



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR



# Audit

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**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

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Memorandum

To: Bryan Mercier  
Acting Assistant Secretary – Indian Affairs

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Acting Deputy Assistant Secretary – Indian Affairs

From: Kathleen Sedney   
Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Final Audit Report – *Indian Affairs Still Needs To Improve Its Management of Bureau of Indian Affairs-Funded and/or -Operated Detention Programs*  
Report No. 2022-WR-040

This memorandum transmits our audit report on Bureau of Indian Affairs-funded and/or -operated detention facilities between fiscal years 2019 and 2021.

We will track open recommendations for resolution and implementation. We will notify Congress about our findings, and we will report semiannually, as required by law, on actions you have taken to implement the recommendations and on recommendations that have not been implemented. We will also post a public version of this report on our website.

If you have any questions about this report, please contact me at [aie\\_reports@doioig.gov](mailto:aie_reports@doioig.gov).

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# Results in Brief

## Objectives

The Office of the Assistant Secretary for Indian Affairs (IA) assists in fulfilling the U.S. Department of the Interior's (DOI's) trust responsibilities to American Indians and Alaska Natives, including members of 574 federally recognized Tribes. The Bureau of Indian Affairs (BIA), which operates under IA, has responsibilities that include oversight and direct operation of detention programs on Tribal lands. At the time of our review, there were 85 detention programs that BIA operated or that were funded pursuant to Indian Self-Determination and Education Assistance Act (ISDEAA or the Act) self-determination contracts or self-governance compacts.<sup>1</sup> Authorities for these programs differ based on how Tribes receive BIA-funded detention services:

- **Direct Service Programs:** Detention programs that BIA operates<sup>2</sup> are considered federally operated and must comply with Federal regulations and requirements and agency guidelines.
- **Contract Programs:** Tribes that operate detention programs funded by self-determination contracts are required to comply only with agency guidelines that are included in the terms of the contract and applicable Federal regulations.<sup>3</sup>
- **Compact Programs:** Like programs funded by contracts, Tribes that operate detention programs funded by self-governance compacts are subject to only the applicable Federal laws and agency guidelines that are included in the compact and accompanying funding agreement.<sup>4</sup>

Additionally, facilities housing these detention programs may be owned by BIA or Tribes, maintained by BIA or Tribes, or occupied through a lease agreement. Separate offices within IA provide programmatic and maintenance funding to these facilities. At the time of our review, the 85 detention programs mentioned above were operated out of 75 facilities.

We initiated this audit in response to a congressional mandate<sup>5</sup> to follow up on the recommendations from a 2016 report in which we evaluated detention facilities in Indian Country.<sup>6</sup> In the 2016 report, we identified concerns with serious incident reporting, health and safety inspections, facility maintenance, overcrowding, and staffing, all of which had a negative impact on the condition of detention facilities and the health and safety of inmates and correctional staff.

In this engagement, we audited BIA-funded and/or -operated detention programs and facilities to determine whether IA:

1. Corrected the operational issues identified in our previous report.

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<sup>1</sup> Passed by Congress in 1975, Title I of ISDEAA, Pub. L. No. 93-638, 25 U.S.C. §§ 5301 et seq., authorized DOI to contract with Tribes to assume planning and administering certain Federal services and programs with Federal funding, referred to as "self-determination contracts." In 1994, the Tribal Self-Governance Act, Pub. L. No. 103-413, 25 U.S.C. §§ 5361 et seq., amended ISDEAA and added a new Title IV authorizing DOI to enter into compacts with Tribes, referred to as "self-governance compacts." These compacts allow Tribes to assume control over some Federal programs that DOI otherwise would provide directly to Tribes. See <https://crsreports.congress.gov/product/pdf/IF/IF11877/2>.

<sup>2</sup> BIA, Office of Justice Services, *Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2020*, [https://www.bia.gov/sites/default/files/media\\_document/2020\\_tloa\\_report\\_final\\_508d.pdf](https://www.bia.gov/sites/default/files/media_document/2020_tloa_report_final_508d.pdf).

<sup>3</sup> 25 U.S.C. §§ 5321, 5324.

<sup>4</sup> 25 U.S.C. §§ 5362-5364, 5374.

<sup>5</sup> Committee Print of the Committee on Appropriations, U.S. House of Representatives, on H.R. 2471/Pub. L. No. 117-103, at page 1448, available at: <https://congress.gov/117/cprt/HPRT47048/CPRT-117HPRT47048.pdf>.

<sup>6</sup> *Bureau of Indian Affairs Funded and/or Operated Detention Programs* (Report No. 2015-WR-012), issued February 2016. Indian Country is defined in 18 U.S.C. § 1151 as all land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, all dependent Indian communities within the borders of the United States, and all Indian allotments.

2. Improved the condition of BIA-funded and/or -operated detention facilities.
3. Spent funds appropriated for detention facilities for the stated purpose.

## Findings

We found that, since our 2016 report, IA had taken actions to correct operational issues, but challenges remain.

Specifically, we found limited monitoring reviews of detention programs, incomplete and inconsistent serious incident reporting, detention staffing shortages, and increasing instances of overcrowding. For instance, we found that BIA's Office of Justice Services has not completed monitoring reviews of all the detention programs and did not issue reports to all of the Tribal programs it did review. In addition, 31 percent of serious incident reports labeled "in-custody death" mischaracterized the severity of the incident; and, during a site visit to the Rocky Mountain detention program, we learned officers worked multiple 12-hour shifts per week due to staffing shortages, which can lead to burnout.

We also found IA lacks complete and accurate information about the condition of detention facilities, resulting in incomplete data and unaddressed maintenance issues. For example, we visited the Northern Cheyenne Busby Juvenile detention facility and subsequently learned issues with the roof made the building uninhabitable. Four work orders for a roof replacement were recorded over a 2.5-year period. As of October 2022, the roof had not been replaced and inmates had to be vacated and moved to another facility. Finally, during our review of detention funding, we identified \$700,000 that was provided to a facility for buildings that had been demolished seven years earlier and more than \$3 million in additional questioned costs, including a potential Antideficiency Act violation. Generally, we found that these issues occurred due to a lack of appropriate guidance and oversight.

## Impact

For decades, detention facilities in Indian Country have been affected by understaffing, overcrowding, and poor facility conditions. The persistent weaknesses in detention program operations and facility maintenance represent a significant risk to the safety and well-being of inmates and staff. Further, without accurate operational and facility condition data, IA cannot be assured that decision makers have all necessary information to allocate resources most effectively.

## Recommendations

We make 24 recommendations to help IA further improve detention programs and facilities in Indian Country.

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# Introduction

## Objectives

We performed this audit in response to a congressional directive to follow up on the recommendations from our 2016 report titled *Bureau of Indian Affairs Funded and/or Operated Detention Programs*.<sup>7</sup> In the Joint Explanatory Statement to the Consolidated Appropriations Act, 2022, the Committees directed the U.S. Department of the Interior (DOI) Office of Inspector General (OIG):

[T]o follow-up on closed OIG recommendations to determine whether changes made by BIA [the Bureau of Indian Affairs] in response to prior recommendations are being implemented correctly. As part of the review, the Committees expect the OIG to examine appropriations provided for Detention/Corrections in prior years to determine how the funds were spent and whether they were spent correctly.<sup>8</sup>

In response, we reviewed BIA-funded and/or -operated detention programs and facilities to determine whether the Assistant Secretary for Indian Affairs (IA):

1. Corrected the operational issues identified in our previous report.
2. Improved the condition of BIA-funded and/or -operated detention facilities.
3. Spent funds appropriated for detention facilities for the stated purpose.

See Appendix 1 for our audit scope and methodology. See Appendix 2 for the status of our 2016 recommendations.

## Background

Our office's work has repeatedly concluded that detention facilities in Indian Country have been affected by understaffing, overcrowding, and poor facility conditions. In 2004,<sup>9</sup> we found that BIA was not providing safe and secure facilities throughout Indian Country. In 2016, we issued an evaluation report updating our 2004 assessment of the status of Indian detention facilities, and we reported that, although BIA had improved its program management and facility conditions, opportunities remained to further improve detention programs and facilities with respect to serious incident reports (SIRs), health and safety inspections, facility maintenance records, and maintenance more generally. We also reported that, while overcrowding issues had improved and staffing and certification levels increased at some facilities, these issues persisted elsewhere. In 2021, the U.S. Government Accountability Office (GAO) identified management of the Federal prison system as an emerging issue<sup>10</sup> and added it to GAO's High Risk List in 2023, based on its oversight work and knowledge of longstanding challenges.<sup>11</sup> Although detention facilities in Indian Country do not fall under the Federal prison system that the Federal Bureau of Prisons manages, the risks GAO cited regarding staffing shortages are similar to the risks we identified.

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<sup>7</sup> *Bureau of Indian Affairs Funded and/or Operated Detention Programs* (Report No. 2015-WR-012), issued February 2016.

<sup>8</sup> Committee Print of the Committee on Appropriations, U.S. House of Representatives, on H.R. 2471/Pub. L. No. 117-103, at page 1448, available at: <https://congress.gov/117/cprt/HPRT47048/CPRT-117HPRT47048.pdf>.

<sup>9</sup> *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities* (Report No. 2004-I-0056), issued September 2004.

<sup>10</sup> *Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs* (Report No. GAO-21-123), issued February 2021.

<sup>11</sup> *High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas* (Report No. GAO-23-106203), issued April 2023.

## BIA and Tribal Detention Programs and Facilities

Detention programs fall into three categories according to how they are funded and operated: direct service programs, contract programs, or compact programs. Detention programs that BIA funds and operates are direct service programs.<sup>12</sup> Tribes that choose to operate their own detention programs are funded pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA or the Act).<sup>13</sup> These are either funded by self-determination contracts (contract programs)<sup>14</sup> or self-governance compacts (compact programs)<sup>15</sup> under the Act.

As we detail later in this report, the authorities applicable to each of the three categories differ. Because compact and contract agreements must incorporate DOI and bureau policies for them to be considered binding, IA faces challenges in providing fundamental guidance to ensure the safety of inmates and corrections staff.

In addition, facility ownership and the responsibility for maintenance varies—meaning the facilities at which programs are operated may be owned by BIA or Tribes, maintained by BIA or Tribes, or occupied through a lease agreement.

Between fiscal years (FYs) 2017 and 2021, Congress appropriated more than \$513 million for detention programs in Indian Country. (See Appendix 3 for more details.)

At the time of our review, there were 85 detention programs: 24 were BIA-operated and -funded, 46 were tribally operated and BIA-funded through contracts, and 15 were tribally operated and BIA-funded through compacts. These programs were housed in 75 facilities that were variously operated by BIA or Tribes (see Figure 1). Our audit did not include review of tribally operated facilities that did not receive Federal funds.

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<sup>12</sup> BIA, Office of Justice Services, *Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2020*, [https://www.bia.gov/sites/default/files/media\\_document/2020\\_tloa\\_report\\_final\\_508d.pdf](https://www.bia.gov/sites/default/files/media_document/2020_tloa_report_final_508d.pdf).

<sup>13</sup> Passed by Congress in 1975, Title I of ISDEAA, Pub. L. No. 93-638, 88 Stat. 2203, 25 U.S.C. §§ 5301 et seq., authorized DOI to contract with Tribes to assume planning and administering certain Federal services and programs with Federal funding, referred to as “self-determination contracts.” In 1994, the Tribal Self-Governance Act, Pub. L. No. 103-413, 25 U.S.C. §§ 5361 et seq., amended ISDEAA and added a new Title IV authorizing DOI to enter into compacts with Tribes, referred to as “self-governance compacts.” These compacts allow Tribes to assume control over some Federal programs that DOI otherwise would provide directly to Tribes. According to 25 U.S.C. § 5362, “Tribal Self Governance Program,” to be eligible to participate in self-governance funding, Tribes must demonstrate financial stability for the prior three fiscal years by having no uncorrected significant and material audit exceptions in the required annual single audit of its self-determination or self-governance agreements with any Federal agency. <https://crsreports.congress.gov/product/pdf/IF/IF11877/2>.

<sup>14</sup> 25 U.S.C. §§ 5321, 5324.

<sup>15</sup> 25 U.S.C. §§ 5362-5364, 5374.

**Figure 1: Programs and Facilities at the Time of Our Review**

<b>Program Category</b>	<b>No. of Programs</b>	<b>Facility Category</b>	<b>No. of Facilities</b>
BIA direct service programs	24	BIA-maintained	15
		Bureau of Indian Education (BIE)-maintained	0
		Tribally maintained	3
		Tribally maintained under contract	1
		Leased	4
Contract programs	46	BIA-maintained*	12.5
		BIE-maintained	3
		Tribally maintained under contract	13.5
		Tribally maintained	10
		Leased	0
Compact programs	15	BIA-maintained	0
		BIE-maintained	0
		Tribally maintained under contract	0
		Tribally maintained	13
		Leased	0
<b>Total</b>	<b>85</b>		<b>75</b>

\* One facility has portions that are maintained by both BIA and the Tribe.

## Responsibilities for Detention Programs and Facilities

The Indian Law Enforcement Reform Act of 1990<sup>16</sup> requires DOI to assist in the provision of law enforcement services in Indian Country, including criminal justice remedial actions, correctional and detention services, and rehabilitation. The law authorizes DOI to prescribe regulations relating to the enforcement of criminal laws, which “includes the prevention, detection, and investigation of an offense and the detention or confinement of an offender.”

IA provides detention and related services directly to Tribes or funds Tribal programs through contracts, grants, and compact agreements. Within IA, responsibilities for detention programs and facilities are shared among several offices (see Figure 2). The Office of Justice Services (OJS)<sup>17</sup> is responsible for the overall management of BIA’s law enforcement program, which includes detention programs operated by BIA and by Tribal contract under ISDEAA.<sup>18</sup> Within the Office of Facilities, Property and Safety Management, the Division of Facilities Management and Construction (DFMC) is responsible for developing and implementing procedures, processes, and systems to execute and monitor the facilities program.<sup>19</sup> Additionally, the Division of Safety and Risk Management is responsible for conducting health and safety inspections of all BIA and

<sup>16</sup> Pub. L. No. 101-379, 104 Stat. 473, 25 U.S.C. § 2801 et seq. (1990).

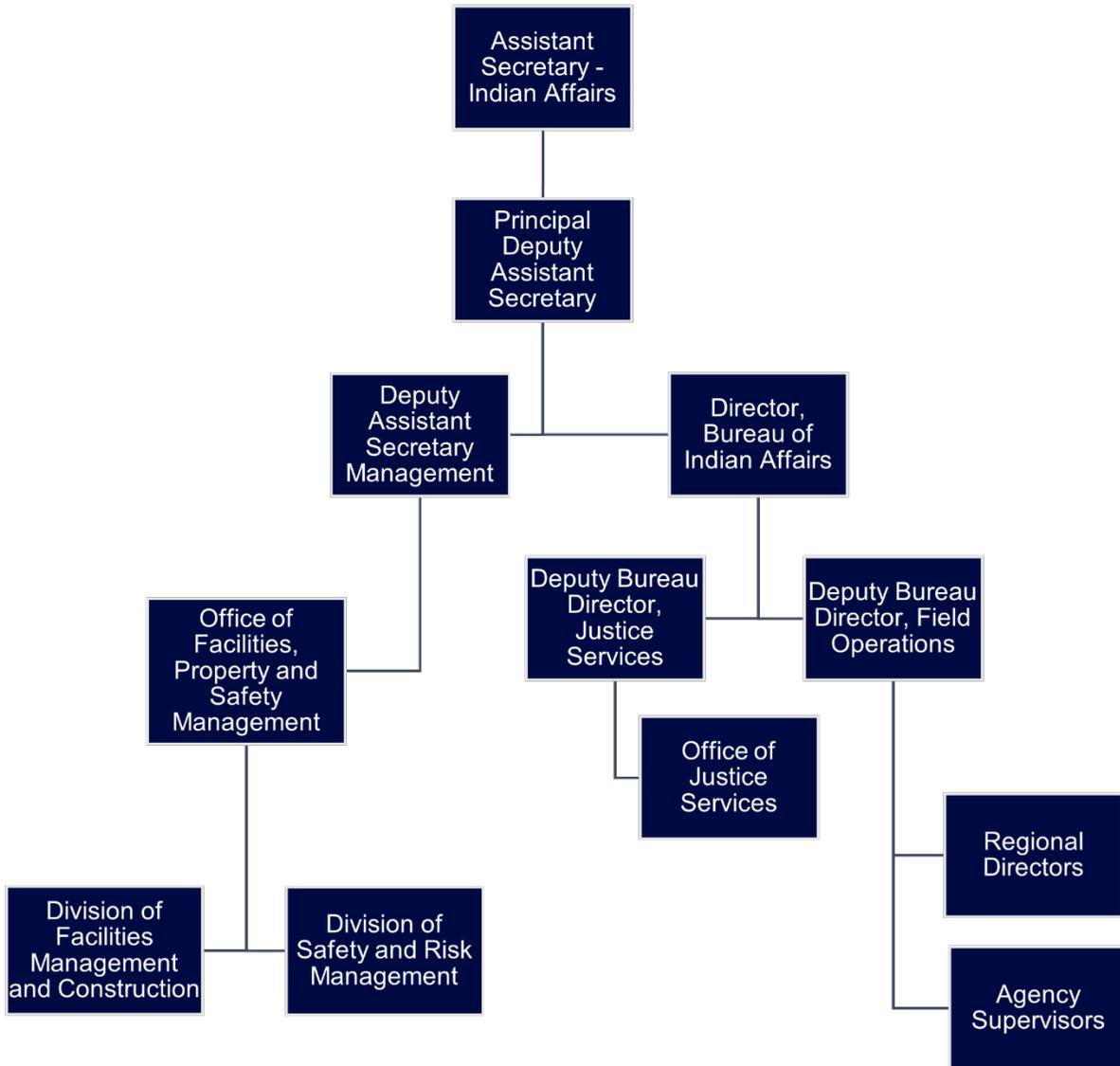
<sup>17</sup> Unlike the program areas covered by the Offices of Indian Services and Trust Services, whose programs are administered through the BIA regional office structure, all law enforcement and corrections programs are administered through the OJS line of authority and its nine-district structure because Federal law mandates supervision of law enforcement personnel exclusively by other law enforcement personnel up through the Deputy Bureau Director, Justice Services.

<sup>18</sup> *Indian Affairs Manual (IAM)*: 40 IAM 3, “Law Enforcement and Corrections,” issued May 2007.

<sup>19</sup> 80 IAM 1, “Division of Facilities Management Construction—Overview,” issued December 26, 2019.

contracted facilities.<sup>20</sup> While DFMC has overall responsibility for the facility program, BIA and BIE regional and agency personnel perform facility maintenance activities at the field level.

**Figure 2: Abbreviated Indian Affairs Organizational Chart\***



\* This organizational chart shows only the offices relevant to this report.

## Relevant Statutes, Regulations, and Policies

A variety of laws, regulations, and policies are relevant to BIA-funded or -operated detention programs and facilities. For detention programs in Indian Country, requirements vary based upon how the Tribes receive funding:

- BIA direct service programs are considered federally run programs, and they must comply with applicable Federal laws and regulations, as well as agency guidelines.
- Tribes that have contract programs must comply with agency guidelines that are included in the terms of the contract and applicable Federal laws and regulations.<sup>21</sup> ISDEAA (Subchapter I) authorizes DOI to

<sup>20</sup> 25 IAM 3-H, Volume 4, "Indian Affairs Inspections and Abatement Handbook," issued August 2023.

<sup>21</sup> 25 U.S.C. §§ 5321, 5324.

enter into self-determination contracts with Tribes under which Tribes or Tribal organizations plan, conduct, and administer federally funded programs or portions of programs. Each ISDEAA self-determination contract must contain, or incorporate by reference, the provisions of the model agreement described in the statute.<sup>22</sup>

- Tribes that have compact programs have greater flexibility over program funds and are subject only to the agency guidelines that are included in the compact and accompanying funding agreement and applicable Federal laws and regulations.<sup>23</sup> ISDEAA (Subchapter IV) authorizes Tribes to assume, through compacts, full control of programs administered by DOI offices and bureaus for the Tribes' benefit.

The Indian Law Enforcement Reform Act, in addition to requiring DOI to assist with law enforcement services in Indian Country, authorizes the Secretary of the Interior to prescribe regulations relating to the enforcement of criminal laws.

Below we summarize the most pertinent guidance.

## **25 C.F.R. Part 10 – Indian Country Detention Facilities and Programs**

This regulation states that the risk for human and civil rights violations due to a lack of common standards will subject the operation and/or facility to unnecessary exposure to liability, and, as such, gives OJS responsibility for establishing “policies, procedures, and standards for the operations, design, planning, maintenance, renovation, and construction of detention programs in the BIA and by Tribal contract under the [ISDEAA].” BIA direct service programs and Tribal contract programs must follow this regulation. Tribal compact programs are encouraged—but not required—to follow this regulation and other BIA manuals and handbooks. Federal regulations recognize that, except as specifically provided in the Act, an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements<sup>24</sup> unless agreed to in the ISDEAA contract or compact or otherwise required by law. As such, the handbooks and guidelines cited in 25 C.F.R. Part 10 apply to Tribal programs only when expressly included in contract or compact agreements as well as BIA programs.

