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Highway to Hell: The Privatized Prison Transportation Industry and the Long Road to Reform

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**HIGHWAY TO HELL: THE PRIVATIZED PRISON
TRANSPORTATION INDUSTRY AND
THE LONG ROAD TO REFORM**

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I. INTRODUCTION

In 2014, Dr. William Weintraub, a 47-year-old nuclear physicist and former college professor, entered the back of a privatized prison transportation van headed to South Carolina from Dr. Weintraub’s home in Boulder, Colorado.¹ Weintraub was being extradited to South Carolina after being accused of making threats to a South Carolina newspaper that published an article about him while

¹ Weintraub v. Advanced Corr. Healthcare, Inc., 161 F. Supp. 3d 1272, 1276 (N.D. Ga. 2015).

he was a professor at Coastal Carolina University.² This ride would prove to be his last.

In the early morning hours of April 25, 2014, Weintraub stopped breathing, fell forward, urinated on himself, and died in the back of that Prisoner Transport Services of America (“PTS”) transportation van.³ His severe decline began just 10 days earlier while he was waiting to enter the custody of PTS.⁴ While awaiting transport at the Boulder County jail, Weintraub began complaining of stomach pain and began a treatment of over-the-counter digestive aids.⁵ However, PTS abruptly ended Weintraub’s treatment once he entered their custody to begin his five-day journey cross-country to the company’s temporary housing facility in Kentucky.⁶

Soon thereafter, Weintraub’s pain became severe and his condition rapidly declined.⁷ He began exhibiting signs of a worsening condition, including moaning, fainting spells, and even vomiting blood.⁸ He attempted to notify PTS of his worsening symptoms, but his attempts were largely ignored.⁹ After a final medical exam, he was cleared for transport to South Carolina.¹⁰ Weintraub was unable to get into the transportation van without assistance, and it was reported that both PTS employees and members of the healthcare service staff mocked and jeered at him as he struggled to board the van.¹¹ He died inside the transportation van a short time later from a perforated ulcer and a septic infection; his death could have been prevented if he had been taken to a doctor even an hour earlier.¹² This was also the second time in two years that a PTS prisoner had died from a perfectly treatable perforated ulcer.¹³

Just like South Carolina, countless state and local jurisdictions throughout the United States entrust for-profit privatized prison transportation

² Vic Micolucci, *Suit: Guards Mocked Former Professor Before Death in Jail Van*, NEWS4JAX (July 11, 2016, 5:45 PM), <https://www.news4jax.com/news/prisoners-death-during-transport-across-county-sued>.

³ *Weintraub*, 161 F. Supp. 3d at 1277.

⁴ *Id.* at 1276.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1277.

¹² *Id.*; Micolucci, *supra* note 2.

¹³ Eli Hager & Alysia Santo, *Private Prisoner Vans’ Long Road of Neglect*, N.Y. TIMES (July 6, 2016), <https://www.nytimes.com/2016/07/07/us/prisoner-transport-vans.html> (describing the death of 36-year-old William Culpepper Jr., who was being transported from Kentucky to Mississippi for a parole violation, and died from what the coroner described as a “perfectly treatable” perforated ulcer while in the custody of PTS).

companies, like PTS, to extradite their prisoners across the country. Unfortunately, tragic stories like this are far too common within the industry.¹⁴

At the end of 2014, there were approximately 1.5 million prisoners being held under the authority of state and federal corrections authorities in the United States.¹⁵ With such a high number of incarcerated persons, there is a constant need to transport prisoners. Prisoners' movements may be authorized for a variety of reasons, including pretrial hearings, trials, movements to a correctional institution to serve a sentence, or transfers between institutions.¹⁶

The United States Marshals Service is entrusted with transporting all federal prisoners both within the United States and internationally.¹⁷ However, state and local jurisdictions are responsible for procuring their own means of prisoner transportation, whether it be police officers traveling to obtain a prisoner or the jurisdiction contracting with a private transportation company.¹⁸ Currently, 26 states employ private prison transportation companies to transport all levels of offenders within the criminal justice system, including both pretrial detainees and those who have been formally convicted.¹⁹ However, in recent years, the reliability of these private companies has come into question as serious allegations of abuse within the privatized transportation industry have come to light.²⁰

¹⁴ See *infra* Section II.D.

¹⁵ E. Ann Carson, *Prisoners in 2014*, BUREAU OF JUST. STAT. (Sept. 17, 2015), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5387>.

¹⁶ U.S. MARSHALS SERV., POLICY DIRECTIVES 16.2, SCHEDULING PRISONER TRANSPORTATION 1–2 (2012) [hereinafter POLICY DIRECTIVES 16.2], <https://www.usmarshals.gov/foia/directives/jpats.pdf> (providing a list of examples of reasons for which prisoner movements may be authorized).

¹⁷ *Prisoner Transportation 2017*, U.S. MARSHALS SERV. (Mar. 10, 2017), https://www.usmarshals.gov/duties/factsheets/prisoner_trans.pdf.

¹⁸ Alex Friedmann, *For-Profit Transportation Companies: Taking Prisoners, and the Public, for a Ride*, PRISON LEGAL NEWS (Sept. 15, 2006), <https://www.prisonlegalnews.org/news/2006/sep/15/for-profit-transportation-companies-taking-prisoners-and-the-public-for-a-ride/>.

¹⁹ See Hager & Santo, *supra* note 13; *Senator Booker Urges Department of Justice to Investigate Private Prisoner Transportation Abuses*, U.S. SENATE (July 12, 2016), [hereinafter *Senator Booker*], https://www.booker.senate.gov/?p=press_release&id=453.

²⁰ See Hager & Santo, *supra* note 13; see also Eli Hager & Alysia Santo, *Inside the Deadly World of Private Prisoner Transport*, MARSHALL PROJECT (July 6, 2016, 5:00 AM), <https://www.themarshallproject.org/2016/07/06/inside-the-deadly-world-of-private-prisoner-transport#.D17UML4gG>. *The New York Times* and *The Marshall Project* collaborated on this project to research and expose the abuses occurring within the privatized prison transportation industry. *The Marshall Project* reviewed thousands of court documents, local news reports, and federal documents, in addition to conducting interviews with 50 current or former guards within the privatized transportation industry. *Id.*

The private prison transportation industry is regulated by 34 U.S.C. § 60101, or “Jeanna’s Act,”²¹ which prescribes only basic, suggested regulations for these companies and has been enforced by the Department of Justice only once since its enactment in 2000.²² Jeanna’s Act provides minimum guidelines intended to serve as a template for the enactment of future regulations focused on protecting the public from the escape of a violent prisoner being transported by a private transportation company.²³ The regulations enacted by the Attorney General of the United States in accordance with the requirements set forth in Jeanna’s Act are located at 28 C.F.R. § 97 and establish the minimum safety and security standards that all private transportation companies must meet. However, for clarity and consistency, when the Author refers to “Jeanna’s Act,” the Author is referring to the empowering statute located at 34 U.S.C. § 60101, and the standards enacted by the Department of Justice as the entirety of the regulations governing the private prisoner transportation industry.

Because Jeanna’s Act inadequately protects the public, guards, and prisoners during transport, this Article argues that it should be amended to include provisions that address the protection of the basic human needs of prisoners during transport; mandatory safety requirements for prisoners and higher training requirements for guards; and higher civil penalties for violations. Part II of this Article explores the current state of the privatized prison transportation industry and exposes its inadequacies under the current law. First, Section II.A outlines the existing structure of the privatized prison transportation industry. Second, Section II.B recounts the background of Jeanna’s Act, from its inception to its enactment. Third, Section II.C examines the prisoner’s rights under the Eighth Amendment to the United States Constitution. Finally, Section II.D highlights the serious allegations of abuse within the industry which have resulted due to the lack of oversight and enforcement of Jeanna’s Act.

²¹ See 34 U.S.C. § 60101 (Supp. V 2012); see also Associated Press, *Missing North Dakota girl remembered 20 years later; body never found*, RAPID CITY JOURNAL (June 28, 2013), http://rapidcityjournal.com/news/latest/missing-north-dakota-girl-remembered-years-later-body-never-found/article_061830c8-b896-56fa-93b1-d9c263db568f.html. Jeanna’s Act was enacted in 2000 after the horrific murder of Jeanna North, an 11-year-old North Dakota girl. *Id.* Jeanna’s killer was her neighbor Kyle Bell, a convicted sex offender who lived just across the street from the Norths. *Id.* Bell was charged for the molestation of two other young girls, pled guilty to those charges, and eventually confessed to the murder of Jeanna. *Id.* However, after his conviction for Jeanna’s death, Bell escaped from the prison transportation vehicle while he was being moved to a maximum-security prison in Oregon. *Id.* This incident strengthened sex offender laws across the country and led the enactment of Jeanna’s Act, which regulates the private prison transportation industry. *Id.*

²² For a further discussion of the enforcement of Jeanna’s Act, see *infra* Section II.B.4.

²³ H.R. REP. NO. 106-1048, at 139 (2001). “Not later than 180 days after December 21, 2000, the Attorney General, in consultation with the American Correctional Association and the private prisoner transport industry, shall promulgate regulations relating to the transportation of violent prisoners in or affecting interstate commerce.” 34 U.S.C. § 60103(a) (Supp. V 2012) (emphasis added).

Part III proposes a regulatory reform of the current privatized prison transportation industry statute, which would successfully address its current inadequacies. Section III.A calls for more generalized regulatory statutory provisions to provide oversight in the industry. Section III.B proposes further provisions that provide for the safety of both guards and prisoners during transport. Section III.C recommends adding regulations which would provide for the prisoner's basic human needs, including food, water, sleep, and access to a restroom. Section III.D argues for higher penalties for violations of the statute that reflect the seriousness of the crimes committed. Finally, Section III.E acknowledges the significant obstacles to reform that have both hindered the development of rights for prisoners and prohibited many individuals from seeking damages for their injuries. The Section then suggests ways in which these challenges can be overcome.

II. BACKGROUND

This Section examines the current state of the privatized prison transportation industry, including both the federal and state prison transportation networks and the history of Jeanna's Act, from its early inception to its enactment in 2001. This Section then explores both the rights of convicted prisoners and pretrial detainees guaranteed under the United States Constitution. Finally, this Section concludes by reviewing claims of abuse within the industry, discussing the media's reception of these claims, and highlighting the difficulties prisoners have had bringing their cases in court.

A. The Current Transportation System

Currently, there are no general statistics for the number of prisoners that are transferred and extradited within the United States each year because private transportation companies are not required to report this data. There are, however, two separate systems within the United States that operate to transport prisoners within this country. The United States Marshals Service is responsible for the transportation of all prisoners in federal custody,²⁴ while state and local jurisdictions are usually responsible for their own prisoner transportation.²⁵ These state and local jurisdictions frequently choose to hire privatized transportation companies because the companies present the most efficient and economical options.

²⁴ *Prisoner Transportation 2017*, *supra* note 17.

²⁵ Friedmann, *supra* note 18.

1. United States Marshals Service

The United States Marshals Service is a bureau within the Department of Justice that operates under the authority and direction of the Attorney General of the United States.²⁶ It is comprised of 5,238 total employees who make up 94 districts, 218 sub-offices, and 3 foreign field offices.²⁷ The Justice Prisoner and Alien Transportation System (“JPATS”) is the division within the Service that is responsible for transporting federal prisoners within the United States. The Service, one of the largest prisoner transporters in the world, estimates that it averages 1,051 prisoners in movement per day between districts and correctional institutions within the United States and between foreign countries.²⁸ The United States Marshals Service transported 255,519 total prisoners by ground and by air during 2016 and averaged 1,051 prisoner movements per day.²⁹ It also maintains several different methods for transportation, including vans, buses, and large and small aircrafts.³⁰

Further, the Marshals Service adopts and abides by policy directives that govern all its operations, including its treatment of prisoners while in transport.³¹ The United States Marshals Service Policy Directives require daily reporting for all trips, advanced scheduling of travel arrangements, regular meals for prisoners, and prompt reporting of any abuse or mishandling of prisoners.³²

In particular, Policy Directive 16.2, titled “Scheduling Prisoner Transportation,” establishes the policy and procedures for all prisoner movements outside 50 miles of a district.³³ This Directive provides that a designated member within the Service “must contact institutions holding prisoners to be moved, arrange release times, and reserve overnight housing space for prisoners at contract jails en route.”³⁴ This employee must also ensure that the required documentation, containing “the prisoner’s identification, medical, and security data,” is given to any jail that houses the prisoners in route and is given to the authority in charge at the prisoner’s final destination.³⁵

²⁶ 28 U.S.C. § 561(a) (2012).

²⁷ *Facts and Figures 2017*, U.S. MARSHALS SERV. (Mar. 10, 2017), <https://www.usmarshals.gov/duties/factsheets/facts.pdf>.

²⁸ *Prisoner Transportation 2017*, *supra* note 17.

²⁹ *Id.*

³⁰ POLICY DIRECTIVES 16.2, *supra* note 16.

³¹ *Policy Directives*, U.S. MARSHALS SERV., <https://www.usmarshals.gov/foia/directives/index.html> (last visited Oct. 5, 2017).

³² POLICY DIRECTIVES 16.2, *supra* note 16.

³³ *Id.*

³⁴ *Id.* at 4.

³⁵ *Id.*

The Service also determines, at the initial prisoner intake, whether the prisoner is an escape risk and what security level classification is appropriate.³⁶ Further, a designated employee is responsible for “promptly” reporting any changes that occur during transportation.³⁷ This includes “prisoners not available for pickup, accidents or illness en route, the addition of prisoners en route when space is available . . . and delays in scheduled arrival times.”³⁸ The Service goes further and requires daily reporting in order to receive supplemental information or other instructions and important messages.³⁹

In addition to these mandates, the Service has extensive directives which describe how prisoners should receive their meals.⁴⁰ These regulations include:

- a) While being transported, prisoners receive meals appropriate for time of travel. Prisoners are not removed from the vehicle (to include aircraft) and remain in their assigned seats while eating. Restraints remain in place while the prisoners are eating.
- b) Trips are normally scheduled to allow for arrival at a detention facility or institution prior to mealtimes. When a travel day cannot be completed prior to established meal times, the [Marshals Service] provides a meal from the prisoner’s detention facility while in transit or makes arrangements in advance with the receiving detention facility or institution for a late meal at the scheduled stop.
- c) If meals are required during transportation, attempts are made to obtain bag lunches, etc. from the detention facility. If meals are not available, [Marshals] are authorized to expend funds to provide prisoner meals and be reimbursed. The maximum expended for prisoner meals are the following percentages of the local meal and incidental expense . . . rate: 15 percent for breakfast, 20 percent for lunch, and 30 percent for dinner. District management may approve deviations from these rates. Deviations must be documented and filed with the trip voucher and reimbursement from the prisoner appropriation account. JPATS does not reimburse districts for prisoner meals.⁴¹

In addition, there are general rules concerning what conduct is appropriate for the prisoners during travel, including never allowing the prisoners to choose the travel plans, monitoring the conversations of the prisoners during transport, and keeping handcuff and leg iron keys on separate

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 4–5.

key rings.⁴² The Service also requires reporting of any prisoner incidents as soon as possible. This includes escapes, attempted escapes, attacks, threats, vehicle accidents, and suicides or attempted suicides.⁴³ Escapes are to be reported immediately to district managers and the Marshals Service Communications Center, while other incidents are to be detailed in a written incident report within one business day.⁴⁴

In addition to the extensive directives listed above, the Marshals Service provides instructions for how to handle “special movements,” which refers to juveniles, females, and physically or mentally impaired prisoners.⁴⁵ These individuals are to be, to the extent possible, separated from other prisoners at all times.⁴⁶ Further, Policy Directive 16.5 prescribes policy and practices detailing procedures which will ensure vehicle safety and security, including: vehicle specifications, vehicle requirements, and instructions for how to conduct restroom stops while on the road.⁴⁷

Adhering to such comprehensive and detailed guidelines has led the United States Marshals Service to become a success, averaging very few instances of abuse and recorded escapes.⁴⁸ Further, the Marshals Service is frequently audited by the Office of the Inspector General of the United States to ensure its compliance with these extensive requirements and to safeguard from abuse and misconduct.⁴⁹ These extensive guidelines and government oversight have allowed the United States Marshals Service prisoner transportation division to become a model within the industry.

