

December 1993

FEDERAL PRISON EXPANSION

Overcrowding Reduced but Inmate Population Growth May Raise Issue Again



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The Honorable Sam Nunn
Chairman, Permanent Subcommittee
on Investigations
Committee on Governmental Affairs
United States Senate

The Honorable William J. Hughes
Chairman, Subcommittee on Intellectual
Property and Judicial Administration
Committee on the Judiciary
House of Representatives

In response to your separate requests, we (1) reviewed the Federal Bureau of Prisons' (BOP) response to our recommendations for reducing overcrowding and increasing capacity at existing and new facilities and (2) evaluated BOP's progress in meeting its expansion plans. We also reviewed available data on the impact of sentencing policies on BOP prison population and expansion needs.

Results in Brief

BOP has taken action on most of our recommendations for improving its efforts to expand capacity, including greater use of double-bunking in existing and new facilities, better use of halfway houses, and identification and evaluation of surplus military property for prison use. BOP has not implemented our recommendation that it obtain statutory authority to contract for private prisons to run demonstration projects or that it work with the National Institute of Justice (NIJ) to determine the benefits and limitations of privatization. BOP does not endorse the use of private prisons for its general adult inmate population and has not contracted directly with the private sector for the operation of adult secure facilities. BOP and the Department of Justice (DOJ) have concluded that BOP already has the authority to contract for private prisons, should it decide to do so. However, we continue to believe that BOP needs specific statutory authority to contract for private prisons. We believe BOP should be given contracting authority so that it can test and evaluate privatization to determine the efficiency and economy of such contracts at the federal level.

During calendar year 1992, BOP increased its total rated capacity by 5,996 beds and reduced overcrowding from 51 percent to 46 percent over rated

capacity.¹ Using current population projections, approved and funded construction and expansion plans should decrease overcrowding systemwide to about 4 percent over rated capacity by 1997. However, population projections for inmates classified as low- and minimum-security risks exceed the planned rated capacity at these security levels. Consequently, BOP may have to decide whether to crowd more inmates into low- and minimum-security facilities, place inmates in facilities that differ from their individual security classifications, or redesignate the mission of some of its facilities. BOP has recently redesignated the missions of five facilities to accommodate its need for greater capacity at low- and minimum-security levels.

We found that some new facilities originally scheduled to become operational in fiscal years 1995 and 1996 are now scheduled to become operational in 1997. BOP officials said that the opening of some low-security facilities has been delayed due to slippage in construction. The construction of some detention facilities has also been delayed because of problems locating sites.

BOP identified 83 base closure, realignment, unused, or underutilized military properties as potential sites for correctional facilities between 1991 and 1993, but BOP did not evaluate 36 of these sites because the properties were not located in areas of projected inmate population growth. BOP experience has shown that military property can provide BOP expansion capacity faster than constructing new prisons and that the costs of renovating such facilities are substantially less than the costs of new construction. If the rapid growth in BOP's inmate population continues and new construction funding is limited or unavailable, the 36 sites not evaluated might provide BOP with additional capacity for less cost than building new facilities.

BOP's inmate population grew from about 42,000 at the end of 1986 to almost 80,000 in July 1993. BOP projects the federal prison population will increase by another 50,000 inmates between 1993 and 2002 to a total of 130,413. The dramatic growth in BOP's prison population is the direct result of the tough law enforcement and sentencing policies of the 1980s, which focused on longer prison terms for a number of crimes—most notably drug offenses. These tough law enforcement policies have translated into larger prison populations for BOP to house, with inmates generally serving longer terms than before federal mandatory minimum sentences and the

¹The term "rated capacity" refers to the maximum number of prison inmates for which BOP institutions were designed, not including capacity set aside for medical and disciplinary segregation.

federal sentencing guidelines were implemented. BOP's capacity and expansion plans through fiscal year 1997 assume a continuation of these policies, and thus, continued rapid growth in BOP's inmate population.

The escalating cost of housing a rapidly growing prison population has led to a growing public policy debate about the best means of curbing crime while identifying less costly sentencing options that do not increase the risk to public safety. Any changes in the types of sanctions available, as well as the number of persons eligible for those sanctions, could have an impact on BOP's inmate population and its need for additional prison capacity.

Background

The two principal determinants of prison capacity needs are the number of inmates being housed and the length of the sentences those inmates serve. The 1980s was a period of unprecedented growth in the federal inmate population. Between 1980 and 1989, the federal inmate population increased from 19,025 to 53,347, or 180 percent, and continues to increase dramatically. BOP was housing 78,661 inmates in July 1993 and projecting a population of 106,174 in 1997. One reason for this is that inmates are serving longer terms. For example, in 1986 the average time served for drug offenses was 23 months, while it is now almost 72 months under the sentencing guidelines that took effect in November 1987. As of January 1993, 62 percent of BOP's inmate population were drug offenders, and BOP projects that drug offenders will constitute almost 72 percent of federal inmates by 1997.

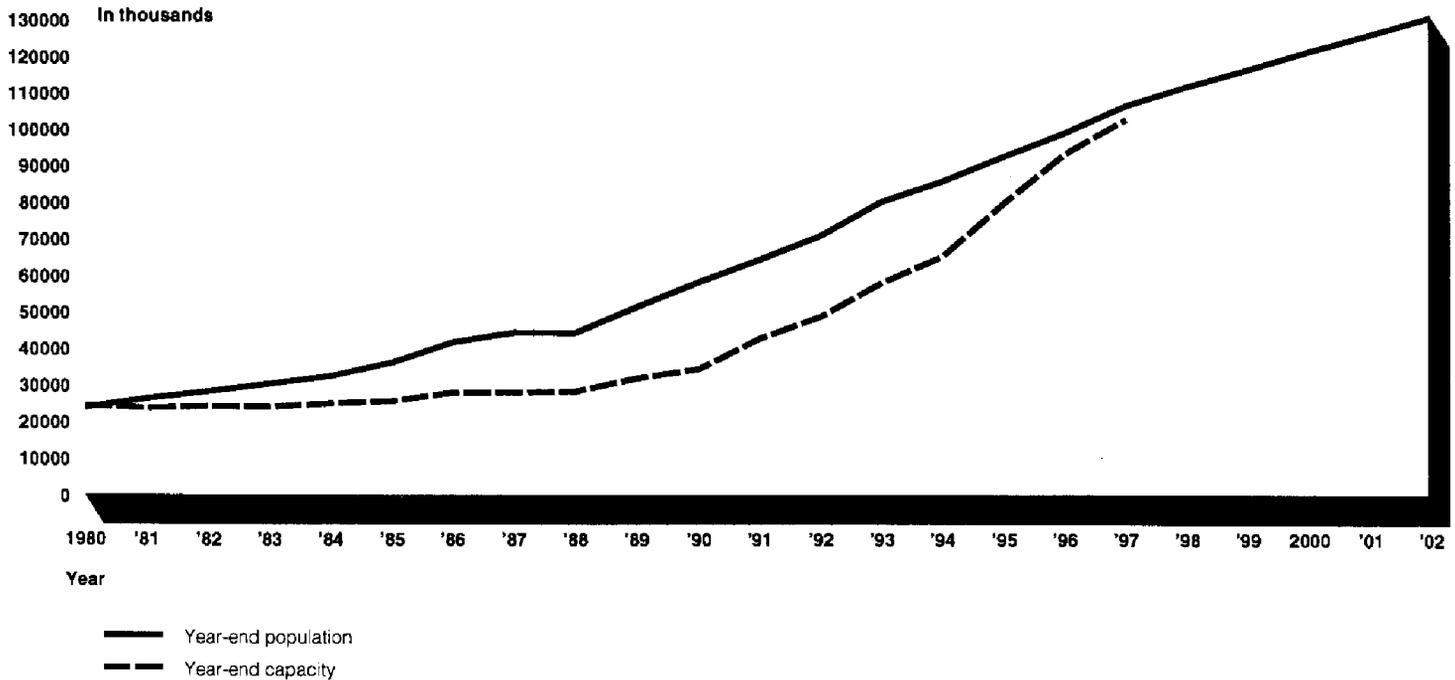
The inmate population growth has resulted in concerns over crowding in BOP facilities. BOP measures crowding by comparing its inmate population to its rated capacity. Using this measure, BOP calculated its total July 1993 rated capacity as 54,791 inmates and its facilities as 44 percent over capacity with a population of 78,661.

To accommodate its increasing prison population, BOP has embarked on the most extensive and costly expansion program in its history. As of fiscal year 1992, BOP had received funding to increase its rated capacity by 34,015 beds. This rated capacity is expected to be completed by 1996 through construction of new prisons, acquisition of surplus government facilities for conversion to prison use, and expansion of existing institutions. Between fiscal year 1989 and 1992, BOP received approximately \$2.4 billion for its facility expansion program. Building and operational costs could

continue to grow if additional expansion is approved to accommodate the 130,413 prison inmates that BOP projects for 2002.

Despite these expansion efforts, BOP's inmate population continues to grow at a rate faster than BOP's ability to increase prison capacity. BOP's expansion program is closing the gap between population and capacity as shown in figure 1. However, population projections beyond 1997 indicate that, if no changes are made to sentencing laws and if prison construction is not funded in the budgets for fiscal years 1994 and beyond, the gap between population and capacity could increase to levels that could renew BOP's concerns about overcrowded prisons.

Figure 1: Comparison of Actual and Projected BOP Population and Capacity



Note: Data are as of the end of the year except for 1980, which are as of January 1, 1981. Also, the actual population is shown from 1980 through 1992 and the projected population is for 1993 through 2002. The actual capacity is shown for 1980 through 1992 and the projected capacity is from 1993 through 1997.

