

[insurgencies]

The Color of Corporate Corrections, Part II: Contractual Exemptions and the Overrepresentation of People of Color in Private Prisons

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My previous study² published in *Radical Criminology*, (Issue 2, Fall 2013) demonstrates that people of color³—though historically overrepresented in public prisons relative to their share of state and national populations—are *further* overrepresented in private prisons contracted by departments of correction in Arizona, California, and Texas.

My current research on the relationship between U.S. racial formation and prison privatization enlarges my previous work by foregrounding the question of *why*. That is, *why is it that*

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² “The Color of Corporate Corrections.” *Radical Criminology* (2)
<http://journal.radicalcriminology.org/index.php/rc/article/view/27>

³ Although racial designations are always imprecise, elusive, historically situated, and subject to revision, I have appropriated U.S. Census Bureau racial categories for the purposes of this study to preserve nomenclatural, and therefore statistical, fidelity in cross referencing figures. People of color here are defined as “Black, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, and non-white Hispanic or Latino.”

people of color are overrepresented in private versus public facilities in select states even in the absence of explicit racially discriminatory correctional placement or classification policies?

In order to explain why people of color tend to be overrepresented in private relative to public facilities around the country this study draws on data from nine (9) states: Arizona, California, Colorado, Georgia, Mississippi, Ohio, Oklahoma, Tennessee, and Texas. These states were selected on the basis of their reliably large sample size. Each of the nine states considered currently houses at least 3,000 prisoners in private minimum and/or medium security facilities.⁴ Additionally, this study controls for differences in facility population profile. Therefore, only public and private facilities/units with a minimum and/or medium security designation are included in this comparison. And finally, as in my previous work, in order to avoid artificially inflating the over-incarceration of people of color in for-profit prisons this examination intentionally excludes figures from federal detention centers controlled by U.S. Immigration and Customs Enforcement (ICE), the U.S. Marshals Service, and detention facilities managed at the local level. For similar reasons, it strategically excludes data from transfer centers, work release centers, community corrections facilities, and reception centers.

Based on an analysis of data obtained from over sixty separate public record requests⁵ and reports accessible on state department of corrections websites, this study finds that people of color are overrepresented in private minimum and/or medium security private facilities relative to their public counterparts in each of the nine (9) states examined.

This research further posits that the overrepresentation of people of color in private versus public prisons across the country is primarily attributable to an unlikely source: finely tailored

⁴ Over thirty states in total contract with private prison companies but many of these jurisdictions have sample sizes that are statistically insignificant. Alaska, for instance, houses less than 1,000 prisoners in minimum and/or medium security private facilities.

⁵ All public record requests were made between May, 2012 and September, 2013.

contractual provisions that implicitly exempt private prison companies from housing certain types of individuals whose health care and staffing costs disproportionately attenuate profit margins. *Health—and therefore age—tends to serve as a proxy for race without any explicit reference to it.*

These figures suggest that the older the prisoner, the more likely that prisoner is to be “Non-Hispanic, white.” Correspondingly, the younger the prisoner, the more likely that prisoner is to be a person of color. Most prisoners over 50 today were convicted and sentenced before the operationalization of the so-called “War on Drugs,” a skein of policies that have disproportionately criminalized communities of color. By implication, the vast majority of those incarcerated prior to 1980—both in real numbers and on a percentage basis— was “Non-Hispanic, white.”⁶ Contrastingly, black individuals constituted 30 percent of state prisons admits in 1950, 34 percent in 1960, roughly 40 percent in 1970, and 42 percent by 1980.⁷

Therefore, age and health serve as dual proxies for race when explaining the persistent racial disparities in private versus public facilities with similar population profiles.

Elderly and/or geriatric prisoners tend to cost more to incarcerate. A 2012 ACLU report estimates that it costs \$34,135 per year to house a non-geriatric prisoner, but it costs \$68,270 per year to house a prisoner age 50 and older.⁸

My study firmly suggests that private prison management companies⁹ responsible for providing health services exempt themselves contractually from accepting and housing prisoners with chronic medical conditions as well as those whose health care costs will be “above average.”¹⁰ This fact results in a prisoner profile that is far younger and far “darker” in minimum

⁶ For example, an individual convicted in 1970 as a 20 year-old would be 63 today. Research conducted by the U.S. Department of Justice and the ACLU both conclude that prisoners over the age of 50 are most likely to be “non-Hispanic, white.” <https://www.ncjrs.gov/pdffiles1/nij/125618.pdf>

⁷ Ibid.