⁴² *Id.* at 5.

⁴³ *Id.* at 6.

⁴⁴ *Id.*

⁴⁵ U.S. MARSHALS SERV., POLICY DIRECTIVES 16.4, SPECIAL MOVEMENTS (2012) [hereinafter POLICY DIRECTIVES 16.4], <https://www.usmarshals.gov/foia/directives/jpats.pdf>.

⁴⁶ *Id.*

⁴⁷ U.S. MARSHALS SERV., POLICY DIRECTIVES 16.5, MODE OF TRANSPORTATION (2012) [hereinafter POLICY DIRECTIVES 16.5], <https://www.usmarshals.gov/foia/directives/jpats.pdf>.

⁴⁸ For an in-depth audit of the U.S. Marshal Service’s JPATS program conducted by the Office of the Inspector General, see *The United States Marshals Service’s Management of the Justice Prisoner and Alien Transportation System*, OFF. INSPECTOR GEN., AUDIT DIV. (Oct. 2006) [hereinafter *Management*], <https://oig.justice.gov/reports/USMS/a0701/final.pdf>. The Office of the Inspector General’s mission is “to detect and deter waste, fraud, abuse, and misconduct in DOJ programs and personnel, and to promote economy and efficiency in those programs.” *United States Marshals Service*, OFF. INSPECTOR GEN. [hereinafter OFF. INSPECTOR GEN.], <https://oig.justice.gov/reports/usms.htm> (last visited Oct. 15, 2017).

⁴⁹ OFF. INSPECTOR GEN., *supra* note 48.

2. Privatized Prison Transportation Industry

In contrast, state and local jurisdictions maintain their individual means of prisoner transportation. Most jurisdictions rely on outsourcing this responsibility to privatized prison transportation companies.⁵⁰ Because the United States has such a high number of incarcerated persons, traditional extradition, which consisted of local deputies traveling considerable distances to obtain one individual, can become quite costly due to overtime pay to officers and the cost of travel, including fuel, transportation, and overnight accommodations.⁵¹

In contrast to the United States Marshals Service, privatized transportation companies like TransCor America, L.L.C., the nation's largest private transportation company, have transported more than 1.3 million individuals since 1990 and average approximately 2.5 million miles annually.⁵² Another industry leader, Prison Transportation Services of America, claims to transport over 100,000 detainees per year.⁵³

Further, the use of privatized transportation companies such as these provides a cheaper alternative for the traditional methods of prisoner transportation.⁵⁴ These private companies can transport large numbers of prisoners at a time and charge anywhere from 75 cents to \$1.50 a mile per prisoner.⁵⁵ These companies are usually paid on a "per prisoner per mile" basis, which means that the companies are paid more for transporting higher numbers of prisoners across the largest number of miles.⁵⁶ Prison transportation companies typically follow circuitous routes and pick up and drop off prisoners along the way.⁵⁷ Private companies can save considerable amounts of money by picking up and dropping off other prisoners along their route, which provides incentives for companies to transport high volumes of prisoners at a time, while

⁵⁰ Friedmann, *supra* note 18.

⁵¹ See Hager & Santo, *supra* note 13 (discussing how some government agencies "take huge advantage of the taxpayers' money by sending deputies 'on vacation' to extradite an inmate . . ."); see also Friedmann, *supra* note 18.

⁵² *Frequently Asked Questions*, TRANSCOR AM., L.L.C., <https://www.transcor.com/about-transcor/faq/> (last visited Sept. 10, 2017).

⁵³ *Services*, PRISON TRANSP. SERV. OF AM., L.L.C., <http://prisonertransport.net/services.html> (last visited Sept. 10, 2017).

⁵⁴ Friedmann, *supra* note 18. Further, beginning in 1993, the then-governor of Montana began requiring that counties obtain prior approval for the use of the state prisoner transportation funds. *Paull v. Park Cty.*, Montana, 218 P.3d 1198, 1200 (Mont. 2009). The policy encouraged the use of private prisoner transportation service for long-distance interstate transportation in order to cut costs. *Id.*

⁵⁵ See Hager & Santo, *supra* note 13.

⁵⁶ See *id.*; Friedmann, *supra* note 18.

⁵⁷ Hager & Santo, *supra* note 13.

taking few breaks and making few stops.⁵⁸ Both prisoners and guards can find themselves on the road for more than 10 days as transportation vehicles pick up and drop off prisoners across the country.⁵⁹

Larger transportation companies maintain a fleet of vehicles used for transportation. This fleet of vehicles often contains cars, mini-vans, full-size vans, and large capacity motor coach buses.⁶⁰ Prisoners are typically transported in 15-passenger vans or modified minivans which have been altered to include interior caging and tinted windows.⁶¹ These vehicles do not have beds or toilets and are not equipped to render medical services.⁶²

Large capacity transportation vans such as these are frequently criticized and have proven to be unsafe. After an analysis of local news reports and court records, *The New York Times* found there to have been more than 50 crashes involving privatized prison transportation vehicles since 2000.⁶³ In almost every one of these instances, the prisoners were shackled but were not wearing seatbelts.⁶⁴ Further analysis of hospital records and accident reports disclosed that dozens of prisoners died as a result of these crashes and dozens more suffered injuries to their neck, spine, and skull.⁶⁵

Moreover, transportation vehicles with such high capacities have been highly criticized for many years by the National Highway Traffic Safety Administration (“NHTSA”).⁶⁶ Federal law even prohibits the use of large, 15-passenger vans to transport children for school related activities because of the vehicles higher rate of rollovers and other inherent safety risks.⁶⁷ The rollover rate of 15-passenger vans in single vehicle accidents with at least 10 or more

⁵⁸ *See id.*

⁵⁹ Eli Hager & Alysia Santo, *Death on a Prison Bus: Extradition Companies' Safety Improvements Lag*, N.Y. TIMES (Mar. 23, 2017) [hereinafter Hager & Santo, *Death on a Prison Bus*], <https://www.nytimes.com/2017/03/23/us/prisoner-transport-vans.html>.

⁶⁰ *See, e.g., TransCor Vehicles*, TRANSCOR AM., L.L.C., <https://www.transcor.com/transcor-vehicles/> (last visited Sept. 10, 2017); *Vehicles*, PRISON TRANSP. SERV. OF AM., L.L.C., <http://prisonertransport.net/vehicles.html> (last visited Sept. 10, 2017).

⁶¹ *See Hager & Santo, supra* note 13.

⁶² For an interactive tour of a decommissioned Prisoner Transportation Services van, see *id.*

⁶³ *Id.*

⁶⁴ *Id.* For an in-depth look at passenger van safety, the National Highway Traffic Safety Administration (“NHTSA”) provides a list of safety precautions that should be taken when driving a passenger van. *Passenger Vans*, NAT'L HIGHWAY TRANSP. SAFETY ADMIN., <https://www.nhtsa.gov/road-safety/passenger-vans> (last visited Sept. 10, 2017). The NHTSA recommends that all occupants *need* to wear seat belts always. *Id.* (emphasis added). Further, 80% of unbuckled passenger van occupants were killed in van rollovers between 2003 and 2007. *Id.*

⁶⁵ *Id.*

⁶⁶ *15-Passenger Van Safety*, NAT'L HIGHWAY TRANSP. SAFETY ADMIN., <https://drivethru.gsa.gov/DRIVERSAFETY/NHTSA-15-PassengerVanSafety.pdf> (last visited Sept. 10, 2017).

⁶⁷ 49 U.S.C. § 30112 (2012).

occupants in the van is nearly three times the rate of vans with only five or more occupants.⁶⁸ Since the private prisoner transport industry frequently uses these high capacity passenger vans to transport prisoners and frequently transports a large number of prisoners in the vehicle, these risks are very real.⁶⁹

In addition to the risks of the transportation vehicles, private transportation companies are failing to address concerns expressed by transportation guards or make adequate accommodations for prisoners while in transit. These companies generally only pay the guards while they are on the road and often require that they pay out-of-pocket for hotel rooms and related expenses.⁷⁰ Overnight stops also require the company to find a jail willing to house the prisoners overnight, which is often very difficult because jails often do not want to house unknown prisoners from other jurisdictions.⁷¹ The culmination of these considerations often leads guards to decide to rarely make stops while on the road.⁷²

Further, there are inherent risks in transporting dangerous criminals, and guards are very hesitant about trusting the prisoners they are transporting.⁷³ These guards usually know nothing about the prisoner, including personality, temperament, or crime committed, before he or she enters the transportation vehicle, and the dangers these officers face are very real.⁷⁴ Many studies and news reports show the guards are not wrong in thinking this way.⁷⁵ Even taking

⁶⁸ *Passenger Vans*, *supra* note 64.

⁶⁹ *See supra* notes 56–62 and accompanying text.

⁷⁰ *See Hager & Santo*, *supra* note 13.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Dana Goldstein, *What Are Correction Officers So Afraid Of?*, MARSHALL PROJECT (July 13, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/07/13/what-are-correction-officers-so-afraid-of#>.

⁷⁴ *Id.*

⁷⁵ According to the Bureau of Labor Statistics, only police officers experience more violent crime incidents on the job than correction officers. *See id.* “For every 10,000 full-time [correctional officers], there were 254 workplace assaults and violent injuries reported in 2011—36 times the rate for all American workers.” *Id.* For further statistics on correctional officers killed or injured on the job, see Srinivas Konda et al., *U.S. Correctional Officers Killed or Injured on the Job*, AM. CORRECTIONAL ASS’N, http://www.aca.org/ACA_PROD_IMIS/Docs/Corrections%20Today/2013%20Articles/November%20Articles/Research%20Notes.pdf (last visited Sept. 10, 2017).

Further, many news outlets have reported on situations where both prison guards and prison transportation guards have been harmed or seriously injured in attacks by prison inmates. *See, e.g.*, Evan Matsumoto, *Inmate charged with murder captured after escape from transport van*, WRAL.COM (Oct. 14, 2016), <http://www.wral.com/inmate-charged-with-murder-captured-after-escape-from-transport-van/16115753/>; Terri Langford, *Rookie Prison Guard is Killed Escorting Violent Inmate*, TEX. TRIBUNE (July 15, 2015, 7:00 PM), <https://www.texastribune.org/2015/07/15/rookie-tdcj-guard-killed-escorting-violent-inmate/>; Sam Newhouse, *Philly prisons to beef up transport security after attack on guard*, METRO (Jan. 5, 2017),

a prisoner to the restroom while on the road can be difficult because of the risks associated with transporting a prisoner back and forth from the transportation vehicle to the restroom.⁷⁶ Guards at several transportation companies claimed that prisoners often fake illnesses or injuries, and it is always a risk to open the vehicle cage because guards do not know “if they’re setting [the guards] up for something.”⁷⁷ The guards face these difficult determinations daily, and, at times, the choice may be between meeting the needs of the prisoners they are paid to transport or protecting their own safety.

Recently, the federal government and lawmakers have begun to acknowledge the difficulties faced within the privatized prison transportation industry. While questioning former United States Attorney General Loretta Lynch, Representative Ted Deutch (D-Fla.) raised concerns about private prison transportation companies that charge on a “pay per mile basis,” which is “the same way we pay for shipping cargo in this country,” and emphasized that it pays to ship in higher quantities.⁷⁸ This payment plan incentivizes overcrowding and infrequent stops as well as discourages other activities that would increase safety because of the motivation to increase profits.⁷⁹ Deutch was also concerned about the inhumane conditions and reports of abuse that had been reported by both *The New York Times* and *The Marshall Project* in a joint article released in July of 2016.⁸⁰ Deutch believed that the lack of oversight in the industry adds to these abuses, and he added that the claims of unsafe and unsanitary conditions are quite concerning.⁸¹ He noted, “no matter their crime, they deserve better than the way that these transport services are treating them.”⁸²

Lynch responded by emphasizing that the treatment of all individuals within the criminal justice system must be fair and humane regardless of the status of their conviction.⁸³ Further, Lynch told the House Judiciary Committee

<https://www.metro.us/philadelphia/philadelphia-prisons-to-beef-up-transport-security-after-attack-on-guard/zsJqad---bflf1MjtK8Ek>; Emily Shapiro, *Escaped Georgia Inmates Captured in Tennessee, Officials Say*, ABC NEWS (June 15, 2017, 11:15 PM), <http://abcnews.go.com/US/escaped-georgia-inmates-captured-tennessee-officials/story?id=48055236>.

⁷⁶ See Rodney Harris, *Prisoner attacks guard, escapes from custody while stopping to get food*, CBS46.COM (Mar. 4, 2015, 9:42 PM), <http://www.cbs46.com/story/28028798/bartow-co-inmate> (describing an incident where a prisoner ambushed a guard and escaped the custody of a private prisoner transport company while stopping for food and a restroom break).

⁷⁷ Hager & Santo, *supra* note 13.

⁷⁸ The Marshall Project, *Rep. Ted Deutch (D-Fla.) discusses prisoner transportation with Attorney General Loretta Lynch*, YOUTUBE (July 12, 2016) [hereinafter *Rep. Ted Deutch*], <https://www.youtube.com/watch?v=zYmQVX5dWYY>.

⁷⁹ *Id.*

⁸⁰ *Id.*; see also Hager & Santo, *supra* note 13.

⁸¹ *Rep. Ted Deutch, supra* note 78.