Source: BOP.

While total population and the length of sentences inmates are serving principally determine overall capacity needs, BOP must also try to match the mix of facilities that it operates with the security classifications of its inmates and their gender. BOP currently houses inmates at four security levels. Minimum-security facilities are camps that do not require a perimeter fence. Low-, medium-, and high-security facilities are prisons located within a secured perimeter. BOP has facilities that are specifically designated for female inmates at varying security levels. BOP also has administrative facilities, including medical facilities and detention centers (e.g., jails).² In addition, BOP contracts with public and private agencies to house eligible inmates in halfway houses, also sometimes referred to as community correction centers. Some inmates who receive short sentences serve their sentences in halfway houses. BOP also places eligible inmates in halfway houses toward the end of their terms as a transition from prison back into the community.

Inmates are assigned a security classification when they enter the prison system. The classification can be revised—upward or downward—during the inmate's incarceration on the basis of a number of factors, including time remaining to serve and the inmate's behavior while incarcerated. Inmates are generally placed in facilities with security levels similar to their individual security classification. However, due to overcrowding, some inmates are placed in facilities of a higher security level than their individual security classification.

Objectives, Scope, and Methodology

Our objectives were to review BOP's response to GAO recommendations for reducing overcrowding and increasing capacity at existing and new facilities, to evaluate BOP's progress in meeting its expansion plans, and to identify new issues that may impact prison expansion. We did our work at BOP headquarters and at the Commission on Alternative Utilization of Military Facilities in Washington, D.C. At BOP headquarters, we obtained information from the Administration Division; Community Corrections and Detention Division; and Information, Policy, and Public Affairs.

We interviewed officials and obtained documentation about actions taken by BOP on rated capacity design standards, construction design standards, the use of community correction centers, contracting for private prisons, and the use of military property for prisons. We reviewed fiscal years 1990 through 1994 budget information. We also reviewed planning documents

²Generally speaking, prisons house offenders who have been sentenced; whereas jails are used to house offenders awaiting trial or sentencing and some offenders whose total sentence is 1 year or less.

that BOP used to support budget submissions for its expansion program, and we obtained data on inmate prison population projections, including BOP's projection model. We identified and reviewed pertinent BOP policies and procedures. We did not independently verify information at any field locations. We also interviewed BOP officials and conducted a search of current data to identify factors that have had an impact on prison crowding and expansion plans.

We did our work between August 1992 and June 1993 in accordance with generally accepted government auditing standards.

BOP Response to GAO Recommendations Has Been Generally Positive

Since 1990, GAO has issued five reports that included recommendations for increasing BOP's current and planned rated capacity and identified ways that BOP could enhance its use of alternative methods for increasing capacity through the conversion of military property, increased use of halfway houses, and the initiation of a pilot of prison privatization. Most of GAO's recommendations have been adopted, in whole or in part, except for those for piloting private prisons and a recommendation made to the Commission on Alternative Utilization of Military Facilities to improve a property survey form used to identify and describe property (see table 1). Appendix I provides a status summary of each report issued and specific actions taken on each recommendation.

Table 1: Summary of Actions on Recommendations From GAO Reports on Prison Expansion

GAO Report	Recommendation	Action taken		
		Yes	No	Partial
Federal Prisons: Revised Design Standards Could Save Expansion Funds (GAO/GGD-91-54, Mar. 14, 1991)	Congress should consider making FY 1992 funding contingent upon double-bunking.		X	
	The Attorney General should require the Director of BOP to revise design standards to provide for double-bunking.	X		
	The Attorney General should require the Director of BOP to use revised standards in budget requests for new construction.	X		
Prison Costs: Opportunities Exist to Lower the Cost of Building Federal Prisons (GAO/GGD-92-3, Oct. 25, 1991)	The Attorney General should require the Director of BOP to determine if space provided to inmates could be reduced.	X		
	The Attorney General should require the Director of BOP to promote use of multipurpose space.			a
	The Attorney General should require the Director of BOP to consider geographic differences in labor and material costs for construction in site selection.			a
	The Attorney General should require the Director of BOP to consider staff labor and pay differentials in site selection.			a
Prison Expansion: Program to Identify DOD Property for Prison Use Could Be Improved (GAO/GGD-90-110, Sept. 28, 1990)	Congress should consider amending legislation to expand use of closed military bases.	X		
	Secretary of Defense should notify the Commission on Alternative Utilization of Military Facilities of base closures as soon as decisions are final.	X		
	Secretary of Defense should direct the (1) services to report excess property and (2) Army to report Army Corps of Engineer property to the Commission.	X		
	The Commission should ensure that all property forms are received and reviewed.	X		
	The Commission should improve the property survey form.		X	

(continued)

GAO Report	Recommendation	Action taken		
		Yes	No	Partial
Prison Alternatives: Crowded Federal Prisons Can Transfer More Inmates to Halfway Houses (GAO/GGD-92-5, Nov. 14, 1991)	The Attorney General should require the Director of BOP to clarify definitions of vague criteria used in placement decisions.	X		
	The Attorney General should require the Director of BOP to enhance procedures that will ensure suitable inmates are placed in halfway houses.	X		
	The Attorney General should require the Director of BOP to ensure that wardens adhere to the BOP 9-month policy for halfway house placement.	X		
	The Attorney General should require the Director of BOP to issue a policy on when inmates may refuse placement.	X		
Private Prisons: Cost Savings and BOP's Statutory Authority Need to Be Resolved (GAO/GGD-91-21; Feb. 7, 1991)	Congress should grant authority for BOP to test use of private prisons.		X	
	The Attorney General should direct NIJ to assist BOP determine benefits and limitations of test.		X	

Note: See appendix I of this report for a more detailed summary of these reports and specific actions taken on each recommendation.

^aAccording to BOP officials, they will consider the factors suggested in our recommendations even though the factors are not specifically written in BOP policies and procedures.

BOP Policy Changes Increase Rated Capacity

Since August 1991, BOP has made several policy changes that have resulted in increases to rated capacity—the maximum design capacity of its institutions. As of March 1993, BOP's policy changes had resulted in an increase in rated capacity at existing facilities of 8,927, or about 17 percent of its total existing capacity of 52,013. The policy changes also resulted in an increase of 16,857 in rated capacity for facilities planned through 1996 or about 37 percent of the additional capacity of 45,313 planned. These policy changes included double-bunking a specified percentage of rooms and cells at each of the security levels and a change in space allocated to inmates in cubicle dormitories and multiple-occupancy areas.³ In addition, for new facilities being built, BOP reduced the space allocated for inmate

³Multiple-occupancy housing means a room, cell, or area of 120 square feet or more that is not partitioned. The most common form of this kind of housing is an "open dormitory." Depending on the security level, cubicle dormitories and multiple-occupancy areas are divided into 80-, 70-, or 60-square-foot inmate living areas.

housing from 90 square feet to approximately 75 square feet per cell.⁴ The combined effect of the design and rated capacity changes is to achieve cost savings by eliminating the need to construct cells that would have been built if BOP had not changed its standards.

Two GAO reports⁵ had recommendations for increasing current and planned rated capacity. One focused on the design standards for single occupancy of cells and the other on the size of cells. For many years, BOP policy on rated capacity followed the standards of the American Correctional Association (ACA) for single occupancy. Briefly stated, the ACA standards required 60 square feet of space per inmate, regardless of the type of space occupied, and the standards required single occupancy in rooms or cells of less than 120 square feet.

We recommended that the Attorney General have BOP reassess design standards for occupancy, institute double-bunking where feasible, and use the revised standards for justifying the need for new facilities. Our recommendation was based on BOP's operational success with double-bunking. In August 1991 and February 1993, BOP revised its procedures for determining and reporting each facility's rated capacity to require double-bunking under certain conditions in a specified percentage of rooms, cells, and cubicles. The revised standards were used in the fiscal year 1993 and 1994 building and facilities budget requests.

In our report of October 1991, which reviewed the construction of new facilities, we recommended to the Attorney General that BOP reassess the amount of space provided to federal inmates to determine whether it could be reduced. Our recommendation was based on a finding that federal institutions provided more space per inmate than did state institutions. Furthermore, for medium-security facilities, the revised BOP policy statement for establishing standards for double-bunking used the criteria of double-bunking cells with 75 or more square feet, but less than 120 square feet. Yet, BOP's policy manual for facility development provides for 90-square-foot cells. BOP officials told us that they have adopted a policy of designing cells at a nominal⁶ 75 square feet and they are in the process of revising their policy manual.

⁴Had BOP made no other changes, the reduced cell size could have had the effect of reducing the overall size of BOP facilities or keeping the same overall size, but increasing the number of cells to house prisoners, and thus rated capacity. BOP decided to enlarge the size of its facilities and increase the number of inmates they would accommodate.

⁵GAO/GGD-91-54, Mar. 14, 1991, and GAO/GGD-92-3, Oct. 25, 1991.

⁶BOP uses "nominal" to allow for a variance of approximately plus or minus 5 square feet to accommodate construction limitations.

BOP's Use of Excess Military Property Limited

In our report that we issued in September 1990⁷ on the program for identifying military property for prison use, we found procedural weaknesses in the process for identifying and reviewing military property that led to omissions and possible inaccurate description of properties. The report raised concerns about whether all military properties suitable for conversion to prisons were being identified by BOP.