See Appendix 4 for the history of this regulation.<sup>25</sup>

### **DOI Law Enforcement Policy**

DOI's Office of Law Enforcement and Security (OLES) establishes minimum standards for the safe and secure operation of detention facilities that DOI owns, operates, or funds.<sup>26</sup> These standards include compliance with the Prison Rape Elimination Act of 2003 and the *Core Jail Standards*, established by the American Correctional Association, which provides a comprehensive set of minimal jail standards. This policy applies to BIA programs; it applies to Tribal programs only when expressly included in contract or compact agreements.

### **DOI Serious Incident Reporting Policy**

OLES also establishes standards for serious incident reporting and requires bureaus to implement a serious incident reporting procedure to ensure that OLES is properly notified of all serious incidents.<sup>27</sup> It defines a serious incident as a law enforcement incident, emergency condition, unusual event, or homeland security concern that could focus public interest on DOI, have a residual effect on DOI, or otherwise result in inquiries

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<sup>22</sup> 25 U.S.C. § 5329(c).

<sup>23</sup> 25 U.S.C. §§ 5362-5364, 5374.

<sup>24</sup> Regulations implementing the ISDEAA exclude “unpublished requirements, such as program guidelines, manuals, or policy directives of the Secretary.” See 25 C.F.R. § 900.5.

<sup>25</sup> The history of this regulation is important because in 1996, DOI made the decision to not include the minimum standards in the regulation itself, but rather to include specific standards *only* in nonpublished agency documents. As discussed in the body of the report, it is exceedingly difficult to apply nonpublished agency documents to contract and compact programs.

<sup>26</sup> OLES *Law Enforcement Policy*, Chapter 6, “Operation of Detention Facilities,” 2014.

<sup>27</sup> *Departmental Manual (DM)*: 446 DM 17, “Serious Incident Reporting,” 2009.

to the Secretary of the Interior. This policy applies to Tribal programs only when expressly included in contract or compact agreements as well as BIA programs.

## **BIA Adult Detention Facility Guidelines**

In 2011, OJS established the *BIA Adult Detention Facility Guidelines* to guide the operation and maintenance of Indian Country detention facilities and other facilities BIA contracted to house Indian offenders. The guidelines are based largely on the American Correctional Association *Core Jail Standards*<sup>28</sup> and modified to reflect unique characteristics of Indian Country detention. Facilities demonstrating compliance with the guidelines may be eligible for BIA's approval to serve as long-term (one through nine years) incarceration facilities.<sup>29</sup> These guidelines apply to BIA programs; they apply to Tribal programs only when expressly included in contract or compact agreements.

## **OJS Division of Operations Corrections Handbook**

In 2012, OJS issued this handbook to provide guidance and clarification to OJS personnel on their duties and responsibilities. The directives in the handbook are based, when applicable, on the *BIA Adult Detention Facility Guidelines*, and the policies, rules, and regulations contained in the handbook apply to all OJS detention personnel. The handbook also states, "Tribal correctional/detention facilities are encouraged to consider adoption of this Handbook as their standard operating procedures manual, understanding that some minor modifications may be necessary. The Office of Justice Services will provide technical assistance to those [Tribal] facilities adopting this Handbook with training and deployment of the Handbook." This handbook applies to BIA programs; it applies to Tribal programs only when expressly included in contract or compact agreements.

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<sup>28</sup> American Correctional Association *Core Jail Standards* are categorized as mandatory and nonmandatory. Detention facilities wishing to be accredited must meet the requirements for all applicable mandatory standards and 90 percent of the nonmandatory standards.  
[https://www.aca.org/ACA\\_Member/ACA/ACA\\_Member/Standards\\_and\\_Accreditation/StandardsInfo\\_Home.aspx](https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx).

<sup>29</sup> Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2261 (2010), states that, for sentences greater than one year of imprisonment, a Tribal correctional center must be approved by BIA for long-term incarceration, "in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes)."

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# Results of Audit

We found that, although IA took actions to correct operational issues identified in our 2016 report, the condition of detention facilities has not significantly improved, and several of the concerns that we identified in our previous report have not been addressed.

We conducted site visits at 25 detention facilities that housed 28 detention programs<sup>30</sup> and found that certain operational issues persisted:

- OJS' Program Monitoring Reviews (PMRs) of contract programs and reviews of BIA direct service programs were limited because OJS did not address staffing issues. Further, OJS did not perform reviews of compact programs because there is no requirement to do so.
- SIRs were inaccurate because of a lack of guidance and inconsistent use.
- Understaffing persisted because of continued challenges with hiring and retention and a lack of strategic analysis of staffing conditions.
- Overcrowding is increasing due to the removal of COVID-19 safety protocols and a lack of guidance.

In addition to the operational issues we identified, we found:

- IA's information on the condition of detention facilities continued to be incomplete and inaccurate due to incomplete and inaccurate entries of facility inventory and maintenance work orders in the Indian Affairs – Facility Management System.
- More than \$3 million in questioned costs, where supplemental funds were not used for their authorized purpose, resulting in a potential Antideficiency Act violation.

These issues may also have occurred because compliance with DOI program guidelines or policy directives, such as the OJS Handbook and *BIA Adult Detention Facility Guidelines*, depends on their inclusion in governing documents for Tribal programs funded pursuant to ISDEAA contracts or compacts. Although relevant regulations mandate the minimum requirements for BIA and Tribal detention or rehabilitation programs receiving Federal funding,<sup>31</sup> an Indian Tribe or Tribal organization is not required to abide by any unpublished requirements such as DOI program guidelines, manuals, or policy directives; they are subject only to the agency guidelines that are included in the contract, compact and accompanying funding agreement, or applicable Federal law. Therefore, without express inclusion in governing documents for Tribal contract and compact programs, BIA manuals and handbooks cited in 25 C.F.R. Part 10 are not binding. Without recourse to these provisions, IA has a limited ability to provide effective oversight and guidance for Tribal detention programs and facilities.

We issued a management advisory<sup>32</sup> to IA during our fieldwork to notify it of significant and longstanding health and safety issues we found at specific detention facilities and included a recommendation to develop and implement a plan to address those issues. Although IA did not provide a response to our management advisory and its recommendations, IA later contacted our office and represented that it was working to address the issues identified in our management advisory.<sup>33</sup>

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<sup>30</sup> The sites visited included 6 BIA-owned buildings, 18 tribally owned buildings, and 1 U.S. General Services Administration-leased building. These facilities housed 4 BIA direct service programs, 21 contract programs, and 3 compact programs. Three facilities we visited had more than one detention program housed in the same facility. Two housed both adult and juvenile programs in the same facility, and one housed male and female programs in the same facility. See Appendix 6 for more details.

<sup>31</sup> 25 C.F.R. Part 10.

<sup>32</sup> *Detention Facility Health and Safety Concerns* (Report No. 2022-WR-040-A), issued April 2023.

<sup>33</sup> IA identified a total of 14 corrective actions at 3 detention facilities described in our management advisory. IA officials told us they expected to have the repairs completed by June 2025. The recommendation will remain open until the repairs are completed.

The issues we identified in this audit continue to present a significant risk to the safety and well-being of inmates and staff. IA should prioritize actions to correct these deficiencies to help address these concerns.

See Appendix 5 for a statement of monetary impact and Appendix 6 for sites visited.

## Operational Issues Persisted

We found that operational issues persisted, specifically in the areas of PMRs, serious incident reporting, staffing, and overcrowding. We found, however, that officer training has improved since our 2016 report.

### Program Reviews Were Limited

We found that OJS' reviews of individual detention programs were limited. OJS developed a PMR program in 2018, which uses a standard template. PMRs fulfill OJS' responsibility for oversight of contract programs; however, it has not completed reviews of all the contract programs and did not issue reports to all of the Tribal programs it did review. In addition, OJS performed only limited reviews of BIA direct service programs, without using a standard tool or template, and did not review compact programs. Finally, OJS stated that it plans to reduce the standards it includes in its PMRs. We determined that the limited reviews occurred because of issues related to staffing, contract language, and authority.

If programs are not reviewed or provided with the resulting report, OJS and Tribes may not be aware of existing program weaknesses and potential risks to the safety and well-being of staff and inmates. In addition, without thorough reviews of programs, OJS cannot ensure compliance with existing guidelines or contract terms in place to protect the safety and well-being of inmates and detention staff.

### 2016 Recommendation Update Regarding BIA-Operated Programs

In 2016, we reported that OJS was conducting Correctional Action Support Team (CAST) reviews of BIA-operated detention programs to identify areas of strength and weakness. The reviews were based on the 43 mandatory and 93 nonmandatory standards (136 standards total) in the 2011 *BIA Adult Detention Facility Guidelines*. In our 2016 report, we noted that OJS had conducted CAST reviews for 10 of the 24 BIA-operated detention facilities. OJS planned to conduct followup inspections 200 days after each CAST review once all BIA-operated programs had been reviewed. At the time of our report, we considered CAST reviews a promising practice and recommended that these reviews be expanded to include tribally operated programs; however, CAST reviews were discontinued in 2017 and replaced by PMRs.

### Program Review Practices and Requirements

After CAST reviews were discontinued in 2017, OJS started reviewing BIA direct service programs by district in 2022. Specifically, OJS reviews direct service programs in one district per year without a standard tool or template.

OJS also began conducting PMRs of all contract programs in 2018. These reviews, conducted pursuant to the terms of the ISDEAA model agreement, are based on the 136 standards in the *BIA Adult Detention Facility Guidelines* and are conducted using a standard template that seeks to ensure documentation of the compliance status of all standards. According to its own policies,<sup>34</sup> OJS must prepare and submit a PMR monitoring plan to the contract awarding official within 45 days of the contract award date, and the plan must include a review date that is coordinated with the Tribe. The review generally takes two to three days onsite. OJS uses each PMR to:

- Verify the program complies with all regulations and/or established Tribal policies and procedures that are set forth in the relevant contract.

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<sup>34</sup> Bureau of Indian Affairs Office of Justice Services P.L. 93-638 Self Determination Awarding Official Technical Representative/Sub Awarding Official Technical Representative (AOTR/SAOTR) Contract Monitoring Guide, August 2020.

- Ensure program expenditures under the contract are allowable, necessary, and reasonably consistent with policies, regulations, and other required procedures within the scope of the contract.
- Proactively address problems that impede the effective implementation of programs.

OJS guidance states that a written report should be sent to the Tribe within 90 days after the PMR site visit.<sup>35</sup> If OJS finds high-liability issues,<sup>36</sup> it issues letters to Tribes within two business days so that the concerns can be addressed promptly. OJS policy requires PMRs to be conducted once per contract period; additional visits may not be performed unless there is reasonable cause to believe that grounds for reassumption of the contract, suspension of contract payments, or other serious contract performance deficiencies may exist.

There is no requirement for program reviews of compact programs.

OJS’ review practices for different detention programs at the time we conducted fieldwork are shown in Figure 3.

**Figure 3: OJS Program Review Practices**

<b>Program Operation Type</b>	<b>Program Review Practice</b>
BIA direct service program	<ul style="list-style-type: none"> <li>• One district per year</li> <li>• Limited report document</li> </ul>
Contract program	<ul style="list-style-type: none"> <li>• Once per contract term</li> <li>• Reviews 136 standards*</li> </ul>
Compact program	<ul style="list-style-type: none"> <li>• No reviews</li> </ul>

\* OJS updated its tool (template) in December 2022 to reduce the standards for review to 56.

### **OJS Detention Program Reviews Were Limited**

We found that OJS has not completed PMRs and issued reports for all contract programs, has reduced the number of standards it reviews in PMRs, and has not reviewed all direct service programs and those reviews it had completed were limited. Of the 46 contract programs, OJS completed PMRs for 41 (89 percent). Of those 41 programs, OJS issued PMR reports to only 21 (51 percent),<sup>37</sup> and the reports for 20 programs (49 percent) were pending and over the 90-day limit, with some dating back to site visits conducted as early as October 2018. OJS later informed us that it did not intend to issue 10 of the reports that were conducted in FY 2019 because too much time had passed and the employees who conducted the reviews were no longer with OJS. The remaining 5 of the 46 contract programs (10 percent) have either never received a PMR or received only a partial review. We visited one of these five programs, however, and found it had a contract period of three years and should have received a PMR.

PMRs help ensure that maintenance and facility deficiencies are corrected in a timely manner. For example, a 2022 PMR report identified multiple facility maintenance issues at the Fort Peck adult detention facility. These issues included a disabled fire system, standing water from broken sprinklers, excrement on walls, and nonfunctioning toilets and sinks. As a result, BIA notified us of the issues and made plans to transport inmates to another location so necessary repairs could be made.

In addition, OJS told us that to improve timeliness in future reviews, it will use a more limited review tool. OJS officials issued the updated tool in December 2022. The tool includes the 43 mandatory BIA standards as well as 13 nonmandatory standards that OJS officials told us they included while “being mindful” of agreed-upon

<sup>35</sup> *Id.* Some awarding officials may have more stringent timeframes and require written reports within 45 days.

<sup>36</sup> High-liability issues pose potential concern for the safety and welfare of Tribal members and those in the communities. According to OJS, deficiencies requiring immediate corrective action must be brought to the Tribe’s attention during the exit brief.

<sup>37</sup> These reviews were completed between 2018 and 2023.

contract terms and conditions. One standard that will be eliminated with the new tool is compliance with the Tribal Law and Order Act of 2010,<sup>38</sup> which requires Tribal correction programs receiving Federal funding to be approved by BIA for long-term incarceration (greater than one year). OJS stated that if a program seeks approval for extended sentencing, it would still need to comply with all 136 standards and that OJS would conduct a separate review to ensure compliance. At the time of our review, only two detention programs had received approval from OJS for long-term incarceration.<sup>39</sup> However, we learned of other programs that reported instances of extended sentencing that had not received OJS approval. In particular, detention program staff at the Blackfeet BIA detention program told us most, but not all, inmates stay less than one year. The San Carlos and Crownpoint detention programs (both contract programs) told us there were occasions when inmates were held longer than one year. Finally, officials from one self-governance compact program we visited told us that inmates can stay up to three years.

Other standards OJS will no longer review include ensuring the facility is in good repair, inmate housing is within capacity limits, physical inmate counts are conducted regularly, special management inmates are observed, SIRs are written for use of force to control inmates or inmates remaining in restraints at the end of a shift, and protocols for actions taken in the event of an inmate death are followed.

In 2023, OJS worked on PMR processes and report submissions. The report was shortened, and additional edits to the PMR tool are planned to further streamline the process. OJS officials told us that there are no remaining obstacles to completing PMRs and issuing reports to Tribes in a timely manner.

Further, OJS completed its last CAST review in 2017 and did not complete any reviews of the 24 direct service programs between 2017 and 2022. We also found that OJS performed only limited program reviews for BIA-funded detention programs, without using a standard tool or template, and conducted these reviews in only one district per year.<sup>40</sup> While OJS officials told us the reviews will use the same standard tool in the future, the final summary report includes minimal information on staffing levels and challenges identified. OJS also informed us that it did not conduct any reviews of BIA programs in 2023 because it was focused on developing the updated PMR tool with fewer standards and completing outstanding reports.

## **Issues With Staffing, Contracting Language, and Authority Contributed to Limited Reviews**

OJS attributed limited reviews of contract detention programs to staffing issues; specifically, it was not fully staffed with Corrections Program Specialists (CPSs), who are primarily responsible for the program reviews, until mid-2022, and it took time to train new CPSs in review procedures after onboarding them. OJS attributed the failure to issue thorough reports to training and staffing limitations of new CPSs as well as report review delays at the Deputy Associate Director and Associate Director level. Regarding reviews of BIA detention programs, BIA officials told us that program reviews in general have been reduced due to OJS staffing vacancies. Additionally, OJS does not require its direct service programs to receive PMRs.

In addition, the model agreement provided under 25 U.S.C. § 5329 states that program reviews of contract programs can be performed once or twice per contract period or as requested by the Tribe.<sup>41</sup> As a result, frequency of reviews can vary substantially depending on contract period. Contract performance periods for the programs we visited ranged from one year to mature indefinite.<sup>42</sup> OJS officials told us that when Tribes requested the indefinite terms in the past, OJS faced challenges in obtaining access to conduct additional reviews without the Tribes' invitation because the model agreement limits OJS to one or two monitoring visits per contract term and Tribes may be reluctant to renegotiate contract requirements. At the time of our review, however, OJS officials told us that all Tribes had been cooperative in allowing OJS to review their programs

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<sup>38</sup> Pub. L. No. 111-211, 124 Stat. 2261, 25 U.S.C. § 2801 et seq.

<sup>39</sup> OJS approved the Salt River and Gila River adult detention programs to hold inmates for longer than one year.

<sup>40</sup> The OJS directory lists nine districts; only five districts contain BIA detention programs.

<sup>41</sup> The model agreement was updated in 2020 to increase the number of program reviews from one to two per contract period.

<sup>42</sup> Mature contracts refer to self-determination contracts that have been continuously operated by a Tribal organization for three or more years and for which there are no significant and material audit exceptions in the annual financial audit of the Tribal organization. An OJS official told us that mature contracts are issued at the request of Tribes and some date back to 1991 and have outdated language.

because OJS had promoted PMRs as opportunities to reveal areas in which technical assistance may benefit the program. An OJS official told us that if there is not a contract end date, OJS tries to review programs on a three-year cycle.

Regulations at 25 U.S.C. § 5302 provide for “maximum Indian participation in the direction of . . . Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.” As a result, for contract programs we visited, we found that only 66 percent (14 out of 21) had contract documentation that included express language requiring the program to operate in accordance with both the *OJS Division of Operations Corrections Handbook* and the *BIA Adult Detention Facility Guidelines* to some degree. Moreover, the terms of compliance varied among the sample. Some contracts commit to only 90 percent of all nonmandatory standards without identifying the standards that would not apply, while others cited either the handbook or the guidelines, or failed to reference either document.<sup>43</sup> The customized nature of these types of contracts and programs provide an opportunity for OJS to conduct more focused reviews.

If detention programs do not receive thorough reviews that consider the unique nature of each program, OJS cannot ensure program compliance. Further, if accompanying reports are not delivered to Tribes in a timely manner, BIA and Tribal detention programs are left unaware of and cannot be held accountable for noncompliance with established standards. Noncompliance with these standards will increase health and safety risks for inmates and staff at detention facilities. Therefore, the applicability of these standards is essential for IA to provide effective oversight and guidance for Tribal detention programs and facilities.

## Recommendations

We recommend that Indian Affairs:

1. Develop and implement minimum standards for the operation of detention programs that are binding on both direct service and contract programs.
2. Conduct risk-based Program Monitoring Reviews of all direct service and contract programs.
3. Provide timely reporting in accordance with Office of Justice Services’ guidelines to Tribes and BIA correctional staff regarding the results of Program Monitoring Reviews.
4. Assess the level of resources needed to accomplish the oversight mission at direct service and contract programs.

## Serious Incident Reports Were Inaccurate

DOI policy and OJS guidance require BIA direct service and contract program staff to use the Incident Management, Analysis, and Reporting System (IMARS) to report and track serious incidents. Of the portions of SIRs we reviewed, we found that approximately 8 percent were missing facility addresses, and 22 percent of high-risk category incidents were inconsistently labeled. For example, SIR labels did not match the narrative descriptions. Despite OJS’ efforts, the issues we found with serious incident reporting were due, in part, to lack of guidance and inconsistent use of IMARS. Inaccurate SIRs prevent OJS from understanding actual and potential deficiencies in detention programs under its supervision.

<sup>43</sup> Our analysis identified the incorporation of other program standards including Federal laws such as the Tribal Law and Order Act and the Prison Rape Elimination Act.

## 2016 Recommendation Update

In 2016, we found SIR reporting had improved since 2004, but we still found inconsistencies and discrepancies in data. In response to our draft findings, OJS issued a policy memorandum<sup>44</sup> in December 2015 further clarifying DOI's requirements for entering SIRs into IMARS.

### Serious Incident Reporting Requirements

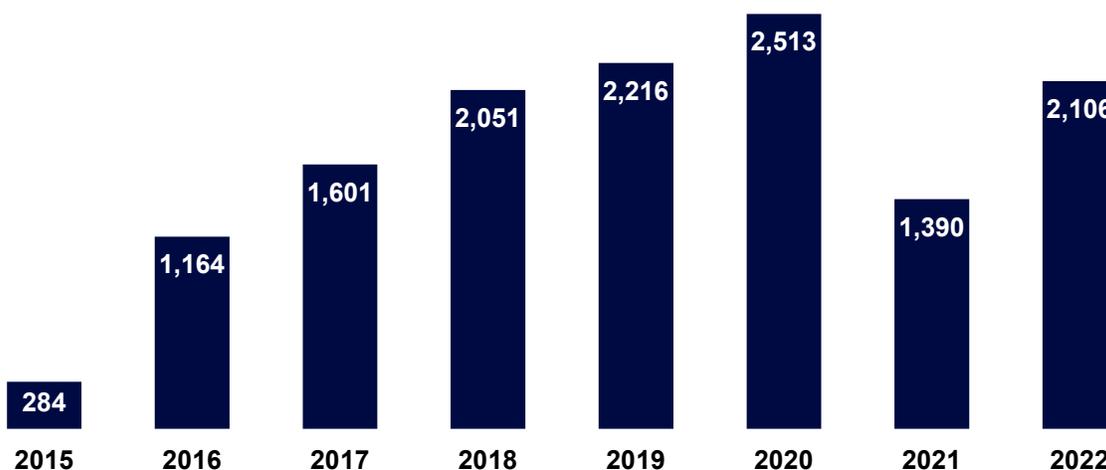
The *Departmental Manual* defines serious incidents as “emergency conditions or unusual events that could focus public interest on the Department.”<sup>45</sup> BIA's OJS Handbook lists the following examples as serious incidents: death, life-threatening injury, escapes, and criminal acts involving DOI-controlled personnel and property. In 2014, the OLES *Law Enforcement Policy* established the requirement for bureaus to use IMARS as the primary means to record, track, and report serious incidents.<sup>46</sup>

Further, the *OJS Division of Operations Corrections Handbook* requires all SIRs and facility SIR logs to be maintained at each location where an SIR is generated. In addition, the 2015 memorandum that OJS issued further clarified that BIA law enforcement personnel are required to record all SIRs in IMARS and enter them into facility SIR logs. The memorandum also expanded OJS' quality assurance process to require staff to collect all facility SIR logs and submit them to the CPS to reconcile against IMARS monthly and to certify report data accuracy quarterly. The CPS sends confirmation of quarterly certification to the OJS Associate Director annually.