⁸² *Id.*

⁸³ *Id.*

that she was unfamiliar with issues raised by Deutch concerning the privatized transportation industry, but it was highly suggested that she look into these claims.⁸⁴

Further, United States Senator Cory Booker (D-NJ) wrote a letter to former Attorney General Lynch in July of 2016 urging the Department of Justice to fully investigate the allegations of abuse within the private prisoner transportation industry.⁸⁵ The letter echoed the concerns shared by Representative Deutch, and Senator Booker described similar concerns for prisoner safety because, currently, guards are not required by law to receive medical training.⁸⁶ Further, he was concerned about potential constitutional violations that might be resulting from the deplorable conditions in the transportation vehicles and the deprivation of rights.⁸⁷

However, under the Trump Administration and current Attorney General Jeffrey Sessions, it is unlikely that these same concerns will be expressed or addressed, and it is currently unclear how this administration will approach criminal justice reform issues.⁸⁸ Attorney General Sessions recently rescinded an Obama-Era memo that directed the Justice Department to phase out the use of private prisons.⁸⁹ One commentator wrote that as a United States Senator, Sessions was “one of few Republican legislators who does not support bipartisan efforts to reform the nation’s criminal justice system.”⁹⁰ As Attorney General,

⁸⁴ *Id.*; see also Eli Hager, *U.S. Attorney General Loretta Lynch Will Probe Private Prisoner Transport Industry*, MARSHALL PROJECT (July 12, 2016, 5:13 PM), <https://www.themarshallproject.org/2016/07/12/u-s-attorney-general-loretta-lynch-will-probe-private-prisoner-transport-industry#.sAw3tb3oz> (describing the former attorney general’s pledge to investigate the allegations of abuse within the private prisoner transportation industry).

⁸⁵ *Senator Booker, supra* note 19.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ The President has placed his advisor and son-in-law Jared Kushner in charge of the administration’s criminal justice reform efforts, among other issues such as peace in the Middle East, China, and improving relations with Mexico. Kevin Liptak, *Trump’s Secretary of Everything: Jared Kushner*, CNN (Apr. 3, 2017, 8:36 PM), <http://www.cnn.com/2017/04/03/politics/jared-kushner-donald-trump-foreign-policy/index.html>.

⁸⁹ See Christopher Dean Hopkins, *Private Prisons Back in Mix For Federal Inmates As Sessions Rescinds Order*, NPR (Feb. 23, 2017, 7:38 PM), <http://www.npr.org/sections/thetwo-way/2017/02/23/516916688/private-prisons-back-in-mix-for-federal-inmates-as-sessions-rescinds-order>.

⁹⁰ Ames C. Grawert, *Analysis: Sen. Jeff Sessions’s Record on Criminal Justice*, BRENNAN CTR. FOR JUSTICE 1, 6 (Jan. 6, 2017), <https://www.brennancenter.org/sites/default/files/analysis/SenatorJeffSessionsRecordonCriminalJustice.pdf>. For additional sources detailing Jeff Sessions approach to criminal justice reform, see Justin George, *Can This Marriage Be Saved?*, MARSHALL PROJECT (June 6, 2017, 7:00 AM), <https://www.themarshallproject.org/2017/06/06/can-this-marriage-be-saved#.giA162xvV> (describing the current state of the criminal justice reform movement); Carl Hulse, *Unity Was Emerging on Sentencing. Then Came Jeff Sessions.*, N.Y. TIMES (May 14, 2017),

his service “could mark a setback for the decade-long effort to make the justice system more effective and fair.”⁹¹ Therefore, it is unlikely that the concerns expressed by former Attorney General Lynch will be addressed by the current Attorney General, and there is a danger that the harms occurring within the private transportation industry will continue with no hope of redress.

B. History and Enactment of Jeanna’s Act

Jeanna’s Act was passed in 2000, and it is currently the only federal statute that regulates the private prisoner transportation industry.⁹² Jeanna’s Act provides suggested regulations for private prison transportation companies that require them to meet minimum standards for guard training and prisoner safety.⁹³ When Jeanna’s Act was first proposed, there was “no uniform set of standards and procedures for these prisoner transport companies to follow”⁹⁴ Prior to its enactment, “[a]nyone with a vehicle and a driver’s license” could engage in the business.⁹⁵ Congress noted that the proposed legislation’s purpose was to “increase public safety by requiring the Attorney General to establish minimum standards and requirements for companies engaging in the business of transporting violent offenders.”⁹⁶

1. The Story of Jeanna North

The name “Jeanna’s Act” is a reference to the tragic story of Jeanna North, an 11-year-old girl from North Dakota who disappeared one summer evening in June of 1993.⁹⁷ Jeanna was last seen rollerblading with her friends less than a block away from her home.⁹⁸ The Norths’ neighbor, Kyle Bell, soon became the prime suspect in Jeanna’s disappearance.⁹⁹ During the investigation into Jeanna’s disappearance, it was uncovered that Bell had previously been convicted of child molestation, and, in April of 1994, well after Jeanna’s

<https://www.nytimes.com/2017/05/14/us/politics/jeff-sessions-criminal-sentencing.html> (describing Sessions’s order that federal prosecutors pursue the toughest penalties possible for criminal defendants); Brandon E. Patterson, *The Feds Had Been Moving Away From Mass Incarceration For Years. Then Jeff Sessions Came Along.*, MOTHER JONES (May 19, 2017, 10:00 AM), <http://www.motherjones.com/politics/2017/05/jeff-sessions-charging-guidelines/>.

⁹¹ Grawert, *supra* note 90, at 6.

⁹² 34 U.S.C. § 60101 (Supp. V 2012).

⁹³ 34 U.S.C. § 60103 (Supp. V 2012).

⁹⁴ H.R. REP. NO. 106-1048, at 139 (2001).

⁹⁵ 146 CONG. REC. H12032-01, H12032, 2000 WL 1796551 (daily ed. Dec. 7, 2000).

⁹⁶ H.R. REP. NO. 106-1048, at 139.

⁹⁷ Associated Press, *supra* note 21.

⁹⁸ *Id.*

⁹⁹ *Id.*

disappearance, Bell was charged with molesting two young girls.¹⁰⁰ While in custody, Bell confessed to killing Jeanna and dumping her body into a nearby river.¹⁰¹ Unfortunately, the body of Jeanna North was never found.¹⁰²

Bell was sentenced to life in prison for both the murder of Jeanna and the molestation of two other young girls.¹⁰³ While being transported to a maximum-security prison, Bell escaped from a prisoner transportation bus during a stop in New Mexico.¹⁰⁴ The guards responsible for transporting Bell did not notice that Bell had gone missing until nine hours later and then delayed notifying the authorities.¹⁰⁵ Bell was captured less than three months later, but his escape led Congress into action.¹⁰⁶ Byron Dorgan, then senator of North Dakota, sponsored a bill that became law, referred to as “Jeanna’s Act,” which would protect the public from further risks from private prison transportation companies.¹⁰⁷ This Act was codified into law in 2001.

2. Jeanna’s Act Requirements

When Jeanna’s Act was enacted in 2000, Congress noted that states were becoming increasingly more likely to turn to private prisoner transportation companies, as opposed to the United States Marshals Service or the state’s own personnel services.¹⁰⁸ Congress also noted that the transportation process can “last for days if not weeks” because the structure of the system allows prisoners to be picked up and dropped off across the country.¹⁰⁹

Jeanna’s Act specifically applies to any private prison transportation company that transports individuals in custody and is not controlled by a state or the United States.¹¹⁰ It is important to note that Congress only intended Jeanna’s Act to serve as a template or guide for the real regulations which were to be promulgated by the Attorney General at a later date.¹¹¹ The regulations enacted

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ 146 CONG. REC. S11011-01, S11012, 2000 WL 1587370 (daily ed. Oct. 25, 2000).

¹⁰⁶ Associated Press, *supra* note 21.

¹⁰⁷ *See* Hager & Santo, *supra* note 13.

¹⁰⁸ *See* 34 U.S.C. § 60101 (Supp. V 2012).

¹⁰⁹ *Id.* § 60101(2).

¹¹⁰ *Id.* § 60102(2).

¹¹¹ H.R. REP. NO. 106-1048, at 139 (2001) (noting that Congress intended this proposed legislation to “increase public safety by requiring the Attorney General to *establish* minimum standards and requirements for companies engaging in the business of transporting violent offenders.”) (emphasis added); *see also* 34 U.S.C. § 60103(a) (Supp. V 2012) (requiring “[n]ot

by the Attorney General, empowered by Jeanna's Act, establishes the minimum safety and security standards with which private transportation companies must comply when they are transporting violent prisoners for state and local jurisdictions. Both of these statutes work together to regulate the private prisoner transportation industry.

It is important to recognize that Jeanna's Act and its subsequent regulations specifically apply only to "violent prisoners."¹¹² A violent prisoner is defined as "any individual in the custody of a State . . . who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State . . . or any attempt thereof."¹¹³ However, privatized prison transportation companies are frequently asked to transport individuals who do not fit within this definition.¹¹⁴ It is unclear how Jeanna's Act would apply to non-violent prisoners, or prisoners who have not been convicted or charged with a crime of violence, or even whether these non-violent prisoners would be protected by the statute at all.

As described above, Jeanna's Act requires the Attorney General of the United States to create regulations in accordance with its requirements. Jeanna's Act itself includes 10 standards and regulations which serve as a guide for the Attorney General's later-enacted regulations.¹¹⁵ First, the Attorney General is required to create minimum standards for background checks and pre-employment drug testing for potential private transport company employees.¹¹⁶ There shall be criminal background checks meant to disqualify any potential employee with a felony conviction or a domestic violence conviction.¹¹⁷ Second, the regulations must include minimum standards for both the length and the type of training for guards, including a 100-hour limit on preservice training that employees must undergo before they can transport prisoners.¹¹⁸ This preservice training shall be focused on the transportation of prisoners and shall include

later than 180 days after December 21, 2000, the Attorney General, in consultation with the American Correctional Association and the private prisoner transport industry, *shall promulgate regulations* relating to the transportation of violent prisoners in or affecting interstate commerce." (emphasis added).

¹¹² See 34 U.S.C. § 60102 (Supp. V 2012).

¹¹³ *Id.* § 60102(3). This definition is the same as is used in the Attorney General's regulations. 28 C.F.R. § 97.2(c) (2017).

¹¹⁴ See *infra* Section II.D.

¹¹⁵ 34 U.S.C. § 60103(b) (Supp. V 2012) (providing "[t]he regulations shall include the following:").

¹¹⁶ *Id.* § 60103(b)(1).

¹¹⁷ *Id.* Here, the phrase "domestic violence conviction" is defined by section 921 of Title 18. *Id.*; 18 U.S.C. § 921(a)(33) (2012).

¹¹⁸ 34 U.S.C. § 60103(b)(2) (Supp. V 2012).

training in “the areas of use of restraints, searches, use of force, including use of appropriate weapons and firearms, CPR, map reading, and defensive driving.”¹¹⁹

Third, the Act requires a limit on the number of hours that employees can be on duty during a specific time period, and this restriction should not be more stringent than the regulations under the “Federal Motor Vehicle Safety Act.”¹²⁰ However, this provision is unclear because the Federal Motor Vehicle Safety Act is not an official short title for any act of Congress. Fourth, Jeanna’s Act requires standards that detail the number of guards that must be present to supervise violent prisoners, but this requirement cannot exceed “1 agent for every 6 violent prisoners.”¹²¹ Fifth, there shall also be requirements for employee uniforms and identification which will require a uniform with a badge or some type of an insignia that identifies the individual as an employee of the privatized transportation company.¹²²

Sixth, categories of violent prisoners should be established that require prisoners to wear “brightly colored clothing clearly identifying them as prisoners.”¹²³ Seventh, restraints, including leg-shackles and double-locked handcuffs, must be used when transporting violent prisoners.¹²⁴ Eighth, the private prisoner transportation company, itself, must notify law enforcement at least 24 hours in advance of any scheduled prisoner drop-off.¹²⁵ Ninth, in the case of an escaped prisoner, the transportation company must immediately notify the appropriate law enforcement agencies of the escape.¹²⁶ Finally, there shall be “minimum standards for the safety of violent prisoners in accordance with applicable Federal and State law.”¹²⁷

In addition, these regulations shall not be stricter than the law applicable to the United States Marshals Service, the Federal Bureau of Prisons, and the Immigration and Naturalization Service when those agencies are “transporting violent prisoners under comparable circumstances.”¹²⁸ Finally, the penalty for violating any of these regulations is a civil penalty not to exceed \$10,000 for each violation.¹²⁹ The company must also repay the United States the costs of prosecution and reimburse the United States and the state for any resources

¹¹⁹ *Id.*

¹²⁰ *Id.* § 60103(b)(3).

¹²¹ *Id.* § 60103(b)(4).

¹²² *Id.* § 60103(b)(5).

¹²³ *Id.* § 60103(b)(6).

¹²⁴ *Id.* § 60103(b)(7).

¹²⁵ *Id.* § 60103(b)(8).

¹²⁶ *Id.* § 60103(b)(9).

¹²⁷ *Id.* § 60103(b)(10).

¹²⁸ *Id.* § 60103(c).

¹²⁹ *Id.* § 60104(1).

expended for capturing any prisoner who escapes the custody of the private transportation company.¹³⁰

3. The Attorney General's Standards Regulating Private Prison Transportation Companies

Under Jeanna's Act, the Attorney General of the United States was tasked with implementing standards to regulate the private prison transportation industry, and these regulations were enacted in accordance with the provisions of 34 U.S.C. § 60101, as described in Section II.B.2 of this Article.¹³¹ These regulations were enacted "to provide minimum security and safety standards for private companies that transport violent prisoners on behalf of State and local jurisdictions."¹³²

A private prisoner transportation company, as used in these regulations, refers to "any entity, other than the United States, a State, or an inferior political subdivision of a State, that engages in the business of transporting for compensation individuals committed to the custody of any State"¹³³ Companies must comply with these rules even if they do not transport prisoners across state lines because the Department of Justice believes "that limiting the Act's provisions to only those companies that cross state borders would create the unacceptable result of leaving unregulated certain members of the industry that Congress clearly intended to regulate."¹³⁴

First, in accordance with these minimum standards and regulations, "[p]rivate prisoner transport companies must adopt pre-employment screening measures for all potential employees."¹³⁵ This testing must include both a background check and a test for the use of controlled substances.¹³⁶ If the potential employee fails either of these screening measures, that potential employee will be barred from employment.¹³⁷

As for the screening measures themselves, the background checks must include (1) "[a] fingerprint-based criminal background check that disqualifies persons with either a prior felony conviction or a State or Federal conviction for a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921;" (2) "[a] Credit Report check;" (3) "[a] physical examination;" and (4) "[a] personal

¹³⁰ *Id.* § 60104(1)–(2).

¹³¹ *Id.* § 60103.

¹³² 28 C.F.R. § 97.1 (2017).

¹³³ *Id.* § 97.2(b).

¹³⁴ Establishment of Minimum Safety and Security Standards for Private Companies that Transport Violent Prisoners, 67 Fed. Reg. 78699-01, *78700 (Dec. 26, 2002).

