

## Hearing on Oversight of the Federal Bureau of Prisons

February 3, 2022

### Questions for the Record from the Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security

Submitted on February 10, 2022

#### COVID-19 Response

- The COVID-19 Health Equity Task Force (also known as the Biden-Harris Task Force) issued more than 50 recommendations in its final report this past November. Many of these recommendations relate to enhancements in COVID-19 response for correctional settings, as well as to general health equity approaches. For example, one recommendation states *“To mitigate the increased risk of COVID-19 and other airborne contagions in carceral settings, the federal government should ensure access to equity-centered preventative adult and pediatric vaccination, testing, treatment, and recovery in carceral settings as well as continuity of Medicaid coverage after release for those previously enrolled.”*
- Which, if any, of the recommendations related to corrections is BOP considering, or perhaps already taking steps to address—and if you could, please elaborate specifically on BOP’s efforts to facilitate inmates’ enrollment in Medicaid as the Bureau prepares them for reentry.

#### Response:

Regarding Medicaid, Bureau social workers identify releasing incarcerated individuals (at least 90-days prior to release) with unique medical and mental health needs. The social worker then collaborates with those incarcerated individuals to develop individualized medical/mental health release plans to ensure continuity of care to include enrollment in or education about Medicaid coverage. Attempts are made to assist with the enrollment in Medicaid prior to release if the state Medicaid office allows it. Some states refuse to process Medicaid applications for BOP inmates because the inmate is not physically located in their state of residence. In those cases, the inmate is provided with information on how to apply for Medicaid upon their release. Inmates are given program information and education on health care coverage and how to obtain benefits.

Inmates on Home Confinement (HC) and RRC placement are encouraged to interact with their local community resources to access federal benefits for which they may be eligible so that they can seamlessly transition to eligible benefits upon their release. The Department of Health and Human Services issued guidance in April 2016 that allows inmates on HC to obtain Medicaid benefits. As to the specific details and benefits, we defer to those federal agencies to respond regarding how they apply their benefits tests to inmates serving terms on home confinement.

The Bureau began providing COVID-19 vaccinations to inmates immediately upon availability in December 2020 and continues to offer them to all inmates and staff. The Bureau continues to follow CDC guidance for COVID-19 vaccination and provide additional doses and boosters as indicated. The Bureau also published the COVID-19 Vaccine Clinical Guidance (available at [www.bop.gov](http://www.bop.gov)). This guidance includes specifics for offering and prioritizing vaccines, as well as information regarding the distribution of vaccines. As of June 30, 2022, the Bureau has fully

vaccinated more than 28,400 staff and more than 94,400 inmates.

The Bureau has also utilized numerous educational and information strategies to provide information to inmates and staff, such as flyers, a “Frequently Asked Questions” document, and a video with Director Carvajal and advocacy via a Public Health Service officer encouraging inmates to receive the vaccine and dispelling myths about the vaccines.

The Bureau worked closely with the CDC to develop the CDC’s *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, which was last updated on May 3, 2022. The CDC regularly updates this guidance. A list of updates can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

- Can you tell the Subcommittee how many inmates, who are currently in BOP custody, have chronic health conditions?

**Response:** As of March 23, 2022, there are 73,838 inmates enrolled in Bureau clinics for chronic conditions. Each inmate receives healthcare services based on individualized assessments performed by qualified medical staff.

- We have heard reports from incarcerated individuals in federal prison that they are not provided medical care for COVID-19 symptoms, including over the counter medication and adequate nutrition. What is BOP doing to ensure access to necessary medical care?

**Response:** The Bureau has worked closely with the CDC in developing guidance for care of inmates with COVID-19 symptoms and continues to follow this guidance to include symptom screening, medical isolation, and clinically appropriate treatment. Health Services staff intervene with individualized care, when clinically indicated, and refer inmates to community hospitals if an inmate’s needs exceed the available level of care at the local institution. The Bureau has continued to follow the CDC’s *Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, which was last updated on May 3, 2022. The CDC regularly updates this guidance. A list of updates can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

- Are you providing medication to reduce symptoms, such as Tylenol and other over-the-counter pain medication? Do inmates have to pay for these medications?

**Response:** If an inmate meets the criteria for care, regardless of COVID-19 status, they will be offered that care per the current Bureau procedures. Inmates who test positive for COVID-19 are assessed for symptoms and provided medications as indicated based on the clinical assessment of the provider. No inmates are charged for medications that are used to treat COVID-19.

- Are you providing masks and hygiene products to staff and incarcerated individuals in federal prisons?

**Response:** The Bureau has continued to follow CDC guidance with respect to the wearing of

face coverings, and KN-95 and/or surgical masks have been made available to all staff and inmates upon request. N-95 respirators are reserved to be utilized as part of the Personal Protective Equipment (PPE) based on exposure risk while maintaining the safety and security of the institution. The Bureau conducted hazard assessments to determine the type of masking appropriate for different environments and staff and inmates are provided N95 masks as well as other PPE as indicated by the assessment and associated guidance.

- In your written testimony before the Senate Judiciary Committee on April 15<sup>th</sup> of last year, you stated that BOP's pandemic response plan included reduced movement of incarcerated individuals to reduce the spread of COVID-19. How did you ensure protection of the privacy rights of individuals appearing in court virtually or having confidential communications with their attorneys?

**Response:** Staff adhere to all policy and procedures, to include confidentiality, when inmates require legal communications. This includes non-monitored phone or video calls. Virtual visits with attorneys or the courts fall under the same guidelines as similar visits which occur in-person. Specifically, virtual visits take place in a private office or conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy. To the extent practical, staff provide an area that ensures the attorney-client virtual visit has a high degree of privacy.

- We know that connections to family can increase an individual's success upon reentry, how does BOP support continued connection between incarcerated individuals and their families when in-person visitation is restricted?

**Response:** Understanding the importance of visitation to the inmate population, we significantly increased telephone minutes for inmates from 300 to 500 minutes on March 13, 2020, and later, on April 8, 2020, in accordance with the CARES Act, telephone calls have been made free for the inmate population. The Bureau also made video visitation free of charge, which we have available at our female facilities. This program remains in place today. The Bureau also offers access to e-mail messaging for the inmate population, as well as access to postal mail services.

The Bureau recognizes the importance of prosocial family relationships in ensuring a successful reentry. As such, it provides the National Parenting Program for individuals in its custody focusing on building strong family ties between children and their incarcerated parents. The program also includes individualized components targeting fatherhood, preparing for motherhood, mothering adolescents, parenting during incarceration, grand parenting, interacting with family members from a distance, parental planning, and parenting children with special needs. The BOP is currently developing interactive family programming targeting the needs of inmates and building healthy ties with their immediate family, partners, children and extended family. This programming will include structured family visiting activities, soft and hard skills, and holistic family activities in addition to the existing children's centers in visiting areas and children/family events that take place at institutions.

- Do you have plans to continue to provide increased access to free telephone and video calls for incarcerated individuals?

**Response:** The Bureau of Prisons has exercised the authority authorized by the Attorney General under the CARES Act, since April 9, 2020, and no termination date has been established to date.

- BOP has previously stated that regularly testing all inmates and staff for COVID-19 would not be feasible. Given the current pandemic environment and the increasing availability of testing options, has BOP reconsidered this policy?

**Response:** The BOP continues to follow diagnostic testing strategies consistent with CDC guidance, which does not currently prescribe routine testing for everyday operations. *See <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>*. The BOP tests all new intakes, those exposed to COVID-19, and all inmates prior to transfer or release from custody. Broad-based routine testing is time-intensive and requires multiple staff to complete. If performed, weekly testing would not prevent a staff member or inmate from contracting and spreading the virus in between tests. All staff, regardless of their vaccination status, may request routine weekly testing at their institutions when community transmission is at a substantial or high level.

- Despite your practice of removing inmates from the total number reported of COVID positive inmates in BOP when those inmates are no longer in BOP custody, how many total inmates have been infected with COVID-19 since March 2020, including inmates who died, were released from BOP custody, or placed in private facilities?

**Response:** As of March 23, 2022, there have been 76,379 people with lab-confirmed cases among incarcerated individuals in BOP-managed facilities.

- How has BOP tracked and reported cases of COVID-19 since the start of the pandemic?

**Response:** The Bureau of Prisons implemented tracking and reporting of COVID cases early in the pandemic. These numbers continue to be updated daily and reported to the public via the public-facing [www.bop.gov](http://www.bop.gov) website. Among the data points tracked and reported by facility are inmates and staff with open COVID-19 cases, recovered inmates and staff, and deaths among inmates and staff.

- Are you currently testing all symptomatic incarcerated individuals for COVID-19?

**Response:** Yes, all inmates with exposure to or symptoms associated with COVID-19 are tested in accordance with CDC guidelines.

- What is the current turnaround time for a COVID-19 test in BOP facilities?

**Response:** Point of care test results are received in minutes. Currently, send-out laboratory Polymerase Chain Reaction (PCR) tests take 1-2 days to yield a result once they are sent out.

- Are there situations in which BOP does not report COVID-19 deaths?

**Response:** No. The BOP reports all COVID-19 deaths in custody regardless of federal or contract institution, home confinement, or Residential Reentry Center locations.

- Have there been instances where an incarcerated individual died of COVID-19 and their family was not informed that the death was due to COVID, or their family was told that the death was due to an illness other than COVID?

**Response:** BOP Policy 5553.08, Escape/Death Notifications, requires the BOP to send a letter of condolence to the inmate's next-of-kin. This letter must advise the family of the circumstances of the death, to include a summary of the cause of death. Furthermore, the BOP is required to provide a copy of the death certificate to the person who receives the remains, which identifies the official cause of death.

- GAO's July 2021 report on BOP's COVID-19 response described BOP's efforts to offer two doses of the Pfizer and Moderna vaccines to all staff and inmates. Please provide an update on your vaccination strategy, including administration of the booster doses and how you are ensuring that all inmates have had the vaccine offered to them.

**Response:** The Bureau is encouraging employees to voluntarily share their vaccination status with their supervisors to more effectively manage institution staffing levels. Consistent with applicable guidance, the Bureau continues to explore strategies to increase vaccination rates among employees and the inmate population, as well as ways to gather information about vaccination status. Health Services staff are available at all institutions for staff desiring to self-report receipt of the vaccination from their primary care physician or other provider. The BOP has administered over 306,000 doses (as of April 12, 2022) and has an overall vaccination rate for staff of 80% and 70% for inmates. The BOP central and regional office staff monitor vaccination dashboards weekly and follow up with institutions as necessary to continue to provide vaccinations per CDC guidance.

The BOP goal is that all inmates are offered vaccination within four weeks of intake. COVID-19 vaccination status is updated upon intake to BOP custody and if not vaccinated inmates are administered or scheduled for vaccination.

- Please also provide an update on your strategy regarding implementation of the executive order requiring federal employees to be vaccinated and the impact that any opposition to this order may have had on adequately staffing your facilities.

**Response:** The Bureau is encouraging employees to voluntarily share their vaccination status with their supervisors to more effectively manage institution staffing levels. Consistent with applicable guidance, the Bureau continues to explore strategies to increase vaccination rates among employees

and the inmate population, as well as ways to gather information about vaccination status. Health Services staff are available at all institutions for staff desiring to self-report receipt of the vaccination from their primary care physician or other provider.

A variety of educational materials including frequently asked questions regarding the vaccines, which is accessible on the internal web site, have been provided to staff. The Bureau Director has addressed the issue in meetings with leadership and institution staff and issued several videos to all staff encouraging vaccination. One of these videos, titled “Get Vaccinated” featured information about the safety and efficacy of the vaccines and included Bureau Director Carvajal, a Public Health Service staff member and Bureau staff from across the country discussing why they were vaccinated against COVID-19, the importance of doing so, and dispelled myths regarding the vaccines.

### **Solitary Confinement and Restrictive Housing**

- In your response to COVID-19, did BOP increase the use of restrictive housing for individuals who tested positive?

**Response:** No. Restrictive housing is not used as a mechanism to isolate persons who tested positive for COVID-19. Medical isolation is operationally distinct from restrictive housing and is a health-safety measure implemented in compliance with CDC COVID-19 guidance. In accordance with CDC guidance, as soon as an inmate develops symptoms of COVID-19 or tests positive for SARS-CoV-2, they are placed under medical isolation in a separate environment from other individuals and medically evaluated. Medical isolation is distinct in both terminology and operational practice from restrictive housing. Patients in medical isolation may be housed individually or as cohorted pairs or groups. If medical isolation in single cells is necessary, Psychology Services staff are consulted to ensure inmates proposed for single-celling are not particularly vulnerable individuals.

- What is the impact of solitary confinement on the physical and mental health of individuals confined?

**Response:** Inmates with COVID-19 are not placed in restrictive housing as a result of their infection, as medical isolation is operationally distinct from restrictive housing. If medical isolation in single cells is necessary, Psychology Services staff are consulted to ensure inmates proposed for single-celling are not particularly vulnerable individuals.

- Are you currently using solitary confinement or restrictive housing as a strategy to increase social distancing or mitigate the spread of COVID-19?

**Response:** Restrictive housing has not been used as a mechanism to isolate persons who tested positive for COVID-19. Medical isolation is operationally distinct from restrictive housing and is a health-safety measure implemented in compliance with CDC COVID-19 guidance. Should medical isolation be required, per the Bureau’s COVID-19 Pandemic Plan, it would require daily

visits from medical staff, access to both routine and urgent mental health services, access to radio, TV, reading materials, personal property, and commissary as would be available in the regular housing units, and increased telephone privileges, to the extent possible.

In its 2017 “Review of BOP’s Restrictive Housing for Inmates with Mental Illness Report” (2017 Restrictive Housing Report), the DOJ’s Office of Inspector General found that, based upon BOP’s own data, many incarcerated people whom the “BOP’s Mental Health Prevalence Project” identified as having mental health needs were not receiving mental health treatment. BOP’s policy states that incarcerated people will receive mental health care commensurate with their needs, even while they are in restrictive housing.

- If BOP is not properly identifying and tracking the number of people with mental illness, how it is ensuring that appropriate mental health care is being provided for those in restrictive housing?

**Response:** The BOP utilizes a Mental Health Care Level system to classify inmates based on their need for mental health services. This is a dynamic system to match services with changing needs over time. The care level system is supplemented by an additional database system identifier for inmates with substantial mental health concerns requiring extra care during major changes to their living conditions. These two systems inform a Special Housing Unit (SHU) Mental Health Dashboard to track inmates with mental health concerns who are placed in SHU thereby reducing overall SHU time and reducing single-cell status. Staff utilize these tools to maximize the appropriate referral to and provision of mental health care to inmates in restrictive housing. The BOP also ensures that individuals in restrictive housing have access to both routine and urgent mental health services.

- According to DOJ’s Office of Inspector General findings in a 2017 Report, although “BOP recognizes that inmates’ mental health can deteriorate if they are held in restrictive housing for long periods of time, BOP policy does not limit the length of time inmates spend in restrictive housing.” How has BOP addressed this critique, if at all, and what efforts have been made or policies adopted to limit the amount of time incarcerated people are held in restrictive housing/solitary confinement?