### Incomplete and Inconsistent Serious Incident Reports

We found that SIRs in IMARS were inaccurate. Specifically, they were incomplete, inconsistently labeled, and not being reconciled regularly. Figure 4 shows the number of SIRs reported in IMARS from 2015 to 2022. The data shows a significant increase between 2015 and 2016, coinciding with OJS' policy memorandum requiring SIRs to be recorded in IMARS. We cannot determine if increases and decreases in IMARS SIR counts are due to actual changes in number of serious incidents occurring or because of improved reporting of incidents occurring in IMARS.

**Figure 4: Number of Serious Incident Reports From 2015 Through 2022**



<sup>44</sup> OJS Memorandum, *IMARS Serious Incident Reporting and Reconciliation – Detention*, issued December 18, 2015.

<sup>45</sup> 446 DM 17, “Serious Incident Reporting,” 2009.

<sup>46</sup> OLES *Law Enforcement Policy*, Chapter 13 “Incident Management, Analysis, and Reporting System (IMARS),” 2014.

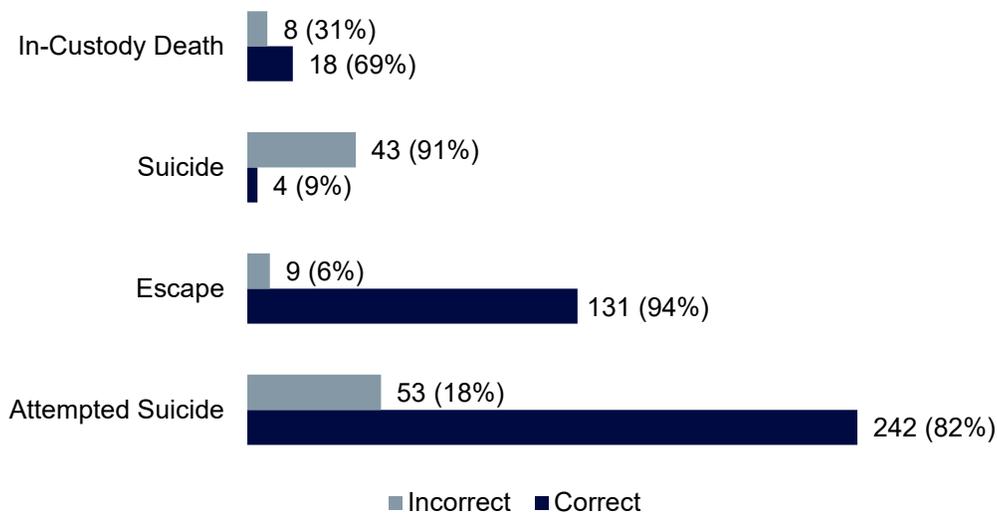
We analyzed all 13,325 SIRs submitted to OJS from 2015 through 2022 and found 30 percent with incomplete entries. Of those incomplete entries, 8.3 percent were missing significant information that prevented us from reconciling the data to facility logs. More specifically, 1,084 were missing both facility names and addresses, which prevented us from determining the location of the incident, and 50 were missing incident notes. Incident notes are an important part of the SIR when reconciling facility SIR logs with IMARS because, unlike other fields, incident notes can capture a narrative description of the incident, which helps document what happened and who was involved, and may help determine where an incident took place if other fields are incomplete. These deficiencies in reporting occurred even though OJS told us it had conducted regular reconciliation calls during the time of our review.

We also found many SIRs were inconsistently labeled. For example, we reviewed 508 SIRs in 4 categories: attempted suicides, escapes, suicides, and in-custody deaths (see Figure 5). We found:

- 8 of 26 incidents labeled as in-custody deaths (31 percent) mischaracterized the severity of the incident. In five of those eight (63 percent), the incident narratives stated that inmates were transported to the hospital; however, no information was provided as to the condition of the inmate after hospitalization.
- 43 of 47 incidents labeled as suicides (91 percent) mischaracterized the severity of the incident.
- 9 of 140 incidents labeled as escapes (6 percent) did not indicate actual escapes.
- 53 of 295 (18 percent) of incidents labeled as attempted suicides included narrative descriptions that mischaracterized the severity of the incident because they described suicidal ideations rather than suicide attempts.<sup>47</sup>

An example of an incident mischaracterized as a suicide had a narrative stating the “inmate was brought in he was uncooperative when being booked in when asked if he was feeling suicidal, he stated that he was suicidal he was later changed out into the suicide smock and placed in the MHU cell #2 alone. Male was later cleared of being on suicide watch.”

**Figure 5: Inconsistencies in SIR Labels for Four Categories\***



\* For the purposes of this report, we analyzed incident notes to determine if each incident accurately reflected the label.

<sup>47</sup> The National Institute of Health, National Library of Medicine states that “suicidal ideation,” which is often called suicidal thoughts or ideas, “is a broad term used to describe a range of contemplations, wishes, and preoccupations with death and suicide.” Definition available at: <https://pubmed.ncbi.nlm.nih.gov/33351435/>.

## **Lack of Guidance and Inconsistencies in IMARS and Facility Logs Contributed to SIR Inaccuracies**

While OJS policy requires the use of IMARS, we determined that there is no existing guidance for detention program and OJS staff on consistent IMARS data entry. In particular, the *BIA Adult Detention Facility Guidelines* do not include a standard for the use of IMARS or logging of serious incidents.

In addition, records of incidents in the facility logs were not reliably updated after the creation of an SIR in IMARS. We found that also made it difficult to measure the true volume of discrepancies that exist. For example, an official at the Rocky Mountain detention facility stated that they did not always update facility logs after SIRs were created in IMARS.

An OJS official told us all SIRs are consolidated annually into a single report. The consolidated report for SIRs occurring in 2022 demonstrated inconsistencies. For example, the consolidated report showed that one of the eight districts categorized attempted suicides as suicides and attempted escapes as escapes. OJS districts categorizing SIRs inconsistently prevents valid comparisons between districts and facilities.

In addition, when we visited detention facilities and attempted to reconcile various information sources, we found inconsistent information. In particular, the IMARS and facility logs did not reflect the same number of SIRs. For example, we found the San Carlos detention program had 1,135 SIRs in its facility logs and 855 in IMARS. Conversely, at the Rocky Mountain detention facility, we found 170 SIRs in its facility logs and 452 in IMARS. Although OJS stated that reconciliations were occurring, the inconsistencies that we identified suggest that this process is not being regularly performed or is not being performed accurately.

SIR data has the potential to inform programmatic decision making by aiding in identifying vulnerabilities (e.g., frequent escapes and deaths). Inconsistencies and incorrect categorization mean that IMARS data cannot be used fully, and resources (financial and operational) may not be allocated to programs in most need. Furthermore, if OJS does not monitor and review SIR documentation and reporting, it may not be able to provide adequate oversight to ensure programs are providing useful data.

### **Recommendations**

We recommend that Indian Affairs:

5. Establish and implement standards for consistency and thoroughness in data entry of serious incidents in the Incident Management, Analysis, and Reporting System and facility log records for direct service and contract programs.
6. Provide training to staff and management at direct service and contract programs regarding serious incident reporting.
7. Provide guidance to Corrections Program Specialists on performing and documenting serious incident report reconciliation to ensure that Incident Management, Analysis, and Reporting System data follows established standards for consistency and thoroughness.
8. Establish oversight procedures to ensure direct service and contract program compliance with serious incident reporting standards and guidance.

## Detention Staffing Levels Were Low

In 2021, GAO reported similar staffing issues for Federal prisons operating under the Bureau of Prisons,<sup>48</sup> resulting in the addition of the Federal prisons system to GAO's High Risk List in 2023. We found that staffing levels across direct service and contract programs were also a challenge. While BIA and OJS guidance require that facilities have sufficient staff and describe how often staff must personally observe inmates, this guidance applies to Tribal programs only when agreed to in a contract, compact, or accompanying funding agreement. Detention program staff noted a lack of available housing, low pay, lack of qualified candidates, a lengthy background check process, the COVID-19 pandemic, and long working hours as factors that kept them from hiring and retaining staff. Staffing shortages may put inmate and officer health and safety at risk.

### 2016 Recommendation Update

In 2016, we reported that staffing shortages in detention programs resulted from lack of available housing, low pay, lack of qualified candidates, lengthy background checks, and insufficient funding. To address our recommendation to explore alternate methods for recruitment and retention of qualified staff, OJS reported that it developed a corrections recruitment and retention guide and worked with the U.S. Indian Police Academy to accept training from other Federal, State, and Tribal training programs when reviewing applicants. In addition, in 2016, OJS reported that, through a memorandum of agreement with the National Institute of Corrections, BIA detention staff received training to conduct proper staffing analyses for their respective programs.

### Detention Facility Staffing Requirements

The *BIA Adult Detention Facility Guidelines* state that sufficient staff are expected at all times to perform functions relating to staff safety and the security, custody, and supervision of inmates as needed to operate the facility in conformance with the standards. It also states that detention officers' posts are to be located in or in close proximity to inmate living areas to permit officers to see or hear and respond promptly to emergency situations. In addition, officers are expected to observe all inmates as follows:

- Facility security, life safety, and communications systems are monitored continuously from a secure location.
- Detention officers personally observe inmates classified as medium- or maximum-security risks or designated as special management at least every 30 minutes.
- Detention officers personally observe inmates classified as minimum- or low-security risks at least every 60 minutes.
- Detention officers visually observe inmates in restraints at least every 15 minutes.

The guidelines also call for sufficient staff, including a designated supervisor, to be provided at all times to perform functions relating to staff safety and the security, custody, and supervision of inmates as needed to operate the facility in conformance with the standards.

Separate from these guidelines, the *OJS Division of Operations Corrections Handbook* states:

- Detention officers shall personally observe face and movement of all inmates at least every 30 minutes on an irregular schedule (every 15 minutes for inmates who have mental disorders or demonstrate unusual or bizarre behavior and continuous observation of suicidal inmates).
- Detention officers assigned to housing units will maintain visual supervision of inmates while inmates are in the housing units.

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<sup>48</sup> *Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs* (Report No. GAO-21-123), issued February 2021.

- Detention officers will perform wellness checks by visually monitoring inmates on an irregular schedule (hourly for general population, at least every 30 minutes for special management inmates, at least every 15 minutes for mentally disordered, and continuous observation for suicidal inmates).
- Detention officers will not leave inmates unsupervised during transport. Transports may be authorized for high-profile cases, routine medical appointments, court appearances, or in the event of an emergency.

The handbook defines the two types of housing units typically found in detention facilities: cells and dormitories (consisting of a dorm sleeping area with bunk beds and storage units). Both types of housing units also include dayrooms, janitor closets, and restrooms with sinks, toilets, and showers.

## Shortages in Detention Program Staffing

We found that detention program staffing levels continued to be low. Based on three-year averages of OJS annual staffing reports from FY 2012 to FY 2014 and FY 2019 to FY 2021,<sup>49</sup> vacant positions have grown from 17 percent to 24 percent.<sup>50</sup>

The Tohono O’odham detention program is an example of a program with vacant positions. Specifically, it only had two officers to monitor more than 30 inmates in the housing units, including multiple special management inmates. The facility included a building with five housing units in which surveillance cameras were located only in hallways. This ratio makes it physically impossible to maintain visual supervision of inmates while inmates are in the housing units, as stated in the *OJS Division of Operations Corrections Handbook*.

Although each Tribe’s and detention program’s specific circumstances may differ, we found that the programs we visited had established promising practices in efforts to address challenges that contributed to staffing shortages. Specifically, during our site visits, we learned that the Hualapai detention program was offering pay increases to attract applicants and retain existing staff and that the Zuni detention program was collaborating with community outreach programs to help with recruitment. In addition to these efforts, the OJS Indian Police Academy coordinated nine recruiting events at local junior colleges in the summer of 2022; OJS Support Services took over these recruitment efforts in August 2022. OJS told us that it continued to hold recruitment events at Tribal colleges and festivals in addition to each district advertising and holding their own recruitment events.

In addition, the Office of Facilities, Property and Safety Management established a Public Health and Safety Program in early 2021 to provide in-house technical expertise in public health for IA. The program team initiated a survey to identify needs, which included efforts to help with employee retention by providing mental health support. At the time of our review, program staff explained that they were authorized to contact only BIA employees but were working toward getting approval to contact contract employees.

## Reported Staffing Shortages Due to Hiring and Retention Issues

An OJS official and detention program staff stated that a lack of available housing, low pay, industry competition, lack of qualified candidates, a lengthy background check process, and the COVID-19 pandemic contributed to the difficulty finding and retaining staff. For example, the White Mountain Apache adult detention program reported that it typically received 50 to 60 applications for a position before the COVID-19 pandemic but now typically receives 3 or fewer applications for a position. In addition, we were told by program staff at multiple facilities that long working hours could cause burnout. For example, the Rocky Mountain detention program, reported that it had officers working six 12-hour shifts per week.

<sup>49</sup> FY 2021 is the most recent year for which we could obtain complete staffing data.

<sup>50</sup> OJS officials stated that staffing needs cannot be determined by applying a standard formula (inmate-to-officer ratio) because facility design and activity schedules can influence the ability of officers to supervise inmates effectively. OJS conducts ongoing staffing analyses that assess various factors including facility design and inmate activity schedules.

These reported shortages may keep detention center staff from meeting supervisory standards set by the *BIA Adult Detention Facility Guidelines*. While these guidelines are not binding on tribally operated programs unless agreed to in a contract, compact, or accompanying funding agreement, the standards serve the interest of the safety and well-being of inmates and staff. Staffing shortages may be exacerbated if there are any special management inmates that may require constant visual observation, if officers must transport and escort other inmates for appointments or medical emergencies, or if officers need to attend required certification training. We believe a strategic recruiting plan will provide an opportunity for BIA to periodically evaluate staffing levels, examine pay scales and other factors that affect hiring and retention, and target hiring where it is most needed.

### Recommendation

We recommend that Indian Affairs:

9. Develop and distribute a strategic recruiting plan that is updated periodically with the goal to fill staffing vacancies at detention facilities and alleviate effects of low detention staffing at direct service and contract programs.

## Overcrowding Incidents Remain High

We found that since the COVID-19 pandemic, reported incidents of overcrowding continued to rise and that facilities did not adjust capacities to account for staffing shortages. OJS and BIA have guidance regarding inmate housing capacity, but there is no specific guidance defining overcrowding, leading us to question whether all instances of overcrowding were reported. Rising incidents of overcrowding jeopardize the safety and well-being of staff and inmates. According to the U.S. Department of Justice, overcrowding is a serious issue that could cause adverse effects in the inmate population such as high blood pressure and increased assault, death, and suicide rates.<sup>51</sup>

### 2016 Recommendation Update

In 2016, we reported that BIA and Tribal detention programs struggled with overcrowding. BIA-operated facilities sought to address overcrowding by contracting bedspace with local counties, Tribes, and private organizations. In addition, some Tribes had agreements with local counties or other Tribes to house inmates in cases of overcrowding. We recommended that BIA continue to explore methods to reduce overcrowding. BIA responded to our report and committed to continuing to support and encourage Tribal and Federal partnerships in exploring and implementing strategies to reduce overcrowding.

### Detention Facility Population Level Requirements

According to the *OJS Division of Operations Corrections Handbook*, instances of overcrowding are considered serious incidents, and policy requires documentation of all serious incidents that occur within detention operations. As noted previously, the *Departmental Manual* established the requirement for bureaus to use IMARS as the primary means to record, track, and report serious incidents. An OJS official told us facility capacity is determined by the number of beds at a facility and when inmate counts exceed beds, an SIR for overcrowding should be created.

While the *OJS Division of Operations Corrections Handbook* directs OJS District and individual facility staff to “monitor inmate capacities and make every effort to address overcrowding,” it does not state the definition of overcrowding or specific standards to be considered in determining a facility’s capacity.

<sup>51</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Effect of Prison Crowding on Inmate Behavior* (Report No. NCJ 67444), issued December 1980.

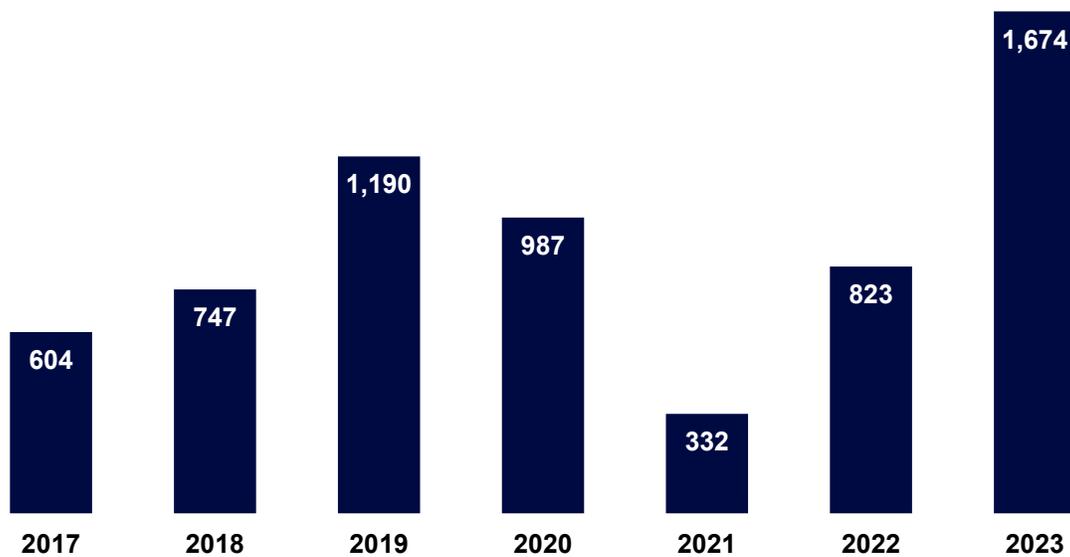
The *BIA Adult Detention Facility Guidelines* include requirements that we believe should be considered when determining if overcrowding has occurred. For example:

- A single-occupancy cell must provide at least 35 square feet of unencumbered space (70 square feet if the inmate is confined for more than 10 hours per day).
- Multiple-occupancy rooms, which house between 2 and 64 occupants, must provide 25 square feet of unencumbered space per occupant (35 square feet if the inmates are confined for more than 10 hours per day).

## Record Levels of Reports of Overcrowding

Since our 2016 review, we found that reported incidents of overcrowding in IMARS have fluctuated but are trending toward record high levels. Specifically, before the COVID-19 pandemic, reports of overcrowding incidents were steadily increasing but dropped incrementally in 2020 and 2021. In 2019, there were 1,190 reported overcrowding incidents; in 2021, there were 332 reported overcrowding incidents, representing a 72-percent decrease from 2019. As pandemic protocols were lifted in 2022 and 2023, however, overcrowding levels appear to be trending back up and reported incidents have significantly exceeded the previous high level of 2019 (see Figure 6).

**Figure 6: Overcrowding Incidents Reported in IMARS From 2017 Through 2023**



Our findings in this area are generally consistent with information in a U.S. Department of Justice October 2021 report that examined the impact of COVID-19 on Tribal jail populations.<sup>52</sup> The report found a 30-percent decrease of inmates held in Indian Country jails from 2019 to 2020. The report attributes the decline in inmate population to a reduction in admissions to Indian Country jails and expedited releases. This aligns with our analysis of inmate population during this same time, which showed that incidents of overcrowding declined due, in part, to redirecting admissions to other locations (other counties, other Tribes, or treatment facilities), and detention facility staff working within the Tribal judicial system to expedite inmate releases. For example, the Tohono O’odham adult detention program reported repeated instances of overcrowding in 2016. During the outbreak of COVID-19, the facility implemented strict booking protocols to limit exposure and has maintained inmate populations below capacity, reporting zero instances of overcrowding between 2019 and 2023.

<sup>52</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Jails in Indian Country, 2019-2020 and the Impact of COVID-19 on the Tribal Jail Population* (Report No. NCJ 300801), issued October 2021.

However, despite the Tohono O’odham facility’s success in reducing reported incidents of overcrowding, we saw multiple-occupancy rooms at the facility that raised questions as to whether each inmate had the standard 25-to-35-square-foot area stated in the *BIA Adult Detention Facility Guidelines*. Based on visual estimates, it did not appear that there was adequate square footage per inmate in multiple holding rooms. We could not confirm these concerns, however, as OJS has not completed a PMR, and no SIR was submitted regarding this situation.

