

# LOCKED UP & SHIPPED AWAY:

## Interstate Prisoner Transfers and the Private Prison Industry



**grassroots  
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November 2013

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Interstate Prisoner Transfers and the Private Prison Industry

NOVEMBER 2013

This report was compiled for Grassroots Leadership by Holly Kirby

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Report Design by Catherine Cunningham

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# Executive Summary

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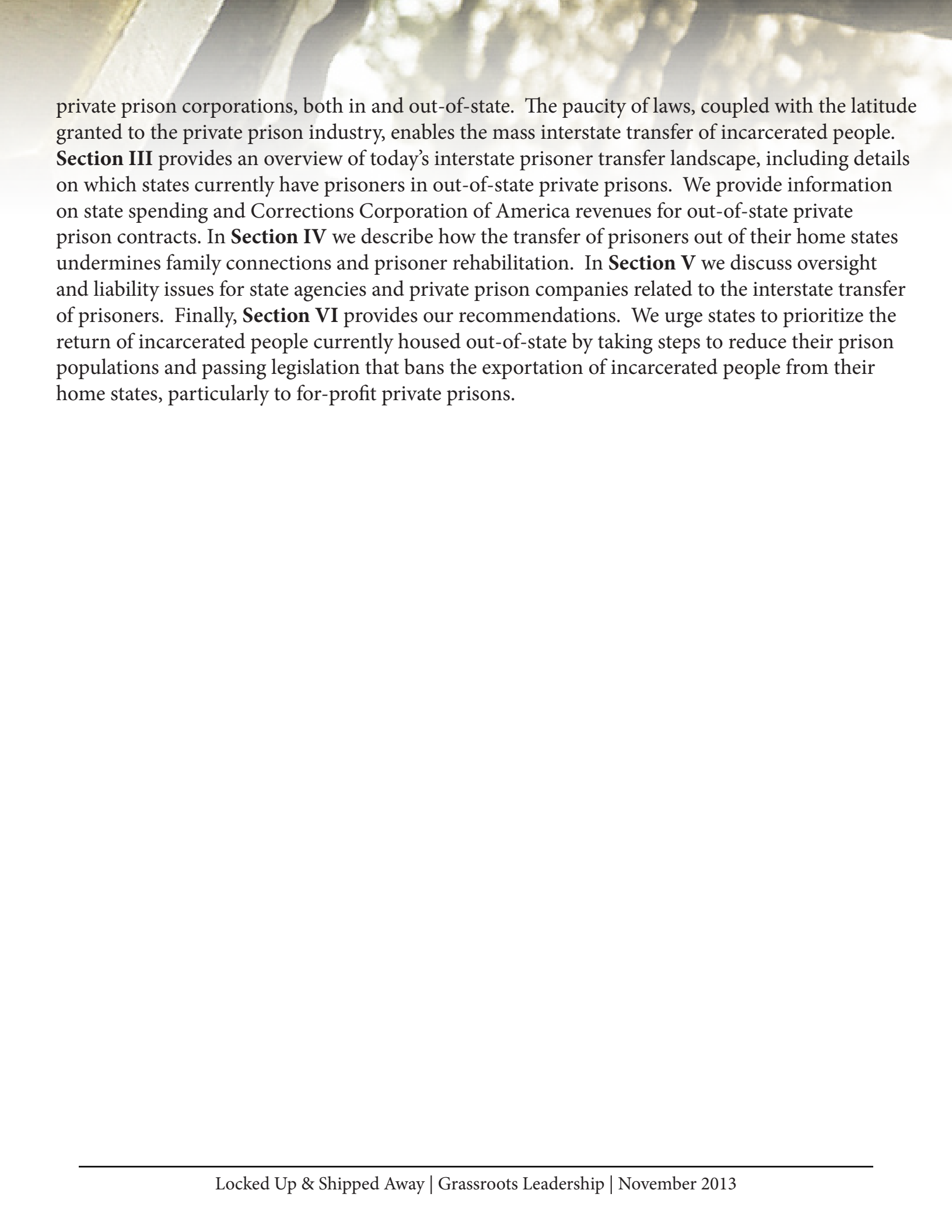
**G**rassroots Leadership is a 33-year-old Southern-based national social justice organization that works to end for-profit incarceration and reduce reliance on criminalization and detention through direct action, organizing, research, and public education. For the past 13 years, Grassroots Leadership has worked with criminal justice reform, faith, labor, social justice, human rights, civil liberties, and student organizations to build bridges between communities to increase the capacity of local leaders and coalitions, mobilize opposition to privatization of prisons, and transform the immigration and justice systems.

As part of the ongoing efforts to create truly just public safety policy, this report examines state governments' practice of transferring incarcerated people out of their home states to for-profit private prisons across the United States.

## MAJOR FINDINGS

- Interstate transfer of prisoners, or the practice of transferring incarcerated people to out-of-state prisons, is detrimental criminal justice policy that hurts families. The practice impedes prisoner rehabilitation by diminishing prisoners' ties to family and community, compromising rather than enhancing the public good.
- Interstate transfers of prisoners to private for-profit prisons serve the interests of an industry that views prisoners as commodities and perpetuate our nation's mass incarceration crisis.
- Today there are more than **10,500** state prisoners incarcerated in private for-profit prisons outside of their home states.
- Currently, four states – **California, Vermont, Idaho, and Hawai'i** – house prisoners in out-of-state private prisons, while **West Virginia** is moving forward with a plan that could move up to 400 prisoners to private out-of-state prisons.<sup>i</sup>
- With little public scrutiny, state officials have pointed to overcrowding as justification for sending incarcerated people to out-of-state prisons, rather than prioritizing decarceration and sustainable alternatives to incarceration to address **prison overcrowding**.
- The **lack of state laws** regulating interstate transfers of prisoners has allowed state officials to send incarcerated people to out-of-state private prisons en masse without their consent.
- Currently, prisoners in out-of-state private facilities are held approximately **450 miles to nearly 3,000 miles** from their home states.
- Using the most recent available contracts and government reports, we estimate that states will spend up to **\$320 million** this year incarcerating state prisoners in private prisons outside of their home states.

**Section I** of this report provides a brief history of the private prison industry, including how private prison corporations have raked in enormous profits from mass incarceration in the United States. In **Section II** we discuss the lack of uniform laws regulating the leasing of prison beds from



private prison corporations, both in and out-of-state. The paucity of laws, coupled with the latitude granted to the private prison industry, enables the mass interstate transfer of incarcerated people. **Section III** provides an overview of today's interstate prisoner transfer landscape, including details on which states currently have prisoners in out-of-state private prisons. We provide information on state spending and Corrections Corporation of America revenues for out-of-state private prison contracts. In **Section IV** we describe how the transfer of prisoners out of their home states undermines family connections and prisoner rehabilitation. In **Section V** we discuss oversight and liability issues for state agencies and private prison companies related to the interstate transfer of prisoners. Finally, **Section VI** provides our recommendations. We urge states to prioritize the return of incarcerated people currently housed out-of-state by taking steps to reduce their prison populations and passing legislation that bans the exportation of incarcerated people from their home states, particularly to for-profit private prisons.

# Introduction

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For decades, the crisis created by California's overcrowded prisons has made national headlines. In 2006, to alleviate overcrowding, then-Governor Arnold Schwarzenegger signed an Emergency Proclamation authorizing the state to transfer prisoners to private prisons outside the state of California without their consent.<sup>ii</sup> By 2010, over 10,000 California prisoners had been transferred to five separate private prisons across the country, operated by the nation's two largest for-profit private prison companies, GEO Group and Corrections Corporation of America (CCA), at a cost of \$1.18 billion to taxpayers.<sup>iii</sup> In 2011, the Supreme Court upheld a lower court ruling that found California's still severely overcrowded prison system was providing such poor medical and mental health care to prisoners that the state was in violation of the Eighth Amendment's ban on cruel and unusual punishment.