**Response:** The Bureau’s goal is to house inmates in the least restrictive environment possible that still provides for safety and security of our staff, our inmate population, and the public. The Bureau is developing new software to better track, analyze, and report key statistical data for all inmates housed in SHUs. We are exploring options to increase our bed space for specialty programs for inmates with mental health concerns. When staff resources are available, programming within the SHU is increased to provide continued education opportunities. The Bureau has made some recent updates to the policy regarding definitions and actions for restrictive housing that is currently pending Joint Policy Committee (JPC) and national union review.

- OIG also found that “BOP does not track inmates’ single-cell confinement or assess cumulative time [in] RHUs (Restrictive Housing Units).” As a result, OIG concluded that the lack of “specificity in BOP policy for RHUs can potentially affect the mental health services provided to all inmates...which is particularly concerning for inmates with mental illness.” What

measures has BOP put in place to track single-cell confinement and cumulative time in RHU is to ensure that people with severe mental illness are not being placed in restrictive housing and are receiving appropriate treatment?

**Response:** The Bureau's goal is to house inmates in the least restrictive environment possible that still provides for safety and security of our staff, our inmate population, and the public. The Bureau is developing new software to better track, analyze, and report key statistical data for all inmates housed in SHU. We are exploring options to increase our bed space for specialty programs for inmates with mental health concerns. When staff resources are available, programming within the SHU is increased to provide continued education opportunities. The Bureau has made some recent updates to the policy regarding definitions and actions for restrictive housing that is currently pending the Joint Policy Committee (JPC) and national union review.

- OIG also found that "BOP cannot accurately determine the number of its inmates who have mental illness, including inmates in RHUs, because the institution's staffs do not always document inmates' mental disorders" which in turn "could prevent the BOP from ensuring that it is caring for all of these inmates appropriately." OIG's report stated that BOP's analysis of 2014 data showed that 19,034 incarcerated people, or 12% of BOP's total incarcerated population, had a history of mental illness. Yet, OIG noted that BOP's staff reported this estimated number is too low and was closer to 40%. What measures has BOP adopted to ensure that staff is effectively identifying and documenting the mental health status of incarcerated persons with mental illness?

**Response:** Highly discrepant answers were provided by BOP staff who serve in different levels of our organization. For example, psychologists who work in BOP Headquarters are responsible for oversight and are readily familiar with rates of illness across the agency, whereas psychologists at BOP institutions are typically familiar with local rates of illness. BOP uses an electronic health record, which allows staff in Headquarters to easily identify rates of mental illness across the agency.

BOP can be confident in the rates of mental illness reported in the health record because the Bureau's Psychology Services at all institutions are doctoral level psychologists. BOP policy requires every inmate admitted to a BOP facility be given an initial psychological screening, which consists of a psychological interview, social history review, and behavioral observations. The purposes of the screening are to identify special treatment or referral needs; provide information useful in future crisis counseling situations; identify strengths as well as potential adjustment problems to imprisonment; provide information about treatment and programs; and diagnose and document mental illness.

In addition to the initial intake, inmates are screened at other routine times, to include at least every thirty days while in restrictive housing. BOP has high standards for documentation of diagnoses and treatment that are reviewed at least annually through an auditing process.

- In February 2020, your predecessor (Director Kathleen Hawk Sawyer) committed to the reduction of the use of restrictive housing, especially for people living with serious mental illness. Under her leadership, BOP committed to no longer house incarcerated people with serious mental illness in isolation cells.



- What is the status of BOP’s implementation of this mandate? Is it memorialized in BOP policy or SOP?

**Response:** As noted in the questions for follow up to the Bureau's hearing dated, November 19, 2019, "decreasing the number of inmates in SHU is a goal of the Bureau leadership." The BOP utilizes a Mental Health Care Level system to classify inmates based on their need for mental health services. This is a dynamic system to match services with changing needs over time. The care level system is supplemented by an additional data system identifier for inmates with substantial mental health concerns requiring extra care during major changes to their living conditions. These two systems inform a SHU Mental Health Dashboard to track inmates with mental health concerns who are placed in SHU thereby ensuring they receive appropriate services and are considered for diversion or removal from SHU, should their mental health decompensate. BOP’s policies and qualified mental health staff support an overall reduction in SHU time and single-cell status by maximizing the appropriate referral to and provision of mental health care to inmates in restrictive housing.

- Director Hawk Sawyer reported that in 2019, BOP added three secure mental health programs to divert persons with serious mental illness from restrictive housing and provide intensive treatment. What is the status of implementation of these diversion programs?

**Response:**

Secure Administrative Unit, USP Allenwood – Contract for facilities improvement is awarded with a projected opening of June 2023.

Secure STAGES Program, USP Allenwood – Currently in the design phase with the Architectural and Engineering firm.

Secure Skills Program, USP Allenwood - Currently in the design phase with the Architectural and Engineering firm.

- In 2016, the DOJ issued its *Report and Recommendations Concerning the Use of Restrictive Housing*, which sets forth specific policy recommendations for limiting the use of restrictive housing in the BOP and other DOJ correctional settings. What steps is BOP currently taking to review, update (if necessary) and implement those recommendations?

**Response:** Both the SHU and SMU program statements have been recently updated and are currently being reviewed in meetings/negotiations with the national union, a required step before finalizing policy changes.

- Recently, Right on Crime released a report in which it noted that BOP’s “website lists insufficient data with scant or no information on the precise order of operations for types of inmate infractions [which can result in placement in solitary confinement].” The report further noted that BOP “also lacks thorough publications of hearings, and [its] data is limited for the total length of time served in solitary confinement by each inmate” calling it problematic. For example, according to the report, “[i]n August of 2020, the BOP website listed federal prisons

averaged 9,655 inmates in Special Housing Units (an average of 8,251 were held in administrative detention units, while 1,414 were held in disciplinary segregation),” about 7.4% of the total inmate population. To cure these failings Right on Crime recommended the following policies be implemented: (1) more data & transparency enhancing due process, (2) expanding programming and privileges for those in solitary, and (3) improving protocols to prevent suicides, violence, and corruption.

- What steps can BOP leadership take to ensure that these data gaps are addressed?

**Response:** The BOP does not concur with the conclusions drawn from this report. Information on due process and the disciplinary process can be found in BOP policy and regulations on the Inmate Discipline Program, published and available on the BOP’s website. The BOP’s website clarifies the numbers of persons in custody and the reasons for this placement at [https://www.bop.gov/about/statistics/statistics\\_inmate\\_shu.jsp](https://www.bop.gov/about/statistics/statistics_inmate_shu.jsp)

The BOP also disagrees with the report’s characterization of its transparency with respect to restrictive housing. BOP inmates have the right to challenge any and all aspects of the process through the use of the Administrative Remedy Process and may then challenge any adverse findings in court. The BOP does, as noted by the authors, publish information as to the types of segregation and the number of individuals in each category of confinement, but federal regulations regarding Institutional Review Boards and the use of human subjects in research limit access to detailed individualized information for third parties.

The BOP’s goal is to house inmates in the least restrictive environment possible that still provides for safety and security of our staff, our inmate population, and the public. The BOP has taken a number of steps in furtherance of this goal:

- We are increasing our use of Reintegration Units (RU), programs that target inmates who habitually request protective custody.
- We disseminated a notice to all Wardens addressing proactive measures they should take to better manage their SHU populations.
- We are exploring options to increase our bed space for specialty programs for inmates with mental health concerns (e.g., secure mental health units to provide concentrated clinical programming).
- We continue to develop new software to better track, analyze, and report key statistical data of all inmates housed in SHU.
- When staff resources are available, programming within the SHU is increased to provide continued education opportunities.

### **Compassionate Release**

- BOP has released thousands under the CARES Act but initiated very few requests for Compassionate Release. Why does it appear that BOP prefers to use its authority under the CARES Act to release inmates to home confinement instead of its authority to seek Compassionate Release?

**Response:** The BOP does not possess the authority to independently release someone from its

custody pursuant to the compassionate release statute.<sup>1</sup> Under statute (18 U.S.C. § 3582(c)(1)(A)) and current BOP policy, the BOP Director may make a motion to the court, through the U.S. Attorneys Office of the district in which an inmate was sentenced, that an individual be granted compassionate release. The decision to grant compassionate release is made by the court, not the BOP. Additionally, pursuant to the First Step Act of 2018, an inmate may directly file a motion with the sentencing court, after the inmate has fully exhausted all administrative rights to appeal or the lapse of 30 days from the date of receipt of a request by the Warden, whichever is earlier.

On the other hand, the authority granted to BOP under the CARES Act to transfer inmates to home confinement rests entirely within its discretion. Therefore, a decision to transfer an individual to home confinement can generally be made substantially faster than a court can grant compassionate release. Since the passage of the CARES Act, inmates requesting compassionate release on the basis of susceptibility to severe illness due to COVID-19 are screened, or have been screened prior to or around the time of their request for compassionate release, for suitability for home confinement.

The BOP, in consultation with the Department of Justice, has determined that COVID-19 susceptibility alone does not suffice for purposes of meeting compassionate release criteria. However, there is an exception process should the warden determine an exception is necessary. Such exceptions when dealing with COVID-19 are evaluated on an individualized basis by medical staff as to whether there are heightened risks to a particular individual associated with COVID-19 based on their underlying medical conditions. If it is determined that there is a heightened risk, the Warden may make a recommendation to the BOP's Central Office (Headquarters) that the inmate's compassionate release be approved by the Director.

- Has BOP started tracking its stated reasons for approving or denying Compassionate Release requests?

**Response:** To be clear, the sentencing court decides whether a particular individual will be granted compassionate release. The BOP does not track the reasons for which it declines to make a recommendation for compassionate release because, in many cases, multiple factors lead to this decision. For example, while some compassionate release requests are denied by the BOP because the inmate does not meet the medical criteria or the age or time-served requirements, other requests are denied due to a combination of factors such as the nature and circumstances of the offense, the inmate's criminal history, and the inmate's institutional adjustment.

- What is BOP's process for reviewing and considering applications for compassionate release?

**Response:** The BOP has a robust, thorough process for evaluation of compassionate release requests, coordinated by BOP's Central Office (Headquarters), to ensure that every inmate's

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<sup>1</sup> Inmates serving a sentence on home confinement are deemed to be in Bureau of Prisons custody.

request is considered on its individual circumstances. This process, including the criteria the BOP uses to evaluate each request, is set out fully in BOP Program Statement 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g), found on our public webpage.

The Director of the BOP may, through the prosecuting United States Attorney's Office, make a motion to a sentencing court to reduce a term of imprisonment. The BOP uses this authority in "extraordinary and compelling circumstances" which could not reasonably have been foreseen by the court at the time of sentencing.

The warden of an institution conducts an initial review of an inmate's compassionate release request. Requests can also be initiated by an inmate's family members, an inmate's attorneys, or BOP staff. If the warden determines the request warrants approval, the request is forwarded to Central Office for review and final disposition.

At Central Office, the Correctional Programs Division, the Health Services Division, the Office of General Counsel, and the Director review requests for compassionate release. Included in the review process is an assessment of the inmate's medical condition (if applicable), the inmate's likelihood of reoffending, the inmate's current offense and criminal history, any victim/witness comments, any unresolved detainers or pending charges, the inmate's institutional adjustment (e.g., the inmate's disciplinary history, work history, and participation in drug treatment or educational programs), public safety concerns, and the availability of an appropriate release plan approved by the United States Probation Office.

- The U.S. Sentencing Commission reported that between Jan. 1, 2020, and June 30, 2021, courts granted 3,602 motions for reduction in sentence under 18 U.S. C. sec. 3582(c)(1)(A)(i), known as "compassionate release." The vast majority of those motions were brought by individuals in prison; less than one percent, only 32 were sponsored by the BOP. In contrast, in 2019, according to the Commission, the BOP brought 47 motions for compassionate release, roughly a third of the 145 motions granted that year. What accounts for the near absence of compassionate release motions in the 15-month period between January 1, 2020 and June 30, 2021, given the fact that the pandemic was tearing through federal prisons and contract facilities and claimed over 275 lives in that period?

**Response:** Pursuant to amendments made to 18 U.S.C. § 3582(c)(1)(A) by the First Step Act of 2018 (FSA), an inmate may file a motion with the sentencing court, after the inmate has fully exhausted all administrative rights to appeal a failure of the BOP to bring such a motion on the inmate's behalf or the lapse of 30 days from the date of receipt of a request by the warden of the inmate's institution, whichever is earlier.

Because of these amendments, an inmate may now seek relief directly from his/her sentencing court, and the court can grant the request and order the release of the inmate, while the inmate's compassionate release request is still under review by the BOP.

Throughout the COVID-19 pandemic, the BOP has continued to evaluate compassionate release requests in accordance with the criteria and process laid out in Program Statement 50.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g). The BOP has determined that COVID-19 susceptibility alone does not suffice for purposes of meeting compassionate release criteria, but requests are evaluated on an individualized basis as to whether there are heightened risks associated with COVID-19 based on underlying medical conditions.

- Are you taking steps to ensure that people who are eligible for compassionate release – people who meet the descriptions provided for in U.S.S.G. sec. 1B1.13 – and especially the terminally ill, are identified by BOP staff, referrals advanced to the Central Office, and decisions made to file motions on their behalf in the sentencing courts? If yes, please describe those changes and how they are being implemented. If no, why not?

**Response:** BOP staff will work with an inmate and provide all relevant information for submitting a compassionate release request if staff believe the inmate meets any of the BOP’s compassionate release criteria, or where an inmate asks to be considered for compassionate release.

Additionally, where an inmate is diagnosed with a terminal illness, the First Step Act of 2018 (FSA) requires BOP staff, not later than 72 hours after the diagnosis, to notify the inmate’s attorney, partner, and family members of the inmate’s condition and inform the inmate’s attorney, partner, and family members that they may prepare and submit on the inmate’s behalf a request for compassionate release, or, upon request, assist the inmate in the preparation, drafting, and submission of a request.

The BOP utilizes a centralized electronic system to track all requests at both the institution and Central Office levels. In the event the basis of the request is the medical condition of the inmate, BOP staff work to expedite processing and consideration of the request at all levels.

### **Home Confinement**

- During this committee’s hearing on January 21<sup>st</sup>, we heard directly from a returning citizen about her experience being released onto home confinement under the CARES Act and being re-arrested based on a determination that she had committed an “escape” when she was attending a computer class and her supervisor was not able to reach her. Although she was ultimately granted compassionate release, her story raises questions about the system of supervision that the BOP utilizes for individuals on home confinement or otherwise under federal supervision. Who supervises inmates released under the CARES Act? Who supervises inmates released under BOP’s Compassionate Release authority?

**Response:** The CARES Act did not change the statutory authority or fundamentals of the home confinement program. Therefore, CARES Act placements have been made under traditional home confinement (HC) policy and procedures, despite the differing goals. These inmates may be supervised by one of the following: RRC staff contracted by the BOP; United States Probation

Office (USPO) utilizing the Federal Location Monitoring Program; or through agreements with state or local governments.

- Does the current system support individual's success returning to their communities and completing the terms of their supervision?

**Response:** The CARES Act did not change the statutory authority or fundamentals of the HC program. CARES Act placements have been made under traditional HC policy and procedures, despite the differing goals. Therefore, these inmates are afforded the same programs as traditional home confinement placements such as assistance finding employment.

- What is the percentage of individuals released onto home confinement or community supervision who are ultimately revoked back to federal prison to complete the remainder of their sentence? What proportion of those individuals are revoked due to arrests for new crimes versus revoked for technical violations of their supervision, such as missing a call from their supervisor, failing to report for a meeting, or other technical violations?