### **Overcrowding Affected by the COVID-19 Pandemic and Lack of Guidance**

As COVID-19 vaccines became available and restrictions were loosened, reported overcrowding levels across Indian Country jails, as illustrated in Figure 6, began to rise and could potentially outpace pre-pandemic levels.

In addition, while overcrowding incidents are required to be entered into IMARS as an SIR, there was no guidance defining how or when overcrowding is determined. An OJS official and a CPS told us facility capacity levels are determined based on the number of open beds. Further, OJS officials indicated an expectation that *BIA Adult Detention Facility Guidelines* standards as well as *OJS Division of Operations Corrections Handbook* policies be considered in determining appropriate facility capacity levels; however, the specific definition of overcrowding and expected consideration of standards and policies are not stated in any document. While these guidelines are not binding on contract or compact programs unless agreed to in a contract, compact, or accompanying funding agreement, the standards serve the interest of the safety and well-being of inmates and staff.

The recent rise in reported overcrowding incidents risks the health and safety of inmates and staff. The issue of overcrowding in prisons has been linked to many negative effects on inmates such as high blood pressure, increased assault rates, death rates (both violent and nonviolent), suicide rates, and suicide attempts.

<b>Recommendations</b>
<p>We recommend that Indian Affairs:</p> <ol style="list-style-type: none"><li>10. Develop and implement guidance, including a clear definition of overcrowding, to ensure consistent reporting of overcrowding incidents for direct service and contract programs. This guidance should consider appropriate industry standards and policies.</li><li>11. Conduct a comprehensive analysis of direct service and contract detention programs to determine capacity limits.</li><li>12. Develop and implement a plan to address overcrowding to the maximum extent possible for all direct service and contract programs.</li><li>13. Establish oversight procedures to ensure review of occupancy levels and physical inmate counts for all direct service and contract programs.</li></ol>



### **Officer Training Certification Rates Improved**

In 2016, we reported that correctional officer training had substantially improved since 2004. We found that officer training rates have further improved since our 2016 review.

The *OJS Division of Operations Corrections Handbook* states that officers must successfully complete an Indian Police Academy (IPA) Basic Detention Course within one year of being hired. We reported in 2004 that only 48 percent of officers at sites we visited received detention officer training. From 2012 through 2014, an average of 67 percent of detention officers had received the required certification training.

During our current audit, we found that training rates have further improved, with 74 percent of officers reported as certified. In addition, detention officers who had not received certification at BIA and Tribal programs we visited had either attempted to go to the IPA, were scheduled to attend the IPA, or were already enrolled in the IPA. Detention programs did not report any issues with training availability.

OJS officials stated that they coordinate with the academy to connect staff for training spots and that, over time, communication has improved, and enrolling detention program staff is no longer an issue. We encourage OJS to continue prioritizing detention officer training to ensure staff are well equipped to perform their duties.

# Facility Condition Information Continued To Be Incomplete and Inaccurate

We found that IA's information about the condition of detention facilities continued to be incomplete and inaccurate. IA requires facilities to be inventoried and inspected.<sup>53</sup> Despite these requirements, incomplete and inaccurate information persisted because of IA's failure to complete inspections and include and update all work orders in the Indian Affairs – Facility Management System (IA-FMS). We also identified \$715,777 in questioned costs for operations and maintenance funding provided to a Tribe for a facility that was no longer operational.

Proper maintenance of detention facilities is critical to ensure the safety and well-being of inmates, correctional staff, and visitors. Conditions may be exacerbated due to inaction over time and will likely require more funding and effort to repair than if they had been addressed in a timely fashion.

## 2016 Recommendation Update

In 2016, we reported that BIA did not have complete and accurate information regarding the condition of detention facilities and that it was therefore unlikely that IA's Facility Condition Index (FCI) ratings accurately reflected facility conditions. We determined that inaccuracy and incompleteness of information was partially due to BIA's failure to conduct required safety inspections and report facility maintenance needs in the IA-FMS. We recommended that BIA ensure health and safety inspections are completed annually and that applicable staff record work orders in the IA-FMS. We also recommended that IA develop a communication plan for IA-FMS implementation that would include roles and responsibilities for applicable staff and provide training to DFMC, BIA, and Tribal maintenance personnel as needed.

In response to our report, BIA committed to developing an action plan to ensure annual health and safety inspections were scheduled and BIA facility managers received direction to enter work orders to track maintenance needs and request projects. In addition, IA responded that DFMC was working on an internal communications plan for IA-FMS implementation that would formalize roles and responsibilities for all users and management officials. IA also provided the training schedule for the IA-FMS for FYs 2015 and 2016.

## Facility Inventory, Facility Condition, and Work Order Requirements

IA requires any personal and real property to be identified through an inventory process and be reconciled in the Financial and Business Management System (FBMS),<sup>54</sup> which updates the IA-FMS. This includes bureau-owned and Government-furnished equipment pursuant to contract funding. Regional Directors, OJS Deputy Bureau Directors, and BIA Directors are required to submit annual inventory certifications to the Office of Facilities, Property and Safety Management's Division of Property Management to verify that an annual property inventory was conducted and completed. DFMC officials told us that the IA real property office is responsible for entering a facility in FBMS and must include verified documentation, such as Construction and Progress Evaluation Reports,<sup>55</sup> floor plans, and pictures. The *OJS Division of Operations Corrections Handbook* includes guidance on how to use the IA-FMS. These requirements apply only to IA-owned property.

DFMC uses the IA-FMS<sup>56</sup> to monitor facility maintenance<sup>57</sup> and assign every detention facility an FCI rating, which is a numerical and categorical (good, fair, or poor) ranking to provide a snapshot of a facility's physical

<sup>53</sup> 80 IAM 1, "Division of Facilities Management and Construction Overview."

<sup>54</sup> 23 IAM 3, "Personal & Real Property Inventory," issued December 2022.

<sup>55</sup> The Construction and Progress Evaluation Report is a quarterly report prepared by the Office of the Chief Financial Officer, Division of Financial Reporting and Analysis.

<sup>56</sup> The IA-FMS is a suite of applications that provides asset management functions to IA.

<sup>57</sup> Facility maintenance needs include deferred maintenance, which is categorized as maintenance costing more than \$2,500, and operations and maintenance, which is categorized as maintenance costing under \$2,500. Our evaluation, *Indian Affairs Is Unable To Effectively Manage Deferred Maintenance of School Facilities* (Report No. 2022-CR-036), issued in March 2024, also highlights the issues of defining deferred maintenance in this way.

condition. The FCI rating is used to prioritize major facility maintenance and construction projects. These ratings are also included in DOI's *Annual Performance Plan*, which is used to "assess the organization's health and impact" and "inform decision making, resource allocation, and strategy."<sup>58</sup>

DFMC calculates the FCI rating based on total cost of all deferred maintenance work orders<sup>59</sup> or backlogs in the IA-FMS, which must receive approval from multiple levels (agency, regional, and facility condition assessment (FCA) contractor) before receiving final DFMC approval. In April 2021, the contractor managing the IA-FMS provided the *Aged Work Orders Training Manual* that called for work order cleanup to begin the year it was issued.<sup>60</sup> The process requires regional and site staff to review work orders more than five years old and update any cost, scope, or status information. The training manual states that an automated biweekly audit report will be sent to appropriate field personnel to provide summary information on the number of work orders outstanding and acted upon.

Facility maintenance needs and funding requests for repairs are reported through work orders, which are created in the IA-FMS in one of three ways: (1) BIA health and safety inspections, (2) FCAs, or (3) direct entry by a field user.

Facilities entered in the IA-FMS are on a roster to receive regular FCAs and health and safety inspections. The *BIA Safety and Health Handbook* requires BIA to conduct annual health and safety inspections,<sup>61</sup> and DFMC is responsible for performing FCAs of all facilities on a three-year cycle.<sup>62</sup> Officials told us that all deficiencies identified on FCA and health and safety inspection reports should be recorded as a work order in the IA-FMS. If a facility is not in the IA-FMS, maintenance deficiencies and unmet requests will not be recorded in the system.

The *BIA Adult Detention Facility Guidelines* include a standard that the facility is clean, sanitary and in good repair.

## Inaccurate Facility Condition Information

Notwithstanding the 2016 report, we found that facility condition information and FCI ratings continued to be inaccurate, making it difficult to determine if facility conditions have improved. For example, the San Carlos detention facility had a "good" FCI rating, indicating a minimal number of work orders recorded in the IA-FMS. However, when we visited that facility, we found that conditions did not reflect its FCI rating. Specifically, during our 2015 and 2022 site visits, we noted a wide crack in the wall between the adult and juvenile inmate holding cells, which could evidence deterioration or structural damage to the building (see Figure 7). We reported this issue in a management advisory to IA during our fieldwork and it is currently addressing this issue.<sup>63</sup>

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<sup>58</sup> DOI, *FY 2021-2022 Annual Performance Plan*.

<sup>59</sup> Work orders must contain required information when entered into the IA-FMS to be considered "complete," receive DFMC approval, and be included in FCI calculations.

<sup>60</sup> *Aged Work Orders Training Manual*, version 7.6, issued April 2021.

<sup>61</sup> The handbook applies BIA's Safety and Health program at all workplaces where Bureau employees perform work or operations. This guidance applies to Tribal facilities housing BIA direct service detention programs only when included in a maintenance contract or agreed to in a compact or accompanying funding agreement.

<sup>62</sup> Indian Affairs, statement of work for facilities condition assessment, "Section C1 – General," June 10, 2020.

<sup>63</sup> *Detention Facility Health and Safety Concerns* (Report No. 2022-WR-040-A), issued April 2023. IA identified a total of 14 corrective actions at 3 detention facilities described in our management advisory. IA officials told us they expected to have the repairs completed by June 2025. The recommendation will remain open until the repairs are completed.

**Figure 7: Crack in the Wall Between Adult and Juvenile Holding Cells Observed in 2015 (Left) and 2022 (Right)**



This crack prevents sight and sound separation between adult and juvenile holding areas, which is a requirement under national standards adopted pursuant to the Prison Rape Elimination Act. During our 2015 site visit, the BIA Facility Manager told us it was their first time hearing about the crack; although, corrections staff told us the crack was first identified in 2009. During our 2022 site visit, we also identified issues with electrical batteries in a pumphouse sitting three-to-four inches above the standing water, a detention pod without a functional air conditioning unit, several inoperative light fixtures in the inmate housing units, and inoperative exterior facility lights.

DFMC officials confirmed that having fewer work orders recorded in the IA-FMS does reflect a better FCI rating, and if no work orders are entered into the system, the default FCI rating is “good,” because it shows that no maintenance work is needed.

### **Inaccurate Facility Condition Information Due to Incomplete and Outdated Information in the IA-FMS**

We found that DFMC’s FCI ratings were inaccurate because the information in the IA-FMS was incomplete. Specifically:

- Health and safety inspections, FCAs, and related work orders were not completed consistently.
- Work orders that require direct entry by IA-FMS users (i.e., those not entered through an FCA or safety inspection) were not entered into the IA-FMS reliably.
- Some work orders were returned for incompleteness, causing maintenance issues to go unaddressed.
- Not all facilities that were in the IA-FMS had been completely inventoried in FBMS, which could cause problems with work orders.

## Lack of Annual Health and Safety Inspections and FCAs and Related Work Orders

In 2016, we visited 25 facilities and found that 17 had not received an annual health and safety inspection in the previous three years; of the 25 facilities we visited during our current audit, 11 had not received annual health and safety inspections between 2019 and 2021.<sup>64</sup> In addition, not all deficiencies found in health and safety inspections had associated work orders in the IA-FMS. For example, from the sites we visited, 40 of the 131 deficiencies (31 percent) that the inspector designated as safety-serious<sup>65</sup> deficiencies posing a threat to safety and health did not have work orders in the IA-FMS.

Further, of the 25 facilities we visited, only 12 had received an FCA between 2019 and 2021. We judgmentally selected eight FCA reports at sites visited for review, and we found that half of the reports included at least one deficiency that was not found in the IA-FMS as a work order. These deficiencies that were not recorded in the IA-FMS had estimated repair costs totaling \$1,786,088.<sup>66</sup> For example, 75 percent of the deficiencies reported by the Warm Springs detention facility were not found in the IA-FMS, totaling \$1.3 million in estimated costs that were not recorded in the system.

Finally, Division of Safety and Risk Management officials also noted that some health and safety inspections were not conducted due to the COVID-19 pandemic. Specifically, between October 2020 and October 2021, at least three regions issued memoranda reporting delayed inspections due to COVID-19 and staffing shortages with the majority stating plans to prioritize completing inspections as soon as possible.

## Inconsistent Direct Entry of Work Orders

Facility information was also inaccurate and incomplete because work orders for regular maintenance needs—that is, issues identified by staff on an ongoing basis—were not always entered into the IA-FMS.

In 2016, in response to our recommendation to ensure that work orders were recorded in the IA-FMS, OJS worked with DFMC to provide IA-FMS training to OJS staff with intentions for OJS to advocate for facility repairs. However, as noted above, OJS has struggled with staffing. OJS staff explained that because the IA-FMS is not an OJS system, its staff are only able to enter work orders, but do not have permissions resolve them. Further, BIA regional facility management officials reported that system training was still an issue. The Southern Plains region said it was a challenge to keep users updated and trained in the system. The Rocky Mountain region told us that many users are not competent working in the system and said there was a lack of hands-on training opportunities. The Great Plains region was unable to provide support to new IA-FMS users needing assistance with creating work orders.

In addition, during our site visits we learned that IA-FMS use in the field is affected by facility maintenance staff shortages. BIA regional facility management officials confirmed significant facility staffing vacancies and frequently shared facility maintenance staff among multiple facilities at the agency level. This has resulted in limited time to enter work orders in the IA-FMS. For example, the Acting Facility Manager for the Tohono O'odham detention facility said that there are only two maintenance workers for approximately 40 buildings across an area stretching over 2.8 million acres. The maintenance workers' primary focus is immediate maintenance and repairs, and they do not enter all work orders into the IA-FMS because they do not have time. Further, an OJS official told us that corrections staff often take on the role of entering work orders because there is a lack of facility maintenance staff at each facility.

We also learned of inconsistent practices with respect to whether non-BIA staff are authorized to gain access to the IA-FMS to enter work orders. For example, the Facility Manager at the tribally operated Quinault detention facility requested access to the IA-FMS in 2018 but was denied access because that person was not a BIA employee and instead worked for the Tribe. As a result, when the roof had a leak, the Facility Manager

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<sup>64</sup> Seven of the facilities we visited in this audit were not listed in the IA-FMS, and none of them received a health and safety inspection or an FCA.

<sup>65</sup> A safety-serious deficiency poses a threat to safety and health, including violations of Occupational Safety and Health Standards; *Life Safety Code*; *Uniform Building Code*; and other codes and laws, as applicable.

<sup>66</sup> This total cost does not include \$97,106 in estimated deficiencies for the Nisqually detention facility because we found the Tribe was no longer receiving operations and maintenance funding for its detention facility.

had to email bids to BIA to request funding, and ultimately, the Tribe paid for and fixed the roof when it did not receive funding. By contrast, Zuni Tribal corrections staff have access to the IA-FMS and can enter work orders directly into the system.

Due to all of the above, work orders were not consistently recorded in the IA-FMS to receive funding for repairs and keep IA informed of facility conditions.

### **Work Orders Returned for Incompleteness**

Maintenance issues can go unaddressed if work orders are returned for incompleteness or if staff are confused about work order processing steps and responsibilities. After work orders are entered into the IA-FMS, DFMC contractors and various agency, region, and DFMC officials process and approve them before they are funded and ultimately addressed. Work orders that are missing information (e.g., a statement of work) are marked as incomplete at any point in the approval process and are returned in the system; these incomplete work orders are not included in the FCI calculations, which can skew the rating by omitting issues that staff have in fact identified. In addition, DFMC told us that the roles and responsibilities associated with entering, processing, and approving work orders are not documented.

We determined that a lack of documentation can cause miscommunication and confusion among BIA regional, agency, and site staff. This, in turn, can add time to the already lengthy work order entry and closure process, again leading to inaccurate FCI ratings and maintenance issues that go unaddressed.

For example, we found four work orders (three with a work type of “emergency”) requesting a roof replacement for the Northern Cheyenne Busby Juvenile detention facility that spanned a 2.5-year period, from April 2020 to July 2022. During this period, two of the work orders had been returned for reworking. In addition, a DFMC official indicated that there were several work orders that had been approved for funding at the facility that had never been moved forward by the regional facility staff. Then, in September 2021, DFMC completed an FCA, which reported that the roof had multiple leaks and was at “end of life” and recommended replacement within 90 days. DFMC officials told us that one of the four work orders requesting a roof replacement had been approved and was ready to be funded, but the BIA Regional Facility Manager had not started the project. In October 2022, the inmates were vacated and moved to another facility because the roofing issue had rendered the facility uninhabitable. The creation of four work orders for the same issue, an unaddressed FCA deficiency, and funded work orders that sat stagnant collectively resulted in a longstanding maintenance issue being left unaddressed until the facility was uninhabitable, which dramatically increased the cost of addressing the issue.

Longstanding maintenance issues like these represent health and safety risks for inmates and staff. They also may result in further declining facility conditions that require more involved and expensive repairs. For example, if work orders are created but not calculated in the FCI, this, along with fluctuating costs of materials and labor may give an unreliable assessment of the needs; as a result, the condition of a facility, the severity of the issues, and the cost for repair may not be considered when prioritizing work. Although in 2021, the IA-FMS contractor provided guidance to DFMC to implement an aged work order cleanup initiative, planned subsequent cleanup efforts have not been completed. DFMC officials told us the last time DFMC performed a work order cleanup was in 2018, prior to the requirement. They also told us that biweekly audit reports are not being sent to appropriate field personnel to provide summary information on the number of outstanding work orders, as described in the *Aged Work Orders Training Manual*.

### **Incomplete Inventory of Facilities**

Lastly, we found that some facilities were improperly inventoried in the IA-FMS. We were unable to determine, however, how or whether this affects the ability to create work orders or FCI ratings.

As discussed earlier, of the 25 facilities we visited, 18 were entered in the IA-FMS. According to DFMC officials, 5 of those 18 did not have complete and updated inventories in FBMS (including the San Carlos facility, pictures of which are shown in Figure 7 above). The facility inventories for 8 of the 25 facilities we visited were more than 10 years old. The San Carlos detention facility in particular was built in 2005, but still has not been properly and completely inventoried in FBMS. DFMC stated that sites should be completing

inventories and updating IA-FMS records annually; however, if facilities are not updated properly, DFMC may not be aware of all facilities, assets, or work orders that may exist. We were unable to determine based on discussions with officials whether this creates a circumstance that prevents work orders from being created for these facilities in the IA-FMS. All 14 facilities showed an FCI rating of “good”; additionally, 6 had a rating of 0, indicating no deferred maintenance work orders were in the system.

Tribal programs that are housed in tribally owned and maintained facilities that are receiving only operational detention program funding (not facility maintenance funding) may not be inventoried in the IA-FMS and are not subject to BIA policy requiring health and safety inspections or FCAs. In this case, a PMR would be the means of reporting facility maintenance issues—or, in certain circumstances, reporting whether the facility receiving funding is still operational.

For example, the Nisqually detention facility, which is operated under a compact and does not receive PMRs, continued to receive funding for modular buildings that are no longer in use for detention. During our site visit, OJS told us that, before completing construction of a new detention facility in 2014, the Nisqually Indian Tribe operated its detention program in a set of tribally owned modular buildings that had been retrofitted for detention use. Upon construction of the new facility, the program ceased using the modular buildings for detention; however, the DFMC continued to provide operation and maintenance funds for the modular buildings, providing a total of \$715,555 in funds from FY 2014 through FY 2021 that we determined were unallowable costs.

BIA regional directors are responsible for monitoring operation and maintenance expenditures, and local facility management is responsible for ensuring that site-specific facilities management inventory data are accurate in the IA-FMS.<sup>67</sup> DFMC officials told us that OJS officials notified them via email that the Tribe should no longer be receiving operations and maintenance funds for that site and that it stopped providing funding in 2021. Had the Nisqually detention program received a PMR, this issue may have been identified and corrected sooner. According to OJS, Nisqually requested a PMR for FY 2024 and was scheduled to receive one in fall 2024.

Inconsistent health and safety inspection practices and FCA reporting, coupled with unreliable entry of work orders in the IA-FMS, result in erroneous FCI calculations and unreliable information about actual facility conditions. The incomplete or absent inventories of facilities without consistent PMRs also contribute to a lack of information on the condition of these additional facilities. Not knowing the extent to which facilities may be in disrepair may put detention staff and inmate health and safety at risk and cause resources to not be allocated to facilities with the greatest need.

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<sup>67</sup> 80 IAM 1, “Division of Facilities Management and Construction Overview.”