Nearly three years later, scrambling to meet the December 2013 deadline to further reduce the state's prison population by nearly 10,000 people, Governor Jerry Brown revealed that part of his plan to comply with the court mandate was to send an additional 4,000 prisoners to prisons operated by for-profit companies, both in and out-of-state.<sup>iv</sup> For now, the court has ordered the state to cease any arrangements to lease additional out-of-state capacity or otherwise increase the number of people currently housed in out-of-state prisons while state officials negotiate a compromise with prisoners' lawyers.<sup>v</sup> The court order brought a sigh of relief to Taina Vargas-Edmond, the wife of a California prisoner who was at risk of being transferred out-of-state. Living in constant fear that her husband could potentially be shipped from their home state, she said:

*"As a wife and as a human being, I cannot bear the thought of Richard being sent thousands of miles away from me, as I struggle, emotionally and financially, to see him as it is."*

While the order to cease expansion of out-of-state prison capacity was welcome news for Taina and so many others, California's example begs this question:

***Why has shipping incarcerated people to private prisons across the country, often thousands of miles from their families and loved ones, long been an acceptable "solution" to prison overcrowding?***

Interstate transfers of prisoners to for-profit prisons are not new, nor are they unique to California, and the practice speaks to several symptoms of our broken criminal justice system. Shipping incarcerated people across state lines into for-profit prisons rather than prioritizing reforms that would reduce the number of people behind bars exemplifies our nation's dangerous reliance on incarceration, particularly incarceration for profit. This costly tactic, which fails to address the root causes of mass incarceration, severely diminishes prisoners' ties to family and community while private prison companies profit handsomely. Despite track records marred with corruption, mismanagement, and human rights abuses, private prison corporations like CCA and GEO Group have turned incarcerating human beings into a multi-billion dollar industry, seizing opportunities to house prisoners wherever they can with little regard to how far from home they may be.

This report exposes the way the interstate transfer of prisoners to for-profit private prisons across the U.S. **impedes prisoner rehabilitation, diminishes prisoners' ties to family and community, serves the interests of an industry that views prisoners as commodities, and perpetuates our nation's mass incarceration crisis, compromising rather than enhancing the public good and public safety.** It includes a discussion of the costs and consequences for prisoners and their families, government agencies, and private prison corporations.

## SECTION I: The Private For-Profit Prison Industry Thrives on Overcrowded Prisons

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Today, there are more people incarcerated in the U.S. than in any nation in the history of the world. The 2.2 million people behind bars in prisons and jails in 2010 represented a more than 500% increase from the level of 1972.<sup>vi</sup> This dramatic increase can be attributed to modern “tough on crime” policy trends, which are characteristic of the “War on Drugs,” legislation that authorized harsher and mandatory minimum sentencing, and truth-in-sentencing laws that reduced the use of parole.<sup>vii</sup>

On August 12, 2013, after four decades of the costly and disastrous “War on Drugs,” Attorney General Eric Holder announced that the Justice Department will no longer pursue “draconian mandatory minimum sentences” for certain drug offences, stating that the criminal justice system’s approach to the “War on Drugs” has been “ineffective and unsustainable.” He characterized our nation’s history of racial disparities in sentencing as not only unacceptable, but shameful. He went on to say that today’s “vicious cycle of poverty, criminality and incarceration traps too many Americans and weakens too many communities, and many aspects of our criminal justice system may actually exacerbate these problems rather than alleviate them.”<sup>viii</sup> While Holder’s comments signify an essential step toward progress, his painfully accurate description of our criminal justice system remains the reality, *with the for-profit prison industry being a significant, yet largely hidden, apparatus that perpetuates mass incarceration.*

The modern private prison industry was born in 1983 with the formation of Corrections Corporation of America (CCA), which won a federal contract to detain immigrants at a facility in Houston, Texas. According to CCA co-founder Tom Beasley, the company was founded on the principle that you could sell prisons “just like you were selling cars, or real estate, or hamburgers.”<sup>ix</sup> Since then the private prison industry has grown dramatically, with the two largest private prison companies, CCA and GEO Group (formerly Wackenhut Corrections), earning combined revenue of more than \$3.2 billion in 2012.<sup>x</sup> From 1990 to 2011, the number of people held in private prisons across the country saw a 1,684% increase from an average of 7,771 people in 1990 to 130,941 on December 31, 2011,<sup>xi</sup> catapulting the private prison industry into a multibillion-dollar business.

In California and Hawai’i, an explosion in the prison population and chronic prison overcrowding compelled Federal Courts to order immediate action to address life-threatening conditions. In California, for example, the *Plata v. Schwarzenegger* and *Coleman v. Schwarzenegger* lawsuits,<sup>xii</sup> which serve as the basis of the Federal Court’s order to reduce the state prison population, found that California prisoners were being denied constitutionally adequate medical and mental healthcare. However, to view transferring prisoners to out-of-state private prisons as a solution to the problem of abhorrent conditions in overcrowded public prisons is problematic.

Though immediate solutions are necessary, for-profit private prisons have their own track records of prisoner abuse, violence, and death within their facilities<sup>xiii</sup> while private prison executives reap multi-million dollar salaries.<sup>xiv</sup> At the same time, private prison corporations have long relied on a revolving door between public corrections and the private prison industry to gain influence with local, state, and federal agencies and lawmakers<sup>xv</sup> and spend millions of dollars each year on campaign contributions and lobbying to ensure continued demand for their services.<sup>xvi</sup> Our nation’s crisis of overcrowded prisons is in urgent need of remedy, and should be addressed with sustainable reforms, not serve as a revenue stream for an industry that thrives on keeping people caged.

## SECTION II: Private Prison Companies Enable and Profit from Interstate Transfers of Prisoners

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Private prison corporations profit from every individual incarcerated in their facilities, usually at a negotiated per diem rate in which government agencies pay a specified amount per prisoner per day. Simply stated, for private for-profit prison corporations, the more people behind bars the better the business. In fact, a recent report by In the Public Interest exposed that the private prison industry guarantees profits by including “lockup quotas” or occupancy guarantee clauses in many contracts, a practice that disincentivizes reducing prison populations and can contractually bind governments to pay for unused private prison beds.<sup>xvii</sup>

Driven by the profit motive, private prison corporations are eager to offer state and local governments the opportunity to ease overcrowding in their prisons by incarcerating prisoners in private facilities, both in and out-of-state. Due to an absence of uniform laws regulating the leasing of out-of-state prison beds from private contractors, state leaders have assumed the authority to strip prisoners of ties to family, community, and invaluable support networks by shipping them across state lines.

In 2006, the U.S. Department of Justice, National Institute of Corrections (NIC) published *Interstate Transfer of Prison Inmates in the United States*, a study undertaken to address the dearth of information about interstate transfers of prisoners. It states,

Aside from statutes defining related interstate compacts, such as the national Interstate Compact for Corrections, there was no literature on how prison inmate transfers were accomplished, the volume of cases involved, or the reasons why these transfers were made.<sup>xviii</sup>

To address this gap, the researchers developed and delivered a written survey questionnaire to departments of corrections (DOCs) in 50 states, of which 48 states responded. Survey items included questions about DOCs’ participation in interstate prisoner transfer, and were designed to assess transfer of prisoners to state-run and private facilities, and the justification(s) for transfer.

According to the study, “survey respondents were asked what source(s) authorize their agency to transfer prison inmates to the custody of another *publicly* managed prison system” (emphasis added). Of the agency respondents that engage in interstate prisoner transfers, all but one (45 of 46 DOCs) reported that they do so under the authority of an interstate compact statute. There are three existing interstate compacts: the national Interstate Compact for Corrections, the Western Corrections Compact, and the New England Corrections Compact, which were all designed to enforce standardized procedures and determine enforceable obligations between states that engage in transfer of inmates. The two main factors that compacts address are: 1) The process for shifting institutional and jurisdictional authority over inmates, and 2) The sharing of agencies’ responsibilities and obligations for inmates who are transferred.

Though interstate compacts serve as “powerful tool[s] for promoting uniform state procedures for subjects of mutual interest”, **many states can and do engage in interstate transfer of prisoners under the authority of additional or supplemental statutes, formal DOC policy, intergovernmental agreements, memoranda of understanding, and independent contracts.** Additionally, “none of these compacts has a central administrative office or active governing body”. As such, it is clear that there is significant potential for varied sources of authority and processes regarding interstate transfer of prisoners between state DOCs. Though the National Institute of Corrections’ study is the best-known data on the practice of interstate



transfer of prisoners, its examination of transfers to private out-of-state facilities is severely limited. One of the first limitations of the study listed upfront states, “... **though transfer of inmates to private prisons may be a concern of DOC officials in the destination state who lack notification of these transfers, the nature of such potential concerns was not explored**”. Additionally, the researchers state, “**transfers to BOP facilities (345 inmates) and privately-owned prison facilities (2,466 inmates) were handled outside the interstate compact auspices**”. In the case of private prisons, the facilities and corporations that operate them, though physically located in a different jurisdiction, are considered private vendors contracted by and accountable to the sending state’s department of corrections.