**Response:** As of September 9, 2022, 46,888 inmates have been placed in HC through all authorities since March 26, 2020. Approximately 11,000 inmates have been released to home confinement under the CARES Act since March 2020. As of September 2, 2022 a total of 460 inmates currently on Cares Act home confinement, have been returned to secure custody for new violations as follows:

- 242 returned for misconduct in violation of program rules (alcohol and/or drug use)
  - 75 returned after escape
  - 17 for new criminal conduct (6 drug related/1 escape with prosecution/1 smuggling non-citizens)
  - 126 returned for technical violations
- Do you think the supervision system needs improvement?

**Response:** There is a robust system in place to review and respond to conduct violations. BOP is consistently working with RRC contract partners to make improvements to the supervision of inmates in the community. This includes review of all conduct issues reported by the contractor and assistance with determination of violation response along with certification by the Bureau's Disciplinary Officer who reviews the cases. However, for inmates who are placed on home confinement as a result of the CARES Act there is no statutory authority in place to house these offenders in an RRC. Therefore, this limits the BOP's ability to manage these offenders as they would other RRC/HC offenders who are being housed under the Second Chance or First Step Act.

- During our prior oversight hearing on December 2, 2020, and during the Senate Judiciary Committee hearing in April of last year, you testified that 94 percent of 4,500 inmates on home confinement are monitored through contracts electronically via GPS, that contract staff are not law enforcement, and that the remaining 6 percent of inmates are monitored by US

probation. You testified that those who are monitored by contract staff were released under the CARES Act? Please explain why 6 percent of those inmates were monitored by US probation. What is different about that 6 percent of inmates?

**Response:** The Federal Bureau of Prisons (BOP) and the Administrative Office of the United States Courts (AOUSC) have established procedures and responsibilities for the supervision of inmates transferred to the community by the BOP and supervised in the Federal Location Monitoring Program by federal probation officers under authority of 18 U.S.C. § 3624(c). Therefore, instead of these inmates being monitored by an RRC contractor on Home Confinement, they are managed and monitored by the USPO under the Federal Location Monitoring Program.

- How are inmates released under Compassionate Release monitored?

**Response:** Inmates who receive “compassionate release” receive a sentence reduction from the courts—typically, a reduction of the term of imprisonment to time served.

Absent unusual circumstances, such as an inmate having another undischarged term of imprisonment left to serve, the granting of compassionate release means the inmate’s incarceration with and supervision by the BOP ends. The inmate is released from BOP custody in the same way as any other inmate who reaches the end of his/her term of imprisonment.

If the inmate’s sentence imposed by the court includes a term of supervised release, the inmate’s supervised release term and supervision by the United States Probation Office begins upon his/her release from BOP custody.

- Would it not be less burdensome for BOP to release more inmates under Compassionate Release, have them placed on supervised release, and monitored by US Probation? If this is true, why is BOP making so few requests for Compassionate Release still – this far into the pandemic?

**Response:** The BOP does not possess the authority to independently release someone from its custody. Unlike transfers to home confinement under the CARES Act, the decision to grant compassionate release is made by the court, and not the BOP. Further, there are specific criteria under which BOP reviews requests that it recommend filing a motion with the sentencing court. The BOP continues to review requests for compassionate release under the criteria and processes set out in BOP Program Statement 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g), found on our public webpage.

The BOP has determined that COVID-19 susceptibility alone does not suffice for purposes of meeting compassionate release criteria; however, requests are to be evaluated as to whether there are heightened risks associated with COVID-19 given underlying medical conditions.

- What are the current public safety criteria for release to home confinement under the CARES Act?

**Response:** The CARES Act authorized the Attorney General to expand the cohort of inmates who can be considered for home confinement during the pandemic emergency, authority that was exercised on April 3, 2020. Under the expanded CARES Act authority, inmates are reviewed for home confinement placement on a case-by case basis and by balancing public safety against inmate safety with substantial weight assigned to COVID-19 risk factors. Each case is reviewed based on the totality of circumstances, including but not limited to the PATTERN recidivism risk level, current offense, history of violence, history of escapes, recent discipline history, and history of supervision violations. Inmates who do not meet all the criteria under the CARES Act may still be elevated to the Central Office Home Confinement Committee for secondary review, and, by balancing public safety against inmate safety with substantial weight assigned to COVID-19 risk factors, may still be approved for home confinement or RRC. For more information on CARES Act home confinement, please see section III(F)(4) in the 2022 annual FSA report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- In April of last year, you told the Senate Judiciary Committee that 50 to 75 percent of inmates had been reviewed for home confinement and that 24,000 inmates had been placed in home confinement. Have all inmates been reviewed for home confinement now?

**Response:** The Director testified that 24,000 inmates have been transferred to home confinement and that the BOP had reviewed everyone that was eligible. All of the inmates transferred to home confinement were reviewed for the criteria outlined by the Attorney General to include COVID-19 risk factors. Further, as the COVID-19 risk factors identified by the CDC changed or as the inmate's status changed, inmates were re-reviewed, referred, and placed as appropriate.

With regard to the current population still in custody in an institution, the Director estimated 50-75% of inmates have been reviewed to date. However, a review of current data, indicates 93.9% (119,889) of 127,709 inmates eligible for review have been reviewed and a determination regarding eligibility has been made. As the Director advised, the majority of these inmates were categorically disqualified from placement based on concerns including, but not limited to, detainers, current violence, sex offense conviction, and/or high and medium PATTERN risk and/or security levels.

Separately, 27.1% (37,912 of 139,782) of all current inmates (both in institutions and community placement) required a more comprehensive review for eligibility with 4,404 inmates placed, pending placement, or pending referral to community placement. Inmates who required a more comprehensive review, but who were ultimately not referred for placement, were denied for a variety of reasons, either singularly or in combination with other factors, including, but not limited to, no COVID-19 risk factors, pending charges, no viable release plan, recent institution misconduct, prior violence, criminal history, percentage of time served, time remaining to serve, and/or the totality of the current offense to include victims, sentencing enhancements, and other community safety concerns.

- How many have been placed in home confinement now?



**Response:** Since March 2020 approximately 11,000 inmates have been placed on home confinement as a result of the CARES Act. As of September 9, 2022, the BOP has nearly 6,238 inmates on HC and approximately 3,700 are there as a result of the CARES Act.

- Please tell us the number of inmates placed in home confinement for each authority that BOP possesses to release inmates.

**Response:** Approximately 46,800 inmates have been placed on HC through all authorities since March 2020. Approximately 11,000 inmates have been released to home confinement under the CARES Act since March 2020. Each inmate is reviewed individually and in totality of the circumstances per the AG criteria. In an effort to maximize our authorities, we expanded the criteria to allow eligibility despite minor disciplinary infractions and identified additional individuals who were also reviewed. Institutions reviewed inmates that met the criteria of the Attorney General memoranda and forwarded cases for inmates outside of the criteria to headquarters for review and approval. U.S. Attorney's Offices were notified and asked to provide input on cases referred to headquarters. Bureau staff examined a variety of data to include medical condition of the inmate based on CDC guidance, institutional history, viable release residence, if the individual would be safer in a community setting, and if placement in a community setting would present too great a risk to the public. BOP reviewed over 5,000 referrals.

## **Implementation of First Step Act**

### PATTERN risk assessment tool

- Roughly 14,000 inmates were placed in the wrong risk category due to errors in the PATTERN risk assessment tool. What is BOP doing to remedy this problem? Does BOP plan to reassess these inmates? If so, when? And, if not, why?

**Response:** Under the FSA, the development and revalidation of the PATTERN risk assessment tool are the duties of the Attorney General. These duties have been assigned to and carried out by the National Institute of Justice (NIJ) using independent research consultants; these consultants report their findings and recommendations to the Attorney General.

After PATTERN was finalized in January 2020, the Department continued to review it as part of the annual revalidation effort. Based on a review by NIJ's research consultants, additional changes to PATTERN were recommended to correct several minor errors.

The BOP adopted these recommendations, updating its field guidance and scoring sheets with the corrections made to the item and scoring typos, thereby refining the tool into version "PATTERN 1.2-Revised" (1.2-R). Upon review of that tool, they proposed a refined version of the tool, PATTERN 1.3, because although version 1.2-R had been revised to correct item and scoring errors that the NIJ consultants identified in 2020, version 1.2-R maintained the scoring scheme developed for version 1.2. The consultants' full revalidation report is accessible at NIJ, 2021 Review and Revalidation of the First Step Act Risk Assessment Tool (Dec. 2021), <https://www.ojp.gov/pdffiles1/nij/303859.pdf>.

The PATTERN automation is integrated within the BOP's "Insight" inmate case management system, so that the Unit Management staff can reassess an individual inmate's score as needed during an inmate's Program Review.

PATTERN 1.3 has been implemented and the Attorney General has directed the continued study of the tool to improve the equitability, efficiency, and predictive validity of the risk assessment system. For more information, please see section II of the 2022 annual FSA report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- PATTERN 1.3 is not in use at this time because it must be approved by the Attorney General. What does this mean for inmates whose level of risk is being assessed right now or was assessed previously?

**Response:** PATTERN 1.3 has been implemented and the Attorney General has directed the continued study of the tool to improve the equitability, efficiency, and predictive validity of the risk assessment system. For more information, please see section II of the 2022 annual FSA report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- Will PATTERN 1.3 adjust or account for overprediction and/or underprediction? If not, could you explain why BOP has chosen not to make this adjustment?

**Response:** BOP Information Technology (IT) staff and research staff worked to confirm concurrence between the research model and the software used to automate PATTERN scoring. The updated PATTERN 1.2-R instrument was fully automated and integrated with the BOP's case management application. In March 2021, the team of expert consultants contracting with NIJ throughout 2020 began their annual 2021 review and revalidation study for PATTERN 1.2-R. Upon review of that tool, they proposed a refined version of the tool, PATTERN 1.3, because although version 1.2-R had been revised to correct item and scoring errors that the NIJ consultants identified in 2020, version 1.2-R maintained the scoring scheme developed for version 1.2. PATTERN 1.3 has proven effective at distinguishing between recidivists and non-recidivists.

- What steps are you taking to ensure public availability of the data needed to validate the PATTERN tool?

**Response:** In developing the new risk tool, PATTERN, emphasis was placed on a system that accurately measures an inmate's change during incarceration and provides opportunities for inmates to reduce their risk scores during periodic reassessments. Please see the public webpage for available information: [www.bop.gov/inmates/fsa/pattern.jsp](http://www.bop.gov/inmates/fsa/pattern.jsp). Additionally, the 2021 review and revalidation of the PATTERN risk assessment tool is available at <https://www.ojp.gov/pdffiles1/nij/303859.pdf>.

- You testified in April of last year before the Senate Judiciary Committee that BOP expanded PATTERN to consider low scores to get more people out of custody. Please explain what that means. What are the low scores that BOP is considering? And for what purpose?

**Response:** This was in reference to the CARES Act authorization to move offenders with COVID-

19 risk factors to home confinement. The original Attorney General’s memorandum on the use of home confinement during the COVID-19 pandemic emergency, dated March 26, 2020, prioritized only offenders with “minimum” PATTERN risk scores. Eligibility for home confinement was later extended to include offenders with “low” risk scores.

- According to the Report of the Independent Review Committee, PATTERN classifications for Earned Time Credit-eligible inmates are 55.22% high (36.67) or medium (18.44) and 44.62% minimum (17.21) or low (27.41) risk. Earned Time Credit- eligible inmates participated in programming during 2020 at a rate of 30.8%. By comparison, only 18.8% of Earned Time Credit-ineligible inmates were involved in programming during 2020. As the Independent Review Committee surmised, these statistics represent provisional evidence that earned time credits do provide an incentive for federal inmates to participate in recidivism-reducing programming. The new risk level cutoffs were determined by replicating the population distributions and recidivism rates in version 1.2. How were the risk level category cutoffs set in version 1.2?

**Response:** BOP implemented the cutoff levels for the PATTERN 1.2 tool that were recommended by the NIJ consultants and approved by the Attorney General. Note that PATTERN uses many factors that are scientifically-weighted based on their predictability of reduced recidivism. The Department analyzed hundreds of different iterations and variables in order to find those factors most predictive of the risk of recidivism. Similarly, the process of setting “cut points”, which define the score ranges that constitute the different recidivism risk level assignments, involved scientific research, testing, and analysis.

- Why did BOP choose to replicate these cutoffs?

**Response:** The BOP has implemented the revised version of the tool, “PATTERN 1.3,” which adjusts various item weights in the prior tool to enhance predictive validity. In conjunction with the shift to PATTERN 1.3, and at the direction of the Attorney General, the Department also adopted new “cut points” for PATTERN’s risk level categories under the “general tool,” in an effort to mitigate against various racial and ethnic disparities associated with prior risk level categories and enhance opportunities for eligible inmates to earn time credits that accrue towards prerelease custody and supervised release, while maintaining public safety. More information is available in the 2022 First Step Act Annual Report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- Has BOP considered resetting the threshold cutoffs between the risk categories, which would allow more inmates to earn credits for release, thereby maximizing access to First Step Act relief and encouraging participation among inmates while ensuring public safety?

**Response:** See previous response. The BOP has implemented a revised version of the PATTERN tool (PATTERN 1.3) that enhances opportunities for inmates to earn time credits. More information is available in the 2022 First Step Act Annual Report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- BOP removed two static factors from PATTERN – age of first arrest or conviction and

voluntary surrender. However, reports following that change still point to racial disparities within the tool. But the National Institute of Justice report found that PATTERN overpredicts the risk that Black, Hispanic, and Asian inmates will commit new crimes or violate rules while it underpredicts the risk for Native Americans.

- 6 to 7 percent overprediction for Black females on the general recidivism tool;
- 12 to 15 percent underprediction of Native American males and females on the general recidivism tool; and
- 5 to 8 percent overprediction of Asian males on the general and violent recidivism tools.

- What is BOP doing to address the racial bias and disparities that were identified in the Risk Assessment Tool?

**Response:** The BOP has implemented the revised version of the tool, “PATTERN 1.3,” which adjusts various item weights in the prior tool to enhance predictive validity. In conjunction with the shift to PATTERN 1.3, and at the direction of the Attorney General, the Department also adopted new “cut points” for PATTERN’s risk level categories under the “general tool,” in an effort to mitigate against various racial and ethnic disparities associated with prior risk level categories and enhance opportunities for eligible inmates to earn time credits that accrue towards prerelease custody and supervised release, while maintaining public safety. More information is available in the 2022 First Step Act Annual Report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- How is BOP accounting for these disparities for inmates whose risk has been determined under this admittedly faulty tool?

**Response:** See previous response. More information is available in the 2022 First Step Act Annual Report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- The National Institute of Justice report recognizes that bias exists in the PATTERN risk assessment tool. PATTERN includes gender-specific tools. The report raises equal protection concerns of race-informed solutions to address the disparities in PATTERN, saying that it can be legally challenging, though not impossible, to base risk assessments on race or gender. What options is BOP pursuing to further reduce bias in the PATTERN risk assessment tool?