⁸ https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf

⁹ Corrections Corporation of America, the GEO Group, and MTC are the three largest private prison companies in the United States. Together they constitute close to 90 percent of the private corrections market share.

and/or medium security private facilities than in select counterpart public facilities. In fact, the states in which the private versus public racial disparities are most pronounced also happen to be the states in which the private versus public age disparities are most salient. Please see data on Oklahoma and Texas.

Secondly, on the rare occasion that a state department of correction retains control of health services while contracting

¹⁰ Please consider these examples of contractual exemptions. **Note California:** “In the event that the CDCR requests that the contractor [Corrections Corporation of America] accept offenders with serious or significant mental health or serious or significant physical problems, included but not limited to physical disability, CDCR and the contractor shall mutually agree to an appropriate plan of care and the population and the allocation of costs associated therewith. If the overall percentage of offenders requiring Hepatitis C treatment exceeds the overall percentage of offenders requiring Hepatitis C treatment in the CDCR system, CDCR agrees to pay the treatment costs for those offenders in excess of the percentage of offenders requiring Hepatitis C treatment in the CDCR system...The cost of providing on-site medical, mental health or dental services through facility staff or contracted services shall be considered normal costs incidental to the operation of the facility and is included in the CDCR offender per diem rates, except that the CDCR shall pay for...all expenses in excess of \$2,500 annually per inmate for medically necessary, off site hospital or emergency care...all HIV or AIDS related inpatient and outpatient medical costs and the costs of providing AZT or other medications therapeutically indicated and medically necessary for the treatment of offenders with HIV or AIDS.” **Note Oklahoma:** “The contractor [The GEO Group] will be responsible for the treatment of offenders infected with HIV. This will include, but will not be limited to, all in-patient and outpatient medical costs excluding the cost of providing antiviral medications therapeutically indicated for the treatment of HIV. If the number of the HIV positive offender population being treated increases by 10 offenders then the medication cost allocation shall be subject to negotiation. The contractor may return any offender diagnosed with AIDS, as defined the center for disease control to the state. The contractor is responsible for treatment of Hepatitis C offenders in accordance with the Oklahoma DOC protocol. If the number of Hepatitis C positive offender population being treated at any one time is more than two (2) then the DOC will transfer those additional offenders out of the facility. When an offender reaches end stage Hepatitis C and can no longer be treated at the contractor’s facility, the DOC will transfer the offender out of the facility...The contractor may claim reimbursement from the department for the inpatient hospitalization in a licensed hospital, for the hospital charges only, not separate physician or other provider charges, for the amount which exceeds 50,000 per inpatient hospital discharge for each single hospital stay which originates while the contract for services is in effect between the contractor and the department.” **Note Mississippi:** “MTC [Management and Training Company] will not be

with a private prison management company¹¹ elderly populations still remain disproportionately expensive to incarcerate because those assigned to monitor geriatric and/or chronically ill prisoners often require special training, benefit from a higher pay grades, and are assigned at lower staff-to-prisoner ratios. Each of these considerations further erodes profit margins.

In sum, explicit contractual exemptions for health services and implicit provisions for reducing “high cost” geriatric or infirmed prisoners helps to explain ongoing racial disparities in private versus public prisons with similar population profiles. My modest hope is that this study provides an incontrovertible example of the ways in which seemingly “race neutral” or “colorblind” carceral policies continue to have a differential impact on communities of color.¹²

responsible or liable for providing counseling and/or mental health programs. MTC will not be responsible or liable for providing medical, mental health, optometry, pharmaceutical, dental, or similar services. MDOC shall provide security and control of inmates for outpatient needs and/or hospitalization.”