## Recommendations

We recommend that Indian Affairs:

14. Develop and implement binding minimum standards for the maintenance of detention facilities that BIA directly maintains or are maintained by contract.
15. Develop policy and procedures that require appropriate facility personnel at facilities that BIA directly maintains or are maintained by contract to have access to and record work orders in the Indian Affairs – Facility Management System.
16. Provide applicable staff with the training or guidance necessary to use the Indian Affairs – Facility Management System to reflect accurate facility conditions and properly address maintenance needs.
17. Require that all facilities that BIA directly maintains or are maintained by contract be inventoried in the Financial and Business Management System and the Indian Affairs – Facility Management System.
18. Require that all deficiencies identified by facility managers, safety managers, and detention program personnel at facilities that BIA directly maintains or are maintained by contract be recorded in the Indian Affairs – Facility Management System as work orders.
19. Coordinate with the Division of Facilities Management and Construction and BIA regions to continue exploring avenues to fill staffing vacancies and alleviate effects of low staffing.
20. Perform annual work order cleanup and send reports of outstanding work orders to field personnel, as outlined in the *Aged Work Orders Training Manual*.
21. Require the Division of Facilities Management and Construction to provide regular reports to the Office of Justice Services detailing the amounts of operation and maintenance funds provided for each building used for detention and review the reports to ensure funding is not distributed for facilities that are no longer in use.
22. Establish oversight procedures to ensure review of facility and maintenance conditions at facilities that BIA directly maintains or are maintained by contract.

## Questioned Costs Related to Detention Spending and a Potential Antideficiency Act Violation

We questioned \$3 million in supplemental funding provided to BIA for hiring detention and correction staff, as we could not substantiate that it was spent for its stated purpose. In addition, if no such documentation is ultimately produced and other appropriations are unavailable to reimburse such expenditures, a potential Antideficiency Act violation exists.

### Federal Spending Requirements

In its FY 2020 Joint Explanatory Statement, Congress earmarked in its appropriations an additional \$2 million to “supplement fiscal year 2019 funding levels to hire additional detention/corrections staff at facilities located on Indian lands.” In its FY 2021 Joint Explanatory Statement, Congress included an additional \$1 million to “supplement fiscal year 2020 funding levels to hire additional detention/corrections staff at facilities located on Indian lands.” That is, a total of \$3 million was appropriated for the specific purpose of hiring “additional detention/corrections staff.”

Appropriations may be applied only to the objects for which the appropriations were made except as otherwise provided by law.<sup>68</sup> GAO's *Principles of Federal Appropriations Law* (the "Red Book") reiterates and explains these points, stating that there must be a "logical relationship between the expenditure and the appropriation applied."<sup>69</sup> The authorized purposes or objects of an appropriation may be determined from the actual language of the appropriation or its legislative history.<sup>70</sup> This includes information set forth in explanatory statements so long as certain conditions are met.<sup>71</sup> In particular, when the language of a statute evidences "clear congressional intent to incorporate by reference, and the referenced material was specifically ascertainable from the legislative language," GAO has found that referenced allocations contained in an explanatory statement can be viewed as "legally binding restrictions on the agencies' appropriations."<sup>72</sup> Given the existence of such clear intent, we conclude that the explanatory statements for FYs 2020 and 2021 direct the permissible uses of the \$3 million at issue.

Noncompliance with appropriations language may result in an Antideficiency Act violation if an expenditure is charged to an improper source and no other funds were available for such expenditure.<sup>73</sup> An agency must report the Antideficiency Act violation to the President, Congress, and the Comptroller General, and the responsible Federal employee may be subject to administrative or penal sanctions. An Antideficiency Act violation may be avoided if there are sufficient funds available in the applicable appropriation to reimburse the expenditure.

## **No Evidence That Supplemental Funding Was Used for Stated Purpose**

We reviewed detention programs' use of contract funds for FYs 2020 and 2021 at the sites we visited and the use of supplemental funding that was appropriated specifically for hiring and background checks and found that OJS did not have adequate support to show supplemental funding was used for hiring additional detention/corrections staff in Indian Country. OJS reported that it did not track the number of additional staff hired. Without this documentation, we could not verify whether any additional staff were hired with the supplemental funding or indeed how the funding was used at all.

We also determined that OJS' method of distributing funds did not allocate enough to hire even a single detention officer at many locations, which led us to further question whether the funds were used for hiring. Specifically, OJS distributed the \$3 million it received in FYs 2020 and 2021 using a weighted formula that considered unfunded need, inmate intake, violent crime rate, population served, and land base. As a result of this allocation, for FY 2020, 48 of 56 programs that received funding were allocated less than the annual salary of a typical corrections officer. (For reference, in August 2023 a Navajo Nation Correctional Officer position was advertised for a salary of \$43,556 per year.)

An OJS official told us that "realistically, most of these programs received a portion too small to fund a single additional correctional officer." While this funding may have contributed to hiring, we have no evidence that it did. Further, staffing numbers for positions authorized and positions filled decreased between FYs 2019 and 2021 (see Figure 8).

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<sup>68</sup> 31 U.S.C. § 1301(a).

<sup>69</sup> GAO, *Principles of Federal Appropriations Law*, 4th ed., 2017 rev., ch. 3, § C.1, GAO-17-797SP (Washington, D.C.: September, 2017).

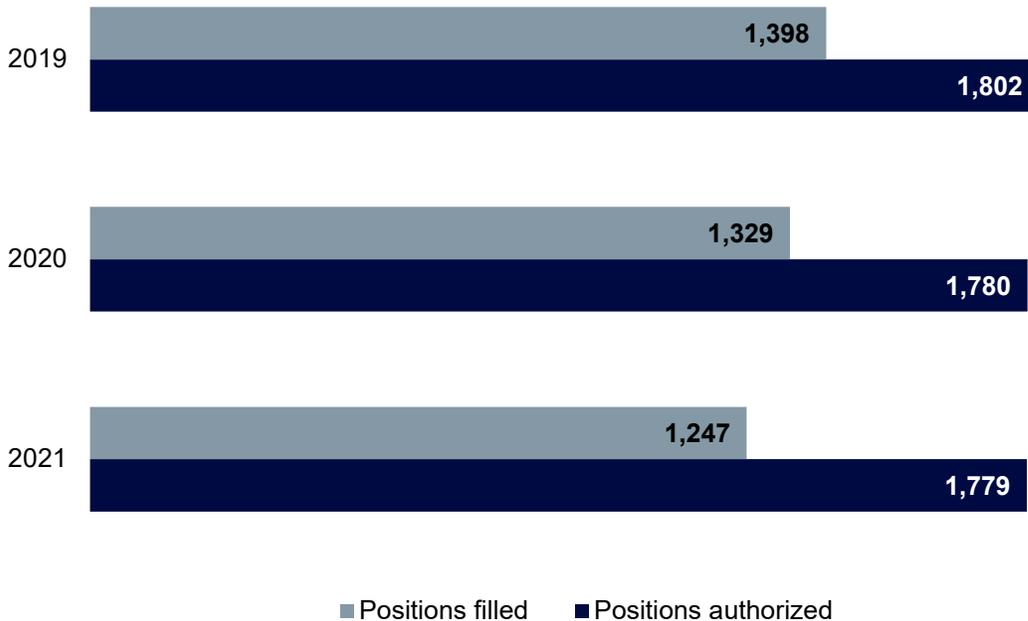
<sup>70</sup> *Id.*

<sup>71</sup> See, *Consolidated Appropriations Act, 2008--Incorporation by Reference*, B-316010, February 25, 2008.

<sup>72</sup> *Id.*

<sup>73</sup> See B-213137, 63 Comp. Gen. 422, June 22, 1984.

**Figure 8: Detention Program Staffing Levels from FYs 2019 to 2021**



Without providing guidance to recipients regarding the use of the supplemental funds, OJS has no assurance that those funds will be used as directed in the supplemental appropriations.

### **Potential Antideficiency Act Violation**

We concluded that there may be an Antideficiency Act violation. We based this conclusion on IA’s lack of support for how the \$3 million dollars it was appropriated in FYs 2020 and 2021 “to hire additional detention/corrections staff at facilities located on Indian lands” were expended.

As described above, OJS could not provide support for its expenditures and allocation method, leaving us unable to determine whether additional staff were hired as specified in the explanatory statements. According to Federal law, appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law. If the expenditure was charged to an unauthorized source and no other funds were available for those expenditures, an Antideficiency Act violation could exist.

These issues occurred due to OJS’ broad application of the language in the Joint Explanatory Statements for FYs 2020 and 2021. An OJS official with the authority to address these issues told us that OJS did not interpret the wording in the Joint Explanatory Statement literally and believed that Congress’ intent was to provide supplemental funds to detention programs, assuming the increase would go toward staffing costs (to include hiring) because staffing is the largest expenditure of these programs. The official also stated that there is “no mechanism to connect personnel hired with a small specific portion of its budget” for BIA direct service programs, and Tribes operating detention programs through contracts and compacts are not obligated to provide such detailed use of funds to BIA.

We noted that the funding documentation provided by OJS to the Tribes did not include any guidance “to hire additional detention/corrections staff,” as specified by Congress. Rather, it labeled the funds as a base increase, and contract documents for contract programs we reviewed showed the increase as a general program increase. An OJS official told us that the largest detention program cost is staffing, so any increase would contribute to staffing.

If funds allocated for hiring in the Joint Explanatory Statement were not used for the stated purpose, and no other funds were available for OJS' specified expenditures, an Antideficiency Act violation could exist. Pursuant to DOI policy, following a determination by the Secretary with advice of legal counsel and the Assistant Secretary for Policy, Management and Budget that an Antideficiency Act violation occurred, the responsible bureau or office head shall furnish a report to the President and both houses of Congress detailing the pertinent facts of the violation and any remedial actions taken.

### **Recommendations**

We recommend that Indian Affairs:

23. Develop and implement a control to ensure that BIA uses supplemental appropriations for their congressionally authorized purpose.
24. Determine whether an Antideficiency Act violation occurred with regard to the FY 2020 and 2021 supplemental appropriations and should be reported as required by DOI policy to resolve the \$3 million in questioned costs.

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# Conclusion and Recommendations

## Conclusion

We undertook this audit in response to a congressional mandate to follow up on the recommendations from our 2016 report. We found that, since our review in 2016, OJS has made efforts to address the issues and recommendations that we identified. Nonetheless, operational issues—program reviews, serious incident reporting, staffing shortages, and instances of overcrowding—persisted. We also found that IA’s information on the condition of detention facilities continued to be incomplete and inaccurate, which led to deteriorating facilities and other deficiencies. Finally, during our review of detention funding, we identified more than \$3 million in questioned costs and a potential Antideficiency Act violation.

For decades, detention facilities in Indian Country have been impaired by understaffing, overcrowding, and poor facility conditions. The persisting weaknesses in detention program operations and facility maintenance represent a significant risk to the safety and well-being of inmates and staff. Further, without accurate operational and facility condition data, IA cannot be assured that decision makers have all necessary information to allocate resources most effectively. We make 24 recommendations that, if implemented, will enable IA to make needed changes.

As stated throughout the report, because compact and contract agreements must incorporate DOI and bureau policies for them to be considered binding, IA faces challenges in providing fundamental guidance to ensure the safety of inmates and corrections staff.

## Recommendations Summary

We provided a draft of this report to the Assistant Secretary for IA for review. IA concurred with all 24 recommendations. We consider Recommendations 2, 3, 6, 7, 10, 11, 12, 16, 17, 19, 20, and 21 resolved; Recommendations 1, 4, 5, 8, 9, 13, 14, 15, 18, and 22 unresolved; and Recommendations 23 and 24 implemented. We determined that Recommendations 1, 14, and 24 are significant and will be reported as such in our semiannual report to Congress in accordance with the Inspector General Act.<sup>74</sup> Below we summarize IA’s response to our recommendations, as well as our comments on its response. After evaluating the response, we met with IA to discuss the unresolved recommendations and options for establishing binding guidance, such as through rulemaking or incorporating minimum standards in contracts. Based on that discussion, IA is reviewing its options and reevaluating its plan of action for those unresolved recommendations. See Appendix 7 for the full text of IA’s response; Appendix 8 lists the status of each recommendation.

We recommend that Indian Affairs:

1. Develop and implement minimum standards for the operation of detention programs that are binding on both direct service and contract programs.

**IA Response:** IA management concurred with part of this recommendation and stated it “will identify the BIA Detention Guidelines as the minimum standards for operating both BIA and Tribal detention programs” and “implement the monitoring tool for both BIA direct services and Tribal contracting programs. Upon completion, evidence of the tool and standardize language for minimum standards will be created for contract language and for BIA direct services will be in memo format. The BIA OJS will continue to recommend that the established guidelines be incorporated into the PL. 93-638 and Self-Governance compacts.” IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is March 31, 2025.

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<sup>74</sup> The Inspector General Act of 1978, 5 U.S.C. § 405(b), requires inspectors general to prepare semiannual reports summarizing OIG activities during the immediately preceding six-month periods ending March 31 and September 30. It also states that these semiannual reports should include an identification of each “significant recommendation” described in previous semiannual reports on which corrective action has not been completed.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation unresolved and will consider it resolved when IA develops and implements binding minimum standards for the operation of detention programs. Although IA stated that it would “recommend that established guidelines be incorporated,” without express inclusion in governing contract documents, BIA OJS guidance is not considered binding on Tribal programs. We will consider this recommendation implemented when IA provides us evidence that it has established binding guidance through rulemaking or has incorporated minimum standards into contracts for the operation of detention programs.

2. Conduct risk-based Program Monitoring Reviews of all direct service and contract programs.

**IA Response:** IA management concurred with this recommendation and stated it will draft and implement program policies and procedures “for follow-up and corrective action on risk-based program monitoring to include identifying, analyzing, managing and mitigating risks based on program reviews. The goal is monitoring risk and evaluating risk for effectiveness. A monitoring tool will be created as part of a high liability for program reviews to be implemented.” IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence of the risk-based tool for PMRs for direct service and contract programs.

3. Provide timely reporting in accordance with Office of Justice Services’ guidelines to Tribes and BIA correctional staff regarding the results of Program Monitoring Reviews.

**IA Response:** IA management concurred with this recommendation and stated it will implement timelines from the *BIA-OJS Awarding Official Technical Representative/Sub-Awarding Official Technical Representative Contract Monitoring Guide, 2020*. IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence that it is issuing PMR reports within the prescribed timelines.

4. Assess the level of resources needed to accomplish the oversight mission at direct service and contract programs.

**IA Response:** IA management concurred with part of this recommendation and stated:

The BIA-OJS will review existing staffing levels and evaluate its responsibilities within each Law Enforcement and Corrections District to confirm duties and or realignment of responsibilities for BIA direct service. Responsibilities regarding facilities repairs, replacement, renovation, and or construction will be included as well. A Program Directive will be implemented by the OJS Deputy Bureau Director to ensure resources are in place to ensure that oversight responsibilities are met. The BIA OJS will continue to recommend that PL. 93-638 and Self Governance contracts evaluate needs and resources.

IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation unresolved because it only commits to evaluate resources for direct service programs and only recommends—as opposed to requires—that contract programs do so. We will consider it resolved when IA includes contract programs in the resource assessment.

5. Establish and implement standards for consistency and thoroughness in data entry of serious incidents in the Incident Management, Analysis, and Reporting System and facility log records for direct service and contract programs.

**IA Response:** IA management concurred with this recommendation and stated the Director of BIA OJS issued a directive “for all BIA OJS detention staff to be trained in the entry of serious incident reports into IMARS and facility SIR log records requirements.” IA provided a copy of the 2015 directive with its response. IA identified BIA OJS as the party responsible for recommendation implementation with no target date for implementation.

**OIG Comment:** Based on IA’s response and lack of additional actions, we consider this recommendation unresolved. The findings noted in this report demonstrate that existing policies and the 2015 directive have not resulted in accurate reporting of SIRs. In addition, IA’s response is silent on its plan for contract programs that do not have access to IMARS. We will consider this recommendation resolved when IA provides us evidence of actions it plans to take for both direct service and contract programs in addition to existing policies and directives that we already had access to, reviewed, and found ineffective. We will consider this recommendation implemented when IA provides us evidence of established standards that will ensure consistency and thoroughness when reporting serious incidents in facility logs and in IMARS.

6. Provide training to staff and management at direct service and contract programs regarding serious incident reporting.

**IA Response:** IA management concurred with part of this recommendation and stated that, along with existing policies and guidance, “training programs will be established for staff and management regarding SIR through the US Indian Police Academy.” IA will provide training curriculum and attendance records as evidence to address the recommendation. Lastly, IA will provide training for Tribes through a web-based training course. IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is August 30, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us confirmation that the SIR training aligns with new standards on consistency and thoroughness established to address Recommendation 5 and provides us evidence of the training curriculum and attendance.

7. Provide guidance to Corrections Program Specialists on performing and documenting serious incident report reconciliation to ensure that Incident Management, Analysis, and Reporting System data follows established standards for consistency and thoroughness.

**IA Response:** IA management concurred with this recommendation and stated that, in addition to existing policies, “a guidance memo will be implemented for the Correctional Program Officers/Specialists.” IA further stated that “[t]his will be documented through guidance directive, training record and establish process for each district.” IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is August 30, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence of the new guidance memorandum, training records, and process established for each district. This guidance should incorporate the standards for consistency and thoroughness established to address Recommendation 5.

8. Establish oversight procedures to ensure direct service and contract program compliance with serious incident reporting standards and guidance.

**IA Response:** IA management concurred with part of this recommendation and stated that “written oversight procedures are a requirement in the PL 93-638 contracts and noted in all communications to

Tribes and BIA direct services programs.” IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is August 30, 2025.

**OIG Comment:** Based on IA’s response and lack of proposed actions, we consider this recommendation unresolved. The findings noted in this report demonstrate that existing policies have not resulted in accurate reporting of SIRs. We will consider this recommendation resolved when IA provides more detailed actions that it will take to ensure direct service and contract program compliance with serious incident reporting standards. We will consider this recommendation implemented when IA provides us evidence that it has established oversight procedures that are binding on direct service and contract programs.

9. Develop and distribute a strategic recruiting plan that is updated periodically with the goal to fill staffing vacancies at detention facilities and alleviate effects of low detention staffing at direct service and contract programs.

**IA Response:** IA management concurred with part of this recommendation and stated BIA OJS Correctional Staff will use existing policies and standards to develop a plan for addressing staffing and recruitment for BIA direct services. IA stated that training on staffing analysis and staffing estimates will “be determined in 20 direct service detention centers with recommended staffing levels and management of Correctional operations.” In addition, IA stated a recruitment plan will “be developed in collaboration with human resources and the hiring officials within BIA OJS. . . . In the future, BIA OJS may explore the possibility of establishing a recruitment and retention unit based on available resources.” Finally, IA stated that during program reviews for Tribal contracts, it will recommend that all vacancies be filled, and the Tribe establish a plan to recruit staff. IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is August 30, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation unresolved. Our intent was that contract programs be incorporated into the strategic recruiting plan and if necessary, provided technical assistance so they can participate in this effort with BIA. We will consider this recommendation resolved when IA commits to incorporating contract programs in its staffing analysis training, staffing estimates, and development of the recruitment plan. We will consider this recommendation implemented when IA provides us evidence of a recruitment plan, staffing estimates, funded staffing lists, and a staffing analysis training list for both direct service and contract programs.

10. Develop and implement guidance, including a clear definition of overcrowding, to ensure consistent reporting of overcrowding incidents for direct service and contract programs. This guidance should consider appropriate industry standards and policies.

**IA Response:** IA management concurred with this recommendation and stated that “BIA OJS will draft and implement guidance on overcrowding in the existing jails with consultation of BIA Division of Safety and Risk Management.” IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is March 30, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence of guidance on overcrowding in existing jails for both direct and contract programs.

11. Conduct a comprehensive analysis of direct service and contract detention programs to determine capacity limits.

**IA Response:** IA management concurred with this recommendation and stated that a “guide for overcrowding will be established and implemented, regarding facility capacities,” and it will meet with both direct service and contract detention programs to learn criteria and establish capacity limits. IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is December 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence of a guide for overcrowding that includes facility capacities for both direct service and contract detention programs.

12. Develop and implement a plan to address overcrowding to the maximum extent possible for all direct service and contract programs.

**IA Response:** IA management concurred with this recommendation and stated that it will instruct each district to provide an annual contingency plan to address overcrowding according to the new definition of overcrowding in its direct service detention centers. During district meetings and/or program reviews and site visits, OJS will encourage and provide technical assistance to tribally contracted programs. IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is December 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence that a plan to address overcrowding in both direct service and contract programs has been implemented based on the newly established definition of overcrowding from Recommendation 10.

13. Establish oversight procedures to ensure review of occupancy levels and physical inmate counts for all direct service and contract programs.

**IA Response:** IA management concurred with this recommendation. IA stated that each district “will establish oversight procedures for occupancy level and physical inmate counts according to the new definition of overcrowding.” During district meetings, program reviews, and site visits, OJS will encourage and provide technical assistance and training to tribally contracted programs. IA further stated, “When oversight procedures are established, the BIA OJS Director will issue a policy directive for direct services to follow.” IA identified BIA OJS as the party responsible for recommendation implementation. The target date for implementation is December 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation unresolved. We will consider it resolved when IA agrees to provide more proactive oversight to contract programs. We will consider this recommendation implemented when IA provides us evidence that it established oversight procedures that are binding on direct service and contract programs.

14. Develop and implement binding minimum standards for the maintenance of detention facilities that BIA directly maintains or are maintained by contract.

**IA Response:** IA management concurred with this recommendation and stated that it will update 80 *IAM* 3 to include a definition of Operations and Maintenance (O&M). IA identified the Deputy Assistant Secretary – IA Management (DAS-M) Office of Facilities, Property and Safety Management (OFPSM) DFMC and BIA OJS as the parties responsible for recommendation implementation. The target date for implementation is September 30, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation unresolved and will consider it resolved when IA agrees to develop and implement binding minimum standards for the maintenance of detention facilities that BIA directly maintains or are maintained by contract. Without express inclusion in governing contract documents, IA policy is not considered binding on Tribal programs. We will consider this recommendation implemented when IA provides us evidence that rulemaking has taken place or that a majority of the contract programs have incorporated minimum standards for the maintenance of detention programs.