**Response:** PATTERN 1.3 is effective at distinguishing between recidivists and non-recidivists and displays dynamic validity. There is also evidence, however, of differential prediction based on race and ethnicity. The BOP has implemented the revised version of the tool, “PATTERN 1.3,” which adjusts various item weights in the prior tool to enhance predictive validity. The Department is committed to making all necessary revisions and updates to the risk assessment system to ensure that racial disparities are reduced to the greatest extent possible, as required by the FSA, 18 U.S.C. § 3631(b)(5). As such, the Attorney General has

directed the continued study of the tool to improve the equitability, efficiency, and predictive validity of the risk assessment system. More information is available in the 2022 First Step Act Annual Report available at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- According to the National Institute of Justice report, general recidivism is defined as a return to BOP custody or a rearrest within three years of release from BOP custody and violent recidivism is defined as a rearrest for a suspected act of violence within three years of release of custody. And we know that some communities are overpoliced, especially communities of color, and, therefore, arrests do not always signal a return to criminal conduct. Why did BOP choose to consider rearrest as a measure for recidivism?

**Response:** “Recidivism” is currently defined in PATTERN to include a return to BOP custody or a re-arrest within three years of release from BOP custody, as well as DUI and DWI offenses. This definition is consistent with the definition used by the Bureau of Justice Statistics (BJS). Some have suggested that it would be fairer to narrow the definition of recidivism so that it only includes convictions and does not count those who were arrested but either never charged with a crime or were acquitted. Previously, the Department explored the possibility of changing the definition to exclude acquittals and arrests not resulting in charges over a five-year period and found that, at that time, the data for such a review was not available. BOP receives state recidivism data as keyed by the states, which each have different reporting processes. Some jurisdictions report only arrests, while others report arrests and convictions. BOP lacks the authority to compel the states to enhance their reporting and to dedicate the resources needed to include disposition. The Department is currently exploring whether it would be technically feasible, and/or advisable, to change the definition of recidivism used for the PATTERN tool in various manners. As part of the Department’s review of the ongoing implementation of the First Step Act, the Office for Access to Justice and NIJ are hosting stakeholder engagement sessions to consider ways to evaluate, refine, and improve the risk assessment system, including a review of the current definition of recidivism used for PATTERN. . More information on the use of re-arrest as a measure of recidivism can be found in the Department’s January 2020 Risk and Needs Assessment report at <https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf>.

- Why does the violent recidivism tool consider only a rearrest but not a return to BOP custody like the general recidivism instrument?

**Response:** Please see previous response. More information on the use of re-arrest as a measure of recidivism can be found in the Department’s January 2020 Risk and Needs Assessment report at <https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf>.

### **Needs assessment**

- After the Needs Assessment Tool assessment and critique by the Independent Review Committee, what if any changes have been made to the Needs Assessment Tool?

**Response:** The BOP has taken important steps to improve the Standardized Prisoner

Assessment for Reduction in Criminality (SPARC-13) needs assessment system including developing tracking assignments, adding new assessment measures, and implementing the reassessment to improve the system. Technology and tracking systems were implemented to ensure proper recording of information. Unique identifiers were created in the agency's inmate management database for each approved program; when an inmate signs up for, participates in, and completes the program, the information is recorded and archived. The BOP's case management tool, "Insight," has been modified to display needs assessment information; the BOP's inmate management and case management systems are integrated so that needs entered in either system will display in both systems.

- Under the First Step Act, you are required to administer a needs assessment, are you currently using a validated needs assessment tool?

**Response:** Prior to the passage of the FSA, the BOP had a longstanding process in place for assessing and addressing inmates' needs. The FSA has led to the formalization and enhancement of the BOP's needs assessment system. The needs assessment tool utilized by the BOP is the SPARC-13, and it assesses thirteen needs of inmates.

- How is BOP currently assessing individual needs? What tools are being used to assess needs?

**Response:**

The BOP has adopted or formalized measures and data sources for the assessment of each need.

- Anger/Hostility need is assessed by the Brief Anger-Aggression Questionnaire (BAAQ). The BAAQ is a six-item questionnaire that yields a score between 0 and 24. The reliability and validity of the BAAQ have been tested and confirmed through four studies completed on a clinical outpatient population and on a nonviolent control sample. Results from the four studies suggested an appropriate level of consistency over time, and the BAAQ was found to measure levels of overt anger and aggression as intended. The BAAQ is a useful screening tool because of its ability to rapidly provide an estimate of anger dysregulation.
- Antisocial Peers need and Cognitions need are assessed by the Measures of Criminal Attitudes and Associates (MCAA) tool. The MCAA is a two-part self-report questionnaire designed to measure criminal thinking style and antisocial associates. Part A is a quantified self-report measure of antisocial associates. Part B contains four attitude scales: Violence, Entitlement, Antisocial Intent, and Associates. The MCAA has demonstrated significant associations with other measures of criminal thinking style and predictive validity for the outcomes of general and violent recidivism.
- Dyslexia need must be assessed using measures that meet certain specifications required by the FSA. The BOP instituted a two-phase screening process to assess dyslexia. First, all inmates must complete a screening instrument to examine symptoms across statutorily defined functional domains. Inmates who reach the threshold for possible dyslexia are then administered the Woodcock-Johnson IV; a psychometrically robust test capable of formal assessment of dyslexia.
- Education need is assessed by first looking for the presence or absence of a high school diploma

or its equivalent. Next, this need is assessed by measuring achievement on core content areas through the use of the Test of Adult Basic Education (TABE) and Comprehensive Adult Student Assessments System (CASAS), of which the latter is used exclusively for English as a Second Language learners.

- Family/Parenting need is assessed by the Family Assessment Device (FAD-12). FAD-12 is a 12-item questionnaire on a Likert scale (from strongly agree to strongly disagree) that elicits the respondents' perception of their family relationships. This measure has been used in a variety of settings to determine individuals' beliefs about their families' reliability, supportiveness, and acceptance. FAD-12 is considered a dynamic measurement and can be re-administered at various points throughout the course of treatment to assess improvements in the nature of the individuals' family relationships and to evaluate the efficacy of selected interventions.
- Finance/Poverty need is assessed through a series of questions on personal history and circumstances and information drawn from the Presentence Report (PSR).
- Medical need is assessed through completion of a medical history and a physical examination performed by a medical practitioner at a BOP institution. The intake screening serves as an assessment of acute medical concerns; the initial physical examination consists of, but is not limited to, the following components: medical and mental health, dental care, and ordering of appropriate laboratory and diagnostic tests.
- Mental Health need is assessed through the diagnoses and services that are identified by the Psychology Services Inmate Questionnaire (PSIQ). The PSIQ is a structured interview tool developed by the BOP that functions as a self-reporting instrument delivered to inmates upon arrival at their designated institutions. It requests key mental health information in support of effective triage and long-term care. Inmates are asked a series of questions that allow staff to identify a need for crisis care (e.g., suicide ideation), acute care (e.g., anxiety, distress), and historical conditions that would prompt routine care (e.g., history of mental health treatment).
- Recreation/Leisure/Fitness need is assessed through participation in a Chronic Care Clinic (CCC), which is available agency wide. CCCs function as a means for inmates with ongoing medical needs to be tracked and seen by a health care provider at clinically appropriate intervals.
- Substance Use need is assessed by a review of substance use information presented in the PSR. Substance use occupies its own section in the PSR, and that section provides an overview of an inmate's lifelong substance use history up to the present, if any.
- Trauma need is assessed by the Adverse Childhood Experiences Scale (ACES). ACES is widely used and reliable tool that measures childhood exposure to different types of trauma: psychological, physical, or sexual abuse; neglect; mental illness; domestic violence; divorce; and having an incarcerated parent. Adverse childhood experiences were found to be associated with significant increases in a number of negative social, behavioral health, and physical health outcomes.
- Work need is assessed through a series of questions and information drawn from the PSR.

The following information describes BOP's Needs Assessment Process:

- BOP's policy on FSA Needs Assessment (PS5400.01) directs staff to follow the new needs assessment process, outlines staff responsibilities, and provides timeframes for initial needs assessment and reassessment. Inmates are initially reviewed at the BOP's Designation & Sentence Computation Center and are designated to an institution that addresses their security level and basic needs. Once inmates arrive at their designated facility, they attend Admission &

Orientation where they become acquainted with the programs the institution offers and the assessment processes. Inmates are also reminded of the initial needs assessments at intake with Psychology Services.

- BOP's inmate computer system (TRULINCS) has an electronic bulletin board which displays and details for inmates the availability of the assessments. Inmates complete the assessments for Anger/Hostility, Antisocial Peers, Cognitions, and Family/Parenting on TRULINCS. The Health Services department is responsible for the assessment of the Medical and Recreation/Leisure/Fitness needs as part of the intake process. Education staff similarly assess Dyslexia, Education, and Work needs as part of the intake process. Unit Management assesses Substance Use needs during the initial intake and the Finance/Poverty need at the first team meeting. Psychology Services is responsible for the remaining needs areas: Trauma and Mental Health, which are also administered as part of the intake process. Because the self-reporting measures lower the assessment response rate, the BOP is implementing a variety of creative strategies to increase participation, including exploring the use of tablet computers as part of the intake process to increase participation in the self-reporting measures.
- Once needs are assessed and entered into BOP systems, Unit Management staff, in consultation with other departments and the inmate, make targeted program recommendations for an inmate's identified needs areas. The needs assessment process is standardized across inmates and designed to be dynamic and flexible to incorporate individualized planning. To further promote standardization, the BOP has automated the SPARC-13 needs assessment system to ensure that recommended programming is tied to the assessed needs. Because such programs are identified to address inmate needs, in accordance with the FSA, inmates are reassessed a minimum of every 180 calendar days by Unit Management during the routine program review (team meeting) process to account for any change of circumstances, e.g., receipt of an incident report or completion of an EBRR program or PA. Unit Management relays reassessment results to inmates during the team meeting; results of the reassessment are cataloged in the BOP's systems, including the inmates' electronic central file.
- Without an accurate needs assessment process, how does that impact an individual's ability to be successful while incarcerated and prepared for successful reentry to the community?

**Response:** Accurate needs assessment is critical to reduction of recidivism and reentry success. BOP's system assesses key needs, and the needs are aligned with specific interventions to address them.

#### Earned time credits

- DOJ's new rule on FSA time credits indicates that additional First Step Act funds will be used to add to existing programs and encourage and increase inmate programming participation. How will BOP determine which existing programs to add and increase participation?

**Response:** Prior to the passage of the FSA, the BOP offered a wide range of programming to inmates. Under the FSA, the BOP has greatly expanded both the agency's capacity to offer



programs to a larger number of inmates and the variety in the types of programs offered. Along with this growth, the BOP has improved both tracking of inmate participation and program referral processes. Inmates complete their individualized needs assessment upon arrival at the institution. During meetings between the inmates and their unit team staff, specific program recommendations are made based on the results of the individualized needs assessments.

As part of FSA implementation in January 2020, the BOP assigned a unique identifier to each program. When an inmate signs up for and successfully participates in or completes a program, the staff delivering the program update and load that information into BOP systems. Information is automated to be shared between the BOP's primary inmate management systems. This integration helps ensure appropriate monitoring and tracking of inmate participation to better inform BOP staff where operational gaps exist and improvements can be made.

- On January 13, 2020, DOJ publicized its new rule for First Step Act (FSA) time credits. To date, has BOP applied all earned time credits for inmates that have participated in evidence-based recidivism reduction programs and productive activities? If not, when does it plan to finalize this effort? If so, because of the applied time credits, how many inmates have had a change to their release date?

**Response:** As of May 3, 2022, the Bureau has not applied time credits for all offenders who have participated in EBRR programs and/or PAs. However, the Bureau developed an implementation plan for the retroactive application of time credits which included the prioritization of those offenders who are most likely able to benefit from the credit application immediately or in the immediate future. These prioritization criteria include:

- offenders not precluded from earning due to a conviction offense
- offenders with low or minimum Recidivism Risk scores
- offenders with no detainers
- offenders who are within two years of the projected release date (prior to application of the Time Credits).

To date, 8,600 inmates have had FSA Time Credits applied and have been released from custody. While not yet at their release date, an additional 5,511 inmates have had FSA Time Credits applied and have received a change in their projected release date.

The Bureau is in the final stages of development and testing of a fully automated system for calculating and awarding credit. Once functional, remaining inmates, regardless of their ability to apply credit to pre-release placement or early release to their Supervised Release Term, will have their earned FSA Time Credits calculated and linked to their individual records.

- According to the DOJ's new rule on First Step Act (FSA) time credits, eligible inmates will be afforded a presumption of participation for the period between December 21, 2018, and January 14, 2020, and be awarded Time Credits accordingly. How will BOP implement this? Does BOP have data on which inmates completed programming and activities during this time period?

**Response:** See response above. BOP has some, but not complete, data on program participation before January 2020; in addition, there were no EBRR or PA indicators

before January 2020.

- According to the new rule on FSA time credits, when a recommended program or activity is unavailable, or when it is at full enrollment and cannot accept more inmates, this circumstance will not affect the inmate's ability to earn time credits. Please explain how BOP will implement and apply FSA time credits in these circumstances.

**Response:** The auto-calculation application places offenders in earning status while on a wait list or in active participation. The offender's earning status reverts to non-earning if the offender declines to participate in an EBRR or PA which was recommended based on an identified need area.

- With the new rule on FSA time credits in place, how many inmates has BOP determined to be eligible for pre-release custody and supervised released immediately? Have these individuals been released accordingly?

**Response:** As of August 10, 2022, the BOP has released 8,966 inmates via the FSA. Additionally, another 5,511 inmates have had their release dates advanced by the FSA and are either pending release or pending transfer to pre-release custody. There are also 4,279 inmates currently in pre-release custody and pending release under the FSA. This number only reflects inmates reviewed under the interim procedures which included prioritizing inmates who would immediately benefit from the retroactive application of credit in terms of release or pre-release placement as such. Only inmates within 24 months of the statutory release date were reviewed.

- For individuals that BOP determined are available for immediate transfer to pre-release custody or supervised released under the new time credit rules, what actions is BOP taking to ensure they are ready for reentry?

**Response:** Inmates eligible for early release to their supervised release term have been identified and released.

- Relatedly, please describe how, if at all, BOP has been coordinating with Probation Services in anticipation of this increased workload for supervised release cases.

**Response:** The BOP has been working closely with the AOUSC, specifically with the Probation Administrator and the Division Chief in the Probation and Pretrial Services Office. The BOP continues to share rosters with the AOUSC of upcoming releases and BOP field staff are in frequent, regular communication with the local Chief USPOs in their district.

- We want to acknowledge and thank DOJ and BOP for the recent opinion and rule issued early this year clarifying the calculation of earned time credits under the First Step Act. What are you doing to make the necessary programming available to more individuals in order for them to benefit from the First Step Act earned time credits?

**Response:** The Bureau has made a great deal of progress in implementing provisions of the First Step Act. As mentioned previously, the Bureau has undertaken an effort to increase program delivery staff and new programs, thereby increasing its program capacity. The Bureau has increased the number of programs offered from 70 EBRR and PA programs in January 2020 to 87 EBRR and PA programs as of August 2022. In addition to the expansion of the approved list of FSA programming, the Bureau has built technology infrastructure to track programming and results of risk assessments, recalculated inmate sentences to account for the new Good Conduct Time and Earned Time Credit regulations, automated the PATTERN risk instrument, developed an enhanced and automated needs assessment process, developed updated training regarding pregnant and post-partum offenders, added pilot animal training and youth programs, implemented dyslexia evaluation and intervention, developed a new volunteer information and recruitment portal, and engaged external partners and consultants to conduct program evaluations. Comprehensive information on the Bureau's FSA implementation activities can be found in the *2022 First Step Act Annual Report* published in April.