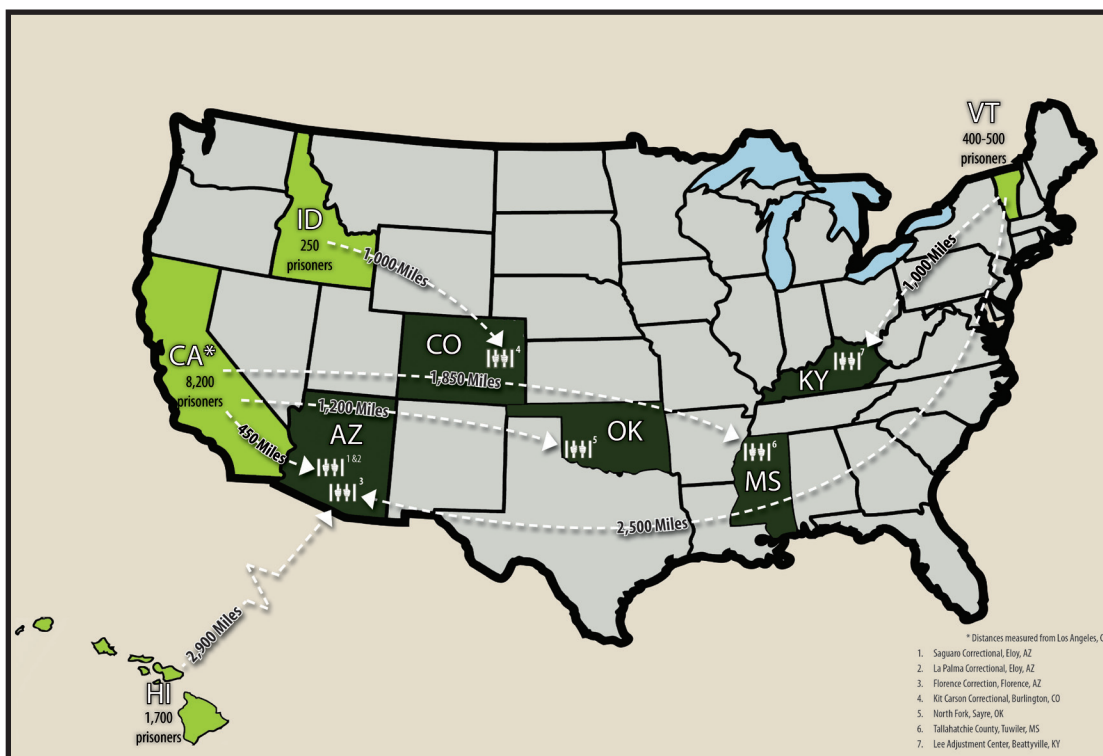
Though these compacts may intend to promote uniform state procedures, any transfer of prisoners against their will that results in diminished access to support networks is ill-advised practice, particularly when these transfers occur en masse to for-profit prisons. Ultimately, lack of regulation and the latitude granted to the private prison industry enables the shipment of prisoners across state lines and exacerbates the already-existing threat that our criminal justice system, especially privatized corrections, poses to

prisoners’ health, safety, and civil liberties.

## SECTION III: Today’s Interstate Prisoner Transfer Landscape

The number of prisoners transferred to private prisons out-of-state has fluctuated over the years, with various state corrections departments having transferred prisoners to different private prisons across the country as a means of alleviating prison overcrowding. Today, there are more than 10,500 state prisoners housed outside of their home states in private for-profit prisons, all operated by industry giant Corrections Corporation of America (CCA), sent by state corrections departments in Vermont, Idaho, Hawai’i, and California. In each case, state officials have justified transferring prisoners to out-of-state private prisons on the basis of prison overcrowding.

Figure 1. 2013 Interstate Private Prison Inmate Transfers



**Table 1. 2013 Interstate Private Prison Inmate Transfers**

Sending State	Approximate # of Prisoners Currently Shipped	Out-of-State Private Prison	Approximate Distance from Home
Vermont	475	Lee Adjustment Center <i>Beattyville, KY</i>	1,000 Miles
		Florence Correctional <i>Florence, AZ</i>	2,500 Miles
Idaho	245	Kit Carson Correctional <i>Burlington, Colorado</i>	1,000 Miles
Hawai'i	1,700	Saguaro Correctional <i>Eloy, AZ</i>	2,900 Miles
California	8,267	Florence Correctional <i>Florence, AZ</i>	450 Miles
		La Palma Correctional <i>Eloy, AZ</i>	450 Miles
		North Fork <i>Sayre, OK</i>	1,200 Miles
		Tallahatchie County <i>Tutwiler, MS</i>	1,800 Miles

**State Spending on Out-of-State Corrections Corporation of America Prisons**

 VERMONT

- For the period of July 1, 2011 – June 30, 2015, Vermont authorized payment of up to \$61.7 million to house Vermonters in private prisons in Arizona and Kentucky.
- The contract includes per diem increases for each year of the contract and 95% occupancy guarantee clauses at both facilities. The clause does not require Vermont to pay for unused beds, but stipulates that the Vermont DOC will lose priority for the use of the beds should the occupancy fall below 95%.

Source: State of Vermont Contract for Services with Corrections Corporation of America. Amendment dated June 29, 2013. Contract available upon request.

 IDAHO

- In July 2012 the Idaho Department of Correction (IDOC) awarded CCA a 2-year contract to house up to 800 Idaho prisoners at the Kit Carson Correctional Center in Colorado at an estimated cost of \$14.4 million.

Source: Idaho Department of Corrections Contract Purchase Order dated July 11, 2012. Contract available upon request.

 HAWAII

Hawai'i failed to respond to our request for current contracts between the state and Corrections Corporation of America. However, according to a 2010 report by the State of Hawai'i Auditor:

- FY 2006 to FY 2009 the Hawai'i Public Safety Department paid CCA a total of \$202.7 million to house Hawai'i prisoners out-of-state.
- Using the most recent per diem rate listed in the Auditor's report, Hawai'i will spend at least \$47.7 million this year incarcerating prisoners in CCA facilities on the mainland.

Source: Higa, M., "Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services," *The Auditor, State of Hawai'i*, December 2010. <http://files.hawaii.gov/auditor/Reports/2010/10-10.pdf>



California ships more prisoners to out-of-state private prisons and spends more money on transfers than all other states combined.

- According to a research brief by the Center on Juvenile and Criminal Justice, between fiscal years 2006-2007 and 2011-2012, the California Department of Corrections and Rehabilitation (CDCR) contracts with out-of-state prisons totaled \$1.18 billion.
- The percentage of California prisoners incarcerated out of state jumped from 1.3% in FY 2007-2008 to 6.3% by FY 2011-2012.
- Based on the number of beds allotted by the most recent California contract and estimated per prisoner annual cost in the Governor's budget, the state will spend more than \$250 million this fiscal year to send prisoners to out-of-state private prisons.

Source: Shelden, R.G. & Teji, S., "Collateral Consequences of Interstate Transfer of Prisoners," *Center on Juvenile and Criminal Justice: Research Brief*, July 2012. [http://www.cjcj.org/uploads/cjcj/documents/Out\\_of\\_state\\_transfers.pdf](http://www.cjcj.org/uploads/cjcj/documents/Out_of_state_transfers.pdf)

Source: Department of Finance. (2013). Governor's Budget, 2013-14. Corrections and rehabilitation. Sacramento, CA: Dept. of Finance. <http://www.dof.ca.gov/budget/historical/2013-14/governors/documents/5210.pdf>

Source: "Out of State Prison Facilities," California Department of Corrections and Rehabilitation, accessed November 16, 2013. [http://www.cdcr.ca.gov/Visitors/CA\\_Out\\_Of\\_State\\_Facilities.html](http://www.cdcr.ca.gov/Visitors/CA_Out_Of_State_Facilities.html)

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## SECTION IV: Interstate Prisoner Transfers Undermine Family Connections and the Right to Rehabilitation

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**"I've moved so many times to be with him."**

– wife of Alaska prisoner transferred multiple times

Scholars argue the most punitive aspect of incarceration is physical separation, with prisoners and their families simultaneously enduring the punishment of incarceration.<sup>xix</sup> Undoubtedly, this punishment is exacerbated when prisoners are shipped from their home state. According to a *New York Times* exposé, "THE NATION; Bartering Inmate Futures," both prisoner advocates and prison officials agree that the practice of transferring prisoners out-of-state "defies sound theory." Not only is it inhumane to put hundreds to thousands of miles between prisoners and their loved ones, but doing so compromises vital ties to family and community which are known to contribute to "better behavior" and reduce recidivism.<sup>xx</sup> Jeffrey Bridges, a Virginia prisoner involuntarily transferred to Texas in 1995, said,

**"It was hard on me, but I think it was a lot harder on my family. I had done a crime, but there was no need for them to suffer along with me."<sup>xxi</sup>**

In August 2009, Alaska ended a 15-year contract with CCA, which housed 800 Alaska prisoners at Red Rock Correctional Center in Arizona, and switched to another private company that would house the prisoners in Colorado less expensively. Brenda Watkinson, the wife of one Alaska man who would be relocated from Arizona to Colorado, told the Anchorage Daily News that the move would cause about half a dozen families that live near the Arizona prison to relocate. Brenda expressed concern over selling her house and finding a new job and friends.