According to a BOP official, BOP has several sources of information on the availability of military property for prison use. These include the Commission on Alternative Utilization of Military Facilities, the Department of Defense (DOD) Office of Economic Adjustment, and individual military service representatives. BOP reviewed 83 base closure, realignment, unused, and underutilized military properties as potential sites for correctional facilities from the beginning of fiscal year 1991 until April 1993. As of April 1993, BOP's review of military property had resulted in the acquisition of two properties.⁸ Of the remaining properties that were reviewed, 1 has not yet been evaluated, 15 are being evaluated and pursued for correctional facilities, 11 were evaluated and rejected, 14 were evaluated but BOP withdrew because of community or political opposition, 4 were not evaluated because of environmental and technical reasons, and 36 were not evaluated because the properties were not in a location where BOP had a need for a facility based on its current and projected inmate population. (See appendix I for a list of the names and locations of these military properties.)

Military properties can provide BOP expansion capacity faster than site development and construction of new prisons, and the costs are substantially less for renovation. For example, the Fort Dix site was on DOD's base closure and realignment list in 1991, and BOP began receiving inmates at the facility in the second quarter of 1993—just 2 years after the facility was made available, compared to the 5-year time period generally needed for new construction.⁹

As of September 1993, Fort Dix had a rated capacity of 1,300 and a population of 1,391 inmates. By the end of fiscal year 1993, the rated capacity was expected to be 1,600 beds. BOP plans to develop capacity for

⁷GAO/GGD-90-110, Sept. 28, 1990.

⁸Only one of the properties, Fort Dix, will be used as a correctional facility. The other property, the Brooklyn Naval Station, will be used as administrative space.

⁹Fort Dix was included in the 1988 base closure and realignment but as a restructuring of the base not a closure. In 1991, Fort Dix was realigned again, and BOP began pursuing acquisition of the property for use as a low-security facility.

an additional 1,600 inmates at Fort Dix within the next year for a total rated capacity of 3,200 inmates. The entire 3,200 bed facility is estimated to cost \$10 million. The cost of renovation for the initial low-security, 1,600-bed capacity at Fort Dix is about \$4.5 million. By contrast, construction of a low-security facility in Yazoo, MS, is estimated to cost about \$64 million for a 1,600-bed capacity. The land is free to BOP for both projects.

BOP has a general policy of siting additional capacity relatively near the states from which its inmates come to facilitate family visits and other community ties. However, budget constraints may compel BOP to reconsider the military sites that it had previously rejected because they were not near a current area of need. Competing policy considerations have recently resulted in BOP building prisons in Mississippi and Arkansas, where BOP does not have a current or projected need, because Congress wanted to encourage economic development in the Delta States.

The Commission's Property Review Process

Of our recommendations on the use of military property, the only one not addressed was a suggested change in the property survey form used by the Commission on Alternative Utilization of Military Facilities. The form is the same one the Department of Housing and Urban Development (HUD) uses to identify property for the homeless under the Stewart B. McKinney Homeless Assistance Act.¹⁰ According to a Commission official, HUD is the primary user of the form and did not want to change it. However, a new base closure checklist was used to obtain better information on this type of property. Since BOP does not rely solely on the Commission and has identified over 80 potential military sites, the flaws in the HUD form to identify properties for prison use may not be as critical.

BOP Has Increased Its Use of Halfway Houses

BOP has generally implemented our recommendations for enhancing the use of available halfway house resources. Our November 1991 report¹¹ found that the crowded federal prisons could transfer more inmates to community correction centers. BOP issued a new program statement that

¹⁰The Stewart B. McKinney Homeless Assistance Act (P.L. 100-77, July 1987) and its subsequent amendments (P.L. 100-628, Nov. 1988) were enacted to respond to the lack of shelter and other supportive services for the homeless. The McKinney Act, among other things, requires federal agencies to identify buildings that could be made available to house the homeless.

¹¹GAO/GGD-92-5, Nov. 14, 1991.

addressed almost all of GAO's recommendations,¹² but did not address the recommendation to ensure that wardens start the placement process in a timely manner so that inmates receive the full benefit of halfway house placement. The program statement emphasized the need to begin release planning from the time the inmate enters the system and to continue the planning process throughout the inmate's confinement. BOP relies on program and operational reviews to monitor the timeliness of halfway house placements.

BOP has taken some actions to improve the timeliness of inmate placement in halfway houses, but problems may continue. At meetings and conferences, BOP officials encouraged wardens to improve their placement process. BOP also developed a centralized monitoring report to track placements. As a result, BOP has increased its use of halfway house beds from 77 percent in fiscal year 1991 to 84 percent in fiscal year 1992 and has increased the number of eligible inmates being placed from 45 percent for the second quarter of 1992 to 65 percent in January 1993. However, internal BOP audits have found deficiencies in the timeliness of processing inmates for placement.

Prison Privatization Has Not Been Pursued

BOP has not implemented GAO recommendations to obtain statutory authority to contract for private prisons to run demonstration projects or to work with NJ to determine the benefits and limitations of privatization. BOP and DOJ's Office of Legal Counsel have concluded that BOP has the authority to contract for private prisons, if the agency should choose to use that method for expanding capacity. Currently, BOP does not endorse the use of private prisons for its general adult inmate population. At the federal level, the use of privatization has been limited to specialized groups of offenders, such as certain aliens and some unsentenced offenders. BOP has not sought help from NJ to develop a research method to empirically evaluate advantages and disadvantages because BOP believes that they can do it themselves.

Concerning our recommendation that BOP obtain statutory authority to contract for private prisons, BOP and DOJ believe that such authority already exists. As basic support for this conclusion, they refer to a statutory provision that allows BOP to designate places of prisoner confinement (18 U.S.C. 3621(b)) and to general principles of federal procurement law. We analyzed these possible sources of authority in detail

¹²Program Statement: Community Corrections Center Utilization and Transfer Procedure (Number 7310.01, Apr. 30, 1993).

in our February 1991 report¹³ and concluded that neither provides BOP with the requisite authority to contract for private prisons. We continue to believe that because BOP's enabling legislation spells out the methods the federal government may use to obtain prisoner housing—such as contracts with state and local governments—private contracts and other methods that are not expressly authorized are prohibited.

Therefore, we continue to believe that BOP needs specific statutory authority to contract for private prisons. We believe that BOP should be granted this authority so that it can use demonstration projects to test the efficiency and economy of privatization for the adult general inmate population.

Expansion Plans Increase Capacity but Overcrowding Concerns Remain

BOP is gradually closing the gap between its projected population and rated capacity systemwide. It established a long-range goal to expand capacity of the federal prison system to keep pace with projected increases in the inmate population and to bring the inmate population in line with rated capacity so that there is little or no overcrowding. BOP increased its total rated capacity during calendar year 1992 by 5,996 beds and reduced overcrowding from 51 percent at the end of 1991 to 46 percent over rated capacity at the end of 1992. By the end of fiscal year 1993, BOP projected a population of 79,963 and estimated that its rated capacity would be at 57,803. Thus, BOP should have been operating at 38 percent over rated capacity by the end of fiscal year 1993—a reduction from the 46 percent over rated capacity at the end of calendar year 1992. By 1997, BOP estimates that its currently funded projects will result in its projected population being about 4 percent over its rated capacity.

It is important to note that while BOP has obtained approval and funding for the above increased capacity and is actively in the process of expanding, the timetable for opening these facilities is subject to change. During our review, we compared BOP's estimated schedules for opening new facilities as of January 1993 and again in June 1993. In January, BOP planned to have about 11,000 low and detention beds available in fiscal year 1995 and 1996; however, in June, its schedule showed that these beds would not become operational until fiscal year 1997. According to BOP officials, the opening of low-security facilities has slipped because of construction delays, and detention facilities have been delayed because of problems associated with locating sites.

¹³GAO/GGD-91-21, Feb. 7, 1991.

An analysis of future capacity plans for each of BOP's security levels indicates that the current and projected capacity for medium-security-level institutions is greater than the projected populations. The projected capacity for high-security-level institutions is expected to exceed populations in fiscal years 1994 through 1997. However, population projections for inmates classified at low- and minimum-security levels will exceed rated capacity for those security levels for fiscal years 1993 through 1997. (See table 2.)

Table 2: Comparison of Projected Inmate Populations to Planned Rated Capacity for Minimum- and Low-Security Levels

From fiscal years 1993 to 1997

Classification and fiscal year	Population projections as of January 1993	Rated capacity planned as of June 1993	Percent of population projections to rated capacity
Minimum security			
1993	20,307	15,137	134
1994	21,754	15,893	137
1995	23,107	17,557	132
1996	24,414	20,373	120
1997	25,665	20,885	123
Low security			
1993	24,646	10,860	227
1994	26,322	12,460	211
1995	27,888	13,452	207
1996	30,867	19,846	156
1997	32,318	26,246	123

Source: BOP.

The rated capacity for minimum- and low-security institutions is based on double-bunking 100 percent of the rooms and cells. To accommodate the projected inmate populations at the lower security levels, BOP may have to triple-bunk minimum- and low-security-level inmates in minimum and low facilities, place inmates in higher security level facilities, or change the mission of some existing facilities. In February 1993, BOP announced plans to change the missions of five existing institutions from medium- to low-security levels during fiscal years 1993 and 1994 because of the need for increased capacity at that security level. These changes are not included in our analysis in table 2 because they were not fully implemented during our review.

The rated capacities for medium- and high-level facilities are based on generally double-bunking 50 percent and 25 percent of rooms and cells, respectively, that are greater than 75 square feet but less than 120 square feet. BOP believes that it is not advisable to double-bunk certain units within facilities such as high-security, medical, witness protection, and holdover units for security reasons. Furthermore, it believes to further double-bunk would limit its ability to retain flexibility in placing an increasing inmate population in the appropriate prison or jail setting.

