

## Research Brief

# Collateral Consequences of Interstate Transfer of Prisoners

By

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### Introduction

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In 2011, the Supreme Court ordered the California Department of Corrections and Rehabilitation (CDCR) to immediately take actions to reduce its state prison overcrowding to 137% capacity. As a result California has embarked on sweeping criminal justice reforms which realign responsibility for low level offenders to the counties, through passage of Assembly Bill 109.

Prior to the Supreme Court mandate, California had been addressing overcrowding concerns by utilizing out-of-state private prisons, the majority of which are operated by the Corrections Corporation of America (CCA). The temporary transfer of California inmates to other states began in late 2006, rose to a peak of 10,400 in early 2011, and declined to under 10,000 by mid-2011. Continued utilization of private out-of-state facilities is slated under the 2011-2012 budget to fall by nearly half by June 2012.

In light of California's extensive budget crisis, in early 2012, CCA offered to purchase California state prisons and operate them through a 20-year management contract. In exchange CCA requested an assurance that the prisons would remain at least 90% capacity (CCA, 2012). California not only declined the offer, but CDCR released plans in April 2012, to return out-of-state inmates to state facilities and terminate its contracts with private out-of-state facilities by FY 2015-16 (CDCR, 2012a). This proposal estimates savings of \$318 million (CDCR, 2012a, p.28). In addition to cost savings, returning out-of-state inmates is a sound public policy decision. The purpose of this publication is to provide an overview of the effects of out-of-state transfers on inmates and families, to evaluate the potential public safety and policy merits of CDCR's proposal.

### Historical context

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For at least 70 years state governments have engaged in some form of transferring prisoners from one state to another. The mechanisms for these transfers are "interstate compacts," which are enforceable legal obligations between states (Thigpen, Keiser, & Humphries, 2006). There are three main interstate compacts in place that address prison inmate transfers: the National Interstate Compact for Corrections; and two regional compacts, the Western Corrections Compact and the

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New England Corrections Compact. None of the compacts has an active governing body (Thigpen et al., 2006). Presently 40 states have signed on to the national agreement, however, interstate transfers can also occur under the authority of a regional compact, other statutes, agency policies, judicial precedent, and court orders.

As of July 1, 2005, Departments of Corrections in at least 43 states had inmates on transferred status in the custody of other public agencies. Approximately 4,900 inmates were on transferred status nationwide; of this number, there were 2,089 state-sentenced inmates were transferred between state prison systems, 345 were transferred to the Federal Bureau of Prisons, and 2,466 were transferred to private prisons in another state (Thigpen et al., 2006).

The most common reason for the transfers was to relieve overcrowding, and of these overcrowding transfers, most (95%) were sent to private prisons. The second most common reason was “inmate protection” (in 12 states) and among the “other” reasons included “family-related” (e.g., being closer to home because of an illness).

The demand for private prisons by state governments was caused by an explosion in America’s use of incarceration. Starting in the late 1980s various kinds of “tough on crime” sentencing reforms emerged in the United States, such as “mandatory sentencing,” “Three Strikes and You’re Out” and “Truth in Sentencing.” One of the consequences of these laws was a large increase in state prison populations (See Tonry, 1995; Petersilia, 2003; Mauer, 2000; Mauer & Chesney-Lind, 2002; Austin & Irwin, 2011).

Many communities around the country that had lost their manufacturing base began “reviving their economies through prison reconstruction and maintenance, leading to prisons in less populated or less desirable parts of the country” (Cnaan, Draine, Frazier, & Sinha, 2008, p. 180). Several states constructed large prison facilities specifically to house out-of-state prisoners (Lawrence & Travis, 2004). The growth in the privatization of prisons during the 1980s and 1990s added to the increased use of out-of-state incarceration. Among the collateral consequences of this development was “that anyone sentenced to state or federal prisons stands a good chance of being transferred to a prison hours away from his or her original community which, in turn, breaks ties with relatives and friends” (Caan et al., 2008, p. 180).