15. Develop policy and procedures that require appropriate facility personnel at facilities that BIA directly maintains or are maintained by contract to have access to and record work orders in the Indian Affairs – Facility Management System.

**IA Response:** IA management concurred with this recommendation and stated that “DFMC will draft a memo from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they review the existing policy [80 IAM 1] concerning maintaining access to and recording work orders in the Indian Affairs – Facility Management System.” IA identified the DAS-M OFPSM DFMC, BIA OJS, and BIA Field Operations as the parties responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and lack of proposed actions, we consider this recommendation unresolved and will consider it resolved when IA provides us evidence of additional actions it plans to take in addition to existing policies that we already had access to, reviewed, and found ineffective. Further, without express inclusion in governing contract documents, IA policy is not considered binding on Tribal programs. We will consider this recommendation implemented when IA provides us evidence that personnel at BIA facilities and facilities maintained by contract have access to and can record work orders in IA-FMS.

16. Provide applicable staff with the training or guidance necessary to use the Indian Affairs – Facility Management System to reflect accurate facility conditions and properly address maintenance needs.

**IA Response:** IA management concurred with this recommendation and stated that “DFMC will provide a list of applicable staff (BIA and OJS personnel) that have access to the IA-FMS and have received both initial and follow on training . . . Any staff identified that have not received training will be provided with the appropriate training.” IA identified the DAS-M OFPSM DFMC as the party responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved. We will consider it implemented when IA provides us evidence that direct service and contract program staff have received the required training to ensure accurate facility conditions and maintenance needs are met in the IA-FMS.

17. Require that all facilities that BIA directly maintains or are maintained by contract be inventoried in the Financial and Business Management System and the Indian Affairs – Facility Management System.

**IA Response:** IA management concurred with this recommendation and stated that “BIA OJS will provide a list of all facilities that are directly maintained or are maintained by contract to DFMC.” With that list, “DFMC will ensure that all facilities are inventoried in the Financial and Business Management System (FBMS) and the IA-FMS.” IA identified BIA OJS and the DAS-M OFPSM DFMC as the parties responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved and will consider it implemented when IA provides us evidence that all facilities that BIA directly maintains or are maintained by contract are inventoried in FBMS and the IA-FMS.

18. Require that all deficiencies identified by facility managers, safety managers, and detention program personnel at facilities that BIA directly maintains or are maintained by contract be recorded in the Indian Affairs – Facility Management System as work orders.

**IA Response:** IA management concurred with this recommendation and stated that “DFMC will draft a memo from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they review the existing policy [80 IAM 1] concerning maintaining access to and recording work orders in the Indian Affairs-Facility Management System.” IA identified the DAS-M OFPSM DFMC and BIA Field Operations as the parties responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response, we consider this recommendation unresolved. It is not clear from the response how this will be implemented for Tribes that contract detention facility maintenance. We also question whether requesting facility personnel to review the existing policy will sufficiently

address the recommendation and ensure that all deficiencies are recorded in the IA-FMS. We will consider this recommendation resolved when IA provides additional actions it plans to take to ensure that direct service and contract programs record work orders in the IA-FMS. We will consider it implemented when IA provides us evidence of its additional actions.

19. Coordinate with the Division of Facilities Management and Construction and BIA regions to continue exploring avenues to fill staffing vacancies and alleviate effects of low staffing.

**IA Response:** IA management concurred with this recommendation and stated that DFMC will issue a memorandum from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they continue to explore avenues to fill staffing vacancies.” IA identified BIA Field Operations and the DAS-M OFPSM DFMC as the parties responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved. We will consider it implemented when IA provides us a copy of the OFPSM Director’s memorandum sent to all appropriate personnel.

20. Perform annual work order cleanup and send reports of outstanding work orders to field personnel, as outlined in the *Aged Work Orders Training Manual*.

**IA Response:** IA management concurred with this recommendation and stated that “DFMC will send reports of outstanding work orders to the applicable facility maintenance personnel.” DFMC started a work order clean up initiative in September 2023; as a result, “3,100 Annual Safety and Health Inspection and Facility Condition Assessment (FCA) work orders, 3 years or newer, were sent back to a Rework status. Of these, just over 1,100 work orders valued at over \$107M have either been submitted back into the system or they have been closed/cancelled. Over 14,000 Facility Condition Assessment generated work orders greater than 3 years old were cancelled.” IA identified BIA Field Operations and the DAS-M OFPSM DFMC as the parties responsible for recommendation implementation. The target date for implementation is May 1, 2025.

**OIG Comment:** Based on IA’s response and actions taken to address outstanding work orders, we consider this recommendation resolved. We will consider this recommendation implemented when IA provides us evidence that work order cleanups are being performed annually and reports of outstanding work orders are sent to field personnel.

21. Require the Division of Facilities Management and Construction to provide regular reports to the Office of Justice Services detailing the amounts of operation and maintenance funds provided for each building used for detention and review the reports to ensure funding is not distributed for facilities that are no longer in use.

**IA Response:** IA management concurred with this recommendation and stated that “DFMC will provide a report detailing the amount of recommended annual O&M funds to be distributed to each of the OJS sites. DFMC conducted Tribal Listening Sessions . . . to solicit input on a new O&M allocation methodology.” IA also noted that DFMC would hold followup Tribal consultations in August 2024 “to solicit input on a formula to calculate annual O&M needs and allocation.” IA further stated “DFMC is drafting a Standard Operating Procedure (SOP) on O&M Allotment Procedures that will be based on these Tribal Consultations. This will simplify the O&M calculation process to ensure that only facilities that are in [the IA-FMS] will receive O&M funding.” IA identified the DAS-M OFPSM DFMC and BIA OJS as the parties responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation resolved. We will consider it implemented when IA provides us the SOP on O&M and evidence that O&M funding is allocated to only detention facilities that are in use.

22. Establish oversight procedures to ensure review of facility and maintenance conditions at facilities that BIA directly maintains or are maintained by contract.

**IA Response:** IA management concurred with this recommendation and stated that DFMC will draft a memorandum requesting that the appropriate personnel “review the existing policy [80 *IAM* 1] concerning maintaining access to and recording work orders in the Indian Affairs – Facility Management System.” IA identified the DAS-M OFPSM DFMC and BIA Field Operations as the parties responsible for recommendation implementation. The target date for implementation is March 31, 2025.

**OIG Comment:** Based on IA’s response and lack of proposed actions, we consider this recommendation unresolved. Specifically, IA’s response simply reiterates existing policies. Our audit findings, however, demonstrate that these policies have not resulted in effective oversight of maintenance conditions at facilities that BIA directly maintains or are maintained by contract. We will consider this recommendation resolved when IA takes additional steps to address this recommendation other than asking personnel to review existing policy that we already had access to, reviewed, and found ineffective. We will consider it implemented when IA provides us evidence of the actions it took to implement oversight procedures to ensure review of facility conditions for facilities that BIA directly maintains or are maintained by contract.

23. Develop and implement a control to ensure that BIA uses supplemental appropriations for their congressionally authorized purpose.

**IA Response:** IA management concurred with this recommendation and stated that IA “has already developed and implemented the controls that address this recommendation.” Specifically, IA cited 26 *IAM* 2, which establishes BIA’s framework to ensure that funds are expended pursuant to enacted appropriations and in accordance with specific directives of the U.S. Congress. IA also stated that “when new legislation is passed, the IA Office of Budget and Performance Management reviews and analyzes appropriations for earmarks . . . to determine legislative constraints on funding and determine if additional follow-up is required.” IA stated “the Joint Explanatory Statement (JES) is also reviewed to better understand Congress’ intent even if not legally binding. In this particular case, while the JES was reviewed, and the language noted, it was not deemed to be a Congressionally Directed Spending Item.”<sup>75</sup> IA further stated that as such, “no additional controls were necessary to track this funding outside of normal programmatic direction.”

**OIG Comment:** Based on IA’s response and proposed actions, we consider this recommendation implemented. We note that during our audit, BIA stated that it did not discuss the methodology used to distribute these funds with its budget office, and IA did not provide us with 26 *IAM* 2 until after we issued our draft report. We reviewed 26 *IAM* 2 after IA provided it in response to our recommendation and agree that it establishes a framework and controls in accordance with the *Departmental Manual* by which IA analyzes appropriations to determine legislative constraints. Although IA made a policy determination that the JES did not contain congressionally directed spending, we concluded there was clear intent that the supplemental funding was directed toward hiring additional detention and corrections staff at facilities located on Indian lands.

24. Determine whether an Antideficiency Act violation occurred with regard to the FY 2020 and 2021 supplemental appropriations and should be reported as required by DOI policy to resolve the \$3 million in questioned costs.

**IA Response:** IA management concurred with this recommendation and stated that IA has performed the verification process described in 26 *IAM* 2. IA also stated:

Upon review of the potential Antideficiency Act violation identified by the OIG, IA, in consultation with the Office of the Solicitor, General Law Division, determined that an Antideficiency Act violation did not occur. IA’s review concluded that the relevant provisions of the Joint Explanatory Statement were not legally binding with regard to the

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<sup>75</sup> We used the term “earmarks” previously in our report to refer to what IA labeled as “congressionally directed spending” in its response.

\$3 million from the FYs 2020 and 2021 appropriations. The BIA believes Congress intended to simply increase the funding level in order to hire additional staff to the extent it meets operational needs and/or constraints. As such, the BIA executed the funds in a manner consistent with clearly communicated congressional intent. The \$3.0 million increase referenced in the Joint Explanatory Statement did, in fact, enable BIA to hire new correctional officers. IA is providing additional data and evidence to support the hiring efforts as reviewed by OIG.

**OIG Comment:** Based on IA's response and proposed actions, we consider this recommendation implemented because IA made a policy determination that the JES did not contain congressionally directed spending. However, we continue to have concerns that there was clear intent that the supplemental funding was directed toward hiring additional detention and corrections staff at facilities located on Indian lands. We will consider referring this information to GAO for a determination because it is not clear that BIA used these funds "to hire additional detention/corrections staff at facilities located on Indian lands," as stated in the JES. The new information IA provided in its response is problematic because it did not include underlying evidence to show how the money was actually used and captured only the direct service programs and not the contract programs. Further, as we stated in the report, BIA previously told us that there is no mechanism to connect personnel hired with a small specific portion of its budget, even for direct service programs.

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# Appendix 1: Scope and Methodology

## Scope

We audited Bureau of Indian Affairs (BIA)-funded and/or -operated detention programs and facilities. The scope included BIA's Office of Justice Services' (OJS') detention program reviews; serious incident reporting in the Incident Management, Analysis, and Reporting System (IMARS); inmate populations; detention facility staffing levels; and correctional officer training and certification rates between fiscal years (FYs) 2019 and 2021. Additionally, we audited health and safety inspections, facility conditions, and deferred maintenance work orders of BIA-funded and/or -operated detention facilities as reported in the Indian Affairs – Facility Management System (IA-FMS), and funds appropriated for BIA-funded and/or -operated detention facilities.

## Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We assessed whether internal control was significant to the audit objectives. We determined that BIA's control activities and the following related principles were significant to the audit objectives:

- Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
- Management should design control activities to achieve objectives and respond to risks.
- Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
- Management should implement control activities through policies.
- Management should internally communicate the necessary quality information to achieve the entity's objectives.

We tested the operation and reliability of internal controls over activities related to our audit objectives. Our tests and procedures included:

- Interviewing officials, including management and staff at BIA, BIA OJS, BIA regional offices, BIA agency offices, and the Office of Facilities, Property and Safety Management (OFPSM).
- Reviewing the *Standards for Internal Control in the Federal Government's* 5 components and 17 principles of an effective internal control system, applicable portions of the Code of Federal Regulations, handbooks, *Indian Affairs Manual* parts, and training manuals.
- Conducting site visits to BIA offices and detention facilities to interview corrections and facility maintenance staff and observe program operations and facility conditions using our own checklist based on a selection of detention standards and prior findings.

In addition, we reviewed:

- OJS' 13,325 serious incident reports in IMARS reported from January 2015 through October 2022.
- Staffing levels.

- Detention officer training data.
- Operations and facility maintenance conditions for 28 BIA-funded and/or -operated detention programs housed in 25 facilities.
- Division of Safety and Risk Management health and safety inspections for 18 facilities.
- Appropriated funds for the Nisqually Tribe for a facility no longer housing a detention program from FYs 2014 to 2021, totaling \$715,555.
- Facility condition assessments for eight facilities.
- Appropriated funds for detention program operations from FYs 2017 to 2021, totaling \$513.2 million.
- Supplemental hiring funding from FYs 2020 and 2021 totaling \$3 million for additional detention staff.
- Operation and maintenance funding for detention facility maintenance from FYs 2017 to 2021, totaling \$82.3 million.
- OJS and Division of Facilities Management and Construction (DFMC) compliance with applicable laws, regulations, and BIA and OJS handbooks.

We found deficiencies in internal controls resulting in our seven findings related to program oversight, serious incident reporting, detention staffing, overcrowding, facility condition information, supplemental funding, and funding for buildings not in use.

We relied on computer-generated data from IMARS for incident reports<sup>76</sup> obtained by OJS and from the IA-FMS for deferred maintenance work orders obtained by DFMC. To assess the reliability of computer-generated data, we:

- Obtained copies of the IMARS report data from OJS and compared the reports to the serious incident report (SIR) logs at detention facilities.
- Reviewed the SIR logs against the IMARS report data to determine whether facts, dates, and figures were accurate and complete.
- Obtained copies of the deferred maintenance work orders in the IA-FMS from DFMC and compared the reports to health and safety inspections with S-1 deficiencies as well as the facility condition assessments conducted by a third party at detention facilities.
- Reviewed health and safety inspections with S-1 deficiencies against the deferred maintenance work orders in the IA-FMS.
- Reviewed the facility condition assessments against the deferred maintenance work orders in the IA-FMS to determine whether work orders existed in the system.
- Interviewed responsible parties at BIA OJS, BIA regional offices, and BIA agency offices as well as OFPSM management and staff to determine whether the information reviewed to answer our audit objective and report on our audit findings was reliable.
- Selected a judgmental sample of 8 facilities comprising 89 deficiencies identified on FY 2021 and 2022 facility condition assessments and compared them to the IA-FMS deferred maintenance work orders.

We used auditor judgment and considered risk levels relative to other audit work performed to determine the degree of testing performed in each area. Because we selected audit samples for testing on a judgmental

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<sup>76</sup> While we assessed the accuracy of the incident reports, we did not assess the reliability of the information system as a whole.

basis rather than using statistical sampling, we did not project the results of our tests to the total population of transactions.

We judgmentally selected and visited 28 BIA-funded and/or -operated detention programs housed in 25 facilities. We revisited 13 facilities to follow up on conditions identified during our prior review in 2016 and added facilities we had not previously visited. We included adult and juvenile programs operated directly by BIA and by Tribes via contracts and compacts. To the extent possible, we selected programs with a variety of sizes and locations and from different BIA districts (see Appendix 6).

# Appendix 2: Status of 2016 Evaluation Recommendations

Status of the nine recommendations we made in our report, *Bureau of Indian Affairs Funded and/or Operated Detention Programs* (Report No. 2015-WR-012), issued February 2016.

Recommendation	Date Closure Requested	Status	Actions Taken According to Closure Documents
We recommend that [the Bureau of Indian Affairs (BIA)] expand the [Corrective Action Support Team (CAST)] review process to the tribally operated programs that are subject to BIA oversight.	10/2016	Implemented*	<ul style="list-style-type: none"> <li>Office of Justice Services (OJS) implemented the CAST review process for tribally operated programs.</li> <li>In fiscal year (FY) 2016, two CAST reviews were completed and two additional Tribal CAST reviews were scheduled for the first quarter of FY 2017.</li> </ul>
We recommend that BIA establish and implement a formal written policy that requires [serious incident reports (SIRs)] be recorded in [the Incident Management, Analysis, and Reporting System (IMARS)].	01/2016	Implemented*	<ul style="list-style-type: none"> <li>BIA developed and implemented a written policy to require all serious incidents to be recorded in the IMARS system of record.</li> </ul>
We recommend that BIA develop a quality assurance process to reconcile IMARS serious incident information to the facility SIR logs, on a periodic basis, to ensure that the information in IMARS is accurate and complete and that OJS management is fully aware of all serious incidents.	01/2016	Implemented*	<ul style="list-style-type: none"> <li>BIA developed a policy memorandum to require reconciliation of SIRs to ensure that logs are accurate. The memorandum requires Correctional Program Specialists to certify for accuracy and Law Enforcement Districts to submit certifications to the Associate Deputy Bureau Director of Field Operations.</li> </ul>
We recommend that BIA develop an action plan and a timeframe for implementing the plan to ensure that health and safety inspections are completed annually as required by BIA policy.	04/2017	Implemented	<ul style="list-style-type: none"> <li>BIA developed an action plan to schedule health and safety inspections.</li> <li>Senior Executive Service Regional Directors' performance plans were amended in FY 2016 to include completion of safety inspections and populating the system with the results. These requirements were also included in FY 2017 performance plans.</li> </ul>
We recommend that BIA exercise greater management control to ensure that applicable staff record work orders in [the Indian Affairs – Facility Management System (IA-FMS)] and [the Division of Facilities Management and Construction (DFMC)] has the information needed to effectively manage the facility operation and maintenance program.	02/2018	Implemented*	<ul style="list-style-type: none"> <li>OJS prioritized training facility supervisors and corrections managers on entering work order tickets into the IA-FMS through DFMC-sponsored training. All new facility managers and supervisors are to attend training on an annual basis.</li> <li>OJS confirmed work order ticket entries provided BIA OJS with the information necessary to advocate for facility repairs, renovation, and replacement of BIA detention centers in the IA-FMS inventory.</li> </ul>

Recommendation	Date Closure Requested	Status	Actions Taken According to Closure Documents
We recommend that Indian Affairs develop a communication plan for IA-FMS implementation that includes roles and responsibilities to ensure that applicable staff are aware of management's expectations.	10/2016	Implemented*	<ul style="list-style-type: none"> <li>DFMC developed and implemented a communications plan that would be updated in the future as needed.</li> <li>DFMC provided training on the IA-FMS to leadership to educate them on the capabilities of the system and successful implementation of the system.</li> <li>DFMC also defined the roles and responsibilities for the overall implementation to facilitate communication and execution of the IA-FMS.</li> </ul>
We recommend that Indian Affairs provide IA-FMS training to DFMC, BIA and [T]ribal maintenance personnel as needed to ensure successful implementation of IA-FMS.	10/2016	Implemented*	<ul style="list-style-type: none"> <li>DFMC provided classroom training and "Train the Trainer" classes to more than 450 students since calendar year 2015 and held numerous webinars.</li> <li>DFMC has posted training course materials on BIA websites.</li> </ul>
We recommend that BIA continue to explore methods to reduce overcrowding at these facilities.	02/2018	Implemented*	<ul style="list-style-type: none"> <li>OJS instituted tracking daily physical count of inmates in the BIA Direct Services Program.</li> <li>OJS instituted a formal process to track and follow up on submitted overcrowding serious incidents.</li> <li>OJS compiled a report on alternative sentencing methods and has provided support to Tribal courts and probation programs in providing training and alternative sentencing methods.</li> <li>OJS implemented a Reduction and Recidivism Initiative at five piloted areas in Indian Country using a standardized assessment to determine alternative sentencing.</li> </ul>
We recommend that BIA continue to explore alternate methods for recruitment and retention of qualified correctional officers.	04/2018	Implemented*	<ul style="list-style-type: none"> <li>OJS developed a corrections recruitment and retention guide to assist each district with developing recruitment and retention strategies.</li> <li>OJS hired correctional officers through the Excepted Service Schedule A – Appointment Authority.</li> <li>OJS worked with the U.S. Indian Police Academy to use a waiver process to accept training from other Federal, State, and Tribal training programs when reviewing current police applicants for OJS.</li> </ul>

\* During our evaluation, we found that, while BIA's and Indian Affairs' corrective actions generally addressed the recommendations from the 2016 evaluation, they did not fully correct the underlying deficiencies; therefore, we make 24 new recommendations to Indian Affairs to address the deficiencies we identified.

# Appendix 3: Indian Detention Funding

## Detention Program and Operation and Facility Maintenance Funds for Fiscal Years 2017 Through 2021 (in Millions)

Fiscal Year	Office of Justice Services			Division of Facilities Management & Construction		Total
	Detention/ Corrections Programs	Detention – CARES Act <sup>77</sup>	Juvenile Detention Education	Detention Facilities Operation & Maintenance		
2017	\$99.9	–	\$0.5	\$14.1	\$114.5	
2018	\$101.5	–	\$0.5	\$16.5	\$118.5	
2019	\$100.4	–	\$0.5	\$18.8	\$119.7	
2020	\$105.0	\$7.7	\$0.5	\$15.4	\$128.6	
2021	\$106.4	–	\$0.6	\$17.5	\$124.5	
<b>Totals</b>	<b>\$513.2</b>	<b>\$7.7</b>	<b>\$2.6</b>	<b>\$82.3</b>	<b>\$605.8</b>	

<sup>77</sup> We previously reported on the CARES Act funding in *The Bureau of Indian Affairs' Coronavirus Response at Indian Country Detention Facilities* (Report No. 2020-WR-044), issued January 2021.