¹³⁵ 28 C.F.R. § 97.11 (2017).

¹³⁶ *Id.*

¹³⁷ *Id.*

interview.”¹³⁸ The background check may not be submitted directly to the Federal Bureau of Investigation or any other Federal agency so the private prisoner transportation companies must arrange these procedures with the contracting government agency.¹³⁹ If the private transportation company is contracting with a privately run incarceration facility and, therefore, not with a government entity, the private transportation company must make arrangements for the background check through the private incarceration facility to have these checks completed by the government entity that ultimately requested the prisoner transport.¹⁴⁰ In addition, the controlled substances testing must be in accordance with the applicable state law, and, if there is no applicable state law, the testing must be in accordance with the Department of Transportation regulations at 49 C.F.R. § 382.301.¹⁴¹

Second, the private prisoner transportation companies must require an employee to complete a minimum of 100 hours of employee training before the employee may transport violent prisoners.¹⁴² The training must include instruction in each of the following areas: (1) “[u]se of restraints;” (2) “[s]earches of prisoners;” (3) “[u]se of force, including use of appropriate weapons and firearms;” (4) “[c]ardiopulmonary resuscitation (CPR);” (5) “[m]ap reading;” and (6) “[d]efensive driving.”¹⁴³

Third, the private transportation companies must adhere to the maximum driving time provisions as set forth in the Department of Transportation regulations at 49 C.F.R. § 395.3.¹⁴⁴ These regulations provide limitations on the number of hours that drivers may operate a vehicle. Fourth, transportation companies must ensure, at a minimum, that there is at least one guard on duty for every six violent prisoners that are being transported.¹⁴⁵ Companies are free to establish more stringent requirements for the guard-to-prisoner ratio.¹⁴⁶

Fifth, employees are required to wear uniforms that meet the following requirements: (1) “[u]niforms must be readily distinguishable in style and color from official uniforms worn by United States Department of Justice employees who transport violent offenders;” (2) “[u]niforms must prominently feature a badge or insignia that identifies the employee as a prisoner transportation employee;” and (3) “[u]niforms must be worn at all times while the employee is

¹³⁸ *Id.* § 97.11(a).

¹³⁹ *Id.* § 97.11(c).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* § 97.11(b).

¹⁴² *Id.* § 97.12.

¹⁴³ *Id.* § 97.12(a)–(f).

¹⁴⁴ *Id.* § 97.13.

¹⁴⁵ *Id.* § 97.14.

¹⁴⁶ *Id.*

engaged in the transportation of violent prisoners.”¹⁴⁷ Employees are also required to wear and display identification that complies with the regulations.¹⁴⁸ Identification must clearly identify the employee as an employee of the transportation company and must display a photograph of the employee, which is at least one square inch in size and contains a printed personal description of the employee, which includes the employee’s name, signature, and the date it was issued.¹⁴⁹ Further, the identification must be displayed on the employee’s uniform, and it must be visible at all times during the transportation of violent prisoners.¹⁵⁰

Sixth, the companies are required to ensure that all violent prisoners in transport are clothed in brightly colored clothing that clearly identifies them as a violent prisoner.¹⁵¹ Private transportation companies are given the discretion to bypass this requirement for security or other specific considerations which would make this requirement inappropriate.¹⁵²

Seventh, private transportation companies are required to use specific types of restraints when transporting violent prisoners.¹⁵³ At a minimum, violent prisoners must be “wearing handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner” or there are other extenuating circumstances, such as pregnancy or a physical disability, which would make the use of these restraints impractical.¹⁵⁴

Eighth, “private prisoner transport[ation] companies are required to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction.”¹⁵⁵ The regulations define a scheduled stop as “a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks.”¹⁵⁶ However, scheduled stops do not include fuel stops or emergency stops.¹⁵⁷

Ninth, private prisoner transportation companies must provide immediate notifications to local law enforcement officials in the event of a prisoner escape.¹⁵⁸ The companies must be sufficiently equipped to provide this

¹⁴⁷ *Id.* § 97.15(a)(1)–(3).

¹⁴⁸ *Id.* § 97.15(b).

¹⁴⁹ *Id.* § 97.15(b)(1).

¹⁵⁰ *Id.* § 97.15(b)(2).

¹⁵¹ *Id.* § 97.16.

¹⁵² *Id.*

¹⁵³ *Id.* § 97.17.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* § 97.18.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* § 97.19.

notice, and the law enforcement officials must receive the notification no less than 15 minutes after the prisoner's escape is detected.¹⁵⁹ If the company does not meet this time limit, it must "demonstrate that extenuating circumstances necessitated a longer delay."¹⁶⁰

In the event of the escape of a violent prisoner, the company must (1) "[e]nsure the safety and security of the remaining prisoners;" (2) "[p]rovide notification within 15 minutes to the appropriate State and local law enforcement officials;" (3) "[p]rovide notification as soon as practicable to the governmental entity or the privately run incarceration facility that contracted with the transport company;" and (4) "[p]rovide complete descriptions of the escapee and the circumstances surrounding the escape to State and local law enforcement officials if needed."¹⁶¹

Tenth, companies must be in compliance with the applicable state and federal laws that govern the safety of violent prisoners during transport.¹⁶² In addition, companies must ensure that it is in compliance with the standards contained in 28 C.F.R. § 97.20. Under this section, private transportation companies must ensure that "[p]rotective measures are in place to ensure that all vehicles are safe and well-maintained" and that vehicles are equipped with communication systems that are capable of immediately notifying law enforcement in the event of a prisoner escape.¹⁶³

Further, the companies must have "[p]olicies, practices, and procedures" in effect which ensure that the health and physical safety of the prisoners is protected during transport, which includes having a first-aid kit and employees who are qualified to provide first-aid, administer CPR, and dispense necessary medications.¹⁶⁴ Companies must also ensure that prisoners are protected from mistreatment, including prohibiting covering the prisoner's mouth with tape and the use of excessive force or sexual misconduct.¹⁶⁵ Companies are also required to ensure that juvenile prisoners are separated from adult prisoners and that female prisoners are separated from males, whenever practicable.¹⁶⁶ Female guards should also be on duty to supervise the transportation of violent female prisoners.¹⁶⁷

Private transportation employees must also be well trained in the handling and restraint of prisoners and the proper use of firearms as well as

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* § 97.20.

¹⁶³ *Id.* § 97.20(a)–(b).

¹⁶⁴ *Id.* § 97.20(c).

¹⁶⁵ *Id.* § 97.20(d).

¹⁶⁶ *Id.* § 97.20(e)–(f).

¹⁶⁷ *Id.* § 97.20(g).

receive specialized training in sexual harassment.¹⁶⁸ Finally, the regulations require that companies must be responsible for taking reasonable measures to ensure the well-being of the prisoners in their custody.¹⁶⁹ This includes taking the necessary steps for restroom breaks and for meals, supplying proper heating and ventilation of the transport vehicle, providing climate-appropriate uniforms, and prohibiting the use of tobacco in any form.¹⁷⁰

Finally, the Attorney General's regulations state that compliance with all these regulations does not mean that the private prisoner transportation companies have met all of their legal obligations.¹⁷¹ There are other applicable federal, state, and local laws that may impose obligations onto these companies, including all federal law governing interstate commerce and possession of weapons, or Transportation Security Administration rules and regulations governing travel on aircrafts.¹⁷² All these rules will continue to govern the conduct of private prison transportation companies because the regulations do not preempt these additional laws.¹⁷³

4. The Single Enforcement of Jeanna's Act

During the enactment of Jeanna's Act, the Senate hoped that the Act would "go a long way toward preventing more violent criminals from escaping."¹⁷⁴ However, the Act has only been enforced once by the Department of Justice since its enactment in 2000.¹⁷⁵ In 2011, Joseph Megna, a registered sex offender from Washington state who, at the time, was charged with first degree child molestation,¹⁷⁶ escaped a privatized prison transportation vehicle operated

¹⁶⁸ *Id.* § 97.20(h).

¹⁶⁹ *Id.* § 97.20(i).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* § 97.24. For supplementary information on these regulations, see Establishment of Minimum Safety Standards for Private Companies that Transport Violent Prisoners, 67 Fed. Reg. 78699-01 (Dec. 26, 2002).

¹⁷² Establishment of Minimum Safety and Security Standards for Private Companies that Transport Violent Prisoners, 67 Fed. Reg. 78699-01 (Dec. 26, 2002).

¹⁷³ 28 C.F.R. § 97.22 (2017).

¹⁷⁴ 146 CONG. REC. S11011-01, S11012, 2000 WL 1587370 (daily ed. Oct. 25, 2000).

¹⁷⁵ *U.S. Attorney's Office Announces Settlement of Claims Against Private Prisoner Transport Company for Violation of Jeanna's Act*, U.S. DEP'T OF JUSTICE (Sept. 16, 2013) [hereinafter *Settlement of Claims*], <https://www.justice.gov/usao-nd/pr/us-attorney-s-office-announces-settlement-claims-against-private-prisoner-transport> ("This suit was the first ever filed under Jeanna's Act[.]").

¹⁷⁶ In April, 2009, Megna was convicted of two counts of communicating with a minor for immoral purposes. *Sex Offender captured in North Dakota cornfield*, DULUTH NEWS TRIBUNE (Oct. 5, 2011, 6:17 PM) [hereinafter *Sex Offender Captured*], <http://www.duluthnewstribune.com/content/sex-offender-captured-north-dakota-cornfield-videos-story>. Megna hosted a party where he provided alcohol to minors, inappropriately touched

by Extradition Transport of America.¹⁷⁷ This pending charge classified Megna as a violent prisoner under Jeanna's Act.¹⁷⁸

During a restroom stop, Megna and another prisoner were left unrestrained and unsupervised in the back of the transportation van.¹⁷⁹ The guards left the van's doors open, and Megna and another inmate were located in a cage inside the van.¹⁸⁰ Megna escaped by simply shaking the cage doors and dislocating the padlock, which had been left unlocked.¹⁸¹ It took approximately 60 law enforcement personnel from 14 different federal, state, and local agencies almost 22 hours to apprehend Megna after his escape.¹⁸² This incident occurred near Tower City, North Dakota, only approximately 45 minutes from where Jeanna North had been murdered almost 20 years earlier.¹⁸³

This manhunt is believed to have cost the United States and the state of North Dakota a combined \$98,000.¹⁸⁴ The United States filed suit against Extradition Transport of America, under Jeanna's Act, seeking penalties against the company for three violations of Jeanna's Act and for restitution of the costs of apprehending the escaped prisoner.¹⁸⁵ The United States alleged that (1) Extradition Transport failed to transport Megna wearing brightly colored clothing that would identify him as a violent prisoner, (2) the company failed to restrain Megna by any means, and (3) the company failed to properly train its employees in the proper use of restraints.¹⁸⁶ The transportation company settled the case for \$80,000, which was comprised of \$70,000 for the expenses relating to the re-capture of Megna and the \$10,000 civil penalty under Jeanna's Act, the

three of them, and then exposed himself outside his apartment. *Id.* At the time of his escape, he was facing charges of first degree child molestation, which is a Class A felony and a violent offense under Washington law. *See* Complaint at 9, *United States v. Extradition Transp. of Am.* (D.N.D. June 11, 2012) (No. 3:12CV00046), 2012 WL 4931753.

¹⁷⁷ *See* Hager & Santo, *supra* note 13; *see also* *Sex Offender Captured*, *supra* note 176.

¹⁷⁸ *See* Complaint, *supra* note 176, at 14.

¹⁷⁹ *Id.* at 18–20; *Sex Offender Captured*, *supra* note 176.

¹⁸⁰ To view the complaint filed by the United States of America in its case against Extradition Transport of America and the factual allegations contained therein, *see* Complaint, *supra* note 176.

¹⁸¹ *Id.*

¹⁸² *Settlement of Claims*, *supra* note 175.

¹⁸³ Driving Directions from Tower City, ND to Fargo, ND, GOOGLE MAPS, <https://maps.google.com> (follow "Directions" hyperlink; then search starting point field for "Tower City, ND" and search destination field for "Fargo, ND").

¹⁸⁴ Complaint, *supra* note 176, at 28 (totaling the expenditures and losses listed to be close to \$98,000); *see also* Dave Kolpack, *Costs at \$55,000 for North Dakota cornfield manhunt*, BISMARCK TRIBUNE (Oct. 8, 2011), http://bismarcktribune.com/news/state-and-regional/costs-at-for-north-dakota-cornfield-manhunt/article_1fc37a56-f16e-11e0-a6e3-001cc4c03286.html.

¹⁸⁵ Complaint, *supra* note 176, at 31–49.

¹⁸⁶ *Id.* at 31–46.

maximum penalty allowed.¹⁸⁷ Following this settlement, Extradition Transport of America went out of business.¹⁸⁸

Following this lawsuit, the attorney for the United States responsible for pursuing this case stated, “This groundbreaking lawsuit should send a clear message to the prisoner transport industry: follow the rules and keep the dangerous prisoners in your custody secure or face severe financial penalties under Jeanna’s Act.”¹⁸⁹ However, abuses within the industry have continued since the lawsuit. Today, this case remains the first and only enforcement of Jeanna’s Act by the Department of Justice in the Act’s history.

C. Prisoner’s Rights Under the Eighth Amendment

It is important to recognize that the prisoners being transported by the privatized prison transportation industry have certain guaranteed rights under the Constitution of the United States. In 1974, the Supreme Court stated that “[t]here is no iron curtain drawn between the Constitution and the prisons of this country.”¹⁹⁰ Therefore, all prisoners of the United States are guaranteed certain constitutional rights that must be protected.

However, the precise constitutional standard depends on whether the individual is a convict, a pretrial detainee, or an arrestee at the time of the violation of his rights.¹⁹¹ A discussion of the rights of arrestees, or persons seized in the course of an arrest, investigation, or other seizure, is beyond the scope of this Article because such rights are not in jeopardy during prisoner transportation. However, persons convicted of crimes and pretrial detainees are frequently transported by privatized prison transportation companies, and it is important to identify the rights inherent to these groups. These two classes of offenders are guaranteed freedom from cruel and unusual punishment; access to shelter, sanitation and personal hygiene, food, clothing, and medical care; and personal safety from force by staff or exposure to hazardous conditions.¹⁹²

Convicted prisoners’ rights are protected by the Cruel and Unusual Punishments Clause of the Eighth Amendment.¹⁹³ The Eighth Amendment of the United States Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹⁹⁴ It is

¹⁸⁷ See 34 U.S.C. § 60104(1) (Supp. V 2012); *Settlement of Claims*, *supra* note 175.

¹⁸⁸ Hager & Santo, *supra* note 13.

¹⁸⁹ *Settlement of Claims*, *supra* note 175.

¹⁹⁰ *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974).

¹⁹¹ JOHN BOSTON & DANIEL E. MANVILLE, *PRISONERS’ SELF-HELP LITIGATION MANUAL* 128 (4th ed. 2010).