- Despite the challenges of COVID-19 and staffing issues, it is still important for individuals to have access to programming in order to support rehabilitation as well as allow individuals to earn credits towards early release, what are you doing to expand programming and ensure those needs are met?

**Response:** BOP has worked throughout the course of COVID-19 to ensure the safety of staff and inmates while supporting the programming needs of inmates. To promote programming, staff were encouraged to continue programming while limiting interactions between housing units, so as to reduce opportunities for the spread of disease. Staff were also encouraged to limit group size, support social distancing, hold groups outside when possible, and be diligent in the requirement of mask wearing. Many programs were able to continue with these precautions in place.

The Bureau has provided guidance to staff and inmates about the new FSA Time Credit rule to increase awareness and understanding to ensure inmates maximize their opportunity of earning time credits.

- The Bureau has also increased the number of programs offered from 70 EBRR and PA programs in January 2020 to 87 EBRR and PA programs as of August 2022. At the beginning of the pandemic, BOP had the authority to release inmates to home confinement under Compassionate Release. Then, Congress expanded the authority to release inmates to home confinement under the CARES Act. When inmates with underlying conditions were not released, the courts were flooded with motions for compassionate release filed by inmates. Now BOP is faced with calculating time credits under the First Step Act, some of which will be calculated retroactively. What is BOP doing to ensure that inmates do not flood the courts this time with Habeas Corpus petitions to determine if they have received the appropriate First Step Act credit or calculation?

**Response:** Compassionate Release poses distinct issues from BOP's authority to transfer an inmate to home confinement. The BOP does not possess the authority to independently release someone from its custody. The decision to grant compassionate release is made by the court, not the BOP. Pursuant to amendments made to 18 U.S.C. § 3582(c)(1)(A) by the FSA, an inmate may file a motion with the sentencing court, after the inmate has fully exhausted all administrative rights to appeal a failure of the BOP to bring such a motion on the inmate's behalf or the lapse of 30 days from the date of receipt of such a request by the warden of the inmate's institution, whichever is earlier.

The Bureau has been systematically tracking inmate participation in programming, including participation that occurred prior to the finalization of the rule regarding FSA Time Credits published on January 19, 2022. In accordance with this rule, an eligible inmate begins to earn FTC as soon as they arrive at their designated BOP institution for service of their sentence, receive a PATTERN risk assessment score, and complete all needs assessments. As long as inmates are "successfully participating" in programming as defined by the regulation, they will continue to earn FTC; additionally, time credits are being applied retroactively back to December 21, 2018. In applying time credits retroactively, BOP has prioritized releases based on projected release dates, beginning with inmates in community confinement (RRC or Home Confinement).

- The Office of the Inspector General issued a report in November of 2021 concluding that staffing shortages and a failure to conduct formal policy negotiations with unions had significantly disrupted BOP's implementation of the First Step Act. This report was issued just two months before the BOP published the final Earned Time Credit Rule. What has the BOP done since the IG report to ensure that staffing issues will not impede accumulation and awarding of Earned Time Credits under the First Step Act?

**Response:** The Department and the BOP are committed to fully staffing BOP institutions. Appropriate staffing, along with training, is key to full implementation of the FSA. In the last two years, the BOP has made significant progress in hiring for correctional services positions as well as for positions designed to prioritize FSA program delivery, including professionals in education, physical and mental health, and religious services. For example, as of early November 2021, the BOP had filled dedicated positions in several fields that directly support FSA implementation, including appointing Mental Health Treatment Coordinators. In the last calendar year, the BOP has hired over 3,800 staff in positions across the agency. In 2021, the BOP's hiring initiative resulted in over 2,000 new staff. The BOP continues to seek to fill vacant positions. In addition, the agency has expanded utilization of individual and group retention incentives, particularly for those locations experiencing the greatest staffing shortages or highest turnover rates. In May 2022 the Bureau received approval from the Office of Personnel Management to offer a 25% retention incentive for all Correctional Officers at six of our most chronically understaffed locations. Recently, the expanded the amount of incentives, as well as the eligibility group. BOP also offers a group retention for all staff agency-wide who were eligible to retire by December 2022. Further, there are an additional 40 Bureau facilities that have been approved for various retention incentives; many target specific hard-to fill professions, and others broadly cover all staff at the location. BOP continues to fill positions that support FSA implementation. Please see the 2022 First Step Act Annual Report for more information at <https://www.bop.gov/inmates/fsa/docs/First-Step-Act-Annual-Report-April-2022.pdf>.

- Thousands of people are eligible to sign up for the Evidence Based Recidivism Reducing programs and Productive Activities. Doing so will earn them credits towards an early release. When will BOP be able to offer everyone who is eligible the programs and activities they need to meet the requirements under the First Step Act and apply credits as provided for in the rule?

**Response:** As of August 10, 2022, the BOP has released 8,966 inmates via the FSA. Additionally, another 5,511 inmates have had their release dates advanced by the FSA and are either pending release or pending transfer to pre-release custody. There are also 4,279 inmates currently in pre-release custody and pending release under the FSA. (On average, the BOP releases approx. 40,000 inmates a year.)

BOP has historically been required by statute to offer some EBRR programs to all inmates and currently has the capacity to do so. For example, the Residential Drug Abuse Program (RDAP) is currently offered to all inmates who are eligible and volunteer. With regard to newer EBRRs and PAs, BOP is diligently working to expand capacity through the addition of positions and, where appropriate, the use of volunteers.

- Individuals in community confinement are eligible to earn up to 15 days credit for every 30-day period in which they participate in programming and productive activities. What is BOP doing to ensure that people in community confinement are afforded opportunities to earn and apply earned time credits under the First Step Act?

**Response:** BOP will prioritize releases based on projected release dates, beginning with inmates in community confinement (RRC or Home Confinement).

Per the FSA (18 U.S.C. 3624(g)), earned time credits may be applied towards pre-release confinement, or at the Director's discretion, towards supervised release. As noted in the Supplemental Information section of the published FSA Earned Time Credit rule:

“The practical effect of allowing eligible inmates to keep earning Time Credits while in pre-release custody (RRCs) will likely be limited, however, for several reasons. First, the Bureau intends to transfer eligible inmates who satisfy the criteria in 3624(g) to supervised release to the extent practicable, rather than to pre-release custody. . . Second, as a practical matter, programming and services for inmates in RRCs or home confinement will often be provided off-site or by a third-party provider, which makes tracking successful participation more difficult. For example, community-based substance use treatment programs referred to by the Senators in their comments are not provided on-site at RRCs, but rather on an outpatient basis. The Bureau uses a comprehensive inmate information tracking system that is only accessible to Bureau staff. . . Third, unlike a prison facility, which is a self-contained unit under the Bureau's control and supervision that can provide Bureau-authorized, comparable, and approved programming to all housed inmates, the breadth of programming available at or through different RRCs, or in the communities where an inmate may be placed in home confinement, could vary significantly and may not correspond directly to recommendations based on inmates' most recent risk and needs assessments. Given these variables, the Bureau will work on a case-by-case basis with eligible inmates in RRCs to

identify appropriate available programming for them to earn FSA Time Credits, and will determine how to best track participation as part of the Bureau's commitment to ensure the maximum number of FSA Time Credits may be awarded to the maximum number of eligible inmates. The Bureau will issue guidance on this topic to ensure consistency in implementation.” FSA Time Credits, 87 Fed. Reg. 2712 (Jan. 19, 2022).

### **Programming**

- What has BOP done, or is it planning to do, to determine which programs are most effective in reducing recidivism?

**Response:** In order to develop an evidence base for the Bureau’s programs, First Step Act (FSA) funds are being used to begin external evaluations of Evidence-Based Recidivism Reduction (EBRR) programs and Productive Activities (PA). The Bureau has more than 80 EBRR programs and PAs. Some of these programs have long-established research to show their effectiveness at reducing recidivism. For example, inmates who participate in educational programming are 43% less likely to recidivate. The Bureau worked with MITRE Corp. to develop an independent review process for programs, which was published in July 2020. Programs accepted after review were placed into the Bureau’s program guide. The Bureau continues working to fund partnerships with external research organizations to further evaluate the value and impact programs have on the lives of inmates and their communities.

- GAO recommended that BOP develop key planning elements for expanding the MAT program and to develop and implement a plan to manage its portfolio of drug treatment programs. What has BOP done to respond to these recommendations?

**Response:** The Bureau completed a comprehensive and collaborative review of all applicable divisions that would require additional personnel to support the expansion of Medication Assisted Treatment (MAT), through base resources dedicated to First Step Act (FSA) initiatives. Divisions worked extensively to determine personnel requirements for the medical, psychological, behavioral, and correctional needs of the BOP to deliver MAT services. BOP did include these requirements in Congressional Budget Submissions (CBS) for FY 2020, FY 2021, and FY 2022. These constitute BOP and DOJ’s final determinations regarding resource requirements for the FSA and MAT for those fiscal years.

The CBS also document the basis for BOP’s increased resource requirements. BOP continues to review available data to ensure requested resources continue to be justified. CBS FY 2022 further explains BOP’s continued efforts at expanding the MAT program: “BOP is developing and implementing treatment protocols designed specifically for MAT program participants, and 30 MAT Psychologist positions have been allocated to the field to ensure the full range of assessment, diagnostic, and treatment services are available.” In addition to budget development documents, BOP is also developing proposed Staffing Considerations for MAT personnel. Staffing Considerations will be provided once they have been approved and finalized by necessary internal BOP stakeholders.

Consistent with GAO recommendations, BOP developed a Drug Education and Treatment Programs Management Plan to ensure necessary resources are secured and appropriately allocated

in a manner consistent with the agency's strategic plan. A related program management plan ensures drug treatment program goals, including the Medication-Assisted Treatment Program, are achieved and program benefits are optimally delivered.

The Programs Management Plan includes the following critical domains: Program Strategy Alignment, Program Benefits Management, Program Stakeholder Engagement, Program Governance, and Program Fidelity. The plan identifies required resources necessary to achieve goals and program benefits under each domain, as well as elements integrated into policies and protocols that ensure effective management of the Bureau's drug education and treatment programs.

- The Bureau of Justice Statistics reported in its 2021 report on Federal Prisoner Statistics Collected Under the First Step Act that only 418 federal inmates received medication-assisted treatment (MAT). Why does this number appear to be so low when we know that at least 25,000 inmates participate in a program of substance use disorder treatment each year (Nonresidential, Residential, or Challenge) and over 41,000 participated in some form of drug treatment or education in BOP in 2020 (according to your testimony before the Senate Judiciary Committee in April of 2021)?

**Response:** Medication-Assisted Treatment (MAT) is a specialized intervention specifically for individuals with opioid use disorders (OUD). Therefore, it will always serve a subset of individuals with substance use disorders. BOP is steadily building capacity for MAT both within secure facilities and those placed in RRCs or on home confinement. For example, BOP has more than doubled the percentage of community offenders who receive MAT services over the last calendar year, from 2.5% of community treatment participants in March 2021 to 5.4% in March 2022.

- What is the BOP doing to expand the number of inmates able to receive this treatment?

**Response:** All inmates in the BOP who are in need of treatment for OUD are offered the treatment through both institution and community resources. The BOP currently screens all inmates who enter the system for eligibility for MAT. If deemed eligible they are followed up by a provider to determine if treatment is appropriate. The BOP is also working with the DEA, SAMHSA, accrediting organizations, DOJ, and ONDCP to stand up a hub and spoke system of Opioid Treatment facilities within the BOP. This hub and spoke system will greatly expand BOP internal capacity and decrease reliance on limited community resources.

Engagement of federal inmates in Medication-Assisted Treatment (MAT) has steadily increased, and as of March 22, 2022, 789 Bureau inmates are actively participating in MAT services. The BOP continues to allocate resources to this treatment program, providing training opportunities for staff, educating inmates regarding the benefits of such services, recruiting qualified prospective clinicians, and strengthening community partnerships. Since May 2019, a total of 1,616 inmates have participated in MAT, and at this time, an additional 1,156 inmates have demonstrated an interest in MAT and have completed the diagnostic interview in preparation for medical screening. Broader access to treatment has been supported by a reliance on community treatment providers as the Bureau's proposed "hub and spoke" model continues to navigate the DEA/SAMHSA's certification process. Other necessary infrastructure, including the drafting of

policy and clinical guidelines, has been developed and it is expected that MAT enrollment will grow substantially over the next few years as Bureau-operated Opioid Treatment Programs become operational.

- The pandemic has significantly reduced program delivery for approved programming. However, in April of last year, you told the Senate Judiciary Committee that 49,000 people were enrolled in Evidenced-Based Recidivism Reducing (EBRP) programs and Productive Activities (PA) and that BOP had over 80 Evidenced-Based Recidivism Reducing programs and Productive Activity programs. How many inmates are currently enrolled in EBRPs? How many inmates are currently enrolled in Productive Activities?

**Response:** As of August 31, 2022, there were more than 87,000 individuals enrolled in EBRR programs and PAs.

- How many EBRPs are available and how many Productive Activities are now available?

**Response:**

- As of August 31, 2022, there are 42 EBRRs and 50 Productive Activities with more than 87,000 individuals currently enrolled.
- We have 87 FSA programs and are working to build capacity by hiring more program delivery staff (professionals such as chaplains, teachers, and psychologists).
- We are developing and implementing programs such as Life Skills Laboratories to teach basic skills to inmates with the greatest needs; providing STEM career technical education for female offenders; and modernizing the inmate education platform to include the use of tablets to make more programs accessible.
- At some point BOP was overseeing a process to review externally submitted programs for inclusion in the EBRPs and PAs. BOP hired MITRE to assess whether the suggested programs satisfy the First Step Act requirements and BOP will determine whether the programs should be added to the approved list. What is the status of this endeavor? Have external programs been submitted and vetted? If so, how many have been added? Can you provide examples of programs that were added?

**Response:** Because the BOP has a robust menu of strong programs covering all need areas, the best outcomes result from adding capacity and fidelity to current programs, and continually exploring new programs. To ensure fair consideration free from personal or political bias, the agency contracted with the MITRE Corp. to conduct independent evaluations of any programs submitted. The primary focus of these evaluations is on evidentiary support of the programs, in addition to other factors such as cost, redundancy with respect to current offerings, and application to assessed inmate needs. BOP worked with MITRE to develop a review process, which was published in July



2020. Programs that were accepted after review were placed into BOP's program guide.

Eleven externally proposed programs have been submitted. The reviews are ongoing, and not all programs have yet been evaluated. Four externally proposed programs have been approved as an EBRR or PA. The externally proposed programs which have been approved are: 7 Habits on the Inside, Resilience Support, Money Smart for Adults, and Aleph Institute. The Bureau continues our efforts to partner with outside providers for programming.

- Has BOP expanded the availability of Productive Activity to compensate for the lack of Evidence-based Recidivism Reducing programming?