Note Arizona: According to a 2011 report issued by the Arizona Department of Corrections “Both private and state-run prison units have differences in the types of inmates that can be housed based on inmate medical, mental health and dental needs Generally, state-run prisons house a higher percentage of inmates with higher medical and mental health needs than private prison units. Private prison units considered to be corridor facilities have access to off-site healthcare and can house inmates with more severe medical and mental health needs. Additionally, two private contracts have a \$10,000 cap per inmate on health care services. When the health care cost of a single inmate exceeds this cap, the inmate is returned to a state-run prison unit and the state assumes all further medical treatment costs associated with the inmate. The consolidation of inmates with higher medical and mental health needs to certain units is cost-efficient overall, but results in a higher per diem cost for those units and complexes that house these inmates.”

http://www.azcorrections.gov/ARS41_1609_01_Biennial_Comparison_Report122111_e_v.pdf

¹¹ In Texas, for instance, medical care in private prisons is provided by Correctional Managed Health Care, a public agency.

¹² The overrepresentation of people of color in private prisons indicates they are disproportionately siphoned away from public prisons—precisely the types of facilities that provide the greatest access to educational and rehabilitative programs and services. <http://www.urban.org/projects/reentry-roundtable/upload/Crayton.pdf>. People of color continue to be seen in the national imagination as sources of profit extraction and not necessarily as citizens deserving of public services.

DATA:**ARIZONA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)**

Douglas-Gila: 359/601

Douglas-Mohave: 663/930

Douglas-Eggers: 127/231

Florence-East: 397/690

Florence-North: 604/1085

Florence-Globe: 164/293

Lewis-Stiner: 786/1176

Lewis-Sunrise: 42/99

Safford-Fort Grant: 331/573

Safford-Graham: 349/536

Safford-Tonto: 194/306

Tucson-Cimarron: 246/371

Tucson-Santa Rita: 503/777

Tucson-Winchester: 501/769

Tucson-Catalina: 144/348

Tucson-Whetstone: 685/1171

Winslow-Coronado: 318/498

Winslow-Kaibab: 614/775

Winslow-Apache: 212/358

Yuma-Cheyenne: 734/1188

Yuma-Cocopah: 570/1047

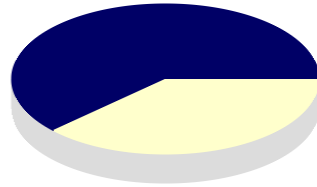
Yuma-Cibola: 152/308

Yuma-La Paz: 661/864

62 % ■
Percent population People of Color

Arizona Public Facilities

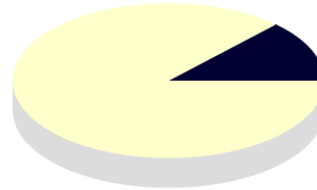
38 % ■



13 % ■
Percent population age 50 or older

Arizona Public Facilities

87 % ■



ARIZONA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Kingman-Cerbat: 1193/1965

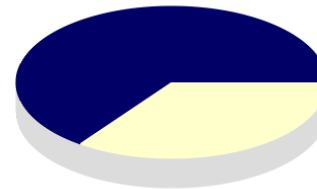
Kingman-Hualapal: 1069/1512

Marana: 309/496

65 % ■
Percent population People of Color

Arizona Private Facilities

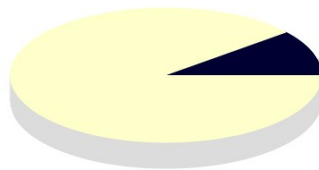
35 % ■



11 % ■
Percent population age 50 or older

Arizona Private Facilities

89 % ■



CALIFORNIA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Avenal: 4447/6217

California Men's Colony: 4719/6240

California Men's Rehabilitation Center: 3156/4263

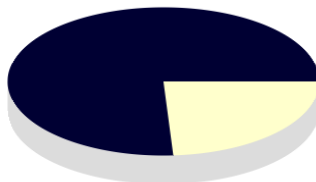
Chuckawalla / Ironwood: 6221/7634

Folsom: 5360/6676

76 % ■
Percent population People of Color

California Public Facilities

24 % ■



***Note:** Though the California Department of Corrections and Rehabilitation has been incredibly uncooperative in releasing data pertaining to the proportion of prisoners age 50 and older in minimum/medium-security public and private facilities, readers should note that the publicly-operated California Health Care facility in Stockton, CA is the only facility officially charged with the task of “housing for patients who require acute and long-term care for medical or psychiatric needs.” It is therefore reasonable to hypothesize that this particular publicly-operated facility would contain the highest proportion of prisoners age 50 and older among California's more than 30 state-operated prisons. <http://cdcrto-day.blogspot.com/2013/06/cdcr-dedicates-new-california-health.html>