¹⁹² *See id.*

¹⁹³ *Id.* at 8.

¹⁹⁴ U.S. CONST. amend. VIII.

now undisputed that “confinement in a prison . . . is a form of punishment subject to scrutiny under Eighth Amendment standards.”¹⁹⁵

The protections afforded by the Eighth Amendment have been expanded beyond strictly physical punishments and now include conditions that are inconsistent with common notions of human decency and the standards of a civilized society.¹⁹⁶ “Although the Constitution does not and the court cannot dictate the general conditions that should exist in jails and prisons, the Constitution does require conditions of confinement imposed by states to meet certain minimum standards.”¹⁹⁷ There is no set test to assist courts in making this determination because these standards draw from the “evolving standards of decency that mark the progress of a maturing society.”¹⁹⁸

The Supreme Court has set out a two-part test to analyze Eighth Amendment challenges. The prisoner must prove that (1) the deprivation of his rights is “objectively, ‘sufficiently serious’” to violate the Eighth Amendment and (2) the prison official acted with a “sufficiently culpable state of mind” which is classified as a deliberate indifference to the inmates’ health or safety.¹⁹⁹ To meet the second part of this test, the court must find that the actor was subjectively aware of the facts of the abuse and acted knowingly.²⁰⁰

For example, violations of the Eighth Amendment are found where it is shown that the facility is “deliberately indifferent to a prisoner’s serious medical needs . . . or if they fail to provide prisoners with reasonably adequate food, clothing, shelter, and sanitation.”²⁰¹ While incarcerated, prisoners are unable to provide for their own needs; thus, prisoners are dependent on the government for meeting each and every one of their basic human necessities. Therefore, the failure to meet these basic needs may be a violation of a prisoner’s constitutional rights because it has the potential to produce physical suffering and anguish incompatible with society’s standards.²⁰²

¹⁹⁵ *Hutto v. Finney*, 437 U.S. 678, 685 (1978); *see also* *Wilson v. Seiter*, 501 U.S. 294, 297 (1991); *Rhodes v. Chapman*, 452 U.S. 337, 345 (1981).

¹⁹⁶ *See Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

¹⁹⁷ *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1571 (11th Cir. 1985) (citation omitted).

¹⁹⁸ *Rhodes*, 452 U.S. at 346 (1981) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

¹⁹⁹ *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citations omitted). For a more in depth discussion of this standard, see Lonnie E. Griffith, Jr., Annotation, *Construction and Application of Eighth Amendment’s Prohibition of Cruel and Unusual Punishment—U.S. Supreme Court Cases*, 78 A.L.R. Fed. 2d 1 § 66 (2013).

²⁰⁰ Griffith, *supra* note 199, at § 72.

²⁰¹ *Hamm*, 774 F.2d at 1572 (citations omitted).

²⁰² *See generally* *Brown v. Plata*, 563 U.S. 493 (2011) (discussing how prisoners may be deprived of certain rights based on their incarcerated status but the Constitution demands the recognition of certain basic human rights, including food, clothing, and medical care).

However, “the Constitution does not mandate comfortable prisons[.]”²⁰³ Many believe that prisoners are paying a debt to society, and conditions that are merely “restrictive and even harsh” are considered part of that penalty.²⁰⁴ The Constitution does not protect pretrial detainees from all unpleasant experiences, and it does not guarantee comfortable confinement conditions.²⁰⁵

There are limits to this rule. The Supreme Court has found violations where a prisoner was handcuffed to a hitching post for seven hours as a punishment.²⁰⁶ Further, the Court has found the exposure to heat, lack of water, and deprivation of restroom breaks amount to constitutional violations under this standard.²⁰⁷

In addition, prison officials have a duty to provide adequate health care as well as to protect prisoners from conditions that threaten to cause serious health problems.²⁰⁸ The government has an established obligation to provide medical care for prisoners because, while incarcerated, prisoners are entirely unable to provide for themselves.²⁰⁹ Prisoners must be provided with adequate medical care and be protected from unnecessary suffering as a result of the failure to treat a medical condition.²¹⁰ Intentionally or deliberately denying a prisoner medical care is a Constitutional violation.²¹¹

While incarcerated, a prisoner must be provided with shelter “which does not cause his degeneration or threaten his mental and physical well being.”²¹² Specifically, prisoners must be provided with beds, and courts have held that making prisoners sleep on mattresses placed on the floor of their cells violates the Eighth Amendment.²¹³ In addition, “[v]entilation is a fundamental attribute of ‘shelter’ and ‘sanitation,’ both of which are basic Eighth Amendment concerns.”²¹⁴ Moreover, exposing prisoners to inadequate or excessive heat has

²⁰³ *Rhodes*, 452 U.S. at 349.

²⁰⁴ *Id.* at 347.

²⁰⁵ See *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (“The Eighth Amendment does not outlaw cruel and unusual ‘conditions’; it outlaws cruel and unusual ‘punishments.’”); *Ivey v. Wilson*, 832 F.2d 950, 954–56 (6th Cir. 1987) (noting that unpleasant experiences that prisoners may experience, such as overcrowding and a spontaneous attack by a guard, are not classified as cruel and unusual punishment under the Eighth Amendment).

²⁰⁶ See *Hope v. Pelzer*, 536 U.S. 730 (2002).

²⁰⁷ *Id.* at 738.

²⁰⁸ See *Helling v. McKinney*, 509 U.S. 25 (1993).

²⁰⁹ *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

²¹⁰ *Id.* at 104–05.

²¹¹ Griffith, *supra* note 199, at § 75.

²¹² *BOSTON & MANVILLE*, *supra* note 191, at 19 (quoting *Ramos v. Lamm*, 639 F.2d 559, 568 (10th Cir. 1980)).

²¹³ *Id.* at 22.

²¹⁴ *Id.* (quoting *Minifield v. Butikofer*, 298 F. Supp. 2d 900, 904 (N.D. Cal. 2004)).

been found to violate the Eighth Amendment, although variations in temperature or occasional failures of the heating system are not violations.²¹⁵

Prisoners are also guaranteed a sanitary environment.²¹⁶ Sanitation is another “basic human need” and must be provided for all inmates.²¹⁷ Another basic necessity of life is access to food. Deprivation of food for any substantial amount of time can be a violation of the Constitution and the food provided must also be nutritionally adequate.²¹⁸

Convicted prisoners are not the only class of individuals in the criminal justice system who are guaranteed certain rights. Pretrial detainees, or persons who are legally detained but have not yet been convicted of a crime, are protected under the Due Process Clause of the Fourteenth Amendment.²¹⁹ The Supreme Court has held that the due process guarantees of pretrial detainees are substantially similar to the rights of convicted prisoners and are “at least as great as the Eighth Amendment protections available to a convicted prisoner.”²²⁰

Under the Due Process Clause, pretrial detainees cannot be punished and can only be detained to guarantee their presence at trial.²²¹ However, if the punitive measure is “reasonably related to a legitimate governmental objective,” then it is not considered a punishment and it is not a violation of the detainee’s due process rights.²²²

But the condition or action may be classified as unconstitutionally punitive if the measure is “arbitrary or purposeless” or “excessive” in relation to the purpose of the action.²²³ However, the Supreme Court has held that unless there is “substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.”²²⁴ Thus, courts will usually defer to

²¹⁵ *Id.* at 23.

²¹⁶ *Id.* at 24.

²¹⁷ *Id.*

²¹⁸ *Id.* at 29–30.

²¹⁹ *See* *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977); *see also* *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979).

²²⁰ *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (citation omitted).

²²¹ *See* *BOSTON & MANVILLE*, *supra* note 191, at 421.

²²² *Id.* (quoting *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979)).

²²³ *Id.* Earlier court decisions regarding pretrial detainees held that because of the presumption of innocence, detainees had a substantive right to be free from conditions not justified by a compelling necessity. *See, e.g.*, *Campbell v. McGruder*, 580 F.2d 521, 529 (D.C. Cir. 1978); *Rhem v. Malcolm*, 507 F.2d 333, 336–37 (2d Cir. 1974) (holding that detainees had “retain[ed] all the rights of an ordinary citizen except the right to go and come as they please.”) (citation omitted). The Supreme Court overruled these decisions in *Bell v. Wolfish*, 441 U.S. 520, 532 (1979). In *Bell*, the Court held that the presumption of innocence is a rule of evidence and not a standard by which to govern confinement conditions. *Id.* at 533.

²²⁴ *Bell*, 441 U.S. at 548 (quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974)).

the judgment of the prison officials, but courts have made it clear that this is not a “blind deference.”²²⁵

In addition, the Cruel and Unusual Punishment Clause of the Eighth Amendment should not be applied to pretrial detainees because, as mentioned above, detainees cannot be punished.²²⁶ However, in practice, when a court is determining a detainee’s rights under a Due Process analysis, courts have adopted Eighth Amendment standards when the case involves issues typically governed by the Eighth Amendment in convicted prisoner cases.²²⁷ For example, most courts have held that a detainee’s claims involving medical care are governed by Eighth Amendment standards.²²⁸

With regards to conditions of confinement, cases in which pretrial detainees’ conditions have been found unconstitutional resemble cases in which conditions have also been found to violate the Eighth Amendment.²²⁹ Some courts have stated outright that the Eighth Amendment standard controls for both convicted prisoners and detainees, while others have held that there is a difference.²³⁰ However, the courts that have attempted to differentiate the standards have failed to articulate a clear and substantiated difference.²³¹

While the constitutional protections guaranteed to convicted prisoners and pretrial detainees are theoretically separate standards guaranteed under different parts of the Constitution, such standards are quite similar in practice. Fundamentally, both classes of individuals are guaranteed the same rights that promise access to fair treatment, medical care, and basic human needs such as food, shelter, and sanitation.²³²

Finally, these protections are important to identify because the privatized prison transportation industry has frequently placed prisoners and detainees in situations that substantially compromise many of the rights described above. Recognizing these established constitutional protections is essential to protecting the safety and liberty of prisoners in transport.

²²⁵ BOSTON & MANVILLE, *supra* note 191, at 422 (quoting *United States v. Gotti*, 755 F. Supp. 1159, 1164 (E.D.N.Y. 1991)).

²²⁶ *Id.* at 423.

²²⁷ *Id.*

²²⁸ *Id.*; *see e.g.*, *Martinez v. Beggs*, 563 F.3d 1082, 1088 (10th Cir. 2009); *Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996) (holding that under the Eighth Amendment and the Due Process Clause “the applicable standard is the same, so decisional law involving prison inmates applies equally to cases involving arrestees or pretrial detainees”) (citation omitted).

²²⁹ *See* BOSTON & MANVILLE, *supra* note 191, at 423.

²³⁰ *Id.* at 424.

²³¹ *Id.*

²³² *Id.* at 423.

D. The Privatized Prison Transportation Industry's Failures

Since the enactment of Jeanna's Act and the escape of Jeanna's killer, Kyle Bell, prisoner abuse and prisoner escapes have continued within the privatized prison transportation industry. Since 2012, at least four people have died while in a prison transportation van, and all these deaths occurred in vehicles owned by Prisoner Transportation Services.²³³ Further, since 2000, at least 60 prisoners have escaped,²³⁴ and 14 female prisoners have alleged that they were sexually assaulted by guards during transport.²³⁵

In addition, it is all too frequent to hear stories of transport drivers who refuse to stop for restroom breaks, causing prisoners to urinate and defecate on themselves and in the transport vehicles, who fail to provide food and water to prisoners, who fail to provide adequate medical care to prisoners or sanitary pads or tampons to female prisoners,²³⁶ and who drive the transportation van in a reckless or dangerous manner.²³⁷ It has also become common to hear stories of

²³³ Hager & Santo, *supra* note 13.

²³⁴ Hager & Santo, *Death on a Prison Bus*, *supra* note 59.

²³⁵ *Id.* For example, Lauren Sierra alleges that she was repeatedly sexually assaulted by a guard in 2014 while being transported by U.S. Corrections, a private prisoner transportation company registered in North Carolina. Hager & Santo, *supra* note 13. Sierra was taken into custody when she faced charges for using another person's Bed, Bath, and Beyond gift card. *Id.* These charges were later dropped. *Id.*

²³⁶ See, e.g., *Opposing Comment for Docket No. MCF 21067*, HUMAN RIGHTS DEF. CTR. 4 (Aug. 8, 2016) [hereinafter HUMAN RIGHTS DEF. CTR.], https://www.humanrightsdefensecenter.org/media/publications/HRDC%20comments%208_8_16.a.pdf (providing examples of the horrific conditions in prisoner transportation vans in objection to the merger of Prisoner Transportation Services and U.S. Corrections, two privatized prison transportation companies); David Ovalle, *Inmate death in private transport van in Miami-Dade raises questions*, MIAMI HERALD (Sept. 28, 2014, 6:14 PM), <http://www.miamiherald.com/news/state/florida/article2287990.html> (describing the death of Denise Issacs, who suffered from several chronic diseases, exhibited strange behavior during transport, and eventually died in a transport van after being apprehended for violating her probation for a shoplifting charge); Hager & Santo, *supra* note 13 (describing the story of Roberta Blake, who had her shirt ripped off by another prisoner and was also forced to use a cup in front of the other prisoners and the male guards once she began menstruating); Micolucci, *supra* note 2 (describing the case of a former college professor who died in the back of a private prison transportation vehicle from a perforated ulcer).

²³⁷ See, e.g., *Crash on I-20 Claims Three*, ONLINE ATHENS (Aug. 6, 2009), http://onlineathens.com/stories/080609/cop_478210144.shtml#.WMIjuhLyv6Y; Denise Hollinshed, *Private company will probe Illinois bus crash involving inmates, guards*, ST. LOUIS POST-DISPATCH (Dec. 15, 2013), http://www.stltoday.com/news/local/crime-and-courts/private-company-will-probe-illinois-bus-crash-involvinginmates-guards/article_1622d7bd-b0ed-5c16-a6a9-f9fe6048e2e4.html; see also HUMAN RIGHTS DEF. CTR., *supra* note 236, at 3, 5.

dangerous prisoners escaping the custody of prison transportation vehicles after careless errors by the guards.²³⁸

For example, earlier this year, 20 prisoners, tightly packed in the back of a Prison Transportation Services vehicle for 10 days, were not allowed to brush their teeth or shower for the entire journey.²³⁹ The bathroom on board the vehicle was also unusable.²⁴⁰ Women menstruating were forced to fashion sanitary devices from old McDonald's food wrappers in front of male prisoners and urinate into plastic bottles with the tops cut off.²⁴¹

On this same trip, Kevin Eli died while he was being transported from Virginia to Florida to face a charge, from nine years earlier, of stealing a pearl necklace during a burglary.²⁴² His death was the fifth on a Prisoner Transportation Services vehicle in five years.²⁴³ Other prisoners on board watched Mr. Eli beg for his life after he got into an altercation with another prisoner and was handcuffed behind his back as punishment.²⁴⁴ Mr. Eli began to complain of chest pain and repeatedly told guards that he was unable to breathe.²⁴⁵ He was placed in a segregation cage and pleaded with guards to call 911 for almost 30 minutes.²⁴⁶ The guards refused to stop the bus.²⁴⁷ Mr. Eli eventually fell unconscious and died.²⁴⁸ The guards attempted to resuscitate him, but were unsuccessful.²⁴⁹ Mr. Eli's cause of death remains unknown, and his mother said the family had to pay several thousand dollars to have his body shipped back to their home in the New York City area.²⁵⁰

To add to these accounts, many former employees of several privatized prison transportation companies have come forward to share stories of abuse they have witnessed firsthand. A former U.S. Corrections officer, Fernando Colon,

²³⁸ See *Police: Oklahoma inmates left in van with keys drive off*, OAKLAND PRESS (Sept. 25, 2013, 3:35 AM), <http://www.theoaklandpress.com/article/op/20130925/NEWS/130929534> (describing an incident where eight prisoners escaped after the guard left the keys in the ignition of a running vehicle); *Prisoner Transportation Services Rap Sheet*, PRIVATE CORR. WORKING GRP., http://www.privateci.org/rap_PTSoFAmer.html (last visited Oct. 15, 2017) (recounting several instances of prisoner escapes while in the custody of privatized transportation companies).