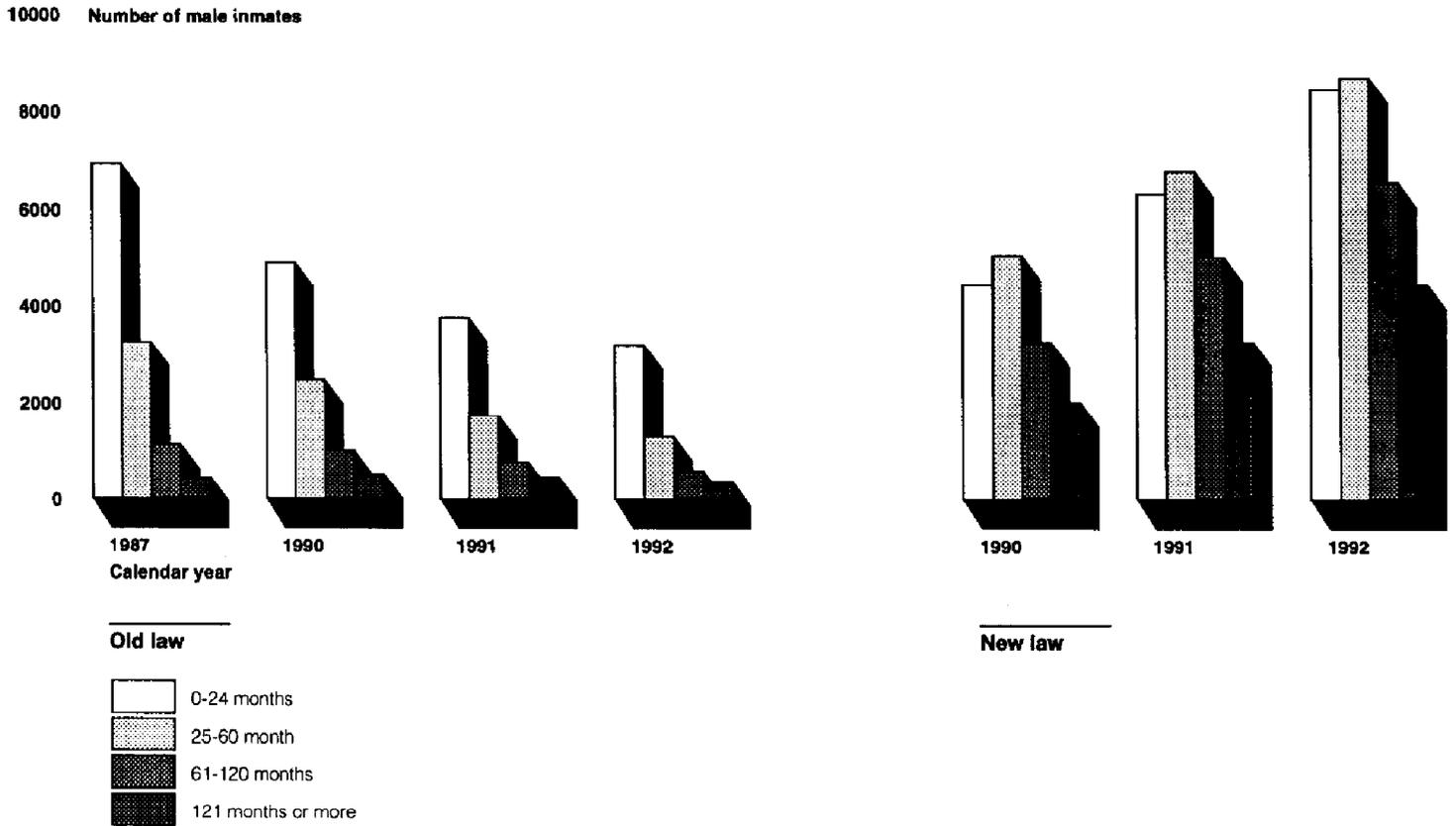
Policy Issues Affect Prison Expansion Planning

During the 1980s, Congress passed several statutes that dramatically affected the federal prison population, including the Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Acts of 1986 and 1988. Among other things, these acts expanded the types of crimes subject to federal prosecution and established mandatory minimum sentences for certain crimes, particularly drug offenses and violent crimes. The 1984 Crime Control Act created the U.S. Sentencing Commission, which was charged with developing the new federal sentencing guidelines that took effect on November 1, 1987. Those sentenced under the guidelines are not eligible for parole and must serve their entire sentences less a maximum good time reduction of 54 days per year. This provision, combined with more restrictive eligibility standards for nonprison sentences, has had the effect of lengthening the sentences that federal inmates serve.

Figures 2 and 3 show the effects that the new sentencing guidelines have had on the prison time that drug offenders serve.¹⁴ As shown, the number of male and female inmates serving 25 months or more for drug offenses has increased dramatically.

¹⁴The sentencing guidelines incorporate the provisions of the mandatory minimum sentencing laws.

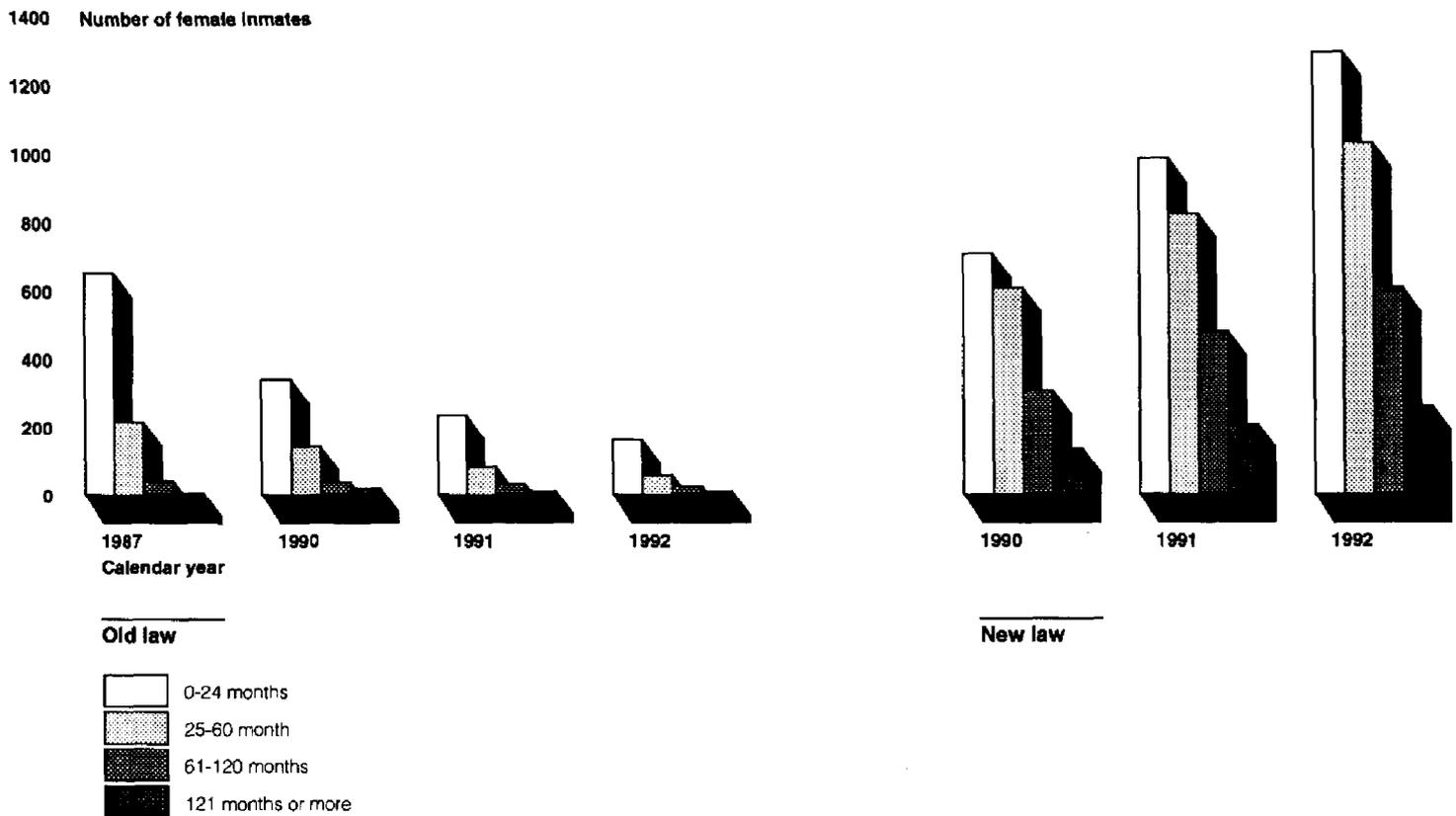
Figure 2: BOP Male Prison Inmate Drug Offenders by Time Remaining to Serve Based on Sentencing Under Old Law and New Law



Note: Data were not verified, and some data fields were not complete. Thus, data are indicative of general trends and are not necessarily precise counts.

Source: BOP Sentry Database and Key Indicators System.

Figure 3: BOP Female Prison Inmate Drug Offenders by Time Remaining to Serve Based on Sentencing Under Old Law and New Law



Note: Data were not verified, and some data fields were not complete. Thus, data are indicative of general trends and are not necessarily precise counts.

Source: BOP Sentry Database and Key Indicators System.

Largely as a consequence of these tough sentencing guidelines, laws, and the emphasis on drug enforcement, prison populations grew much faster than BOP could add capacity; the result has been prison overcrowding. To reduce the overcrowding in federal prisons, Congress appropriated over \$3.1 billion to build more prison capacity between fiscal years 1989 and 1993. In 1989, BOP had 70 facilities. In July 1993, BOP had 103 facilities; and

by the end of 1997, it plans to have 154 facilities operational.¹⁵ If no changes are made in sentencing policies, BOP projects its population to continue to increase beyond 1997. If no new construction is funded, the gap between prison population and capacity could grow again, causing serious overcrowding.