CALIFORNIA: PRIVATE (OUTSOURCED) MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

La Palma (in Arizona): 2454/2949

North Fork (in Oklahoma): 1774/2003

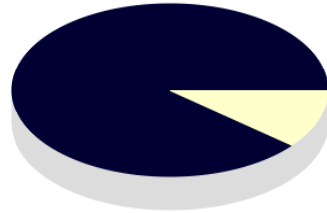
Red Rock (in Arizona): 1382/1504

Tallahatchie (in Mississippi): 2410/2603

89 % ■
Percent population People of Color

California Private Facilities

11 % ■



COLORADO: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Arkansas Valley: 575/1008

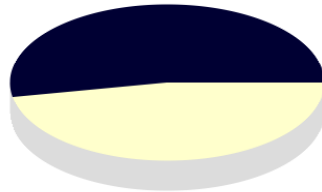
Buena Vista: 546/926

Fremont: 798/1662

53 % ■
Percent population People of Color

Colorado Public Facilities

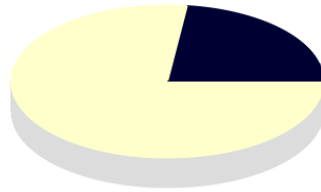
47 % ■



23 % ■
Percent population Age 50 or Older

77 % ■

Colorado Public Facilities



COLORADO: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Bent: 764/1317

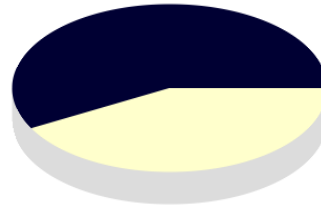
Crowley: 938/1590

Kit Carson: 456/800

58 % ■
Percent population People of Color

42 % ■

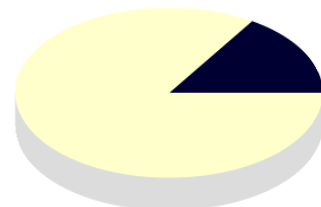
Colorado Private Facilities



16 % ■
Percent population Age 50 or Older

84 % ■

Colorado Private Facilities



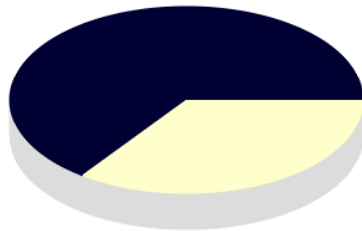
GEORGIA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Autry: 1155/1644
Calhoun: 1169/1635
Central: 614/1099
Dodge: 796/1198
Dooly: 1093/1652
Johnson State: 855/1544
Lee State: 523/725
Long: 100/224
Montgomery: 236/374