**"I've moved so many times to be with him," she said. "It really takes a toll on families."**<sup>xxii</sup>

All out-of-state Alaska prisoners were expected to return to Alaska by September 2013 after corrections officials have argued keeping prisoners close to home helps reduce recidivism.<sup>xxiii</sup>

A Vermont prisoner interviewed for this report, John, (who preferred we did not use his real name) was transferred to a private prison in Kentucky in 2006, said he had no clue what was happening when officers came into his Vermont cell in the middle of the night, told him to get up and grab his things, and refused to answer when asked where he was going. Shackled to the person next to him, he endured the 36-hour bus ride, still without any idea where he would end up. His new "home" was the CCA-operated Lee Adjustment Center in Kentucky. While incarcerated in Vermont, John reported seeing his family every weekend. In Kentucky, he only saw them twice in the nearly two years he was incarcerated there. In addition to diminished ties to his support network, the transfer to Kentucky stripped John of access to rehabilitative programs, which simply did not exist at the private prison in Kentucky. Now out of prison and back in Vermont, John regularly advocates for prisoners' rights, and says,

**"This practice of transferring inmates out-of-state is horrendous. You're taking people who, whatever support network they may have, is gone. The truth of the matter is [ ] that as an incarcerated person, you're alone. You're isolated."**<sup>xxiv</sup>

On October 21, 2013 in California, Taina Vargas-Edmond, along with a host of other family and loved ones of California prisoners, presented public testimony to the Select Committee on Justice Reinvestment and spoke to the devastating impact of out-of-state transfers of prisoners. Taina, whose husband, Richard, is a prisoner at the Correctional Training Facility in Soledad, CA, said that in two years she has spent more than \$10,000 on transportation to visit him only twice a month at various in-state facilities. When Taina and Richard got word that he would be transferred to a private prison out-of-state as part of Governor Brown's plan to comply with the federal court mandate, Taina was struck with the fear of not knowing how she would be able to maintain their already limited connection. To the Select Committee on Justice Reinvestment and Governor Brown, Taina implored,

**"Remember that those incarcerated and their families are humans with dignity and we deserve to be treated as such. Please do not send Richard or any other inmate out-of-state, away from their loved ones and away from their chances of rehabilitation."**<sup>xxv</sup>

Not only does the interstate transfer of prisoners place increased hardship on families and loved ones, but as Taina notes, it also systematically impedes prisoner rehabilitation. A traditional goal of the correctional system, rehabilitation "involves changing inmates' attitudes and providing skill development in prison to enable them to live crime-free lives after release from prison."<sup>xxvi</sup> Researchers argue that preparation for dealing with post-prison responsibilities is a key aspect of rehabilitation, in which family ties play a significant role.<sup>xxvii</sup> Studies have shown a correlation between visitation and reduced recidivism upon completion of prison time, which contributes to keeping families together, reducing crime, and ultimately improving public safety. Thus, when prisoners are transferred across state lines, rehabilitation is compromised, as is the goal of enhancing public safety.<sup>xxviii</sup>

In addition to researchers in the field, the Supreme Court of Alaska also recognized visitation as a vital component of rehabilitation. In the 1997 case of *Brandon v. Alaska State Department of Corrections*,<sup>xxix</sup> Brandon claimed that his transfer to Arizona substantially impaired his rehabilitation in violation of Alaska's constitutionally and statutorily-guaranteed right to rehabilitation of which the right to visitation is a vital component.<sup>xxx</sup> Brandon won his case and was returned to Alaska. Though the Alaska Supreme

Court should be lauded for its recognition of all Alaskans' constitutional rights, including those who are incarcerated, their decision fell short:

**"Rather than mandating a per se rule which would prohibit out-of-state prison transfers, the court only went so far as to permit judicial review of such transfer decisions. This inefficient result requires each prisoner to seek judicial review every time the commissioner orders an out-of-state transfer, or to have prisoners bring civil claims alleging an infringement on rehabilitation due to the lack of visitation when the Alaska Supreme Court has already accepted that visitation is indispensable to rehabilitation. If visitation is indispensable to rehabilitation, it seems logical to prohibit out-of-state transfers, preventing the de facto elimination of prisoners' visitation rights."<sup>xxxix</sup>**

Additional dire consequences of the interstate transfer of prisoners include compromised access to legal counsel and an increased reliance on telecommunication, which often subjects prisoners and those who wish to contact them to exorbitant prison phone rates. Current efforts, such as the Campaign for Prison Phone Justice, are fighting predatory prison phone companies that make it more difficult, if not impossible, for prisoners to call their families and loved ones, in private and public facilities alike. When prisoners are transferred across state lines, increased long-distance calling costs add up on top of these already existing exorbitant phone rates. Out-of-state prisoners and their families inevitably suffer the consequences.

Finally, diminished phone access to legal representation has resulted in lawsuits in the State of Hawai'i. Seventy Hawai'i prisoners housed at the Saguaro Correctional Center in Arizona, represented by Attorney Myles Breiner, claim their attorney-client privilege is consistently violated. Breiner alleges that eavesdropping by CCA staff on Hawai'i prisoners' phone calls has made prisoners reluctant to speak openly and honestly with their attorneys. He also alleges the eavesdropping is a result of other lawsuits filed against CCA after a riot two years prior left a prison guard injured. Breiner has brought this issue to the attention of Hawai'i Senator Will Espero, who has voiced concern that these lawsuits can cost the state a lot of money.<sup>xxxix</sup>

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## SECTION V: Oversight and Liability

**"We weren't happy about the things that were going on down there...we didn't have that level of budget to accommodate full-time monitors."**

-Former Idaho Corrections Department Director Vaughn Killeen.

In addition to family separation and increased isolation of prisoners, interstate transfers to private prisons have had costly consequences for state agencies as well. While lack of oversight has been consistently problematic in in-state private prisons, the hundreds to thousands of miles separating state corrections departments from the out-of-state private prisons they contract with make maintaining oversight all the more difficult. Today, approximately 250 Idaho prisoners are housed in a for-profit prison in Colorado about 900 miles from home. Idaho's history with out-of-state transfers, however, should serve as a cautionary story. In August 2006, Idaho prisoners were moved from the private GEO Group-operated Newton County Correction Facility in Texas after complaints of abuse by prison guards. During the time Idaho prisoners were incarcerated there, the state sent an official to Texas only once, which resulted in the reporting of problems such as lack of substance abuse treatment and anger management programs. Despite these reported deficiencies, news reports suggest that no action was taken to address them.<sup>xxxix</sup>

In 2007, the suicide of Scot Noble Payne, an Idaho prisoner incarcerated at the Dickens County Correctional Center, another GEO Group-operated private prison in Spur, Texas, revealed squalid conditions. According to John Miller of the *Associated Press*, “[Payne’s] death exposed what had been Idaho’s standard practice for dealing with inmates sent to out-of-state prisons: Out of sight, out of mind.”<sup>xxxiv</sup> His suicide came after spending months alone in his cell, writing pages of letters to loved ones telling of the atrocious conditions in the prison. While investigating Payne’s suicide, the Idaho Department of Correction’s health care director, Don Stockman, described Payne’s cell as unacceptable and the rest of the facility as “beyond repair.”<sup>xxxv</sup> Complaints also included verbal and physical intimidation by the warden and guards who were indifferent to the horrid living conditions.<sup>xxxvi</sup>

Soon after, Idaho announced they would move 125 prisoners from the Dickens County Correctional Center, citing poor conditions at that facility. Former Idaho Corrections Department Director, Vaughn Killeen, admitted,

**“We weren’t happy about the things that were going on down there...we didn’t have that level of budget to accommodate full-time monitors.”**

In September 2009, the Idaho Department of Corrections reached a settlement with Payne’s family, agreeing to pay \$100,000 to Payne’s estate. Despite this and the revelation in 2007 of squalid conditions at the for-profit Texas prison where Idaho prisoners were being housed, the state continues to contract with private prison companies to house prisoners out-of-state.