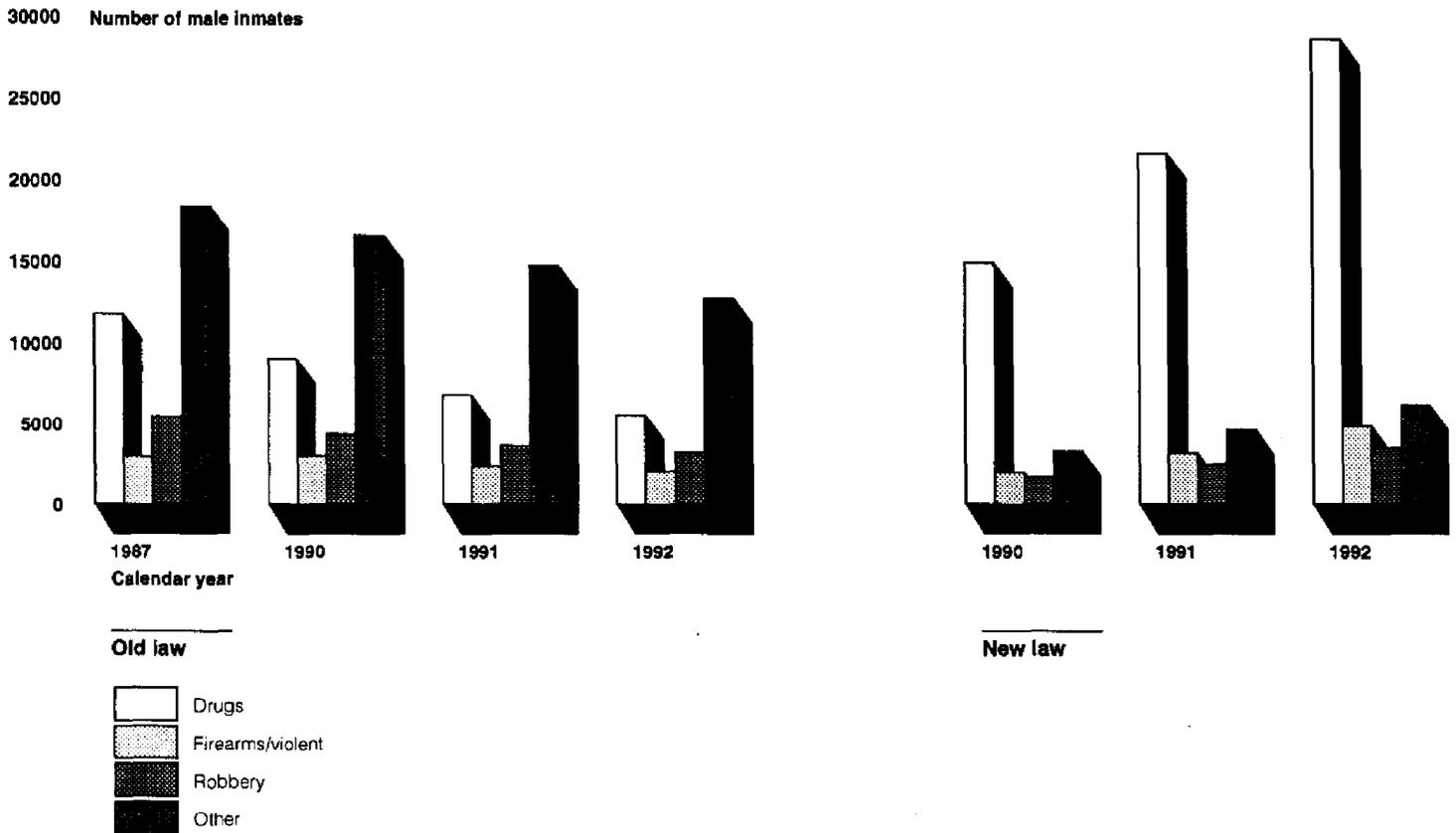
In addition to the construction costs, BOP's salaries and expenses budget to operate the larger prison system has grown dramatically. BOP's salaries and expenses budget has more than quadrupled in the last 10 years from \$363.2 million in fiscal year 1982 to approximately \$1.8 billion in fiscal year 1993, or \$1.1 billion in constant (inflation adjusted) 1982 dollars. Operating the 51 facilities expected to open between 1994 and 1997 will further increase these costs. BOP estimates that its annual operating budget will almost double between 1993 and 1997 to \$3.6 billion, or \$1.8 billion in constant 1982 dollars. Given the focus on reducing continuing high federal deficits, BOP officials expressed concern that funds may not be available to operate the new facilities when they are ready to open.

The tough drug sentencing laws have also changed the demographics of the federal prison population. Currently, over 60 percent of BOP's inmate population is serving time for drug crimes compared to 25 percent of the population in 1980. BOP expects the proportion to grow to 72 percent of the population by 1997. The number of female inmates has also increased significantly from 1,415 in 1981 to 5,006 in 1991, principally as a result of drug prosecutions. The percentage of female inmates serving time for drug crimes has increased from 26 percent in 1981 to 64 percent in 1991.

Figures 4 and 5 show the number of male and female inmates who were sentenced for drug crimes committed before November 1, 1987, and after November 1, 1987. The figures clearly show the federal emphasis on drug enforcement and tougher sentences for drug offenses.

¹⁵GAO's count of facilities differs from BOP. According to a BOP official, BOP had 59 facilities in 1989, 72 facilities in July 1993, and they will have 103 facilities in 1997. The count differs because BOP considers minimum-security facilities colocated with facilities of a higher security level and managed by one warden as one facility. We counted them as separate facilities to take into consideration that they were of different security levels and housed a different classification of inmates.

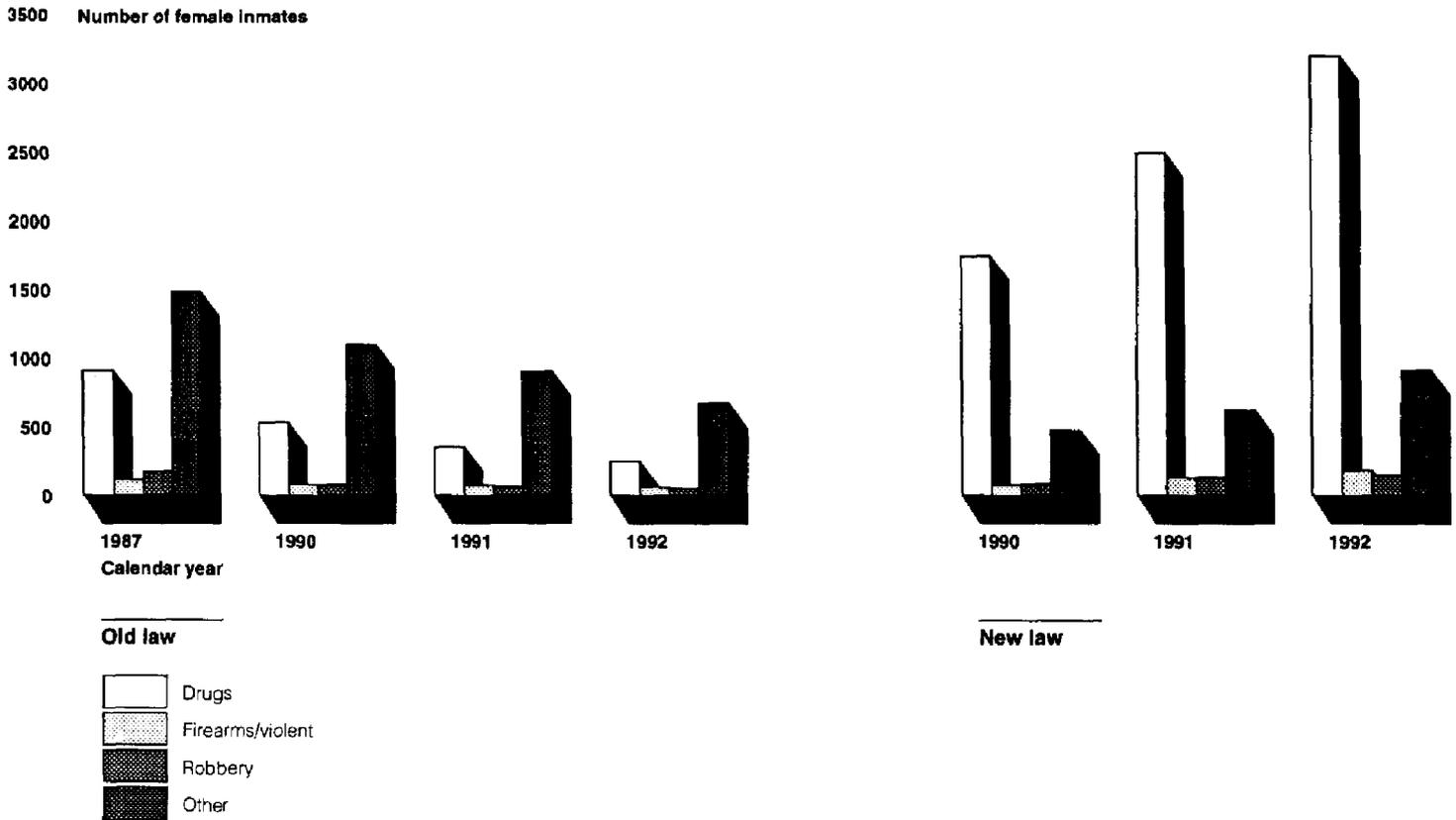
Figure 4: BOP Male Prison Inmates Sentenced Under Old Law and New Law



Note: Data were not verified, and some data fields were not complete. Thus, data are indicative of general trends and are not necessarily precise counts.

