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**Before the United States House of Representatives
Committee on Oversight and Government Reform**

**Oversight of the Bureau of Prisons and Inmate Reentry
December 13, 2017**

Chairman Gowdy, Ranking Member Cummings, and members of the Committee, thank you for inviting me to participate in today's oversight hearing on the Bureau of Prisons (BOP) and reentry. This hearing provides a timely opportunity to 1) discuss how the BOP can most effectively promote successful reentry and 2) encourage more transparency and accountability regarding BOP's current efforts to implement the many recommendations that have previously been made to improve reentry.

My perspective and understanding of the BOP comes from my experience as a federal defender and criminal defense attorney in Atlanta, the project manager of Clemency Project 2014, and a member of the Charles Colson Task Force on Federal Corrections. The testimony I provide here is my own and not as a representative of any of these entities.

For those who may not know, the Colson Task Force was established by Congressional mandate in 2014 as a nine person, bipartisan panel charged with developing practical, data-driven recommendations to enhance public safety by creating a more just and efficient federal corrections system. Led by its chair, former Congressman J.C. Watts, Jr., and vice-chair, former Congressman Alan B. Mollohan, the Task Force conducted over a year of fact-finding, rigorous data analysis, and discussions with key experts and stakeholders. The Urban Institute provided valuable research, analysis, and strategic support. The Task Force endorsed a broad set of reforms affecting all stages of the federal criminal justice system.

The work of the Task Force was grounded in several principles, two of which are especially pertinent here: 1) correctional policy should improve public safety and 2) correctional interventions and programming should be individualized. This means that federal corrections policies should be designed to ensure that people involved in the federal criminal justice system are provided the tools for successful release and reentry, which will improve safety in our nation's communities.

Based on its fact-finding, and consistent with these principles, the Task Force made a series of recommendations directed to BOP, which I'd like to discuss today:

1. promote a culture of safety and rehabilitation in the BOP
2. incentivize participation in risk-reduction programming
3. ensure successful reintegration by using evidence-based practices, and
4. enhance system performance and accountability through increased transparency.

1. Promote a culture of safety and rehabilitation in the BOP

The BOP needs to create a culture of both safety and rehabilitation inside its facilities. Federal prisons have been operating at crisis levels of overcrowding for decades. Despite recent reductions, overcrowding remains high at medium and high security facilities to the detriment of BOP staff and those incarcerated. It is challenging to operate safe, rehabilitative environments with that level of crowding.

Nonetheless, population reduction in recent years -- from a peak of almost 220,000 in 2013 to about 185,000 in 2017 -- should enable BOP to reexamine its staffing levels and housing assignments. Making sure that individuals are housed in accordance with rated cell capacity and maintaining appropriate inmate-to-staff ratios are prerequisites to operating safe facilities. Reduced overcrowding should also enable staff to focus on rehabilitation. The Task Force learned, for example, that federal corrections staff were often pulled away from their professional positions to provide basic safety and security functions in facilities.

In response to these findings, the Task Force encouraged BOP to implement new ways of doing business. Our assessment found that BOP's policies and practices had not kept up with best practices in the field and that much work needed to be done to create a culture of rehabilitation inside federal prisons. And let's be clear: public safety is a logical consequence of good corrections policy. A wealth of evidence is now available to identify correctional practices that lead to the best outcomes.

Evidence shows that using actuarial risk and needs assessments to guide correctional treatment and programs can improve outcomes.¹ It allows practitioners to individualize treatment and services, an evidence-based practice that is essential to improving public safety. However, the Task Force found that the BOP did not adequately account for risk of recidivism or capture individual needs for treatment. Because a validated risk and needs assessment is the foundation of prison-based services and treatment, the Task Force recommended the BOP adopt a similar tool.

Risk and needs assessments wouldn't only improve individualized treatment efforts. They would allow the BOP to analyze its program capacity and make data-driven decisions about where resources are needed. Based on the information the Task Force and others have collected about insufficient programming, BOP should expand educational programs and occupational training opportunities immediately.