Hawai’i has a similar sordid history with out-of-state private prisons. From the mid-1970’s to the 1980’s, a dramatic increase in Hawai’i’s incarceration rate led to chronic statewide prison overcrowding. Consequently, the federal government oversaw the Hawai’i prison system from 1985-1999, placing increased pressure on the state to ease overcrowding. In 1995, citing major cost savings, Hawai’i Governor Ben Cayetano and corrections officials signed the first contract with a private prison company and sent 300 prisoners to private facilities in Texas. By 2006, nearly 2,000 Hawai’i prisoners were incarcerated in mainland CCA facilities in Arizona, Kentucky, Mississippi, and Oklahoma.

Over the span of more than a decade, the State of Hawai’i has been sued numerous times due to incidents involving Hawai’i prisoners in CCA facilities on the mainland. Kat Brady, long-time criminal justice reform advocate and coordinator of Community Alliance on Prisons, has maintained contact with several Hawai’i prisoners over the years during their incarceration out-of-state. She says,

**“Our people have been moved around like chess pieces -- sold to the lowest bidder, in essence. I hear the anguish of families, of children who miss their daddies, of wives struggling to keep their families together and the desperation of people trying to locate their loved ones.”**<sup>xxxvii</sup>

In 2009, after female prisoners from Hawai’i had been shipped from Oklahoma to Colorado to Kentucky, all 168 women were transferred yet again and removed from the CCA-run Otter Creek Correctional Center in Kentucky after charges of sexual abuse by prison guards surfaced. When Hawai’i investigators traveled to the facility they found that at least five corrections officials at the prison, including a chaplain, had been charged with having sex with prisoners in the previous three years, and four were convicted.<sup>xxxviii</sup>

Cultural clashes occurred between both prisoners and prison staff when Hawai’i prisoners were transferred to private prisons in Arizona with reports of gang violence and the denial of religious freedoms, according to Brady. In 2006, six native Hawai’ian prisoners in two separate private prisons in Arizona – Saguaro and Red Rock Correctional Centers – sued CCA and the State of Hawai’i for allegedly violating their

constitutional right to religious freedom.<sup>xxxix</sup> In Hawai'i, according to Michael Hoffman, Institutions Division director of the state Department of Public Safety, prisoners at Halawa Correctional Center are allowed to celebrate Makahiki and construct an outdoor altar for the ceremonies. Hawai'i prisoners housed in private Arizona facilities, however, allege that CCA has consistently denied written requests to establish a sacred place in the prison yard and to have access to a spiritual adviser and sacred items.<sup>xi</sup>

Gang violence turned deadly at the CCA-run Saguaro Correctional Center in Eloy, AZ. In 2012, the family of slain Hawai'i prisoner, 26-year-old Bronson Nunuha, filed a wrongful death lawsuit against CCA and the State of Hawai'i after he was brutally murdered in his cell. Nunuha had less than a year left to serve on his five-year sentence for burglary and property damage when he was fatally beaten and stabbed over 140 times by two members of a prison gang. The assailants reportedly carved the initials of their gang into Nunuha's chest.<sup>xii</sup> Nunuha was murdered while in the Special Housing Incentive Program, or SHIP, where rival gang members were placed together in the same unit. Only one guard was on duty to supervise Nunuha's cellblock when the murder occurred. According to the lawsuit, the assailants "showered, changed clothes, and re-mingled with other prisoners" before anyone discovered Nunuha's body.<sup>xiii</sup> To add insult to this senseless loss of life, according to Hawai'i law, at the time of his murder, Nunuha should have already been returned to Hawai'i, with less than one year left to serve on his sentence. Four months after Nunuha's death, another Hawai'i prisoner, Clifford Medina, 23, was murdered at the same CCA-operated prison in Arizona. His family also has filed a wrongful death suit.<sup>xliii</sup>

Gang violence in out-of-state private prisons is not unique to Hawai'i prisoners. California prisoners who were hospitalized in 2011 after a riot at the CCA-run North Fork Correctional Facility in Oklahoma are suing CCA for putting them at risk of harm by the Sureños prison gang. The suit claims that understaffing and poorly trained prison guards are to blame for "severe and permanent physical and mental injuries" suffered by the four California plaintiffs.<sup>xliv</sup>

Finally, government officials in California and Hawai'i have formally reported on major deficiencies in the states' use of out-of-state private prisons, making strong recommendations to take corrective actions. In California, after visiting five out-of-state private prisons with California contracts in 2010, Inspector General David R. Shaw sent a letter to CDCR outlining serious concerns including the denial of prisoner rights, the misuse of administrative segregation, delaying transfer of prisoner property, and a lack of video visitation in some prisons. The inspection also noted several safety and security concerns, and that CDCR did not enforce many of its own rules and policies when entering into the prison contracts.<sup>xlv</sup>

A report by the State of Hawai'i Auditor in December 2010 found that not only did the Hawai'i Department of Public Safety (PSD) circumvent the law and misuse the procurement exemption associated with their Intergovernmental Agreement (IGA) with the City of Eloy, AZ, but also,

***"that the IGA does not contain safeguards that protect the State's interest in the event of a dispute or if funds are not appropriated or available to pay CCA, so the State is exposed to a liability risk."***<sup>xlvi</sup>

The audit also found that the PSD director ignored out-of-state contract oversight and administration responsibilities, and that the PSD's indifference to the needs of policymakers and the public left the Legislature without accurate cost data, hindering the state from "appropriately address[ing] the continuing problem of prison overcrowding."

## SECTION VI: Recommendations

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The practice of shipping incarcerated people across state lines to for-profit prisons as a tactic to alleviate prison overcrowding illustrates our nation's dangerous reliance on incarceration and failure to prioritize strategies to reduce the number of people behind bars. Nothing runs more counter to the goals of public safety, rehabilitation, and justice than an industry that profits from keeping people caged. The devastating consequences of failed criminal justice policies and for-profit incarceration -- violence, human rights abuses, and neglect stemming from mismanagement, under-staffing and lack of oversight -- are further exacerbated when prisoners are transferred to private prisons away from their home state. Interstate transfers of prisoners increase the likelihood for cultural conflict and violence, while the sheer distance inherently impedes prisoner rehabilitation by severing critical supportive ties, in addition to compromising access to legal counsel and the ability of the sending state to maintain adequate oversight.

Attorney General Eric Holder acknowledged in his remarks on August 12, 2013 that many aspects of our criminal justice system are causing more harm than public good. States are uniquely positioned on this critical shift in public discourse to demand sustainable reforms that will put an end to mass incarceration, especially incarceration for profit, and to take immediate steps to abolish the practice of transferring prisoners across the country like commodities. The interstate transfer of prisoners is a costly band-aid, not a root cause solution, to the problem of prison overcrowding and our nation's mass imprisonment crisis. On the contrary, it perpetuates our broken justice system.

We recommend state lawmakers take immediate action to:

1. Prioritize strategies to reduce prison populations in order to bring home prisoners currently housed in out-of-state facilities.
2. Pass legislation that bans the exportation of incarcerated people from their home state, especially to private for-profit prisons.