California was no exception. The state began utilizing out-of-state private prisons, predominantly owned and operated by the Correctional Corporation of America (CCA) in October 2006, in order to ameliorate massive overcrowding in the state prisons. Former Governor Schwarzenegger signed an Emergency Proclamation overriding the requirement that inmates consent to the transfer in order to expedite the process (Office of Governor, 2006). In 2007, Assembly Bill 900 provided the authority for the mass transfer of 8,000 inmates to CCA facilities for a temporary period of five years (CDCR, 2008). The contract was expanded in November 2009 and 2010 to allow for additional transfers, resulting in a total of over 10,000 out-of-state inmates, and contracts totaling \$1.18 billion (Lagos, 2010; CDCR, 2009). Each of the four CCA facilities utilized by California charges a different per-diem cost beginning at \$61 per inmate. Any inmate medical costs over \$2,500 are billed to CDCR, and thus the California taxpayer (Maass, 2012).

According to CDCR, inmates prioritized for transfer to out-of-state facilities included previously deported criminal aliens, inmates to be paroled outside California, inmates who have limited family

ties to California, and “other inmates chosen and considered appropriate by CDCR” (CDCR, 2011). Table 1 shows the number of transfers by year by state and budgeted cost.

**Table 1. California out-of-state transfers by year and budgeted cost, 2006-2012.\***

State/facility	Fiscal year					
	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Arizona total	141	735	3,048	4,237	4,955	4,493
Michigan-NCLF	0	0	0	0	33	0
Mississippi-Tallahatchie	0	1,192	1,913	2,561	2,567	2,564
Oklahoma-North Fork	0	252	998	1,306	2,345	2,347
<u>Tennessee</u>	<u>49</u>	<u>78</u>	<u>51</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total, out of state	190	2,256	6,010	8,104	9,900	9,404
Total inmate population	172,597	171,754	170,361	167,276	163,502	148,131
Percent out-of-state	0.1%	1.3%	3.5%	4.8%	6.1%	6.3%
Total cost, out of state (millions)	n/a	\$66.2	\$149.2	\$243.5	\$290.0	\$426.4
Cost /out-of-state prisoner	n/a	\$29,363	\$24,817	\$30,052	\$29,298	\$45,339

Sources: CDCR, 2011; Dept. of Finance, 2011. Costs are in constant 2011 dollars. FY 2011-12 data were derived as an average of monthly data. \*CJCJ staff would like to thank Senior Research Fellow Mike Males for producing this table.

According to state calculations, the earlier out-of-state contracts offered considerable savings over housing inmates in California facilities, but by 2011, annual per-inmate costs for out-of-state (\$45,300) and in-state facilities (\$45,800) were more similar. According to the Legislative Analyst’s Office, this is in part due to the decreased cost of inmate medical services in California prisons. The decreased cost for inmate medical services was driven by lower rates of specialty care referrals, the utilization of management software, and the negotiation of improved contract rates with community hospitals (personal communication, Drew Soderberg, LAO, September 30, 2011). Thus, while there may still be a need to ameliorate overcrowding in state facilities, there is no longer a fiscal benefit to transferring inmates to out-of-state and private facilities.

### **Conditions of care and rehabilitation**

Private prisons have been scrutinized over the years following several reports of dangerous conditions of care. For example, on October 11, 2011, a riot occurred in North Fork Correctional Facility, a CCA prison in western Oklahoma that houses Californian inmates. The riot involved over 600 inmates and resulted in many serious injuries, including four inmate hospitalizations. According to California-based correctional professionals, the riot appeared to be a result of understaffing and multiple security failures. While CDCR facilities classify and separate inmates from rival gangs to decrease the likelihood of violence, information from North Fork indicated that large groups of rival gangs are housed together, increasing the risk of riots (Maass, 2012).

One of the most prominent criticisms of the private prison industry is that it “trades security for profit” (Maass, 2012). Federal and state contracts result in significant profits for CCA, earning revenue of \$1.73 billion in 2011 alone. CCA achieves its profit margin through low staffing ratios and wages (approximately \$14 per hour), compared to the approximately \$32 per hour that a state correctional officer earns (Maass, 2012; CDCR, 2012).