The unique circumstances and attributes of each case and each person entering the BOP system should inform the rehabilitation programs, treatment, and services provided. The Task Force recommended that the BOP adopt best practices demonstrated by the states in assessing all federally incarcerated persons' risk of recidivism and programming needs. Delivering programming based on risk and needs is an evidence-based practice shown to reduce the risk of recidivism. Data and research should guide practice.

The BOP should also take steps to create conditions of confinement that support rehabilitation.

¹ Ægisdóttir et al. 2006; Andrews, Bonta, and Wormith 2006; Grove et al. 2000, as cited in Bonta and Andrews 2007.

It should have housing and security procedures that consider the needs of its diverse population, including the aged, infirm and LGBT populations.

2. Incentivize participation in risk-reduction programming

Providing evidence-based programming based on risk and needs can only go so far in promoting public safety. The research suggests that effective treatment aimed at behavior change requires strong incentives and positive reinforcement.² The Task Force recommended that corrections policies incentivize participation in risk reduction programming. Evidence shows that encouraging more people to participate in programming while in prison can improve public safety and restore the lives of people returning to their communities.

The Task Force recommended that people in federal prison be eligible to earn time off credits if they complete programs and treatment prescribed in their individualized case plans. Further, it recommended that those at higher risk of recidivism earn credits by completing intensive, evidence-based programs pursuant to their case plans. Lower risk individuals should be able to earn time off, but their case plans would be less onerous.

The Task Force also recommended that earned time for the intensive Residential Drug Abuse Program be expanded so that all those who have demonstrated substance abuse problems be incentivized to participate in the program. Currently, people with histories of violence are restricted from benefiting from this incentive. But, all individuals should be strongly incentivized to participate in programming that addresses their needs, regardless of the nature of their criminal histories. This would require both the BOP and Congress to expand the criteria for this incentive.

The BOP already uses some institutional incentives (such as reducing security level) to encourage program participation and completion. The Task Force recommended that the BOP review these policies and expand earned privileges further to include more recreation time, expanded visiting hours, and other institutional incentives. It further recommended that these be available to all those in federal prison, including those serving life sentences.

The BOP has the discretionary authority to recommend early release for people that BOP staff deem rehabilitated. Under a transparent system with measurable outcomes, BOP staff are in a unique position to discern rehabilitation and make recommendations for release.

Finally, the Task Force recommended that Congress establish a judicial second look function, to review and possibly reduce the sentences of people who have served at least 15 years behind bars. As the Project Manager of the Clemency Project 2014, I managed lawyers who reviewed the cases of many people who had served decades behind bars. Some had turned their lives around while in prison, contributing to the prison community by teaching classes and preparing others for reentry. The data suggests that as such individuals age, their risk of recidivism falls considerably.³

² Andrews and Bonta 2010; Bonta and Andrews 2007; Cullen and Gendreau 2000; Drake and Barnoski 2008; Latessa, Cullen, and Gendreau 2002; National Research Council 2008; Petersilia 2004, 2007; Taxman, Soule, and Gelb 1999.

³ Blumstein and Nakamura 2009; Sampson and Laub 2004.

3. Ensure successful reintegration by using evidence-based practices

Almost everyone confined in the federal prison system will return to their home communities one day, and BOP should do all it can to ease the transition back to the community. One important way the BOP can help people prepare for their return is by facilitating relationships with family members. The Task Force learned, however, that prison visitation procedures—which can change and vary by institution—sometimes hinder regular family visits. The Task Force therefore recommended that the BOP establish a central family affairs and visitation office to oversee prison visitation procedures, with a focus on easing visitation difficulties without compromising security. The office would also work to expand programs designed to enhance family bonds, particularly between children and incarcerated parents. Consistent with the research, by implementing these programs the BOP could help reduce recidivism rates while greatly improving the lives of family members.

It's critical that all agencies within the federal corrections system – BOP facilities, federal halfway house contractors, and federal probation office – work collaboratively to facilitate a smooth transition home for people released from federal prisons. At present, the systems lack the highly coordinated, cross-agency data sharing platforms and procedures to improve the transition process. Critical information—such as case plans, program completion and mental health evaluations—is not always passed along from BOP to halfway houses to community supervision agencies, leading to less effective reentry planning and support. Improving data sharing among these agencies could improve efficiency and system-wide outcomes.