65 % ■
Percentage People of Color

35 % ■

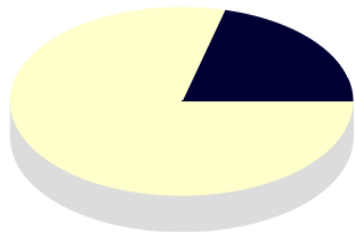
Georgia Public Facilities



21 % ■
Percent population Age 50 or Older

79 % ■

Georgia Public Facilities



GEORGIA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Coffee: 1811/2540

Jenkins: 665/1107

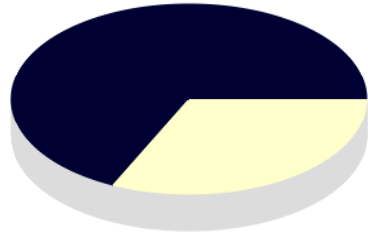
Riverbend: 1012/1459

Wheeler: 1817/2640

68 % ■
Percentage People of Color

32 % ■

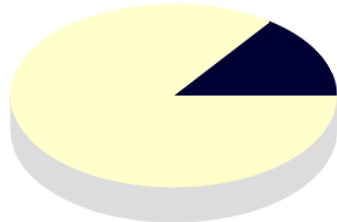
Georgia Private Facilities



15 % ■
Percent population Age 50 or Older

85 % ■

Georgia Private Facilities



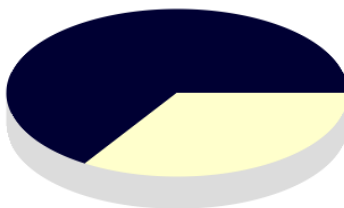
MISSISSIPPI: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)*

CMCF: 1451/2188

66 % ■
Percentage People of Color

Mississippi Public Facility

34 % ■



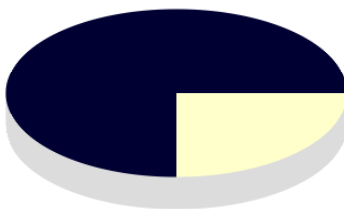
MISSISSIPPI: PRIVATE MEDIUM SECURITY FACILITIES (PEOPLE OF COLOR / TOTAL POPULATION)*

as Composite Totals: 3256/4314

75 % ■
Percentage People of Color

Mississippi Private Facilities

25 % ■



***Note:** Though the Mississippi Department of Corrections has not been able to provide me with data pertaining to the proportion of prisoners age 50 and older in minimum/medium-security public and private facilities, readers should note that the *publicly-operated* Mississippi State Penitentiary in Parchman, MS is the only facility responsible for “maintain[ing] two special units for its elderly prisoners.”—<http://www.mdoc.state.ms.us>

OHIO: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Allen Oakwood: 659/1590

Marion: 1343/2617

Dayton: 315/882

Chillicothe: 1038/2747

London: 1119/2263

Belmont: 1220/2762

Noble: 1034/2495

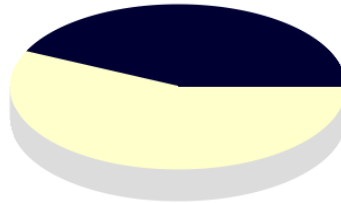
Southeastern: 853/2055

Pickaway: 919/2165

43 % ■
Percentage People of Color

Ohio Public Facilities

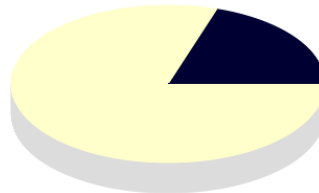
57 % ■



20 % ■
Percent population Age 50 or Older

Ohio Public Facilities

80 % ■



OHIO: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

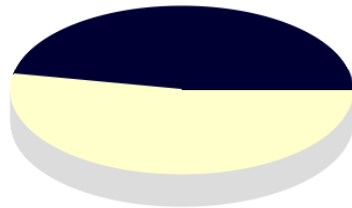
Lake Erie: 898/1542

North Central Complex: 1113/2708

47 % ■
Percentage People of Color

53 % ■

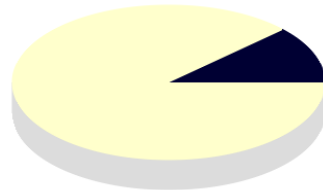
Ohio Private Facilities



12 % ■
Percent population Age 50 or Older

88 % ■

Ohio Private Facilities



OKLAHOMA: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Dick Conner: 608/1202