An Inspector General audit of California-utilized out-of-state facilities in 2010 revealed a severe lack of staff screening, training, or protocol. For example, the audit reported that the “hiring

process [for staff] does not include a comprehensive criminal background and arrest history review” (OIG, 2010, p. 5). The conditions in the facilities were also found to be inadequate, with many inmates placed in segregation for 12 months or more, without access to education, treatment programs, or exercise. The auditors also observed other significant lapses in security; staff attire that was indistinguishable from inmate attire, unsupervised inmates moving freely in restricted areas, malfunctioning security cameras, no audible incident alarm system, and in the case of the Tallahatchie facility “an approximate ten inch gap below a gate in a restricted area that was large enough for a man to crawl through” (OIG, 2010, p. 8). The audit urged the CDCR to immediately address the issues regarding denial of inmate rights and safety and security weaknesses.

The California Correctional Peace Officers Association (CCPOA) stated that these deficiencies led to dangerously compromised conditions in CCA’s facilities that contributed to the October 2011 riot (Maass, 2012). The association reasoned that custodial staff at private prisons have little incentive to place themselves at risk during a riot situation, because they are both underpaid and understaffed. (Maass, 2012).

In addition to breaches in facility security, out-of-state private prisons create significant barriers to rehabilitation and humane conditions of care. Serving offenders out-of-state provides fewer opportunities for familial visitation and engagement – a fundamental component to successful rehabilitation. Interstate transfer virtually eliminates visitation by family members; exacerbated when private prisons are involved as they are not held to the same visitation and rehabilitation standards as the sending state. For example, an Alaskan court in 2000 found that a prisoner’s constitutional rights were at risk when an Alaskan inmate was transferred to a CCA facility in Arizona.

The court reasoned that housing Alaska prisoners in private Arizona prisons is an issue of constitutional magnitude because the Alaska Constitution grants prisoners a constitutional right to rehabilitation, of which the right of visitation is a vital component. According to the court, the distance between Alaska and Arizona seriously impedes visitation and, thus, inhibits rehabilitation (Hunter, 2000, pp. 320-321).

Similarly, in California, the Inspector General reported that out-of-state facilities utilized “conflicting inmate visiting protocols” and practices, and that family video-conferencing was not available which “may effectively preclude family members from visiting” their loved ones (OIG, 2010, pp. 3, 9-10).

Maintaining connection to community support structures is of fundamental importance to an inmate during their incarceration. Studies show that it prevents prisoners from being “socialized to the life of an inmate [and helps transform them into] individuals who have the necessary skills and emotional stability to face up to their responsibilities as citizens, parents and spouses” (Hunter, 2000, p. 339). Moreover, “when prisoners are able to maintain contact with family members during incarceration, they are more likely to sustain their relationships after their release. Further, tensions are less intense within prisons where inmates receive regular visits (see Mushlin, 1993; Brooks & Bahna, 1994).

In California, the CDCR's mandate includes the rehabilitation of offenders. The research above strongly suggests that out-of-state private prisons are not conducive to rehabilitation and do not reduce recidivism upon release. Housing inmates in-state increases the opportunity for family reunification and community-based programmatic engagement. Ultimately these connections enable offenders to more successfully reintegrate into society upon release, and have the potential to improve conditions within the facilities themselves. Thus, the practice of sending inmates to private out-of-state facilities creates significant barriers to achieving CDCR's rehabilitation mandate.

### **Further collateral consequences**

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Incarceration not only effects offenders, but also greatly impacts their loved ones, community, and the public at large. There are many collateral consequences to incarceration of an individual, especially when they are confined out-of-state. For example, research shows that visitation significantly impacts recidivism upon release, and thus improves long-term public safety (See Bales & Mears, 2008; Duwe & Clark, 2011; Mills & Codd, 2008).

There are also significant social and community repercussions of incarceration that are rarely discussed. In many cases the strains associated with having an incarcerated loved one causes family members to terminate relationships with the inmate. Research shows that the stigma related to incarceration is such that many family members react by isolating themselves from the prisoner (Braman & Wood, 2003). Women in particular often experience "secondary prisonization" when they have incarcerated loved ones, including "restricted rights, diminished resources, social marginalization, and other consequences of penal confinement, even though they are legally innocent and reside outside of the prison's boundaries" (Comfort, 2003, p. 79).