²³⁹ Hager & Santo, *Death on a Prison Bus*, *supra* note 59.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

stated, “My prisoners got sick and threw up on each other all the time They were car sick, dizzy, panicked, and claustrophobic.”²⁵¹ Only one of the vans in the U.S. Corrections fleet had cushioned seats, and in the rest of the vans, the prisoners were seated on metal benches, squeezed tightly next to each other for up to seven days in a row.²⁵² Zachary Raines, a former Prisoner Transportation Services guard, described the trips he witnessed as “like the airport shuttle from hell.”²⁵³

It has also become common for prisoners or their families to come forward with their own accounts of the tragedy that resulted from trips under the control of privatized prison transportation companies. Steven Galack was arrested in Florida on an out-of-state warrant for failure to pay child support from Ohio.²⁵⁴ Galack was placed in a van, in the custody of a private transportation company, along with 10 other detainees, to travel more than 1,000 miles to his destination.²⁵⁵ There was no air conditioning, and amid the 90-degree heat, Galack began to grow delusional and exhibit odd behavior.²⁵⁶ On the third day of travel, the guards physically assaulted Galack, likely to keep him quiet due to his delusions, and he was later found dead in the back of the transport van.²⁵⁷ The other prisoners on board claim to have heard a guard say “only body shots” as the guards began to stomp on Galack.²⁵⁸ A homicide investigation lasted less than one day, and the cause of death remains undetermined.²⁵⁹

In another tragic incident, Michael Dykes was forced to have both his legs amputated after spending three days in the custody of a private transportation van.²⁶⁰ Dykes was facing theft and fraud charges stemming from a dispute over a construction project.²⁶¹ Dykes is a diabetic and was already in declining health when he was placed in the custody of the transportation company and forced to wear ankle shackles.²⁶² The company’s guards denied his repeated requests for medical assistance, and Dykes claimed that his insulin,

²⁵¹ HUMAN RIGHTS DEF. CTR., *supra* note 236, at 3.

²⁵² *Id.*

²⁵³ Hager & Santo, *supra* note 13.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* The transportation guards claimed in depositions that they first noticed Galack’s bloodied body more than 70 miles later in Tennessee. *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

which is supposed to be kept cold, was kept in the dashboard of the van, in the sun.²⁶³

In August of 2005, Steven Wiley was held by a police department in Illinois after it was discovered that there was an outstanding warrant for his arrest in Georgia.²⁶⁴ The warrant was based on the claims that Wiley failed to report to the probation office and to pay a court-ordered fine, which Wiley had actually paid.²⁶⁵ Wiley was arrested in Illinois and was subsequently placed in the custody of a private prisoner transportation vehicle to be extradited back to Georgia.²⁶⁶ For eight days, Wiley and, at times, as many as 10 other detainees were held in the back of a vehicle with no air conditioning; were not allowed to shower or to change clothes; were not provided proper sleeping arrangements; and were stranded in the vehicle while it was either broken down or unloading other detainees.²⁶⁷ Wiley was not given his prescribed medications for the entirety of the eight days and sustained injuries as a result of the driver's "irresponsible driving style."²⁶⁸ Once Wiley reached Georgia, he was immediately released because prosecution was no longer feasible and the District Attorney had dismissed the case one day prior.²⁶⁹ Wiley filed suit as a result of his injuries, but the lawsuit was dismissed.²⁷⁰

In 2010, the federal government charged Albert Preston Long, a guard for the private transportation company Court Services Incorporated, with sexual assault for repeatedly raping Magan Marie Mays, a prisoner placed in his custody.²⁷¹ Long dropped off the three male prisoners at a County Jail for the night, and then took Mays to the Kings Court Motel where he forced her to perform sexual acts by threatening her with his firearm.²⁷² Long continued this

²⁶³ *Id.*

²⁶⁴ Wiley v. Cronin, No. 07-CV-00542-JPG-CJP, 2008 WL 450461, at *1 (S.D. Ill. Feb. 15, 2008).

²⁶⁵ *Id.*

²⁶⁶ *Id.* at *2.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.* Wiley filed a lawsuit against the Georgia Sheriff of Hall County, his lieutenant, and Mid-Florida Extradition, Inc., alleging false imprisonment, negligence, and violations of his constitutional rights under 42 U.S.C. § 1983. *Id.* The District Court for the Southern District of Illinois granted the defendant's motion to dismiss for a lack of personal jurisdiction. *See id.* at *2, *5.

²⁷¹ *See Private Prisoner Transport Employee Pleads Guilty to Civil Rights, Traveling Across State Lines to Engage in Unlawful Sexual Activity, and Firearms Offenses*, FBI: LOUISVILLE DIV. (Sept. 20, 2010) [hereinafter *Employee Pleads Guilty*], <https://archives.fbi.gov/archives/louisville/press-releases/2010/lo092010.htm>; *see also* Maxum Indem. Co. v. Court Servs., Inc., No. 2:11-CV-2014 GEB EFB, 2012 WL 2090473, at *1 (E.D. Cal. June 8, 2012).

²⁷² *Employee Pleads Guilty*, *supra* note 271.

practice the following night until a county detention employee questioned why Mays was included in the prisoner log but was not being dropped off at the facility.²⁷³ Prior to Long's employment with Court Services Incorporated, Long was a convicted felon with two prior felony convictions.²⁷⁴ Court Services Incorporated failed to adequately screen Long during pre-employment and he was hired despite his serious criminal record.²⁷⁵

Serious incidents of abuse such as these occur quite frequently within the industry. This abuse is often quite traumatizing for the prisoners involved, and, for some, it can even be deadly. Recognizing the areas in which transportation companies are consistently failing and the patterns of abuse and neglect within many of these companies is necessary if this abuse is to be corrected.

III. ANALYSIS

Jeanna's Act is the only statute that regulates the privatized prison transportation industry, and the Act proscribes minimum standards which privatized transportation companies must meet.²⁷⁶ As discussed in Section II.B, when Jeanna's Act was enacted, its primary purpose was to protect the public from violent prisoners who escape the custody of a privatized prison transportation company. Thus, the statute is intended to protect the safety of the public rather than the safety and rights of prisoners and guards during transport.

This Article argues that Jeanna's Act should be reformed because its regulations are inadequate to protect the rights of prisoners and the safety of prisoners, transportation guards, and the public during transport. This Act should be amended to provide for mandatory safety requirements, higher training requirements for guards, and higher civil penalties for violators. Section III.A argues for general regulations, such as mandatory stops and more oversight over transportation plans within the industry, which would resemble the policy directives prescribed by the United States Marshals Service. Section III.B proposes further regulations to protect the safety of prisoners and guards during transport, including higher training standards for guards and higher safety precautions for prisoners being transported. Section III.C argues for the addition of regulations that provide for the basic human needs of prisoners, which would include mandatory meal times, time for sleep, and access to a restroom. Section III.D argues that the Act should be amended to reflect the seriousness of its abuses by increasing the penalties for violations of the Act. Finally, Section III.E offers recommendations for overcoming the serious obstacles to reform that arise from both the lack of enforcement of Jeanna's Act and prisoners' limited access

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *See id.*

²⁷⁶ *See* 34 U.S.C. § 60103 (Supp. V 2012).

to adequate legal services, which has prevented many prisoners from seeking damages for their injuries arising from transportation.

A. The Prison Transportation Industry Must Be More Closely Regulated

Currently, the privatized prison transportation industry is highly unregulated and riddled with incidents of serious abuse.²⁷⁷ Since its enactment in 2001, Jeanna's Act has been enforced only once, and when confronted with this fact and several allegations of abuse, former Attorney General Loretta Lynch stated that she was unfamiliar with these issues.²⁷⁸ However, because the Attorney General has no control over the autonomy of the individual companies beyond what is mandated by statute, these companies should be further regulated to ensure that guards, prisoners, and the public are adequately protected. While those who promulgate the regulations must be conscious of the fact that these companies are privately owned, this does not mean that the government cannot step in to further regulate this industry.

Private prisoner transport companies are responsible for transporting individuals committed to the custody of the government. These individuals are incarcerated and are unable to provide for their own basic needs while in the care of these companies. As prescribed by the Eighth Amendment and, in the case of pretrial detainees, by the Due Process Clause of the Fourteenth Amendment, these individuals are guaranteed certain constitutional rights.²⁷⁹ However, because this industry is highly unregulated, many prisoners are being left unprotected and are suffering.²⁸⁰ Thus, the amendment of this statute should be made with prisoners' rights in mind. These rights include the freedom from cruel and unusual punishment; the access to shelter, sanitation and personal hygiene, food, clothing, and medical care; and the guarantee of safety from excessive force by staff or exposure to hazardous conditions.²⁸¹

Currently, the regulations do not go far enough to ensure that prisoners' rights are being protected. The regulations provide broad statements, such as that companies must ensure that "[p]olicies, practices, and procedures are in effect to ensure the health and physical safety of the prisoners during transport" and that "[p]olicies, practices, and procedures are in effect to prohibit the mistreatment of prisoners."²⁸² However, these overly broad statements do not provide the type of guidance that is needed within the industry. These regulations read more like a set of ideals to be strived for instead of standards to be met. This industry is

²⁷⁷ For a further explanation of this claim and examples of such abuse within the industry, see *supra* Section II.D.

²⁷⁸ See *supra* notes 78–84 and accompanying text.

²⁷⁹ See *supra* Section II.C.

²⁸⁰ For references to specific instances of abuse, see *supra* Section II.D.

²⁸¹ See *BOSTON & MANVILLE*, *supra* note 191.

²⁸² 28 C.F.R. § 97.20(c)–(d) (2017).

failing to meet even the most basic standards of human decency. Thus, heightened standards are required that tell the companies exactly how health and safety must be maintained and how prisoner mistreatment is to be avoided. Providing broad statements, such as what is stated in the current model, leaves too much discretion with the companies, placing the health and safety of prisoners across the country at risk.

1. The United States Marshals Service Policy Directives

An ideal model that can be used to address the inadequacies within the privatized prison transportation industry and that also respects the prisoners' guaranteed constitutional rights can be found in the United States Marshals Service Policy Directives. The privatized prison transportation industry and the United States Marshals Service are similar services that both operate under the supervision of the Attorney General of the United States. To mimic these pre-established regulations, which have been utilized by the Marshals Service for many years, seems intuitive.

The U.S. Marshals Service is the largest transporter of prisoners in the world, and its policies and structure are frequently audited by the Office of the Inspector General of the United States to ensure that the branch is not committing any fraud, abuse, or misconduct.²⁸³ This extensive auditing process ensures that the Marshals Service is conducting its prisoner transportation process in the most effective way possible. Further, the policy directives and procedures are the means by which this government agency conducts its business. Thus, the United States Marshals Service Policy Directives is the perfect model for private prisoner transportation regulations. This model is time-tested, and its policies and procedures are written, outlined, and easily accessible.²⁸⁴

The first directive that should be incorporated in Jeanna's Act is U.S. Marshals Policy Directive 16.2,²⁸⁵ the directive for scheduling prisoner transportation which provides regulations that the Marshals Service must abide by when it transports prisoners. First, these new regulations should go further and prescribe requirements that compel private transportation companies to reserve travel arrangements in advance. Currently, Jeanna's Act only requires companies transporting violent prisoners to notify local law enforcement 24 hours in advance of any predetermined stops in their jurisdiction.²⁸⁶ These requirements should be amended to include requirements for contacting

²⁸³ See *Management*, *supra* note 48 (detailing the extensive 118 page report and investigation conducted into whether the Marshals Service is adequately managing its prisoner transportation system).

²⁸⁴ To view the U.S. Marshall Service Policy Directives, see *Policy Directives*, *supra* note 31.

²⁸⁵ POLICY DIRECTIVES 16.2, *supra* note 16.

²⁸⁶ 28 C.F.R. § 97.18 (2017).

institutions to reserve overnight housing space for prisoners in jails en route when the trip will last more than one day.

These travel arrangements are necessary to protect the rights of prisoners and prevent the instances of abuse that arise when prisoners are deprived of sleep, restroom breaks, and medical care. Pre-planning these stops will reduce the likelihood of many of the common instances of abuse that currently face the industry, including prisoner escapes and the deprivation of sleep, food, water, and access to a restroom.²⁸⁷ Coordinating stops with jails will allow prisoners a comfortable place to sleep and a place to use the restroom, and it will reduce the risks for guards who fear making unplanned stops along highway rest stops. Further, if guards are allowed a break from duty while the prisoners are safely in the care of a correctional institution, this will likely reduce the amount of accidents on the roadways and the instances of prisoner escapes due to guard oversights, which would protect the public at large.

Second, to make these overnight stops easier, the regulations should mandate that companies include the necessary documents which shall accompany the prisoners during their travels. These forms should include the prisoner's identification information as well as medical and security data, which should be provided to the administrator of any detention facility used to house prisoners along their travels. Such documentation is also required under the Marshals Service Policy Directive 16.2.²⁸⁸ This documentation would allow guards to familiarize themselves with the prisoners in their care. Guards can identify prisoners with serious medical conditions that may require medications to be dispensed or aid to be provided. Further, it will also allow the guards to determine which prisoners are violent and present the biggest risk to the safety of both guards and the other prisoners in transport.

Further, because prison transportation companies frequently travel circuitous routes, developing relationships with correctional institutions along their routes will reduce the tension correctional institutions feel when unfamiliar prisoners are placed in their care, an issue of which companies are now weary. Having the necessary paperwork accompanying each prisoner will ease these tensions, and correctional institutions will be aware of who is being allowed into their facility and the risks associated with each prisoner.