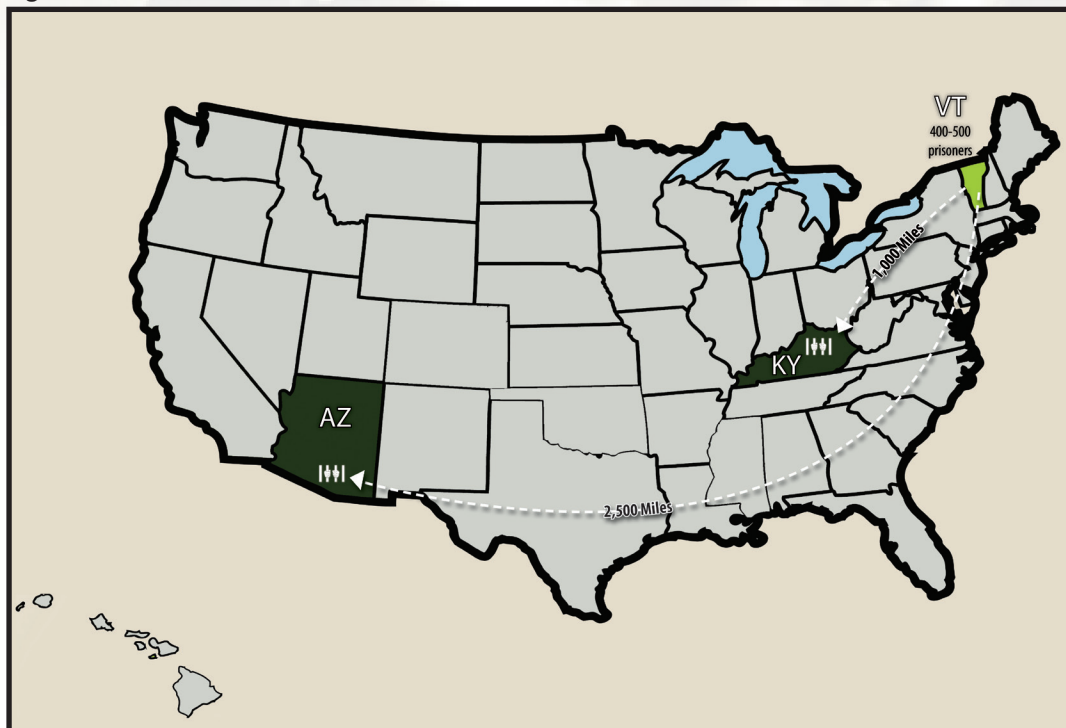
Many states have successfully reduced prison populations by participating in the Justice Reinvestment Initiative (JRI). Launched in 2001 by the Bureau of Justice Assistance and Pew Charitable Trusts, JRI is a program model adopted by states designed to identify and implement data-driven criminal justice reforms that will reduce state prison populations and save money. Furthermore, states should heed the recommendations put forth in a new report, *Ending Mass Incarceration: Charting a New Justice Reinvestment*,<sup>xlvii</sup> co-authored by a group of researchers, advocates, and analysts dedicated to ending mass incarceration in the U.S., which critically outlines the outcomes and limitations of the past decade of justice reinvestment. The authors offer a new strategy for a revamped justice reinvestment to guide policy-makers in achieving prison population reductions. The report illustrates how to move forward with criminal justice reform strategies in a more effective, inclusive, and sustainable way, including a discussion of incentivizing reducing prison populations as well as where and how state-level reforms have been effective.

It is clear that the practice of shipping prisoners out-of-state is costly, unsustainable, and detrimental to families and communities. In the four states that currently have prisoners in out-of-state private prisons, what was initially touted by state officials as a "temporary solution" to overcrowding has now become common practice. The time is now to take the necessary steps toward criminal justice policies that truly serve the public good, keeping families together and providing people with opportunities to rehabilitate. Ending the practice of transferring prisoners out-of-state, particularly to prisons for-profit, is a critical step in that direction.



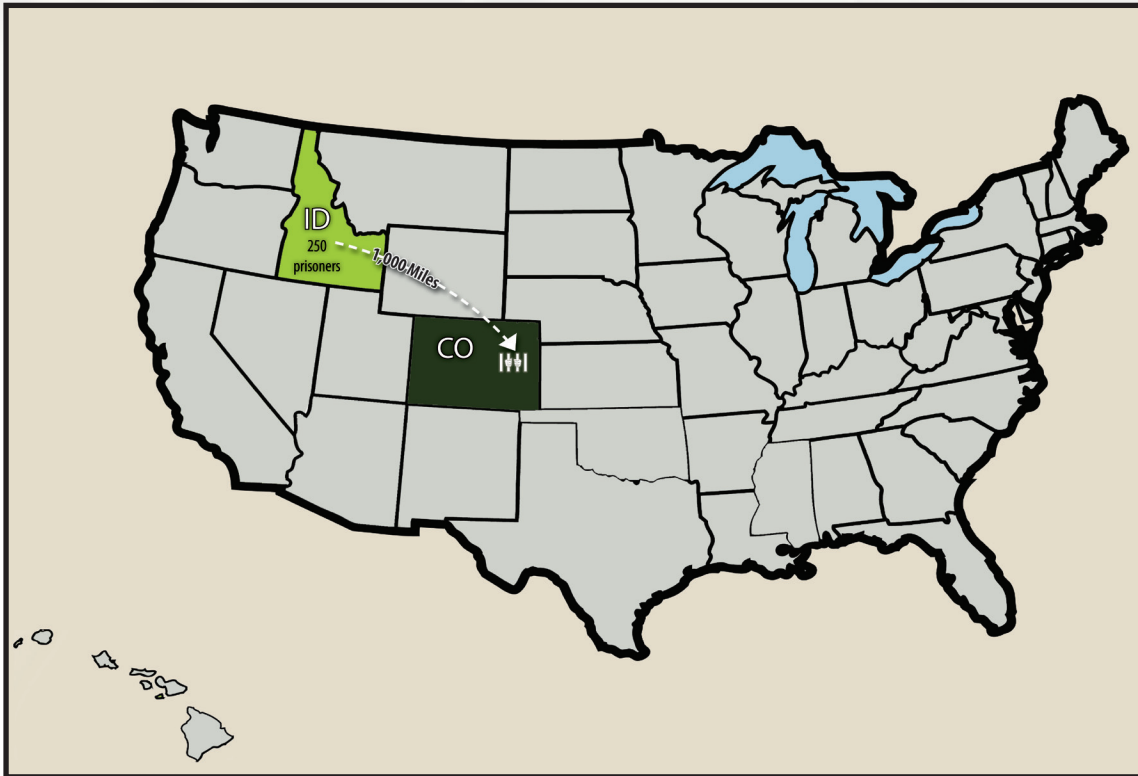
## Appendix A: Vermont

Figure 2. 2013 Interstate Private Prison Inmate Transfers from Vermont



- **HISTORY OF INTERSTATE TRANSFER TO PRIVATE PRISONS** – 9 years (Since 2004)
  - **TOTAL PRISON POPULATION** – 2,100
  - **POPULATION IMPRISONED OUT OF STATE** – 450 in KY, 30 in AZ
  - **OUT-OF-STATE LOCATION** – Lee Adjustment Center, KY & Florence Correctional Center, AZ
  - **CCA CONTRACT DETAILS** – Expires June 2015
- 
- **January 2004** – Vermont signs a contract with Corrections Corporation of America to house up to 700 prisoners in Kentucky and Tennessee. Corrections Commissioner Steve Gold says, “The contract provides up to 700 offenders but my hope and my goal really is to eliminate the need for any Vermonters having to go out of state while they are incarcerated. But at the present time we will need to use some out of state beds.”<sup>xlviii</sup>
  - **September 2004** – Prisoners riot and set two buildings on fire at the Corrections Corporation of America-run Lee Adjustment Center in Kentucky after a mass transfer of 400 Vermont prisoners to the facility and a cutback in outdoor recreation time.<sup>xlix</sup>
  - **2008** – In a memo regarding the cost of housing Vermonters in out-of-state private prisons, Doug Hoffer, working as a private consultant for VSEA\*\*, writes that CCA lacks rehabilitative programming offered by the Vermont Department of Correction, saying, “Corrections Corporation of America (CCA) does not provide mental health services. [...] CCA does not provide services related to sexual abuse, substance abuse, or violent offenders.”<sup>[iii]</sup> Hoffer was elected State Auditor in November 2012 and took office January 2013. <sup>1</sup> An earlier version of this report stated that Doug Hoffer was Vermont Auditor at the time the memo was written.
  - **2013** – Vermont Democratic State Representative Suzi Wizowaty introduces H.28, a bill that “proposes to prohibit the transfer of a Vermont inmate to a privately operated out-of-state correctional facility unless living conditions at that facility meet or exceed those in Vermont.”<sup>li</sup>
  - **2013** – Vermonters for Criminal Justice Reform launch the Restore Our Communities Campaign calling for a 25% reduction in the state’s prison population by 2016 in order to bring all out-of-state prisoners back to Vermont.<sup>lii</sup>