Source: BOP Sentry Database and Key Indicators System.

Figure 5: BOP Female Prison Inmates Sentenced Under Old Law and New Law



Note: Data were not verified, and some data fields were not complete. Thus, data are indicative of general trends and are not necessarily precise counts.

Source: BOP Sentry Database and Key Indicators System.

Prior to 1987, when the sentencing guidelines took effect, inmates served an average of about 23 months for drug offenses. In 1990, under the guidelines, inmates were serving an average of about 72 months for drug offenses. About one-third (10,468) of the 36,491 persons sentenced in 1992 under the federal sentencing guidelines received mandatory minimum sentences ranging from 1 year to life imprisonment (see table 3). Of those receiving mandatory minimum sentences, 88 percent were drug offenders.

Table 3: Mandatory Minimum Sentences Imposed in Fiscal Year 1992

Sentence Imposed (in years)	All mandatory minimums	Drug mandatory minimums
1	221	201
5	4,989	4,262
10	4,194	4,139
15	633	273
20	331	306
30	22	17
Life	78	57

Source: BOP.

Data from the U.S. Sentencing Commission indicate that 60 percent of the drug offenders sentenced under the guidelines fall into the lowest (least severe) of the six criminal history categories used by the Sentencing Commission to determine sentence length. Such persons are either first-time offenders or have minor prior criminal histories (such as convictions for misdemeanors); they may not have had a prior jail term that exceeded 60 days. Over half of the drug offenders entering the federal prison system are first-time offenders. Many first-time and most female offenders are categorized as nonviolent. Such inmates are generally placed in minimum- or low-security facilities.

Reflecting a growing concern about the rising costs of building and operating prisons for an increasing prison population, some Members of Congress and the Attorney General have begun to express an interest in reviewing sentencing policies, including use of intermediate sanctions for first-time and nonviolent offenders.¹⁶ Intermediate sanctions include such options as halfway houses, intensive supervised probation, electronic monitoring and house arrest, boot camps, and various combinations of these sanctions.

Among the policies that affect the growth of federal prison populations are

- the crimes that are federalized;
- prosecutorial policies;
- sentencing guidelines and other policies that determine who is incarcerated in prisons;
- availability and use of acceptable forms of nonprison sanctions;

¹⁶Intermediate sanctions refer to programs that impose sanctions on offenders that are typically more severe than standard probation or parole and less severe than traditional incarceration.

- the level of crowding that is acceptable; and
- whether costs are considered as a determinant for establishing sentencing policies (for example, the use of alternative sanctions, such as boot camps, which may be less costly, at least in the short term).¹⁷

Greater use of alternative sanctions may reduce BOP's budgetary requirements but increase those of the federal Judiciary's Probation and Pre-Trial Services Division, which would probably be responsible for many of the inmates sentenced to alternative sanctions, such as intensified supervised probation.

Conclusions

Under current law enforcement, prosecutorial, and sentencing policies, BOP's prison population has increased dramatically and is expected to continue to grow rapidly. To reduce crowding and accommodate population growth, BOP received over \$3.1 billion from fiscal years 1989 through 1993 to increase its bed capacity. BOP has grown from 70 facilities in 1989 to 103 facilities in July 1993, and its expansion plans will provide 51 more facilities by 1997. Overall rated capacity is expected to reach 106,174 by 1997, which will reduce overcrowding to 4 percent, using current population projections. However, if no changes are made to sentencing laws and if prison construction is not funded in the budgets for fiscal years 1994 and beyond to accommodate the expected growth, the level of overcrowding could become a serious concern again beginning in 1998.

Policymakers are considering revisions to sentencing guidelines and laws to permit the use of alternative sanctions. Changes to these law enforcement policies can affect the total prison capacity needed, types of facilities needed, and resource requirements of other law enforcement entities, such as the Judiciary's Probation Service.

Agency Comments

On October 8, 1993, we met with senior BOP officials who are responsible for the areas covered in this report. These included representatives of the Community Corrections and Detention Division, the Program Review Division, and the Office of General Counsel. In oral comments, BOP officials said that they found the report to be a fair and accurate presentation of the status of BOP's actions on our past recommendations on their expansion program, and the report accurately reflected the

¹⁷See Prison Boot Camps: Short-Term Prison Costs Reduced, but Long-Term Impact Uncertain (GAO/GGD-93-69, Apr. 29, 1993). If boot camps are not successful in reducing recidivism rates, compared to those who are imprisoned, they may not be less costly in the long run.

current status of their expansion efforts. The only other comment that BOP officials had was that they continue to disagree with our legal analysis of their statutory authority to contract for private prisons.

We requested comments from DOD for segments of the report on the use of military property for prisons. DOD officials reviewed the draft report and concurred with it without further comment.

As agreed with the Subcommittees, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, copies of this report will be sent to the Attorney General, the Director of BOP, the Chairman of the Commission on Alternative Utilization of Military Property, and other interested parties. Copies will also be made available to others upon request.

The major contributors to this report are listed in appendix II. Should you need additional information on the contents of this report, please contact me on (202) 512-8777.



Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

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Abbreviations

ACA	American Correctional Association
BOP	Bureau of Prisons
DOD	Department of Defense
DOJ	Department of Justice
GSA	General Services Administration
HUD	Department of Housing and Urban Development
NIJ	National Institute of Justice

Status Summary and Specific Recommendations of Five GAO Reports on Prison Expansion

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

Summary of Changes in Policy for Rated Capacity

Twice in the past 2 years BOP has revised program statements that establish procedures for determining and reporting each institution's rated capacity.¹ The first program statement provided that (1) 50 percent of existing rooms or cells in medium-security institutions with 75 or more square feet but less than 120 square feet be rated for double occupancy (double-bunking) and (2) 50 percent of existing rooms or cells in low- and minimum-security institutions with 65 or more square feet but less than 120 square feet be rated for double occupancy.

The second program statement revised the first statement to require (1) high-security institutions to double-bunk 25 percent of the rooms, cells, and cubicles with 75 or more square feet but less than 120 square feet;² (2) medium-security institutions to double-bunk 50 percent of their rooms, cells, and cubicles with 70 net square feet, a change from the 75 net square feet, to be consistent with new design standards of a nominal³ 75 square feet; and (3) low- and minimum-security institutions to double-bunk 100 percent of their rooms, cells, and cubicles that are 65 or more square feet.

As shown in table I.1, as of March 1993, BOP increased its existing rated capacity by 8,927, or about 17 percent, and its rated capacity for facilities

¹Program Statement: Rated Capacities for Bureau Facilities (Number 1060.08, Aug. 1, 1991) and Program Statement: Rated Capacities for Bureau Facilities (Number 1060.09, Feb. 23, 1993).

²We recommended in our report, Federal Jail Bedspace: Cost Savings and Greater Accuracy Possible in the Capacity Expansion Plan (GAO/GGD-92-141, Sept. 24, 1992), that BOP revise its design standards for jails (high-security level) 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.

³"Nominal" means plus or minus 5 square feet.

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planned through 1996 by 16,857, or about 37 percent, as a result of its policy revisions.⁴

Table I.1.: Rated Capacity for BOP Facilities Through 1996 and the Amount of Rated Capacity Attributed to BOP's Policy Changes

Sources of increased rated capacity	Rated capacity as of March 1993	Amount of rated capacity attributable to revised policy
Existing facilities as of March 1993	52,013	8,927
New construction	38,283	13,952
Acquired facilities	4,576	2,045
Expansion projects planned at existing facilities	2,454	860
Total	97,326	25,784

Source: BOP.

Specific GAO Recommendations and Actions Taken

1. Congress should consider making funding of BOP's fiscal year 1992 budget request for new facility construction contingent on BOP completing and justifying its transition to standards that include double-bunking, wherever feasible.

Action: None taken.

2. The Attorney General should require the Director, BOP, to reassess current and proposed BOP design standards to ensure that its expansion plans and budget requests are premised on the use of standards that provide for double-bunking where feasible and limit single-bunking to those locations where double-bunking is clearly not feasible.

Action: BOP revised its policy that establishes procedures for determining and reporting each institution's rated capacity on August 1, 1991, and February 23, 1993. The program statements specified conditions for using double-bunking as a standard.

3. The Attorney General should require the Director, BOP, to use the revised standards to determine the rated capacity of the federal prison system and justify the need for new facilities.

⁴In addition to the policy change for double-bunking, BOP revised the standard cell size for new construction from 90 square feet to a nominal 75 square feet. The calculated increase in rated capacity due to policy changes includes all policy changes; however, according to BOP officials, most of the increase is attributable to double-bunking.

Action: The revised standards were used to determine the rated capacity in the development of BOP's building and facilities budget requests for fiscal years 1993 and 1994.

**Prison Costs:
Opportunities Exist to
Lower the Cost of
Building Federal
Prisons
(GAO/GGD-92-3,
Oct. 25, 1991)**

**Summary of BOP Facilities
Development**

As of January 1993, BOP had 46 construction projects that were funded at approximately \$2.5 billion. Of these, 17 projects were under construction, 27 were in various stages of site investigation and development or design, and 2 facilities were in the process of opening.⁵ Of the 17 construction projects in process, 3 were shown as ahead of schedule, 8 were within schedule, and 6 were behind schedule. A BOP official said that information on estimated milestones is updated periodically to reflect BOP's best estimate of when the particular activity will actually be completed.

BOP documentation of the facilities development process is described in its Facilities Development Manual dated June 25, 1991. The Facilities Development Manual describes the site acquisition and planning phase of facilities development, provides design criteria for each institutional security level, and concludes with time line schedules and procedures for site activation. The manual is intended to promote and encourage consistency from one construction project to the next through the use of a standard set of design criteria.