James Crabtree: 387/992

Joseph Harp: 555/1396

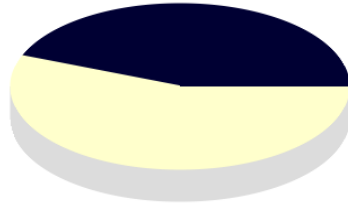
Mack Alford: 349/793

OK State Reformatory: 483/1067

44 % ■
Percentage People of Color

56 % ■

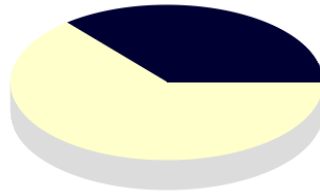
Oklahoma Public Facilities



36 % ■
Percent population Age 50 or Older

64 % ■

Oklahoma Public Facilities



OKLAHOMA: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

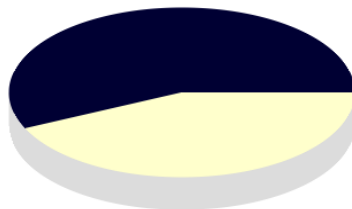
Davis: 989/1682

Lawton: 1423/2529

57 % ■
Percentage People of Color

43 % ■

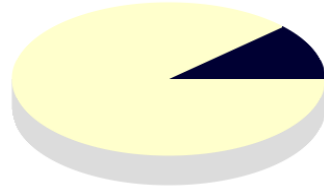
Oklahoma Private Facilities



12 % ■
Percent population Age 50 or Older

Ohio Private Facilities

88 % ■



TENNESSEE: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

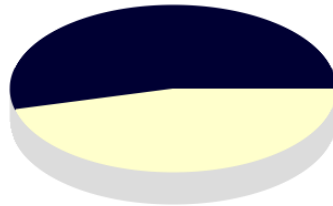
CBCX: 315/604

NWCX: 1315/2404

54 % ■
Percentage People of Color

Tennessee Public Facilities

46 % ■



TENNESSEE: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Hardeman: 1265/1998

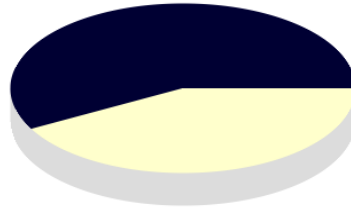
South Central: 765: 1669

Whiteville: 974/1528

58 % ■
Percentage People of Color

Tennessee Private Facilities

42 % ■



* **Note:** Though the Tennessee Department of Correction has stated it “does not have the resources to perform individual requests to disaggregate data [pertaining to the proportion of prisoners age 50 and older in minimum/medium-security public and private facilities],” readers should note that the publicly-operated Lois M. DeBerry Special Needs Facility in Nashville, TN is the only facility responsible for providing “acute and convalescent health care” to Tennessee prisoners. It is therefore reasonable to hypothesize that this particular publicly-operated facility would contain the largest proportion of prisoners age 50 and older among all of Tennessee’s prisons. —<http://www.tn.gov/correction/institutions/dsnf.html>

TEXAS: PUBLIC MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Byrd: 723/1088

Goree: 483/975

Huntsville: 874/1520

Jester III: 629/1083

Luther: 795/1261

Pack: 763/1429

Powledge: 504/1105

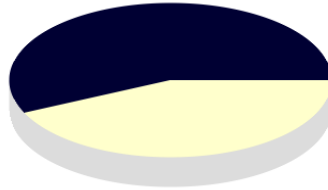
Terrell: 940/1539

Vance: 192/295

57 % ■
Percentage People of Color

43 % ■

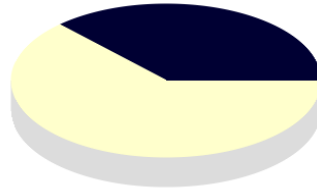
Texas Public Facilities



37 % ■
Percent population Age 50 or Older

63 % ■

Texas Public Facilities



TEXAS: PRIVATE MINIMUM/MEDIUM SECURITY FACILITIES OR UNITS (PEOPLE OF COLOR / TOTAL POPULATION)

Billy Moore: 344/499

Bridgeport: 360/520

Cleveland: 361/519

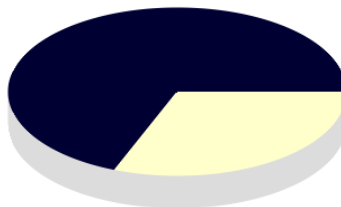
Diboll: 354/517

Estes: 722/1039

69 % ■
Percentage People of Color

31 % ■

Texas Private Facilities



17 % ■
Percent population Age 50 or Older

Texas Private Facilities

83 % ■