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# Appendix 4: History of 25 C.F.R. Part 10

The Bureau of Indian Affairs (BIA) issued a Federal Register notice in 1994 “proposing to establish standards for governing Indian adult and juvenile detention, holding and community residential facilities and programs,” as “the current detention regulations are over 20 years old and extremely limited.”<sup>78</sup> BIA proposed changes that were intended to cover the complete range of issues in the administration of detention, holding and community residential services in Indian Country, and provide Tribes sufficient direction to administer constitutionally sound detention, holding and community residential programs.

The 1994 notice prescribed standards for the construction and operation of various types of adult and juvenile law enforcement facilities and programs operated in Indian Country.<sup>79</sup> The standards were divided into five sets, based on facility type: adult detention facilities, juvenile detention facilities, adult community residential facilities, juvenile community residential facilities, and adult holding facilities. The notice stated that the standards would apply to any facilities constructed and/or operated on reservations.<sup>80</sup> The standards included a table that showed the number of mandatory and nonmandatory standards by facility type and new and existing construction. The notice also explained that mandatory standards dealt with areas in which there is potential danger to the life, health, and safety of inmates, staff, and/or the community and those areas in which there are other statutes, regulations, or directives that mandate compliance; the notice listed the mandatory standards in each subpart of the proposed rule.<sup>81</sup>

Following the required notice-and-comment period,<sup>82</sup> BIA promulgated final regulations for 25 C.F.R Part 10.<sup>83</sup> Instead of comprehensive standards, the 1996 final regulations excluded the operational standards and day-to-day guidance. Day-to-day guidance was included in referenced handbooks and guides specific to Indian Country detention facilities that would be made available to Tribes, BIA employees, and the public upon request.

According to the Office of Regulatory Affairs and the U.S. Department of the Interior’s Office of the Solicitor, the 1994 proposal predominately contained interpretive standards and procedures for the operation of detention or holding facilities in Indian Country; as such they should not be published in the C.F.R.<sup>84</sup> As specifically detailed in response to a comment by a Tribe, “As directed of the Department of the Interior, Office of Regulatory Affairs, the format for the rule must be general in nature.”

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<sup>78</sup> Standards for Adult and Juvenile Detention, Community Residential, and Holding Facilities and Programs, 59 Fed. Reg. 40,086 (Aug. 5, 1994) (to be codified at 25 C.F.R. pt. 10).

<sup>79</sup> *Id.*

<sup>80</sup> Reservation means any federally recognized Indian Tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), and Indian allotments if considered reservation land by BIA (59 Fed. Reg. 40,086, 40,089).

<sup>81</sup> 59 Fed. Reg. 40,090.

<sup>82</sup> Comments received during the comment period ending November 3, 1994, were considered in the drafting of the final rule.

<sup>83</sup> Indian Country Detention Facilities and Programs, 61 Fed. Reg. 34,371, 34,373 (July 2, 1996) (to be codified at 25 C.F.R. pt. 10).

<sup>84</sup> Guidance documents “do not have the force and effect of law.” *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 97 (2015).

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## Appendix 5: Monetary Impact

Description	Questioned Costs	
	Unallowable	Unsupported
Operation and Maintenance funding for building no longer in use	\$715,555	–
Potential Antideficiency Act Violation	–	\$3,000,000
<b>Totals</b>	<b>\$715,555</b>	<b>\$3,000,000</b>

# Appendix 6: Sites Visited or Contacted

## Detention Facilities

<b>District 3</b>	Colorado River Adult – Male and Female, Parker, AZ* Colorado River Juvenile, Parker, AZ Fort Mojave Adult Detention, Mohave Valley, AZ Hualapai Adult Detention, Peach Springs, AZ Hualapai Juvenile Detention, Peach Springs, AZ	Tohono O’odham Adult Detention, Sells, AZ San Carlos Adult and Juvenile Detention, San Carlos, AZ White Mountain Apache Adult Detention, Whiteriver, AZ
<b>District 4</b>	Crownpoint Detention – Adult and Juvenile, Crownpoint, NM* Window Rock Adult Detention, Window Rock, AZ Tuba City Adult Detention, Tuba City, NM	Tuba City Juvenile Detention, Tuba City, NM Zuni Department of Corrections – Adult and Juvenile, Zuni, NM*
<b>District 5</b>	Blackfeet Adult Detention, Browning, MT Fort Peck Adult Corrections, Poplar, MT Fort Peck Juvenile Detention, Poplar, MT Northern Cheyenne Transport, Lame Deer, MT	Northern Cheyenne Youth Services Center, Busby, MT Rocky Mountain Regional Detention, Hardin, MT
<b>District 8</b>	Chehalis Adult Detention, Oakville, WA Nisqually Adult Detention, Olympia, WA Puyallup Adult Detention, Tacoma, WA	Quinault Adult Detention, Taholah, WA Warm Springs Adult Detention, Warm Springs, OR Flathead Adult Detention, Pablo, MT

## Other Sites and Offices

<b>Bureau of Indian Affairs (BIA), Office of Justice Services</b>	Headquarters, Washington DC† Support Services, Washington, DC, and Oklahoma City, OK†	Indian Police Academy Recruitment Event, Browning, MT
<b>Indian Affairs</b>	Division of Facilities Management and Construction, Albuquerque, NM Division of Safety and Risk Management, Albuquerque, NM	Office of Facilities, Property and Safety Management, Reston, VA†
<b>BIA Regional Offices</b>	Navajo Region, Gallup, NM† Northwest Region, Portland, OR Rocky Mountain Region, Billings, MT	Southwest Region, Albuquerque, NM Western Region, Phoenix, AZ
<b>BIA Agency Offices</b>	Blackfeet Agency, Browning, MT Colorado River Agency, Parker, AZ Fort Apache Agency, White River, AZ Warm Springs Agency, Warm Springs, OR	Fort Peck Agency, Poplar, MT† Northern Cheyenne Agency, Lame Deer, MT Truxton Canon Agency, Valentine, AZ
<b>Detention Construction Sites</b>	Hopi Detention Construction Site, AZ Blackfeet Detention Construction Site, MT	Quinault Detention Construction Site, WA Warm Springs Detention Construction Site, OR
<b>Other</b>	U.S. Department of the Interior Office of Law Enforcement and Security, Washington, DC†	

\* Two OJS detention programs located at the same building.

† Contacted only.

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# Appendix 7: Response to Draft Report

Indian Affairs' response to our draft report follows on page 52.



# United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

Memorandum

To: Nicki Miller  
Acting Assistant Inspector General  
for Audits, Inspections, and Evaluations

Through: Bryan Newland  
Assistant Secretary – Indian Affairs

10.04.24

From: Bryan Mercier  
Acting Director, Bureau of Indian Affairs  
Acting by virtue of being detailed to the  
position of Director of the BIA

BRYAN MERCIER

Digitally signed by BRYAN  
MERCIER  
Date: 2024.10.04 10:13:54  
-0400'

Kevin Sturlaugson

KEVIN

Digitally signed by  
KEVIN STURLAUGSON

Acting Deputy Assistant Secretary – Management, Indian Affairs

STURLAUGSON

Date: 2024.10.03  
18:24:00 -0400'

Subject: Management Response to Recommendations in Draft Report No. 2022-WR-040  
Performance Audit of the Bureau of Indian Affairs (BIA) Funded and/or Operated  
Detention Programs

Indian Affairs (IA) appreciates the opportunity to comment on the U.S. Department of the Interior Office of Inspector General (OIG) Draft Audit Report – Performance Audit of the Bureau of Indian Affairs (BIA) Funded and/or Operated Detention Programs.

This memorandum transmits the IA management's response to each of the audit recommendations, plans for corrective actions, and documentation of corrective actions taken thus far. IA management is committed to correcting the operational issues identified by OIG and improving the condition of BIA funded and operated detention facilities. Our responses are listed below:

**Recommendation #1:** Develop and implement minimum standards for the operation of detention programs that are binding on direct service and contract programs.

**Actions Planned:** IA management concurs with part of this recommendation. The Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) will identify the BIA Detention Guidelines as the minimum standards for operating both BIA and Tribal detention programs. The BIA Detention Guidelines are derived from the American Jail Association, Core Jail Standards. The minimum standards are monitored by program reviews for BIA Direct Service Programs and Tribal contracted programs. The Guidance provided in the Interim Departmental Manual 446 - Chapter 6 (446 DM 6).

**Responsible Party:** BIA Office of Justice Services

**Action Taken:** Actions planned over the next six months are to establish minimum standards, implement the monitoring tool for both BIA direct services and Tribal contracting programs. Upon completion, evidence of the tool and standardize language for minimum standards will be created for contract language and for BIA direct services will be in memo format. The BIA OJS will continue to recommend that the established guidelines be incorporated into the PL. 93-638 and Self-Governance compacts.

**Target Date:** March 31, 2025

**Recommendation #2:** Conduct risk-based Program Monitoring Reviews of all direct service and contract program.

**Actions Planned:** IA management concurs with the recommendation. BIA-OJS will draft program policies and procedures that specifically apply to this recommendation which will support the management actions planned.

**Responsible Party:** BIA Office of Justice Services

**Action Taken:** BIA-OJS will explore, draft, and implement policies and procedures for follow-up and corrective action on risk-based program monitoring to include identifying, analyzing, managing and mitigating risks based on program reviews. The goal is monitoring risk and evaluating risk for effectiveness. A monitoring tool will be created as part of a high liability for program reviews to be implemented.

**Target Date:** March 31, 2025

**Recommendation #3:** Provide timely reporting in accordance with Office of Justice Services' guidelines to Tribes and BIA correctional staff regarding the results of Program Monitoring Reviews.

**Actions Planned:** IA management concurs with the recommendation. The BIA-OJS P.L. 93-638 Self-Determination Awarding Official Technical Representative/Sub-Awarding Official Technical (AOTR/SAOTR) Representative Contract Monitoring Guide, 2020.

**Responsible Party:** BIA Office of Justice Services

**Action Taken:** The BIA-OJS will implement timelines from the BIA-OJS AOTR/SAOTR Monitoring Guide, 2020. The BIA-OJS shall provide documentation (timelines) verifying this process is followed.

**Target Date:** March 31, 2025

**Recommendation #4:** Coordinate with BIA's Office of Justice Services to assess the level of resources needed to accomplish the oversight mission at direct service and contract programs.

**Actions Planned:** IA management concurs with part of the recommendation. The BIA-OJS will fully assess its existing and additional staffing resources needed to complete oversight goals of direct services detention programs.

**Responsible Party:** BIA Office of Justice Services

**Action Taken:** The BIA-OJS will review existing staffing levels and evaluate its responsibilities within each Law Enforcement and Corrections District to confirm duties and or realignment of responsibilities for BIA direct services. Responsibilities regarding facilities repairs, replacement, renovation, and or construction will be included as well. A Program Directive will be implemented by the OJS Deputy Bureau Director to ensure resources are in place to ensure that oversight responsibilities are met. The BIA OJS will continue to recommend that PL. 93-638 and Self-Governance contracts evaluate needs and resources.

**Target Date:** March 31, 2025

**Recommendation #5:** Establish and implement standards for consistency and thoroughness in data entry of serious incidents in the Incident Management, Analysis, and Reporting System (IMARS) and facility log records for direct service and contract programs.

**Actions Complete:** IA management concurs with the recommendation. A directive has been issued by the Director of BIA OJS, for all BIA OJS detention staff to be trained in the entry of serious incident reports into IMARS and facility SIR log records requirements, according to OJS Memorandum, IMARS Serious Incident Reporting and Reconciliation, 2015, 446 DM 17, Serious Incident Reporting, 2009, OLES Law Enforcement Policy, Chapter 13 IMARS.

**Responsible Party:** BIA Office of Justice Services

**Action Taken:** A directive was issued for all BIA OJS staff, see attachment A.

**Recommendation #6:** Provide training to staff and management at direct service and contract programs regarding serious incident reporting.

**Actions Planned:** IA management concurs with part of the recommendation. Along with a directive issued about responsibilities, according to OJS Memorandum, IMARS Serious Incident Reporting and Reconciliation, 2015, 446 DM 17, Serious Incident Reporting, 2009, OLES Law Enforcement Policy, Chapter 13 IMARS, guidance and training will be developed and established for all levels of OJS personnel and Tribes.

**Responsible Party:** BIA Office of Justice Services

**Action Taken:** Directive issued to all OJS Staff, see attachment A. The training programs will be established for staff and management regarding SIR through the US Indian Police Academy. To close this recommendation, training curriculum and attendance will be provided. Training for Tribes will be offered through a web-based training course.

**Target Date:** August 30, 2025

**Recommendation #7:** Provide guidance to Corrections Program Specialists on performing and documenting serious incident report reconciliation to ensure that Incident Management, Analysis, and Reporting System (IMARS) data follows established standards for consistency and thoroughness.

**Actions Planned:** IA management concurs with the recommendation. Along with a directive issued about responsibilities, according to OJS Memorandum, IMARS Serious Incident Reporting and Reconciliation, 2015, 446 DM 17, Serious Incident Reporting, 2009, OLES Law Enforcement Policy, Chapter 13 IMARS, a guidance memo will be implemented for the Correctional Program Officers/Specialists.

**Responsible Party:** BIA Office of Justice Services

**Action taken:** Directive issued to all OJS Staff, see attachment A. Correctional Program Specialists/Officers will have received training and implemented the guidance for IMARS for consistency and thoroughness. C1-55 SERIOUS INCIDENT REPORTING POLICY, establishes a mandatory uniform reporting system and protocol for incidents that are related to the custodial management of inmates in detention operations. This will be documented through guidance directive, training record and establish process for each district.

**Target Date:** August 30, 2025

**Recommendation #8:** Establish oversight procedures to ensure direct service and contract program compliance with serious incident reporting standards and guidance.

**Actions Planned:** IA management concurs with part of the recommendation. P.L. 93-638 Contractual requirements on SIR reporting. BIA-OJS Directive on IMARS reporting requirements. IMARS Serious Incident Reporting and Reconciliation, 2015, 446 DM 17, Serious Incident Reporting, 2009, OLES Law Enforcement Policy, Chapter 13 IMARS, will support actions planned.

**Responsible Party:** BIA Office of Justice Services

**Action taken:** Written oversight procedures are a requirement in the PL 93-638 contracts and noted in all communications to Tribes and BIA Direct services programs. Annual program monitoring and reviews, in the following year of the report will ensure compliance. Corrective action will be taken. Oversight procedures to ensure contractual and BIA Direct Services. Program Reviews will also reflect oversight procedures followed. The BIA OJS will continue to recommend that the Serious Reporting be incorporated into the PL. 93-638 and Self-Governance compacts and the contract is followed.

**Target Date:** August 30, 2025

**Recommendation #9:** Develop and distribute a strategic recruiting plan that is updated every 2 years with the goal to fill staffing vacancies and alleviate effects of low detention staffing at direct service and contract programs.

**Actions Planned:** IA management concurs with part of the recommendation. BIA OJS Corrections Handbook, BIA Detention Standards BIA ADF-2A-05 Male and Female Staffing, BIA Detention Standards BIA ADF 2A-09 Sufficient Staffing, and PL 93-638 Contractual staffing plan. These policies and standards will be used to develop a plan for the BIA direct services.

**Responsible Party:** BIA Office of Justice Services

**Action taken:** The BIA OJS Correctional Staff shall take the Training on Staffing Analysis. Staffing Estimates shall be determined in 20 direct service detention centers with recommended staffing levels and management of Correctional operations. A recruitment plan shall be developed in collaboration with human resources and the hiring officials within BIA OJS. For action taken a recruitment plan, staffing estimates, funded staffing lists, staffing analysis training list, shall be provided to close out this recommendation. BIA OJS will expand existing employee resiliency and mental health programs to Tribal employees. In the future, BIA OJS may explore the possibility of establishing a recruitment and retention unit based on available resources. During program reviews for tribal contracts, it will be recommended that all vacancies be filled, and the tribe establish a plan to recruit staff. Documentation will be provided in the program reviews over the next year.

**Target Date:** August 30, 2025

**Recommendation #10:** Develop and implement guidance, including a clear definition of overcrowding, to ensure consistent reporting of overcrowding incidents for direct service and contract programs. This guidance should consider appropriate industry standards and policies.

**Actions Planned:** IA management concurs with the recommendation. A guide for overcrowding will be established and implemented, with regard to facility capacities, 25 IAM 2: Design Review, Final Inspection, and Certificate of Occupancy (Policy), 25 IAM 3: Occupational Safety and Health Program (Policy), 25 IAM 3-H, Volume 4: Inspection and Abatement Handbook. These polices and handbook provide guidance with respect to the National Fire Codes as published by the National Fire Protection Association (NFPA) for building safety code and fire safety code compliance. The BIA OJS Corrections has the BIA ADF-1A-06 Single –Occupancy Cells, BIA ADF-1A Multiple Occupancy Rooms/Cell Size, BIA ADF-1A-08 Dayroom Size.

**Responsible Party:** BIA Office of Justice Services

**Action taken:** BIA-OJS had implemented consistent reporting with inmate daily counts of direct service and contracts. In order to develop guidance and draft clear policy, OJS must understand IAM Policy for the existing facilities. BIA OJS will draft and implement guidance on overcrowding in the existing jails with consultation of BIA Division of Safety and Risk Management on capacity load and fire protection. A policy directive will be provided to close this recommendation.

**Target Date:** March 30, 2025

**Recommendation #11:** Conduct a comprehensive analysis of direct service and contract detention programs to determine capacity limits.

**Actions Planned:** IA management concurs with the recommendation. A guide for overcrowding will be established and implemented, regarding facility capacities, 25 IAM 2: Design Review, Final Inspection, and Certificate of Occupancy (Policy), 25 IAM 3: Occupational Safety and Health Program (Policy), 25 IAM 3-H, Volume 4: Inspection and Abatement Handbook. These polices and handbook provide guidance with respect to the National Fire Codes as published by the National Fire Protection Association (NFPA) for building safety code and fire safety code compliance. The BIA OJS Corrections has the BIA ADF-1A-06 Single –Occupancy Cells, BIA ADF-1A Multiple Occupancy Rooms/Cell Size, BIA ADF-1A-08 Dayroom Size.

**Responsible Party:** BIA Office of Justice Services

**Actions taken:** Analysis criteria is created from existing policy and industry standards. Meetings with both BIA and Tribal detention programs to learn criteria and establish capacity limits. Each program will have a profile and classification to close this out.

**Target Date:** December 31, 2025

**Recommendation #12:** Develop and implement a plan to address overcrowding to the maximum extent possible for all direct service and contract programs.

**Actions Planned:** IA management concurs with the recommendation. OJS will address this recommendation with standard with BIA ADF-2A-10 Inmate population management and the BIA Corrections Handbook, for the BIA direct services locations. Each District will provide an annual contingency plan addressing overcrowding according to the new definition of overcrowding in direct service detention centers. During district meetings and or program reviews and site-visits OJS will encourage and provide technical assistance /training to Tribal Contracted programs.

**Responsible Party:** BIA Office of Justice Services

**Target Date:** December 31, 2025

**Recommendation #13:** Establish oversight procedures to ensure review of occupancy levels and physical inmate counts for all direct service and contract programs.

**Actions Planned:** IA management concurs with the recommendation. The BIA Detention Guidelines outline Inmate counts through BIA ADF-2A-10 Inmate population management, BIA ADF-2A-11 Counts, BIA ADF-2A-12 Facility Design as well as the BIA Correctional Handbook. P.L. 93-638 contractual requirements with regard to the security requirements for BIA direct services locations. Each District CPO/CPS will establish oversight procedures for occupancy level and physical inmate counts according to the new definition of overcrowding in direct service detention center and policy and procedures and standards. During district meetings and or program reviews and site-visits will encourage and provide technical assistance /training to Tribal Contracted programs. When oversight procedures are established, the BIA OJS Director will issue a policy directive for direct services to follow. The BIA OJS will highly encourage Tribal contracts

to continue to document and establish inmate counts to be incorporated into the P.L. 93-638 and Self-Governance compacts.

**Responsible Party:** BIA Office of Justice Services

**Target Date:** December 31, 2025

**Recommendation #14:** Develop and implement binding minimum standards for the maintenance of detention facilities that BIA directly maintains or are maintained by contract.

**Actions Planned:** IA management concurs with the recommendation. OFPSM/DFMC will update the Indian Affairs policy 80 IAM 3 – Operations and Maintenance to include the following definition of Operations and Maintenance (O&M):

Per the DOI Federal Real Property Profile (FRPP), O&M funding is to be utilized as follows:

Operations, which is defined as the costs for services related to the normal performance of functions for which the facility is used (include contracted services when applicable but exclude federal personnel costs). Examples include but are not limited to utilities, cleaning/janitorial, roads/grounds, and actual operations costs. All services include personnel, equipment and supplies.

Maintenance, which is defined as the recurring annualized costs for planned activities needed to maintain an asset's functionality and capacity over its expected life. This includes but is not limited to planned and scheduled activities such as inspections, preventive maintenance, refinishing, painting, weatherproofing, and parts replacement. This also includes costs for contracted maintenance services and other expenses and supplies required to perform recurring activities to maintain the asset. Actual repair expenditures are included in the annual maintenance costs. Included are costs for personnel, supplies, and materials.