**Response:** The BOP provides over 80 different EBRR programs and Productive Activities to assist inmates in addressing individualized needs. The BOP monitors program participation and although program offerings have been limited due to the institutional COVID-19 protocols, program participation is increasing. In addition to the standardized EBRR programs and Productive Activities being offered, institutions also provide inmates the opportunity to participate in unstructured activities such as fitness classes, hobby crafts, and maintaining family connections. While the addition of approved programs is always welcomed, the focus remains on adding capacity and fidelity to current PA programs.

- During the Senate Judiciary hearing in April, you said that COVID had caused you to evaluate the delivery of programming and that BOP was upgrading virtual programming. BOP, like this country, is still in the midst of the pandemic, which is made painfully obviously when reviewing BOP's daily COVID statistics. BOP currently has 98 facilities operating at Level 3 of Modified Operational levels – meaning Intense Modifications. Is any programming being offered to BOP inmates virtually at this time?

**Response:** To assist with the pandemic and any future public health emergencies, institutions follow the COVID-19 Modified Operations Plan and Matrix. This matrix determines the operational level and mitigating procedures institutions need to follow to prevent the risk and spread of illness. To ensure the delivery of programs in a safe manner during these types of situations, the Bureau has learned to modify class size to support social distancing as well as utilizing other program delivery methods such as classes being held outdoors. Additionally, the Bureau solicited for a correctional tablet solution to enable inmates to supplement classroom-based learning with program and education curricula available on a tablet device. In this way, inmates will be able to continue program and treatment instruction even if institution operations are disrupted. As well, the BOP frequently uses residential unit-based programs, which allows inmates to continue program treatment together by being placed into cohorts, including living and programming in a residential housing unit. This allows programming to continue even in the event that a unit may need to be isolated.

### **Employee Abuse and Misconduct**

- An Associated Press investigation report detailed an astonishing amount of abuse and criminal misconduct committed by BOP staff. The investigation found that two-thirds of

the criminal cases against Justice Department personnel in recent years have involved federal prison workers, who account for less than one-third of the department's overall workforce. Of the 41 arrests in 2021, 28 were of BOP employees or contractors. For context, the FBI had just five, the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives each had two. One-fifth of the BOP cases tracked by the AP involved crimes of a sexual nature. All sexual activity between a prison worker and an inmate is illegal. In the most egregious cases, inmates say they were coerced through fear, intimidation and threats of violence. What is BOP leadership doing to address the abuse of incarcerated individuals by BOP staff?

**Response:** The Bureau has zero tolerance for any sexual misconduct or any other kind of abuse. Such conduct is reprehensible and completely counter to our core principles.

Bureau policy requires every allegation of staff sexual misconduct to be referred to our Office of Internal Affairs (OIA), and our OIA refers every case to the Office of Inspector General (OIG) for their review. Between OIA, OIG, and the FBI, if criminal misconduct is discovered, they are referred to the appropriate prosecuting authorities.

The BOP is working to more aggressively correct problems and address misconduct, including by instituting new leadership at BOP facilities, as appropriate. We also support criminal investigations and prosecutions that hold staff accountable for sexual misconduct with inmates.

In addition to these efforts, the Deputy Attorney General recently directed a group of senior officials, chaired by the Principal Associate Deputy Attorney General, to work with BOP in reviewing the Department's approach to rooting out and preventing sexual misconduct by BOP employees. The group's work is ongoing, and the BOP is committed to implementing the reforms necessary to address this critically important issue.

- The warden of a federal women's prison in Dublin, California, was arrested in September and indicted on charges that he molested a female inmate multiple times. When questioned by AP investigators, BOP staff noted that the wardens of each institution hold significant power over whether investigations of misconduct or abuse are carried out. What is the BOP policy for investigating complaints of abuse by wardens? Are BOP staff held accountable for crimes committed against incarcerated individuals?

**Response:** Sexual misconduct is unacceptable, and the BOP is committed to taking steps to aggressively confront this problem, including—as described in more detail below—at FCI Dublin.

Bureau policy requires every allegation of staff sexual misconduct to be referred to our Office of Internal Affairs (OIA), and our OIA refers every case to the Office of Inspector General (OIG) for their review. Between OIA, OIG, and the FBI, if criminal misconduct is discovered, they are referred to the appropriate prosecuting authorities.

- Warden Garcia's alleged sexual abuse are the most recent allegations that have come to light. Other FCI Dublin staff have also recently been charged with abusing prisoners. A warden has authority over an entire correctional facility. The warden sets the tone for expected conduct of

employees and prisoners alike. It is a position of trust and of great responsibility. Warden Garcia allegedly committed his offences when he was an associate warden. He was promoted to Warden after, or during, the time he sexually abused women prisoners. How did BOP decide to promote Garcia to Warden?

**Response:** The BOP was not aware of any allegations of Mr. Garcia's misconduct before his promotion to Warden. As soon as BOP officials learned of the allegations, BOP worked closely with OIG to facilitate Garcia's arrest prior to his entry into the institution. The BOP appointed a new warden on February 28, 2022, who is intently focused on protecting the safety of those housed at FCI Dublin, including by rebuilding a culture of trust and communication between inmates and staff, as well as the institution and the general public.

- How was he vetted or evaluated for the position?

**Response:** The Bureau takes seriously its obligation to identify staff who have a likelihood of performing well in a correctional environment and to train that staff to perform in accordance with the law and Bureau policy throughout their careers. Bureau policy provides guidance on addressing allegations of staff members failing to meet conduct standards. The Bureau's application and hiring processes are described on its public website (application process *available at* [https://www.bop.gov/jobs/application\\_process.jsp](https://www.bop.gov/jobs/application_process.jsp); hiring process *available at* [https://www.bop.gov/jobs/hiring\\_process.jsp](https://www.bop.gov/jobs/hiring_process.jsp)).

- If the allegations are true, how did BOP miss the fact that Garcia was abusing women?

**Response:** As soon as the allegations surrounding this employee were reported, and consistently since that time, the BOP has acted in support of this investigation, and dedicated any available resource in support of it. In order to improve its processes with respect to employee misconduct, the Bureau has launched a multidisciplinary Task Force to conduct an assessment, solicit feedback from staff and inmates, and serve in a supportive role to the institution's leadership, staff, and inmate population. This Task Force has been deployed to FCI Dublin and conducted a review to assess its operations; improve coordination among staff and communication between inmates and staff; identify root causes of operational disruptions; promote, where necessary, changes in existing processes to facilitate the realization of the objectives; and enhance public confidence in the operation of the facility.

- Other FCI Dublin staff have faced recent allegations of sexual abuse. How is it possible that so many FCI Dublin staff have faced allegations of sexual abuse?

**Response:** As allegations are reported, affirmative steps are taken to address the medical and psychological needs of victims. Separately, these matters are immediately referred to the Office of the Inspector General to allow for criminal investigation and prosecution of any perpetrator. In order to improve its processes with respect to employee misconduct, the Bureau has launched a multidisciplinary Task Force to conduct an assessment, solicit feedback from staff and inmates, and serve in a supportive role to the institution's leadership, staff, and inmate population. This Task Force has been deployed to FCI Dublin and conducted a review to assess its operations; improve coordination among staff and communication between inmates and staff; identify root causes of

operational disruptions; promote, where necessary, changes in existing processes to facilitate the realization of the objectives; and enhance public confidence in the operation of the facility.

- How have BOP's systems failed to keep women prisoners safe?

**Response:** As allegations are reported, affirmative steps are taken to address the medical and psychological needs of victims. Separately, these matters are immediately referred to the Office of the Inspector General to allow for criminal investigation and prosecution of any perpetrator. In order to improve its processes with respect to employee misconduct, the Bureau has launched a multidisciplinary Task Force to conduct an assessment, solicit feedback from staff and inmates, and serve in a supportive role to the institution's leadership, staff, and inmate population. This Task Force has been deployed to FCI Dublin and conducted a review to assess its operations; improve coordination among staff and communication between inmates and staff; identify root causes of operational disruptions; promote, where necessary, changes in existing processes to facilitate the realization of the objectives; and enhance public confidence in the operation of the facility.

- Warden Garcia was charged with PREA implementation at FCI Dublin, yet was himself allegedly sexually abusing women. This issue goes beyond "PREA implementation." You have staff at the highest levels committing crimes against the women they are charged with keeping safe. How are you going to address the fact that your employees are committing crimes on the job?

**Response:** Bureau of Prisons staff are committed to complying with all PREA standards. The Bureau aims to eliminate all sexually abusive behaviors in our facilities, and when these behaviors do occur, we ensure that victims receive the appropriate care and treatment. The Director has appointed new leadership at FCI Dublin who is focused intently on protecting the safety of those housed at FCI Dublin, including by rebuilding a culture of trust and communication between inmates and staff, as well as the institution. The Bureau has referred the allegations of misconduct and retaliation to the Department's Office of the Inspector General (OIG) for investigation and has agreed to cooperate fully in any investigation. The Bureau has also launched a multidisciplinary Task Force to conduct an assessment, solicit feedback from staff and inmates, and serve in a supportive role to the institution's leadership, staff, and inmate population.

- Aside from any prosecutions that may occur, what are you doing to identify systemic failures that allowed abuses to flourish? How will you fix those systems?

**Response:** We believe that holding staff accountable to the fullest extent of the law will serve as a deterrent against future misbehavior by staff. The Bureau is taking a number of steps to address these serious allegations described in the responses above.

In addition to these efforts, and as described above, the Deputy Attorney General recently directed a group of senior officials, chaired by the Principal Associate Deputy Attorney General, to work with BOP in reviewing the Department's approach to rooting out and preventing sexual misconduct by BOP employees. The group's work is ongoing, and the BOP is committed to implementing the reforms necessary to address this critically important issue.

## Staffing and Management Issues

- In your written testimony before the Senate Judiciary Committee last April, you noted that a key priority area that you are focused on is your work with the GAO related to their audits of agency operations. You said you established a cross-agency task force to work towards resolving all open GAO recommendations. What have been the results of that work to this point?

**Response:** Of the 16 recommendations from GAO's High Risk List, BOP's task force has facilitated the closure of 12 recommendations. BOP's task force has facilitated updated responses on all remaining recommendations and is also actively engaged with new GAO recommendations as they are issued.

- How have you addressed GAO's recommendations?

**Response:** BOP has taken a proactive approach toward resolving open recommendations at GAO by engaging in frequent communications with GAO regarding the status of its open audit recommendations, through quarterly conference calls, and by overhauling its external auditing branch to take a more active role in the development and responses for audit recommendations. As noted above, the task force's work has resulted in the closure of 12 of the recommendations initially referenced by GAO in its High Risk List. GAO publishes its closure notifications on its website at [www.gao.gov](http://www.gao.gov). Additionally, regarding GAO's Audit concerning BOP's COVID-19 response and capture and incorporation of lessons learned published in July of 2021, BOP has already successfully closed two of the three issued recommendations. The third recommendation has been partially addressed.

- You also stated in that prior testimony that you are engaging external organizations to assist BOP in assessing your operations across a range of areas to further your goals. Have you engaged external organizations at this point?

**Response:** We have worked with external entities to increase the recruitment and retention of staff, as well as to identify inefficiencies and produce solutions for staffing challenges.

- What has been the result of those engagements?

**Response:** Engagement with external organizations has resulted in a consistent rebranding of the Bureau of Prisons (BOP) as a potential employer; and the enhanced recruitment presence of the BOP in online job forums and platforms. We are actively working to develop a staffing tool which we expect will better identify our staffing needs at each institution.

- Would you say you have made progress on any of your organizational management goals? If so, please describe the progress you have made and how it was achieved.

**Response:** The BOP has recognized the need to assess the organizational structure across Central Office and the Regional Offices. We have engaged a contractor, Deloitte, to support this effort by conducting an organizational assessment of our current organizational structure to uncover

redundancies, inefficiencies, and barriers to delivering mission outcomes of providing support to field locations. Additionally, they are tasked with developing recommendations for an organizational structure that will help strengthen operations so that we can be more effective, supportive, and mission focused. To date, the contractor has visited 5 of 6 Regional Offices and has conducted interviews with all levels of management and staff. Moving forward, the contractor will complete site visits and continue analyzing data from Regional Office site visits. The existing period of performance for this contract expires June 30, 2023. Recommendations were provided and implementation is ongoing.

- In what ways are staffing challenges preventing effective implementation of the First Step Act? What are you doing to address staffing shortages?

**Response:** The BOP's greatest resource in delivering programs is its staff and adding staff has been the primary factor in increasing program capacity. BOP is one of the largest civilian employers of doctoral level psychologists in the United States and also employs chaplains and teachers among its complement of service-delivery professionals. These positions have long provided treatment, training, and self-improvement services across BOP facilities. Since January 2021, the BOP allotted 109 new positions in program delivery disciplines to expand the capacity of its more than 80 Evidence-based Recidivism Reduction (EBRR) programs and PAs. In addition to the aforementioned professions, the newly-added positions include the Special Populations Coordinator, who delivers gender-responsive programs, and a new vocational counselor position, which is currently pending position classification. Every new position adds capacity to the BOP's FSA programs.

Through recent hiring initiatives to focus on hiring external applicants into the agency at entry level positions, the Bureau has hired or given conditional offers of employment to more than 2,000 individuals. While Congress did not direct specific staffing levels for individual institutions, the goal is to fill 100% of the Bureau's funded positions. We are also assessing our staffing guidelines and bed space to optimize efficient and effective operations at our facilities across the agency. Our review will modernize our staffing plans to maximize use of personnel with flexibility based on security level, number of staff, physical layout of facilities, and care level. We are maximizing the use of incentives, as appropriate, to recruit and more importantly, retain our staff.

- GAO's July 2021 report on BOP's COVID-19 response found issues related to the clarity of BOP's COVID-19 guidance given to staff as well as shortcomings in BOP's approach to capturing, sharing, and ensuring facilities incorporate lessons learned and best practices. What is BOP doing to address the recommendations GAO made on these issues? For example, we understand that BOP has deployed a staff survey that includes questions on BOP's COVID-19 guidance. How does BOP plan to analyze and address the staff feedback in this regard?

**Response:** GAO has closed two of the three recommendations as implemented. The remaining recommendation concerns the staff survey and has been partially addressed. BOP's Health Services Division recently received the results of the survey and is currently analyzing the results.

- GAO issued a report in February 2021 in which it made 5 recommendations to BOP, in part, to address the Bureau's staffing challenges. In response, the Bureau hired a contractor this

past summer to take the actions necessary to help implement these recommendations. Now that the contractor's work has been underway for 6 months, what can you tell us about progress? More importantly, what is the Bureau doing to address staffing challenges in the interim? With a 2 year contract in place, what, if anything, can we expect to see change before the contractor is expected to complete its work in 2023?

**Response:** Work is ongoing with the contractor on the Automated Staffing Tool, with an initial version scheduled for completion in June 2023. An analysis was completed on the risks of overtime and augmentation, as well as the agency's use of incentives. The BOP is seeking ways to enhance our monitoring of overtime at the regional and national levels to proactively plan, budget, and allocate resources.

- Related, an announcement just posted that the National Institute of Corrections— an organization within the Bureau's—is seeking participation in a new NIC sponsored training from state and local correctional facilities interested in learning more about how to conduct analyses of their staffing levels. Given the challenges that BOP itself has faced with staffing and the GAO recommendation that BOP conduct related staffing analyses, why isn't BOP coordinating with NIC to leverage its knowledge in this area, and instead dedicating resources to contract for an independent staffing evaluation?