Residential reentry centers (RRCs) could also play a pivotal role in the transition from prison to the community in the federal system, but BOP needs to ensure that the right individuals—those who stand to benefit from a federal halfway house—transition through them and receive reentry services matched to their needs. Studies have shown that under certain circumstances, stays at halfway houses can be ineffective or even harmful to a person's prospects for successful reentry.⁴

A great deal of work was done over the last few years to assess the RRCs and develop recommendations for improvement. Recommendations from the Colson Task Force, Department of Justice (DOJ) Inspector General's office, Deloitte, and others culminated in a series of action steps laid out by DOJ in late 2016.

There is a lack of transparency about the new Administration's approach to BOP and the RRCs, but some of the recent indications about the RRCs have not been positive. We have heard about modifications to the RRC contracts, including a shift away from the commitment to adopt performance based contracting, and a reduction in the number of contracts and available bed-space. DOJ and BOP committed to moving towards performance-based contracting in 2016, but we have since learned that the revised Statement of Work reflecting these changes has been revised or is not being fully implemented. For example, we understand that the provisions requiring certain types of programming (Cognitive Based Treatment) have been eliminated. If they have, in fact, backed away from this commitment, the potential improvements for those housed in RRCs will not be realized.

4. Enhance system performance and accountability through better coordination across agencies and increased transparency

⁴ Lowenkamp and Latessa 2002.

The Task Force urged more collaboration among agencies, increased transparency about agency policies and practices, and additional mechanisms to hold agencies and the overall federal corrections system accountable for results. This starts with BOP being more transparent and accountable about its operations and programming.

Experience from state criminal justice reform efforts suggests that far too often reform measures lack the mechanisms to ensure effective implementation and assessment. To that end, the Task Force recommended two new oversight bodies to improve accountability. One would be for BOP, and would provide advice on best corrections practice, ensure accountability, and promote compliance. The other would be a high-level working group headed by the DOJ and the Judiciary (Criminal Law Committee) to oversee and coordinate implementation of the reforms. It also recommended developing better system-wide performance measures that would be shared with the public. Regular reporting of recidivism rates was at the top of our list for improved performance metrics.

Ultimately, coordinated efforts require consistency in standards, practice, and data collection. The federal corrections system must work towards standardized assessment protocols and case management practices. As the BOP develops its risk and needs assessment, it should consult with US Probation and RRC contractors to develop comparable measures. By improving the handoff across agencies, the Task Force believed the federal corrections system could further reduce recidivism rates.

Finally, the Task Force expressed concern about the adverse impact of collateral consequences and recommended that the new Joint Working Group review them through the lens of public safety.

Moving Ahead

The roadmap for BOP reform is straightforward. I have attached a list of the recommendations from the Colson Task Force as well as references to other suggestions regarding RRCs. Given the size and complexity of the BOP, however, implementation will be difficult under the best of circumstances. The key question is whether BOP, working with its partners, is committed to adopting and implementing the changes. Last year, there seemed to be momentum to reform the BOP, including the RRCs, but it is unclear what is currently underway. Requiring BOP to be more transparent about its ongoing operations by issuing regular reports with agreed upon performance measures, would support effective oversight, improve accountability, and promote successful reentry.

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Recommendations by Authority

Recommendation 1: Reserve Prison for Those Convicted of the Most Serious Federal Crimes