The Facilities Development Manual generally provides for 90 square feet per cell. However, according to BOP officials this provision has been changed to a nominal 75 square feet, and it is the standard for construction projects that were not too far along in the process to make the adjustment. Of the 17 projects under construction, BOP indicated that 5 would provide

⁵A detention center is under design in Oklahoma City, but BOP is leasing the facility and is not managing the construction project.

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90 square feet, 6 would provide 75, and 5 would provide 80 square feet. One facility is being configured as a dormitory and does not have rooms, cells, or cubicles. BOP is in the process of revising the manual to include the new inmate cell criteria as well as other space requirement revisions.

Reducing the space allocated to inmates in housing areas could have resulted in cost savings either by (1) building smaller prisons to accommodate the same number of prisoners or (2) building the same size prison to accommodate an increased number of inmates. To realize even greater efficiencies, BOP decided to enlarge the overall size of its new facilities that are in the design stage to accommodate more inmates. For example, a new low-security facility went from a rated capacity of 1,000 to a 1,600 capacity, including a rise in net total square footage from 209,057 to 262,800 square feet. The increased rated capacity of 600 inmates reflects an increase of 300 rooms to accommodate 600 more inmates who would be 100 percent double-bunked. The overall average square footage per inmate has gone from about 209 square feet to about 164 square feet. The combined effect of the design and rated capacity changes is to achieve cost savings by eliminating the need to construct cells that would have been built if BOP had not changed its standards.

**Specific Recommendations
and Actions Taken**

1. The Attorney General should require the Director, BOP, to reassess current prison standards to determine if the amount of space provided to federal inmates could be reduced.

Action: As of August 1993, the revised Facilities Development Manual was being printed and BOP expected to issue it soon. According to BOP officials, BOP revised the amount of space provided to inmates to a nominal 75 square feet for rooms and cells for construction projects in the design stage.

2. The Attorney General should require the Director, BOP, to promote the use of multipurpose space, where feasible.

Action: BOP officials said that they promote the use of multipurpose space.

3. The Attorney General should require the Director, BOP, to amend prison-site selection criteria to include the consideration of geographic differences in labor and material costs.

Action: BOP officials said that while this is not an explicitly written criteria, it is considered during the site selection process.

4. The Attorney General should require the Director, BOP, to consider prevailing labor costs and locality pay differentials when selecting sites for new prison construction.

Action: BOP officials said that prevailing labor costs and locality pay differentials are considered when selecting sites for new prison construction.

**Prison Expansion:
Program to Identify
DOD Property for
Prison Use Could Be
Improved
(GAO/GGD-90-110,
Sept. 28, 1990)**

**Summary of Military
Property Used for Prisons**

BOP uses both active and closed military installations as correctional facility sites. DOD has a policy that only minimum-security level inmates can be housed on active bases. As of August 1991, nine BOP minimum-security prison camps were located on active military installations. In addition, BOP currently has 14 facilities on 13 deactivated bases or former military property and 8 facilities currently under design or construction on 3 deactivated bases or military properties.

According to a BOP official, BOP has several avenues to access information on the availability of military property for prison use. These include the Commission on Alternative Utilization of Military Facilities, the DOD Office of Economic Adjustment, and individual military services representatives. BOP reviewed 83 base closure, realignment, unused, and underutilized military properties as potential sites for correctional facilities between the beginning of fiscal year 1991 and April 1993. Using specific criteria and taking into consideration local issues that might affect decisions, BOP considered each property's potential for siting a federal correctional facility. As of April 1993, BOP's review of military property resulted in the

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acquisition of 2 properties,⁶ 15 properties were being evaluated and pursued for correctional facilities, 11 were evaluated and rejected, and 14 properties were evaluated but BOP withdrew because of community or political opposition. Four of the properties were not evaluated because of environmental and technical reasons, 36 were not evaluated because the properties were not in a location that BOP had a need for a facility, and 1 property was not yet evaluated. See the following list for the names and locations of these sites.

Acquired

Fort Dix, New Jersey
Brooklyn Naval Station, New York

Evaluated and Pursuing

Coosa River Annex, Alabama
Williams Air Force Base, Arizona
Navajo Depot Activity, Arizona
Castle Air Force Base, California
Marine Corps Air Station Tustin, California
March Air Force Base, California
Sacramento Army Depot, California
George Air Force Base, California
Hamilton Army Airfield, California
McDill Air Force Base, Florida
Grissom Air Force Base, Indiana
Fort Devens, Massachusetts
Umatilla Army Depot, Oregon
Carswell Air Force Base, Texas
Naval Station Puget Sound, Washington

Evaluated and Rejected

Fort Chafee, Arkansas
Lowry Air Force Base, Colorado
Fort Gordon, Georgia
Rock Island Arsenal, Illinois
Lexington-Blue Grass Army Depot, Kentucky
Fort Polk, Louisiana
AMTL Watertown, Massachusetts
Fort Devens/Cohasset, U.S. Army Reserve Center, Massachusetts
Pontiac Storage Facility, Michigan
Taony Warehouse (Philadelphia), Pennsylvania
Philadelphia Naval Hospital, Pennsylvania

⁶Only one of the properties, Fort Dix, NJ, will be used as a correctional facility. The Brooklyn Naval Station will be used as administrative space.

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**Evaluated and Withdrew Due to
Opposition**

Ford Ord, California
Mather Air Force Base, California
Naval Hospital Long Beach, California
Norton Air Force Base, California
Naval Air Station Long Beach, California
Kapalama, Hawaii
Fort Benjamin Harrison, Indiana
England Air Force Base, Louisiana
Fort Mead, Maryland
Pease Air Force Base, New Hampshire
Philadelphia Naval Shipyard, Pennsylvania
Construction Battalion Center Davisville, Rhode Island
Myrtle Beach Air Force Base, South Carolina
Cameron Station, Virginia

**Not Evaluated Due to
Environmental or Technical
Reasons**

Alabama Ammunitions Plant, Alabama
Indiana Army Ammunitions Plant, Indiana
Aberdeen Proving Ground, Maryland
Fort Devens/Sudbury Annex, Massachusetts

**Not Evaluated Due to Location
Outside Area of BOP Need**

Eaker Air Force Base, Arkansas
DeCray Lake, Arkansas
Naval Station San Francisco, California
Salton Sea Test Base, California
Naval Air Station Moffett Field, California
Pueblo Army Depot, Colorado
Bennett Army National Guard Facility, Colorado
Cape St. George Naval Reserve Center, Florida
Mountain Home Air Force Base, Idaho
Chanute Air Force Base, Illinois
Fort Sheridan, Illinois
Jefferson Proving Ground, Indiana
Fort Des Moines, Iowa
Naval Station Lake Charles, Louisiana
New Orleans Military Ocean Terminal, Louisiana
Bayou Bodeau Dam and Reservoir, Louisiana
Loring Air Force Base, Maine
U.S. Army Reserve Center Gaithersburg, Maryland
Fort Holabird, Maryland
Wurtsmith Air Force Base, Michigan
Grenada Lake, Mississippi
Richards-Gebaur Army Reserve Station, Missouri

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Nike Kansas City, Missouri
Fort Wingate, New Mexico
Rickenbacker Air Force Base, Ohio
Naval Station Philadelphia, Pennsylvania
Nike Philadelphia, Pennsylvania
Lake Barkley, Hickman Creek Site, Tennessee
Bergstrom Air Force Base, Texas
Goodfellow Air Force Base, Texas
Outlying Landing Field, Texas
Naval Station Galveston, Texas
Naval Air Station Chase Field, Texas
Fort Douglas, Utah
Defense Mapping Agency, Virginia
Harry Diamond Laboratory, Virginia

Not Yet Evaluated

Beale Air Force Base, California

BOP has one military property at Fort Dix, NJ, that is in the construction phase. BOP arranged with DOD to have permission to use Fort Dix as a location for a low-security facility while ownership of the site remained with the military.

Military properties can provide BOP expansion capacity faster than site development and construction of new prisons and the costs are substantially less for renovation. The Fort Dix site was part of DOD's base closure and realignment list in 1991, and BOP began receiving inmates at the facility in the second quarter of 1993.⁷ This is a 2-year time frame compared to a usual 5-year time period for new construction. As of September 1993, Fort Dix had a rated capacity of 1,300 and a population of 1,391 inmates. By the end of fiscal year 1993, the rated capacity was expected to be 1,600. The cost of renovation at Fort Dix was about \$4.5 million for the 1,600 beds and, eventually, 3,200 inmates will be housed at the base. The entire 3,200 bed facility is estimated to cost \$10 million. Construction of a low-security facility in Yazoo, MS, is estimated to cost about \$64 million for a 1,600 bed capacity.

**Specific Recommendations
and Actions Taken**

1. Congress should consider amending the Commission on Alternative Utilization of Military Facilities' enabling legislation to (a) eliminate limitation to minimum-security prisons, thus encouraging the Commission

⁷Fort Dix was included in the 1988 base closure and realignment but as a restructuring of the base, not as a closure. In 1991, Fort Dix was realigned again and BOP began to pursue the acquisition of property for use as a low-security facility.

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to consider property for higher security prisons and (b) make explicit the consideration of state and local government prison needs when military property is reviewed.

Action: Congress amended the legislation to expand the use of closed military facilities to a broad definition of "Federal confinement or correctional facilities including shock incarceration facilities" (i.e., boot camps) and included states and local jurisdiction needs for confinement or correctional facilities in property reviews.⁸

2. The Secretary of Defense should require that bases subject to closure be reported to the Commission as soon as a final decision on closure status has been made.