**Response:**

- The Bureau has determined that using external experts will provide the most valuable and productive information. Therefore, the BOP has contracted with Deloitte to provide a staffing analysis.
- The Bureau launched a successful social media recruitment campaign aimed at rebranding BOP as a potential employer, with a targeted focus on correctional officers and nurses. This included video and photo advertising on three social media platforms (Indeed, Facebook, and LinkedIn). Approximately 30 video clips were filmed and produced for a social media campaign. Additionally, recruitment incentives for hard-to-fill institutions and for hard-to-fill occupations are being offered. Institutions are participating in regularly held recruitment events throughout the country.
- Due to constant staff movement (promotions, reassignments, retirements, and transfer-out actions), the Bureau can neither predict nor forecast a specific date when all, or nearly all, of the vacant positions will be filled. Recruitment efforts to fill vacant positions continue. Through recent recruitment initiatives, the Bureau has hired or given conditional offers of employment to more than 1,900 individuals.
- The Department and the BOP are committed to fully staffing BOP institutions. Appropriate staffing, along with training, is key to full implementation of the FSA.

- While you said in your written testimony in April before the Senate Judiciary Committee that BOP issued guidance on COVID-19 to all Clinical Directors and relevant Health Services staff six weeks ahead of the emergency declaration, GAO reported that BOP did not effectively communicate its COVID-19 protocol with its employees and, as a result, staff failed to understand and effectively implement the protocols. BOP concurred with GAO's recommendations: to evaluate methods of communicating COVID-19 guidance to staff, to develop or modify an approach to capture and share best practices and lessons learned based on staff feedback; and to develop an approach to ensure facilities apply these practices as appropriate so that staff can understand and effectively implement protocols for COVID-19 and any future public health emergency. What has BOP done to implement these recommendations?

**Response:** BOP has successfully implemented, and GAO has closed, two of the three recommendations and BOP is actively engaged in implementing the final recommendation as described above. GAO publishes its closure notifications on its website at [www.gao.gov](http://www.gao.gov).

In the Recommendations, GAO found that the Bureau had processes, such as teleconferences among officials and facility inspections, to identify best practices and lessons learned from its COVID-19 response, but did not capture or share some of this information Bureau-wide. They recommended BOP capture and share best practices and lessons learned for responding to COVID-19 and future public health emergencies as discussed among BOP officials at their regular teleconferences and develop and implement an approach for ensuring its facilities are applying, as appropriate, best practices and lessons learned.

In response, BOP officials have developed and implemented two approaches, in addition to maintaining use of teleconferences that aim to capture and help share this information. In particular, BOP issued a memo in December 2021 outlining one specific new process for this purpose. The memo describes an email account where facility staff can send procedures or protocols believed to be effective in responding to the pandemic, not already outlined in agency policy or guidance. As submissions are received, BOP officials will review them to determine their viability for implementation across the agency. The officials then assess if the practice should be made mandatory across BOP, if so, policy or guidance would be updated accordingly, and update the checklist that reviewers on the COVID-19 Compliance Review Team (CCRT) use to oversee COVID-19 policy implementation at each facility in the Bureau, to ensure that the new mandatory practice is reflected. In addition, the CCRT review process itself serves as an additional way to capture lessons learned and best practices because during discussions about compliance with the checklist, reviewers often hear from facility officials about some novel approaches that they have found useful and effective. Both the use of the email account and the CCRT discussions reflect approaches that are consistent with our recommendation. While facility wardens will maintain discretion to implement new practices that are shared but that BOP has not made mandatory, the CCRT process will serve as the approach to ensure facilities are applying the new practices that are mandatory. This approach is consistent with our recommendation.” For further information, GAO publishes its closure notifications on its website at [www.gao.gov](http://www.gao.gov).



## Danbury FCI

- Senators Chris Murphy and Richard Blumenthal said they were denied full access to the Danbury Federal Correctional Institution in Connecticut while investigating recent complaints about COVID safety measures and staff shortages in recent weeks. Earlier this month, the senators and Representative Jahana Hayes sent a letter to the Bureau of Prisons requesting a review of the facility amid reports that about half of the women in a satellite facility tested positive for COVID and isolation guidelines weren't followed, according to the News-Times in Connecticut. On Wednesday, January 26, Murphy and Blumenthal arrived at the facility to evaluate the conditions of the facility but were only allowed to see one unit of the men's prison and not allowed in the women's facility, according to a series of tweets from Murphy. Is it true that BOP wouldn't let members of Congress enter two prisons to talk to incarcerated people about COVID safety? What was behind this response and how can BOP leadership ensure such future access issues won't reoccur?

**Response:** The Warden is responsible for ensuring the safety and security of the staff, inmates, and public in the operation of a Bureau facility. While the Warden and on-site executive staff work daily with local union officials, only the Warden may approve or conduct a tour of a Bureau facility, a requirement for entering a Bureau facility. In this instance, congressional officials arranged the tour through the Union and the Bureau was only made aware of the tour a few days prior. The Warden and other Bureau staff advised the congressional staff prior to the visit that due to a need to conduct a safe tour, an abbreviated tour would be conducted, which the staff agreed to and did not voice any concerns.

Among numerous stops on the tour within the prison, the members were brought to and offered a tour of a housing unit, and offered an opportunity to tour the Federal Prison Camp (FPC), however, they declined to tour the unit and opted not to tour the FPC. In order to ensure safety, a tour of the Federal Satellite Low (FSL) facility was not provided, as this location was under quarantine and medical isolation status due to the number of COVID-19 cases at that time.

In order for tours of quarantine or medical isolation areas to be safely conducted, the executive staff need sufficient time to prepare tour participants. This preparation would include completion of the CDC and OSHA-required respiratory protection program enrollment, the questionnaire, and fit testing for the N-95 respirator. Since this tour did not follow the appropriate and established planning channels and protocols, the necessary preparations were not able to be accomplished in the short time with which the Bureau was made aware of the request. Given the short notice provided to the Bureau and the congressional offices who acknowledged the abbreviated tour, the most feasible tour route was provided while being cognizant of the safety, security, and health of the staff, inmates, and tour attendees.

The Bureau supports and recommends tours of the facilities by members of congress, when appropriate arrangements are made within acceptable time frames, safety requirements, and security needs.

- In April of last year, you told the Senate Judiciary Committee that you were committed to hiring and retaining staff but that a staff shortage still existed. At the time BOP had hired 3800 staff in 2020 and 500 new staff at the time of the Senate hearing. Yet we heard reports

just last week that the Danbury Federal Correctional Institution in Connecticut is down to 80 correctional officers, which is well below the BOP's stated goal of one officer per prison unit. Shaun Boylan, a corrections officer and local union leader, told the Associated Press that the facility has roughly one officer for every three units. Just last year in April, you told the Senate Judiciary Committee that the Danbury FCI was at 102% staffing because BOP had "over-hired" correctional officers. Has Danbury lost the gains in staffing that you testified to in April? If so, what happened?

**Response:** As of February 22, 2022, FCI Danbury was staffed at 94.87 percent overall, with 95.08 percent in correctional services and 107.14 percent in health services. As of January 27, 2022, FCI Danbury was staffed at 93 percent overall, with 95 percent in correctional services and 107 percent in health services.

- How has BOP progressed in hiring new staff now?

**Response:** The Department has made BOP hiring a priority. In 2020, BOP hired more than 3,800 new staff. For calendar year 2021, BOP hired just under 3,000 new staff members. During FY21 and while operating under the FY2022 Continuing Resolution, BOP worked to maintain staffing levels. As of September 22, 2022, BOP has 36,422 funded positions and has 34,612 onboarded staff.

The majority of our hard to fill prisons are geographically situated in remote locations. These prisons are faced with recruitment barriers such as a high cost of living and; competitive compensation packages offered by other local employers public and private sector who are often in a position to offer negotiable incentives. On the other end of the spectrum, some prisons are situated in communities offering less than desirable living conditions, poorly rated school systems, or lack of accessible childcare, resulting in employees seeking residence in communities with more suitable living opportunities. We continued our ongoing efforts to increase our use of available suite of incentives at hard to fill institutions such as recruitment and relocation incentives to attract qualified staff to our workforce. We also have an ongoing branding and hiring marketing campaign, which includes the creation of a National Recruitment Office focused on targeted recruitment strategies for positions and locations to build a robust applicant pool of potential corrections professionals.

### **Independent Review:**

- During this committee's hearing on January 21<sup>st</sup>, we heard from witnesses recommending additional independent oversight and review of BOP. Based on what we have heard today regarding BOP's failure to adequately protect the health and safety of individuals incarcerated in your facilities and the management problems at every level leading to abuse and misconduct of staff, an independent oversight body could help to identify the areas of disfunction within the agency and inform strategies for improvement. Would you support independent oversight of BOP?

**Response:** The Government Accountability Office (GAO) and the Department of Justice's Office

of Inspector General (OIG) currently provide significant independent oversight of BOP's activities. These independent oversight bodies have focused recent their efforts on the above-described topics to include health care, safety and security, as well as management and staffing concerns.

- Title I of the First Step Act established an Independent Review Committee (IRC) of outside experts to advise and assist DOJ in the performance of Title I, including development and implementation of a risk and needs assessment tool. The Committee's authorization ended last month. (Sec. 107 of the First Step Act states that the IRC shall terminate 2 years after the risk and needs assessment tool is released.) The Committee issued two reports during its tenure, one in June of 2020, the First Step Act Implementation Fiscal Year 2020 90-Day Report, and a second in December of 2020, Report of the Independent Review Committee Report Pursuant to the Requirements of Title I the First Step Act. Do you see the need to extend authorization of the Independent Review Committee, considering that BOP is moving to approve a third iteration of the PATTERN Risk Assessment Tool?

**Response:** No. The IRC carried out their stated responsibilities and provided assistance to the Attorney General in establishing the initial risk and needs assessment system required under the First Step Act. The law, however, includes provisions to ensure that ongoing research and analysis of the risk and needs assessment system is carried out by expert consultants as required by 18 U.S.C. §§ 3631(b)(3) and (b)(4). The National Institute of Justice engages these expert researchers to conduct revalidation of both the risk assessment and tool (PATTERN) and the BOP's needs assessment system (SPARC-13). NIJ and BOP have also taken steps to engage outside research consultants to conduct evaluations of its programs. The IRC is no longer necessary.

- The First Step Act requires the Attorney General to issue an annual report to Congress. We last received a report in December 2020. When can we expect the next report?

**Response:** The Department released this report on April 5, 2022. It is available at <https://www.ojp.gov/first-step-act-annual-report-april-2022>.

### **National Prison Rape Elimination Act**

- The National Prison Rape Elimination Act Standards require both: access to an external emotional support entity to provide emotional support directly to inmates, and access to an external reporting entity to only receives allegations of sexual abuse and forwards the allegations to the prison, without providing any services to the reporter. Can you clarify whether people in BOP custody have hotline access for the first requirement – access to an external emotional services provider? This would be separate from your external reporting hotline.

**Response:** Bureau of Prisons staff are committed to complying with all PREA standards. The Bureau aims to eliminate all sexually abusive behaviors in our facilities, and when these behaviors

do occur, we ensure that victims receive the appropriate care and treatment.

All inmates have access to emotional support services. Every institution has qualified doctoral level psychologists on staff who are available to provide support throughout the PREA process and beyond. Additionally, the vast majority of our facilities have agreements in place with local rape crisis centers, and these staff are available to support the victims through the forensic medical examination process and during the investigatory process and/or provide counseling following the allegation. The local hospitals which conduct the examinations also typically provide support staff throughout the evidence collection process. Approximately ten percent of our facilities do not have an agreement in place with a rape crisis center. The reasons for a lack of agreement typically are that the prison is located in a rural area with limited services nearby or the rape crisis center lacks sufficient staff or resources to enter into an agreement with the facility. In these rare instances in which an agreement is not in place, the qualified psychologists at the prison provide the necessary support and follow-up counseling with the victims.

Regarding the availability of hotline support services, there is currently no national PREA hotline in place. The Office on Violence Against Women (OVW) and the Bureau of Justice Assistance (BJA) are currently working to issue a solicitation for a planning grant to develop a national service hotline. In the meantime, inmates in facilities that have an agreement with a local rape crisis center are able to receive telephonic and/or in person support services via the local rape crisis center. In facilities where no local rape crisis center is available or an agreement is not in place, inmates are supported in contacting the national sexual assault hotline operated by the Rape, Abuse & Incest National Network (RAINN). Inmates do so with the assistance of the local Psychology Services and/or Chaplaincy staff. In addition, all BOP facilities have psychologists available to provide crisis counseling.

The Bureau is sensitive to the trauma victims of sexually abusive behavior experience and ensure that these victims speak with a psychologist for crisis intervention within 24 hours of an allegation. The victims are treated with sensitivity and care by our psychologists, and they are offered support by rape crisis center staff, where those agreements are in place. Support services for all alleged victims of sexual abuse begin at the time of the allegation and continue until they are no longer needed. All support staff, whether they are Bureau or rape crisis center staff, take their role of providing emotional support seriously.

Inmates have numerous methods to report allegations:

- Staff – Inmates can directly report to any staff. Staff have been trained to complete the PREA First Responder's Notification form. Also, it's been discussed recently in the staff briefings and through email updates.
- EMAIL (TRULINCS) – There is a standard DOJ Sexual Abuse Reporting mailbox available providing the inmate with a method to report allegations of sexual abuse and harassment that goes directly to the Office of Inspector General (OIG). OIG is a component of the Department of Justice and is not a part of the Bureau of Prisons. Bureau staff do not see e-mails to this address on their monitoring. There is also an Inmate to SIS mailbox that only SIS can receive and monitor. Inmates can also e-mail any department to include the Warden and Associate Wardens.

- Phone –Signs for Crime Stoppers Report number are located in all housing units and is available for all inmates to call on their phone list. This number is preprogrammed into all inmate accounts goes through to SIS. Messages are heard weekdays during business hours in the SIS shop. This number can only be monitored by SIS and does not show up when other staff are monitoring inmate calls. There is also an OIG phone hotline (800-869-4499) to report misconduct.
- Administrative Remedy Program – Inmates can request a sensitive BP-9 which is submitted directly to the Warden or a BP-10 which is sent directly to the Regional Director.

### **Inmate Communications**

- Physical mail is a lifeline for inmates. Numerous academic and public health studies have documented the positive effects of receiving letters on inmates' mental health, which, in turn, leads to better reentry outcomes. And yet, the Bureau of Prisons has contracted with a private company, Smart Communications, to implement its MailGuard system at two federal prisons. MailGuard converts personal mail to electronic scans that are provided to inmates either as a printout, through a personal tablet, or via a public kiosk. The goal is ostensibly to increase security of the mail. In fact, similar programs have been shown to have a negligible impact on safety – certainly not enough of an impact to justify the devastating consequences to incarcerated people. Mail scanning services incentivizes corporations to profit from incarceration.
  - Which facilities use MailGuard’s services?
  - Will you provide data concerning any effect the scanning services have had on the introduction of contraband into each facility?
  - What is the total cost of using MailGuard in BOP facilities?