Third, Jeanna's Act should go further in its mandated reporting than its current requirements, which only mandate reporting in the event of an escape by a violent prisoner.²⁸⁹ The regulations should require prompt and mandatory reporting in the event of any incidents with prisoners. Similarly, Marshals Service Policy Directive 16.2 provides that privatized prison transportation companies should be responsible for reporting, as soon as possible, any incidents

²⁸⁷ See *supra* Section III.C.

²⁸⁸ POLICY DIRECTIVES 16.2, *supra* note 16.

²⁸⁹ 28 C.F.R. § 97.19 (2017).

with prisoners, which includes escapes, escape attempts, use of force against prisoners, vehicle accidents, threats or attacks by or against prisoners, suicides, and attempted suicides.²⁹⁰ These incident reports should be reported to an authority prescribed by the Attorney General to ensure that accurate records are maintained.

Further, the Marshals Policy Directive requires daily reporting requirements to receive supplemental trip information and other necessary instructions.²⁹¹ The implementation of such a centralized reporting system in the privatized prison industry would be difficult because these companies are individualized, but it is necessary. Mandatory reporting, which includes the suggested incident reporting mentioned above, and daily reporting requirements are the type of heavy oversight that is currently lacking within the industry. The Attorney General should attempt to model the reporting structure of the Marshals Service so that these privatized transportation companies are aware of who is required to report and to whom.

Currently, the Marshals Directives refer to a designated titled individual, an employee in a supervisory role, who is required to report incidents and who is also required to engage in daily check-ins.²⁹² Mandating a reporting structure, like the Marshals Service, will streamline the privatized transportation industry and ensure that there is oversight into their activities.

Fourth, the Policy Directives provide instructions for dealing with prisoners with physical or mental impairments.²⁹³ These are situations that Jeanna's Act fails to address. Currently, Jeanna's Act only requires "[p]olicies, practices, and procedures" to be developed to ensure juveniles are separated from adult prisoners and females are separated from male prisoners, whenever practicable.²⁹⁴

Under the U.S. Marshals Directives, mentally or physically incompetent prisoners should also be separated from other prisoners.²⁹⁵ The Marshals also "carefully consider" the opinions of medical personnel and recommend obtaining a written statement that analyzes the prisoner's condition and recommends additional safety measures that should be taken.²⁹⁶ By failing to require that mentally or physically incompetent prisoners are separated from other prisoners, Jeanna's Act fails to account for an entire class of offenders. Separating these individuals from others will likely prevent harassment and potentially even violence between prisoners.

²⁹⁰ POLICY DIRECTIVES 16.2, *supra* note 16.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ POLICY DIRECTIVES 16.4, *supra* note 45.

²⁹⁴ 28 C.F.R. § 97.20(e)–(f) (2017).

²⁹⁵ POLICY DIRECTIVES 16.4, *supra* note 45.

²⁹⁶ *Id.*

2. Jeanna's Act Must Be Enforced Within the Industry

Currently, Jeanna's Act is a set of regulations without any authority to monitor compliance. There is little to no oversight, and private transportation companies are not being held accountable for their violations. Without an authority to monitor compliance, the industry is operating with little to no compliance with the regulations.

Because these companies operate across state lines, accountability for the private transportation companies' actions is unclear.²⁹⁷ Jurisdictions that hire these companies claim no responsibility for the prisoners because they are no longer under their direct custody and the federal government has largely ignored the industry.²⁹⁸ The Chief Operating Officer of Prisoner Transportation Services stated that ". . . I've never seen anybody come out to actually check on us."²⁹⁹

The Department of Transportation is responsible for monitoring vehicle and driver safety as provided in Jeanna's Act's regulations.³⁰⁰ However, a review of Department of Transportation records shows that the agency's monitoring is infrequent and transportation companies are typically given advance notice of upcoming audits.³⁰¹ "Between 2000 and 2015, records indicate, the department issued fines 20 times, most below \$10,000."³⁰² Further, Prisoner Transportation Services has been registered with the Department of Transportation since at least 2005, but the company was not audited for the first time until 2009.³⁰³ U.S. Corrections, another private transportation company, was founded in 2014 but was not audited for the first time until March of 2016.³⁰⁴

The way this industry is currently being run is simply not working and is unacceptable. Instituting a more comprehensive set of regulations in the industry is necessary to provide a safer environment for all prisoners in transport. Currently, Jeanna's Act is only focused on protecting the public from violent prisoners and requires reporting only if there is an escape during transport, and the Act does little to protect the safety of prisoners themselves or to provide for their needs.³⁰⁵ Adopting a set of regulations that standardizes procedures for

²⁹⁷ Hager & Santo, *supra* note 13.

²⁹⁸ *Id.*; see also Paull v. Park Cty., 218 P.3d 1198, 1201 (Mont. 2009) (reversing a lower court decision which held that the State owed no duty to the prisoner because he did not have any contractual or agency relationship with the private prisoner transportation company, and, therefore, the county did not either).

²⁹⁹ Hager & Santo, *supra* note 13.

³⁰⁰ 28 C.F.R. § 97.13 (2017) (incorporating by reference the applicable Department of Transportation regulations located at 49 C.F.R. § 395.3 (2017)).

³⁰¹ Hager & Santo, *supra* note 13.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ 34 U.S.C. § 60103 (Supp. V 2012).

reserving overnight accommodations at participating correctional facilities, procedures that ensure companies have the necessary documentation accompanying each prisoner, and procedures that mandate more comprehensive reporting requirements will make these practices commonplace and drastically reduce the instances of abuse.

B. Safety Must Be a Bigger Priority Within the Industry

Jeanna's Act must be amended to protect the safety of guards and prisoners during transport. First, the Act must raise the minimum training requirements for guards to further protect the safety of the prisoners, the public, and the guards themselves. Currently, the Act includes only minimal employee training requirements and very minimal medical knowledge requirements.³⁰⁶ Second, the Act must be amended to include higher safety standards to protect prisoners while they are in transit. Raising the standards for safety in this area will further protect prisoners in the event of motor vehicle accidents. Finally, the Act should be amended so that its protections apply to violent as well as non-violent prisoners during transport.

First, the Act must be amended to provide higher standards for guard training, including raising the medical knowledge requirements. Currently, private transportation companies must require a minimum of 100 hours of employee training before the employee may transport a violent prisoner.³⁰⁷ The training must include instruction in each of the following areas: (1) "[u]se of restraints;" (2) "[s]earches of prisoners;" (3) "[u]se of force, including use of appropriate weapons and firearms;" (4) "[c]ardiopulmonary resuscitation (CPR);" (5) "[m]ap reading;" and (6) "[d]efensive driving."³⁰⁸

Further, the Act provides a limit on the number of hours employees can be on duty. These requirements are set forth in the Department of Transportation regulations at 49 C.F.R. § 395.3 and apply regardless of whether the private transportation company is covered by the Department of Transportation's regulations.³⁰⁹ However, these regulations are not suitable for this one-size-fits-all approach. A limit on the number of hours a guard may be on duty is essential to protect not only the prisoners, but also the safety of the public and the guards themselves. When a driver becomes fatigued while driving, this increases the risk of a motor vehicle accident and affects a driver's ability to make good decisions.³¹⁰ Thus, drowsy driving is a risk to other motorists as well as the passengers of that motor vehicle.

³⁰⁶ 28 C.F.R. §§ 97.12, 97.20(c) (2017).

³⁰⁷ *Id.* § 97.12.

³⁰⁸ *Id.* § 97.12(a)-(f).

³⁰⁹ *Id.* § 97.13.

³¹⁰ For further discussion on the risks of drowsy driving, see *Drowsy Driving: Asleep at the Wheel*, CDC, <https://www.cdc.gov/features/dsdrowsydriving/> (last updated Nov. 5, 2015). The

Ideally, Jeanna's Act should be amended to provide for a maximum time that an employee may be on duty and not just the maximum time that the employee may drive the transportation vehicle. The Department of Transportation's regulations are meant for "property-carrying vehicles" and refer to travel completed in shifts.³¹¹ The pertinent regulation operates under the assumption that a driver is considered on-duty while driving the vehicle and considered off-duty when he is not behind the wheel. Legislators must acknowledge that private transportation guards may still be responsible for monitoring prisoners even they are not currently driving a vehicle. One guard may be responsible for driving the vehicle during a specific period, alternating with the other for an extended period of time.

However, if the limits on the number of hours guards may be "on duty" only refers to hours spent driving, guards responsible for monitoring prisoner activities may find themselves working for extended periods of time. This dual role must be considered because, even if a guard is disqualified from driving based on the Department of Transportation's regulations, the guard may still be responsible for monitoring the prisoners, a hefty responsibility on its own. Currently, because of the pay-per-mile basis of compensation within the industry, infrequent stops as well as overcrowding of the transportation vehicles are encouraged because of the motivation to increase profits.³¹² Thus, provisions that limit the time employees spend on-duty will be quite contentious for companies.

In addition, Jeanna's Act lacks any requirements for medical training beyond a simple CPR instruction.³¹³ Under Jeanna's Act, companies must also ensure that "[p]olicies, practices, and procedures are in effect to ensure the health and physical safety of the prisoners during transport, including a first-aid kit and employees who are qualified to dispense medications and administer CPR and emergency first-aid."³¹⁴

The Eighth Amendment's cruel and unusual punishment protections provide the guarantee of adequate medical and health care for prisoners.³¹⁵ The private transportation companies have shown an inability to provide medications

CDC classifies drowsy driving as a combination between "driving and sleepiness or fatigue." *Id.* Driving while drowsy makes a driver less able to pay attention to the road, slows reaction time in an event that requires a sudden braking or steering movement, and it affects a driver's ability to make good decisions. *Id.* Commercial drivers who operate vehicles such as tractor trailers and buses, which would include private transportation company guards who drive transportation vehicles, are more likely to drive drowsy. *Id.*

³¹¹ 49 C.F.R. § 395.3 (2016).

³¹² See *Rep. Ted Deutch*, *supra* note 78; see also Hager & Santo, *supra* note 13.

³¹³ 28 C.F.R. § 97.12(d) (2017).

³¹⁴ *Id.* § 97.20(c).

³¹⁵ *Helling v. McKinney*, 509 U.S. 25 (1993).

and basic medical attention to the prisoners in their care.³¹⁶ For example, Michael Dykes had both his legs amputated after spending three days in the custody of a private transportation van.³¹⁷ Dykes has diabetes and, despite his repeated pleas for medical attention, was left shackled and handcuffed in the back of a van while sores on his feet worsened due to the pressure from the ankle shackles.³¹⁸ Additionally, recall the story of Dr. William Weintraub, the nuclear physicist and former college professor who died in the back of a prisoner transportation van from a perforated ulcer and a septic infection.³¹⁹ Dr. Weintraub had complained of increasing stomach pain for many days and was even unable to physically enter the transportation van without assistance.³²⁰ If the transportation guards had adequately acknowledged and responded to Weintraub's worsening condition, his death could have been prevented.³²¹

Transportation guards should be able to administer, at a minimum, basic first aid. Simply requiring the transportation companies to implement policies and procedures to address medical and health care is not sufficient. Jeanna's Act must go farther and describe these requirements in detail so that it is clear how companies are expected to respond to medical emergencies and which medical supplies must be carried in the vehicle at all times. Requiring only a CPR certification and a vague policy and procedure requirement for health and physical safety are inadequate when transportation guards will be responsible for administering required medications to prisoners over several days or even weeks. Further, first aid classes are readily accessible and can even be taken online, and it is not overly burdensome to require a guard to complete a simple first aid training course.³²²

Next, the Act should be amended to require higher safety measures to protect prisoners while in the transportation vehicle. These requirements should include mandatory seatbelt and safety restraint requirements and mandatory transportation vehicle requirements. Currently, the Act only mandates that prisoners wear brightly colored clothing that clearly identifies them as a prisoner³²³ and a list of mandatory restraints prisoners must wear during

³¹⁶ See *supra* note 268 and accompanying text.

³¹⁷ See Hager & Santo, *supra* note 13.

³¹⁸ *Id.*

³¹⁹ See *supra* notes 1–12 and accompanying text.

³²⁰ Weintraub v. Advanced Corr. Healthcare, Inc., 161 F. Supp. 3d 1272, 1277 (N.D. Ga. 2015).

³²¹ Micolucci, *supra* note 2.

³²² For example, the American Red Cross offers basic first aid classes for only \$20.00 and even offers training classes online. *Courses Eligible for Continuing Education Units*, AM. RED CROSS (July 2016), <http://www.redcrossstore.org/Navigation/RedCrossStore/Documents/CEUApprovedCourses.pdf>; *First Aid Classes*, AM. RED CROSS, <http://www.redcross.org/take-a-class/first-aid/first-aid-training/first-aid-classes> (last visited Sept. 10, 2017).

³²³ 28 C.F.R. § 97.16 (2017).

transport.³²⁴ These provisions were included to protect the public as well as to help clearly distinguish prisoners from the guards and the general public. However, the Act has failed to proscribe any safety standards to protect the prisoners themselves from the dangers of highway travel.

Jeanna's Act should include a requirement of using a seatbelt or other type of safety restraint to protect prisoners being transported in vans and buses. The Act currently requires violent prisoners to be restrained using handcuffs, leg irons, and waist chain leg shackles.³²⁵ However, the Act does not require the use of a seatbelt or any type of safety restraint to protect prisoners in the event of a motor vehicle accident.

As of February, 2017, 34 states and the District of Columbia required the use of seatbelts inside motor vehicles.³²⁶ The use of a seatbelt is the most effective way to save lives and reduce injuries in the event of a motor vehicle accident.³²⁷ Requiring the use of a safety belt, in addition to the use of restraints already required, will further protect guards by making sure prisoners are fully restrained and will ensure that prisoners are protected in the event of a motor vehicle accident. Currently, in the event of a motor vehicle accident, prisoners would be bound by the hands, legs, and waist, which would only increase their likelihood of serious injury in the event of a vehicle accident. The prisoners would have no way to brace themselves for impact and little flexibility to move.

Next, in its current form, the Act specifically applies only to violent criminals and fails to account for the non-violent prisoners who are also subject to the privatized transportation process.³²⁸ This language leaves out an entire class of "nonviolent" convicted prisoners as well as pretrial detainees, who are also often transported by these companies. It is important to recognize that all persons who have been legally detained are guaranteed certain rights under the United States Constitution.³²⁹

³²⁴ *Id.* § 97.17.

³²⁵ *Id.*

³²⁶ *Seat Belts*, GOVERNORS HIGHWAY SAFETY ASS'N, <http://www.ghsa.org/state-laws/issues/Seat-Belts> (last visited Aug. 25, 2017).

³²⁷ *Seat Belts: Get the Facts*, CDC, <https://www.cdc.gov/motorvehiclesafety/seatbelts/facts.html> (last updated June 2, 2017). For further information on the effectiveness of the use of seatbelts, see *Lives Saved in 2014 by Restraint Use and Minimum-Drinking-Age Laws*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Nov. 2015), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812218>.

