopt procedures to ensure that the detention bedspace plan reflects, as accurately as possible, the expected number of BOP bedspaces which will be available to USMS in fiscal year 1996.

USMS Detainee Population Projections

According to USMS and BOP officials, USMS and BOP jointly produced the population projections used in development of the detention bedspace plan. USMS officials told us that the projections were developed using data on federal court city and judicial district populations obtained from district month-end reports and from surveys of the 271 court cities conducted in fiscal years 1987 and 1989. Combined, the data on court city populations covered actual and projected detainee populations for fiscal years 1986-1995. In both surveys, USMS requested average daily population, for each city, for each year. Estimates were provided for the out years. USMS officials also told us that month-end counts of district populations were obtained for each year, which supplemented the court city data. BOP used these data in a projection model based on linear extrapolation. Using this model, BOP estimated future populations by calculating the yearly average level of change in the court city and district populations and then extrapolated the level into the future. USMS adjusted the forecasts in 27 cities to account for factors not included in the BOP model such as INS detainee populations or changes in the population levels due to information discovered during CAP negotiations.

BOP's projections underestimated the actual fiscal year 1990 aggregate USMS detainee population by only about 1.4 percent. The actual fiscal year 1991 aggregate population was underestimated by about 10.2. Accuracy beyond fiscal year 1991 cannot be measured because data for years beyond fiscal year 1991 are not yet available. Accuracy by court city for fiscal years 1990 and 1991 cannot be measured because USMS did not collect actual counts by court city for those years.

The reliability of forecasts developed in the future can be improved if certain shortcomings in the data used are corrected. The data provided to BOP included different and inconsistent measures of average daily population and covered a relatively short period of time. According to officials, USMS was unable to provide data on admissions, length of stay, and demographic attributes of detainees. The absence of these and other data precluded use of projection methodologies which take into account factors such as increased law enforcement or judicial resources in a particular locality. Consequently, BOP was limited to use of linear extrapolation, a methodology which assumes that the detainee population in a court city will grow by the same amount each year.

According to USMS, improvements are planned in the collection of data on detainee populations and demographics. USMS officials told us that an automated data system, the Offender Based Information System (OBIS),

Appendix I
USMS Detainee Population Projections

will enable USMS to collect information on charges, length of stay, daily counts, demographic characteristics, and movements in and out of the system. These data will allow BOP to use a more sophisticated projection methodology. According to USMS officials, OBIS should be on line by the beginning of fiscal year 1994.

Major Contributors to This Report

**General Government
Division, Washington,
D.C.**

**Richard M. Stana, Assistant Director, Administration
of Justice Issues**

Carl Trisler, Acting Assistant Director

Doris Page, Evaluator-in-Charge

William J. Sabol, Social Science Analyst

Joel Sacks, Program Review Analyst

Michelle Wiggins, Secretary

Geoffrey Hamilton, Attorney-Advisor

Elizabeth D. Johnson, Editor

Ordering Information

... ..
... ..
... ..
... ..
... ..

... ..

... ..

... ..

... ..