Action: The Secretary of Defense reported bases targeted for closure to the Commission on January 1992 for review and inclusion in the September 1992 Commission report.

3. The Secretary of Defense should instruct (a) the services to report to the Commission the excess property that has been reported to the General Services Administration (GSA) and (b) the Army to report to the Commission on its excess civilian property.

Action: According to a DOD official, all excess property that had been reported to GSA by the services and the Army's excess civilian property is included in the Commission report. An official directive was not issued.

4. The Commission should establish controls to ensure that it receives and reviews all property survey forms completed by the services.

Action: The Commission changed its control system to use the Housing and Urban Development (HUD) database that was already established to manage HUD's property survey forms.

5. The Commission should take steps to improve the property survey form to increase the likelihood of obtaining consistent and meaningful data.

Action: According to a DOD official, the property survey form was not changed because its primary user is HUD, which is also a member of the Commission. However, the DOD official said that the base closure checklist was revised to capture better information.

⁸National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510.

**Prison Alternatives:
Crowded Federal
Prisons Can Transfer
More Inmates to
Halfway Houses
(GAO/GGD-92-5,
Nov. 14, 1991)**

**Summary of BOP Transfer
of Inmates to Halfway
Houses**

BOP's Community Corrections and Detention Division was created in July 1991 and is responsible for the development and implementation of policies and procedures related to the administration of community corrections and detention contract facilities nationwide. BOP has 32 community corrections offices throughout the United States. Each office has a community corrections manager who is responsible for the development, administration, and routine oversight of residential and nonresidential services provided through contractual agreements.

Programs and services are facilitated through contractual agreements with federal, state, county, and city government agencies and through contracts with private agencies. Services provided by these agencies include traditional prerelease (community corrections centers), short- and long-term detention and confinement, juvenile and adult boarding, program for pregnant offenders, and nonresidential home confinement programs such as electronic monitoring.

BOP issued a new program statement that addresses almost all of GAO's recommendations.⁹ The program statement does not address the recommendation to ensure that wardens start the placement process within BOP's 9-month policy so that inmates receive the full benefit of halfway house placement. BOP has taken some actions to improve the timeliness of inmate placement in halfway houses, but problems may still exist. At meetings and conferences, BOP officials encouraged wardens to improve their placement process. BOP also developed a centralized monitoring report to track placements. BOP officials believe that both of these efforts have increased the awareness of wardens to place inmates in halfway houses.

⁹Program Statement: Community Corrections Center Utilization and Transfer Procedures (Number 7310.01, Apr. 30, 1993).

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Problems with timely placements may remain as shown in internal audits of the corrections program. BOP's Program Review Division conducted reviews of the correctional program at seven institutions during 1992. In six of the seven audit reports, BOP reviewers identified deficiencies in prerelease planning or community correction placement. Deficiencies cited included prerelease documentation was lacking, inmates were not afforded the opportunity to properly prepare for re-entry into the community, and community correction center referrals were not processed in the appropriate time frames.

BOP's Utilization Report for January 1993 showed that agencywide approximately 65 percent of the eligible inmates were transferred for halfway house placement. For administrative,¹⁰ minimum-, low-, medium-, and high-security-level facilities approximately 44 percent, 84 percent, 57 percent, 37.5 percent, and 5.3 percent of the inmates, respectively, were transferred to halfway houses.

In the conference report on DOJ's appropriations for fiscal year 1993,¹¹ Congress directed BOP to provide an annual analysis of fiscal year 1992 newly awarded community correction centers' contracts, which compares the estimated requirements to actual usage at the end of the fiscal year. The conference report referred to a report by the Senate Committee on Appropriations,¹² which expressed concern that BOP had been using less than the estimated requirements in its firm fixed price contracts with some community corrections centers. The Committee report stated that unused beds have an adverse economic impact on the centers, which are unable to make use of the empty, yet reserved beds. The Committee stated that it considered the practice unfair to community corrections centers and that it expected BOP to substantially improve the accuracy of its estimated requirements. If a significant difference continues to be evident between estimated requirements and actual usage, the report stated that the Committee would consider directing BOP to utilize guaranteed minimum requirement contracts.

BOP analysis of its utilization of contract beds awarded in fiscal year 1992 showed that on average it used 87 percent of the contract bedspace. BOP analysis also showed that the average utilization rate for all contract beds

¹⁰Administrative includes inmates in court, detention, or medical facilities.

¹¹See H.R. Rep. No. 918, 102 Cong. 2d Sess. 41, 42 (1992), accompanying the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102-395.

¹²S. Rep. No. 331, 102d Cong. 2d Sess 32 (1992).

in fiscal year 1992 was 84 percent. This was an improvement over the 1991 utilization rate of 77 percent.

BOP's increased emphasis to community correction managers to develop better estimates and to wardens to increase their community correction center placements probably accounts for some improvements. According to BOP officials, BOP has been increasing its use of community correction centers while the courts have decreased their use. BOP officials attribute past underutilization of contract bedspace to overestimation by Judiciary's Probation and Pre-Trial Services Division for their requirements and some overestimation by BOP based on anticipated increases because of the Sentencing Reform Act of 1984.

Specific Recommendation and Actions Taken

1. The Attorney General should require the Director, BOP, to clarify its national policy on halfway house placements by providing better definitions of vague criteria, such as "history of violence" and "use of a weapon," that are used in making placement decisions.

Action: BOP issued guidance that requires a memorandum signed by the warden, which explains the rationale for excluding an inmate from community correction programs based on "a history of violence" or "threat to the community."¹³ Also, a program statement issued in June 1992 on security designation and custody classifications¹⁴ specifies public safety factors that require increased security measures and provides examples that apply the public safety factors.

2. The Attorney General should require the Director, BOP, to ensure that suitable inmates are identified for the halfway house program by adapting procedures that have proven successful at prisons with high referral rates, such as holding discussions with inmates and staff on program benefits, requiring that denials be justified in writing, and reviewing denials and approvals of halfway house placements.

Action: BOP issued guidance that establishes procedures for encouraging inmate participation in halfway house programs and requires documentation signed by an associate warden and the inmate when an inmate refuses to participate in the placement program.

¹³Program Statement: Community Corrections Center Utilization and Transfer Procedures (Number 7310.01, Apr. 30, 1993).

¹⁴Program Statement: Security Designation and Custody Classification Manual (Number 5100.04, June 15, 1992).

3. The Attorney General should require the Director, BOP, to ensure that wardens start the placement process in a timely manner, in accordance with the BOP 9-month policy, so that inmates will receive the full benefit of halfway house placement.

Action: BOP officials emphasized to wardens the need to improve utilization of halfway houses. They also developed a report to monitor institution placements in halfway houses. According to the BOP officials, the report has increased warden awareness of their utilization rate for placing eligible inmates in halfway houses. BOP uses program and operational reviews in their institutions to monitor the timeliness of placements.

4. The Attorney General should require the Director, BOP, to issue policy guidelines defining the circumstances in which inmates could refuse to accept a halfway house placement.

Action: BOP issued guidance that provides examples of appropriate reasons an inmate might use to decline placement in a community corrections center.

**Private Prisons: Cost
Savings and BOP's
Statutory Authority
Need to Be Resolved
(GAO/GGD-91-21,
Feb. 7, 1991)**

**Summary of Piloting
Privatization of Prisons**

At the federal level, use of privatization has been limited to specialized groups of offenders such as certain aliens and some unsentenced offenders. GAO concluded that BOP does not have sufficient statutory authority to use private prisons for the general adult inmate population. BOP's enabling legislation prescribes specific measures that may be used to obtain prisoner housing. Contracts for privately operated correctional facilities are not one of these measures. The report also concluded that empirical studies on service and costs comparisons for privatization were inconclusive; thus, more research and testing is needed.

**Appendix I
Status Summary and Specific
Recommendations of Five GAO Reports on
Prison Expansion**

BOP does not endorse the use of private prisons for its general adult inmate population. Thus, they have not taken action on our recommendation. In addition, as discussed in our report, BOP believes it has authority to make private contracts for prisons on the basis of a statutory provision allowing it to designate places of prisoner confinement and on the basis of general principles of federal procurement law. In March 1992, the Department of Justice, Office of Legal Counsel, rendered an opinion which generally supported BOP's position. We reviewed the DOJ legal decision and found nothing to provide a basis for changing our conclusion.

BOP's fiscal year 1993 budget included a request for \$22 million to fund a contract facility in the Southwest in a joint effort between BOP and the Immigration and Naturalization Service. The 1,000 bed facility is for criminal aliens serving federal sentences and aliens being held for the Immigration and Naturalization Service. The facility is expected to centralize criminal aliens in order to expedite their deportation after completion of their sentences. BOP awarded the contract to a company in July 1993 for a facility in Eloy, AZ.

**Specific Recommendations
and Actions Taken**

1. Congress should grant BOP explicit statutory authority to design and implement demonstration programs and projects to fully test and evaluate the benefits and limitations of privatization. Such legislation should specifically authorize BOP to contract for privately operated prisons for demonstration purposes and, among other concerns, should address the need for adequate controls in these contracts to preserve the rights of federal prisoners, ensure contractor accountability, and provide for effective government oversight.

Action: No action taken. BOP believes it has statutory authority to contract for private prisons. DOJ's Office of Legal Counsel concurs with BOP.

2. If Congress grants authority, the Attorney General should direct NJ to assist BOP in determining the benefits and limitations of privatization. In this regard, NJ should help design and build into BOP's tests a research component that would allow for empirical evaluations to demonstrate privatization's advantages, disadvantages, and conditions for greatest potential.

Action: No action taken. BOP believes it has the capabilities within its research department to compare the use of private prisons with its own facilities.

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