These collateral consequences can be found in virtually every state across the nation due to the geographic isolation of most prisons (Shelden, 2010). However, these consequences are significantly increased when an inmate is located out-of-state. Sometimes the strains associated with visiting results in family members being forced to make choices about how their scarce resources will be spent. Social pressures and responsibility for dependents often fuel the decision to sever contact with the incarcerated loved one (Christian, 2005, p. 45). Out-of-state facilities present even larger challenges and obstacles to familial visitation. California's contracted out-of-state facilities in particular have received criticism for their inadequate visitation procedure and lack of accessibility (OIG, 2010).

In addition to the strain long-distance incarceration can have on partners and spouses, it can also have a devastating effect on children. One of the strongest predictors of whether or not a child will become a chronic delinquent is parental criminality, especially if a parent has spent time in jail or prison (Dryfoos, 1990; Gabel & Johnston, 1995; Gabel, 1992; Gaudin & Sutphen, 1993).

Parental incarceration, along with the crimes and arrests that precede it, "cause chaos in the lives of these children, including traumatic separations and erratic shifts from one caregiver to another. Most children with incarcerated parents reside in poverty before, during, and after their parents' incarceration" (Seymour & Hairston, 2001, p. 2). This in turn is an additional causative factor in delinquency. Children of incarcerated parents "experience a broad range of emotions, including fear, anxiety, anger, sadness, loneliness, and guilt. They may exhibit low self-esteem, depression,

and emotional withdrawal from friends and family” (Seymour & Hairston, 2001, p.2). As a result, many of these children struggle both socially and academically.

In addition, while separation from a parent can occur through several different circumstances (such as marital separation or death), the separation through incarceration creates unique stressors in a child’s life. For example, children of incarcerated parents often experience repeated abandonment as many incarcerated parents cycle in and out of prison, creating significant instability in the child’s life. In addition, the extensive barriers to communication while the parent is incarcerated are often exacerbated by reluctance by caregivers to facilitate such communications (La Vigne, Davies, & Brazzell, 2008).

These effects are exacerbated when a parent inmate is transferred to an out-of-state facility. In 2008, almost 1,707,000 children (2.3% of the children in the United States) had a parent in prison (Glaze & Maruschak, 2008). The stress of this impact on children is not only experienced in communities, but also in the child welfare and juvenile justice systems. In California, decreased reliance on both out-of-state and private prisons will reduce the geographical barriers between inmates and their families, thus reducing the numerous collateral consequences of incarceration.

## **Conclusion**

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By April 2012, approximately 9,500 Californian inmates were being held in out-of-state private facilities. In its five year realignment blueprint, *The Future of California Corrections*, CDCR details a staggered elimination of out-of-state contract facilities use by 2015-16. In June 2013, California’s current contract with CCA will expire. CDCR is requesting that the Supreme Court increase its prison population cap by 6,000 inmates in order to allow for the out-of-state inmate population to return to California. Bringing the out-of-state prisoners back to state prisons in California is projected to save the state \$318 million annually and could have significant public safety benefits (CDCR, 2012a).

When Assembly Bill 109 initiated sweeping criminal justice realignment back to the counties, Governor Brown supported the reform, asserting that the best correctional interventions are those delivered at the point where the offender is most likely to return (Office of Governor, 2011). This assertion is born out by extensive research across the nation. In addition, as this survey of existing research shows, providing access for familial engagement and visitation while an individual is incarcerated reduces incidents of violence within a facility and improves the inmate’s likelihood to engage in treatment. It also allows the family and community to prepare for the inmate’s return and increases the likelihood that the inmate will be successful upon release. The opportunity to address and ameliorate the effects of incarceration on children, families, and communities should remain a priority as realignment is pursued.

The return of out-of-state inmates to state facilities is an appropriate extension of the underlying philosophy behind AB 109. Research indicates that this could not only result in improved outcomes for individual inmates and their families, but it will strengthen long-term public safety and public wellbeing in California by reducing the collateral consequences of incarceration for communities, families, and individuals.

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