³²⁸ 34 U.S.C. § 60102(3) (Supp. V 2012) (referring to a violent prisoner as "any individual in the custody of the State. . . who has previously been convicted of or is currently charged with a crime of violence or any similar statute. . . or any attempt thereof."). The statute uses the term "violent prisoners" when referring to prisoners within the custody of the private transportation company. 34 U.S.C. § 60103 (Supp. V 2012). The use of this language seems to imply that the protections of this Act may only be afforded to prisoners that fall within the violent prisoner definition as provided in the statute.

³²⁹ See *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974).

Further, the private prisoner transportation industry has proven its inability to provide safe transportation for individuals.³³⁰ When Jeanna's Act was enacted, Congress did not intend for it to protect the rights of prisoners. Thus, this Act must be amended to protect prisoners, both violent and non-violent, who are subject to transportation within the privatized prison transportation industry.

Currently, Jeanna's Act is solely focused on protecting the public from the dangers of an escaped prisoner and ignores the very real dangers facing the prisoners themselves. The Act should be amended to raise the training requirements for guards and mandate a safety belt for each prisoner in transit. Together these safety requirements will better secure prisoners, protect their safety on the road, and ensure that transportation guards are adequately prepared to respond in the event of a medical emergency.

C. The Prisoner's Basic Human Dignities Must Be Protected

Jeanna's Act should be amended to provide for prisoners' basic human dignities during transport, including standards that require addressing the prisoner's basic human needs such as food, water, sleep, and access to a restroom. Currently, the Act only includes a general provision which states that private transportation companies "are responsible for taking reasonable measures to insure the well being of the prisoners in their custody including, but not limited to, necessary stops for restroom use and meals, proper heating and ventilation of the transport vehicle, climate-appropriate uniforms, and prohibitions on the use of tobacco"³³¹ The Act does not describe what "reasonable measures" include and provides no formal procedures for the types of meals that must be provided, the frequency of meals or restroom breaks, or a requirement for proper air-conditioning in the vehicle during warm weather.

Again, the U.S. Marshals Service Policy Directive 16.2 provides guidance for these suggested regulations.³³² The Policy Directive discusses the Marshals' policy regarding prisoner meals and requires that prisoners "receive meals appropriate for time of travel."³³³ The Directive further requires that prisoners are not to be removed from the transportation vehicle, should remain in their seats, and should remain restrained while eating.³³⁴ The Marshals Service normally schedules trips to allow for the arrival times of prisoners to coincide with mealtimes at correctional institutions.³³⁵ However, if a travel day cannot be completed prior to the institution's scheduled mealtimes, the Service will make

³³⁰ See *supra* Section II.D.

³³¹ 28 C.F.R. § 97.20(i) (2017).

³³² POLICY DIRECTIVES 16.2, *supra* note 16.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

arrangements in advance for the prisoner to receive a late meal at the scheduled stop or for a meal to be provided from the correctional institution while in transit.³³⁶

From this Policy Directive, it appears that the U.S. Marshals Service makes every attempt to have prisoners' meals furnished at or furnished by a correctional institution. Moreover, if meals are required during transportation, attempts will be made to obtain a bag lunch from the correctional institution.³³⁷ It is only then when, if meals are not available, the Service will expend funds to provide prisoner meals.³³⁸

Adopting this system will prevent many of the issues that currently plague the private transportation companies. Currently, on most trips, "every meal is a fast-food sandwich."³³⁹ This type of structure is clearly inadequate, and structuring the prisoners' meals around a scheduled stop at a correctional institution will not only provide them with access to a full meal, but it is also the safest solution. Requiring transportation guards to be responsible for furnishing prisoners' meals while in transit presents unnecessary risks for prisoner escape.

Further, structuring meals around pre-planned stops at correctional institutions will provide prisoners with access to a place to sleep for the night and a restroom, all concerns discussed above. Thus, following the U.S. Marshals Service Policy Directive for prisoner meals will solve several different issues and it guarantees the safest option.

These protections are the most necessary. While incarcerated, a person is unable to provide for any of his basic needs because he has been stripped of access to all resources.³⁴⁰ As evidenced by the continued failure of companies within the industry to provide for the well-being of prisoners in their care, these regulations must be more clear, specific, and demanding. These companies have shown an inability to provide prisoners with adequate access to food, water, sleep, and restroom access on their own. They must be provided with policies that articulate these policies clearly and in detail.

Amendments providing for the prisoner's basic human dignities are necessary because a prisoner's basic human rights are not null and void simply because he or she is incarcerated or has been placed in physical custody. Prisoners are guaranteed basic human dignities while incarcerated.³⁴¹ Prison is meant to be a place where freedoms are limited; this restriction does not apply to a human's basic needs of food, water, sleep, and access to a restroom.

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ See Hager & Santo, *supra* note 13.

³⁴⁰ See generally Brown v. Plata, 563 U.S. 493 (2011) (discussing how prisoners may be deprived of certain rights based on their incarcerated status but the Constitution demands the recognition of certain basic human rights, including food, clothing, and medical care).

³⁴¹ See *supra* Section II.C.

Moreover, at its inception, Jeanna's Act was focused on protecting the public from the escape of violent prisoners. After the death of Jeanna North and the escape of her killer Kyle Bell, Congress enacted Jeanna's Act to protect the public from violent prisoners like Bell who are a serious threat to public safety. It was never intended to address the needs of the prisoners during transport. In addition, private prison companies have a history of failing to provide for many of a human's basic needs. Many prisoners and detainees have recounted serious allegations of abuse that resulted from transportation while incarcerated. Without additional protections, these abuses will likely continue.

D. The Penalties for Violations Must Be Harsher

The penalties for a violation of Jeanna's Act should be amended to reflect the seriousness of abuses within the industry, and the reform regulations should raise the monetary penalty for each violation. The civil penalties for a violation of this statute must be fitting for the serious consequences that often result. Currently, the Act limits the penalties for violations to \$10,000 for each violation plus the costs of prosecution.³⁴² Also, a company must pay restitution to the United States and the state for any funds that are spent in apprehending any violent prisoner who escapes from the custody of a prisoner transport company.³⁴³ A \$10,000 limit is not appropriate because it is inadequate to compensate for the potential harm that might result.

To illustrate the inadequacies of this penalty, consider the death of Steven Galack, a prisoner who died in the back of a transportation vehicle after being beaten by guards; Michael Dykes, who had both of his legs amputated after being denied his diabetes medication and spent three days shackled in the back of a transportation vehicle; Megan Marie Mays, who was threatened and raped repeatedly by a transportation guard; or Dr. William Weintraub, who died in the back of a transportation vehicle from a preventable ruptured stomach ulcer and septic infection.³⁴⁴ The transportation companies responsible for these incidents of violence against prisoners would be fined a total of \$0.00 under Jeanna's Act. The \$10,000 penalty could not be enforced against any company for the death of a prisoner, any serious harm, or any deprivation of food, water, or sanitary needs under Jeanna's Act because these situations are not addressed by the statute.³⁴⁵

Such a standard seems wholly unfair and unjust. Currently, the statute forces prisoners to pursue their remedies under other acts of Congress. Therefore, to serve the interests of justice, the penalties under Jeanna's Act must be

³⁴² 34 U.S.C. § 60104 (Supp. V 2012).

³⁴³ *Id.*

³⁴⁴ For a recount of these stories, see *supra* Section II.D.

³⁴⁵ 34 U.S.C. § 60104 (Supp. V 2012) ("Any person who is found in violation of the regulations . . . shall [] be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation . . .").

amended to allow for remedies for prisoners in the event that transportation companies cause serious or irreparable harms. In order to get private transportation companies to pay attention to Jeanna's Act and the standards and regulations it requires, the penalties must be increased so companies are fearful of the consequences for their violations.

E. Obstacles to Reform

In addition to the concerns expressed above, there are significant obstacles to reform that have both hindered the development of rights for prisoners in this area and prohibited many individuals from seeking damages for their injuries. For the reforms described above to occur, these obstacles must be recognized. These hindrances include both the lack of enforcement of Jeanna's Act by the Department of Justice and prisoners' historical lack of access to adequate legal services. Both difficulties have acted together to allow the privatized transportation industry to go unregulated despite the federal statute currently in place.

One of the biggest reasons for the increase of abuse in this industry is the lack of enforcement by the Department of Justice. Jeanna's Act grants authority to the Attorney General to act to promulgate regulations that adhere to the Act.³⁴⁶ Thus, it is the responsibility of the Department of Justice to take action to enforce Jeanna's Act and to police the conduct that occurs within the industry. Without the threat of enforcement, it is highly unlikely that the industry will follow these rules.

The private prisoner transportation industry has come to know these regulations will not be enforced because there have been no inspections or regular check-ins, and there has been no accountability for any of the egregious incidents of violence and misconduct. It is not unsurprising that the regulations are being completely disregarded and that the allegations of abuse have become so serious.

News articles published by both *The New York Times* and *The Marshall Project* have brought awareness of the abuses in the industry on a wide scale. Both Senator Cory Booker and Representative Ted Deutch referenced these reports in their appeals to the former Attorney General Lynch for reforms within the industry.³⁴⁷ When confronted with the serious allegations of abuse within the industry, Lynch stated that she was unaware of the serious nature of the allegations of abuse occurring.³⁴⁸

³⁴⁶ 34 U.S.C. § 60103 (Supp. V 2012).

³⁴⁷ *Id.*; Senator Booker, *supra* note 19.

³⁴⁸ *Rep. Ted Deutch, supra* note 78 (showing a confrontation between Rep. Ted Deutch and Attorney General Loretta Lynch, where Deutch describes the recent revelations about abuses within the privatized prisoner transportation industry and Lynch states that she is unaware of the issue).

It would be futile to reform the current regulations if the Attorney General will continue not to act. In order for any meaningful reform to occur within this industry, Attorney General Sessions must acknowledge his responsibility to promulgate such regulations and his responsibility to enforce the law against companies who are not following them.

Secondly, it is important to acknowledge that prisoners are historically a class with limited access to quality legal representation. Most of the cases brought against private prison companies are dismissed before the court has the ability to get to the merits of the case. Most prisoners bring their cases *pro se* and are fighting an uphill battle against the legal teams held by the transportation companies.

Many actions brought by prisoners alleging abuse during transportation are dismissed on technical issues before the court is able to get to the facts of the case or to redress the prisoner's allegations.³⁴⁹

The Prison Litigation Reform Act ("PLRA") is a federal statute that makes it incredibly difficult for prisoners to enforce their rights in a federal court and to receive adequate relief.³⁵⁰ This Act requires that

indigent prisoners, unlike other indigent litigants, to pay filing fees in installments; it bars prisoners from using the *in forma pauperis* (IFP) procedures at all under some circumstances; it limits the damages prisoners can receive for certain kinds of constitutional violations; it requires prisoners to exhaust administrative remedies before filing suit.³⁵¹

In addition, all the constitutional challenges that have been raised against this statute have been upheld.³⁵² This Act forces prisoners to pay a \$350 filing fee before any case can be filed in federal court.³⁵³ This fee increases to \$450 for an appeal.³⁵⁴ Further, if the prisoner's case is dismissed, he may face a strike; three strikes will disqualify the prisoner from qualifying for IFP status in the future.³⁵⁵ In addition, the prisoner must exhaust the prison grievance process or other applicable administrative remedy before he can file a suit in federal court, or he risks having the suit dismissed.³⁵⁶ Finally, because this Act includes a cap

³⁴⁹ See, e.g., *Greene v. PTS of Am., LLC*, No. 3:15-00145, 2016 WL 1701964, at *1 (M.D. Tenn. Apr. 28, 2016) (holding that a prisoner's claims against the prison transportation company should be dismissed for failure to adequately serve process when service was made to an employee who served as a bookkeeper and receptionist and was not an agent authorized to receive process).

³⁵⁰ *BOSTON & MANVILLE*, *supra* note 191, at 542.

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

on certain types of damages, private attorneys are far less likely to be incentivized to take on representation of a prisoner.

The PLRA broadly defines a prisoner as “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.”³⁵⁷ The limitations this Act places on the ability of prisoners to successfully initiate civil suits should be recognized because it will affect, and likely has already affected, prisoners’ ability to bring claims against private transportation companies for the injuries occurred during transit.

The limits placed on prisoners’ access to adequate legal representatives and to the ability to initiate their own suits should serve as an incentive for legislators to increase the civil penalties for violations of Jeanna’s Act. This would increase the likelihood that prisoners are able to adequately enforce their rights, and it would hold transportation companies accountable for the abuse and neglect they have caused.

IV. CONCLUSION

Every day prisoners across the country are being placed under the control of privatized prison transportation companies and loaded into transportation vehicles with no guarantee they will make it out alive. Every day guards are left in control of prisoners of unknown temperaments with unknown motives, with little training or resources to protect themselves. Every day the public shares the roadways with these transportation vehicles and trusts that the government is protecting them from violent and dangerous criminal offenders who have already been removed from society. This danger and abuse, which has been allowed to run rampant within this industry, is not isolated and has the potential to affect the lives of many.

The prisoners who are being maimed, traumatized, violated, and killed are not the violent, murderous brutes we typically imagine. They are shoplifters, fraudulent credit card users, and people who failed to pay their child support. They are individuals who made wrong choices, who got caught up within the criminal justice system, and who are headed to face their wrongs in a court of law. These individuals are professors, veterans, mothers, fathers, and even our neighbors, friends, and members of our own family. As guaranteed by the Constitution of the United States of America, all individuals within the criminal justice system deserve to be adequately protected by the law no matter their crime. To allow the privatized prison transportation industry to continue to this unsanctioned abuse is to allow for the erosion of the fundamental ideas upon which this country was founded.

³⁵⁷ 28 U.S.C. § 1915(h) (2012); 28 U.S.C. § 1915A(c) (2012); 42 U.S.C. § 1997e(h) (2012).

In order to adequately address the ongoing abuse occurring within the privatized prison transportation industry, Jeanna's Act must be amended to include higher safety requirements, to require companies to provide for the basic human needs of prisoners during transport, and to elevate the penalties for violations of this statute to provide the necessary incentives for the industry to reform. This Article argues for reformatory regulations which will alter Jeanna's Act to better address these concerns in order to protect guards, prisoners, and the public from further risks.

A reform of Jeanna's Act is the first step in the process of protecting the guards, prisoners, and the public from the harms currently being caused by privatized transportation companies who have run unregulated for far too long. Promulgating new regulations will mean very little if the Department of Justice and the Attorney General continue to ignore their responsibility to oversee regulation of this industry. Adequately reforming the legislation governing the private prisoner transportation industry and the actual enforcement of these regulations by the Attorney General will hopefully lead to a meaningful reform of this industry. If privatized prisoner transportation companies are finally held accountable for the abuses regularly occurring within the industry, maybe then meaningful change and reform within the industry will occur and the safety of the public and the well-being of the prisoners in transport will become the top priority.

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