	Recommendation	Congress	Executive Branch	Judiciary
1.1	Mandatory minimums for drug offenses	✓		✓
1.1.a	Repeal drug mandatory minimum penalties, except for drug kingpins; apply Fair Sentencing Act retroactively	Congress		
1.1.b	Revise Sentencing Guidelines to reflect role and culpability; prescribe alternatives to prison for lower-level drug trafficking offenses			USSC
1.2	Mandatory minimums for weapon possession	✓		✓
1.2.a	Enable judges to sentence below the mandatory minimum weapon enhancement for possession associated with nonviolent offense	Congress		
1.2.b	Monitor impact of change and consider similar departure mechanisms for other mandatory minimums	Congress		USSC
1.3	Mandatory minimum research and sunset provisions	✓	✓	✓
1.3.a	Update report on mandatory minimum penalties re: unwarranted disparities or disproportionately severe sentences			USSC
1.3.b	Apply sunset provision to any future mandatory minimum penalties	Congress		
1.3.c	Prepare prison, fiscal, and racial impact assessments for proposed legislative and Sentencing Guidelines changes		DOJ, other agencies	US Courts, USSC
1.4	Alternatives to incarceration	✓	✓	✓
1.4.a	Prescribe probation for lower-level drug trafficking offenses and consider doing so for other offense types			USSC
1.4.b	Promulgate information regarding alternatives to incarceration			USSC
1.4.c	Increase use of alternatives to incarceration including front-end diversion courts, problem-solving courts, and evidence-based probation		US Attorneys	Judges
1.4.d	Authorize and fund front-end diversion programs and problem-solving courts, evaluating alternatives	Congress		OJP
1.5	Federal prosecution		✓	
1.5.a	Review case selection and charging practices regarding federal interest and jurisdiction		US Attorneys	
1.5.b	Analyze data from all US Attorneys' offices to determine application of Smart on Crime		US Attorneys	

Recommendation 2: Promote a Culture of Safety and Rehabilitation in Federal Facilities

	Recommendation	Congress	Executive Branch	Judiciary
2.1	Safety and security in BOP	✓	✓	
2.1.a	Assess and reallocate staffing to ensure appropriate inmate-to-staff ratios		BOP	
2.1.b	Ensure individuals are housed in accordance with rated cell capacity		BOP	
2.1.c	Enable individuals to earn up to 15 percent off sentence to incentivize good conduct	Congress		
2.2	Risk and needs		✓	
2.2.a	Develop and implement an actuarial risk and needs assessment tool		BOP	
2.2.b	Develop case plans and deliver programming based on individual risk and needs		BOP	
2.3	Programming		✓	
2.3.a	Develop aggregate criminogenic risk and needs profile of its population		BOP	
2.3.b	Conduct a systemwide assessment of facility-specific programming needs		BOP	
2.3.c	Allocate programs and treatment offerings in accordance with facility risk and need		BOP	
2.3.d	Expand educational and occupational opportunities in accordance with facility need		BOP	
2.4	Conditions of confinement and rehabilitative culture		✓	
2.4.a	Train all staff on communication, problem solving, and procedurally just resolution practices		BOP	
2.4.b	Use segregated housing as punitive measure only in extraordinary circumstances		BOP	
2.4.c	Ensure housing and security procedures respond to specific needs of diverse population		BOP	
2.4.d	Develop appropriate and nonrestrictive housing options for those in need of protective custody		BOP	
2.5	Family engagement		✓	
2.5.a	House people close to home communities		BOP	
2.5.b	Establish visitation and family affairs office to oversee and ease visitation procedures		BOP	
2.5.c	Expand video conferencing and other visitation programs		BOP	
2.5.d	Enhance support for families of people in prison		BOP	

Recommendation 3: Incentivize Participation in Risk-Reduction Programming

	Recommendation	Congress	Executive Branch	Judiciary
3.1	Risk-reduction programming	✓	✓	
3.1.a	Enable individuals not serving life sentences to earn up to 20 percent off time served by complying with individualized case plans	Congress		
3.1.b	Enable individuals, including those serving life sentences, to earn facility-based privileges		BOP	
3.1.c	Enable all Residential Drug Abuse Program participants not serving life sentences to earn up to one year off time served	Congress	BOP	
3.2	Second Look provision	✓		✓
3.2.a	Enable resentencing for anyone who has served more than 15 years of their sentence	Congress		
3.2.b	Develop guidelines for Second Look reviews and sentence modifications			USSC

Recommendation 4: Ensure Successful Reintegration by Using Evidence-Based Practices in Supervision and Support