**Responsible Parties:** DAS-M OFPSM Division of Facilities Management and Construction (DFMC) and BIA Office of Justice Services

**Target Date:** September 30, 2025

**Recommendation #15:** Develop policy and procedures that require appropriate facility personnel at facilities that BIA directly maintains or are maintained by contract to have access to and record work orders in the Indian Affairs – Facility Management System.

**Actions Planned:** IA management concurs with the recommendation. DFMC will draft a memo from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they review the existing policy concerning maintaining access to and recording work orders in the Indian Affairs – Facility Management System.

**Responsible Parties:** DAS-M OFPSM DFMC, BIA OJS, and BIA Field Operations (BIA Field Ops)

**Action Taken:** 80 IAM 1 is the Facilities Management Program Overview which is a policy that applies to all IA employees responsible for any aspect of real property asset management, including programs operated by federally recognized tribal governments and tribal organizations at IA-owned or maintained real property assets. This policy states that BIA Regional Directors, BIE Chief of Facilities and BIE Deputy Bureau Director, School Operations are responsible for accessing and utilizing the IA-FMS to ensure accurate inventory of all assets within the respective region, including scheduling and completion of improvements and repairs. This policy also states that site-level Facility Management is responsible for using the IA-FMS to create, modify and update Deferred Maintenance Work Orders and ensuring that site specific facilities management inventory data is accurate in the IA-FMS.

**Target Date:** March 31, 2025.

**Recommendation #16:** Provide applicable staff with the training or guidance necessary to use the Indian Affairs – Facility Management System to reflect accurate facility conditions and properly address maintenance needs.

**Actions Planned:** IA management concurs with the recommendation. DFMC will provide a list of applicable staff (BIA and OJS personnel) that have access to the IA-FMS and have received both initial and follow on training, which allows the staff to enter work orders to properly address maintenance needs. Any staff identified that have not received training will be provided with the appropriate training.

**Responsible Party:** DAS-M OFPSM DFMC

**Action Taken:** DFMC provides initial and ongoing training in the IA-FMS and OJS has made this training mandatory.

**Target Date:** March 31, 2025.

**Recommendation #17:** Require that all facilities that BIA directly maintains or are maintained by contract be inventoried in the Financial and Business Management System and the Indian Affairs – Facility Management System.

**Actions Planned:** IA management concurs with the recommendation. BIA OJS will provide a list of all facilities that are directly maintained or are maintained by contract to DFMC. DFMC will ensure that all facilities are inventoried in the Financial and Business Management System (FBMS) and the IA-FMS.

**Responsible Parties:** BIA OJS and DAS-M OFPSM DFMC

**Target Date:** March 31, 2025.

**Recommendation #18:** Require that all deficiencies identified by facility managers, safety managers, and detention program personnel at facilities that BIA directly maintains or are

maintained by contract be recorded in the Indian Affairs – Facility Management System as work orders.

**Actions Planned:** IA management concurs with the recommendation. DFMC will draft a memo from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they review the existing policy concerning maintaining access to and recording work orders in the Indian Affairs – Facility Management System.

**Responsible Parties:** DAS-M OFPSM DFMC and BIA Field Ops

**Action Taken:** 80 IAM 1 is the Facilities Management Program Overview which is a policy that applies to all IA employees responsible for any aspect of real property asset management, including programs operated by federally recognized tribal governments and tribal organizations at IA-owned or maintained real property assets. This policy states that BIA Regional Directors, BIE Chief of Facilities and BIE Deputy Bureau Director, School Operations are responsible for accessing and utilizing the IA-FMS to ensure accurate inventory of all assets within the respective region, including scheduling and completion of improvements and repairs. This policy also states that site-level Facility Management is responsible for using the IA-FMS to create, modify and update Deferred Maintenance Work Orders and ensuring that site specific facilities management inventory data is accurate in the IA-FMS.

**Target Date:** March 31, 2025.

**Recommendation #19:** Coordinate with the Division of Facilities Management and Construction and BIA regions to continue exploring avenues to fill staffing vacancies and alleviate effects of low staffing.

**Actions Planned:** IA management concurs with the recommendation. DFMC will draft a memo from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they continue to explore avenues to fill staffing vacancies.

**Responsible Parties:** BIA Field Ops and DAS-M OFPSM DFMC

**Action Taken:** In April 2023, the DFMC branches were expanded from one to four. This provided additional capacity for technical assistance and aligned the organization to be better fit for purpose. One of these Branches focuses specifically on PS&J New Construction and Facility Improvement & Repair (FI&R).

BIA Field Operations has increased efforts across all Regions to improve staffing and continues to work in partnership with the Office of Human Capital Management (OHCM) to implement service delivery standards timelines, utilize USA Staffing to promote transparency, and ensure close and continued coordination between Regions and their designated OHCM Service Centers. These actions have increased the overall staffing level and decreased the time to hire durations among all programs, which includes facility management functions. Field Operations and OHCM will continue their coordinated efforts to further increase efficiency in the hiring process across all job

series. Regions continue to staff facility program managers and work with local Superintendents to make best use of available facility operations funds to staff positions at the site level. Funding limitations prevent hiring of full-time designated facility managers at each location, but Region facility managers develop support plans to make best use of available resources and work closely with Tribal partners to operate and maintain facilities operated under P.L. 93-638 agreements.

**Target Date:** March 31, 2025.

**Recommendation #20:** Perform annual work order cleanup and send reports of outstanding work orders to field personnel, as outlined in the *Aged Work Orders Training Manual*.

**Actions Planned:** IA management concurs with the recommendation. DFMC will send reports of outstanding work orders to the applicable facility maintenance personnel.

**Responsible Parties:** DAS-M OFPSM DFMC and BIA Field Ops

**Action Taken:** DFMC started a Work Order Clean Up initiative in September 2023. The purpose was to:

- Better understand the quality of the data being entered in the Indian Affairs-Facilities Management System, which is currently MAXIMO;
- Increase the completeness and accuracy of the data being entered into MAXIMO by validating and verifying the deferred maintenance work orders;
- Verifying and validating the data to increase our ability to address location needs; and
- Finally, prioritize Facilities Improvement and Repair funding and support the Site Assessment Capital Investment Program, which is how we prioritize large capital investments.

About 3,100 Annual Safety and Health Inspection and Facility Condition Assessment (FCA) work orders, 3 years or newer, were sent back to a Rework status. Of these, just over 1,100 work orders valued at over \$107M have either been submitted back into the system or they have been closed/cancelled. Over 14,000 Facility Condition Assessment generated work orders greater than 3 years old were cancelled. The deferred maintenance associated with these cancelled work orders was \$524 million. Consequently, this initiative has resulted in addressing \$631 million in deferred maintenance that was outdated, duplicative, already completed, etc.

**Target Date:** May 1, 2025

**Recommendation #21:** Require the Division of Facilities Management and Construction to provide regular reports to the Office of Justice Services detailing the amounts of operation and maintenance funds provided for each building used for detention and review the reports to ensure funding is not distributed for facilities that are no longer in use.

**Actions Planned:** IA management concurs with the recommendation. DFMC will provide a report detailing the amount of recommended annual O&M funds to be distributed to each of the OJS sites. This is generally only sent once a year unless there is a Continuing Resolution, in which case the O&M funding is sent in apportionments. DFMC is drafting a Standard Operating Procedure (SOP)

on O&M Allotment Procedures that will be based on these Tribal Consultations. The SOP creates a checks and balances within DFMC and the applicable programs to ensure that the correct amount of O&M is being distributed.

**Responsible Parties:** DAS-M OFPSM DFMC and BIA OJS

**Action Taken:** DFMC conducted Tribal Listening Sessions on March 5 and March 7, 2024, to solicit input on a new O&M allocation methodology. DFMC is following up with two Tribal Consultations on August 27 and August 29, 2024, to solicit input on a formula to calculate annual O&M needs and allocation. This will simplify the O&M calculation process and ensure that only facilities that are in Maximo will receive O&M funding.

**Target Date:** March 31, 2025.

**Recommendation #22:** Establish oversight procedures to ensure review of facility and maintenance conditions at facilities that BIA directly maintains or are maintained by contract.

**Actions Planned:** IA management concurs with the recommendation. DFMC will draft a memo from the Director of OFPSM in coordination with BIA Deputy Bureau Director Field Operations to be sent to the appropriate personnel at facilities requesting that they review the existing policy concerning maintaining access to and recording work orders in the Indian Affairs – Facility Management System.

**Responsible Parties:** DAS-M OFPSM DFMC and BIA Field Ops

**Action Taken:** 80 IAM 1 is the Facilities Management Program Overview which is a policy that applies to all IA employees responsible for any aspect of real property asset management, including programs operated by federally recognized tribal governments and tribal organizations at IA-owned or maintained real property assets. This policy states that BIA Regional Directors, BIE Chief of Facilities and BIE Deputy Bureau Director, School Operations are responsible for accessing and utilizing the IA-FMS to ensure accurate inventory of all assets within the respective region, including scheduling and completion of improvements and repairs. This policy also states that site-level Facility Management is responsible for using the IA-FMS to create, modify and update Deferred Maintenance Work Orders and ensuring that site specific facilities management inventory data is accurate in the IA-FMS.

**Target Date:** March 31, 2025.

**Recommendation #23:** Develop and implement a control to ensure that BIA uses supplemental appropriations for their congressionally authorized purpose.

**Actions Taken:** IA management concurs with recommendation 23, to develop and implement a control to ensure that BIA uses supplemental appropriations for their congressionally authorized purpose. The Departmental Manual (328 DM 1) requires IA to establish BIA controls to ensure supplemental appropriations are used for their Congressionally authorized purpose. IA has already developed and implemented the controls that address this recommendation. The Indian Affairs Manual sections provide the framework and controls implemented by IA in accordance

with Department policy. Specifically, two iterations of the Indian Affairs Manual Part 26 Chapter 2 – Administrative Control of Funds were in effect during the time period in question. One is the current version issued on 5/5/2021, the other is the prior version issued on 9/30/2009.

As part of IA’s controls, when new legislation is passed, the IA Office of Budget and Performance Management reviews and analyzes appropriations for earmarks (including supplemental appropriations) to determine legislative constraints on funding and determine if additional follow-up is required (i.e. a report back to Congress, etc.). Additionally, the Joint Explanatory Statement (JES) is also reviewed to better understand Congress’ intent even if not legally binding. IA strives to comply with all appropriations law requirements and confers with DOI Office of Budget to resolve uncertainties regarding reprogramming limitations, or any other concern regarding appropriations to consistently be in compliance. In this particular case, while the JES was reviewed, and the language noted, it was not deemed to be a Congressionally Directed Spending Item. As such, no additional controls were necessary to track this funding outside of normal programmatic direction.

**Responsible Parties:** DAS-M Office of Budget and Performance Management (OBPM)

**Recommendation #24:** Determine whether an Anti-deficiency Act violation occurred with regard to the FYs 2020 and 2021 supplemental appropriations and should be reported as required by DOI policy to resolve the \$3 million in questioned costs.

**Actions Taken:** IA management concurs with recommendation 24, to determine whether an Antideficiency Act violation occurred and should be reported with regard to the \$3 million in questioned costs from FYs 2020 and 2021 supplemental appropriations. IA performed the verification process described in 26 IAM 2: Administrative Control of Funds. Upon review of the potential Antideficiency Act violation identified by the OIG, IA, in consultation with the Office of the Solicitor, General Law Division, determined that an Antideficiency Act violation did not occur.

IA’s review concluded that the relevant provisions of the Joint Explanatory Statement were not legally binding with regard to the \$3 million from the FYs 2020 and 2021 appropriations. The OIG draft report correctly indicates that language in legislative history, including joint explanatory statements, may be legally binding restrictions on an agency's appropriations when incorporated by reference. However, in this particular case, IA and the Office of the Solicitor did not identify any such incorporating language in the relevant acts. Therefore, there was no suspected Antideficiency Act violation to report in accordance with 328 DM 1.

Notwithstanding the response to recommendation 23 and the above, The BIA believes Congress intended to simply increase the funding level in order to hire additional staff to the extent it meets operational needs and/or constraints. As such, the BIA executed the funds in a manner consistent with clearly communicated congressional intent. The \$3.0 million increase referenced in the Joint Explanatory Statement did, in fact, enable BIA to hire new correctional officers. IA is providing additional data and evidence to support the hiring efforts as reviewed by OIG. Specifically, a table of the amounts allocated to BIA-operated detention centers with corresponding numbers of new hires and losses by fiscal year is provided below. Documentation to support these hires and losses is maintained by the IA Office of Human Capital Management.

**Number of New Correctional Officer Staff Hired During Availability Period for FY 2020 and 2021 Appropriations**

BIA/OJS Detention Center	Amount of \$3M Allocated:			New Staff Hired/Attrition During FY:						
	2020	2021	Total	2020		2021		2022		Net
	Amt.	Amt.	Amt.	Gain	Loss	Gain	Loss	Gain	Loss	Chg.
Winnebago Detention	14,184	8,220	22,404	1	-1	1			-1	0
Standing Rock Detention	39,329	19,702	59,031	2	-2	3	-2		-3	-2
Turtle Mountain Detention	21,118	12,046	33,164	4		1			-1	4
Fort Totten Detention	14,197	9,181	23,378		-1					-1
Lower Brule Detention	24,133	12,928	37,061	2		3	-5			0
Yankton Detention	11,681	5,034	16,715	5	-3	1		1	-1	3
Northern Cheyenne Detention	32,212	5,631	37,843		-1				-4	-5
Wind River Detention	35,483	15,343	50,826			2		3		5
Fort Belknap Detention	23,937	12,225	36,162	1	-1		-1		-1	-2
Spokane Detention	14,091	4,933	19,024		-2		-1	5	-1	1
Blackfeet Detention	34,233	19,983	54,216		-2	5	-6	4		1
Eastern Nevada Detention	6,617	3,161	9,778	1			-3	2		0
Uintah & Ouray Detention	24,888	13,386	38,274	2	-2	2	-2	1	-1	0
Hopi Detention	22,044	10,778	32,822	2					-1	1
Ute Mountain Detention	28,135	15,956	44,091	4	-2	7	-2	2	-1	8
Other Locations					-2		-5		-7	-14
<b>Totals</b>	<b>346,282</b>	<b>168,507</b>	<b>514,789</b>	<b>24</b>	<b>-19</b>	<b>25</b>	<b>-27</b>	<b>18</b>	<b>-22</b>	<b>-1</b>

Additionally, IA concluded that the BIA hiring of correctional officers to support the program administration was appropriate during this period considering the following factors. From 2019 to 2021, the Detention/Corrections budget line identified in congressional support tables increased from \$102.98 million to \$106.41 million, representing an increase of \$3.43 million or 3.33%, which includes the \$3.0 million referenced in the Joint Explanatory Statements. During that time, the Office of Personnel Management (OPM) general schedule employee pay raises for 2020 and 2021 totaled 4.10%, resulting in the cost of BIA’s existing [2019] corrections staff increasing more than the appropriated funding for the program during 2020 and 2021. Consequently, the \$3.0 million increase referenced in the JES was not adequate to maintain existing BIA staffing levels, much less to hire additional staff. This required BIA to limit the rate of hiring new correctional officers to at or below the rate of existing staff attrition, and necessarily played a central role in BIA’s ultimate execution of the funds.

**Responsible Parties:** DAS-M OBPM

**List of Attachments:**

- BIA Office of Justice Services Memo - Attachment A
- 80 IAM 1 Facilities Management Program (current version)
- 26 IAM 2 Admin Control of Funds, 5-5-21 (current version)
- 26 IAM 1-6 Budget Policy 9-30-09 (previous version)

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## Appendix 8: Status of Recommendations

Recommendation	Status	Action Required
<b>2022-WR-040-01</b> We recommend that Indian Affairs develop and implement minimum standards for the operation of detention programs that are binding on both direct service and contract programs.	<b>Unresolved</b>	We will meet with Indian Affairs (IA) to further discuss resolution of this recommendation.
<b>2022-WR-040-02</b> We recommend that Indian Affairs conduct risk-based Program Monitoring Reviews of all direct service and contract programs.	<b>Resolved</b>	We will track implementation.
<b>2022-WR-040-03</b> We recommend that Indian Affairs provide timely reporting in accordance with Office of Justice Services' guidelines to Tribes and BIA correctional staff regarding the results of Program Monitoring Reviews.	<b>Resolved</b>	
<b>2022-WR-040-04</b> We recommend that Indian Affairs assess the level of resources needed to accomplish the oversight mission at direct service and contract programs.		
<b>2022-WR-040-05</b> We recommend that Indian Affairs establish and implement standards for consistency and thoroughness in data entry of serious incidents in the Incident Management, Analysis, and Reporting System and facility log records for direct service and contract programs.	<b>Unresolved</b>	We will meet with IA to further discuss resolution of this recommendation.
<b>2022-WR-040-06</b> We recommend that Indian Affairs provide training to staff and management at direct service and contract programs regarding serious incident reporting.		
<b>2022-WR-040-07</b> We recommend that Indian Affairs provide guidance to Corrections Program Specialists on performing and documenting serious incident report reconciliation to ensure that Incident Management, Analysis, and Reporting System data follows established standards for consistency and thoroughness.	<b>Resolved</b>	We will track implementation.
<b>2022-WR-040-08</b> We recommend that Indian Affairs establish oversight procedures to ensure direct service and contract program compliance with serious incident reporting standards and guidance.	<b>Unresolved</b>	We will meet with IA to further discuss resolution of this recommendation.

Recommendation	Status	Action Required
<p><b>2022-WR-040-09</b> We recommend that Indian Affairs develop and distribute a strategic recruiting plan that is updated periodically with the goal to fill staffing vacancies at detention facilities and alleviate effects of low detention staffing at direct service and contract programs.</p>	Unresolved	We will meet with IA to further discuss resolution of this recommendation.
<p><b>2022-WR-040-10</b> We recommend that Indian Affairs develop and implement guidance, including a clear definition of overcrowding, to ensure consistent reporting of overcrowding incidents for direct service and contract programs. This guidance should consider appropriate industry standards and policies.</p>	Resolved	We will track implementation.
<p><b>2022-WR-040-11</b> We recommend that Indian Affairs conduct a comprehensive analysis of direct service and contract detention programs to determine capacity limits.</p> <p><b>2022-WR-040-12</b> We recommend that Indian Affairs develop and implement a plan to address overcrowding to the maximum extent possible for all direct service and contract programs.</p>	Resolved	We will track implementation.
<p><b>2022-WR-040-13</b> We recommend that Indian Affairs establish oversight procedures to ensure review of occupancy levels and physical inmate counts for all direct service and contract programs.</p>	Unresolved	We will meet with IA to further discuss resolution of this recommendation.
<p><b>2022-WR-040-14</b> We recommend that Indian Affairs develop and implement binding minimum standards for the maintenance of detention facilities that BIA directly maintains or are maintained by contract.</p> <p><b>2022-WR-040-15</b> We recommend that Indian Affairs develop policy and procedures that require appropriate facility personnel at facilities that BIA directly maintains or are maintained by contract to have access to and record work orders in the Indian Affairs – Facility Management System.</p>	Resolved	We will track implementation.
<p><b>2022-WR-040-16</b> We recommend that Indian Affairs provide applicable staff with the training or guidance necessary to use the Indian Affairs – Facility Management System to reflect accurate facility conditions and properly address maintenance needs.</p>	Resolved	We will track implementation.

Recommendation	Status	Action Required
<p><b>2022-WR-040-17</b> We recommend that Indian Affairs require that all facilities that BIA directly maintains or are maintained by contract be inventoried in the Financial and Business Management System and the Indian Affairs – Facility Management System.</p>	<b>Resolved</b>	We will track implementation.
<p><b>2022-WR-040-18</b> We recommend that Indian Affairs require that all deficiencies identified by facility managers, safety managers, and detention program personnel at facilities that BIA directly maintains or are maintained by contract be recorded in the Indian Affairs – Facility Management System as work orders.</p>	<b>Unresolved</b>	We will meet with IA to further discuss resolution of this recommendation.
<p><b>2022-WR-040-19</b> We recommend that Indian Affairs coordinate with the Division of Facilities Management and Construction and BIA regions to continue exploring avenues to fill staffing vacancies and alleviate effects of low staffing.</p>		
<p><b>2022-WR-040-20</b> We recommend that Indian Affairs perform annual work order cleanup and send reports of outstanding work orders to field personnel, as outlined in the <i>Aged Work Orders Training Manual</i>.</p>	<b>Resolved</b>	We will track implementation.
<p><b>2022-WR-040-21</b> We recommend that Indian Affairs require the Division of Facilities Management and Construction to provide regular reports to the Office of Justice Services detailing the amounts of operation and maintenance funds provided for each building used for detention and review the reports to ensure funding is not distributed for facilities that are no longer in use.</p>		
<p><b>2022-WR-040-22</b> We recommend that Indian Affairs establish oversight procedures to ensure review of facility and maintenance conditions at facilities that BIA directly maintains or are maintained by contract.</p>	<b>Unresolved</b>	We will meet with IA to further discuss resolution of this recommendation.
<p><b>2022-WR-040-23</b> We recommend that Indian Affairs develop and implement a control to ensure that BIA uses supplemental appropriations for their congressionally authorized purpose.</p>	<b>Implemented</b>	No action is required.

Recommendation	Status	Action Required
<b>2022-WR-040-24</b> We recommend that Indian Affairs determine whether an Antideficiency Act violation occurred with regard to the FY 2020 and 2021 supplemental appropriations and should be reported as required by DOI policy to resolve the \$3 million in questioned costs.	<b>Implemented</b>	No action is required.



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