Figure 3. 2013 Interstate Private Prison Inmate Transfers from Idaho



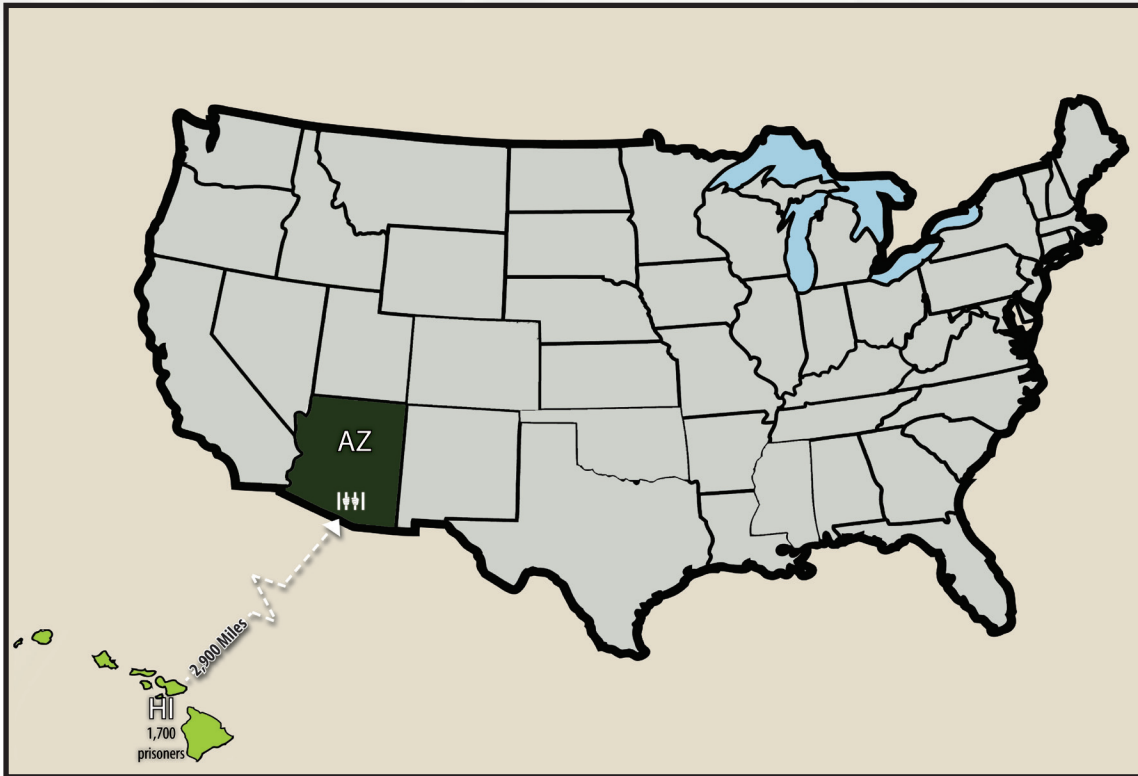
- **HISTORY OF INTERSTATE TRANSFER TO PRIVATE PRISONS** – 16 years (since 1997)
- **TOTAL PRISON POPULATION** – 8,697 (May 2013)<sup>liii</sup>
- **POPULATION IMPRISONED OUT OF STATE** – 245 (May 2013)<sup>liv</sup>
- **OUT-OF-STATE LOCATION** – Kit Carson Correctional, Burlington, CO
- **CCA CONTRACT DETAILS** – Expires July 2014

- **1997** – Idaho Department of Corrections (IDOC) sends prisoners to first CCA facility out-of-state, the Prairie Correctional Facility in Minnesota.<sup>lv</sup>
- **1999** – IDOC sends prisoners to private CCA operated Cibola County Correctional Center in New Mexico.<sup>lvi</sup>
- **August 2006** – Idaho prisoners housed in a GEO Group-run private Newton County Correction Facility in Texas are transferred to Dickens County Correctional Center after complaints of abuse by prison guards.
- **March 2007** – The suicide of Idaho prisoner Scot Noble Payne while incarcerated in the GEO Group-operated Dickens County Correctional Center (DCCC) in Spur, TX exposes squalid conditions at the prison.<sup>lvii</sup>
- **July 2007** – The state announces plans to move 125 Idaho prisoners from DCCC to other facilities, citing poor living conditions. Former IDOC Director Vaughn Killeen says, “We weren’t happy about the things that were going on down there. We didn’t have that level of budget to accommodate full-time monitors.”<sup>lviii</sup>
- **July 2007** – In the wake of Payne’s suicide, revelation of squalid conditions, and transfer of Idaho prisoners to other facilities, new director of Idaho prison system, Brent Reinke, says, “If I had to do it over again, I would have.”<sup>lix</sup>

- **August 2008** – Idaho prisoner, Randall McCullough, is found dead after more than a year in solitary confinement while supposedly being monitored by GEO and its personnel at the Bill Clayton Detention Center in Littlefield, TX.<sup>lx</sup>
- **November 2008** – IDOC terminates its contract with GEO Group to house Idaho prisoners at the Bill Clayton Detention Center in Littlefield, TX. IDOC Director Brent Reinke says chronic understaffing at the facility was placing Idaho prisoners’ safety at risk. Prisoners are transferred to another private prison in Oklahoma.<sup>lxi</sup>
- **May 2010** – Randall McCullough’s son, Daniel McCullough, files suit against GEO Group and the warden, among others, alleging grossly inhumane treatment, abuse, neglect, illegal and malicious conditions of confinement, and subsequent cover up of wrongdoing.<sup>lxii</sup>
- **July 2012** – IDOC enters contract with CCA to house up to 800 Idaho prisoners at Kit Carson Correctional Center in Colorado.
- **September 2013** – A federal judge finds CCA to be in contempt of court for falsifying staffing records and understaffing the Idaho Correctional Center, also known as “gladiator school” for its reputation of excessive violence. CCA subsequently decides not to submit a bid to renew its contract to operate the in-state facility.<sup>lxiii</sup>
- **October 2013** – Gov. Butch Otter’s spokesman, Mark Warbis, delivers a letter signed by sixteen of the legislature’s twenty Democrats urging the Idaho Board of Correction to allow the state to submit a proposal to operate the Idaho Correctional Center.<sup>lxiv</sup>
- **October 2013** – Despite the CCA debacle in state at the Idaho Correctional Center, the state continues to contract with CCA to house up to 800 prisoners approximately 1,000 miles from home at Kit Carson Correctional Center in Colorado.