**Response:** In FY 2020, the BOP deployed a mail-scanning pilot program at Federal Correctional Institution (FCI) Beckley, WV and United States Penitentiary (USP) Canaan, PA. Inmate postal mail is scanned off-site and converted into an electronic mail file by the vendor, then sent to the institution for distribution to inmates. Scanned general postal mail can be easily reviewed electronically for approval or rejection by staff. Both pilots completed successfully and have ended no further funding provided. USP Canaan utilized the Mail Guard Program from March 1, 2020 to June 30, 2021. During this time frame, the SIS and Mail room staff have recovered 76 attempted introductions. It should be noted that all 76 were attempted via legal mail, Legal mail was not part of the Mail Guard program. Based on information gathered by investigative staff at USP Canaan, prior to the Mail Guard Program a full strip Suboxone was \$50, now the same strip is sold for \$800. The same prices are applied to a gram of Marijuana. It should be noted that as a result of this program 0 introductions were attempted utilizing social mail and all introductions were attempted by utilizing the legal mail system and books. Without question the transition to off-site mail has significantly reduced risks for mail room staff, while reducing contraband entering the facility via mail. One year prior to mail guard implementation USP Canaan had 93 positive UA's. While Mail guard was in place USP Canaan had 5 positive UA's. After the pilot stopped from June 2021 to the present date USP Canaan had 6 positive UA's.

Mail Scanning at FCI Beckley has made the price of drugs drastically increase also the prices for one sublingual strip prior to COVID when mail, books, magazines, and packages were not restricted or controlled would sell for as low as \$100.00. The mail program, book programs, and control of outside contact has increased the price to as high as \$4300.00 per strip in the cut down for use sizes. The current whole strip cost has hovered at \$1200.00 for the last 6 months. The current price for one 9” by 11” sheet of paper laced with some form of intoxicant general sells for \$27,000 to \$30,000 per sheet.

### **Use of Force**

- BOP staff have received training on how and when to use different types of force in correctional situations. One type of force employed by BOP staff is the use of batons to physically strike inmates. What is the BOP policy on the use of batons by correctional staff? Under what circumstances would BOP staff be authorized to use batons to physically strike inmates?

**Response:** Guidance for the use of a baton is found in the Program Statement, Correctional Services Manual. Circumstances that determine when use of force is necessary, to include deployment of batons, is outlined within the Program Statement Use of Force and Application of Restraints. Batons maybe deployed in accordance with the BOP’s Use of Force Model.

- Are BOP staff authorized to use batons to hit all BOP inmates, including inmates with mental health diagnoses and women inmates?

**Response:** BOP staff are authorized to utilize the baton in accordance with the Use of Force model and applicable Program Statements. “In certain extenuating circumstances, and after confrontation avoidance has failed or has proven to be impractical, staff may be forced to make a decision, such as whether to use force on a pregnant inmate or an aggressive inmate with open cuts, sores, or lesions. Special cases such as mentally ill, disabled, or pregnant inmates, after consultation with the Clinical Director, must be assessed carefully to determine whether the situation is grave enough to require the use of physical force.”<sup>2</sup>

- Will you provide data on how often BOP staff utilize batons as a use of force, against which inmates, and for what justification?

**Response:** From April 2021 to March 2022, there were 96 incidents of baton usage during emergency use of force for safety and security.

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<sup>2</sup> Per P5566.006 CN-1, "13. USE OF FORCE IN SPECIAL CIRCUMSTANCES.

## Private Prisons

- President Biden’s executive order calls for BOP not to renew contracts with private prisons that have reached the end of their contracted term. How many private prisons are still operating right now under contract with BOP and what are the dates of their respective contract expirations?
- Please tell us how many inmates are left in these contracted bed spaces and describe BOP’s process for determining where to confine these inmates when their incarceration in a private prison is no longer possible. Does the Bureau currently have sufficient low-security bed space to absorb these inmates when the time comes?

**Response:** There are two remaining private facilities. Northlake expires September 30, 2022 (1733 inmates remaining) and McRae expires November 30, 2022 (1591 inmates remaining).

The Bureau will ensure low security bed space is available for placements of inmates within the BOP upon contract expiration.

## Emergency Preparedness

- On February 2, 2022, GAO issued a report with 8 recommendations to BOP to address shortcomings in its oversight of disaster-related projects, its ability to learn and adapt from its past disaster experiences and take proactive steps to mitigate disaster risks. What actions does BOP have planned to address these 8 recommendations?

**Response:** BOP has already addressed and GAO has closed three recommendations from this report as fully implemented.

GAO recommended BOP implement a systematic approach for identifying and sharing the lessons that BOP institutions have learned following their disaster-related experiences. In response, BOP developed and implemented a mechanism where institutions can submit via email any proposed best practices which are then reviewed by subject matter experts within BOP for consideration for broader dissemination on BOP’s intranet. Updates to the site include any submitted practices approved by its subject matter experts and that are not in conflict with BOP policy. GAO confirmed this mechanism is consistent with its recommendation and closed the recommendation as implemented.

GAO recommended BOP take steps to routinely collect feedback from its institutions to understand how or whether the lessons shared have been implemented at other institutions, as applicable. In response, BOP developed an intranet site to broadly disseminate best practices that institutions have submitted. It encourages institutions who plan to implement best practices to report the information and also encourages them to share feedback so BOP can assess the effectiveness of these practices for potential inclusion in national policy. GAO confirmed this work is consistent with its recommendation and closed it as implemented.

GAO recommended BOP expand the scope of its annual vulnerability assessments to include disaster-related risks and plans for mitigating those risks. In response, expanded the scope of its annual vulnerability assessments by including a checklist to conduct the annual Building and Grounds inspection at each institution that scans for disaster-related risks and plans to mitigate

the risks. The checklist asks BOP staff to note whether any disaster-related risks were identified during the year and, if so, to add a comment about the risk identified and plans to mitigate the risk. GAO confirmed this work is consistent with its recommendation and closed it as implemented.

BOP is actively engaged in addressing the remaining recommendations. Specifically, it is working with multiple stakeholders to develop its definition of “disaster” for tracking maintenance and repair project information and it will conduct a cost-benefit analysis of adding additional features to its systems regarding maintenance and repair projects.

- Relatedly, many recent GAO reports have noted that BOP does not adequately ensure that lessons learned and best practices that are adopted at one facility are shared with others and applied, as appropriate. Why does this continue to be an issue for BOP and what specifically is being done to position BOP to leverage these opportunities bureau-wide?

**Response:** Although BOP has approximately 122 prisons and six regional offices located throughout the United States, it is enhancing its communication and sharing of best practices bureau-wide by utilizing technological tools on hand. For example, BOP developed a system to capture and share best practices regarding COVID-19 by vetting submissions for best practices from staff to determine viability across the agency and then making them available to staff bureau-wide on its intranet through updated guidance or policy as appropriate. This resulted in GAO closing as implemented its recent recommendations concerning the sharing, capture, and implementation of lessons learned and best practices from its July 29, 2021, report on BOP’s COVID-19 Communications. As noted above, BOP has also successfully implemented the recommendations concerning best practices from GAO’s February 2, 2022, regarding disaster-related projects.

- GAO’s February 2022 report discussed an effort that BOP has underway to make its financial and property management systems interoperable by this October. Can you provide an update on where things stand with regard to this effort and how are you incorporating some of the suggestions that GAO made for features to enhance the systems?

**Response:** BOP is working with multiple stakeholders to develop its definition of “disaster” for tracking maintenance and repair project information and it will conduct a cost-benefit analysis of adding additional features to its systems regarding maintenance and repair projects.

- The GAO’s February 2022 report highlighted a couple of recent instances where facilities had to evacuate inmates to other BOP institutions, often hundreds of miles away, after disasters caused damages that made the facilities unsafe for inmates to continue to inhabit. In other cases, inmates continue to reside in the institutions, despite having damages that allegedly put inmate and staff health and safety at risk. In light of these concerns, what is BOP doing to ensure that inmates that have been evacuated continue to be able to consult with their attorneys/attend legal hearings and connect with their family members?



**Response:** The Bureau understands the importance for inmates to maintain contact with family members especially after a recent national disaster effecting an institution. The inmates maintain their inmate telephone and TRUCLINC account and are afforded opportunities to make contact once they arrive at a new institution. Telephone minutes were significantly increased from 300 to 500 minutes on March 13, 2020, and later, on April 8, 2020, in accordance with the CARES Act, and made telephone calls free for the inmate population. The Bureau offers access to TRULINCS (email) messaging for the inmate population, as well as access to postal mail services.

- What, if any, impacts have these evacuations had on the receiving institutions? For example, do these institutions have the staffing and capacity to absorb the additional inmates, including providing for their programming needs?

**Response:** Inmates that have been evacuated from institutions are appropriately redesignated to another facility commensurate with their security and programming needs. Staffing levels and capacities of institutions receiving inmates as a result of evacuations following natural disasters remain unchanged.

- What is BOP doing to ensure the health and safety of inmates that have to continue to reside in damaged institutions? For example, what type of safety measures are in place to mitigate the potential health effects of living and working in these damaged institutions? How is BOP prioritizing these repairs to minimize inmate and staff exposure to potential hazards in these damaged institutions?

**Response:** Dedicated Occupational Safety and Health (OSH) staff are located at each BOP facility. Policy requires these staff to access hazards and when hazards cannot be eliminated, administrative and/or engineering controls must be implemented. OSH staff work with local administration to implement processes and procedures to help mitigate any potential hazards. Institution Duty Officers conduct inspections of the institution on a weekly basis and OSH staff conduct inspections of all areas of the institution monthly to help identify any deficiencies. These inspection reports are sent to affected department heads and to local executive staff for review and corrective action if needed. In addition, Regional and Central Office OSH staff are available for technical assistance as needed to help institutions mitigate any potential hazards.

### **Responsiveness and Accountability**

- What factors does BOP consider in its process for prioritizing responses to questions that we, as members of Congress submit, such as requests for information and participation in hearings?

**Response:** All questions and requests from congress are prioritized and responded to as quickly as possible.

- Under Director Carvajal's leadership, BOP established a Task Force to address Inspector General and GAO recommendations. Is it expected that his successor, whenever named, will continue this emphasis on correcting the deficiencies that the IG and GAO have identified? What other areas do you envision the new Director focusing his or her attention on?

**Response:** Director Colette S. Peters was sworn in on August 2, 2022. She remains focused on enhancing current initiatives, such as FSA and inmate programming, staffing, safety and security, and is in the process of reviewing BOP operations and identifying additional priorities.

### **Implementation of Executive Order on Voting Access**

- On March 7, 2021, President Biden issued an Executive Order on Promoting Access to Voting, Exec. Order No.14,019, directing federal agencies, by September 23, 2021, to submit plans for promoting and facilitating the right to vote. Has the BOP developed a strategic plan for EO implementation?

**Response:** The BOP, in conjunction with the Department of Justice, is committed to ensuring that citizens in federal custody or preparing for reentry into the community understand, and can exercise, the voting rights provided by state law. DOJ has various efforts underway to implement E.O. 14019, including those undertaken by BOP and the US Marshals Service to implement Section 9 of the EO. Please see [www.justice.gov/voting](http://www.justice.gov/voting) for further information. Specifically for BOP, the agency has created an Admission & Orientation Handbook addendum which is provided to all inmates upon admission to the Bureau regardless of admission status. The addendum includes information regarding voting rights while in prison, voting rights status while in pretrial, mail handling procedures for all outgoing mail to Boards of Election, special handling procedures for incoming election ballots, and information regarding restoration of voting rights. Additionally, information regarding these same items were posted the Inmate Electronic Bulletin Board to ensure all inmates had access to the information. The BOP also created an Admission & Orientation lesson plan for Reentry Affairs Coordinators (RACs) and incorporated it into the Release Orientation Program (ROP). Finally, working with the Department, BOP recently distributed for its Release Orientation Program a state-by-state guide to voting rules that apply after a criminal conviction.

- How does the agency's plan ensure ballot access to all eligible voters in BOP, including both residents of universal enfranchisement jurisdictions(DC, ME, VT, PR), residents of other states who may be eligible to vote from prison (MS, TN, AL, AK), and all voters with only misdemeanor convictions?

**Response:** As noted above, the BOP's updated Admission & Orientation Handbook includes information regarding voting rights while in prison, voting rights status while in pretrial, mail handling procedures for all outgoing mail to Boards of Election, special handling procedures for incoming election ballots, and information regarding restoration of voting rights. This includes specific information for residents of the District of Columbia, Maine, Puerto Rico, and Vermont. Likewise, BOP recently distributed a state-by-state voting guide which explains voting rules that apply after a criminal conviction in each jurisdiction. Ballots for eligible offenders are sent to the inmates and are treated as legal mail.

- What is the status of access to existing programming at this time (including educational, workforce training, substance abuse disorder, and mental health treatment) and how will voting and civic education be incorporated into existing programming?

**Response:** BOP facilities are delivering programming when it is safe to do so in accordance with the BOP’s COVID operational matrix. As noted above, BOP created an Admission & Orientation lesson plan for Reentry Affairs Coordinators (RACs) to relay to the inmates upon admission to the institution. In addition, for those institutions that have implemented the Release Orientation Program (ROP), there is a lesson plan that conveys general voting information as well as voting information specific to DC, Vermont, Maine, and Puerto Rico. Likewise, BOP recently distributed a state-by-state voting guide which explains voting rules that apply after a criminal conviction in each jurisdiction.

- How will the agency's plan ensure access to voting and related programming when eligible voters are placed in lockdown and do not have access to reentry affairs coordinators?

**Response:** Institution lockdowns are non-punitive and temporary security measures. Disruptions to programming and services is sought to be resumed as soon as possible once security issues have been addressed but Unit Staff are available to address immediate concerns. In the case of Special Housing Units, Unit Management staff make daily rounds in those areas and relay inmate requests to subject matter staff. Additionally, inmates can write an Inmate Request to a staff member for a written response. Voting eligible individuals can still receive and submit ballots while on lockdown.

- What staff or third-party organizations has the agency identified that will provide programming and services for these voters?

**Response:** The BOP Reentry Affairs Coordinators provide voting information and assistance to inmates during their portion of Admission and Orientation (A&O). Unit Management staff may also provide assistance regarding access for forms.

- What is the BOPs timeline for implementation?

**Response:** These activities have been implemented and are ongoing.

- When will a draft strategic plan be released for feedback from the public?

**Response:** Consistent with the Executive Order, the Department submitted its strategic plan to the Assistant to the President for Domestic Policy last fall. The Department has made extensive information about its implementation E.O. 14019, including Section 9, publicly available at <https://www.justice.gov/voting>.

- How will BOP solicit feedback and public comment on the draft plan?

**Response:** The BOP conducted a listening session with stakeholders on October 21, 2021 (entitled “*Access to Voter Registration and Voting for Persons in Federal Custody*”) to solicit feedback regarding voting access, and it will continue to engage with stakeholders and community groups as appropriate. As noted above, the Department has also made extensive information available on its

website, including publishing certain voting resources that it has disseminated to incarcerated individuals.

- Has the agency worked with DOJ to promulgate a routine use exception to the Privacy Act to allow state, local, tribal, and territorial officials and community groups to access the information stored in the BOP's Inmate Central Records System for the purpose of facilitating registration and voting for incarcerated voters?

**Response:** No, the BOP has not promulgated such an exception. Consistent with the Privacy Act, BOP's routine uses are focused on sharing the private information about inmates with authorized governmental entities for specific legal purposes. Particularly in the case of community groups, there are significant correctional and informational security risks regarding such sharing.