	Recommendation	Congress	Executive Branch	Judiciary
4.1	Prerelease custody and Residential Reentry Centers (RRCs)		✓	
4.1.a	Make recommendations regarding allocation of RRC beds, alternatives to RRC placement, and performance-based RRC contracts		BOP Performance, Accountability, and Oversight Board (Board)	
4.2	Safe and seamless reintegration		✓	✓
4.2.a	Improve coordination by establishing a shared information system		BOP	Probation
4.2.b	Share information on risk and needs assessment, program participation, medical and mental health status, and aftercare information		BOP	Probation
4.3	Supervised release and early termination			✓ Probation Judges

Recommendation 5: Enhance System Performance and Accountability through Better Coordination across Agencies and Increased Transparency

	Recommendation	Congress	Executive Branch	Judiciary
5.1	Establish joint Department of Justice/Judiciary working group (Joint Working Group) to oversee reforms		✓	✓
5.1.a	Monitor implementation of recommended legislative and policy changes		Joint Working Group	Joint Working Group
5.1.b	Submit an annual report on reform progress and performance metrics		Joint Working Group	Joint Working Group
5.2	Caseload reporting and performance metrics		✓	✓
5.2.a	Review and expand annual reporting of caseload data for the corrections and supervision population		Joint Working Group	Joint Working Group
5.2.b	Develop metrics and an ongoing review for performance measurement; disseminate recidivism data annually		Joint Working Group	Joint Working Group USSC
5.3	Establish BOP Office of Victim Services		✓	
5.4	Membership, role, and capacity of the USSC	✓		✓
5.4.a	Expand voting membership of USSC to include representation of victims, formerly incarcerated individuals, defense attorneys, and experts in sentencing and corrections	Congress		USSC
5.4.b	Routinely monitor and report on the impact of sentencing changes			USSC
5.4.c	Revise 2011 mandatory minimum report			USSC
5.5	Permanent BOP Performance, Accountability, and Oversight Board (Board)		✓	
5.5.a	Work with BOP to develop and promulgate performance metrics		BOP Board Board	
5.5.b	Monitor development of new risk and needs assessment and implementation of new earned time credits			
5.5.c	Review BOP data on internal performance, safety, and security metrics for external consumption		Board	
5.5.d	Oversee development and implementation of comprehensive 10-year plan to restructure federal prison system		Board	
5.5.e	Review BOP oversight, accreditation, auditing, and compliance mechanisms		Board	
5.5.f	Conduct special studies such as review of prerelease custody practices and procedures, focused on RRCs		Board	
5.6	Collateral consequences and barriers to reintegration	✓	✓	✓
5.6.a	Review federal collateral consequence laws		Joint Working Group	Joint Working Group
5.6.b	Allow Pell grants for incarcerated persons	Congress		

	Recommendation	Congress	Executive Branch	Judiciary
5.6.c	Eliminate executive branch criminal history disclosure on employment applications for federal contractors		President	
5.6.d	Codify criminal history disclosure changes for federal employees and contractors	Congress		

Recommendation 6: Reinvest Savings to Support the Expansion of Necessary Programs, Supervision, and Treatment

	Recommendation	Congress	Executive Branch	Judiciary
6.1	Resources for reform	✓	✓	✓
6.1.a	Fund BOP to implement validated risk and needs assessment tool, catalog current program offerings and capacity, and expand necessary programs and treatment	Congress	BOP	
6.1.b	Fund US Probation to increase staffing, programs, and services	Congress		Probation
6.1.c	Fund Courts to establish the Second Look function	Congress		US Courts
6.1.d	Fund USSC to expand capacity and training	Congress		USSC
6.1.e	Fund DOJ Office of Justice Programs (OJP) to incentivize front-end diversion programs, problem-solving courts, and other alternatives to incarceration	Congress	OJP	
6.2	Develop recommendations for reinvesting savings from the reduced BOP population	Congress	Joint Working Group	Joint Working Group

Note: For the following recommendations, congressional action, funding, or approval may be required before they can be fully implemented by the identified agencies: 1.1.b, 1.4.a, 2.1.a, 2.1.b, 2.3.d, 3.2.b, 6.1, and 6.2.