## Appendix C: Hawai'i

Figure 4. 2013 Interstate Private Prison Inmate Transfers from Hawai'i

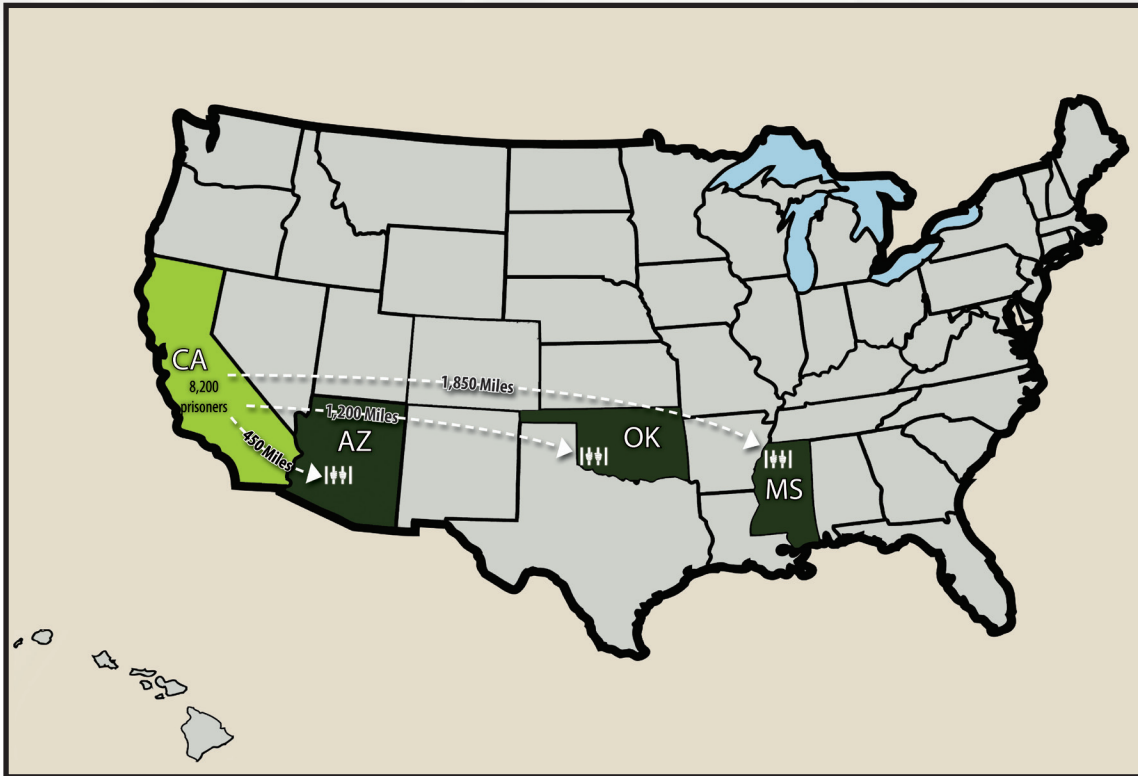


- **HISTORY OF INTERSTATE TRANSFER TO PRIVATE PRISONS** – 18 years (since 1995)
  - **TOTAL PRISON POPULATION** – 5,738 (January 2013)
  - **POPULATION IMPRISONED OUT OF STATE** – 1,700 men
  - **OUT-OF-STATE LOCATION** – Saguaro Correctional Center, Eloy, AZ
  - **CCA CONTRACT DETAILS** – Expires June 2014
- 
- **September 1984** – American Civil Liberties Union files a class action lawsuit on behalf of prisoners at the O’ahu Community Correctional Center and the Women’s Community Correctional Center, both prisons in the state of Hawai’i, calling crowded conditions life-threatening. As part of the settlement, the State consents to federal oversight of both facilities.<sup>lxv</sup>
  - **June 1985** – Under federal consent decree, the Hawai’i Department of Public Safety (PSD) is required to address deficient prison conditions, including ameliorating overcrowding.<sup>lxvi</sup>
  - **December 1995** – In efforts to address overcrowding, Hawai’i PSD initiates the first transfer of Hawai’i prisoners out-of-state to a private prison in Texas operated by the Bobby Ross Group. This is viewed as a “short-term solution to chronic overcrowding.”<sup>lxvii</sup>
  - **August 2009** – All 168 female Hawai’i prisoners are removed from the CCA-run Otter Creek Correctional Center in Kentucky after charges of sexual abuse by prison guards surface. Before being transferred to Kentucky, women were shipped from Oklahoma to Colorado.<sup>lxviii</sup>
  - **October 2009** – A Hawai’i woman who was sexually assaulted while incarcerated at Otter Creek files a lawsuit against CCA and the State of Hawai’i claiming both parties were aware of the sexual assault allegations at the facility, but took

no action to prevent further incidents. The woman was only one of 19 women who came forward with allegations that she had been abused by prison guards.<sup>lxxix</sup>

- **December 2010** – Eighteen Hawai'i prisoners incarcerated in a CCA run facility in Arizona sue CCA, the State of Hawai'i, and the on-site contract monitor, demanding a protective injunction and punitive damages, for assault and battery, cruel and unusual punishment, coercion and retaliation. The prisoners allege that CCA guards at Saguaro Correctional Center "stripped, beat and kicked inmates and threatened to kill them, banged their heads on tables while they were handcuffed". The complaint goes on to say that CCA officials and their employees "deliberately destroyed and failed to preserve evidence of their wrongdoing, including videotapes," and "deliberately falsified reports."<sup>lxxx</sup>
- **December 2010** – Hawai'i Governor Neil Abercrombie announces promise to bring home all Hawai'i prisoners serving sentences out-of-state and says, "[The policy of sending prisoners away] costs money. It costs lives. It costs communities. It destroys families. It is dysfunctional all the way around — socially, economically, politically and morally."<sup>lxxxi</sup>
- **December 2010** – A report by the State of Hawai'i Auditor examines the practice of transferring prisoners out-of-state and finds that the "[Hawai'i PSD] management does not understand the necessity of providing detailed and accurate financial information to policymakers and the public, a key component in solving this crisis."<sup>lxxxii</sup>
- **February 2011** – Six Hawai'i prisoners in two separate private prisons in Arizona – Saguaro and Red Rock Correctional Centers – sue CCA and the state of Hawai'i for allegedly violating their constitutional religious freedom rights.<sup>lxxxiii</sup>
- **February 2012** – The family of 26-year-old Hawai'i prisoner, Bronson Nunuha, files a lawsuit against CCA, the state of Hawai'i, and a host of others employed by both CCA and the state after Nunuha was brutally murdered in his cell at Saguaro Correctional Center in Arizona. Nunuha had less than a year left to serve on his five-year sentence for burglary and property damage when he was fatally beaten and stabbed over 140 times by two members of a prison gang.<sup>lxxxiv</sup>
- **May 2012** – A wrongful death suit is filed against CCA and the State of Hawai'i after 23-year-old Hawai'i prisoner, Clifford Medina, was strangled to death by another prisoner in his cell.<sup>lxxxv</sup>
- **July 2012** – Of approximately 1,700 Hawai'i prisoners housed at Saguaro Correctional Center in Arizona, Attorney Myles Breiner represents 70 of them who claim their attorney-client privilege is consistently being violated. Breiner alleges that eavesdropping by CCA staff on Hawai'i prisoner phone calls has made prisoners reluctant to speak openly and honestly with their attorneys. He also alleges the eavesdropping is a result of other lawsuits filed against CCA after a riot two years prior left a prison guard injured. Breiner has brought this issue to the attention of Hawai'i Senator Will Espero, who has voiced concern that these lawsuits can cost the state a lot of money.<sup>lxxxvi</sup>
- **November 2013** – Nearly three years after Governor Abercrombie decries the practice of shipping prisoners out-of-state and promises to bring Hawai'i prisoners home, 1,700 Hawai'i prisoners remain in a CCA prison in Arizona.

Figure 5. 2013 Interstate Private Prison Inmate Transfers from California



- **HISTORY OF INTERSTATE TRANSFER TO PRIVATE PRISONS** – 7 years (since 2006)
  - **TOTAL PRISON POPULATION** – 134,063 (November 2013)<sup>lxxvii</sup>
  - **POPULATION IMPRISONED OUT OF STATE** – 8,988 TOTAL – 3,240 at the La Palma Correctional Facility (AZ), 2,719 at the Tallahatchie County Correctional Facility (MS), 2,549 at North Fork Correctional Facility (OK), and 480 at the Florence Correctional Facility (AZ)<sup>lxxviii</sup>
  - **POPULATION IMPRISONED OUT OF STATE (Current Population)** – 8,267 TOTAL – 3,419 in Arizona, 2,553 in Mississippi, and 2,295 in Oklahoma.<sup>lxxix</sup>
  - **CCA CONTRACT DETAILS** – Expires June 2016
- 
- **October 4, 2006** – Governor Arnold Schwarzenegger issues an emergency proclamation to relieve severe prison overcrowding that allows the California Department of Corrections and Rehabilitation (CDCR) to immediately enter into temporary contracts for up to 5,000 prison beds in out-of-state prisons.<sup>lxxx</sup>
  - **May 3, 2007** – Passage of Assembly Bill 900 provides the state authority for the transfer of 8,000 California prisoners to out-of-state facilities for a temporary period of five years.<sup>lxxxi</sup>
  - **2009-2011** – CDCR's contract with private prison corporations is expanded to allow for more than 10,000 prisoners to be incarcerated out-of-state. The number of California prisoners incarcerated in out-of-state facilities peaks at 10,400 in 2011 before declining to under 10,000 later that year.<sup>lxxxii</sup>
  - **December 2, 2010** – After visiting five out-of-state private prisons with California contracts, Office of Inspector General sends a letter to CDCR outlining serious concerns including the denial of prisoner rights, the misuse of administrative

segregation, delaying transfer of prisoner property, and a lack of video visitation in some prisons. The inspection also noted several safety and security concerns, and noted that CDCR did not enforce many of its own rules and policies when entering into the prison contracts.<sup>lxxxiii</sup>

- **May 23, 2011** – The U.S. Supreme Court upholds a lower court ruling finding California’s severely overcrowded prison system was providing such poor medical and mental health care to prisoners that the state was in violation of the Eighth Amendment’s ban on cruel and unusual punishment.<sup>lxxxiv</sup>
- **October 11, 2011** – A riot breaks out at the CCA-operated North Folk Correctional Facility in Sayre Oklahoma. Forty-six California prisoners were injured in the uprising, including more than a dozen who were taken to the hospital. The facility was locked down for months.<sup>lxxxv</sup>
- **July 2013** – California enters into a revised contract with CCA expanding the number of prisoners shipped out of state to 8,988.<sup>lxxxvi</sup>
- **August 2013** – Scrambling to meet the December 2013 deadline to further reduce the state’s prison population by nearly 10,000 people, Governor Jerry Brown reveals that part of his plan to comply with the court mandate was to send an additional 4,000 prisoners to prisons operated by for-profit companies, both in and out-of-state.<sup>lxxxvii</sup> The court orders the state temporarily cease any arrangements to lease additional out-of-state capacity while state officials negotiate a compromise with prisoners’ lawyers.<sup>lxxxviii</sup>

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